

Overall Score:

68 - Weak

Legal Framework Score:

82 - Strong

Actual Implementation Score:

54 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁹Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

"The rights of citizens to form NGOs".

References:

The Law of the Republic of Tajikistan on Public Organizations, from 21.07.2010.№ 621 Chapter 1 – General Provisions, Article 4 "The rights of citizens to form NGOs." www.parlament.tj

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

“The rights of NGOs”

References:

The Law of the Republic of Tajikistan on Public Organizations, from 21.07.2010.№ 621, Chapter 3 – Rights and Responsibilities of NGOs, Article 24 – “The rights of NGOs” www.parlament.tj

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

The Law of the Republic of Tajikistan on Public Organizations, from 21.07.2010.№621. Article 24 states that a public organization has a right to disseminate information about its activity but does not oblige it to disclose the sources of funding.

References:

The Law of the Republic of Tajikistan on Public Organizations, from 21.07.2010.№ 621, Article 24.

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

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

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

67

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

Comments:

There are several NGOs in Tajikistan involved in anti-corruption and human rights activities, such as: "Law and Society," "Bureau for Human Rights and Respect of Law," "Rights and Prosperity" and "Anti-corruption Education and Propaganda Center." The Strategy for the Fight against Corruption in Tajikistan in 2008-2012 and Decree of the President #864 encouraged improvement of anti-corruption awareness among citizens and coordination of government agencies with civil society.

NGO activities mostly focused on providing awareness raising campaigns, dealing with civil society complaints and cooperation with other NGOs and INGOs working in the same field. There are no significant barriers for NGO activities. It was mentioned that the "Anti-corruption Education and Propaganda Center" initially had a different name, "Monitoring of Corruption," but the government authority requested that it change the name of NGO to make it connected with anti-corruption education, training and awareness raising.

The biggest challenge of anti-corruption and good governance NGOs in Tajikistan is financial support. International donors refrain from funding these NGOs. Most of the NGOs benefit from cooperation with INGOs on implementation of related projects.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Dec 2010 <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

Mr. Aliakbar Abdulloev, General Director of NGO "Anti-corruption education and propaganda center" on 09/02/2011

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

Comments:

The NGO "Anti-Corruption Education and Propaganda Center" made an agreement with the Agency for State Financial Control and Fight against Corruption of Tajikistan. However, the NGO mentioned that there is no interest and initiative from the government to consider their opinion and results of work in policy and decision making.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Dec 2010 <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

Mr. Aliakbar Abdulloev, General Director of NGO "Anti-corruption Education and Propaganda Center" on 09/02/2011

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

No cases have been observed.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Dec 2010 <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

Mr. Aliakbar Abdulloev, General Director of NGO “Anti-corruption Education and Propaganda Center” on 09/02/2011

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

No: A NO score is earned if any NGO 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 NGO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

There were no cases of arresting NGO activists working on anti-corruption issues.

References:

Aliakbar Abdulloev, General Director of the Republican Public Organization "Anti-corruption Education and Propaganda Center" Dushanbe, 09/02/2011

Alisher Karimov, Project Manager "State Enhancement for Improved Governance," UNDP, Dushanbe, 09/02/2011

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

No cases have been observed.

References:

Aliakbar Abdulloev, General Director of the Republican Public Organization "Anti-corruption Education and Propaganda Center" Dushanbe, 09/02/2011

Press review

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

No cases have been observed.

References:

Aliakbar Abdulloev, General Director of the Republican Public Organization “Anti-corruption Education and Propaganda Center” Dushanbe, 09/02/2011

Press review

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

“The rights of citizens to form trade unions”

References:

The Trade Union Law of the Republic of Tajikistan. Chapter 1 – General Provision, Article 5 “The rights of citizens to form trade unions” from 2 Aug, 2011, № 757 www.parlament.tj

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.

04b. In practice, citizens are able to organize into trade unions.

Comments:

In Tajikistan, any government institution having more than three employees has the right to form union committee. There is a Federation of Independent Unions of Tajikistan. All activities, instructions and regulations are set by the Federation. Trade Unions have responsibilities to defend rights of employees. For example, if there is an unfair performance appraisal by an employer, trade unions have the rights to ask for reappraisal. Trade Unions are not financed by the government. Financing comes from the salary of employees. It is usually 1 percent to 2 percent out of total salary and other incomes. These funds are used for the benefit of employees and their children, such as summer camps for children, celebrating or buying gifts for birthdays, retreats, and some medical expenses. Trade Unions refrain from strikes and political interference, and such cases are very rare.

References:

[Source – Anonymous] ,Chairman of Trade Union Committee, Government Organization, 13 Oct, 2011

US Department of State, 2010 Human Rights Reports: Tajikistan, April 8, 2011 web link: <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

Azia Plus News, Article: "Trade unions of Tajikistan, Kazakhstan and Kyrgyzstan signed an agreement to protect the rights of migrants," 30/03/2011, by Pairav Chorshanbiev. <http://news.tj/ru/news/profsoyuzy-tadzhikistana-kazakhstana-i-kyrgyzstana-podpishut-soglasheniya-po-zashchite-prav->

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:
"Freedom of press"

References:
The Law of the Republic of Tajikistan on Press and other Mass Media, from 2002 № 4, Chapter 1 – General Provisions, Article 2:
"Freedom of press" www.parlament.tj

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:
"Freedom of press"

References:
The Law of the Republic of Tajikistan on Press and other Mass Media, from 2002 № 4, Chapter 1 – General Provisions, Article 2:
"Freedom of press" www.parlament.tj

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?

81

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:
Registration is not complicated. The main problem of getting registered is that the citizens are not aware about a simple way of registering their print media entity via "Edinoe okno," through which they can do registration within 5 days.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

The law discusses a “procedure for appealing a denial of mass media registration, as well as the decision to terminate its activities.”

References:

The Law of the Republic of Tajikistan on Press and other Mass Media, from 2002 № 4, Chapter 1. General Provisions, Article 15. www.parlament.tj

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Print media entities must register. Within 5 days the print media can be registered and publish its newspaper. Local newspaper “Vechernee Dushanbe” is one of the examples.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

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

Comments:

Print media entities must register. The cost of registration is approximately 1000 TJS (~USD 200). The price is not clearly mentioned in the Mass Media Law and Regulations.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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?

44

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

Comments:

The licenses are granted based on the review of the Licensing Committee. Applications are rejected if the requirements are not met. The procedure generally is not transparent. Officials reject the application with vague arguments and reasons.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

The specific appeal mechanism for mass media does not exist. Mass media representatives should undergo the general appeal process.

References:

The Law of the Republic of Tajikistan on Press and Mass Media, from 2002, № 4, Chapter 1; General Provisions, Article 15: "Procedure for appealing a denial of registration of mass media, as well as the decision to terminate its activities." www.parlament.tj

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.

07c. 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:

In practice, 90% of the groups are denied a license. The officials refer to unspecific reasons like “papers are not in order.”

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the licensing commission asks the applicants to prove that they have necessary equipment. As such, major investments have to be made into equipment and/or proof of financial viability before applying for license.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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?

50

08a. In practice, the government does not prevent citizens from accessing content published on-line.

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

Comments:

From time to time, Internet sites with news are blocked. Currently four news sites and religious sites are blocked. (www.tjknews.com, www.centrasia.ru, www.ferghana.ru, www.turazhon.com). The sites are blocked on the level of ISP but are accessible via proxy servers, but not all citizens know how to use them.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

08b. In practice, the government does not censor citizens creating content on-line.

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

Comments:

Criminal defamation and liability legislation covering mass media is also extended to Internet publications, which might include user-generated content since the law does not differentiate. This causes a chilling effect. Most user-generated content sites are not blocked.

Criminal defamation and liability legislation prohibits and makes punishable by law the use of media to interfere in the personal lives of citizens, publish false, defamatory and provocative information, or encroach on the honor and dignity of citizens, state bodies, public associations and other organizations. Moreover, publishing information that constitutes a state or other secrets protected by law, calls for the violent overthrow or changes the constitutional order, discredits honor and dignity of the State and the President, furthers war propaganda, terrorism, racial, ethnic or religious discrimination or intolerance, pornography, incitement to commit other criminal acts also are prohibited.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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?

33

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

The articles 135, 136 of The Criminal Code give five years corrective labor, against president up to 2 years for citizens. The law uses the terms “dignity and honor” instead of defamation and libel. There are nine cases within the last two years. Defamation and libel cases 2010-2011 – one private case; one government official case; one ex-member of parliament case (criminal); eight cases with government officials. Two of 11 – criminal cases (officials). Paykon (newspaper) lost the case, three are out of court agreement, the rest are pending. The compensation for moral hazard accounted for \$1.5 mln. in total.

References:

Mr. Farrukhsho Dzhunaidov, OSCE National Media Development Officer. Dushanbe, 29/07/2011

Mr. Michael Unland, OSCE Media Officer, Dushanbe, 5/08/2011

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In 2011, the newspaper “Paykon” was practically closed down by enforcing a verdict of the city court. The city court charged the newspaper with defamation and mandated it to pay a fine of 300,000 somoni (~USD 55,000). Subsequently, businessmen published an open letter in which they alleged corruption in the state agency TojikStandard.

Another newspaper, “Millat,” was convicted by a civil court of first instance for alleging that the Ministry of Agriculture was the most corrupt ministry in Tajikistan. Millat was mandated to pay a reduced fine of approximately 1,500 TJS. The Ministry had originally mandated them to pay 1 million TJS.

References:

[Source – Anonymous], National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous], Media Officer, Dushanbe, 5/08/2011

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government controls one of the major printing houses. In some cases, the government used its influence over the printing house and its authority to conduct tax inspections to pressure privately owned printing houses. Such government control attempted to prevent newspapers from being printed. However, government control was not as evident with respect to corruption-related coverage. Corruption-related coverage is encouraged even by presidential decrees, which force ministries to be more accountable to the media. Finally, corruption-related government control occurs mostly in retaliation after newspapers published critical reports.

References:

[Source – Anonymous], National Media Development Officer, Dushanbe, 29/07/2011.

[Source – Anonymous], Media Officer, Dushanbe, 5/08/2011.

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?

20

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

Yes | **No**

Comments:

No law speaks about it.

References:

No law speaks about it.

Yes: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

Yes | **No**

Comments:

No law speaks about it.

References:

No law speaks about it.

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

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

Comments:

Despite the fact that most of the journalists signed the Ethic Norms on 30, October, 2010, in practice not all of the journalists follow the norms. There are organizations that do not accept the norms.

For example, the cases of newspapers “Nigoh” and “CCCP.” Last year political disorders took place in Rasht valley of Tajikistan. Newspaper CCCP published scary pictures of killed opposition members during political disorder in Tajikistan’s Rasht valley. The pictures were considered unethical based on journalism rules of ethics. Similarly, the weekly newspaper “Nigoh” in its last page (#16) uses a lot of swear words. For example: in one of the articles, unethical words were addressed to the international organizations active in the country.

However, most of the journalists follow Ethic Norms, those who do not follow could be justified by economical needs.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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:

According to the Constitutional Law on Elections, Article 39, “Pre-election agitation,” each candidate is entitled to up to 15 minutes, and each political party is entitled to up to 30 minutes for public television and radio agitation.

In compliance with the law, all ruling and non-ruling parties are entitled to specific time in local media for debates and campaigns. State TV and radio channels constantly and openly campaigned and promoted the ruling party and its representatives. Private holdings had relatively fair coverage of election campaign of any candidate or party. However, it should be noted that not many private media entities took part in this activity.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law on Election, candidates and parties participating in the elections are entitled to the specific allocation of time in state-owned media for campaigns and discussions. However, state-owned media election campaigns mostly covered the ruling party. Other parties' debates and presentations were not broadcast as often as those of the ruling party.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

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?

33

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

Yes

No

Comments:

Recent cases involving imprisonment of journalists are related to media covering the acts of corruption. For example, journalist Mukhommadyusuf Ismailov, who was convicted based on the Criminal Code for slander, insult, hatred, excitation of parochial strife, and extortion. It is widely known that Ismailov was actually imprisoned for criticizing officials and coverage of social and economic problems in Asht region.

In another case, the newspaper "Paikon" was convicted and closed down for criticizing the activity or inactivity of individual officials and government agencies. Tajikstandard sued Paikon for publishing the cases of business entrepreneurs who violated anti-corruption laws. The court awarded Tajikstandard moral hazards [damages] of 300,000 Somoni. Later, the Ministry of Justice filed a lawsuit against the newspaper with a fictitious charge that the founder of the newspaper violated the law on public associations.

References:

[Source – Anonymous] National Media Development Officer, Dushanbe, 29/07/2011

[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

Avest. Tj, "Journalist Mukhommadyusuf Ismailov released from prison", 14.10.2011 <http://www.avesta.tj/eng/security/770-journalist-mukhommadyusuf-ismailov-released-from-prison.html>

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:

Journalist Ms. Ramziya Mirzobekova was arrested and charged for libel by the Ministry of the Interior after she published a report on the use of torture by law enforcement agencies.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011
[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

Embassy of the United States Dushanbe, Tajikistan. "Speeches and Remarks: Statement By The U.S. Ambassador Ken Gross On World Press Freedom Day." May 3, 2011. http://dushanbe.usembassy.gov/sp_05052011.html

Asia-Plus. "In what capacity is Asia-Plus's journalist summoned to prosecutor's office?" February 2, 2011. www.news.tj/en/printpdf/98829

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:

No cases have been observed.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011
[Source – Anonymous] Media Officer, Dushanbe, 5/08/2011

Press review

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.

52
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

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

Yes | No

Comments:

“Government Information Policy.”

References:

The Law of the Republic of Tajikistan on Government Information, from 10 Apr, 2002, № 609 . Article 7 “Government Information Policy”. www.parlament.tj

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

“Appeal of denial and delay to meet a request for access to official documents”

References:

The Law of the Republic of Tajikistan on Government Information, from 10 Apr, 2002, № 609 . Chapter 3 – Types Sources and Modes of Access to Information. Article 31: “Appeal of denial and delay to meet a request for access to official documents” www.parlament.tj

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:

There is the National Information Agency of Tajikistan, one of the main government information agency of Tajikistan, which covers social and economic aspects and daily news of the Republic.

References:

National Information Agency of Tajikistan. <http://www.khovar.tj/eng/>

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 to information requests effective?

58

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

100 | 75 | 50 | 25 | 0

Comments:

Any information request must be done in written form called "Zayavlenie/Ariza" in the local language. This rule applies to all (citizens, NGOs, and government agencies when requesting information from another government agency). The higher authority/head of agency is a decision maker in this regard. Usually, the government responds within one or a maximum two weeks, depending on the type of information requested. In some cases, they contact by telephone to inform that the "Zayavlenie" was received and under consideration. Most of the government agencies have Web sites, but information is not regularly updated.

References:

Maknuna Khujalieva, Senior Internal Auditor, OXUS, Microfinance, 21 Oct, 2011. Dushanbe

OECD Anti – Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring. Dec, 2010. www.oecd.org/dataoecd/11/55/41603641.pdf

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the new decree “On approval of the order of reimbursement of costs related to provision of information” which came into effect in Jan. 2010, government institutions are allowed to charge citizens and media representatives for any kind of information requested (oral and written information, one page of information should cost 35 Somoni – equivalent to \$8). Lawyers and human rights experts stated that new decree is in conflict with the Law on Access to Government Information.

References:

Maknuna Khujalieva, Senior Internal Auditor, OXUS, Microfinance, 21 Oct, 2011. Dushanbe

OECD Anti – Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring. Dec, 2010. www.oecd.org/dataoecd/11/55/41603641.pdf

Central Asia Caucasus Institute Tajik Government Introduces Fees for Public Information Access. By Suhrob Majidov. (12/23/2009 issue of the CACI Analyst) <http://www.cacianalyst.org/?q=node/5247>

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Online information provided by the agencies is updated with significant delays and sometime not in full scope. Interviewed individuals stated that information provided was precise and high quality. However, media and NGO sector stated that legislation in practice is not effective and does not provide them with opportunity to obtain detail information requested.

References:

Maknuna Khujalieva, Senior Internal Auditor, OXUS, Microfinance, 21 Oct, 2011. Dushanbe

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring. Dec, 2010. www.oecd.org/dataoecd/11/55/41603641.pdf

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

The general appeal process might take up to 10 working days and in rare cases one month. Specific information about information denial appeal was not available; therefore, it is difficult to evaluate.

The cost of appeal is determined by a lawyer based on the complexity of case and volume of work.

References:

Mr. Farrukhsho Dzhunaidov, OSCE National Media Development Officer. Dushanbe, 29/07/2011

Mr. Michael Unland, OSCE Media Officer, Dushanbe, 5/08/2011

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.

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

100 | 75 | 50 | 25 | 0

Comments:

The cost of an appeal depends on the volume and complexity of the case. However, in most cases, citizens refrain from filing an appeal because of the informal costs, which are too expensive.

References:

Mr. Farrukhsho Dzhunaidov, OSCE National Media Development Officer. Dushanbe, 29/07/2011

Mr. Michael Unland, OSCE Media Officer, Dushanbe, 5/08/2011

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan, Public Opinion."

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.

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

100 | 75 | 50 | 25 | 0

Comments:

If it is confidential and sensitive information. The government provides reasons for denying to provide information usually in written, and sometimes oral, form.

References:

Mr. Farrukhsho Dzhunaidov, OSCE National Media Development Officer. Dushanbe, 29/07/2011

Mr. Michael Unland, OSCE Media Officer, Dushanbe, 5/08/2011

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.

Category 2. Elections

2.1. ⁷²Voting and Party Formation

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

Comments:

Article 4: "Universal Suffrage;" Article 5: "Equal Suffrage."

References:

Constitutional Law on Elections from July, 2004, #44. Chapter 1 – General Provisions, Article 4: "Universal Suffrage;" Article 5: "Equal Suffrage." www.parlament.tj

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:

In the Constitutional Law on Elections, Chapter 5 covers Nomination, Registration and Warranties of Candidates Registration. Article 28. "Election of lower chamber" (Majlisi Namayandagon); Article 29. "Election of national chamber" (Majlisi Milli)"

References:

Constitutional Law on Elections from July, 2004, #44. Chapter 5 – Nomination, Registration and Warranties of Candidates Registration, Article 28. "Election of lower chamber" (Majlisi Namayandagon); Article 29. "Election of national chamber" (Majlisi Milli") www.parlament.tj

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?

75

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

100 | 75 | 50 | 25 | 0

Comments:

In the Parliamentary Election held in February 2010, 3,641,778 voters were registered. Citizens who are 18 years old or older are eligible to vote. There were door-to-door invitations, awareness campaigns and use of mass media to increase participation of voters. Election Commission reached disabled persons in their home. The voting polls were opened in the Tajikistan Embassies throughout the world. However, according to OSCE the woman and minority participation in the parliamentary election were low.

References:

Ms. Kurbanova Habiba, Former Senior Accountant of Micro Credit Organization "Arzish", 16 Oct, 2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010 <http://www.osce.org/odihr/elections/69061>;

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.

Comments:

On one hand, observers from the Commonwealth of Independent States reported on transparent and secret voting.

On the other hand, international observers opposed the fact, citing serious irregularities like proxy and family voting, low public profile, and low visibility of campaign. For example, Ms. Kurbanova noted that the polling station of her district was School #11 of Ismoili Somoni. The list of candidates was received by the election date and the process of voting was explained by the member of election commission. Voting was done in separate booths, and the voter placed his or her ballot in the ballot box. There were no attempts to influence voters.

Moreover, the Organization for Security and Cooperation in Europe reported, "Attempts to influence voters were observed in 44 cases or 5.8 percent of the polling stations. Multiple voting was directly observed in 60 cases or 8 percent of these polling stations. OSCE/ODIHR observers saw voters voting with pre-marked ballots in four polling stations."

References:

Kurbanova Habiba (Ms), Former Senior Accountant of Micro Credit Organization "Arzish", 16 Oct, 2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>;

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.

Comments:

Elections in Tajikistan are regulated by the Constitutional Law on Elections. Elections are held according to the Constitution. According to the schedule, parliamentary elections should be held every five years (the last one was in 2010) and presidential elections should be held every seven years (the last one was in 2007).

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe 28/10/2011.

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), Dushanbe, 18 Oct. 2011.

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?

75

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

Yes

No

Comments:

Chapter 5, Article 30 of the Constitutional Law of the Republic of Tajikistan sets forth “The right to nominate candidates.”

References:

Constitutional Law of the Republic of Tajikistan. Elections of Majlisi Oli of the Republic of Tajikistan. 10 Dec, 1999, #857. Chapter 5 – Nomination, Registration and Warranties of Candidates Activities, Article 30: “The right to nominate candidates”

http://parlament.tj/ru/index.php?option=com_content&task=view&id=10&Itemid=12

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

Comments:

“The right to nominate candidates.”

References:

Constitutional Law of the Republic of Tajikistan. Elections of Majlisi Oli of the Republic of Tajikistan. 10 Dec, 1999, #857. Chapter 5 – Nomination, Registration and Warranties of Candidates Activities, Article 30: “The right to nominate candidates” Web link: http://parlament.tj/ru/index.php?option=com_content&task=view&id=10&Itemid=12

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:

Currently there are eight parties officially registered in Tajikistan: 1) the Social Democratic Party of Tajikistan; 2) the Socialist Party of Tajikistan; 3) the Democratic Party of Tajikistan; 4) the Party of Economic Reforms; 5) the Agrarian Party; 6) the Islamic Revival Party of Tajikistan (IRPT); 7) the People’s Democratic Party; 8) the Communist Party of Tajikistan.

There are no constraints to form political parties, however international observers state that only three of these parties are independent from the government.

References:

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>;

Islamic Renaissance Party of Tajikistan wants to represent moderate Islam in CIS 26 September 2011. <http://www.interfax-religion.com/?act=news&div=8755>

2010 Country Reports on Human Rights Practices – Tajikistan, United States Department of State, 8 April 2011, http://www.unhcr.org/refworld/publisher_USDOS_/_TJK_4da56d82c_0.html

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.

Comments:

International observers reported that the Islamic Party (considered to be the opposition party) gained 38 percent of votes in the last parliamentary elections but in the official results it was mentioned as 8.5 percent. The cost of running political office depends on the support of party members and mostly on individual financial situation.

Mr. Abduali Toirov (former deputy of Dushanbe city) was discouraged by unfair practices during elections (there were falsified ballots printed where his name was crossed out). He filed the case in court and submitted evidence but he was informed that evidence materials/proofs were lost, therefore court could not continue investigation.

References:

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>

Interview with Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011. Dushanbe

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. A system of party lists may discourage or prevent independent 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.

Comments:

The Islamic Party (called an opposition party) held two seats in parliament, Peoples Democratic Party (called the ruling party) held 52 seats.

References:

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>

Tajik Social Democrats, "10 years of struggle for the right to be a constructive opposition", 19.March, 08. <http://www.ariana.su/?S=3.0803191454>

Parliamentary Elections, February 24, 2010, Konstantin Parshin freelance journalist based in Dushanbe. <http://www.eurasianet.org/departments/insightb/articles/eav022510.shtml>

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.

2.2. Election Integrity

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

100

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

Yes

No

Comments:

"The system of election commissions."

References:

Central Commission for Elections and Referenda. <http://en.kmir.tj/>

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44, Chapter 2 – Election Commissions, Article 10: "The system of election commissions" www.parlament.tj

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 exists 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?

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

Yes | No

Comments:

The Central Commission for Election and Referenda of the RT is the main monitoring agency. During elections, it functions at all levels region/oblast and district.

The electoral commission is independent from the government. The Election Commission's decisions and other acts adopted under their authority are mandatory for all state agencies, local governments, political parties, public associations, organizations and officials, candidates, voters, and lower election commissions. The law prohibits any establishment or activity of other agencies or organizations that would wholly or partially impede the electoral commission's authority.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44, Chapter 2 – Election Commissions, Article 10: "The system of election commissions" www.parlament.tj

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:

The appointments of the Commission are made based on professional qualifications and none of the employees have political loyalties. Currently there is an open position for the Deputy Chairman, vacancy announcements made in the local newspapers (for example, Sadoi Mardum). The new Chairman has been appointed (due to retirement of previous Chairman) based on the recommendation of the President and approval of lower chamber of parliament.

According to Rajab Mirzo, Tajik Analyst that previous chairmen had little independence in implementing his job. Opposition parties also complained about his dependence from political leaders.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

"President Reshuffles Tajik Election Body," Feb 22, 2011, http://tjmonitor.wordpress.com/2011/02/22/ccer_reshuffle/

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:

Currently there are 15 employees in the Central Election and Referendum Commissions of the Republic of Tajikistan. All staff have higher education and many years of working experience. During elections, due to workload, the commission hires on a temporary basis specialists from different ministries and agencies. There are also student volunteers who provide support during elections. For example, specialists from the Statistic Agency are involved in data collection and analysis.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. <http://www.osce.org/odihr/elections/69061>

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 Commission prepares reports on election observations, results, press releases and also is open for mass media. The citizens can access reports in the Web site: www.kmir.tj. The website was recently developed following OSCE recommendation by the financial support of the Republic of Tajikistan. Preliminary results are announced through mass media within 24 hours after the completion of elections.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. <http://www.osce.org/odihr/elections/69061>.

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:

During elections a working group is organized to deal with complaints and notifications. During the last elections there were more than 25,000 local observers. According to OSCE, contestants were reluctant to file the case since they did not believe in the transparency of complaint investigation. However, there were eight complaints submitted to the District Commission, 15 to Central Commission and nine cases submitted to courts by political parties.

References:

Interview: Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. <http://www.osce.org/odihr/elections/69061>.

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?

71

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

100 | 75 | 50 | 25 | 0

Comments:

Prior to elections, advocacy and awareness campaigns were conducted on how to fill the ballots and the place of polls through mass media. Local election observers were also trained on voter registration in the city, country and districts levels. There is also a mechanism for involving disable people in the election. Since, electronic voting is not introduced yet, members of commission or volunteers visit them at home and make sure their participation/voting during election. Nevertheless, international observers in the parliamentary elections noted 26% of proxy voting, 29% group voting and 36% were allowed to vote without identification documents in the polling stations.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

Asia Plus, "Social Democratic Party decides to boycott the upcoming by-election in Dushanbe", Avaz Yuldoshev, 28/03/2011. <http://news.tj/en/news/sdp-decides-boycott-upcoming-election-dushanbe>

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. <http://www.osce.org/odihr/elections/69061>

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

Comments:

“Consideration of appeals against decisions of electoral commissions.”

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44, Chapter 2 – Election Commissions, Article 20: “Consideration of appeals against decisions of electoral commissions” www.parlament.tj

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:

Election results can be appealed in the city, county and district level courts. Investigation takes from three to 10 days. The process of appeals regulated by the election law, civil procedure code and administrative offenses code. At the first stage complaints must be submitted to the Central Commission or to the courts. According to the law there is a deadline for submitting complaints against election results. The deadline is too short and some of the election contestants state that they doubt the transparency of the process.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>

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:

In an interview with one of the members of the Central Commission, the interviewee stated that during 16 years of working experience there was no interference from military or security forces during elections.

However, the media reported cases where Islamic Party activists were attacked and their agitation car was stopped by law enforcement officials. In another case, a journalist was attacked by prosecutor. That case was filed in the court.

References:

[Anonymous source], Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

Opposition Parties in Tajikistan state about offenses during election campaign by Rukhshona Ibragimova, 2010-02-25. <http://centralasiaonline.com/ru/articles/caii/features/main/2010/02/25/feature-01>

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 overtly 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

Comments:

“Status and Authority of International Observers.”

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44, Chapter 1 – General Provisions, Article 8 (1) “Status and Authority of National Observers” Article 8 (2) “Status and Authority of International Observers” www.parlament.tj

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:

Central Election and Referendum Commissions of the Republic of Tajikistan provides all necessary information to international observers, such as law of the RT on elections, new decrees and other important information. The Commission does not interfere to the work of international observers. Major obstacles have not been noted.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 28 Feb, 2010. web link: <http://www.osce.org/odihr/elections/69061>

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.

80
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

83

20a. In law, there are limits on individual donations to political parties.

Yes | No

Comments:

Donations from individuals in the electoral fund of the political parties should not exceed 100 (one hundred) for index calculation.

References:

Constitutional Law on Elections from July, 2004, #44. Chapter 1 – General Provisions, Article 9 “Elections Funding” www.parlament.tj

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

According to the Election Law donations of legal entities in the election fund of political parties should not exceed 500 (five hundred) for index calculation.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: “Elections Funding” www.parlament.tj

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

Yes | No

Comments:

According to the law the maximum size of the electoral fund of a political party should not exceed 30,000 (thirty thousand) for the indicator calculation.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9 “Elections Funding” www.parlament.tj

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

The law requires the State Savings Bank of the Republic of Tajikistan (“Amonatbank”) to inform the Commission of the income and expenditure of the electoral fund of political organization.

References:

Constitutional Law on Elections of the Republic of Tajikistan. July, 2004. #44. Chapter 1, Article 9: “Elections Funding”

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

The law grants the Central Commission for Elections and Referendum of the republic of Tajikistan the authority to control audits. However, the law does not establish an “independent agency/third party” auditing financial expenditures in case of irregularities because the Commission cannot be considered a third-party, independent agency.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: ” Elections Funding.”

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

Constitutional Law on Elections of the Republic of Tajikistan #44, Article 9, discusses " Elections Funding."

References:

Central Commission for Elections and Referendum of the Republic of Tajikistan. <http://en.kmir.tj/>

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: "Elections Funding"

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

80

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

The law states that donations from individuals in the election fund of candidates shall not exceed fifty (50) indicator for the calculation.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: "Funding of Elections" www.parlament.tj

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes

No

Comments:

According to the law, donations by legal entities to the election fund of candidates should not exceed 100 (one hundred) for calculating the indicator.

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1, Article 9: "Elections Funding." www.parlament.tj

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes

No

Comments:

The law states that the State Savings Bank of the Republic of Tajikistan, "Amonatbank," shall inform the Election Commission of the income and expenditure of the electoral fund of the political organization.

References:

Constitutional Law on Elections of the Republic of Tajikistan. July, 2004, #44. Chapter 1 – General Provisions, Article 9: "Funding of Elections" www.parlament.tj

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

Article 9 grants the Central Commission for Elections and Referenda the authority to conduct: “Control [audits] over purposeful use of funds allocated by the election commission to conduct elections, as well as control over revenues, proper accounting and use of campaign funds of the candidate and political parties is done by the Central Commission for Elections and Referenda of the Republic of Tajikistan.” However, the Article does not mandate an independent auditing campaign when irregularities are uncovered (it is a self-audit).

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: “Elections Funding”

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate’s campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate’s campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates’ campaigns.

Yes | No

Comments:

Article 9 discusses ” Elections Funding.”

References:

Constitutional Law on Elections of the Republic of Tajikistan from July, 2004, #44. Chapter 1 – General Provisions, Article 9: ” Elections Funding”

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 the financing of individual political candidates’ campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

29

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual’s ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, individual donations should be done to the temporary accounts of political parties in the State Savings Bank of the Republic of Tajikistan "Amonatbank" based on the written request of Central Commission. This is the only bank having legal status to open accounts for political parties and candidates. Individual donations should be not more than 100 for the calculation of indicators (100 показателей для расчетов). The bank should disclose information on financing of political parties (expenses and received funds) to the Central Commission. However, there is no proper control over the funds of political parties. Parties only submit receipts on their expenditures to the Central Commission.

Communist Party of the Republic of Tajikistan exists and is active thanks to its membership fees which also supports during elections. Currently there are 45,000 members of the Communist Party. It was mentioned that in-kind support (from non-members) is very rare in practice.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, Dushanbe, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, donations by corporations should not be more than 500 for the calculation of indicators (показателей для расчетов in Russian). The Communist Party is supported mostly by members of the Communist Party, such as Dehkan Farms (farmers association), trade unions, and youth associations.

However, funds are not sufficiently detailed in reports to enable agencies to conduct efficient investigations. For example, in the Communist Party's published annual budget for 2010, the budget line titled 'Sponsor's Support' totaled only 6,000 Tajik Somoni (~approx. USD1250). The names of sponsoring companies or associations are not included in the publication.

References:

[Source – Anonymous] Political Program Unit, Senior Program Assistant Dushanbe, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

"Poor parties of Tajikistan" Sergei Rasov, 09.02.2010, <http://www.politcom.ru/9577.html>

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

According to the law, the maximum total expenditure of political parties should not exceed 30,000 for the calculation of indicators (показателей для расчетов in Russian). However, expenditures are made outside of formal limitations. During an interview, party members stated that some of the parties (ruling parties) spend as much as possible during campaigns; and, this was obvious from advocacy coverage, frequent mass media investigative journalism, leaflets and other awareness campaigns.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, Dushanbe, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

"Opposition Parties in Tajikistan state about offences during election campaign" by Rukhshona Ibragimova, 2010-02-25 <http://centralasiaonline.com/ru/articles/caii/features/main/2010/02/25/feature-01>

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are independent and not funded by the government budget, therefore there is no independent investigation on financing of political parties. An agency that would conduct independent investigation of political party financing does not exist. Political Parties have their own internal Control Audit Commission.

Note that although the Central Commission is in charge of controlling bank accounts, to which political parties submit expense receipts, the Commission does not conduct audits.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), Dushanbe, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The communist party noted that during their existence they have never paid any penalties. Political parties and individual candidates should return unused funds to the Central Commission for Elections and Referendum within 30 days. If political parties and individual candidates use sources of funding apart from election funds, the Central Commission may revoke the registration of the candidate on the list of candidates from political parties.

The press review and interviews did not provide any information on penalties to offenders.

References:

Ms. Parvina Rasulova, Chief Specialist of Central Election and Referendum Commissions of the Republic of Tajikistan. Dushanbe, 28/10/2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no independent auditing agency for auditing contributions to political parties. Each party has their own Auditing Commission. After elections, the party's Audit Commission prepares a financial report that is published in the party's newspaper, the "Communist of Tajikistan," and other mass media.

References:

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

35

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

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

Comments:

Individual donations for supporting political candidates are very rare in practice. Political candidates are usually supported by their family members, relatives, friends, or by their own funds and through other unofficial means. To participate in elections, political candidate should pay a \$1550 election pledge. This results in reducing the party list because they are unable to pay the full amount.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

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

Comments:

Corporate donations are very similar to individual donations. Political candidates are usually supported by their family members, relatives, friends, or by their own funds and through some other unofficial ways.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Central Commission is in charge of monitoring the financing of individual candidates, however interview and press review clarified that there was no control over the financing of candidates. A representative of Central Commission stated that candidates only submit receipt of expenses after elections.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Commission for Election and Referendum has the authority to revoke a candidate's registration if the candidate uses funding other than the approved election funds. There were no cases of penalty.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no audit for financing of election candidates.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

56

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the legislature, political parties in Tajikistan should submit reports on their activities and financial statements to the Ministry of Justice and publish it through mass media. It is worth mentioning that citizens are not interested in financial records of political parties.

The members of communist party stated that their financial records are published in the "Communists of Tajikistan" newspaper. However, there were complaints from the Ministry of Justice to the Social Democratic Party that the Social Democratic Party did not submit either reports on activities or financial reports to the Ministry of Justice and mass media. In response to the complaint, the Deputy of Social Democratic Party noted that the financial report of the party was published in the local newspaper Asia-plus and pointed out that the complaint had political motives.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, Dushanbe, 18 Oct. 2011.

UP Monitor, "Ministry of Justice Sues the Social Democrats." 18.04.2007. <http://www.upmonitor.ru/news/100707a>

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of political parties are published in the local newspapers Asia Plus and in the party's newspapers (Communists of Tajikistan). Interested citizens can access records at the same day or maximum within one week.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free of charge.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The annual financial report is not detailed, but there are aggregate numbers corresponding to budget lines. Financial reports of other parties were not available.

References:

Mr. Abduali Toirov, Political Program Unit, Senior Program Assistant OSCE, (former Deputy of Dushanbe city), 18 Oct. 2011.

Newspaper "Communists of Tajikistan", #1, 2011, Page 2

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

25

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not interested in financial records of individual candidates. No information could be found in mass media and reports.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Press review

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not interested in financial records of individual candidates. No information could be found in mass media and reports.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant , 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not interested in financial records of individual candidates. In the case that information is requested, it is provided for free.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not interested in financial records of individual candidates. No information could be found in mass media and reports.

References:

[Source – Anonymous], Political Program Unit, Senior Program Assistant, 18 Oct. 2011.

Mr. Talbakov Ismoil, Deputy Secretary of Communist Party, Dushanbe, 29/10/2011

Ms. Mirasanova Zaragul, Secretary of Communist Party, Dushanbe, 29/10/2011

Dr. Pirumshoev Haidarsho, Director of the Institute of Political Researches, Dushanbe, 29/10/2011.

Press review

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁴¹Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

Comments:

It is mentioned in the Constitution of the Republic of Tajikistan, Chapter 2 – Rights, Freedom, Fundamental Rights and Responsibilities of a Citizen, Article 19, that everyone is guaranteed judicial protection (“Everyone has the right to require consideration by a competent and impartial tribunal”). But it does not directly say that citizens can sue the government.

References:

Constitution of the Republic of Tajikistan, Chapter 2 – Rights, Freedom, Fundamental Rights and Responsibilities of a Citizen, Article 19.

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.

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

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Chief executives mostly do not provide reasons for policy decisions. For example, Russian military bases were supposed to be phased out from Tajikistan in 2012, but the executive decided to keep Russian bases for 49 more years. The reasons and conditions were not disclosed.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and International Department, Dushanbe, 9/11/2011

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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

“Everyone is equal before the law.”

References:

Constitution of the Republic of Tajikistan, Chapter 2 – Rights, Freedom, Fundamental Rights and Responsibilities of a Citizen, Article 17: “Everyone is equal before the law.” www.parlament.tj

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

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

Comments:

The judiciary reviews executive actions, but their power is limited with respect to politically sensitive issues. A recent case with Russian pilots attracted a lot of mass-media attention worldwide and shows limits to judicial review. According to Asia-Plus, a media group in Tajikistan, Russian pilots were arrested on March 12, 2011, when their planes landed at the Qurghon Teppa airport for an unscheduled refueling en route to Russia from Afghanistan. Both planes were owned by Rolkan Investment Ltd and confiscated by Tajik authorities. The two pilots ignored warnings from Tajikistan's air traffic controllers, entered Tajik airspace illegally, lacked log books or air safety certificates, and contained undeclared cargo.

Although the court in Khatlon reviewed the case and sentenced the pilots to 8 1/2 years in prison, the Tajik government was concerned about preserving Tajik-Russia migrant labor relations. To avoid conflict with Russia, the executive branch reduced the prisoners' sentences from 8.5 years to 2.5.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

2010 Human Rights Reports, US State Department

Asia-Plus "Tajikistan to review case of Russian-hired pilots" by Sayrahmon Nazriyev, 21/11/2011 <http://news.tj/en/news/tajikistan-review-case-russian-hired-pilots>

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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

Legislature and adopted laws are under the control of the executive. The policies implemented are based on executive orders and legislature.

References:

Mr. Farrukhsho Dzhunaidov, OSCE National Media Development Officer. Dushanbe, 29/07/2011

Mr. Abdusalom Radzhabov, Head of Labor Union/International Relations Department, Ministry of Culture

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.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | **No**

Comments:

The law grants the President the right of immunity.

References:

Constitution of the Republic of Tajikistan, Article 72: " The President has the right of immunity" <http://parlament.tj/>

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

Comments:

Minister level officials have no immunity. Like any other citizen, they can be prosecuted for any crimes they commit.

References:

Criminal Code of the Republic of Tajikistan, Article 5: "The principle of equality before the law" from 21 July 2010. № 617
www.parlament.tj

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.

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

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

Yes, the law requiring "information on income and property status" of public servants currently requires all levels of public servants to submit asset disclosures.

References:

Law on Civil Service from 11.03.2010.№ 603, Chapter 3 – Legal Rights of Civil Servant, Article 31: "Information on income and property status public servant" (current law covers all levels of public servants" <http://parlament.tj/>)

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

This law requires "Information on income and property status public servant" and applies to all levels of public servants.

References:

Law on Civil Service from 11.03.2010.№603, Chapter 3 – Legal Rights of Civil Servant, Article 31: "Information on income and property status public servant" <http://parlament.tj/>

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

This law discusses limitations associated with the implementation of public services and applies to all levels of public servants.

References:

The Law of the Republic of Tajikistan on Fight against Corruption from 6.10.2008.№ 419 Chapter 2 – Notice of Corruption, Article 10: Limitations associated with the implementation of public services" <http://parlament.tj/>

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.

29d. 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

Comments:

No law addresses this issue.

References:

No law speaks to this issue.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | **No**

Comments:

No law addresses this.

References:

No law addresses this.

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.

29f. 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:

There is no regulation restricting post-government private sector employment .

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department 9/11/2011

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

No cases have been observed.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department, 9/11/2011

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The audit is not conducted. Civil servants should submit an annual asset declaration to the Tax Committee.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department, 9/11/2011

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.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

30b. 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**

Comments:

The asset disclosure records are confidential.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department, 9/11/2011

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.

30c. 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

Comments:

Citizens have no access to the legislative asset disclosure. It is kept confidential in the Tax Committee and in the Human Resources Department.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department, 9/11/2011

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

Comments:

Citizens have no access to the legislative asset disclosure. It is kept confidential in the Tax Committee and in the Human Resources Department.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

[Source – Anonymous], Head of Labor Union and Internationale Relations Department, 9/11/2011

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

25

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

During the Parliamentary Elections in February 2010, most of the parties complained that the ruling party spent government money for investigations and other propaganda campaigns.

References:

[Source – Anonymous] National Media Development Officer. Dushanbe, 29/07/2011

Asia Plus. "Ruling party wins by-election in Dushanbe's constituency # 4" 16/05/2011 Avaz Yuldoshev

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

83

32a. In law, the judiciary can review laws passed by the legislature.

Yes

No

Comments:

"The powers of the Constitutional Court of the Republic of Tajikistan."

References:

Constitutional Law of the Republic of Tajikistan on Constitutional Court of the Republic of Tajikistan, from 2003-2008 № 368 Chapter 4 – Competence of Constitutional Court of the Republic of Tajikistan, Article 14: "The powers of the Constitutional Court of the Republic of Tajikistan" <http://www.constcourt.tj>

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

Comments:

The Legislature in Tajikistan consists of Majlisi Milli (Upper Chamber) and Majlisi Namoyandagon (Lower Chamber). According to the Constitution of the Republic of Tajikistan, Majlisi Namoyandagon develops and adopts laws. Majlisi Milli approves laws. Developed and approved laws are forwarded to the Ministry of Justice. Based on the comments and approval of the Ministry of Justice the law is adopted or declined. This ensures constitutional checks and balances.

Human Rights Watch reported in the 2011 World Report Chapter: Tajikistan that the judiciary is “neither independent nor effective.”

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

Human Rights Watch, 2011 World Report Chapter: Tajikistan, <http://www.hrw.org/world-report-2011/tajikistan>

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes

No

Comments:

Article 51 of the Constitution of the Republic of Tajikistan speaks about immunity of legislature parties. However, based on criminal proceedings, the court has the authority to revoke legislatures’ immunity.

References:

Constitution of the Republic of Tajikistan, Article 51.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

39

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

The current law requires information on income and property status of public servants and applies to all levels of public servants.

References:

Law on Civil Service from 11.03.2010.№ 603, Chapter 3 – Legal Rights of Civil Servant, Article 31: “Information on income and property status public servant” <http://parlament.tj/>

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

No law addresses the issue.

References:

No law addresses the issue.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

This law governs limitations associated with corruption in the implementation of public services.

References:

Law of the Republic of Tajikistan on Fight against Corruption from 6.10.2008.№ 419 Chapter 2 – Notice of Corruption, Article 10: Limitations associated with the implementation of public services” <http://parlament.tj/>

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

Comments:

No law addresses the issue.

References:

No law addresses the issue.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Post-government private sector employment is allowed by the legislation. But, legislation restricts private sector employment while in civil service. Civil servants are allowed to teach and implement other scientific work.

References:

Mr. Abdusalom Radzhabov, Head of International Department/Chairman of Labor Union, Ministry of Culture, Dushanbe
28/10/2011

Mr. Barakatullo Akhmedov, Member of Parliament, Majlisi Namoyandagon (Lower Chamber of Parliament), Dushanbe, 28/10/1011

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

National Legislators in Tajikistan consist of “Majlisi Milli” and “Majlisi Namoyandagon”. Members of parliament are considered high-level officials. There are no examples or cases brought up by the local mass-media and corruption surveys of involvement of national legislators in corruption. The Anti-Corruption agency reported 510 cases of corruption by government authorities, of which 77 officials were dismissed. However, there are no specific cases where national legislators are the main figures. It is a very sensitive issue.

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

Press review

US Department of State, 2010 Human Rights Reports: Tajikistan, April 8, 2011 web
link: <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

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

Comments:

The audit for national legislative branch assets is not conducted. There is regulation for submission of declaration of assets to the Tax Committee annually. This rule applies to all civil servants.

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

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: 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.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to the legislative asset disclosure. It is kept confidential in the Tax Committee and in the Human Resources Department.

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to the legislative asset disclosure. It is kept confidential in the Tax Committee and in the Human Resources Department.

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to the legislative asset disclosure. It is kept confidentially in the Tax Committee and in the Human Resources Department.

References:

Mr. Abdusalom Radzhabov, Head of International Department/Chairman of Labor Union, Ministry of Culture, Dushanbe 28/10/2011

Mr. Barakatullo Akhmedov, Member of Parliament, Majlisi Namoyandagon (Lower Chamber of Parliament), Dushanbe, 28/10/1011

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

A citizen has the right to participate in political life and government directly or through representatives.

References:

Constitution of the Republic of Tajikistan, Article 27: A citizen has the right to participate in political life and government directly or through representatives. <http://parlament.tj>
<http://www.president.tj/>

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The laws are accessible on the President's and Parliament websites: (<http://www.parlament.tj/> and <http://www.president.tj/>, respectively). However, the information provided is not always sufficient, detailed and updated.

References:

[Source – Anonymous], Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:

Legislative processes and documents are available online at no cost in the websites: (www.parlament.tj and www.president.tj). However, citizens residing in rural areas do not have access to online documents because they lack Internet connection.

References:

[Source – Anonymous] , Head of International Department/Chairman of Labor Union, Dushanbe 28/10/2011

[Source – Anonymous], Dushanbe, 28/10/1011

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 NGOs. 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 NGOs trying to access this information.

49

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

50

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | **No**

Comments:

Constitution of the Republic of Tajikistan, Article 85: “Judges of Supreme Court, Supreme Economic Court, Court of Gorno-Badakhshan Autonomous Region, the regional courts and judges in Dushanbe should not be younger than 30 years old and no older than 65 years, having experience as a judge for at least 5 years.”

References:

Constitution of the Republic of Tajikistan, Article 85: "Judges of Supreme Court, Supreme Economic Court, Court of Gorno-Badakhshan Autonomous Region

http://www.cawater-info.net/bd/pdf/const_taj.pdf

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

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

Comments:

Judicial power in Tajikistan consist of Constitutional Court, Supreme Court, Supreme Economic Court, Military Court, oblast, city and district courts. District level and military court judges are selected based on degree in law, at least three years of working experience and age 25 years old. Higher courts judge must be between 30 to 65 years old and have years of judicial experience. Those who pass the qualification exam are recommended by the Qualification Board to Council of Justice to be appointed as judges. Then, proposals are submitted by the Minister of Justice, then to the President, who decides on the appointment of judges. Supreme Court, High Economic Court, and Constitutional Court judges are elected by Majlisi Milli based on the proposal of the President. However, recent government and international organization survey results on public opinion about judiciary system showed that citizens believe judges are unqualified to skillfully settle the case.

References:

Judge of the District, [Source – Anonymous], Dushanbe, 1/11/2011.

American Bar Association, Judicial Reform Index for Tajikistan, Dec 2008. http://apps.americanbar.org/rol/publications/tajikistan_jri_12_2008_en.pdf

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP, "Corruption in Tajikistan, Public Opinion" www.undp.tj/files/undpeng.pdf

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes

No

Comments:

The Article 59 states that the Lower Chamber of Parliament has authority over the election commission and any recall of the chairman, deputies and judges of the Constitutional Court, the Supreme Court and the Supreme Economic Court based on recommendation of the President.

References:

Constitution of the Republic of Tajikistan, Article 59: "Authority of Majlisi Milli/Lower Chamber of Parliament" www.parlament.tj

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

63

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

Comments:

According to the Code of Criminal Procedure of the Republic of Tajikistan adopted on 3 December 2009 #564, judges are obliged to give reasons for their decisions.

References:

Code of Criminal Procedure of the Republic of Tajikistan adopted on 3 December 2009 #564, the Code entered into force on 1 April 2010.

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

After the completion of a judicial process, judges read the reasons and provide legal basis for their decisions. Decision in the written form is also provided. However, delays occur for parties to get their copies. A recent amendment of the Civil Procedure Code allows judges to have sufficient time for preparation of well/quality written decisions.

References:

[Source – Anonymous] Judge of the Sino District, Dushanbe, 1/11/2011.

American Bar Association, Judicial Reform Index for Tajikistan, Dec 2008. http://apps.americanbar.org/rol/publications/tajikistan_jri_12_2008_en.pdf

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

“Power of the Council of Justice of the Republic of Tajikistan”

References:

Council of Justice of the Republic of Tajikistan. Law on Courts, Article 97. “Power of the Council of Justice of the Republic of Tajikistan” www.parlament.tj

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

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

Comments:

Judicial Council of Justice and Association of Judges of the Republic of Tajikistan conduct investigations based on complaints submitted. However, due to the low awareness of citizens about the existence of such mechanisms, not many cases are filed against judges. Moreover, the population generally does not believe that investigations will be transparent and fair.

References:

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP “Corruption in Tajikistan, Public Opinion”, 2010. www.undp.tj/files/undpeng.pdf

American Bar Association, Judicial Reform Index for Tajikistan, December 2008. http://apps.americanbar.org/rol/publications/tajikistan_jri_12_2008_en.pdf

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Judicial Council of Justice and Association of Judges of the Republic of Tajikistan have no authority to impose penalties. Cases were submitted to the Qualification Board for the disciplinary hearing. But no issue of penalty was mentioned during interview.

Tajikistan has three judicial qualification boards (one for the Supreme Court judges; one for the High Economic Court judges; and one for lower-level court judges), charged with recruitment, placement, evaluation, discipline, and removal of judges, as well as recommending candidates for appointment to higher courts. The qualification boards for the Supreme Court and the High Economic Court each consist of five judges of those courts, elected by the respective Plenums. The qualification board for lower-level courts operates independently under the Court of Justice (COJ) and consists of 11 members: chairman, deputy chairman, and nine judges elected by the Conference of Judges from among judges of lower-level courts. All boards serve 10-year terms.

References:

[Source – Anonymous] Judge of the Sino District, Dushanbe, 1/11/2011.

American Bar Association, Judicial Reform Index for Tajikistan, Dec 2008. http://apps.americanbar.org/rol/publications/tajikistan_jri_12_2008_en.pdf

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.

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

36

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

Judges are required to provide financial disclosures which include information about their income and property status.

References:

The Law on Anti-Corruption of the Republic of Tajikistan, from 6.10.2008 № 419, Chapter 2 – Prevention of Corruption. Article 8: “Measures of Financial Control”

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes

No

Comments:

The law specifies limitations associated with the implementation of public services.

References:

Law of the Republic of Tajikistan on Fight against Corruption from 6.10.2008, № 419 Chapter 2 – Notice of Corruption, Article 10: Limitations associated with the implementation of public services” <http://parlament.tj/>

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes

No

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

Comments:

There is no regulation restricting post-government private sector employment for national-level judges.

References:

Judge of the Sino District, Loiksho Zikirov, Dushanbe, 1/11/2011

Ardakulov Sharif, Retired Lawyer 3/11/2011.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

International organization surveys found that the judicial system has low salaries and unfair promotions and transfers, despite the “Judicial Legal Reform” decree which was signed by the President on June 23, 2007. Thus, the judicial system creates an environment for corruption.

References:

The Center for Strategic Studies under the President of the RT, UNDP “Corruption in Tajikistan, Public Opinion” 2010. www.undp.tj/files/undpeng.pdf;

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round Monitoring, 2010. www.oecd.org/ff/404;http://www.oecd.org/80/corruption/acn.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no audit conducted for judiciary assets disclosure.

References:

Judge of the Sino District, Loiksho Zikirov, Dushanbe, 1/11/2011

Ardakulov Sharif, Retired Lawyer , Dushanbe, 3/11/2011.

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: 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.

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

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

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

Comments:

Citizens have no rights to access judicial assets information. Asset declaration is submitted to the Tax Committee annually, and this information is confidential.

References:

Judge of the District, [Source – Anonymous], Dushanbe, 1/11/2011

[Source – Anonymous], Retired Lawyer, Dushanbe, 3/11/2011.

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no rights to access judicial assets information. Asset declaration is submitted to the Tax Committee annually and this information is confidential.

References:

Judge of the District, [Source – Anonymous], Dushanbe, 1/11/2011

[Source – Anonymous], Retired Lawyer, Dushanbe, 3/11/2011.

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

Comments:

Citizens have no rights to access judicial assets information. Asset declaration is submitted to the Tax Committee annually and this information is confidential.

References:

Judge of the District, [Source – Anonymous], Dushanbe, 1/11/2011

[Source – Anonymous], Retired Lawyer, Dushanbe, 3/11/2011.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

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

75

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

"Laws are made by Majlisi Namoyandagon" (the Lower Chamber of Parliament).

References:

Constitution of the Republic of Tajikistan, Article 60 "Laws are made by Majlisi Namoyandagon" (Lower Chamber of Parliament) www.parlament.tj

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

If the budget expenditures are less than 10 percent, the Ministry of Finance simply brings it to the attention of the Parliament within five working days. If budget expenditures are more than 10 percent, the Ministry of Finance should submit the draft amendments to the extraordinary session of the Parliament within 15 working days for the discussion and approval.

The Tajikistan International Budget Partnership's assessment report, "Open Budget Initiative," will include Tajikistan in the next report (released early 2012).

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The legislature does not only vote "yes" or "no," but they have a unit that is responsible for monitoring of budget issues, updating parliamentarians on budgetary news, and answering any budget-related questions to anyone at the parliament. The analytic unit is called "Secretariat under the Committee on Budget, Taxes and Revenues of the Majlisi Namoyandagon and Majlisi Oli." However, the unit does not have sufficient technical capacities. International consultants were invited to conduct training.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

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.

41. Can citizens access the national budgetary process?

8

41a. 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:

There is no formal process for national budgetary discussions with citizens.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Representatives of NGOs and citizens legally are allowed to participate in the budget hearing, but in practice rarely anyone does so. This could be explained by a general lack of both interest and specialized budgeting skills. Select NGOs and civil society members are interested in participating and having input in the budget hearings as it relates to their field of activities. But, usually they are not taken into account.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011. www.minfin.tj

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

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

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Although difficult, citizens can access an itemized budget on occasion. The Ministry of Finance regularly publishes Budget Performance reports on its website (www.minfin.tj). Reports contain only aggregate numbers for each budget line. The annual government budget is also published on the Parliament website (www.parlament.tj). In theory, to get a detailed budget report, NGOs or citizens should submit Request Letter (called "Zayavlenie"). It is very difficult to obtain an itemized budget at the local government level, e.g. what is the school budget, what is the district budget for agriculture, etc.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011. www.minfin.tj

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

0

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

58

43a. In practice, department heads regularly submit reports to this committee.

100

75

50

25

0

Comments:

The Secretariat under the Committee on Budget, Taxes and Revenues of the Majlisi Namoyandagon (Lower Chamber) and Majlisi Oli (Upper Chamber) is effective. The head of agencies regularly submit reports to the Committee; however, the Committee lacked the technical capacity to analyze budget reports submitted by agencies.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

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.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Unit personnel selected based on the proposal of the head of the committee with approval by the chairman of the lower chamber of the parliament. The Unit is purely technical, does not belong to any party and acts in a non-partisan manner.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

Press review

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Committee does have the power to investigate aggressively but it did not exercise this power in full (in the previous years) because they simply did not have the technical capacity to analyze the budgets and defend their arguments effectively. They do cooperate with other government institutions depending on the situation.

References:

Shuhrat Mirzoev, PhD in Economics at Rutgers University, US. Peer Reviewer for International Budget Partnership assessment for Tajikistan, (former World Bank Economic Analyst in Tajikistan)

Ministry of Finance, Budget Performance Report, 2011 www.minfin.tj

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 4. Public Administration and Professionalism

4.1. ⁶⁸Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

The law on civil service sets forth “the basic principles of public service.”

References:

The Law of the Republic of Tajikistan on Civil Service. Chapter 1 – General Provisions, Article 7: “The basic principles of public service” <http://www.parlament.tj/>

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

The Law on Civil Service sets forth regulations to prevent corruption and ensure transparency in public office.

References:

The Law on Civil Service was amended on March, 2010 # 603 “amendments with regard to prevention of corruption and ensuring transparency in public office.” <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

Chapter 2: “Fundamental Rights of Trade Unions and their Associations”

Article 16: “The rights of unions and their associations for the protection of labor rights”

References:

Trade Unions . The Law of the Republic of Tajikistan on Trade Unions, from 11.03.2010 № 603, Chapter 2 – “Fundamental Rights of Trade Unions and their Associations, Article 16: “The rights of unions and their associations for the protection of labor rights” web link: <http://parlament.tj>

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism’s decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

39

45a. In practice, civil servants are protected from political interference.

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

Comments:

Civil servants are typically independent, yet sometimes they are influenced in their judgments by personal incentives. In Tajikistan, “personal interest” is a narrow concept (material and other benefits that civil servant seeks to acquire). This narrow understanding minimizes the practical use of the concept. Personal interest is one the main reasons resulting in emergence of conflict of interest, which is due mostly to economic and financial interests, affiliation with non-profit and commercial organisations, and connections with political and other professional organizations.

References:

OECD Anti Corruption Network for Eastern Europe and Central Asia Second Round of Monitoring, Dec, 2010
<http://www.oecd.org/dataoecd/11/55/41603641.pdf>

[Source – Anonymous], Head of International Department, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

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

Comments:

The vacancy announcements are made in the local newspapers, within the government institution and through job fairs. The selection commission evaluates candidates based on written tests and interviews. Major requirements for civil service positions include higher education and, depending on the position, years of work experience.

Undeniably, connections matter in daily activities and especially for appointments to higher positions.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Tajikistan Monitoring Report, December 2010 <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

2010 Human Rights Reports: Tajikistan, US Department of State, April 8, 2011. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

[Source – Anonymous], Head of International Department, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

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

Comments:

Regional consideration played an important role for the last years. For example, being from the same region as the higher authorities in certain ministries and other agencies could significantly increase chances to get the job and also could influence decisions on promotions and demotions. It still happens in practice, but control over appointments has been restricted recently. Quarterly, the corruption agency conducts control audits of appointments in the government institutions.

For example, the Head of Khatlon Statistic Office hired his son to work in the same department. The case was revealed. As an result, his son was fired and he got reprimanded. The other case happened with the former Director of Statistic Agency. The complaint was sent to the government that the Director (from Pamir region) hired most of the employees from that same region. The Director proved this fact to be wrong, through, bringing facts that those employees has been working before he was appointed as a Director. Even though regionalism (Kulyabi, Gharmi, Pamiri, Ainigi) is still in practice, the situation has improved from previous years.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Tajikistan Monitoring Report, December 2010 <http://www.oecd.org/dataoecd/38/48/46822139.pdf>

2010 Human Rights Reports: Tajikistan, US Department of State, April 8, 2011. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

[Source – Anonymous], Head of International Department, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants have clear job descriptions and daily routine work is implemented according to that described in the frame of Terms of References. But, overtime payment is not common in the civil service. Usually, weekends are spent in the offices with no overtime payment (locally they call it: dobrovolno prinuditelno), despite the fact that, according to the law, overtime should be paid. Their justification for not paying overtime is “budget limitations.”

References:

Abdusalom Radzhabov, Head of International Department, Ministry of Culture of the RT, Dushanbe, 31/10/2011.

Kosimov Khurshed, Deputy Agricultural Department, Statistic Agency under the President of the RT, Dushanbe, 1/11/2011.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Government employees used to get 60 to 70 percent out of total pay motivational bonuses. Eligibility for the bonuses was identified by submitted reports on implemented work and achievements. Out of the total number of employees, usually 50 percent were entitled for bonuses. With the new system, bonuses will depend on years of working experience, and the ranks will not be considered.

References:

[Source – Anonymous], Head of International Department, Dushanbe 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45f. 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

Comments:

The government does not publish the number of authorized civil service positions and positions filled. Each Ministry publishes the list of employees and their titles. That list is updated every two years.

References:

[Source – Anonymous], Head of International Department, Dushanbe 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

An independent redress mechanism does not exist in the government institutions. There is a labor union within each institution but its functions are mostly related to organization of social events and social protection.

References:

2010 Human Rights Report, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

For the past few years, civil servants salaries were paid on time.

References:

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

No cases have been observed.

References:

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

“Information on income and property status of public servants”

References:

The Law on Civil Service of the Republic of Tajikistan, from 11.03.2010 № 603 Chapter 3 – The legal status of civil servant, Article 31: “Information on income and property status of public servants” <http://parlament.tj>

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Chapter 3 governs the legal status of civil servant, and Article 28 sets forth the main duties of a public servant.

References:

The Law on Civil Service of the Republic of Tajikistan, from 11.03.2010. №603, Chapter 3 – The legal status of civil servant Article 28: The main duties of a public servant.

http://parlament.tj/ru/index.php?option=com_content&task=view&id=10&Itemid=12

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

The law prohibits accepting remuneration for services that are related to official duties, except for the symbolic courtesies and gifts during protocol and other official events. The total value of received gifts during the year should not exceed 100 index for calculation.

References:

The Law on Fight with Corruption of the Republic of Tajikistan, from 6.10.2008 № 419 Chapter 1 – General Provisions, Article 10: "Limitations associated with the implementation of civil service"
" <http://parlament.tj>

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

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

Comments:

The Law on Civil Service does not restrict post-government employment in the private sector.

References:

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

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

Comments:

International surveys on corruption noted that, in practice, civil servants accept gifts and hospitality a lot. However, the people giving and receiving gifts and hospitality keep it confidential and rarely complain.

For example, a former tax policeman who wants to remain anonymous stated that once he investigated an Iranian company. The representative of the company handed out gift packs and the gifts were accepted. The anonymous source shared about what happened with colleagues without knowing about legal restrictions. As a result, the former tax policeman received a “note to the file.”

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP “Corruption in Tajikistan Public Opinion” December 2010 www.undp.tj/files/undpeng.pdf

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:

International organizations and government studies on anti-corruption showed that “personal interest” emerged as an issue. “Personal interest” issues were evident in financial matters or connections with NGOs that participated in tender bidding processes, as well as in connections with political or professional organizations.

References:

2010 Human Rights Report, US State Department. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, Tajikistan, December 2010.

The Center for Strategic Studies under the President of the Republic of Tajikistan. “Corruption in Tajikistan, Public Opinion,” 2010. www.undp.tj/files/undpeng.pdf

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.

46i. In practice, civil service asset disclosures are audited.

Comments:

Civil servants should submit annual asset declarations to the Tax Department. This is controlled by the Finance and HR Department in each agency. But, audits on civil service asset disclosures are not conducted.

References:

Anti-Corruption Network for Eastern Europe and Central Asia, Second Round of Monitoring, Tajikistan Monitoring Report, Dec 2010
<http://www.oecd.org/dataoecd/38/48/46822139.pdf>

[Source – Anonymous], Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous], Dushanbe, 1/11/2011.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

Comments:

This information is confidential and submitted to the Tax Department, and citizens have no rights to access the records of all level civil servants.

References:

[Source – Anonymous] , Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous] , Dushanbe, 1/11/2011.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This information is confidential and submitted to the Tax Department. Citizens have no rights to access the records of any level of civil servants.

References:

[Source – Anonymous] , Head of International Department and Labor Union, Dushanbe, 31/10/2011.

[Source – Anonymous] , Dushanbe, 1/11/2011.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This information is confidential and submitted to the Tax Department. Citizens have no rights to access the records of any level of civil servants.

References:

[Source – Anonymous] , Head of International Department and Labor Union. Dushanbe 31/10/2011.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

48a. 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

Comments:

The law protects whistle-blowers by providing "Guarantees of inviolability of persons assisting in the fight against corruption."

References:

Law of the Republic of Tajikistan on the Fight against Corruption from 6.10.2008 № 419. Chapter 1 – General Provisions Article 6: "Guarantees of inviolability of persons assisting in the fight against corruption". www.parlament.tj

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.

48b. 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:

Whistle-blowers in most cases are protected from negative consequences. According to an anti-corruption agency, in 2010, 510 corruption cases by government officials were registered. This means that awareness on how to report corruption cases and confidence of being protected is increasing. However, confidentiality is not always guaranteed to the whistle-blowers.

For example, Makhmadyusuf Ismoilov, an independent journalist who worked with a weekly newspaper called "Nuri Zindagi," is being charged after he "blew the whistle" on corruption. He might be sentenced for 16 years for insulting of officials, defamation and inciting ethnic tensions. The Eurasianet article states, "Although this journalist has been in provisional detention for more than 10 months, the investigators have still been unable to produce any convincing evidence for the charges against him."

References:

Eurasianet, Media Group "Tajikistan: Authorities Seek to Punish Anti-Corruption Whistleblower" October 3, 2011, by Konstantin Pashin

<http://www.eurasianet.org/node/64261>

Amrullo Negmatov, Head of Financial Control Department. Agency for State Financial Control and Fight against Corruption, Dushanbe, 14/09/2011

2010 Human Rights Report, US State Department <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

48c. 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

Comments:

The law protects whistle-blowers by providing "Guarantees of inviolability of persons assisting in the fight against corruption."

References:

Law of the Republic of Tajikistan on the Fight against Corruption from 6.10.2008№ 419. Chapter 1, Article 6.

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.

48d. 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:

Most of the filed/registered cases are related to civil servants. Private sector employers rarely report on corruption, although they are caught often on charges of bribery.

References:

Anonymous Source, Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, Dec, 2010. www.oecd.org/ff/?404;http://www.oecd.org:80/corruption/acn

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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:

Civil servants can report corruption cases to the Agency for Financial Control and Fight Against Corruption through the agency hotline which operates 24 hours a day. After the phone call, a whistle-blower must submit a case in written form with an entity called "Zayavlenie." Related departments within the agency will be in charge of the case.

The Ombudsman Office provides legal advice for all citizens regarding the protection of human rights and monitors reported cases. The complaints usually are submitted in written form to “Zayavlenie.”

A complaint may be filed only after the exhaustion of legal or other administrative means of protection. That is, one must first challenge the decision or action (or inaction) that violated human rights in court or the superior administrative court.

References:

Agency for Financial Control and Fight against Corruption, www.anticorruption.tj

The Ombudsman of Tajikistan, www.ombudsman.tj

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

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

Comments:

The Ombudsman of Tajikistan said they have qualified full-time staff. The other source stated that the anti-corruption agency lacks staff, and employees of the agency work more than normal working hours. Most of the time they are overloaded.

References:

Mr. Amrullo Negmatov, Head of Financial Control Department. Agency for State Financial Control and Fight against Corruption, Dushanbe, 14/09/2011

Ms. Lola Khisravova, Head of Public Sector Service, Dushanbe 10/10/2011.

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman and anti-corruption agencies are funded by the government budget.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

[Source – Anonymous], Head of Public Sector Service, Dushanbe 10/10/2011.

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Both agencies mentioned that response to complaints takes one week. In rare cases, responses takes two weeks. In the recent survey conducted by the Strategic Research Center, 55 percent of respondents believe that the work of Anti-Corruption agency is inefficient.

References:

[Source – Anonymous], Financial Control Department, Dushanbe, 14/09/2011

[Source – Anonymous], Head of Public Sector Service, The Ombudsman Office, Dushanbe 10/10/2011.

Strategic Research Center under the President of RT “Sociological Survey on Perception and Fight Against Corruption,” Dushanbe, 2011

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency independently initiates investigations. The agency also cooperates with the Ministry of Interior and KGB for further processing cases of corruptions .

The Ombudsman of Tajikistan conducts monitoring and, based on findings, submits cases to the competent agency for investigation.

References:

Mr. Amrullo Negmatov, Head of Financial Control Department. Agency for State Financial Control and Fight against Corruption, Dushanbe, 14/09/2011

Ms. Lola Khisravova, Head of Public Sector Service, Dushanbe, 10/10/2011.

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.

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

The law on Government Procurement of Goods, Works and Services governs conflicts of Interest.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184 Chapter 1, Article 8.

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.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

Comments:

No law addresses this issue.

References:

No law addresses this issue.

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

The Agency on Public Procurement of Goods, Works and Services under the Government of Tajikistan was formed in May 2010. Before the Ministry of Economy Development and Trade had the authority to perform government procurements. The source mentioned that the Law on Procurement of Goods, Article 8 (Conflict of Interest), is vague and provides some room for flexibility and misconduct. The Ministry of Economic Development and Trade intends to amend the law.

International surveys noted that the Agency is new, and it is hard to evaluate if conflict of interest regulations are effective. However, the source also stated that the transparency of the agency is under doubt. Currently, there are 20 government agencies having status for internal procurement and for the purpose of transparency the procurement system needs to be decentralized.

References:

[Source – Anonymous], Department on Procurement and Government Mobilized Reserves, Dushanbe. 2/11/2011.

OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, 2010, www.oecd.org/dataoecd/11/55/416036

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | **No**

Comments:

The law requires asset declarations but it does not require monitoring of assets, incomes and spending habits.

References:

Tax Committee under the Government of the Republic of Tajikistan. <http://www.andoz.tj/en/>

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.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

The law on the Government Procurement of Goods, Works and Services regulates Procedures of Government Procurement and "Invitation for Tender."

References:

Agency on Public Procurement of Goods, Works and Services under the Government of the Republic of Tajikistan. The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 4 – Procedures of Government Procurement, Article 31: "Invitation for Tender" www.parlament.tj

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

A law mandates government procurement of goods from multiple sources.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 3, Article 25, <http://goszakupki.tj/>

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

The law grants citizen rights for appeal of procurement decisions.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 7, Article 79, www.parlament.tj

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes

No

Comments:

The law grants a right to appeal procurement decisions.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 7, Article 79, www.parlament.tj

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes

No

Comments:

The law requires maintaining a list to register unreliable (unfair) suppliers (contractors).

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 2, Article 21, www.parlament.tj

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. 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

Comments:

The list of companies that have violated the rules of procurement is available in the Web site of the Agency on Public Procurement of Goods, Works and Services. This information is regularly updated in the website: <http://goszakupki.tj/ru/penalties>

References:

[Source – Anonymous], Department of Procurement and Government Mobilized Reserves. Dushanbe, 2/11/2011

OSCE Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, December 2010.

www.oecd.org/ff/404; <http://www.oecd.org:80/corruption/acn>

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.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Citizens can access procurement regulations.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 2 – Participants of Government Procurement, Article 20: “The main functions of the authorized body for public procurement”

www.parlament.tj

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

The law requires the government to give notification of selection of successful bidders.

References:

The Law of the Republic of Tajikistan on Government Procurement of Goods, Works and Services from 24 Feb 2006, № 184, Chapter 4. Procedures of Government Procurement, Article 45: "Notification of selection of successful bidder"

www.parlament.tj

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Detailed information about public procurement regulation and law is available on the Web site of the Agency (<http://goszakupki.tj>) . However, according to the law, the Agency should develop a procurement Bulletin. This is still not available as an easy reference for procurement within government agencies.

References:

[Source – Anonymous], Department of Procurement and Government Mobilized Reserves, 2/11/2011.

OSCE Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, December 2010.
www.oecd.org/ff/404;http://www.oecd.org/80/corruption/acn

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Detailed information about public procurement regulation is available free of charge on the Web site of the Agency: <http://goszakupki.tj/ru/legislation/the-provisions-of-the-procurement>

References:

[Source – Anonymous], Department of Procurement and Government Mobilized Reserves, 2/11/2011

OSCE Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, December 2010. www.oecd.org/ff/404;http://www.oecd.org/80/corruption/acn

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement opportunities are advertised in the Procurement Agency and Ministries Web sites, in the government, and local newspapers "Jumhuriyat," "Sadoi Mardum," "Asia Plus," etc. According to a 2010 U.S. State Department Human Rights report, some of the government contracts are made without tender bidding process.

For example, Innovative Road Solutions company received a contract to manage the road but no tender was announced. The government stated that the contract to manage the road (and collect the tolls) was awarded based on a competitive bidding process, but no tender was ever announced, and almost nothing is known about the company that received the contract, "Innovative Road Solutions" (IRS). The company appears to be based in the British Virgin Islands, and reports have circulated that it is run by a member of the president's family.

References:

2010 Human Rights Reports, US State Department. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

[Source – Anonymous], Department on Procurement and Government Mobilized Reserves. Dushanbe, 2/11/2011.

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The results of public procurement bids are published in the Procurement Agency and Ministries Web sites. Written notification is also given to the companies that participated in the bidding process: <http://goszakupki.tj/ru/tender/results-of-the-tender>

References:

[Source – Anonymous], Department on Procurement and Government Mobilized Reserves. Dushanbe, 2/11/2011

OECD Anti – Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010. www.oecd.org/ff/?404;http://www.oecd.org:80/corruption/acn

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

The law sets forth an “understanding of privatization” which allows any business to compete for privatization bids.

References:

The Law of the Republic of Tajikistan on Privatization of State Property, Article 2: “Understanding of privatization” from 2009 №3 www.parlament.tj

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations do not exist.

References:

[Source – Anonymous], State Committee on Investment and State Property Management of the RT, Dushanbe, 9/11/2011

[Source – Anonymous] Head of International Department and Labor Union Dushanbe, 9/11/2011

Press release “Implemented activities for the period of 2011.” www.gki.tj

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.

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The “Privatization of State owned property” law addresses “information about the process of privatization.”

References:

The Law of the Republic of Tajikistan on “Privatization of State owned property,” 2009 , № 3, Article 16(1), www.parliament.tj

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Advertisements are regularly made (three times a month) in the local newspapers “Jumhuriyat,” “Sadoi Mardum,” and “Asia Plus” and on the committee Web site: www.gki.tj

References:

[Source – Anonymous], State Committee on Investment and State Property Management of the RT, Dushanbe, 9/11/2011

[Source – Anonymous], Head of Labor Union and International Department, Dushanbe, 9/11/2011

Press release on activities implemented for the period of 2011 www.gki.tj

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

The “Privatization of State owned property” law covers “information about the process of privatization.”

References:

The Law of the Republic of Tajikistan on “Privatization of State owned property” from 2009 , № 3 Article 16(1) : “Information about the process of privatization” www.parlament.tj

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are available on the committee's Web site: www.gki.tj and the Parliament's Web site: www.parlament.tj

References:

[Source – Anonymous], Head of Labor Union, State Committee on Investment and State Property Management of the RT, Dushanbe, 9/11/2011

[Source – Anonymous], Head of Labor Union and International Department, Dushanbe, 9/11/2011

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are available free of charge.

References:

[Source – Anonymous], State Committee on Investment and State Property Management of the RT, Dushanbe, 9/11/2011

[Source – Anonymous], Head of Labor Union and International Department, Dushanbe, 9/11/2011

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁷⁷National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

The law creates an Office of the Human Rights Ombudsman.

References:

The Office of the Human Rights Ombudsman. The Law of the Republic of Tajikistan "On the Human Rights Commissioner of the Republic of Tajikistan" #372, from 20 March, 2008. <http://ombudsman.tj/en/>

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.

56. Is the national ombudsman effective?

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

The law on the Human Rights Commissioner of the Republic of Tajikistan, Article 3, requires the independence of the Ombudsman.

References:

The Law of the Republic of Tajikistan “On the Human Rights Commissioner of the Republic of Tajikistan” #372, from 20 March, 2008. Article 3. The independence of the Ombudsman

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.

56b. In practice, the ombudsman is protected from political interference.

100

75

50

25

0

Comments:

The Ombudsman is appointed by the President and funded by the government budget. There were cases where the Ombudsman did not act on government action that violated human rights. For example, the government stated that the Roghun hydroelectric station shares should be purchased voluntarily. However, most of the people were forced to buy shares.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011

2010 Human Rights Reports, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

Institute for War and Peace Reporting, Tajik Ombudsman on First Year in Office By Parvina Khamidova – Central Asia Human Rights Reporting Project, 30 May 2010. <http://iwpr.net/report-news/tajik-ombudsman-first-year-office>

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The first Head of Ombudsman Office in Tajikistan is Mr. Zarif Alizoda, formerly State Adviser to the President for Legal Policy and President's Representative in Parliament. He was appointed in May 2009 and is still serving.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011

Institute for War and Peace Reporting, Tajik Ombudsman on First Year in Office By Parvina Khamidova – Central Asia Human Rights Reporting Project, 30 May 2010 <http://iwpr.net/report-news/tajik-ombudsman-first-year-office>

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The recently established office has three departments and two sectors. There are head of departments and deputies, two chief specialists and one leading specialist. The office lacks sufficient staff and capacity for monitoring and responding to complaints. The UNDP project "State Enhancement for Improved Governance" works with Ombudsman office to establish internal complaint mechanism, improve capacity of staff and connect it with other Ombudsman offices. The project is supposed to end in 2011. A project representative stated that the final report on project achievements/implemented works is under process.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011

Mr. Alisher Karimov, UNDP Project Manager, 21/10/2011

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The source stated that the agency recruits its staff based on vacancy announcement in local newspapers. Head of Departments are recruited and appointed by the President's Office/Apparatus. The anonymous source noted that he/she found his/her current position in the local newspaper and was selected based on interview and test. Members of the Ombudsman do not belong to any political parties.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

Institute for War and Peace Reporting, Ombudsman of Tajikistan, <http://iwpr.net/central-asia-human-rights-reporting-project/human-rights-partners-tajikistan>

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Human Rights Ombudsman receives regular but not sufficient funding.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

2010 Human Rights Report, US State Department <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The first Ombudsman report was presented on 19 of May, 2011. On the same day the Ombudsman officially presented the Web site www.ombudsman.tj. The first report covered the human rights situation in Tajikistan for the period of September 2009 – December 2010. The Chairman stated they had serious difficulties in preparation of the first report due to lack of experience in this field and thanked international experts for providing necessary support.

References:

[Source – Anonymous] , Head of Public Sector Service, Dushanbe, 10/10/2011.

Office of Human Rights, "Tajikistan Ombudsman presented its first report," 20/05/2011 <http://www.humanrts.tj/ru/index/index/pageId/239/#>; <http://news.tj/ru/news/ombudsmen-pravovoe-polozhenie-detei-v-tadzhikistane-ostavlyat-zhelat-luchshego>

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Office of the Human Rights Ombudsman in Tajikistan conducts monitoring based on complaints submitted and they can advise on how to present the case in the court and how to defend rights. However, by law, the office cannot deal with criminal cases. The office monitors complaints and if necessary forwards the cases to the competent agency for further investigations. The analyses of local articles and interviews did not clarify if the agency is fair in its application of power, the international organizations reports stated that in many cases the office did not react efficiently in cases of human rights violations, while in his interviews that office director stated that it's beyond their competency.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

Institute for War and Peace Reporting, “Tajik Ombudsman on First Year in Office” <http://iwpr.net/report-news/tajik-ombudsman-first-year-office>

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The source stated that the agency does not determine the guilt or take any decisions on imposing penalties on offenders, it provides legal advice, responds to citizens’ complaints, and monitors cases. The office cooperates with other law enforcement agencies by forwarding cases that are beyond its competence.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

2010, Human Rights Report, US State Department <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

Institute for War and Peace Reporting, Parvina Khamidova – Central Asia Human Rights Reporting Project, 30/05/10. <http://iwpr.net/report-news/tajik-ombudsman-first-year-office>

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The anonymous source from the Public Sector Service ministry mentioned that the first report from May 2010 was submitted to the President's office, Parliament (Lower and Upper Chamber), Constitutional Court, Supreme Court, Economic Court and Attorney's General Office. The report was prepared based on 1,500 complaints of citizens. Most of the complaints were directed to the judicial system. No information is available on government reaction or feedback on this report.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

TopTJ News The Ombudsman of Tajikistan first time presented its report.
10.03.2011, http://www.top tj.com/News/2011/03/10/ombudsmen_tadzhikistana_vpervye_predstavil_otchet_po_pravam_cheloveka

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The responses to complaints are given within one week. Sometimes they are extended to two weeks, depending on workload. Resolving complaints takes up to one month, depending on the complexity of the case.

On the Ombudsman Web site, there is opportunity for online complaint submission (http://ombudsman.tj/en/murochiat_ba_vakolatdor_questions_answered_by_ombudsman.php).

The UNDP project is directed to improving and simplifying the complaint mechanism (http://www.undp.tj/index.php?option=com_content&task=view&id=339).

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

Mr. Alisher Karimov, Project Manager, UNDP, Dushanbe, 21/10/2011.

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.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

Comments:

The law requires "Publication of the conclusion of the Commissioner for Human Rights."

References:

The Law of the Republic of Tajikistan "On the Human Rights Commissioner of the Republic of Tajikistan" #372, from 20 March, 2008, Article 19: Publication of the conclusion of the Commissioner for Human Rights. www.ombudsman.tj

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online in the ombudsman Web site: www.ombudsman.tj

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

Mr. Alisher Karimov, Project Manager, UNDP, Dushanbe, 21/10/2011.

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available at no cost on the ombudsman Web site: www.ombudsman.tj. The office also distributes reports to local and international partners and NGOs working in the same field.

References:

[Source – Anonymous], Head of Public Sector Service, Dushanbe, 10/10/2011.

Mr. Alisher Karimov, Project Manager, UNDP, Dushanbe, 21/10/2011.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

The Agency for State Financial Control and Fight Against Corruption is established by the Article 2 of the Law with the same name. It was established March 6, 2008.

References:

The Law of the Agency for State Financial Control and Fight Against Corruption, Article 2, March 6, 2008. <http://europeandcis.undp.org/anticorruption/show/CA336056-F203-1EE9-BA0ECA58624891C8>

Association of the Anti-Corruption Authorities, Tajikistan, February 15, 2012, http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/T/Tajikistan/201202/t20120215_805341.shtml

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.

59. Is the supreme audit institution effective?

72

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

The agency most similar is the Agency for State Financial Control and Fight against Corruption. The law calls for non-intervention on the activities of the Agency.

References:

The Law of the Republic of Tajikistan, "Agency for State Financial Control and Fight against Corruption" Chapter #1 – General Provisions, Article # 6: Non – intervention to the activities of the Agency. From 6 of March, 2008. www.parlament.tj

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Director is dismissed from the position only if based on a justification, investigation by the Ministry of Interior and order of the President.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn

2010 Human Rights Report, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Currently, the agency has almost 140 full-time employees. Some of the employees are doing the work of two employees. Due to insufficient budget, the agency cannot hire more staff. For example, sometimes for an investigation of government institutions there is only one specialist assigned to deal with all financial and legal issues.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn

The Center for Strategic Studies under the President of the Republic of Tajikistan, 2010

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The recruitment process is well organized. For each job, there is a vacancy announcement, interviews, tests, and a qualified interview panel. Job positions are given to those having law or economics degrees and at least two years of working experience; however, government connections are important for appointments to higher positions.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP, Survey on “Corruption in Tajikistan, Public Opinion” 2010

2010 Human Rights Report, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency is regularly funded by the government budget.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
[www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn](http://www.oecd.org:80/corruption/acn)

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Agency prepares annual reports and submits to the Parliament and the President. The articles on corruption cases, activities and achievements of the Agency are published in newspapers, press releases and other mass media (www.news.tj), as well as on the agency Web site: www.anticorruption.tj.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

President's website, "Session of the Government of Tajikistan" 18/01/2011 http://www.president.tj/rus/novostee_180111a.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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Information was not found on policy changes based on audit report submitted. However, in the 2010 government session, where each agency reported on activities during the year and presented numbers, it was reported that the President gave concrete tasks and elimination of shortcomings.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

President's Web site, "Session of the Government of Tajikistan" 18/01/2011 http://www.president.tj/rus/novostee_180111a.html

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.

59h. In practice, the audit agency is able to initiate its own investigations.

Comments:

The Agency independently initiates and carry out investigations. Depending on the case, the Agency cooperates with the Ministry of Interior and other competent agencies. However, cases of investigating politically sensitive issues are not in mainstream media reports.

References:

[Source – Anonymous], Dushanbe, 14/09/2011

The Center for Strategic Studies under the President of the RT, UNDP, “Corruption in Tajikistan, Public Opinion,” 2010
www.undp.tj/files/undpeng.pdf

Asia Plus, Corruption Reports, <http://news.tj/en/news/security/corruption?page=2>

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.

60. Can citizens access reports of the supreme audit institution?

17

60a. In law, citizens can access reports of the audit agency.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The audit reports are supposed to be available online at the agency Web site. However, the Web site does not work well and the reports are not available. For example, if one clicks on “News” or “Press release,” it will not provide you with any information. (www.anticorruption.tj).

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Monitoring Report, Tajikistan, 2010. www.oecd.org/ff/?404;<http://www.oecd.org:80/corruption/acn>

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The audit reports supposed to be available online at the agency Web site. However, the Web site does not work well and reports are not available. For example, if one clicks on “News” or “Press-release,” it will not provide you with any information. (www.anticorruption.tj).

References:

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Monitoring Report, Tajikistan, 2010. www.oecd.org/ff/?404;<http://www.oecd.org:80/corruption/acn>

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 NGOs. 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 NGOs trying to access this information.

63 5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

The law establishes the Tax Committee under the Government of the Republic of Tajikistan.

References:

Tax Committee under the Government of the Republic of Tajikistan.

Regulation of Tax Committee under the Republic of Tajikistan, from 28.05.2009. № 327. <http://www.andoz.tj/ru/nalogovyj-komitet/nalogovaya-otchetnost>

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.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Both sources stated that the agency has qualified full-time staff (all having higher degrees in law or economics) in all departments. But, there is lack of analysts to work on methodology issues.

References:

[Source – Anonymous], Dushanbe, 08/27/2011.

Ms. Jumaeva Nazira Nurulaevna, Senior Inspector of Special Services, Department of Personnel Management of Custom Service under the Government of the Republic of Tajikistan, Dushanbe, 09/06/2011

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Tax Committee is regularly funded by the government budget.

References:

[Source – Anonymous], Dushanbe, 08/27/2011.

Ms. Jumaeva Nazira Nurulaevna, Senior Inspector of Special Services, Department of Personnel Management of Custom Service under the Government of the Republic of Tajikistan, Dushanbe, 09/06/2011

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 tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

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

Comments:

The Tax Code is enforced equally for all citizens. The rate of tax is reduced for special groups of people, such as former soldiers of the Afghanistan war, national heroes and disabled people.

However, the practice of tax evasion is widespread among entrepreneurs who have small business and enterprises/sub-divisions of joint stock companies. According to the IFC's Survey: Business Environment as Seen by Small and Medium Enterprises, "More than one in three survey respondents admits that firms like theirs conceal some amount of revenue from the tax authorities. According to respondents, individual entrepreneurs conceal about 25 percent of their earnings from taxation, and the average for the entire SME sector is also 25 percent."

References:

[Source – Anonymous], Dushanbe, 08/27/2011.

Asia plus, "Tax committee calls Tojiktransgaz the most incorrigible tax defaulter" by Rasoul Shodon, 08/10/2010. <http://news.tj/en/news/tax-committee-calls-tojiktransgaz-most-incorrigible-tax-defaulter>

Ms. Jumaeva Nazira Nurulaevna, Senior Inspector of Special Services, Department of Personnel Management of Custom Service under the Government of the Republic of Tajikistan, Dushanbe, 09/06/2011

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

The law establishes the Customs Service under the Government of Tajikistan.

References:

Customer Service under the Government of Tajikistan.

The Decree of the Government of Tajikistan on Customs Service under the Government of the Republic of Tajikistan from 03.05.2010 #246. <http://www.customs.tj/rus/>

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Ms. Jumaeva mentioned that there are 1,166 employees working in Custom Service. All employees have higher education and according to the Agreement on Cooperation signed 23 November, 1994 between CIS countries Tajik custom students can study in the Russian Customs Academy and, funded by the Russian Federation, most of the employees are graduates of this academy. Due to modernization of the Custom Service, there will be need for IT specialists in the future.

References:

Ms. Jumaeva Nazira Nurulaevna, Senior Inspector of Special Services, Department of Personnel Management of Custom Service, Dushanbe, 09/06/2011

Mr. Saidali Homidov, Deputy Chief, Department of Customs-Tariff Regulation and Currency Control, Dushanbe, 09/06/2011

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Custom Service is regularly funded by the government budget.

References:

Mr. Saidali Homidov, Deputy Chief, Department of customs-tariff regulation and currency control, Dushanbe, 09/06/2011

Ms. Jumaeva Nazira Nurulaevna, Senior Inspector of Special Services, Department of Personnel Management of Custom Service, Dushanbe, 09/06/2011

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Mr. Jurabekov mentioned that Custom and Excise Law enforced laws uniformly without discrimination. Moreover, the Custom Service has followed Kyoto protocol terms and conditions since 1999. (See the Kyoto protocol: http://www.customs.tj/index.php?option=com_content&task=view&id=157&Itemid=45.)

However, an anonymous source stated that the Customs and Excise Law is not fully efficient. Misconduct may occur if a payer has connections with the Customs and Excise officers. Further, during customs declarations at the borders, entrepreneurs mostly provide wrong information on goods and try to evade custom payments.

References:

Mr. Jurabekov Eraj Tadjidinovich, Department of Organization of Custom Control, Head of Department, Dushanbe, 09/06/2011.

Anonymous Interview conducted via Skype with an employee of the Organization for Security and Co-operation in Europe.

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

The law establishes the Ministry of Finance of the Republic of Tajikistan, which has the scope of the supervisory powers of the Authority Control.

References:

The Ministry of Finance of the Republic of Tajikistan,

The Law of the Republic of Tajikistan on Financial Control from 30.07.2007r.№324. Chapter 3. Responsibilities of Control Body, Article 7: "The scope of the supervisory powers of the Authority Control" www.minfin.tj/downloads/files/zakfincont.doc

Agency of Financial Control and Fight Against Corruption. The Law of the Republic of Tajikistan on Agency of Financial Control and Fight against Corruption, from 2010, №3 №599 , Chapter – 1, Article 3 – "Objectives and main activities of the Agency" http://parlament.tj/ru/index.php?option=com_content&task=view&id=10&Itemid=12

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several

government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

70

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

Comments:

The Law of the Republic of Tajikistan on Agency of Financial Control and Fight regulates “Non-interference in the activities of the Agency.”

References:

The Law of the Republic of Tajikistan on Agency of Financial Control and Fight Against Corruption, from 2010, № 3, № 599 Chapter 1 – General Provisions Article 6: “Non-interference in the activities of the Agency”

www.parlament.tj

Yes: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100

75

50

25

0

Comments:

The Audit Department within the Ministry of Finance has 15 full-time employees. The source stated that the number of staff is sufficient for the department to carry out its basic duties.

Currently in the agency of Financial Control and Anti-corruption there are almost 140 full-time employees. Some of the employees are doing work of two employees. Due to an insufficient budget, the agency cannot hire more staff. For example, sometimes for investigation of government institutions there is only one specialist assigned to deal with financial and law issues.

References:

Mr. Amrulo Negmatov, Head of Financial Control Department. Financial Control and Anti-Corruption Agency, Dushanbe, 14/09/2011

Mr. Sharapov Umed Sharifovich, Head of Internal Audit and Control Department, Ministry of Finance, Dushanbe, 6/10/2011

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Both agencies are regularly funded by the government budget.

References:

Financial Control and Anti-Corruption Agency, Dushanbe, 14/09/2011

Ministry of Finance, Dushanbe, 6/10/2011

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

Comments:

The pertinent agency initiates and carries out investigations. Depending on the complexity of the case, the agency may cooperate with the Ministry of the Interior and other competent agencies. Both interviewees indicated that there is duplication of activities by the agency and the ministry.

However, investigations of politically sensitive cases were not observed, and audit reports of agency findings and recommendations were not published. The IMF conducted an independent international audit of the state-owned enterprise/aluminum company, Talco. The IMF revealed serious problems, which is evidence of institutional weakness.

References:

Mr. Amrulo Negmatov, Head of Financial Control Department. Financial Control and Anti-Corruption Agency, Dushanbe, 14/09/2011

Mr. Sharapov Umed Sharifovich, Head of Internal Audit and Control Department, Dushanbe, Ministry of Finance, 6/10/2011

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

Comments:

Both agencies have the authority to impose penalties. If necessary, the agency can forward the cases to the Ministry for further investigation and processing. However, the lack of concrete examples through either interviews or mass media reports suggests that the agency may not be imposing penalties effectively.

References:

Mr. Amrulo Negmatov, Head of Financial Control Department. Financial Control and Anti-Corruption Agency, Dushanbe, 14/09/2011

Mr. Sharapov Umed Sharifovich, Head of Internal Audit and Control Department, Dushanbe, Ministry of Finance, 6/10/2011

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

35

69a. In law, citizens can access the financial records of state-owned companies.

Yes | **No**

Comments:

No law addresses this issue.

References:

No law addresses this issue.

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

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

Comments:

The World Bank experts noted that Tajikistan's corporate financial reporting system needs to be improved in order to increase accountability and transparency of banks and state-owned enterprises. Tajik accounting standards are in place; however, it needs further development. The companies rarely publish updated financial reports. There is a need to adopt a mechanism for implementing International Financial Reporting Standards.

References:

Central Asia online, "Tajik Air on brink of financial ruin" by Rukhshona Ibragimova. 2010-07-29 http://centralasiaonline.com/en_GB/articles/caii/features/business/2010/07/29/feature-03

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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

Comments:

The Tajikistan Aluminum Company (TALCO) was audited by an external international audit company, Britain's Moore Stephens. The audit revealed a number of findings. The tender announcement was also made by NBO Roghun Joint – Stock Company for conducting an external audit. However, the regularity of external audit is under question.

References:

Central Asia Online "TALCO still hasn't published external audit, Tajik company flouts promise it made to international donors" by Rukhshona Ibragimova. 2010/06/25 [http://www.centralasiaonline.com/en_GB/articles/caii/features/b"usiness/2010/06/25/feature-02](http://www.centralasiaonline.com/en_GB/articles/caii/features/b)

Asia Plus. "NBO Roghun announces tender for conducting external audit" by Payrav Chorshanbiyev, 01/07/2010. <http://old.news.tj/en/news/nbo-roghun-announces-tender-conducting-external-audit>

The World Bank Center for Financial Reporting Reform, Report on the Observance of Standards and Codes (RosC) Accounting and Auditing, Republic of Tajikistan, 2009. http://siteresources.worldbank.org/EXTCENFINREPREF/Resources/4152117-1232359743213/5751608-1277910991638/38768P_Tajikistan_engl.pdf

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Tajikistan Aluminum Company (TALCO) did not publish the audit results in time, but rather one month late. The company justified the delay by saying it was awaiting a government decision and reappraisal of fixed assets.

The IMF also requested that the Tajik authorities conduct an external audit for “NBO Roghun” and make regular reports for the public.

Audit reports of state-owned enterprises generally are considered hard to access and not available online.

References:

Asia Plus, “IMF Urges Tajik Authorities to Speed Up Work on Organizing External Audit at OJSC NBO Roghun,” by Payrav Chorshanbiyev, 25/09/2010.

Central Asia Online, “TALCO Still Hasn’t Published External Audit, Tajik Company Flouts Promise It Made to International Donors” by Rukhshona Ibragimova, 2010/06/25. [http://www.centralasiaonline.com/en_GB/articles/caii/features/b"usiness/2010/06/25/feature-02](http://www.centralasiaonline.com/en_GB/articles/caii/features/b)

The World Bank Center for Financial Reporting Reform, Report on the Observance of Standards and Codes (Rosc) Accounting and Auditing, Republic of Tajikistan, 2009. http://siteresources.worldbank.org/EXTCENFINREPREF/Resources/4152117-1232359743213/5751608-1277910991638/38768P_Tajikistan_engl.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 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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Web sites review showed that audit reports are not available online (For example, TALCO Web site: <http://talco.com.tj> and Open Stock Holding Company “Barki Tojik” www.barkitajik.tj). To access audit reports, one must make a written request – “Zayavlenie” – to the company and a decision will be made by the director whether the report will be provided.

References:

Ms. Maknuna Khujaliev, Senior Audit in OXUS, Dushanbe, 5/11/2011

The World Bank Center for Financial Reporting Reform, Report on the Observance of Standards and Codes (Rosc) Accounting and Auditing, Republic of Tajikistan, 2009 http://siteresources.worldbank.org/EXTCENFINREPREF/Resources/4152117-1232359743213/5751608-1277910991638/38768P_Tajikistan_engl.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 NGOs. 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 NGOs trying to access this information.

68

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

Yes

No

Comments:

See the law on “Registration of Legal Entities and Individual Entrepreneurs.”

References:

The Law of the Republic of Tajikistan on “Registration of Legal Entities and Individual Entrepreneurs,” Chapter 1 – General Provisions, Article 3. From 1 July, 2009. #508 www.parlament.tj

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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

The law provides an appeal mechanism if a business license is denied.

References:

The Law of the Republic of Tajikistan on "On State Registration of Legal Entities and Individual Entrepreneurs" from 2010, № 12 Article: "Justification for refusal of registration"

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.

70c. 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:

According to the World Bank Doing Business 2011 Report, Tajikistan made remarkable progress. In 2010, Tajikistan was ranked 149, and, in 2011, Tajikistan was ranked 139. Tajikistan was included on the list of the ten most improved business reformers. Registering a company at a "one stop shop" ("edinoe okno") and obtaining a registration certificate, along with a Tax Identification Number, takes five days.

Progress was made when a new law was adopted, the law "On State Registration of Legal Entities and Individual Entrepreneurs" Article 4. The state registration of the principle of "edinoe okno (one stop shop)" from 29.12.10, № 669.

References:

The World Bank's Doing Business Report.

2011. <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>

Business Environment in Tajikistan as Seen by Small and Medium Enterprises, IFC, 2009 [www.ifc.org/ifcext/tajikistansme... ExSumEng12152009.../TJ_BEE_...](http://www.ifc.org/ifcext/tajikistansme...ExSumEng12152009.../TJ_BEE_...)

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.

70d. 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

Comments:

According to the World Bank Doing Business report, registration costs TJS 1000 State duty + TJS 80 (fee for the extract summarizing information about the registered entity) and to make a company seal cost TJS 70.

The World Bank estimate shows that the financial cost does not create a burden for citizens.

References:

World Bank, 2011 Doing Business Report. <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf>

Business Environment in Tajikistan as seen by Small and Medium Enterprises, IFC, 2009 www.ifc.org/ifcext/tajikistansme...ExSumEng12152009.../TJ_BEE...

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

The law regulates the “implementation of economic activity of entrepreneurs.”

References:

The Law of the Republic of Tajikistan on Government Protection and Support to Entrepreneurship, from 12.05.2007r.N 259.

Chapter 3. Economic Activity of Entrepreneur, Article 12. "Implementation of economic activity of entrepreneur" http://tajikinvest.com/investor/rus/gov_regulation/o_gos_zashite_pred.html

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

The law regulates the "Implementation of economic activity of entrepreneurs."

References:

The Law of the Republic of Tajikistan on Government Protection and Support to Entrepreneurship, from 12.05.2007, N 259. Chapter 3. Economic Activity of Entrepreneur, Article 12: "Implementation of economic activity of entrepreneur" http://tajikinvest.com/investor/rus/gov_regulation/o_gos_zashite_pred.html

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

The law regulates the "Implementation of economic activity of entrepreneurs."

References:

The Law of the Republic of Tajikistan on Government Protection and Support to Entrepreneurship, from 12.05.2007, N 259. Chapter 3. Economic Activity of Entrepreneur, Article 12: "Implementation of economic activity of entrepreneur" http://tajikinvest.com/investor/rus/gov_regulation/o_gos_zashite_pred.html

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

58

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Health standard inspections are carried out by the State Sanitary Control Service. The sanitary controls or inspections could be efficient by being reactive rather than proactive, but that is not always the reality. A number of private dentist clinics were closed based on complaints that clients contracted hepatitis while undergoing treatment.

In the interview, the resident said that bribes are also paid occasionally to get a sealed health standard certificate.

References:

Asia Plus, "Private Tajik dental clinics closed following hepatitis scare." 04/08/2011 <http://news.tj/en/news/private-tajik-dental-clinics-closed-following-hepatitis-scare>

Mr. Abdusamad Hamidov, Manager of Pre-print Department, Limited Liability Company "Dusti". Dushanbe, 14/10/ 2011.

Asia Plus, "Sanitary inspectorate tightens control over fruits and vegetables at local bazaars." Mavjouda Hasanova, 13/06/2011

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.

72b. 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

Comments:

The private business representative mentioned that during his work in the business company from 2004 – 2010 there were no inspections for meeting environmental protection. To improve environmental protection in Tajikistan the ecology commission

within the lower house of Tajikistan's parliament was set up in April 2010. The commission consists of 15 members to deal with environmental issues in Tajikistan. The bribe issue has not been observed .

References:

Business Environment in Tajikistan as Seen by Small and Medium Enterprises, December 2009, International Finance Corporation (IFC). <http://www.ifc.org/tajikistan/sme>

Asia Plus, "Two brickworkers fined a total of more than 1.6 mln somoni for illegal use of land resources" by Mavjouda Hasanova, 20/07/2010

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.

72c. 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:

Private business representatives stated that fire inspection authorities conduct inspection once a year and fire prevention plan is not checked properly, if any irregularities are observed they can be solved through some unofficial ways. One of the priority issues in public safety is control over entrepreneurs or businesses selling or producing food products. The rate of infectious diseases usually increases in summer, even though regular inspections are held.

References:

Mr. Abdusamad Hamidov, Manager of Pre-print Department, Limited Liability Company "Dusti." Dushanbe, 14/10/ 2011.

Shahnoza Radzhabaova, Human Resources Agency, Dushanbe, 16/10/2011

Asia Plus, "Sanitary inspectorate tightens control over fruits and vegetables at local bazaars" 13/06/2011. Mavjouda Hasanova.

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

The law criminalizes: "Corruption act (action or inaction) of persons authorized to perform public functions or similar entities to use their position and associated opportunities for illegal tangible and intangible benefits and advantages, as well as the promise to provide benefits and advantages for inducement or reward for act (action or inaction) in favor of individuals or entities."

References:

The Law of the Republic of Tajikistan on Fighting Corruption, from 6.10.2008, Chapter 1 – General Provisions, Article 1: "Concepts." www.parlament.tj

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes

No

Comments:

The criminal code prohibits extortion and crimes against property.

References:

Criminal Code of the Republic of Tajikistan. From 21 July, 2010, Article 250, Part 11, Chapter 26, <http://anticorruption.tj>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes

No

Comments:

The Criminal Code section on 'Crime Against Government and Interests of Public Service' criminalizes offering a bribe.

References:

Criminal Code of the Republic of Tajikistan. From 21 July, 2010, Part 1, Chapter 30, Article 320, <http://anticorruption.tj>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes

No

Comments:

In law it is illegal to accept a bribe.

References:

The Law of the Republic of Tajikistan on Fighting Corruption from 6.10.2008 № 419. Article 12 "Administrative violation related to corruption"

Criminal Code of the Republic of Tajikistan. From 21 July, 2010. General Part. Part 1 – Criminal Law . Chapter 1 – Crime Against Government and Interests of Public Service. Article 319: Receiving a bribe. <http://anticorruption.tj>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes

No

Comments:

Part 3 of the law criminalizes bribery of officials of foreign states and international organizations working in Tajikistan, or entering into a relationship with officials, government agencies, individuals and legal entities outside of the Republic of Tajikistan.

References:

The Law of the Republic of Tajikistan On Fight Against Corruption, Article 3: "The Scope of Law"

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes

No

Comments:

Relevant text of the law states:

"The following act of person authorized to perform public functions, if it does not constitute a criminal offense shall be deemed as administrative violations related to corruption: The use of public resources for personal, group and other unofficial purposes, provided to them to carry out governmental functions such as premises, means of transport and communication, electronic communication, money and other public property."

References:

The Law of the Republic of Tajikistan on Fight with Corruption, from 6.10.2008№ 419. Chapter 3 – Violation of the Law, Related to Corruption and Accountability. Article 12: "Administrative Violations Related to Corruption". www.parlament.tj

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.

73g. In law, using confidential state information for private gain is illegal.

Yes

No

Comments:

Relevant text of the law states:

“The following act of person authorized to perform public functions, if it does not constitute a criminal offense shall be deemed as administrative violations related to corruption: The use of confidential information for personal or group interests gained during the performance of public functions.”

References:

The Law of the Republic of Tajikistan on Fight with Corruption, from 6.10.2008 № 419. Chapter 2 – Prevention of Corruption. Article 12: “Administrative Violations Related to Corruption,” www.parlament.tj

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.

73h. In law, money laundering is illegal.

Yes

No

Comments:

The law criminalizes money laundering.

References:

The Law of the Republic of Tajikistan on Anti Money Laundering and Anti-Terrorism, 2011, ##684, http://www.nbt.tj/files/Laws/law_RT_en.pdf

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes

No

Comments:

In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

References:

Criminal Code of the Republic of Tajikistan. From 21 July, 2010. General Part. Part 1 – Criminal Law . Chapter 5 – Fault. Article 28 – The crime committed intentionally. <http://anticorruption.tj>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

The law establishes the Agency for State Financial Control and Fight Against Corruption.

References:

The Agency for State Financial Control and Fight against Corruption.

The Law of the Republic of Tajikistan “Agency for State Financial Control and Fight against Corruption” Chapter 1 – General Provisions, Article 1: Agency for State Financial Control and Fight against Corruption. From 6 of March, 2008. #455

www.anticorruption.tj

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.

75. Is the anti-corruption agency effective?

72

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

“Agency for State Financial Control and Fight against Corruption” is required by law to have non-intervention into the activities of the Agency.

References:

The Law of the Republic of Tajikistan “Agency for State Financial Control and Fight against Corruption” Chapter #1 – General Provisions, Article # 6 – Non – intervention to the activities of the Agency. From 6 of March, 2008. #455. www.anticorruption.tj

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100

75

50

25

0

Comments:

Legally, the agency is protected from political interference. In practice, there were cases when high authorities were dismissed in response to investigations of the Agency. For example, the previous Minister of Health was dismissed.

Human rights and anti-corruption surveys question the independence of the agency on investigation of higher authorities corruption practices.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

Asia Plus, “Tajik population names anti-corruption agency among the most corrupt bodies” by Parvina Khamidova, 28/07/2011 <http://news.tj/en/news/tajik-population-names-anticorruption-agency-among-most-corrupt-bodies>

The Center for Strategic Studies under the Government of RT, UNDP “Corruption in Tajikistan, Public Opinion” 2010

2010 Country Reports on Human Rights Practices – Tajikistan, United States Department of State, 8 April 2011, http://www.unhcr.org/refworld/publisher_USDOS_/TJK_4da56d82c_0.html

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.

75c. 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 director of the Agency is removed from the position based on justification and information provided by the Administration of the President. Following the decree of the President on 30 April, 2010, "Additional Measures on Strengthening Anti-Corruption Activities", the Head of Agency bears personal responsibility on any anti-corruption activities of the Agency.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org/80/corruption/acn

The Center for Strategic Studies under the Government of RT, UNDP "Corruption in Tajikistan, Public Opinion" 2010

2010 Country Reports on Human Rights Practices – Tajikistan, United States Department of State, 8 April 2011, http://www.unhcr.org/refworld/publisher_USDOS_TJK_4da56d82c_0.html

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The recruitment process is well organized (vacancy announcement, interviews, tests, qualified interview panel). Priorities are

given to those who have law or economics degree and at least two years of working experience. Anti-corruption surveys of international organisations mentioned that government connections sometimes matter for appointments to higher positions.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn

The Center for Strategic Studies under the President of the Republic of Tajikistan, 2010

2010 Human Rights Report, US State Department, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

Currently, the agency has approximately 585 full-time employees. Some of the employees are doing the work of two specialists due to lack of technical experts and insufficient budget so the agency cannot hire more staff. For example, for an investigation of government institutions, there is only one specialist to deal with financial and legal issues. Although specialists have enough capacity and knowledge (in some cases, academic degrees in two fields, economics and law), employees still need to work overtime due to lack of qualified technical specialists.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org:80/corruption/acn

The Center for Strategic Studies under the President of the Republic of Tajikistan, 2010

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency is regularly funded by the government budget. The budget of the Agency is prepared based on work plan and expenditures and submitted to the Ministry of Finance six months prior to the end of the year for the approval. The sources mentioned that every year the budget is increased from 10 to 15 percent.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404;http://www.oecd.org/80/corruption/acn

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Agency prepares annual reports which are submitted to the Parliament and the President. The articles on corruption cases, activities and achievements of the Agency are published in newspapers, press releases, and other mass media (www.news.tj) and in the agency Web site (www.anticorruption.tj). Also, the agency conducts press conferences quarterly.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring Report, 2010
www.oecd.org/ff/404; <http://www.oecd.org:80/corruption/acn>

[Source – Anonymous], Dushanbe, 14/09/2011

“Session of the Government of Tajikistan” 18/01/2011. http://www.president.tj/rus/novostee_180111a.html

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

The agency has access to the confidential, politically sensitive information, as well to the financial information through its department of Financial Control of the National Bank of Tajikistan. If corruption practices/cases are found, the investigator submits results of investigation to the court. However, the findings of a survey recently conducted by Research Center under the President of the RT and OSCE stated that the agency is among corrupt institutions. The Agency disputes the methodology of the survey and accuracy of information provided.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

Research Center under the President of the RT “Sociological Survey on Perception of Corruption and Fight Against Corruption in Tajikistan,” 2011.

[Source – Anonymous], Dushanbe, 14/09/2011

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Agency independently initiates and carries out investigations and depending on the case cooperates with other law enforcement agencies. For example, in a region called Sughd in 2010, there were 269 registered corruption cases, of which 39 were committed by 20 public authorities, 11 were committed by employees of the Ministry of Interior, 20 by the Ministry of Education, three by Tajikstandard, eight by the judiciary, nine by the Land Committee, 25 by the Ministry of Health, 25 by the Ministry of Energy and industry, seven by the Ministry of Defence, five by the Ministry of Irrigation and Water Management, four by Customs Service, 22 by the Ministry of Agriculture, and 15 by the Banking Institutions. Although this is but one part and not representative, this provides insight into investigations and enforcement within a typical region in Tajikistan.

References:

Mr. Sukhrob Kokhiri, Head of Public Relations and International Relations Department, Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

Asia-plus 269 corruption cases discovered in northern Tajikistan” Dushanbe, 21/01/2011 by Mavlyuda Rafieva. <http://news.tj/ru/news/269-korrupsionnykh-prestuplenii-vyyavleno-na-severe-tadzhikistana>

[Source – Anonymous], Dushanbe, 14/09/2011

Asia Plus, Corruption Reports, <http://news.tj/en/news/security/corruption?page=2>

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.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Every Saturday there are open doors from 10 am to 12 pm for citizens to meet with the Director of the Agency. Citizens can discuss and receive advice on corruption issues, as well as submit complaints. The time period for investigation depends on the case. If it is a simple case, it takes up to 10 days. If it is a complicated case, it takes one month to investigate. However, an investigation can be extended at most up to two months. It is not extended more than this.

In one case, a response was received within two days after an inspector made a phone call to set a meeting date.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

Asia Plus, Corruption Reports, <http://news.tj/en/news/security/corruption?page=2>

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Media reports on corruption issues and corruption-related surveys provide evidence that citizens do not refrain from complaining if any misconduct occurred or was observed. Currently, the agency does not have an anonymous complaint mechanism. The sources mentioned that some of the citizens have fear of recrimination; therefore, the new program on defending citizens and whistle-blowers is under development.

References:

Anonymous official at the Agency for Financial Control and Fight Against Corruption. Dushanbe 14/12/2011

[Source – Anonymous], Dushanbe, 14/09/2011

Asia Plus, Corruption Reports, <http://news.tj/en/news/security/corruption?page=2>

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.

82
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

Yes

No

Comments:

The law stipulates “The right to appeal procedural actions and decisions.”

References:

Criminal Procedure Code of the Republic of Tajikistan from 21.07.2010 № 618. Part 1 – General, Section 1 – General Provisions, Chapter 1 – Criminal, Procedural Law, Article 23: “The right to appeal procedural actions and decisions” www.minjust.tj

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

At the Supreme Court, appeals are usually resolved within one month. In the city, Oblast Courts usually resolve appeals within 14 days.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan, Public Opinion", 2010. <http://www.undp.tj/files/undpeng.pdf>;

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The appeal cost is regulated and approved by the Bar Presidium and Ministry of Finance. The main principle is agreement between client and lawyer considering the complexity of case. Nevertheless, citizens believe that the informal cost is too expensive, and those who pay are more likely to win the cases.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan, Public Opinion", 2010. <http://www.undp.tj/files/undpeng.pdf>;

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

The sources and survey on public opinion indicate that the judicial system does not always follow written law. Low salaries and bribes sometimes influence judges' personal motives and decisions.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan, Public Opinion", 2010. <http://www.undp.tj/files/undpeng.pdf>;

Human Rights Reports: Tajikistan, April 8, 2011, US Department of State. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>.

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

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.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

Comments:

The judicial system has been undergoing reforms for the past few years. In 2007, the President signed a decree for implementation of a Program on Judicial Legal Reform in the Republic of Tajikistan. The objectives of the program were to strengthen the judicial system and staff, to improve their knowledge and responsibility and to increase the role of court in defending citizens' rights. However, the public opinion in 2010 about the judicial system was far from the positive. Many people believe that the law is not equally applied and that social status affects judges' decisions.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan, Public Opinion", 2010. <http://www.undp.tj/files/undpeng.pdf>;

Human Rights Reports: Tajikistan, April 8, 2011, US Department of State. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>.

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

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.

80. Is the judiciary able to act independently?

63

80a. In law, the independence of the judiciary is guaranteed.

Yes

No

Comments:

The law sets forth courts that have independent judicial power.

References:

Constitutional Law of the Republic of Tajikistan on "Courts of the Republic of Tajikistan" Section 1 – General Provisions, Article 2: "Judicial Power" 6 Aug 2001, № 30 www.constcourt.tj

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

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

Comments:

The first instance judges are appointed based on the proposal Council of Justice of Tajikistan and appointed or dismissed by the President. The Law on Courts provides immunity and independence for judges. However, centralized decision making on appointments, dismissals, qualification, ranks, salaries and bonuses creates doubt as to the independence of judges. Judges are particularly susceptible to be politically influenced when a decision is related to higher elite authorities.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), Istanbul Anti-Corruption Action Plan, Second Round of Monitoring. 2010, www.oecd.org/dataoecd/11/55/41603641.pdf

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | **No**

Comments:

Mr. Amirbekov, the Chairman of the Bar Presidium of the Republic of Tajikistan, mentioned in an interview that such a system does not exist. Case submission depends on the geographic location.

References:

No law addresses this issue.

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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes

No

Comments:

The Constitutional law on courts regulates the “Grounds for bringing judges to disciplinary responsibility.”

References:

Constitutional Law of the Republic of Tajikistan on “Courts of the Republic of Tajikistan” Section 5, Qualifying Board, Competency Assessment and Disciplinary Responsibility of Judges, Chapter 10 – Disciplinary responsibility of judges. Article 119: “Grounds for bringing judges to disciplinary responsibility” <http://www.constcourt.tj>

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes

No

Comments:

No cases have been observed.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

Comments:

No cases have been observed.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

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.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There have been no known cases.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Woman have access to courts but usually refrain from filing a case because of the fear of being stigmatized and the financial constraints. In most cases, low awareness about legal rights is an issue for the women in Tajikistan. This is related to other issues such as the fact that the rate of suicide among women is increasing in the rural areas due to domestic violence (spouse and in-laws abuse). There are a number of NGOs currently working to address this issue.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

2010 Human Right Report, US State Department. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

The law include a provision that mandates legal aid.

References:

The Law of the Republic of Tajikistan on Advocacy, Chapter 1 – General Provisions Article 5: “Provision of legal aid” <http://parlament.tj>

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, the government should provide legal counsel to low-income people, the disabled and veterans. The counsel should be provided regardless of the type of case. But, in practice, legal aid is rarely provided. Moreover, it is not always efficient due to low paid services. Instead, human rights NGOs offer protections by providing efficient legal aid.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP. “Corruption in Tajikistan Public Opinion” Dushanbe, 2010, <http://www.undp.tj/files/undpeng.pdf>

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The average-income citizen can afford to bring a legal suit. However, the fees will depend on the type and complexity of the case. The Public Opinion on Corruption showed that many people believe those who paid more won the case.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP. "Corruption in Tajikistan Public Opinion" Dushanbe 2010, <http://www.undp.tj/files/undpeng.pdf>

World Bank, Doing Business Report 2011 Tajikistan, Enforcing Contracts, <http://www.doingbusiness.org/data/exploreeconomies/tajikistan/#enforcing-contracts>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Yes, small retail business can afford to bring a legal suit. But the cost will be associated with the case context.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

Mr. Abdusamad Hamidov, Manager of Pre-print Department, Limited Liability Company "Dusti". 14/10/2011.

World Bank, Doing Business Report 2011 Tajikistan, Enforcing Contracts, <http://www.doingbusiness.org/data/exploreeconomies/tajikistan/#enforcing-contracts>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Courts are available in the city, oblast, district and the Gorno Badakhshan Autonomous Oblast.

References:

Chairman of the Bar Presidium of the Republic of Tajikistan, M. Amirbekov, Dushanbe, 25/10/2011.

[Source – Anonymous] Judge of the District, Dushanbe, 1/11/2011.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The appointments of high authorities in law enforcement agencies (Ministry of Interior, State Tax Committee, and Customs Service, Drug Control Agency, State Committee for National Security, Agency on State Financial Control and Fight Against Corruption) are centralized, which creates a serious challenge for its independence.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP “Corruption in Tajikistan Public Opinion”, Dushanbe, 2010. www.undp.tj/files/undpeng.pdf

Asia Plus “President shakes up law enforcement and defense officials” 23/06/2011 by Mavjouda Hasanova. <http://news.tj/en/news/president-shakes-law-enforcement-and-defense-officials>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The law enforcement agencies are regularly funded by the government budget. Nevertheless, one of the main reasons for corruption within law enforcement agencies is because they receive a low salary, which creates an incentive for misconduct.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP “Corruption in Tajikistan Public Opinion,” Dushanbe. 2010. www.undp.tj/files/undpeng.pdf

2010 Human Rights Report Tajikistan, US State Department 2010, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

83c. In practice, the law enforcement agency is protected from political interference.

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

Comments:

Legally agencies have the authority to conduct investigations independently without government interference, but they lack efficiency and independence in conducting investigations of higher level officials.

References:

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP "Corruption in Tajikistan Public Opinion," Dushanbe, 2010. www.undp.tj/files/undpeng.pdf

2010 Human Rights Report Tajikistan, US State Department 2010. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

OECD Monitoring Report, 2010. www.oecd.org/dataoecd/38/48/46822139.pdf

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.

84. Can law enforcement officials be held accountable for their actions?

83

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Office of the Human Rights Ombudsman.

References:

Office of the Human Rights Ombudsman. The Law of the Republic of Tajikistan "On the Human Rights Commissioner of the Republic of Tajikistan" #372, from 20 March, 2008. <http://ombudsman.tj/en/>

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

84b. 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:

The Office of the Human Rights Ombudsman in Tajikistan conducts monitoring based on complaints submitted. Citizens receive response for simple cases within one or maximum two weeks. Serious cases take one to two months but not more than this.

References:

Ms. Lola Khisravova, Head of Public Sector Service, Dushanbe, 10/10/2011.

2010 Human Rights Report, US State Department <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

The Office of the Human Rights Ombudsman.

References:

The Office of the Human Rights Ombudsman. The Law of the Republic of Tajikistan "On the Human Rights Commissioner of the Republic of Tajikistan" #372, from 20 March, 2008. <http://ombudsman.tj/en/>

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

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

Comments:

The Ombudsman Office in Tajikistan was established in 2009. During 2010, the office received 1543 written and 444 oral complaints, with 323 received complaints related to law enforcement officials. The office is not fully independent, especially in the cases where high government officials are involved.

References:

Ms. Lola Khisravova, Head of Public Sector Service, Dushanbe, 10/10/2011.

2010 Human Rights Report, US State Department. <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154487.htm>

The Ombudsman Report for 2009-2010. <http://ombudsman.tj/bitrix/file%20PDF/Doklad-ru.pdf>

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

A general law does not exist, but law enforcement agencies (Corruption Agency, Ministry of Interior, State Police, Drug Control Agency, State Tax and Custom, Drug Control Agency, Custom Service), have their own laws and regulatory systems that prohibit immunity from criminal proceedings.

References:

No law addresses this issue.

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

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

Comments:

It is believed that the law enforcement officials are among the most corrupt agencies. Public survey findings showed that people believe that instead of fighting corruption the agencies are corrupt themselves. Daily misconduct is observed in traffic police – they charge drivers through unofficial ways and justify it by low salary. However, for the last two years the government has tightened its control over the law enforcement agencies.

References:

Asia – Plus, “Some police officers do not have shame at all, says anti-corruption agency chief,” Nargis Hamroboeva, 26/04/2011;

<http://news.tj/en/news/some-police-officers-do-not-have-shame-all-says-anticorruption-agency-chief>

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Asia-Plus, “If BBC reporter is found not guilty, police officers that detained him will be fired, says minister,” by Avaz Yuldoshev 20/07/2011 <http://news.tj/en/news/if-bbc-reporter-found-not-guilty-police-officers-detained-him-will-be-fired-says-minister>

The Center for Strategic Studies under the President of the Republic of Tajikistan, UNDP “Corruption in Tajikistan, Public Opinion”, 2010. www.undp.tj/files/undpeng.pdf

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.
