It should be noted that the research mission and the interviews for this assessment were conducted in 2008 but that legislative research and secondary sources were checked and updated in 2009. ABA ROLI has done its best to note those updates either in the body of the paper or in footnotes.
The statements and analysis contained herein are the work of the American Bar Association’s Rule of Law Initiative. The statements and analysis expressed are solely those of authors, and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report is to be considered rendering legal advice for specific cases. This report is made possible by the generous financial support of the Open Society Institute Assistance Foundation in Tajikistan (OSI AF Tajikistan), the Organization for Security and Cooperation in Europe (OSCE) Center in Dushanbe, and the Swiss Agency for Development and Cooperation (SDC) represented by the Swiss Cooperation Office in Tajikistan and Helvetas - the Swiss Association for International Cooperation branch in Tajikistan (Helvetas). The contents of this document and the views expressed herein are the responsibility of the American Bar Association’s Rule of Law Initiative and may not coincide with the views or opinions of OSI AF Tajikistan, OSCE, SDC or Helvetas.
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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association’s Rule of Law Initiative (ABA ROLI). It was developed in 2001 by the ABA’s Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with the other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA ROLI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars of judicial reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working on this issue in the field ABA ROLI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department’s COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House’s NATIONS IN TRANSIT. This assessment will not provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country’s judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information about a country’s legal system.

Assessing Reform Efforts

Assessing a country’s progress towards judicial reform is fraught with challenges. No single criterion provides a universal indicator, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary is inherently qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret “evidence of impartiality, insularity, and the scope of a judiciary’s authority as an institution.” Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

1. the reliance on formal indicators of judicial independence which do not match reality,
2. the dearth of appropriate information on the courts which is common to comparative judicial studies,
3. the difficulties inherent in interpreting the significance of judicial outcomes, or
4. the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to quantitatively measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score,” Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, Judicial Protection of the Constitution in Latin America, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).
The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated ... the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, supra, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. E.g., Larkins, supra, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, supra, at 616.

Methodology

In designing the JRI methodology, the ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria chosen on fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary and the Bangalore Principles on Judicial Conduct. In addition, these criteria also rely upon norms elaborated in regional documents, such as the Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”; the European Charter on the Statute for Judges; the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region; the Arab Justice Conferences’ Beirut and Cairo Declarations on Judicial Independence; and the Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA ROLI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA ROLI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA ROLI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA ROLI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism, and, if so, which one, was one of the most difficult and controversial aspects of this project. During 1999-2001, ABA ROLI tested various scoring mechanisms. Following a spirited discussion with members of ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, the ABA ROLI decided to forego any attempt to provide an overall scoring of a country’s reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system. Despite this general conclusion, ABA ROLI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the correlation between the
statement and the country’s judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and Judicial Independence*: 1949-59, 82 HARV. L. REV. 972 (1969) (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA ROLI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA ROLI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. An assessed correlation and a description of the reasoning behind this conclusion is given for each factor. In addition, the assessment includes a more in-depth analysis, detailing the various issues involved and based on the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary, as well as on information obtained through the key informant interview process, relying on the perspectives of at least 35-40 judges, legal professionals, law professors, NGO leaders, and journalists who have expertise in and insight into the functioning of the judiciary. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast the performance of different countries in specific areas and – as JRIIs are updated – within a given country over time.

Social scientists might argue that some of the aspects of the assessment would best be addressed through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these explorations so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. This reflects the fact that the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the JRI assessment process is to help ABA ROLI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Of course, many of the issues raised (such as judicial salaries and improper outside influences) cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA ROLI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most well-educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA ROLI offers this product as a constructive step in this direction and welcomes constructive feedback.

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**Assessment Team**

The Tajikistan JRI 2008 Analysis assessment team was led by Marilyn Zelin, a former ABA/CEELI legal specialist and country director who has served in multiple countries in Central and Eastern Europe and the former Soviet Union. Other members of the team were Staff Attorneys Dilafruz Nazarova and Parvina Abduvakhoboova. The team received support from ABA ROLI staff in Dushanbe and Washington, including Tajikistan Country Director Marit Rasmussen; Legal Specialists John Mussara, Douglas Mooney, Joshua Friedman, and Nicholas Hentoff; Staff Attorney Zulfikor Zamonov; Program Manager in Tajikistan Office Larisa Petrosyan and Staff Attorney Nodira Aminova, Research and Assessments Office Director Simon Conté; Central Asia Program Managers Heather Salfrank and Irina Parshikova; Tajikistan Program Officer Hakim Lakhdar; and interns Sarah Jordan Watson, Ardasher Avzalov and Tamerlan Ibraimov. ABA ROLI’s Research Coordinator Olga Ruda and Legal Analyst Paulina Rudnicka provided guidance throughout the assessment process, served as editors, and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in Tajikistan in April-May 2008 and relevant documents that were reviewed through the end of August 2008. As a result of unforeseen delays in publication, ABA ROLI had the opportunity to include some legislative updates and relevant developments through 2009. Generally, such updates are noted in footnotes. Records of relevant authorities and a confidential list of individuals interviewed are on file with ABA ROLI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.
Executive Summary

Brief Overview of the Results

Tajikistan faces challenges in the development and appointment of a qualified judiciary. As is the case for all jurists, Tajik judges attend law schools that offer mainly a theoretical introduction to the law and that are under-staffed and with few resources. The judiciary is not a particularly high-status career path and is not the first choice of most students. There is no requirement that new judges have prior judicial experience, although many of them are familiar with the courts. The selection process for entry-level positions, which involves an oral examination, is frustratingly opaque and open to corruption, with no set criteria for success. The promotion process is also not transparent, leading to fears of political influence on the selection process for higher-level judges. There is hope that the situation may improve in future, however; a year-long judicial internship program, introduced in 2008 and currently training as many as 25 interns each year, will hopefully improve the quality of new judges, and a majority of current judges attend yearly continuing legal education. The Tajik judiciary is fairly diverse, although women are not as well represented as they are among the law school student body.

Tajikistan’s judiciary system provides, on paper, many of the structures necessary for an empowered judiciary, but these protections are only intermittently put into practice. The Constitutional Court is able to strike down laws that are not compatible with the Constitution. Courts of general jurisdiction may hear administrative disputes and have the power to enforce guarantees of civil liberties. Judicial decisions may only be overturned by higher courts, and judges have adequate enforcement, contempt, and subpoena powers. In reality, however, the picture is rather more problematic. The Constitutional Court hears only a few cases a year and is nearly inactive. Furthermore, there is a perception that the government always wins administrative disputes and courts have been reluctant to provide effective remedies to those whose civil liberties have been infringed. Judges rarely use their enforcement powers, and enforcement of judgments, particularly civil judgments, is far from complete.

Many of the systemic flaws in Tajikistan’s judiciary may be traced to its lack of financial resources. Although the highest courts administer their own budgets, in practice no court has any influence over its funding level. And while judges’ salaries have been increasing, judges, especially at lower courts, simply do not earn enough to support their families, increasing the temptations of corruption. Nor are court buildings sufficient for their purposes; lack of space means that hearings are frequently held in the presiding judge’s office. Although security at courthouses is generally lax, judges do not report feeling unsafe.

The judiciary is also weakened by its internal regulation, most importantly the laws governing tenure, promotion, and discipline. Tajik judges are appointed for ten year terms, but the reappointment and promotion processes are opaque and lack objective criteria. Advancement is believed to depend in part on the low rate of decisions overturned on appeal, as well as on political considerations. Judges do enjoy broad immunity for official acts, but the discipline and removal process is open to manipulation and abuse. Although judges are assured fair process under law in disciplinary hearings, they do not feel that it is available in practice. The judge’s association, which might lobby for greater protections for its members, is mostly quiescent.

The weaknesses created by these systemic issues are not corrected by any judicial culture of transparency and accountability. Although the judiciary is technically independent under the Constitution, reports of undue influence on courts by the other branches, as well as of corruption, are widespread. Furthermore, judges habitually are swayed by senior judges and court chairmen in coming to their decisions. Case assignment is haphazard, and judges are frequently assigned to cases that they have already discussed with at least one of the parties. Although a Code of Ethics exists, it is not well or widely known by judges. Citizens who feel they have been unfairly treated in court do not have access to any formal complaint process, and those complaints that are made are rarely heeded. Although the media and members of the public are supposed to
have access to trials, hearings held in judges’ chambers are often closed to the public due to space constraints, and the media rarely reports aggressively on judicial decisions. Furthermore, accurate trial transcripts are frequently not kept, and court decisions, other than those of the Supreme and Constitutional Courts, are not published and only the parties are given copies.

Nor does the judicial system have the resources and procedures necessary to allow the courts to function at their maximum efficiency. Each judge does have his or her own secretary, and court chairmen have additional assistance. But an inadequate procedure for creating new judgeships when and where they are needed means that judges in the busiest courts are overworked, while those in rural areas often have little to do. The Tajik court system is without a case filing and tracking method, resulting in difficulty filing new cases; and courts lack sufficient computers, with many judges resorting to bringing their own. Finally, judges are not always supplied with copies of new legislation in a timely manner, and what they do receive is often funded by international donors.

The Tajik judicial system thus faces significant challenges. Only when the serious issues of corruption, lack of judicial independence, and the absence of transparency in all aspects of the system are resolved will it be able to offer the Tajik people reliable access to justice.
Tajikistan Background

The Republic of Tajikistan is a landlocked country in Central Asia, bordering Uzbekistan, Kyrgyzstan, China, and Afghanistan. According to official statistics, Ethnic Tajiks, who are of Iranian ancestry, comprise approximately 80% of Tajikistan’s estimated population of over seven million, with the remainder consisting of ethnic Uzbeks (15.3%), Russians (1.1%), and others (3.6%).

Once part of the Persian Empire, what is now Tajikistan was conquered by Islamic Arabs in the eighth century, followed by the Iranian Samanid Empire and, later, invading Turks and Mongols. Between the 16th and 19th century, parts of the region fell under first Uzbek and then Russian rule. In 1920, after the Russian Revolution reached the Emirate of Bukhara, which encompassed much of the territory of the modern-day Tajikistan, the Bukharan People’s Soviet Republic was proclaimed. Tajikistan became an autonomous republic within the Uzbek Soviet Socialist Republic in 1924, and in 1929 was established as a separate constituent Tajik Soviet Socialist Republic [hereinafter TSSR] within the USSR.

On September 9, 1991, following the collapse of the USSR, Tajikistan declared its independence and was renamed the Republic of Tajikistan. Two months later, one of the former communist party leaders, Rahmon Nabiye, won the first presidential election. Nabiye’s victory was followed by political turmoil and massive demonstrations against the new government, led by reformers and the Islamic opposition. A five-year civil war erupted later in 1992, claiming an estimated loss of some 100,000 lives and resulting in massive economic decline. The Nabiye government fell and the presidency was abolished in late 1992, with Emomali Rahmon (since 2007 – Emomali Rahmon), a previously unknown Party member from the south of the country, elected Chairman of the Parliament (an office then equivalent to the head of state). Rahmon was later elected President in 1994 and reelected, in 1999 and 2006. In 1997, the Rahmon government signed a power-sharing peace accord with the United Tajik Opposition, which formally ended the civil war.

The dissolution of the USSR and the civil war that followed have had devastating consequences for Tajikistan’s economy. The country remains the poorest of the post-Soviet republics; according to the World Bank, Tajikistan’s estimated annual real GDP per capita as of 2007 was USD 550, with approximately 53% of the population living below the poverty line. The civil war also meant that the newly independent Republic of Tajikistan has faced serious difficulties in reestablishing the rule of law, and a full transition to modern institutions and the structures of a democratic state has not been achieved.

Legal Context

On November 6, 1994, Tajikistan adopted its post-Soviet Constitution, which was significantly amended in 1999. Another package of 56 constitutional amendments was overwhelmingly approved in June 2003 by a referendum that many regarded as flawed. See generally CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (adopted Nov. 6, 1994 through a national referendum; last amended Jun. 22, 2003 through a national referendum) [hereinafter CONST.]. Among others, these amendments increased the powers of the President and made it possible for President Rahmon to be elected for two more seven-year terms. His current term expires in 2013.

The Constitution proclaims Tajikistan as a sovereign, democratic, law-based, secular, and unitary state, with a multi-level administrative structure consisting of viloyats (provinces), cities, nohiyas (districts), as well as settlements and villages. Id. arts. 1, 7. The four main administrative
divisions are the Dushanbe and the Regions of Republican Subordination [hereinafter RRS], Khatlon viloyat, Sughd viloyat, and Viloyati Mukhtori Kuhiston Badakhshon (hereinafter GBAO).}

The Constitution provides for basic human and civil rights, such as the right to life, the right to privacy, freedom of expression, freedom of religion, and freedom of political participation (see generally id. Chpt. II); prohibits discrimination (id. art. 17); and guarantees the right to legal representation from the moment of arrest, as well as to judicial protection by competent and impartial courts (id. art. 19). It also proclaims the principle of separation of the state power into executive, legislative, and judicial branches of the government. Id. art. 9. In practice, however, the balance of power is tipped toward the executive branch, which has significant influence over the legislature and the judiciary. The executive power is highly centralized around the President, who is popularly elected and serves as both the head of state and the head of the Government. Id. arts. 64-65. The Government is comprised of the Prime Minister, first deputy prime minister, deputy prime ministers, ministers, and chairmen of state committees. Id. art. 73. All members of the Government are appointed by the President with the Parliament’s approval. Id. arts. 55.1, 69.4. The President also has extensive powers of legislative initiative and appoints one quarter of the members of the Parliament’s upper chamber. Id. arts. 49, 58. In addition, the President recommends candidates for judges of the Supreme Court, the High Economic Court, and the Constitutional Court to the Parliament, as well as appoints all other judges. Id. arts. 56.2, 69.8, 69.13. Tajikistan’s bicameral Parliament, the Majlisi Oli (Supreme Assembly), consists of a lower chamber, the Majlisi Namoyandagon (Assembly of Representatives), with 63 deputies elected by popular vote; and an upper chamber, the Majlisi Milli (National Assembly), with 34 members. Three-quarters of the Majlisi Milli’s members (25) are selected at joint meetings of local deputies; one-fourth of the members (8) are appointed by the President; and one seat is reserved for the former President. Id. art. 49. Both chambers serve five-year terms. Id. art. 48. Both chambers of the Parliament are currently controlled by the People’s Democratic Party of Tajikistan, headed by President Rahmon.

Tajikistan’s legal system is based on the civil law tradition. The main areas of the law, including criminal law and procedure, civil law and procedure, economic court procedure, administrative procedure, family law, labor law, tax law, and enforcement of criminal judgments, are codified. In the hierarchy of laws, the Constitution has the highest legal force and is directly applicable. Laws and other legal acts that do not conform to the Constitution are legally void. Ratified international treaties take precedence over domestic statutes. Id. art. 10. Laws can be adopted either by the Majlisi Oli or by the population through a referendum. Constitutional laws, which regulate the areas directly addressed in the Constitution (such as the creation and functioning of government bodies, the structure of the courts, or the election process), require approval of at least two-thirds of the members of each parliamentary chamber. Id. art. 61. General laws deal with all other issues related to the functioning of the state and citizens, and are adopted by the majority of the members of each parliamentary chamber. The exception is the state budget and amnesty laws, which are adopted exclusively by the Majlisi Namoyandagon, which also oversees their implementation. Id. art. 60. In addition, the President, the Government, and the Majlisi Oli are empowered to issue resolutions, decrees, and orders within the framework of their authority. Id. arts. 56, 57, 70, 74. The President can repeal or suspend a legal ruling issued by an agency of the executive branch, if such act does not comply with the Constitution or the laws. Id. art. 69.6.

Tajikistan is not a member of the Council of Europe, and so has not acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms or to the jurisdiction of the European Court of Human Rights. However, Tajikistan has ratified most international human rights instruments, including the International Covenant on Civil and Political Rights [hereinafter ICCPR] and its Optional Protocol, which allows individuals to file complaints to the UN Human Rights Committee alleging violation of any of the rights set forth in the ICCPR.

1 The abbreviation GBAO stands for the Russian translation (Gorno-Badakhshan Autonomous Oblast) of Viloyati Mukhtori Kuhiston Badakhshon and, as it is commonly used in Tajikistan is retained in this Report.
History of the Judiciary

In the pre-Soviet era, the Tajik legal system was dominated by customary law (adat) and Islamic legal tradition. The judicial power was vested in Qozi Kalon (the supreme judge) and Qoziho (judges), who administered justice in accordance with the Sharia law. In 1924, when Tajikistan became an autonomous republic within Uzbekistan, several district courts were established by a decree of the Tajik Revolutionary Committee. In addition, a Tajik department was created within the Uzbek Supreme Court. Most Qozi courts were abolished, although some continued to try cases until the late 1920s on the basis of Soviet laws and Sharia rules which were not contrary to the principles of “revolutionary conscience” and the “revolutionary concept of justice.”

In 1929, a separate court system was created in Tajikistan, with the TSSR Supreme Court at its apex. The law provided for the independence of the judiciary and public participation in the court system through the institution of people’s assessors (lay judges). In reality, however, these provisions were ignored and all power was centralized in the hands of the Communist Party. In addition, the Supreme Court of the USSR was empowered to supervise the administration of justice by all courts throughout the Soviet Union.

After the collapse of the Soviet Union in 1991, Tajikistan has undertaken a number of reforms aimed at strengthening the rule of law and the justice system. In 1995, an array of new laws pertaining to the administration of justice were introduced, such as the law on the judiciary, the law on the status of judges, the law on military courts, the law on the Supreme Court, and the law on economic courts. In 2001, all of these laws were replaced by the new Law on Courts which, together with the 1995 Law on the Constitutional Court, regulate the basic aspects of organization and functions of the judicial system. See generally CONSTITUTIONAL LAW OF THE REPUBLIC OF TAJIKISTAN “ON COURTS OF THE REPUBLIC OF TAJIKISTAN” (Law No. 30, adopted Aug. 6, 2001, last amended Dec. 31, 2008) [hereinafter LAW ON COURTS]; CONSTITUTIONAL LAW OF THE REPUBLIC OF TAJIKISTAN “ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TAJIKISTAN” (Law No. 85, adopted Nov. 3, 1995, last amended Oct. 10, 2008) [hereinafter LCC]. Tajikistan has also adopted new civil procedure, economic procedure, and administrative procedure codes, as well as a new criminal code and a law on arbitration. Until recently, the criminal procedure was governed by the 1961 Criminal Procedure Code, which, despite amendments over time, still contained references to Soviet institutions. New institutions have been established, including the Constitutional Court in 1994, the Council of Justice [hereinafter COJ] in 1999, and the Judicial Training Center [hereinafter JTC] in 2003. Additionally, in 1995, the old Soviet arbitration courts were replaced by economic courts.

In June 2007, President Rahmon approved the State Program on Judicial and Legal Reform, which outlines specific goals and objectives aimed at enhancing the administration of justice and protection of human rights in Tajikistan. STATE PROGRAM FOR JUDICIAL AND LEGAL REFORM IN THE REPUBLIC OF TAJIKISTAN (Decree of the President of the Republic of Tajikistan No. 271, adopted Jun. 23, 2007) [hereinafter JUDICIAL REFORM PROGRAM]. While the Program was considered a positive step, the process of its development has been far from transparent. Although some academics and legal experts were involved in the discussions, the draft document was not made available to the media, nor was it a subject of parliamentary hearings or public debates.

Notwithstanding some efforts to reform, Tajikistan’s legal system retains many Soviet-era institutions and norms.

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2 In December 2009, during preparation of this JRI assessment, a new criminal procedure code was adopted with entry into force in April 2010.
3 According to the COJ, a new comprehensive judicial and legal reform program is in development.
Structure of the Courts

Courts

The judicial power in Tajikistan is vested in the courts of general jurisdiction (which consist of district-level courts, viloyat-level courts, and the Supreme Court, as well as military courts); the economic courts (which consist of viloyat-level economic courts and the High Economic Court); and the Constitutional Court.\(^4\) CONST. art. 84; LAW ON COURTS art. 20. Most courts consist of a chairman, one or more deputy chairmen (except in district-level courts, military courts, and viloyat-level economic courts with less than five judges), judges, and people’s assessors (except in economic courts). Courts are created by Majlisi Namoyandagon (CONST. art. 57.7), while the number of judges in each lower-level court is determined by the President upon recommendation of the COJ, and the number of judges on higher-level courts is determined by Majlisi Milli upon proposal of the President (LAW ON COURTS arts. 25, 48, 86, 75, 97). At the time of this assessment, there were a total of 343 authorized judicial positions in all of Tajikistan’s courts (including the Constitutional Court); 42 of these positions were vacant.

District-level courts include district and city courts. They are the courts of first instance for all civil, criminal, and administrative violations cases in their jurisdiction. \(\text{id.}\) art. 87. There are currently 68 district-level courts in Tajikistan, with 193 authorized judicial positions.

Viloyat-level courts include viloyat courts, the Court of GBAO, and the Dushanbe City Court. They hear civil, criminal, and administrative cases in cassation and supervisory review (i.e., in second and third instances), and, in certain instances, exercise first-instance jurisdiction. As second-tier courts, they also oversee the activities of district-level courts. \(\text{id.}\) art. 76. Each viloyat-level court consists of a civil and a criminal chamber, which hear cases in the first and cassation instance, as well as cases when new circumstances are revealed. \(\text{id.}\) art. 81. There is also a presidium, which conducts supervisory review and review as required by new circumstances, as well as approves the composition of court chambers and provides assistance to district (city) courts in order to ensure accurate application of legislation. \(\text{id.}\) art. 78. There are currently four viloyat-level courts in Tajikistan, with 52 judicial positions.

The Supreme Court is the highest judicial body in Tajikistan and oversees all lower-level courts of general jurisdiction; administers justice in civil, criminal, and administrative matters as a court of first-instance, cassation, and supervisory review, and when new circumstances are discovered; considers issues pertaining to international treaties ratified by Tajikistan; and summarizes judicial practice and analyzes judicial statistics. LAW ON COURTS arts. 22-23. The Supreme Court currently has 34 judges, divided into a Civil, Criminal, and Military Chambers, who hear most of the cases. \(\text{id.}\) arts. 34-36. There is also a Presidium of the Supreme Court, which currently consists of five Supreme Court judges (the membership is approved by the President of Tajikistan upon recommendation of the Plenum of the Supreme Court), as well as the Chairman of the Supreme Court, First Deputy Chairman, and other Deputy Chairmen \textit{ex officio}. It conducts supervisory review of cases and when new circumstances require it. \(\text{id.}\) arts. 30-31. The Plenum of the Supreme Court, which consists of all judges of the Court, is the highest judicial body, and conducts supervisory review of decisions issued by the three Chambers, resolutions of the Presidium, and its own resolutions, where a substantial violation of the law was identified. It also reviews its own decisions in case of newly discovered circumstances, oversees activities of the Chambers and the Presidium, and elects the Qualification Board of the Supreme Court. \(\text{id.}\) arts. 26-27. Finally, in order to ensure uniform application of the law, the Plenum is authorized to issue mandatory guidelines to the lower courts regarding the interpretation of legislation in certain types of cases. \(\text{id.}\) art. 27.

\(^4\) In this assessment, the Supreme Court and the High Economic Court are also referred to as higher-level courts, while all other courts (except the Constitutional Court) are referred to as lower-level courts.
Military courts are established within the armed forces of Tajikistan and consist of courts of military garrisons (currently four courts with 15 judicial positions) and the Military Chamber of the Supreme Court, which is the final authority on military cases. Id. arts. 61, 65. These courts have jurisdiction primarily over crimes committed by military personnel, but also try other crimes, such as espionage and offenses against protocol committed by the command staff in penitentiary institutions. They also adjudicate civil claims of military entities and citizens seeking compensation for damages inflicted by military offenses. Id. arts. 62-64. The Military Chamber of the Supreme Court hears cases in cassation and supervisory review. However, it may also try any cases under jurisdiction of military courts in first instance, and always acts as a court of first instance for crimes committed by military personnel that may be punishable by death penalty or life imprisonment, as well as for crimes committed by a military officer in the rank of colonel or higher. Id. arts. 35, 62.

Economic courts include viloyat-level courts (of Khatlon, Sughd, and GBAO viloyats, as well as RRS) and the High Economic Court. These courts have jurisdiction over all economic disputes – i.e., those related to entrepreneurial and other economic activity. CODE OF THE REPUBLIC OF TAJIKISTAN ON ECONOMIC PROCEDURE art. 1 (adopted Jan. 5, 2008, effective Apr. 1, 2008) [hereinafter ECON. PROC. CODE]. Viloyat-level economic courts serve as first instance and appellate courts for all economic cases, as well as review decisions in light of newly discovered circumstances. They also summarize judicial practice and analyze judicial statistics. LAW ON COURTS art. 92. There are currently four such courts in Tajikistan, with 26 judicial positions. The High Economic Court, with 16 judicial positions, oversees all lower-level economic courts. It hears cases in the first instance, as well as appeals and cassations; conducts supervisory review and review in case of newly discovered circumstances; summarizes and provides explanations on judicial practice; administers its own judicial statistics; and drafts legislative proposals pertaining to entrepreneurial and other economic activities. Id. arts. 45-46. It has a Presidium, as well as an Appellate Chamber and a Cassation Chamber, responsible for reviewing economic court decisions that, respectively, have and have not entered into force. Id. art. 48.

The Constitutional Court, which consists of seven judges elected for 10-year term by the Majlisi Milli upon the nomination of the President, has exclusive jurisdiction over constitutional issues. CONST. art. 90; LCC arts. 4-6. The Court’s jurisdiction was significantly expanded in March 2008 and currently extends to: (1) determining the constitutionality of laws and other legal acts; (2) deciding cases concerning violations of constitutional rights and freedoms of citizens under applied or applicable laws and other legal acts; and (3) resolving disputes between central government agencies and local powers. LCC art. 14. Standing before the Court depends on the types of issues a case presents. In addition to executive and legislative bodies, the Human Rights Commissioner (i.e., the Ombudsman), citizens, legal entities, courts, and judges may all apply to the Constitutional Court. Id. art. 37.

Judicial Administration

In 1999, the Council of Justice (COJ) replaced the Ministry of Justice’s [hereinafter MOJ] court administration division as the body responsible for matters pertaining to judicial administration of all lower-level courts. The COJ, a part of the judicial-branch, currently consists of four ex officio members (representatives of the Majlisi Milli and the Majlisi Namoyandagon, the President’s advisor on personnel policy, and the Chairman of the Supreme Court), as well as the COJ’s Chairman, first deputy chairman, and deputy chairman (secretary) who are appointed to and

5 Tajikistan introduced a moratorium on death penalty (both as to sentencing and execution) in 2004, and the Criminal Code was amended in 2005 to introduce life imprisonment as a substitute punishment in lieu of the death penalty. See LAW OF THE REPUBLIC OF TAJIKISTAN “ON SUSPENSION OF DEATH PENALTY APPLICATION” (Law No. 45, adopted Jul. 15, 2004); CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN arts. 58, 59 (adopted May 21, 1998, as amended by Law No. 86, Mar. 1, 2005) [hereinafter CRIM. CODE].
removed from office by the President. See CONST. art. 69.12; see also Decree of the President of the Republic of Tajikistan “On Establishing the Council of Justice of the Republic of Tajikistan” (Decree No. 48, adopted Dec. 14, 1999, as amended Mar. 14, 2003) [hereinafter COJ Decree]. The COJ’s goals include providing managerial, financial, and technical support to courts; managing their human resources; enhancing professional qualifications of judges and judicial candidates; and developing recommendations for improvement of the administration of justice and strengthening judicial independence. Among other duties, the COJ is charged with making recommendations concerning the selection and removal of judges, the number of judges and court personnel, and the establishment of new courts; drafting and administering the judiciary’s budgets; providing facilities and informational resources to courts; and collecting judicial statistics. LAW ON COURTS arts. 95-97. In addition, the COJ’s Examination Commission administers the qualification exam for judicial candidates. Id. art. 103.

Tajikistan also 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 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. Id. arts. 105-107. All boards serve 10-year terms.

Conditions of Service

Qualifications

Candidates for judicial appointments to district-level courts, viloyat-level economic courts, and military courts must be citizens of Tajikistan who are at least 25 years old, have a university degree in law, and have at least three years of professional experience. Higher age and experience requirements apply to judges of higher courts. Candidates for those positions must be between 30 and 65 years old and have at least five years of judicial experience. Judges of military courts must comply with such additional requirements as physical fitness and adequate moral and physical qualities. CONST. art. 85; LAW ON COURTS art. 11. The Constitutional Court judges must be between 30 and 65 years of age and have at least 10 years of professional legal, but not necessarily judicial, experience. CONST. art. 89; LCC art. 4.

Appointment and Tenure

Individuals who meet educational and experience requirements and have successfully passed a qualification exam administered by the COJ’s Examination Board may be appointed as judges. The Examination Board issues an opinion assessing each candidate’s qualifications to hold judicial office and forwards its decision to the Qualification Board, which then issues an opinion recommending or rejecting proposed individuals for their first judicial appointment. The COJ then submits a proposal to the President, who makes the final appointment decisions. CONST. art. 69.13; LAW ON COURTS arts. 97, 107. Candidates for appointment to the Supreme Court and the High Economic Court are recommended to the President by the respective qualification boards, and the President then submits candidates for approval to the Majlisi Milli. CONST. arts. 69.8, 56.2; LAW ON COURTS arts. 97, 107. Judges of the Constitutional Court are also elected by the Majlisi Milli upon proposal of the President. CONST. arts. 69.8, 56.2; LCC art. 6.

All judges in Tajikistan serve 10-year terms and are eligible for reappointment after the expiration of this term. CONST. arts. 84, 89. When a judge’s tenure is up for renewal, he/she must undergo an official evaluation before the respective qualification board. Reappointment decisions are then made by the same bodies and in the same manner as initial appointments. There is no limit on
the number of terms that a judge may serve and no specific age for mandatory retirement, although a judge’s last appointment must occur before he/she reaches the age of 65. The Law on Courts also specifies grounds for involuntary removal of judges. See art. 18.

Professional Training

Until recently, candidates for judicial positions were not required to participate in any additional training prior to their appointment. Since July 2008, candidates for first-time judicial appointments who have at least two years of professional legal experience and passed a qualification examination must complete a one-year judicial internship program prior to taking the bench. LAW ON COURTS art. 103. The program involves training at the Judicial Training Center (JTC) and practical training at the courts, and counts towards the three years of required professional experience. Interns are selected by the COJ’s Chairman based on an entrance examination. The program began with 15 interns in September 2008, and an additional 25 interns were scheduled to enter the program in January 2009.

The JTC, which is located in Dushanbe and operates under the COJ, is also charged with raising the qualifications of judges and court personnel. Although participation in continuing legal education [hereinafter CLE] is not required under any law, in practice, all judges are expected to attend annually a two-week training program at the JTC. The program focuses on changes to the law and practical applications, and covers such areas as criminal law and procedure, civil law and procedure, family law, and property law, as well as international law and judicial ethics. In addition, the JTC organizes occasional short training programs in the regions on topics selected by the COJ and the Supreme Court, and the COJ cooperates with viloyat-level courts to offer monthly seminars for judges and court personnel.
Tajikistan JRI 2008 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain factors, ABA ROLI emphasizes that these conclusions are most useful when viewed in conjunction with the underlying analysis. ABA ROLI believes that the relative significance of particular correlations warrants further study. Thus ABA ROLI invites comments and information that will enable it to develop better or more detailed responses in future JRI assessments. ABA ROLI views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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<th>Judicial Reform Index (JRI) Factors</th>
<th>Correlation 2008</th>
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<tr>
<td>Factor 1 Judicial Qualification and Preparation</td>
<td>Neutral</td>
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<tr>
<td>Factor 2 Selection/Appointment Process</td>
<td>Negative</td>
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<tr>
<td>Factor 3 Continuing Legal Education</td>
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<td>Factor 4 Minority and Gender Representation</td>
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<td><strong>II. Judicial Powers</strong></td>
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<td>Neutral</td>
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<td>Neutral</td>
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<td>Factor 7 Judicial Jurisdiction over Civil Liberties</td>
<td>Negative</td>
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<td>Neutral</td>
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<td>Factor 9 Contempt/Subpoena/Enforcement</td>
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<td><strong>III. Financial Resources</strong></td>
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<tr>
<td>Factor 10 Budgetary Input</td>
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<td>Neutral</td>
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<td><strong>IV. Structural Safeguards</strong></td>
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<td>Factor 14 Guaranteed Tenure</td>
<td>Negative</td>
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<td>Factor 16 Judicial Immunity for Official Actions</td>
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<td>Factor 17 Removal and Discipline of Judges</td>
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<td><strong>VI. Efficiency</strong></td>
<td></td>
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<td>Factor 26 Court Support Staff</td>
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<td>Factor 27 Judicial Positions</td>
<td>Neutral</td>
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<tr>
<td>Factor 28 Case Filing and Tracking Systems</td>
<td>Negative</td>
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<tr>
<td>Factor 29 Computers and Office Equipment</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 30 Distribution and Indexing of Current Law</td>
<td>Neutral</td>
</tr>
</tbody>
</table>
I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion: Correlation: Neutral

Judges are required to have university-level legal training, which is largely theoretical. Prior judicial experience is required for viloyat-level, High Economic Court, and Supreme Court judges. Lower-level court judges and Constitutional Court judges must have prior professional, but not necessarily judicial, experience. In practice, most new judges tend to satisfy the professional experience requirement by working at the courts.

Analysis/Background:

At a minimum, all candidates for appointment as judges to trial courts, viloyat economic courts, and military courts must be citizens of Tajikistan who are at least 25 years old, have a university degree in law and at least three years of professional experience. CONST. art. 85; LAW ON COURTS art. 15; REGULATIONS ON EXAMINATION BOARD OF THE COUNCIL OF JUSTICE OF THE REPUBLIC OF TAJIKISTAN art. 2.3 (Decree of the President of the Republic of Tajikistan No. 693, adopted Oct. 22, 2001) [hereinafter REGULATIONS ON EXAMINATION BOARD]. Judges of military courts must comply with additional requirements, such as physical fitness and adequate moral and physical qualities. LAW ON COURTS art. 11; LAW ON GENERAL MILITARY DUTY AND MILITARY SERVICE art. 31. Enhanced age and professional experience requirements apply to judges of all higher courts. Thus, candidates for judicial positions in viloyat-level courts, the High Economic Court, and the Supreme Court must be between 30 and 65 years old and have at least five years of judicial experience. CONST. art. 85; LAW ON COURTS art. 11. Candidates for judicial positions in the Constitutional Court must be between 30 and 65 years of age and have at least 10 years of professional legal experience. CONST. art. 89; LAW ON CONSTITUTIONAL COURT art. 4.

Legal education in Tajikistan is offered as a five-year undergraduate degree (six years for correspondence students and three years for those who already have a university degree). Since the country became independent in 1991, the overall quality of legal education in Tajikistan has declined, largely due to the proliferation of new law schools. Until 1991, there was only one law faculty, founded in 1949 at the Tajik State National University [hereinafter TSNU]. Currently, there are seven law schools in Tajikistan (although three of them have ceased to enroll new students and will be closed once the remaining students graduate). Most professors emphasize theory and rarely use interactive methods of instruction. Exams are typically administered orally, which leads to greater subjectivity in grading and presents increased opportunities for corruption. In fact, corruption in Tajik law faculties is reported to be so commonplace that the amount of bribes expected for entry into specific universities or by certain professors is well known. See, e.g., ABA/CEELI, LEGAL PROFESSION REFORM INDEX FOR TAJIKISTAN 17-18 (2005). In addition, most law faculties do not provide instruction in advocacy skills and do not require, or even offer, sufficient practical skills training.

As a result of deficiencies in initial preparation, the competence level of many new judges in Tajik courts is reportedly low, and most are said to lack the necessary practical skills. Because most aspiring judges tend to satisfy their practical experience requirement by working in court support positions, they may be familiar with administrative and clerical procedures in the courts. However, they lack sufficient expertise to issue adequate judicial decisions. In fact, according to
many interviewees, many recently appointed judges do not have the experience necessary to effectively handle their jobs.

When interviews for this assessment were conducted, there was no requirement that judicial candidates or newly appointed judges undergo any additional training prior to taking the bench. However, in 2005-2006, the JTC conducted a Sunday School for Future Judges – a 240-hour voluntary training program for court support personnel implemented under the supervision of the COJ and funded by the Danish Institute for Human Rights. Participants were selected from among the staff of courts of Dushanbe and RRS on the basis of a competitive oral examination. The program focused on human rights issues and graduated 49 participants. According to the JTC, 18 graduates (approximately 40%) received judicial appointments in 2007, which the JTC claims attests to the value of the training.

In addition, the Law on Courts was amended in March 2008 to provide for a possibility of a one-year court internship for qualified judicial candidates. See id. art. 103. In May 2008, the COJ issued a resolution specifying the detailed provisions on the new mandatory court internship. The internship is modeled after the earlier JTC program. Judicial candidates who are at least 24 years old and have a law degree and at least two years of professional experience may apply to the Chairman of the COJ with a request to sit for the entrance examination for the internship program. LAW ON COURTS art. 103; see also Regulation on Judicial Interns arts. 2.1, 3.1 (COJ Resolution No. 30, adopted May 2, 2008) [hereinafter Regulation on Judicial Interns]. Those candidates selected by the COJ Chairman who successfully pass the exam are appointed by the COJ Chairman as judicial interns at the JTC and lower-level courts. Regulation on Judicial Interns art. 3.6. The purpose of the internship is to allow judicial candidates to obtain theoretical knowledge and practical skills necessary to perform judicial functions in the future. Id. art. 1.3. The internship counts towards the three years of professional experience required to become a judge. Id. art. 3.8. The number of judicial interns is regulated by the presidential decree. A total of 15 interns were enrolled in the program in September 2008, and an additional 25 interns entered the program in January 2009. DECREE OF THE PRESIDENT OF THE REPUBLIC OF TAJIKISTAN ON JUDICIAL INTERNS (Decree No. 495, adopted Jul. 22, 2008). Candidates who successfully complete the internship will be eligible for appointment as judges, following the procedure described in Factor 2 below. While the court internship program, including the interns’ salaries, are in principle funded by the state due to the lack of sufficient government resources it has required support from international donors.

According to interviewees, only about 10-15% of law school graduates pursue careers in the judiciary. Nearly 40% of graduates choose prosecutorial positions because the broad authority given to prosecutors makes it a more desirable career, while approximately 20-30% become defense attorneys. TSNU’s Law Faculty refers 30 students per year for positions in the government, including the judiciary. The recommendations committee for this program is composed of the rector, Law Faculty dean, eight department chairs, and representatives of government bodies. Although recommendations are supposed to be based on applicants’ grades and interviews, some are reportedly based on connections rather than merits.

Lay judges, known as people’s assessors, must have Tajik citizenship, a good reputation, positive references from their place of work, and no history of committing a dishonorable act. They must be at least 25 years old, with the exception of lay judges in the military courts of military posts, who can be as young as 18. In addition, lay judges in all military courts, including the Military Chamber of the Supreme Court, must be in active military service. See generally REGULATION ON PEOPLE’S ASSESSORS. Lay judges do not receive any training prior to their appointment and, although in theory they are of equal status to judges (see LAW ON COURTS art. 16), in practice they generally do not actively participate in hearings and typically follow the vote of the professional judges.
Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, further training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

**Conclusion**

<table>
<thead>
<tr>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judges of the Supreme Court, High Economic Court, and Constitutional Court are elected by the Majlisi Milli upon proposal of the President, while other judges are appointed by the President upon proposal of the COJ. Each candidate for initial judicial appointment must take an oral qualification exam administered by the COJ’s Examination Board, which makes a recommendation to the COJ. There is no formal written judicial examination or specified criteria for selection among candidates for judicial positions.</td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Judges of the Supreme Court, High Economic Court, and Constitutional Court are elected by the Majlisi Milli upon proposal of the President, while all other judges are appointed by the President upon proposal of the COJ. CONST. arts. 56.2, 69(13), 86; LAW ON COURTS art. 14. Competency of candidates for judicial positions must be formally assessed. LAW ON COURTS art. 108.

The formal appointment procedure begins when a candidate applies to the COJ requesting admission for the qualification examination. The request must be accompanied by supporting documents, such as a diploma proving a higher degree in law, a curriculum vitae, a reference letter from the applicant’s last workplace, and at least three professional references. Five days prior to the scheduled exam, the COJ’s Chairman approves the list of candidates permitted to take the exam, which is then administered by the COJ’s Examination Board. LAW ON COURTS art. 103; REGULATIONS ON EXAMINATION BOARD arts. 2.1, 2.3, 2.6. Members of Examination Board, which acts independently when conducting examinations, are appointed by the COJ upon the proposal of the COJ’s Chairman, and serve 10-year terms. REGULATIONS ON EXAMINATION BOARD arts. 1.1-1.2.

The qualification exam is conducted through an oral exam ticket or a written test, which determines the candidates’ knowledge of constitutional law, civil law and procedure, criminal law and procedure, labor law, administrative law, family law, housing law, economic procedure, and international human rights treaties ratified by Tajikistan. The COJ determines whether the exam will be written or oral. Id. art. 2.7. The results of the qualification examination are valid for three years, and individuals who passed the exam are placed on the reserve list for judicial positions. Id. art. 2.11. Those who did not pass the exam are placed on the reserve list of judicial candidates but they must retake the exam. Candidates who passed the exam but were not appointed during the following three years must retake the exam if they wish to remain on the list and are not given special standing over new candidates.

Following the qualification exam, the Examination Board issues an opinion assessing each candidate’s qualifications. Id. art. 2.9. The opinion must be approved by a majority vote of the Board’s members present at the session. Id. art. 3.5. A quorum consists of at least half of the members. Id. art. 3.2. An extract from the minutes or a copy of the opinion must be made available to any interested person within three days of the date of the decision. Id. art. 3.9. The Examination Board may annul or modify its decision in view of new circumstances. Id. art. 3.7. Unsuccessful candidates may also appeal the Board’s decision in court. Id. art. 1.4.
No later than five days after making its decision, the Examination Board submits the opinion to the COJ’s Chairman, who then forwards the decision to the Qualification Board for lower-level courts. Id. art. 2.10. According to one of its members, the Qualification Board interviews judicial candidates and checks references. It then issues an opinion either recommending proposed individuals for appointment or objecting to their candidacy. The opinion of the Qualification Board is valid for three years. LAW ON COURTS art. 107.

Taking into account the opinions issued by the Examination and Qualification Boards, the COJ’s Chairman presents judicial candidates for consideration at the COJ’s session. REGULATIONS ON EXAMINATION BOARD art. 2.10. After making its decision, the COJ submits a recommendation to the President regarding the appointment of selected candidates. LAW ON COURTS art. 97.

The COJ was established in 1999 pursuant to a constitutional amendment, the main purpose of which was to ensure that the judiciary was no longer subject to the executive branch. However, the executive still holds substantial power over the judiciary. Not only does the President have the final appointment authority for most judges, but the composition and membership of the COJ are also determined by the President. CONST. art. 69.12; LAW ON COURTS arts. 95, 99

Neither the COJ nor its Examination Board is involved in the process of appointing judges to the Supreme Court or the High Economic Court. Instead, the Courts’ respective Qualification Boards recommend candidates to the President, who in turn submits a proposal to the Majlisi Milli. The Qualification Boards’ recommendation procedure is defined by the President. LAW ON COURTS art. 107. Similarly, neither the COJ nor the Examination or Qualification Boards participate in the appointment of Constitutional Court judges, who are elected by the majority vote of the Majlisi Milli upon recommendation of the President. LAW ON CONSTITUTIONAL COURT art. 6.

In practice, the judicial selection and appointment process is not transparent. The law does not provide for public announcement of judicial vacancies. There are also no provisions for open hearings or public comments on candidates under consideration. The COJ reported that interested candidates submit their applications directly to the COJ, the COJ maintains a reserve list of such candidates, and there is sufficient number of applicants to fill all vacancies. Sitting judges interviewed by the assessment team confirmed this procedure. However, the assessment team was unable to determine whether there is an excess of candidates on the reserve list, whether any candidates remain on the list for extended periods of time due to political considerations, or how many candidates have been appointed to judicial positions during the last several years.6

Similarly, some interviewees claimed that the examination is a pro forma process. Exams tend to check the candidates’ knowledge of procedural issues and are not considered to be difficult. The Chairman of the COJ and judges who have taken the exam confirmed that, at present, the exam is administered only orally and typically lasts for no more than an hour. No data was provided to the assessment team on the number of candidates that have taken the exam or the pass rate.

The COJ maintains that all judges are competent and that most new judges come from the ranks of court support personnel, having served as secretaries or consultants at the courts or as COJ staff members. Accordingly, their performance and credentials are well known and taken into consideration during the appointment process. However, according some to interviewees, the COJ Chairman has recently been proposing former prosecutors and investigators for judicial positions, which was not previously the practice. Some claim that prosecutorial experience may

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6 According to an NGO representative, a large number of judges (approximately 300) were reportedly appointed in 2001-2002. In addition, the COJ informed the assessment team that 18 individuals who completed the JTC’s Sunday School for Future Judges (see Factor 1 above) were appointed in 2007. Additionally, 15 court interns entered the new internship program in September 2008, and 25 interns were scheduled to enroll in January 2009.
impede judges’ independence. On the other hand, however, candidates who meet the requisite qualifications have equal rights under law to apply for judicial positions.

Several interviewees believed that the low quality of judges and their inability to resist pressure starts with the appointment process. They noted that the majority of the COJ members have very little legal experience and therefore are not qualified to make recommendations on judicial candidates. There was widespread agreement that the executive reserves the top judicial positions for individuals it can control, indicating that many judges are relatives of high-level officials. Interviewees also mentioned that despite the fact that the President has issued six decrees on judicial reform since 1992, the situation has only gotten worse, with less competent and more corrupt judges. Some interviewees were particularly concerned about the low qualifications and widespread incompetence of judges given that the authority of judges is to expand significantly under the new Criminal Procedure Code.  

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion | Correlation: Neutral
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Although judges’ participation in CLE is not required by any law, in practice, all judges are expected to attend annually a two-week training program at the JTC. The training is offered at no cost to judges and covers major developments in the law and judicial practice.

Analysis/Background:  

In 2003, the Government issued a resolution establishing the JTC in Dushanbe, charged with raising the qualifications of judges and court personnel. See RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN ON THE ESTABLISHMENT OF THE JTC (Resolution No. 150, adopted Mar. 31, 2003, as amended Jun. 3, 2006) [hereinafter JTC RESOLUTION]. The JTC operates under the COJ and is managed by the Coordination Council, which meets twice a year to, inter alia, approve the JTC’s budget and curriculum. The JTC also has a Scientific and Advisory Council composed of judges and legal scholars. Although the JTC Resolution calls for eight staff members, the Center currently operates with a staff of seven, including the Director, who serves at the will of the President. Id. §§ 2, 4.

Technically, the JTC should be funded from the state budget. In practice, however, due to very limited government funding, the JTC relies primarily on international donors to support its activities (including the new judicial internship program discussed in Factor 1 above). This has significant implications for the Center’s sustainability. Currently, the major funders include the Swiss Agency for Development and Cooperation/Swiss Cooperation Office in Tajikistan [hereinafter SDC], Open Society Institute [hereinafter OSI], Gesellschaft für Technische Zusammenarbeit [hereinafter GTZ], United Nations Development Program [hereinafter UNDP], and United Nations Children’s Fund [hereinafter UNICEF]. The United States Agency for International Development [hereinafter USAID] through ARD/Checchi has provided significant support in the past, and the U.S. Department of State through ABA ROLI has also offered assistance with the internship program.

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7 Among other changes, some previously prosecutorial powers are transferred to judges, who assume the right to order pretrial detention.
The JTC runs two-week training programs that all judges are expected to participate in annually, although participation is not required by law. According to the JTC, 287 judges (100% of sitting judges) participated in the program in 2004-2005, 220 judges (76%) in 2005-2006, 200 judges (69%) in 2007, and 83% of sitting judges in 2008. Each session is attended by 20 judges, and the JTC offers one session per month. The curriculum focuses on the latest changes in the law and practical applications of the law. The curriculum for 2008 consisted of a total of 64 hours of instruction, covering such issues as criminal law (16 hours), criminal procedure (7 hours), civil law (11 hours), civil procedure (19 hours), family law (4 hours), property law (3 hours), international law (4 hours), as well as judicial ethics (2 hours). The JTC's Director reported that a questionnaire is distributed to all judges each year, seeking input on their training needs, and the curriculum is revised according to the feedback received. For training purposes, judges are now divided into four groups based on their level of experience: those with up to three years of judicial experience; three to five years; five to ten years; and over 10 years of experience. While the training program is the same for all groups, some adjustments to the curriculum and teaching methods are made for less experienced judges. No specific courses on court organization or management are available to court chairmen or their deputies.

According to the COJ, the JTC has 17 instructors (most of whom are Supreme Court and Constitutional Court judges). In 2005, with USAID’s support, the trainers attended a training session at the National Judicial College in Reno, Nevada. GTZ has also provided technical assistance and international expertise for trainings of the JTC trainers on teaching methodologies. In 2006, the JTC built a residential training center in Dushanbe, which is used for the two-week program. The building includes training rooms, a library, and computer facilities, as well as dormitory-style double rooms for attendees. The government provided the building, and international donors supplied furniture, equipment, and funds for renovation.

Although most judges interviewed by the assessment team spoke favorably of the JTC’s training program, other respondents from outside of the judiciary expressed concerns over the quality of the JTC’s trainings. Additionally, a judge from outside Dushanbe felt that a two-week residential training was too long, particularly since a judge’s workload is not reassigned to another judge while he/she is away on training. The judge also felt that the training covered too many areas of the law, and that more time should have been devoted to new legislation. The broad scope of the curriculum was also a concern for the JTC’s Coordination Council.

In 2005, the ARD/Checchi program designed a pre- and post-training questionnaire to determine the impact of the JTC’s training program. The results for 2007 showed that, on average, the share of the trainees that showed competency in the covered topics increased from 58% before the training to 72% after the training. The results indicate that judges’ knowledge improved as a result of the trainings; however, there is some concern about whether the results are long-lasting.

In addition to the two-week training program, the JTC sends instructors to the regions to conduct short workshops on topics selected by the COJ and the Supreme Court. Workshops include discussion of specific cases and the reasons that some rulings were overturned on appeal. These special trainings are typically funded by international donors. For example, in 2008, the JTC with support from GTZ had organized training on the new Civil Procedure Code in GBAO, Khatlon, and Sogd viloyats. Approximately 160 judges attended the three-day sessions. Furthermore, the COJ (without the JTC’s involvement) cooperates with viloyat-level courts and the Supreme Court to offer monthly seminars for judges and court staff (secretaries and judges’ assistants/consultants). In Dushanbe, these daylong sessions are held on the last Friday of every month. The same trainings are conducted in the regions. These seminars may include analysis of recent decisions of the Supreme Court or of new legislation, discussions of particular cases considered by the courts, and other similar topics. Finally, the JTC offers two-day seminars on consumers’ rights and protections issues, supported jointly by SDC and OSI. In 2007, seven trainings were held, in which 136 judges from different regions participated, and in June-October 2008, four additional seminars were conducted, which were attended by 74 judges.
To complement the formal trainings organized by the JTC, court chairmen hold discussion sessions and trainings in their own courts. These sessions often focus on particular questions or problems that judges have raised in relation to specific cases, and as such have a tendency to guide judicial decision-making. See Factor 20 below.

The Supreme Court also conducts periodic training seminars for people’s assessors in order to improve their legal knowledge. In the past, the Supreme Court, with funding from USAID and ARD/Checchi, published a manual for people’s assessors.

**Factor 4: Minority and Gender Representation**

*Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.*

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>Approximately 20% of all Tajik judges are female. Women are represented in the higher courts and serve as court chairpersons and deputies. While no specific data were available to the assessment team, ethnic and religious minorities are, reportedly, adequately represented.</td>
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**Analysis/Background:**

The Constitution provides that everyone is equal before the law and the courts, regardless of nationality, race, sex, language, religion, beliefs, political persuasion, social status, knowledge, or property, and that men and women have the same rights. CONST. art. 17. In addition, all citizens have equal rights to state services, and every person has the right to work and choose his/her profession. The same work must be compensated with equal wages. Id. arts. 27, 35. Tajik legislation further prohibits any discrimination on the basis of gender and guarantees equal representation of men and women in the executive, legislative, and judicial branches. LAW ON STATE GUARANTEES OF EQUAL RIGHTS AND OPPORTUNITIES FOR MEN AND WOMEN arts. 3, 5 (Law No. 89, adopted March 1, 2005). However, the Law on Courts does not specifically address discrimination in judicial appointments.

Although official statistics were not available, the COJ reported that women represent merely 20.5% of all judges, which is consistent with the information obtained from individual courts visited by the assessment team. Representation of women in the judiciary is comparable with that in the Majlisi Oli, but it is well below the percentage of law school students who are women (approximately 35-40% at the TSNU Law Faculty). This disparity, as well as that between women’s representation on the courts and in the population at large, suggests that discrimination against women may be a problem in Tajikistan. In 2007, the U.S. Department of State reported that Tajik women faced traditional societal discrimination, fewer educational opportunities than men, and increased poverty. See U.S. DEPARTMENT OF STATE, TAJIKISTAN, IN COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2008). Although statistics on the representation of women in private legal practice and prosecutorial positions were unavailable, reportedly there appear to be proportionally more women working as prosecutors than as judges.

According to the COJ, as of 2008, there were 50 female judges in Tajikistan. Nine of them occupied leadership positions, including six court chairwomen and three deputy chairwomen. For example, Khatlon Viloyat Court, Khujand City Court, and Khujand Viloyat Economic Court are chaired by female judges. In addition, many sitting judges in Khujand City Court and Sughd Viloyat Court are female. As far as the representation of women in higher-level courts is concerned, there is one women judge on the Constitutional Court who was appointed in 2008 to
fill the seat of another woman who had resigned from the court for personal reasons. Eight out of 34 Supreme Court judges are women, and the three Chambers of the Supreme Court are all chaired by women. There are also five women among the 16 judges of the High Economic Court, including one Deputy Chairwoman.

Ethnic Tajiks make up approximately 80% of Tajikistan’s population. The largest minorities are ethnic Uzbeks (15.3%) and Russians (1.1%); other ethnic minorities make up 3.6% of the population. The vast majority of the population are Sunni Muslims, with a minority of Ismaili Muslims in the Pamir region. Although no data were available on ethnic and religious minorities in the judiciary, interviewees indicated that minorities were represented in the regions that have significant minority populations. For example, Murgab District Court in GBAO, which has a large Kyrgyz population, has a Kyrgyz judge.
II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

<table>
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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>The Constitutional Court has the power to determine the constitutionality of legislation and official acts. The Court's jurisdiction and standing were significantly expanded in March 2008. However, the Court is relatively inactive and hears only a handful of cases each year.</td>
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Analysis/Background:

The Constitution has the highest legal force in the hierarchy of laws, and its norms are directly applicable. Laws and other legal acts that contradict the Constitution are not legally valid. CONST. art. 10. The exclusive authority over constitutional issues is vested in the Constitutional Court. CONST. art. 89; LAW ON CONSTITUTIONAL COURT art. 3.

The Constitutional Court was established in 1994 to protect the Constitution and individual rights and freedoms and to enforce the rule of law. LAW ON CONSTITUTIONAL COURT art. 1. It began hearing cases in 1995, and its jurisdiction and standing before the Court were significantly expanded as a result of amendments to the Law on Constitutional Court passed in March 2008. The Court is located in Dushanbe and consists of seven judges, including the Chairman, Deputy Chairman, and a representative of GBAO. Candidates for a judicial position on the Constitutional Court must be between 30 and 65 years old, hold a university degree in law, and have at least 10 years of professional legal experience. CONST. art. 89; LAW ON CONSTITUTIONAL COURT art. 4; LAW ON COURTS art. 142. They are elected by the Majlisi Milli, upon nomination of the President, for a term of 10 years. CONST. art. 56(2); LAW ON CONSTITUTIONAL COURT arts. 5-6.

The Constitutional Court is charged with determining the constitutionality of laws and other legal acts; deciding on cases concerning violations of constitutional rights and freedoms of citizens under applied or applicable laws and other legal acts; resolving disputes between bodies of state and local power; and exercising other duties provided for by law. 8 CONST. art. 89; LAW ON CONSTITUTIONAL COURT art. 14. In particular, the Court determines the compliance with the Constitution of laws and other legal acts adopted by the Majlisi Oli, the President, the Government, the Supreme Court, the High Economic Court, and other government and public bodies; international treaties prior to their entry into force; draft constitutional amendments; and draft laws and other matters submitted for public referendum. Importantly, this power extends to reviewing other courts’ application of legislation and their guiding explanations: directives issued to lower courts for deciding particular cases. CONST. art. 89(1); LAW ON CONSTITUTIONAL COURT art. 14. The Constitutional Court's jurisdiction over the guiding explanations of the Plenums of the Supreme Court and the High Economic Court is noteworthy, as those explanations have taken on a very significant role in judicial decision-making.

Standing before the Constitutional Court depends on the types of issues that need to be decided. For example, only the President and both chambers of the Majlisi Oli can challenge the constitutionality of draft constitutional amendments or draft laws submitted for referendum. LAW

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8 For example, the Constitutional Court, upon request of the Majlisi Oli, issues conclusions on whether the President should be formally charged with treason. Based on this conclusion, the Majlisi Oli decides whether to deprive the President of his immunity. LCC arts. 14, 16.
The Court has six months from the date of receiving the application to issue its decision. Id. art. 37(1). In addition to these entities, individual members and deputies of the Majlisi Oli, the Government, the Prosecutor General, the Supreme Court, the High Economic Court, viloyat-level representative bodies, and the Human Rights Commissioner (i.e., the Ombudsman) can challenge the constitutionality of laws and other legal acts of the legislature, the executive, and the highest judicial bodies, as well as of international treaties prior to ratification. Id. art. 37(2). Lower-level courts and judges, as well as citizens and other legal entities, may apply to the Constitutional Court to verify the constitutionality of laws, other legal acts, and guiding explanations applied by a court in deciding on a particular case. 9 Citizens, legal entities, and the Human Rights Commissioner can also turn to the Constitutional Court in case of a violation of individual rights and freedoms guaranteed by the Constitution. Id. arts. 37(5)-(7), (9); LAW ON COURTS arts. 23, 46, 67, 76, 87, 92. Finally, three judges of the Constitutional Court can file a joint application concerning any issues that fall under the jurisdiction of the Constitutional Court. Id. art. 37(8).

An application to the Constitutional Court must be made in writing and filed in at least 10 copies. The Chairman of the Constitutional Court then assigns one of the Court’s judges to review the application, and the judge has one month to make a recommendation to the Constitutional Court on whether or not to initiate a formal constitutional proceeding. Id. arts. 40-41. An application may be rejected if it does not comply with the specified format and content, was filed by an unauthorized person or body, or concerns a matter outside of the Constitutional Court’s jurisdiction or one that has already been decided by the Court. Id. art. 42. If the Constitutional Court decides to accept the claim, the Court will instruct the rapporteur judge to prepare the case for a hearing. Id. art. 41. The preparation must be completed within two months; however, if the case is very complex or of critical importance, the Chairman of the Constitutional Court can assign several judges to the case and extend the preparation time by an additional one month. Id. art. 43. The Constitutional Court may decide to suspend the legislative act whose constitutionality is in question until the hearing. Id. art. 41.

The Court has six months from the date of receiving the application to issue its decision. Id. art. 45. Decisions are adopted through an open ballot by a majority vote of judges present. Id. art. 48. Any law, legal act, or international treaty deemed not in compliance with the Constitution is declared invalid. Court judgments adopted on the basis of unconstitutional laws are also declared null and void and cannot be executed. Furthermore, if the Constitutional Court identifies a violation of the Constitution or national laws, it will issue a ruling addressed to competent bodies and officials, bringing to their attention the need to eliminate the infringement. Decisions of the Constitutional Court are final, not subject to appeal, and are subject to mandatory execution. Id. art. 16; CONST. art. 89(3). The Court’s judgments enter into force upon their adoption or on a date established by them and must be published in AKHBORI MAJLISI OLI (“NEWS OF THE PARLIAMENT”), DIGEST OF LAWS, and in mass media.10 LAW ON STATUTORY ACTS art. 55; LAW ON CONSTITUTIONAL COURT art. 54. The Constitutional Court must be notified about measures taken to enforce its decisions within a specified period of time. LAW ON CONSTITUTIONAL COURT art. 54.

In practice, the Constitutional Court has heard very few cases. Its Chairman reported that in 2007, the Court received 57 applications, of which only two were accepted. The official reason for rejecting of the remaining applications was lack of jurisdiction. Most of the applications protested illegal actions of investigative bodies and decisions of other courts. In January-April 2008, the Constitutional Court received 20 applications; all of them were being reviewed at the time of this assessment. Statistics regarding the Constitutional Court’s activities in previous years

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9 If application of the law in a civil case is being reviewed by the Constitutional Court, the case must be suspended until the issue of constitutionality is resolved. CIVIL PROCEDURE CODE arts. 220, 222. There is no equivalent provision pertaining to criminal or to economic proceedings.

10 The Constitutional Court is also supposed to issue its own quarterly bulletin which, in addition to the its decisions, contains a review of the Court’s work for the quarter. To date, however, the Court has published only one issue of the bulletin, with financial support from international donors.
were not made available to the assessment team. One interviewee attributed the small volume of cases to the low level of legal knowledge among the public and government officials. However, several interviewees were of the opinion that the Constitutional Court avoided accepting cases whenever possible, presumably as a result of de facto executive control over the judiciary. In support of this view, some advocates interviewed by the assessment team referred to the fact that, to date, the Court has not heard a single case involving constitutionality of a Presidential decree. Representatives of NGOs asserted that they do not bring cases before the Constitutional Court because they know they would be rejected. Clearly, the law provides ample grounds for rejecting applications.

Because courts acquired the right to apply to the Constitutional Court only very recently, the assessment team was unable to determine if they exercise this right on a regular basis. Prior to the March 2008 amendment, courts followed a practice of issuing explanatory notes to parties if a constitutional issue came up in their case, stating that the case was not under the court’s jurisdiction. The parties could then apply to the Constitutional Court on an individual basis. Alternatively, the courts would reroute the issue to another court or government body, depending on the nature of the case in question. In addition, although the Law on the Human Rights Commissioner was passed in March 2008, the position was vacant at the time this report was drafted. Thus, the assessment team was unable to evaluate the Commissioner’s role in filing applications to the Constitutional Court.

The above-mentioned amendments to the LCC should increase the number of applications filed with the Constitutional Court, as well as the volume of cases it must accept. However, unless the public is aware of their rights, the number of applications is unlikely to increase significantly. In this regard, one interviewee emphasized the need to conduct a public awareness campaign on citizens’ expanded rights to apply to the Constitutional Court. In addition, the interviewee expressed intention to publish a relevant article in the media and to meet with citizens throughout the country. The Constitutional Court intends to fund some of these trips from its own budget, and has also applied to the OSI for funding.  

A filing fee for submitting an application to the Constitutional Court is one minimum monthly salary for individuals and 10 minimum monthly salaries for legal entities, courts, and government bodies.  

11 After the interviews for this assessment were conducted, the Constitutional Court, with OSI’s support, conducted a series of public awareness seminars throughout Tajikistan, during which potential applicants (including representatives of local authorities, judges of district- and viloyat-level courts, law enforcement officials, defense attorneys and private legal practitioners, as well as NGO and media representatives) had an opportunity to learn about the Court’s expanded jurisdiction and other legislative development. According to the Constitutional Court, these seminars resulted in both an increased number of applications to the Court and a growing number of decisions issued by the Court.

12 At the time the interviews for this assessment were conducted, the minimum monthly salary was TJS 20 (approximately USD 5). On June 20, 2008, the President issued a decree raising the minimum monthly salary to TJS 60 (approximately USD 20).
Information about the Constitutional Court’s practice and the types of cases it most commonly considers is neither systematized nor easily accessible by the general public. Of the cases identified by the assessment team, one, resolved in 1997, had challenged provisions of the Constitutional Law on the Majlisi Oli, which allowed for the Chairman of the Majlisi Oli to be removed from the office by a super-majority of two-thirds of the members, as opposed to the simple majority provided specified in the Constitution. The Constitutional Court ruled that the law had to be amended to comply with the Constitution. Another case, heard in 2004, challenged the constitutionality of the Civil Code’s allowing a bona fide purchaser to possess property acquired without the consent of the actual owner. The Constitutional Court found these provisions constitutional.

Judges of the Constitutional Court do not have access to any regular training opportunities to improve their qualifications, although the Court has been active in seeking out such opportunities for its judges. To date, trainings have mostly taken the format of occasional meetings with visiting foreign parliamentarians and judges or attendance at donor-sponsored seminars. These events are typically supported by donors, including, among others, U.S. Department of State, GTZ, OSI, SDC. Judges also participate in conferences and roundtable discussions on various legal topics and serve as trainers for the JTC. The Court itself sometimes organizes such discussions and invites participants from courts of general jurisdiction, law enforcement bodies, advocates, law professors, practicing attorneys, local authorities, mass media, and NGOs. Nevertheless, interviewees commented that the Constitutional Court judges would benefit from additional training opportunities and exposure to information about the jurisdiction, cases, and decisions of constitutional courts in other countries. The Constitutional Court does not always have sufficient funding to enable its judges to participate in relevant international conferences.

**Factor 6: Judicial Oversight of Administrative Practice**

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

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<th>Conclusion</th>
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<tr>
<td>Claims contesting administrative acts and failures to act are resolved by courts of general jurisdiction in accordance with the general rules of civil procedure. Minor exceptions to this rule are specified in the recently adopted Administrative Procedure Code, which broadened the courts’ jurisdiction over disputes emerging from public law relationships. In practice, judicial oversight of state institutions is lacking given the small number of administrative cases heard by courts and public perception that the state almost always wins them.</td>
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**Analysis/Background:**

Tajik citizens and legal entities have the right to challenge in court administrative acts, i.e., decisions, actions, and failures to act by state bodies, local governments, public officials, and civil servants, which have violated or created obstacles to the free exercise of their rights and freedoms, have illegally imposed a duty on them, or have resulted in an illegal prosecution. Prosecutors also have the authority to contest in courts administrative acts and omissions. Civ. PROC. CODE arts. 254-255. Individuals are entitled to receive compensation for any material and moral damages inflicted on them as a result of illegal actions by state bodies. CONST. art. 32.

Tajikistan does not have separate administrative courts, and disputes that arise from public law relationships are heard by courts of general jurisdiction in accordance with the general rules of civil procedure, with some exceptions specified in the Civil Procedure Code and Chapter 6 of the Administrative Procedure Code. LAW ON COURTS art. 87; CIV. PROC. CODE arts. 24, 250(1);
ADMIN. PROC. CODE art. 3(1), 114. Courts of general jurisdiction can resolve claims contesting administrative acts and failures to act, challenging decisions concerning administrative offenses, and requesting protection of citizens’ voting rights, including the right to participate in referendums. CIV. PROC. CODE art. 249. The new Administrative Procedure Code extends jurisdiction of trial courts to public law disputes related to compliance of normative and individual administrative acts with the laws, presidential decrees, and Government resolutions. In addition, trial courts are authorized to consider claims asserting failure on the part of administrative bodies to compensate for damages, adopt individual administrative acts, or perform any other action prescribed by the Administrative Procedure Code. ADMIN. PROC. CODE art. 115. Consequently, judges are now able to review almost all administrative claims. Claims can be filed to declare invalidity of an administrative act, demand adoption of an administrative act, demand performance of, or abstention from, an action, and determine the existence of a right or a public law relationship, provided that the plaintiff has a lawful interest in demanding such a judgment. Id. arts. 125-128.

An administrative act can be contested in two ways: by filing a civil or administrative action in court or by filing an administrative action in a higher administrative body. A civil claim contesting the validity of an administrative act or failure to act must be filed no more than three months after the plaintiff became aware of the violation of his/her rights and freedoms CIV. PROC. CODE art. 256. The limitation for filing an action under the administrative procedure code is six months after examining the administrative act or decision in question ADMIN. PROC. CODE art. 125(3). The claim must specify which administrative acts or failures to act should be declared illegal and which rights or freedoms they have violated. CIV. PROC. CODE art. 251. Plaintiffs are not required to exhaust administrative remedies prior to seeking redress in court.

As a general rule, filing an administrative lawsuit with a court automatically suspends the administrative act in question. ADMIN. PROC. CODE art. 131. A plaintiff may also request the court to suspend the administrative act prior to filing the suit. The judge has three days to decide on the matter. Id. art. 132. Similarly, a party may demand, before filing a suit, that the court issue a ruling on the adoption of an administrative act or performance of, or abstention from, an action by an administrative body. Id. art. 133.

While the plaintiff is required to justify his/her claim and submit relevant evidence, the burden of proof is placed on the administrative body or public official who adopted the administrative act in question or performed a contested action or failure to act. The court may request evidence on its own initiative and impose a fine on a defendant who fails to comply, unless refusal to disclose information is justified by the need to protect state and public security; state, commercial, or personal secrets; or other lawful interests of individuals. CIV. PROC. CODE arts. 253, 257(3); ADMIN. PROC. CODE arts. 120, 123.

The court has one month to rule on an administrative dispute, compared to three months for ordinary civil trials. CIV. PROC. CODE arts. 157(1), 257. At the written request of the parties, a judge can also decide to hear the case in an expedited or simplified procedure. The latter involves resolution of the dispute in the absence of the parties. ADMIN. PROC. CODE arts. 129-130. If the court finds the claim justified, it will issue a decision ordering the defendant to eliminate the violation of rights and freedoms or obstacles to exercising them. The court may also compel the defendant to adopt an administrative act, or declare an administrative act invalid. If an administrative act was executed prior to the resolution of the case, the court’s decision must set forth a procedure for the annulment of the execution. Id. arts. 134-135. The decision must be delivered to the defendant (or higher-level administrative body or public official) within three days of its entry into force. The defendant has one month from the receipt of the decision to inform the court and plaintiff about its execution. CIV. PROC. CODE arts. 258(2)-(3). An administrative body can also settle the case by amicable agreement or decide not to contest the claim, provided that it does not contradict the law. ADMIN. PROC. CODE art. 116(2).
In practice, according to interviewees, the number of administrative cases brought before the Tajik courts has been rather low, especially compared to other types of cases, indicating that judicial oversight of state institutions is severely lacking. Although the assessment team was unable to obtain official statistics on the administrative caseload, one judge interviewed by the assessment team described average caseload in his court as follows: 170-190 civil cases, 60-70 criminal cases, and only 20-30 administrative cases. Another interviewee mentioned, however, that Khujand City Court has seen an increase in administrative cases because some issues previously covered by the criminal law now fall under the administrative law. See also FREEDOM HOUSE, COUNTRIES AT CROSSROADS 2007 at 15 [hereinafter COUNTRIES AT CROSSROADS 2007].

NGO representatives report that individuals, including attorneys, are reluctant to challenge government authorities, due to the fear of reprisal, as well as to the belief that the courts will not resolve their complaints in a satisfactory manner. In fact, even judges interviewed by the assessment team were hesitant to share their opinions on this subject. This, combined with the fact that relevant statistics were not available, resulted in the assessment team’s inability to determine with certainty what types of complaints contesting administrative acts and omissions are most common, what trends characterize their resolution, and how effectively decisions against the government are enforced. However, a focus group of NGO representatives reported that the government almost always wins in administrative cases, reporting that, in practice, the burden of proof rests on the complaining party, who is not even given the opportunity to examine the response submitted by the administrative body. They also claimed that in the past there have been frequent delays in administrative proceedings and that the courts often ignored administrative complaints. However, the NGO employees did note that judges have received training on the new Administrative Procedure Code and now schedule hearings immediately.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>Although the legal basis for the protection of civil liberties by the courts is adequate, there are problems in implementation. An array of civil and human rights violations, including the right to a fair trial and effective counsel, have been catalogued in numerous reports by international and local NGOs; however, thus far the judiciary has been reluctant to provide effective remedies to victims of these violations.</td>
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Analysis/Background:

The Constitution provides that the life, honor, dignity and other rights of the individual are sacred. Recognition, observance and protection of human and civil rights and freedoms are the obligation of the state. CONST. art. 5. Among other rights, the Constitution provides for equality before the law and the courts and freedom from discrimination (see id. art. 17); the right to life (id. art. 18), freedom from torture and cruel and inhuman treatment (id.); the right to have one’s case considered by a competent and impartial court (id. art. 19); prohibition on arrest, custody, and exile without a legal basis (id. arts. 16, 19); legal assistance from the moment of arrest (id. art. 19); presumption of innocence (id. art. 20); and prohibition on double jeopardy (id.); the right to privacy of one’s home, correspondence, and personal information (id. arts. 22-23); the right to access information from state bodies and officials (id. art. 25); freedom of religion (id. art. 26); the right to participate in political life and public administration (id. art. 27); voting rights (id.); freedom of association (id. art. 28); and freedom of speech (id. art. 30). The judicial power of the state is exercised by courts, which are charged with protecting individuals’ and citizens’ rights and
freedoms and safeguarding the interests of the state, institutions, and organizations, as well as with defending legality and justice. *Id.* art. 84; *see also* LAW ON COURTS art. 3.

Despite the constitutional and legal guarantees of judicial protection in case of civil and human rights violations, in practice courts are reportedly quite reluctant to take a position in their decisions that would contradict the position of the executive branch. A number of non-judge interviewees agreed that, because judges are dependent on the President and the COJ for their reappointment, promotion, and removal, they rarely make decisions against the will of these authorities, as this could jeopardize their career by delaying their promotion or having them removed from office. Moreover, judges are reportedly very cautious when deciding cases that could come into conflict with government policy. Thus, for instance, courts rarely issue acquittals in criminal cases.

Many violations of civil liberties stem from the continued application of the old Soviet Criminal Procedure Code. Although the Code has been amended multiple times, it continues to conflict with international law and human rights standards in many respects. One example of such conflicts involves the right to counsel. The Constitution, in compliance with the ICCPR, provides for legal assistance from the moment of arrest. CONST. art. 19. However, the Criminal Procedure Code states that a defense attorney must be admitted within 24 hours of the time the accused was first taken into detention. CRIM. PROC. CODE art. 49. Although this conflict has frequently been noted, interviewees generally felt that it was not addressed in the numerous amendments that have been made to the Code because doing so is not in the interests of investigators. The availability and quality of counsel has also been cause for concern. Advocates interviewed by the assessment team commented that judges used their authority to assign court-appointed counsel to criminal defendants (see CRIM. PROC. CODE arts. 49-50) to favor “pocket advocates” who provide legal advice and representation of substandard quality and one that is not in the best interests of the client. *See also, e.g.*, FREEDOM HOUSE, Tajikistan, in NATIONS IN TRANSIT 2007: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA at 699 (2007) [hereinafter NIT 2007]; UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, MISSION TO TAJIKISTAN: ADDENDUM TO REPORT ON CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY at 10-11 (Dec. 2005 [hereinafter UN SPECIAL RAPPORTEUR REPORT ON TAJIKISTAN] (noting cases when arrested defendants are reportedly forced to sign a waiver of their right to counsel). Other provisions in the law, as well as some aspects of practice, undermine the presumption of innocence, including the instruction that the judge or prosecutor ask the defendant whether he/she “recognizes himself to be guilty” (CRIM. PROC. CODE arts. 149, 280), the use of metal cages for the accused in criminal cases, and the prosecutors’ practice of referring to the accused as the convicted in the media prior to conclusion of the trial. Furthermore, in defiance of procedural requirements (see CRIM. PROC. CODE art. 275), criminal defendants are not always completely or adequately informed of their procedural rights, and most judges do not make an effort to ensure that a defendant properly understands his/her rights or to remind him/her of those rights in the course of the trial. In fact, the Human Rights Center’s trial monitoring team found that judges rarely informed the accused of his/her

13 Criticism of the prolonged and nontransparent process of drafting the new Code was widespread. The drafting process began in 2001, but work on the new law was repeatedly stopped and then restarted under a new drafting commission. There were concerns that such lack of transparency would result in the passage of a new Criminal Procedure Code with multiple internal conflicts that could have been identified and avoided through practitioners’ review, as was the case with the adoption of the new Civil Procedure Code in 2008. However, the draft Code was finally provided to attorneys, judges, and civil society organizations for comment in the spring of 2009 (after interviews for this assessment were completed). At the time of finalization of this JRI, it was expected that the Parliament would pass the new Code by the end of 2009.

14 The HRC is a local NGO whose mission is to assist vulnerable groups within the Tajik population and to raise their legal awareness through promotion of human rights standards. The HRC’s projects include delivery of free legal aid and monitoring of criminal trials.
right to repudiate a confession. See, e.g., HRC, ENSURING FAIR TRIAL IN TAJIKISTAN THROUGH MONITORING: REPORT ON MONITORING RESULTS, MAY-DECEMBER 2005 at 12 [hereinafter HRC TRIAL MONITORING REPORT 2005]; HRC, ENSURING FAIR TRIAL IN TAJIKISTAN THROUGH MONITORING: REPORT ON MONITORING RESULTS, APRIL-DECEMBER 2006 at 20 [hereinafter HRC TRIAL MONITORING REPORT 2006].

Among the most egregious violations of civil rights within the criminal justice system are those committed by the law enforcement bodies. These include illegal arrest and detentions, illegal searches, forced confessions, and torture, which are reportedly very common. Numerous sources have reported that prosecutors continue to rely for evidence on forced confessions rather than on thorough and impartial investigation. The situation is exacerbated by the deficiencies of the current Criminal Procedure Code, which places pretrial detention and searches under the control of the prosecution, without meaningful judicial supervision. This will be addressed in the new Criminal Procedure Code, as authority for these measures will be transferred to the judiciary; however, it is not yet certain when this change will be implemented, and many interviewees believed that the gap between adoption and implementation will be too long. In the meantime, while law enforcement officers who apply torture and other means to obtain forced confessions can be prosecuted under abuse of power provisions, the courts appear reluctant to consider such cases thoroughly. See, e.g., BUREAU ON HUMAN RIGHTS AND RULE OF LAW [hereinafter BHR], THE 2007 ANNUAL REPORT: OBSERVANCE OF HUMAN RIGHTS IN TAJIKISTAN at 8 (2008) [hereinafter BHR ANNUAL REPORT 2007]; BHR, THE 2008 ANNUAL REPORT: OBSERVANCE OF HUMAN RIGHTS IN TAJIKISTAN at 12-13 (2009) [hereinafter BHR ANNUAL REPORT 2008]. For instance, attorneys reported that if a defendant claims his/her confession was obtained by torture or repudiates prior confession, judges typically either ignore such statements or ask the law enforcement officer if he/she applied torture, without hearing any other evidence that might help evaluate the veracity of defendant’s complaints. Attorneys also reported that judges routinely rely on arguments made by the prosecutor and admit illegal evidence gathered by the prosecutor. Another common practice is returning the case for additional investigation, as opposed to acquitting, when a defendant’s guilt cannot be proven based on the prosecution’s evidence (see CRIM. PROC. CODE art. 233), while keeping the defendant in pretrial detention. This results in transferring the burden of proof from the prosecution to the defendant and undermines the equality of arms.

The courts have also not been effective in protecting against violations of freedom of religion, which is infringed, in part, as a consequence of the government’s fight against Islamist extremists. For instance, the Supreme Court of Tajikistan, acting upon a petition from the Prosecutor General’s Office, has banned the international Islamist party Hizb ut-Tahrir (“Freedom Party”), arresting several hundred of its alleged members. This “targeting of Hizb ut-Tahrir as a security threat, subsequent arrests, and the lack of transparency in court proceedings have raised serious concerns over the government’s restriction of religious observance and affiliation.” FREEDOM HOUSE, TAJIKISTAN at 12, in COUNTRIES AT THE CROSSROADS 2007: A SURVEY OF DEMOCRATIC GOVERNANCE (2007) [hereinafter COUNTRIES AT THE CROSSROADS 2007]. Moreover, female Muslim students in secondary schools and universities are routinely banned from wearing religious headdress in the classroom. In 2007, one of the district courts in Dushanbe ruled against one such student, who claimed that the ban violated her constitutional rights. The court held that the university acted within the acceptable norms of educational process, and that the student failed to present evidence of violation of her right to the freedom of religion. See BHR ANNUAL REPORT 2007 at 21-22. However, violations of the freedom of religion are not limited to Muslims. In 2008, the government issued a decision, subsequently upheld by the Dushanbe City Military Court, banning Jehovah’s Witnesses from operating in Tajikistan. See BHR ANNUAL REPORT 2008 at 24. Dushanbe city authorities were also successful in evicting the only synagogue in the city from its location and having the building demolished, with the land used for the gardens of the new presidential palace. Id.

Forced evictions are yet another major problem. One of the legal assistance NGOs reported that the issue was so pervasive that they had to set up a separate unit to deal with this problem. In most of these cases, the plaintiff is a local authority and the defendant a citizen accused of failing
Participants in a focus group of local human rights NGOs who have been working in the justice sector for over 10 years maintain that there has been almost no progress in establishing effective judicial protection for human rights violations. Although interviewees conceded that the law on the books is slowly improving, these changes have little, if any, practical value, because in reality neither the executive nor the judiciary are interested in protecting the people’s interests. For example, some interviewees were skeptical as to whether a Law on the Human Rights Commissioner passed in March 2008 would have any practical benefit, as the Human Rights Commissioner (i.e., Ombudsman) would simply replace the existing Department of Constitutional Guarantees of Citizens’ Rights, part of the executive branch. In addition, legal assistance NGOs reported that they are not accepting some cases, because they know they will lose and simply do not wish to give their clients false hope.

Tajikistan has ratified all of the key international human rights treaties, including the ICCPR. By law, these treaties are given precedence over the national laws, and their norms should be directly applicable, even in the absence of implementing legislation. Nevertheless, in practice the courts have yet to apply international human rights standards in their decisions. Interviewees suggested that this may be a result of lack of procedural mechanisms for such application, lack of awareness and familiarity with these norms among judges, or corruption. One interviewee noted that during a recent roundtable on compliance of current legislation with the ICCPR, NGO and government representatives were actively engaged in an open discussion, but the judges had no reaction. This observation is consistent with what other interviewees characterized as the “passiveness” of judges.

Tajik citizens also have the right to file a complaint with the UN Human Rights Committee when there is a violation of their rights under the ICCPR. At the time of assessment, approximately 18 cases against Tajikistan have been considered by the Human Rights Committee, and in every case the Committee found violations of human rights. The Committee’s decisions, however, are issued in the form of opinions that are forwarded to the member state’s government, and there are no sanctions for failure to comply with these opinions.

**Factor 8: System of Appellate Review**

*Judicial decisions may be reversed only through the judicial appellate process.*

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<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>Judicial decisions may be reversed only by the courts. However, the number of appeals is low. There are also concerns about the lack of equality of arms during supervisory review of criminal cases, as well as insufficient protections against double jeopardy.</td>
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15 The Department was given a number of competences, such as receipt of citizens' complaints (including, but not limited to, those concerning human rights violations) addressed to the President and the Government; granting citizenship; and granting pardons and issuing government awards.

16 Although international law and human rights are part of the annual CLE curriculum attended by most judges, and additional trainings have been conducted by several international donors, the amount of time devoted to, and information available on, this subject is still insufficient.
Analysis/Background:

The courts in Tajikistan administer justice through first instance trials, cassation review of decisions that have not entered into force, supervisory review of decisions that have entered into force, and review in light of newly discovered circumstances.

All courts of general jurisdiction have first instance jurisdiction over civil, criminal, and administrative cases, and all economic courts are authorized to try economic cases in the first instance. LAW ON COURTS arts. 87, 92; CIV. PROC. CODE art. 26; CRIM. PROC. CODE art. 31; ECON. PROC. CODE art. 33. First-instance civil and economic cases, and criminal cases concerning unintentional crimes or those involving less serious crimes are heard by a single judge. Economic cases concerning bankruptcy are heard by a panel of three judges, while cases concerning serious crimes are heard by a professional judge and two people’s assessors. CIV. PROC. CODE art. 16; CRIM. PROC. CODE art. 10; ECON. PROC. CODE art. 17.

All first instance decisions that have not entered into force can be reviewed through cassation proceedings. Viloyat-level courts have cassation jurisdiction over first instance decisions issued by trial courts located in their territory, and the Supreme Court has cassation jurisdiction over first instance judgments issued by any court. LAW ON COURTS arts. 23, 46, 76; CIV. PROC. CODE arts. 326-327; CRIM. PROC. CODE arts. 330, 332; ECON. PROC. CODE art. 254. Within the economic courts system, each viloyat-level economic court has an appellate panel that reviews first instance decisions of the same court that have not yet entered into force. The High Economic Court operates as a cassation jurisdiction over decisions issued by viloyat-level economic courts, verifying legality of first instance and appellate decisions that have entered into force. ECON. PROC. CODE arts. 237, 253.

A cassation petition may be filed by parties in a civil case or their representatives, as well as by criminal defendants, their advocates or representatives, victims and their representatives, and the acquitted seeking to modify the portion of the decision dealing with motives and grounds for acquittal. Prosecutors also may file cassation protests against civil judgments, and must file such protests concerning any illegal or unjustified decision in a criminal case. CIV. PROC. CODE art. 325; CRIM. PROC. CODE art. 329; ECON. PROC. CODE art. 236. Cassation petition or protest is filed through the court that issued the original judgment, within one month of delivery of the copy of a judgment to parties in a civil case, or within seven days from announcement of a sentence or delivery of a sentence to a convict held in custody. CIV. PROC. CODE arts. 326-327; CRIM. PROC. CODE arts. 330, 332. An appellate petition in economic cases must be filed within one month of the issuance of the original decision. ECON. PROC. CODE art. 238.

Cassation cases (as well as appellate economic cases) are heard by three-judge panels. CIV. PROC. CODE art. 16; CRIM. PROC. CODE art. 10; ECON. PROC. CODE art. 17. The court is entitled to review the case in its entirety and is not bound by arguments presented in the cassation/appellate petition or protest. It may receive new evidence that was not presented in the court of first instance, establish new factual circumstances, and review legality and reasoning of the lower court’s decision. CIV. PROC. CODE art. 336; CRIM. PROC. CODE art. 336; ECON. PROC. CODE art. 247. The cassation/appellate court may affirm the lower court’s decision; reverse the decision and either remand the case to the first instance court or, in civil proceedings, issue a de novo judgment; modify the decision without remanding it to the first instance court; or reverse the decision and terminate the proceedings. CIV. PROC. CODE art. 350; CRIM. PROC. CODE art. 343; ECON. PROC. CODE art. 248. Grounds for reversal or modification may include: failure of the court to correctly identify or prove circumstances important to the case; inconsistency between the court’s reasoning and factual circumstances; incorrect application of the substantive law; and significant violation of procedural law. Substantively correct civil decisions cannot be overturned only on the basis of procedural violations. CIV. PROC. CODE art. 351; CRIM. PROC. CODE art. 346; ECON. PROC. CODE art. 249. Although the cassation court may not reverse an acquittal judgment, impose a more severe penalty, or reclassify the crime to a more serious one on its own initiative,
it may do so upon a prosecutor’s or a victim’s petition – thus violating a constitutional protection against double jeopardy and prohibition against repeat punishment for the same crime (see Const. art. 20). A harsher sentence may also be rendered in the re-trial. CRIM. PROC. CODE arts. 344-345, 357. Cassation/appellate decisions become effective immediately upon their adoption. CIV. PROC. CODE art. 356; CRIM. PROC. CODE art. 360; ECON. PROC. CODE art. 250.

Court decisions that have entered into force may be reviewed through supervisory review. Viloyat-level courts have supervisory jurisdiction over decisions issued by trial courts located in their territory, and the Supreme Court has supervisory jurisdiction over judgments issued by any court. The High Economic Court has cassation and supervisory jurisdiction over decisions issued by viloyat-level economic courts. LAW ON COURTS arts. 23, 46, 76. The Chairman of the Supreme Court, the Chairman of the High Economic Court, the Prosecutor General, and their deputies can request supervisory review of any court decision, excluding resolutions of the Plenum of the Supreme Court. 17 Id. arts. 27, 31, 34-36, 39; CIV. PROC. CODE art. 365(3); CRIM. PROC. CODE art. 375(5)-(6); ECON. PROC. CODE art. 270. The Chairman of the Supreme Court can also file a protest to that Court’s Presidium to review any decision in order to ensure uniformity of judicial practice. CIV. PROC. CODE art. 378; CRIM. PROC. CODE art. 375(2). Petition for supervisory review can also be filed by chairmen of viloyat-level courts and viloyat prosecutors with respect to first-instance decisions of trial courts and cassation decisions of viloyat-level courts. LAW ON COURTS art. 82; CRIM. PROC. CODE art. 375(7). Finally, parties and other individuals, public and private entities whose rights and lawful interests were violated by decisions rendered in civil and economic cases (except resolutions of the President of the Supreme Court and the President of High Economic Court) may file petitions for supervisory review, and for cassation review in economic cases. CIV. PROC. CODE art. 365(1); ECON. PROC. CODE arts. 252, 270. However, criminal defendants and their defense attorneys do not have a corresponding right to request a supervisory review of their cases, which respondents saw as a violation of the constitutional principle of equality of arms (see Const. art. 88).

Petition for supervisory review must be filed within one year of the entry into force of the original decision. CIV. PROC. CODE art. 365(2); CRIM. PROC. CODE art. 377. For economic cases, the statute of limitations for filing a petition for supervisory review is six months from the entry into force of the latest decision. ECON. PROC. CODE art. 270. Acceptance of a case for supervisory review is discretionary; the final authority over this issue rests with the chairman of the reviewing court. Once accepted for review, the case will be heard by a three-judge panel. CIV. PROC. CODE art. 16; CRIM. PROC. CODE art. 10. In economic cases, the case will be heard by at least two thirds of the members of the President of High Economic Court. ECON. PROC. CODE arts. 17, 277. The reviewing court may affirm any of the lower court decisions, reverse the decision and either remand the case to the prior instance court or terminate the proceedings, or modify the decision. CIV. PROC. CODE art. 379; CRIM. PROC. CODE art. 382; ECON. PROC. CODE art. 283. In addition, in civil cases, the court may issue a de novo judgment, if the error pertained to an incorrect application or interpretation of substantive law. CIV. PROC. CODE art. 379. In civil proceedings, grounds for reversal or modification are substantial violations of substantive or procedural law. Id. art. 376. In criminal proceedings, the grounds are the same as for cassation. CRIM. PROC. CODE art. 383. As with cassation review, the court may not impose a more severe penalty or reclassify the crime to a more serious one; it may, however, reverse an acquittal judgment and remand the case for new hearing to the court of first or cassation instance. CRIM. PROC. CODE arts. 383-384.

In practice, bodies authorized to file a petition for supervisory review select cases on their own initiative, often through the procedure of oversight of lower-level courts by higher-level courts, which have the right to verify legality of the lower courts’ decisions. LAW ON COURTS arts. 22, 45, 76, 136; CRIM. PROC. CODE art. 18. For example, trial courts are visited periodically by commissions from viloyat-level courts. A consultant responsible for oversight in one of the

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17 These resolutions can be challenged only by the Chairman of the Supreme Court and the Prosecutor General, and only if a substantial violation of the law was identified.
viloyat-level courts reported that the consultants visit each trial court at least once a month. They review the information card for each case and if they notice a possible violation, they will remove the file for review and make a “register complaint.” Similarly, according to the Chairman of the High Economic Court, three judges from the Court visit viloyat-level economic courts to review cases every six months. In addition, higher-level courts can request any case file from lower-level courts for studying.

Courts are authorized to reopen proceedings in light of newly discovered circumstances. The grounds for reopening a case may include: discovery of substantial circumstances unknown to the petitioners in civil and economic proceedings or to the court in criminal proceedings; false or forged evidence; deliberate mistakes in translation; commission of a crime in the course of proceedings by a judge, criminal investigator, or parties in a civil case or their representatives; and reversal of a decision issued by a court, state or local self-government body that was used as a basis of a judgment under review. CIV. PROC. CODE art. 381; CRIM. PROC. CODE art. 388; ECON. PROC. CODE art. 288. The parties, prosecutor, and other case participants may petition to reopen a civil case. CIV. PROC. CODE art. 383. Upon receipt and verification of pertinent information from individuals or legal entities, a prosecutor may petition to reopen a criminal case. CRIM. PROC. CODE art. 390. An economic case may be reopened if the parties to the proceedings file a petition to do so. ECON. PROC. CODE art. 289. In addition, the Prosecutor General can request that the Plenum of the Supreme Court review its own decisions when new circumstances are revealed. LAW ON COURTS art. 27. The petition to reopen the case must be filed within one month of discovery of new circumstances in economic cases, within three months in civil cases, and within one year in criminal cases. However, if newly discovered circumstances support conviction, there are no time limitations. CIV. PROC. CODE art. 383; CRIM. PROC. CODE art. 389; ECON. PROC. CODE art. 289.

The Supreme Court, the High Economic Court, and the viloyat-level courts (including viloyat economic courts) are authorized to make decisions on reopening of proceedings in light of new circumstances. LAW ON COURTS arts. 23, 46, 76, 92. Once such a decision is made, the case is reviewed by the court that issued the latest decision during regular proceedings. CIV. PROC. CODE art. 382; CRIM. PROC. CODE art. 392; ECON. PROC. CODE art. 287.

It is difficult to determine the number of cassation and other review proceedings or their outcomes, concerning which official statistics were not made available to the assessment team. By means of illustration, the Dushanbe City Prosecutor reported that in 2007, 154 out of 3,554 decisions issued by courts located within the territorial jurisdiction of the Dushanbe City Court contradicted the law. The prosecutor filed protests against 111 decisions and all were granted. Of the 43 petitions submitted by other petitioners, 25 were granted, including 11 protests filed by judges of higher courts. The Office of the Prosecutor General estimates that 70% of cassations are resolved in favor of the prosecution. According to its Chairman, the High Economic Court heard 191 cassations and 118 cases on supervisory review in 2007. However, the assessment team was not informed about the outcomes of these hearings.

Reportedly, the Tajik courts come under pressure from prosecutors, other government agencies, private parties, and organized criminal groups. For example, members of the Office of the Prosecutor General are said to frequently monitor cases, particularly political ones and those involving grave crimes. If the judgment is not satisfactory, they may file a protest or resort to less orthodox techniques, such as accusing the presiding judge of rendering a decision that contradicts the law or bringing criminal charges against him or her under anticorruption laws. See Factor 20 below for more details about improper influence over judicial decision-making. A representative of an NGO that regularly visits courts throughout the country reported that there are many violations of the law in the lower-level courts, mostly involving procedural infringements, and that the situation is worse in the regions where law enforcement bodies exert greater authority. The interviewee stated, however, that it is possible to get justice at the Supreme Court, with the exception of cases where prosecutors, mayors, or other state officials are defendants.
He noted that the Supreme Court had resolved approximately half of NGO’s cases in favor of its clients.

Other published reports have discussed the chances for obtaining justice at higher-level court. For instance, according to Freedom House, in 2005 the Supreme Court heard cassations in 536 criminal cases, remanded 160 of them to lower-level courts, and changed sentences in 151 of them. COUNTRIES AT THE CROSSROADS 2007 at 15. However, the review process may take more than a year, as in the case of 28 farmers in the Rudaki district who filed their lawsuit in 2004 and did not receive recourse from the High Economic Court until 2005. Id. at 17.

But another NGO representative was less optimistic about the appellate process. He noted that, in practice, most cassation hearings are closed to the public. They are often held in the office of a court’s deputy chairman and last no more than 20 minutes. The interviewee referred to a case monitored by the NGO, in which the judge seemed to have formed an opinion prior to the hearing. From the interviewee’s point of view, the rest of the panel was there just to rubber-stamp the decision. The interviewee also claimed that if the second instance judge personally knows the first instance judge, he/she may instruct the first instance judge to reverse the judgment in order to avoid having the case formally overturned, as reversal rate can affect the possibility of promotion.

**Factor 9: Contempt/Subpoena/Enforcement**

*Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.*

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<td>Judges have adequate subpoena and contempt powers, though they do not seem to use these powers regularly. Responsibility for the enforcement process, which is most problematic in civil cases involving property rights, has recently been transferred to the MOJ.</td>
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**Analysis/Background:**

The law creates liability for parties, or any individuals present at trial, who show disrespect for the court or commit any acts implying disregard for the court. LAW ON COURTS art. 6. Liability for contempt of court is one of the safeguards of judicial independence. Id. art. 5. Specific provisions stipulating the judiciary’s contempt and subpoena powers, as well as the consequences for failure to appear before a court or otherwise observe a judge’s directives, are included in the respective procedural codes.

Parties to proceedings, other participants in proceedings, and all other persons present in the courtroom must observe the established court order and obey the rulings of the presiding judge. CIV. PROC. CODE arts. 159(3), 161(4)-(5); CRIM. PROC. CODE art. 264; ECON. PROC. CODE art. 153(4); LAW ON CONSTITUTIONAL COURT art. 33. Those who violate the established court order (including criminal defendants who do not heed the presiding judge’s directions) will receive a warning from the presiding judge, and upon repeated violation, the offenders may be removed from the courtroom. 18 CIV. PROC. CODE arts 162(1)-(2); CRIM. PROC. CODE art. 265; ECON. PROC. CODE art. 153(4). If a prosecutor or defense attorney in a criminal case repeatedly fails to observe the presiding judge’s instructions after being warned, the court may either replace the offender by another person (if this is not detrimental to the case) or postpone the hearing. The

18 However, sentences in criminal cases must be announced in the defendant’s presence or he/she must be informed immediately after. CRIM. PROC. CODE art. 265.
court will also inform the higher-ranking prosecutor or the advocates’ collegium about the prosecutor’s or advocate’s conduct. CRIM. PROC. CODE art. 265. In addition, the court may impose a fine on the offenders. CIV. PROC. CODE art. 162(3); CRIM. PROC. CODE art. 265; ECON. PROC. CODE arts. 118(2), 153(5). In civil and economic cases, the fine imposed on individuals may not exceed 10 units used for calculation; additionally, in economic proceedings, officers of organizations may be fined up to 20 units used for calculations, and legal entities may be fined up to 100 units used for calculation. CIV. PROC. CODE art. 162(3); ECON. PROC. CODE art. 118(1). The Constitutional Court may impose a fine of 5-10 units used for calculation on public officials who violate courtroom order, or 2-5 units used for calculation on other persons. LCC art. 52. If an offender’s actions constitute a criminal violation, the presiding judge can institute criminal proceedings or refer the matter to the prosecutor. CIV. PROC. CODE art. 162(4). Finally, in the case of mass violations of courtroom order, the presiding judge may either postpone the hearing or remove everyone (except the parties) from the courtroom and continue the case in a private hearing. Id. art. 162(5).

Insulting the participants in a trial is punishable by a fine of up to 500 units used for calculation or correctional labor for 180-200 hours. Insulting a judge, people’s assessor, or other person participating in the administration of justice is punishable by two years of correctional labor or imprisonment. CRIM. CODE art. 355. In addition, the Code on Administrative Offenses penalizes disrespect for the court with a fine of 2 to 5 units used for calculation or administrative arrest for a period of 3 to 10 days. CODE ON ADMIN. OFFENSES art. 528. Judges interviewed for this assessment acknowledged that the existence of provisions addressing penalties for contempt of court in two different pieces of legislation is confusing. In practice, judges have difficulty deciding which of the two sets of provisions applies in a particular case.

A party to a civil case must inform the court about the reasons for non-appearance and supply evidence of reasonable grounds. If grounds for non-appearance are deemed reasonable, the court will postpone the hearing, unless the party submits a written request that the case is heard in his/her absence. The court may also postpone a hearing upon a party’s request due to justified non-appearance of his/her representative. In the event of an unjustified non-appearance, the court may proceed with the hearing in absentia. CIV. PROC. CODE art. 170. The court is authorized to issue a default judgment if all of the duly notified defendants fail to appear without providing valid reasons, unless the plaintiff present in the proceedings does not consent to have the case heard in the absence of the defendant, or the nature or grounds of the suit are changed, or the value of the claim is increased. In these circumstances, the court will postpone the hearing. Id. art. 238. A copy of the default judgment must be delivered to all parties within three days, and defendant may petition the issuing court to annul a decision within 10 days of receiving its copy. Id. arts. 241-242. If the court finds that grounds for defendant’s non-appearance were reasonable and he/she did not have an opportunity to notify the court of those reasons in a timely manner, the default judgment must be annulled, and the court will renew proceedings on merits. Id. arts. 246-247.

In criminal cases, the participation of the defendant in the first instance court proceedings is mandatory. If the defendant does not appear, the hearing will be postponed. In exceptional circumstances, however, a case may be heard in the defendant’s absence, as long as such absence does not create an obstacle to establishing the truth or if the defendant is abroad and evading the appearance. CRIM. PROC. CODE arts. 246-247. The defendant may be forcibly brought to court, and the court may also impose or modify a pretrial restriction measure. Id. art. 247. In case of a defense attorney’s non-appearance, the trial must be postponed, unless it is possible, with defendant’s consent, to replace him/her with another advocate. If a prosecutor fails to appear, the court may either postpone the hearing or continue the trial in his/her absence. The

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19 Units used for calculation are set in the annual budget laws as an index rate for the calculation of taxes, duties, fines, and other payments stipulated by Tajik law. For 2008, this amount was fixed at TJS 25 (approximately USD 7.50). As of July 1, 2009, this amount was raised to TJS 35 (approximately USD 8.75).
court will also inform a higher-ranking prosecutor or the advocates’ collegium about the prosecutor’s or advocate’s conduct. Id. art. 253.

A person called as a witness must appear in court and testify truthfully. A witness who refuses to testify without valid reasons or intentionally provides false testimony faces criminal prosecution. CIV. PROC. CODE art. 73(1)-(2); CRIM. PROC. CODE arts. 66, 68, 75. In the case of an unjustified absence on the part of a witness, expert, specialist, interpreter, or victim (in a criminal trial), the court may impose a fine, and those who repeatedly fail to appear may be forcibly brought to court. CIV. PROC. CODE art. 171; CRIM. PROC. CODE arts. 66, 68, 75. Those who fail to appear before the Constitutional Court may also be fined. LAW ON CONSTITUTIONAL COURT art. 52. A witness, victim, expert, or interpreter’s refusal to appear before the court or refusal to testify is punishable by a fine of up to 500 times the minimum monthly wage. CRIM. CODE art. 352.

To assist judges with the administration of justice, the Law on Courts established the position of a bailiff responsible for ensuring order during court proceedings and delivering court notifications and summonses to parties, witnesses, and other persons. Bailiffs serve in all courts of Tajikistan. LAW ON COURTS art. 132.

In practice, judges are reportedly able to maintain order in the courtroom in almost every case. Nonetheless, reports from the Human Rights Center’s court monitoring projects cited one case in Dushanbe and six in Sugd viloyat where the judges showed indifference and did not react to the unacceptable behavior of the participants. Interviewees confirmed that judges do not use contempt powers very often. One interviewed judge stated that disrespect is actually quite common in lower-level courts, but no cases have been brought under the Code on Administrative Offenses thus far.

Although parties and witnesses reportedly routinely appear in practice, the HRC’s reports mentioned multiple instances where witnesses failed to appear. No measures were taken against the absent witnesses and only one judge made an effort to summon a witness. The HRC’s reports also mention frequent delays in hearings due to the tardiness of parties, witnesses, attorneys, prosecutors, and judges. See, e.g., HRC TRIAL MONITORING REPORT 2005 at 14; HRC TRIAL MONITORING REPORT 2006 at 13, 24. Late notifications are one of the obstacles to timely arrival of parties, witnesses, and attorneys. As discussed in Factor 23 below, at times judges forgo the requirement that notices be provided at least three days prior to hearings, and inform the participants the night before their scheduled court appearances. Despite this, postponement of hearings due to the absence of parties or witnesses occurs only occasionally. In fact, the most common reason for postponement is reportedly the absence of the judge.

Judgments enter into force upon the expiration of the window for filing a cassation complaint or protest. If the judgment was affirmed by a cassation instance, it becomes effective immediately upon the adoption of a resolution by the second instance court. CIV. PROC. CODE art. 213(1); CRIM. PROC. CODE art. 360. Certain decisions in civil cases are enforced immediately after their promulgation, including the inclusion of a citizen in voter lists, reinstatement of employment, and awards of alimony, salary, compensation for infliction of bodily injuries, and damages for the death of a breadwinner. CIV. PROC. CODE art. 215(1). The judgment of acquittal or sentence which relieves the defendant from punishment is also executed immediately. Decisions of the Constitutional Court are final, enter into force upon their adoption or at a later date specified by the Court, and may not be appealed. LCC art. 32.

Enforcement of decisions, sentences, rulings, and resolutions that have been adopted by the court and entered into force is mandatory. LAW ON COURTS art. 8; CIV. PROC. CODE arts. 15(1), 214(1). Failure to execute judgments and decisions in a proper manner entails responsibility established by the law. CIV. PROC. CODE art. 15(2); LCC art. 55. Intentional non-execution of valid court judgments is punishable by a fine of 200 to 500 times the minimum monthly wage, or confinement for a period of 3 to 6 months, or imprisonment for up to two years. CRIM. CODE art. 363. Pursuant to the new Law on Enforcement Procedure adopted in March 2008, the
enforcement function has been transferred from the individual courts to the MOJ. The MOJ’s inaction with respect to enforcement can be challenged in the courts.

In practice, judgments in criminal cases and administrative cases against the government are usually enforced immediately, unless penalties involve fines, confiscation of property, or payment of damages. By contrast, enforcement of civil judgments, which most often involve property disputes, often proves problematic. While no official information was made available to the assessment team, there is a general perception that courts were overburdened with enforcement proceedings and that this was the main reason for transferring enforcement responsibilities to the MOJ. Nonetheless, one interviewee asserted that advocates usually do not complain about the enforcement process, but admitted that the issue needs to be studied in greater detail.
III. Financial Resources

Factor 10: Budgetary Input

*The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>The Supreme Court, High Economic Court, and Constitutional Court prepare and administer their own budgets, while budgets for all other courts are prepared and administered by the COJ. Draft court budgets are then approved by the Government (or the President, in case of the Constitutional Court) and adopted by the Majlisi Namoyandagon. In practice, the judiciary has no influence over funding levels or the expenditure of funds that have been allocated.</td>
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</table>

**Analysis/Background:**

Funding and maintenance of the courts must be covered by the state budget. The state budget allocates funding for each court as separate line items, with the exception of the military courts. **Law on Courts** art. 104. Funding for the Military Chamber of the Supreme Court and lower-level military courts is covered by the budget allocated to the Military Chamber of Supreme Court and the COJ. *Ibid.* art. 73. The COJ develops and reviews draft budgets for its own activities and financial support of all courts, with the exception of the Constitutional Court, the Supreme Court, and the High Economic Court. *Ibid.* arts. 97-98. The COJ’s Chairman submits a formal budget proposal to the Ministry of Finance [hereinafter MOF]. There is no legal requirement that individual courts offer input regarding the proposed budgets. Instead, funding is based on the courts’ locations, number of employees, and salary ranges. Budgets for the Supreme Court, the High Economic Court, and the Constitutional Court are prepared and submitted to the MOF by the Chairmen of these courts. Draft budgets for all courts are then approved by the Government, except the Constitutional Court’s budget, which is approved by the President. *Ibid.* arts. 101, 124; **Law on Constitutional Court** art. 58. Once the draft state budget is finalized, the Government submits it to the Majlisi Namoyandagon, which adopts the annual state budget law by majority vote. The Majlisi Namoyandagon may modify proposals submitted by the Government. **Const.** arts. 59-60, 75.

Once funding has been allocated, the COJ’s Chairman approves budgets and staff tables for individual courts. The COJ is charged with managing the courts’ financial resources, providing them with adequate buildings and facilities, and auditing their expenditures. **Law on Courts** arts. 98, 101.

Recent practice shows that the COJ is sometimes successful in defending proposed court budgets, but the Government has the ultimate power over funding. Court chairmen report that they do not have any meaningful input on the amount of funding allocated to their courts or control over their own budgets. However, the one of the President’s legal advisors interviewed by the assessment team reported that courts are able to send their budget requests to the COJ.

According to the Chairman of the COJ, the judiciary’s budget for 2008 increased by more than 30% over the 2007 budget, exceeding TJS 8 million (approximately USD 2.5 million). In 2007, TJS 6,090,620 (approximately USD 1.8 million) was allocated to the judiciary, including TJS 4,130,190 (approximately USD 1.2 million) for salaries. Information regarding the percentage of the budget allocated to each level of courts was not available; the budget line items related to the judiciary were listed as “not for publication” in the annual budgets reviewed by the assessment
team. The amount of funding that the COJ requested for 2008 was not disclosed to the assessment team.

In addition to funds received from the state budget, local governments sometimes provide resources to the courts, such as office space or equipment. For example, Kulyab District Court has reportedly received two computers from viloyat authorities. Judges also rely on their own resources, such as using their private computers. The limited court budgets are reflected in low salaries, shortage of equipment, poor working conditions, and insufficient access to legislative texts and legal literature. Although interviewees generally agreed that budgetary allocations for the courts are insufficient, given the country’s economic condition court chairmen appear to accept this situation and simply make do with the limited funds.

**Factor 11: Adequacy of Judicial Salaries**

*Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Although judicial salaries were increased in 2003 and another increase, was approved in 2008, salaries, particularly at the lower-level courts, are still not sufficient to enable judges to support their families and live in a reasonably secure environment.</td>
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**Analysis/Background:**

State-provided material and social support corresponding to a judge’s status is one of the safeguards of judicial independence and, as such, cannot be eliminated or reduced by any other laws or regulations. *LAW ON COURTS* art. 5. Judicial remuneration consists of base salary and allowances for qualification rank and length of service, which are established by a presidential decree. Military court judges may choose between allowances for a military or a qualification rank. The Law guarantees that judicial remuneration may not be reduced. *Id.* art. 125; *LCC* art. 59. The most recent presidential decree concerning judicial salaries was issued in June 2008. *DECREE OF THE PRESIDENT TO DETERMINE THE SALARY SCHEME FOR PERSONNEL WORKING IN GOVERNMENT BODIES, LOCAL GOVERNMENTS, ARMED FORCES, MINISTRY OF INTERIOR, LAW ENFORCEMENT BODIES, COURTS, AND PROSECUTORIAL OFFICES* (adopted June 20, 2008) [hereinafter *DECREE ON SALARY SCHEME FOR GOVERNMENT PERSONNEL*].

Unfortunately, official information regarding the actual judicial salary figures was not made available to the assessment team. The appendix to the Decree on the Salary Scheme for Personnel, which lists these amounts, has been designated “for internal use” by the COJ and has not been published. Respondents reported that, at the time of the interviews for this assessment, the monthly salaries for judges of the Supreme Court, the High Economic Court, and the Constitutional Court ranged from TJS 800 (approximately USD 233) to TJS 1,600 (approximately USD 467), while salaries for lower-level court judges ranged from TJS 310 (approximately USD 90) to TJS 600 (approximately USD 200). Reportedly, all judges received a 300% increase in 2003, and another increase of 35-40% was allocated in July 2008. This increase was promulgated in July 2008 through Presidential Decree No.480, after the interviews for this assessment were completed.

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20. Although judges did not know the extent of the planned increase, interviewees mentioned that the President had made a public remark to the MOF that the raise should keep pace with inflation, which was 6.2% for the first quarter of 2008. Judicial salaries are comparable to those of other public servants and are
said to even be slightly higher than those of prosecutors. Reportedly, district prosecutors earn about TJS 450 (approximately USD 150), while district court judges make about TJS 600 (approximately USD 200).

Non-judge interviewees unanimously stated that low judicial salaries were a major cause of judicial corruption, because they make supporting a family impossible without having to resort to other income sources. According to one attorney, “everything can be bought and sold.” Although judges interviewed by the assessment team would not openly complain about their salaries, several did say that higher salaries, along with better material resources for the judiciary, would not only strengthen judicial independence but also improve the public image of the judiciary.

By law, judges are also entitled to additional material benefits. Most notably, this includes state-supplied housing, which local executive authorities where the court is located must provide to a judge within six months of appointment. This housing becomes the judge’s property after 10 years of service. In lieu of housing, a judge may choose to receive an interest-free loan from the state budget to purchase or build his/her own housing. LAW ON COURTS art. 127. Constitutional Court judges must be provided with a separate apartment or house in Dushanbe within three months of election to office. LCC art. 59. Judges and their family members also enjoy a number of other benefits, such as paid vacation (including paid return transportation to and from the vacation location anywhere in Tajikistan), a 50% discount on utility and home phone fees (excluding long-distance calls), state-funded medical care, and life and health insurance in the amount of 10 years of salary. LAW ON COURTS arts. 126-128. It is unclear whether the government has enough resources to ensure that judges enjoy all of these benefits fully.

The Chairman, Deputy Chairman, and judges of the Constitutional Court enjoy the same housing, medical, and technical benefits as, respectively, the Prime Minister, First Deputy Prime Minister, and Deputy Prime Minister of Tajikistan. LCC art. 59. Additionally, all Constitutional Court judges are also provided with a government car and a driver.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

<table>
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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Courthouses are generally centrally located and easy to find. While the condition of court buildings varies, most are old and in need of repairs. Many of the courts do not have adequate space, and judges frequently hold hearings in their offices.</td>
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</table>

Analysis/Background:

The COJ is charged with providing adequate buildings and facilities for courts and financing their infrastructure needs. LAW ON COURTS art. 98.

Generally, courthouses in Tajikistan are centrally located in cities and towns and relatively easy to find. However, based on the assessment team’s observations and interviewees’ statements, most courthouses are old and in need of repairs. Court buildings in 12 of Tajikistan’s 68 district courts are rented from or shared with other government agencies. Some of these buildings do not have adequate space for courtrooms. At the time that interviews for this JRI assessment were conducted, the COJ had started construction of new courthouses for four of these district
courts, but no projects to renovate the existing courthouses were being implemented either by the
government or by international donors, due to the lack of sufficient funding.21

Most urban and semi-urban courthouses visited by the assessment team had two courtrooms
located on the first floor. While some had been freshly painted and had new furniture, others
were in a very poor condition. There is usually satisfactory space for all trial participants, but no
adequate waiting room and no space for attorneys to meet with their clients. Heating is not
sufficient in the winter, when temperatures in the courthouse can reach below freezing; and there
is no air-conditioning in the summer, although temperatures rise as high as 50 degrees Celsius.
According to judges interviewed by the assessment team, courtrooms are generally available for
criminal trials, but, not infrequently, judges have to hold hearings in civil case in their offices.
Judges also reported conducting hearings in their offices during winter months, as the unheated
courtrooms were too cold. Of the 41 criminal court sessions attended by the HRC monitoring
team in 2006 in Dushanbe City Court, 21 were held in judges’ offices. Of the 62 court sessions in
the Sugd viloyat, seven were conducted in judges’ offices, three in a conference room, and one in
the entrance hall of the Military Commandant’s office. See HRC TRIAL MONITORING REPORT 2006
at 11.

In the majority of the courts visited by the assessment team, most judges had their own offices,
though some were very small. The judges’ secretaries sat either in an entry foyer to a judge’s
office or, in some cases, in the judge’s office. Chairmen of the courts had large, comfortable
offices equipped with conference tables.

The Sino District Court in Dushanbe, which is probably the busiest district court in the country, is
in a very poor condition. It is located in a former three-building school complex. Two of the
buildings are occupied by the district office of the Ministry of Interior and the district prosecutor’s
office. Judges’ offices are located on the first two floors of the third building. To give all judges
their own offices, the Court’s chairman had the hallway on the first floor narrowed in order to build
offices on both sides of the corridor. As a result, most offices are extremely small. The Court has
two courtrooms, which are not sufficiently spacious or comfortable. Space in other lower-level
courts is also limited. For example, at the Khatlon Viloyat Court, the first floor is used by the local
office of the COJ. In the Kurgan-Tube City Court in Khatlon viloyat, the first floor is occupied by
notaries’ offices.

Interviewees reported that small rural courthouses typically consist of one room, usually in a
building of the local government. The judge’s office usually doubles as a courtroom. As many of
these courts currently have only one judge, this is less problematic than it may seem. However, a
plan to place at least two judges in each court will make this arrangement less practicable.

Although the building which houses and stairway leading to the Constitutional Court were dingy at
the time of the assessment team’s visit, the Court’s premises are comfortable and have recently
been renovated. The building has ample offices for each judge, a newly renovated courtroom
with an adjacent room for judges’ deliberations, and a library funded by USAID through the
ARD/Checchi program. The Supreme Court, on the other hand, is housed in a very old building,
although it has sufficient space to accommodate all judges and hearings. The Chairman reported
that the President had allocated funds for a new courthouse, and construction was expected to
commence in 2008. The High Economic Court is located on the upper floors of the headquarters
of the Communist Party of Tajikistan.

21 After this assessment report was drafted, the COJ informed the assessment team that
budgetary allocations for construction and renovation of courthouses in Tajikistan are increasing
every year, and that expenditures for this purpose during January-June 2009 were five times
higher than during the same period in 2008.
Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>The Government is required to provide protection to the courts, judges, their families, and property at no cost. Due to shortage of funding, security measures employed in most courts are limited to posting an unarmed guard at the entrance and requiring those seeking to enter judicial chambers to obtain permission. Threats against judges are reportedly rare, and judges seem to feel relatively safe. However, an explosion outside of the Supreme Court building in 2007 suggests that the security situation is still precarious.</td>
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Analysis/Background:

Judges, members of their families, and their property are under special protection of the state. If deemed necessary, the Government is required to provide protection for the courts, as well as the judges, their families, and property at no cost. In addition, judges have the right to possess and carry arms in accordance with the law of Tajikistan. LAW ON COURTS art. 10.

The Criminal Code contains special provisions on crimes involving attacks against judges. A threat of violence against a judge, people’s assessor, or their relatives is punishable by correctional labor for up to two years or imprisonment for up to three years. Using violence that does not endanger the life or health of such persons is punishable by imprisonment for 2 to 5 years, 5 to 8 years if the violence endangers their life or health. CRIM. CODE art. 356.

Court-employed unarmed guards are posted at the entrances to most courts. They record the names of visitors, verify the purpose of the visit, and notify appropriate court staff of their arrival or direct them to their destinations. Once visitors are inside the court building, they are allowed to walk around unsupervised. However, permission is required to enter judicial chambers. Usually, visitors must go through areas designated for judicial secretaries prior to reaching judges’ offices. Other security measures are rarely employed due to shortage of funding. None of the court buildings visited by the assessment team had metal detectors, and only a few buildings had separate entrances for judges. In some courts, the guards did not request the assessment team members to state their names or present identification documents prior to entering the buildings.

Threats or attacks against judges are reportedly rare. The Chairman of the Supreme Court responded that he was not aware of any recent threats against judges. Other judges confirmed that threats are uncommon, and that they are not particularly concerned about their safety and security. In fact, many judges seem to be complacent about the present security situation simply because it is much better than during the civil war, when attacks against the judiciary were common. Despite the relative safety of post-civil war Tajikistan, a June 2007 explosion outside of the Supreme Court building suggests that the security situation in the country remains precarious. The incident is reportedly being investigated by the State Committee on National Security as an act of terrorism aimed at intimidating the judiciary. At the time of this assessment, the case was still under investigation, and further details were not available to the assessment team.

Most judges seem resigned to the fact that there are no resources available for the protection of judges or the courts. However, one viloyat court judge expressed serious concern about the lack of funding to hire police to protect court buildings. The judge mentioned an incident in the Sugd Viloyat Court in which a defendant’s family threw personal items at the judges after the verdict was announced. The four guards assigned to the defendants were unable to protect the judges.
IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

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<th>Conclusion</th>
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<td>In 2003, judicial tenure was increased from five to ten years. While there is no limit on the number of terms a judge may serve, the reappointment procedure is not regulated by law and lacks transparency. In addition, some of the grounds for involuntary removal are highly subjective and prone to manipulation. Although there is no mandatory retirement age, a judge must be under the age of 65 when appointed.</td>
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Analysis/Background:

The 1994 Constitution provided a five-year term for judges. In 2003, the Constitution was amended to increase judicial tenure to ten years. CONST. art. 84; see also LAW ON COURTS art. 13; LAW ON CONSTITUTIONAL COURT art. 5. If a judge is appointed or elected to another court during his/her term, the 10-year tenure is to be counted from the new appointment or election. LAW ON COURTS art. 13. If a Constitutional Court judge’s tenure expires during the consideration of a case in which he/she participates, the judge remains in office until the decision is issued. LAW ON CONSTITUTIONAL COURT art. 5. Judges of viloyat-level and trial courts are reappointed by the President upon recommendation of the COJ, following the same procedure as for initial appointment. When a judge’s tenure is up for renewal, he/she must update his or her resume and personal portfolio, submit the required documentation to the COJ, and undergo an official qualification attestation by one of the three Qualification Boards. LAW ON COURTS art. 108; see also Factor 15 below for a detailed description of the attestation procedure. There is no limit on the number of terms a judge may serve or a mandatory retirement age; however, a judge must be appointed prior to reaching the age of 65.

The criteria for reappointment are not specified in any law, and the process itself is not transparent. A former judge interviewed for this assessment mentioned that the COJ reviews the judge’s records, and if any shortcomings (such as a certain number of overturned decisions) are discovered, the judge may not be recommended for reappointment. Official reappointment statistics were not provided to the assessment team.

Judges may be removed from office prior to expiration of their tenure on a number of grounds. While some of these grounds are objective and within the judge’s control, others are not. They include activities incompatible with judicial office, acts disgracing honor and dignity of a judge, criminal sentence against a judge, being declared legally incompetent, inability to perform judicial functions for four consecutive months, loss of citizenship, the reorganization of court(s), reduction in the number of judicial positions, violation of legislation in adjudication of cases, violation of labor laws, failure to meet the qualifications and requirements of a particular position, and violation of the rules concerning regulation of traditions, celebrations, and rituals. LAW ON COURTS art. 18; LAW ON CONSTITUTIONAL COURT art. 11; see also LAW ON THE REGULATION OF TRADITIONS, CELEBRATIONS, AND RITUALS (adopted July 30, 2007, as amended) [hereinafter LAW ON REGULATION OF TRADITIONS].

Although there has not been a reorganization of courts or

22 The adoption of the Law on Regulation of Traditions was initiated by the President in the course of implementation of the National Poverty Reduction Strategy Paper 2007-2009. The Law introduces government oversight over the observance of traditions and rituals, and regulates such
reduction in the number of judges in Tajikistan since independence, similar provisions have been used in other post-Soviet countries to remove unwanted judges. According to interviewees, there no judges have been removed for violating the Law on Regulation of Traditions as of the drafting of this assessment.

Judges who honorably and voluntarily resign before reaching the retirement age or decide not to seek reappointment are entitled to receive 10 months remuneration upon resignation, provided that they have served for at least 10 years and have general legal work experience of at least 20 years. If the judge has served for more than 10 years, he/she is entitled to either a pension or life-long allowance amounting to 80% of the salary of a judge holding a similar office. The same benefit applies to Constitutional Court judges with at least 20 years of professional legal experience. The allowance is increased by 1% for every additional full year of service, up to 90% of a judge’s salary. LAW ON COURTS art. 19; LAW ON CONSTITUTIONAL COURT art. 11.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>The Law on Courts specifies a detailed judicial advancement procedure that refers to competence, professional and moral characteristics, and evaluation of past performance. Judges who wish to be promoted must undergo a qualification attestation before the Qualification Board, which consists solely of judges. However, specific criteria for advancement are not clearly laid out by the law, and judges do not consider the advancement procedure to be transparent.</td>
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Analysis/Background:

There are several options for Tajik judges to receive career advancement, including the award of a higher qualification rank, appointment to a higher-level court, or promotion to the position of a court chairman or deputy chairman. Judges who wish to be promoted must undergo an official qualification attestation before one of the three Qualification Boards. LAW ON COURTS art. 108; see also Factor 2 above for description of Qualification Boards’ structure and functions.

All judges are assigned qualification ranks, which are retained following their retirement or resignation. LAW ON COURTS art. 109. Qualification attestation for new judges is conducted within six months of the initial appointment date. Other judges undergo the attestation within one month of the expiration of their current qualification rank. Judges may also be subject to early qualification attestation, which can be conducted not less than two years from the last attestation (except for attestations involving verification of a judge’s competence, which can be conducted at any time). Id. art. 112. Qualification ranks are established by the Majlisi Namoyandagon, but regulations on the assignment procedures are approved by the President. Id. art. 109. There are six qualification ranks, ascending from the fifth to the highest rank, with the fifth rank being the rank for a new judge. After three years of service, a judge who has performed well can be promoted to the fourth rank. In order to be promoted to the third rank, the judge must spend at least three years in the fourth rank, while the minimum terms for a promotion to the second and first rank are five years. There is no limit on how long a judge may spend in the first rank. To motivate a judge who has demonstrated significant achievements, he/she may be qualified at a rank one higher than that for which he or she would ordinarily qualify (i.e., a third rank instead of a

issues as the number of guests that can be invited to social events and ceremonies (e.g., weddings, birthdays, circumcision ceremonies, etc.), venues, and timing of celebrations.
The qualification attestation begins with the COJ preparing a reference for the judge being evaluated, which details his/her professional and moral characteristics and assesses his/her performance. References for Supreme Court and High Economic Court judges are prepared by the Chairmen of these courts. The judge has the right to review the reference at least 15 days prior to the date of the qualification attestation. Within one month of receiving this reference, the respective Board reviews all submitted documents and conducts an attestation. The judge in question must be present during the attestation session and must be notified of its time and place no fewer than 15 days prior to the scheduled hearing. LAW ON COURTS arts. 113-114. The sessions of Qualification Board are conducted publicly, and the chairmen of the courts and COJ representatives may also be invited to attend the sessions. Id. art. 114. The Qualification Boards adopt their decisions by a majority vote of members present at the hearing. A copy of the decision concerning qualification attestation of a judge is presented to the COJ (or the appropriate court chairman) and the judge in question within seven days of its adoption. The decisions of the Qualification Boards may be appealed in the Supreme Court. Id. art. 117. After receiving the decision, the Chairmen of the COJ, the Supreme Court, and the High Economic Court submit recommendations to the President regarding the awarding of qualification ranks to judges. Id. arts. 39, 59, 97.

Appointment of judges to higher-level courts is treated as an initial appointment and follows the same procedure (except that judges undergo qualification attestation instead of an examination). Decisions concerning appointment to higher-level courts or promotion to the position of a court chairman or deputy chairman are made by the same bodies or officials that are authorized to appoint judges to the respective courts. Chairmen, Deputy Chairmen, and judges of the Supreme Court, the High Economic Court, and the Constitutional Court are elected by the Majlisi Milli upon recommendation of the President. CONST. art. 69(13); LAW ON COURTS art. 14; LCC art. 6. Chairmen, Deputy Chairmen, and judges of all other courts are appointed by the President upon recommendation of the COJ. CONST. art. 86; LAW ON COURTS arts. 75, 85. There are no limits on the number of terms a judge can serve as a court Chairman or Deputy Chairman.

According to the COJ, final decisions regarding judicial advancement are based on a judge’s experience, adherence to the law in deciding cases, professional and moral characteristics, and past performance. In practice, judges’ performance is often measured by the number of reversed decisions. Although technically decisions can be reversed only if they violate the law, the reality is somewhat different. For example, any decision of acquittal may ultimately be reversed due to enormous pressure from the prosecution. See Factor 20 below. This may potentially lead judges to seek guidance from higher-instance courts with respect to their decision-making, in order to minimize the likelihood of reversal. Although judges interviewed by the assessment team did not mention this as a problem, they reported other problems with judicial promotions. First, they complained that the advancement procedure is not transparent, with the specific criteria that judges should meet in order to be promoted not clearly laid out by the law. Additionally, vacant positions are not publicly announced, with only the COJ’s Chairman having information about vacancies, and senior positions are not open for competition. This means that judges are effectively unable to apply for promotions. Some interviewees stated that, unlike judges, prosecutors and police officers are often promoted, even before their tenure expires. For example, one judge with a 20-year service record had a third qualification rank, which was not updated since 2002. Most troubling, however, is the fact that the judges interviewed were generally reluctant to talk about promotions because, in their view, they depend exclusively on the will of the COJ. They said they had not complained about this situation because they were too busy and did not believe that complaints would help.
Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion

Judges enjoy broad immunity from criminal and civil liability, arrest, and detention, which is respected in practice. The Criminal Code provides for liability of judges for issuing intentionally illegal decisions or acts.

Correlation: Neutral

Analysis/Background:

Judicial immunity is one of the guarantees of judicial independence, and its violation entails responsibility established by law. LAW ON COURTS art. 5. Tajik Constitution and legislation provide for broad judicial immunity. Specifically, a judge may not be arrested, detained (unless he/she is caught in flagrante), or criminally prosecuted without the consent of the body that elected or appointed the judge (i.e., the Majlisi Milli or the President). If a judge is arrested or brought before a government body on the suspicion of having committed a crime or an administrative violation, he/she must be released immediately upon identification as a judge, unless the arrest was duly authorized. As an additional safeguard, a Constitutional Court judge may not be subject to administrative sanctions without the consent of the Majlisi Milli, while detention of a Constitutional Court judge caught in flagrante must be immediately reported to the Chairman or Deputy Chairman of that Court. Furthermore, only the Prosecutor General is authorized to bring criminal charges or issue arrest or detention warrants for a judge, and only the Supreme Court has jurisdiction to try in the first instance a criminal case against any judge and an administrative offenses case against a Constitutional Court judge. CONST. arts. 91; LAW ON COURTS art. 9; LAW ON CONSTITUTIONAL COURT art. 9.

Judicial immunity extends to judges’ dwellings, offices, means of transportation and communication, correspondence, personal belongings, and documents. Interference with this immunity through entry, search (including personal search), seizure, or wiretapping, requires a warrant issued by the Prosecutor General and can only occur after criminal prosecution against a judge has been initiated. Judges also have civil immunity, which covers damages caused by unintentional acts or neglect in the course of performance of their duties. LAW ON COURTS art. 9; LAW ON CONSTITUTIONAL COURT art. 9. In addition, Constitutional Court judges may not be subjected to compulsory medical measures or declared legally incompetent without the consent of the Constitutional Court. They also may not be penalized for any opinion expressed in the course of Constitutional Court proceedings. LAW ON CONSTITUTIONAL COURT art. 9. Judges of all courts continue to enjoy the guarantees of personal immunity upon their honorable resignation. Id. art. 11.1; LAW ON COURTS art. 19.

A judge whose immunity has been lifted may face prosecution for a variety of crimes committed in his/her official capacity, including exceeding, or abuse or usurpation of, power; accepting a bribe; illegal participation in entrepreneurial activity; nonfeasance in office; negligence; and official forgery. See generally CRIM. CODE arts. 314-319. In addition, a judge may be prosecuted for intentionally rendering an illegal sentence, decision, or other judicial act. This crime is punishable by a fine in the amount of 1,000-1,500 times the minimum monthly wage or imprisonment for up to two years. If the offense involved fabrication of evidence or resulted in grave consequences (such as incarceration of an innocent person), the punishment is imprisonment for 3 to 5 years combined with a prohibition on holding certain positions for up to 5 years. Id. art. 349.

Judges interviewed by the assessment team confirmed that judicial immunity is usually respected in practice. One interviewee stated that the President usually lifts a judge’s immunity upon receiving a request from the authorized body, and there have been recent instances when judicial
immunity was limited. Perhaps the most controversial example is the 2004 case of Murtazo Aliev, a judge of the Khujand City Court. Aliev was arrested and charged under Article 349 of the Criminal Code with intentionally rendering an illegal sentence in connection with the early release from the penitentiary institution of Mr. Dehgonboi Soliev and three other individuals, without participation of the prosecutor and the people’s assessors in the hearing. In 2005, Aliev was sentenced to imprisonment of one year. Some interviewees felt that Aliev’s prosecution and removal were politically motivated. Representatives of the Prosecutor General’s office reported that there were no prosecutions under Article 349 since the Aliev case.

According to the COJ’s Chairman, one judge was convicted on corruption charges and one was convicted of fraud during January-September 2008. See BHR ANNUAL REPORT 2008 at 15. The assessment team also learned about three judges from Sughd viloyat who were convicted for bribery in 2004-2005. Interviewees also mentioned two other cases that involved the lifting of judicial immunity. One involved a judge from the Khujand City Court who was convicted and imprisoned for one year for accepting a bribe. The other case involved a judge from Khatlon Viloyat Court who was charged with corruption. Some judges expressed a view that these cases were staged. However, the assessment team was unable to obtain further details as to these two cases.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

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<th>Conclusion</th>
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<td>Judges may be disciplined or removed from office for reasons specified by law. While some grounds are objective and/or within a judge’s control, others may provide an open door for abuse. Although, by law, disciplinary proceedings appear to be reasonably fair, they are not perceived as transparent in practice.</td>
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Analysis/Background:

Responsibility for disciplining judges lies with the three Qualification Boards. LAW ON COURTS art. 107; see also Factor 2 above for description of Qualification Boards’ structure and functions. Judges can be disciplined on one of the following grounds: (1) gross violation of the law in the course of administration of justice; (2) violation of internal labor regulations; and (3) commission of an act discrediting the judiciary. The law specifies that reversal or modification of a court decision is not, by itself, a ground for disciplinary responsibility, unless the judge intentionally violated the law or acted in bad faith in issuing the judgment. LAW ON COURTS art. 119.

Judicial disciplinary proceedings involve three stages: investigation of information concerning the alleged misconduct, commencement of disciplinary proceedings, and a disciplinary hearing. Id. art. 120. Disciplinary proceedings may be commenced by one of the following bodies or officials:

- Chairman of the Supreme Court – with respect to any judge in Tajikistan, except the Constitutional Court and economic courts judges, but only for gross violation of the law;
- Chairman of the High Economic Court – with respect to any viloyat-level economic court judge, but only for gross violation of the law, and with respect to a High Economic Court judge on any of the enumerated grounds;

However, he/she can commence disciplinary proceedings against a Supreme Court judge on any of the three enumerated grounds.
• Chairman of the COJ – with respect to any lower-level court judge, but only for violation of internal labor regulations or commission of a discrediting act; and
• chairmen of viloyat-level courts – with respect to any trial court judge within the territorial jurisdiction of the viloyat court, but only for gross violation of the law.

Id. art. 121. Prior to commencing the proceedings, the authorized body or official must verify information concerning the alleged misconduct and obtain a written explanation from the judge in question. If this investigation results in discovery of sufficient grounds for discipline, the competent body issues a decision commencing disciplinary proceedings. The judge in question can then review this decision and any supporting documents and provide explanations or move for additional investigation. After this, the decision and supporting documents are forwarded to the appropriate Qualification Board for hearing. Id.

The Qualification Board must conduct the disciplinary hearing within one month of receiving the case file. A judge’s participation in the hearing is mandatory; however, failure to appear at the hearing without valid reasons does not prevent the Qualification Board from going forward with the hearing. Id. art. 122. If there are insufficient grounds for commencing a disciplinary proceeding against a judge, or if the statute of limitations has expired, the Board will terminate the proceedings. Id. art. 123. If, however, the Qualification Board finds the judge guilty of the alleged misconduct, it will impose one of two disciplinary penalties – reprimand or severe reprimand. The penalty imposed must be commensurate with the nature and severity of the misconduct and its consequences, a judge’s character, and the degree of his/her guilt. If a judge is not subject to a new disciplinary penalty during the year following the imposition of the original penalty, his/her disciplinary record is expunged. The record may also be expunged early, as little as six months from the date of the original penalty, if the judge exhibited irreproachable conduct and acted in good faith in performance of his/her duties. Id.

The Qualification Board may suspend the proceeding and forward the case materials to those bodies or officials authorized to remove a judge from office, or to the Prosecutor General for consideration of a criminal proceeding against a judge. If there are insufficient grounds for removal or criminal prosecution against a judge, the case will be returned to the Qualification Board, which will resume the disciplinary hearing. Id.

By law, the Qualification Boards’ hearings are conducted publicly. The Board adopts its decision by a majority vote of members present in the session. A copy of the decision is provided to the body that initiated the proceedings and the judge in question within seven days of its adoption. Id. art. 117. In addition, a copy of the disciplinary decision is included in a judge’s personnel file. Id. art. 123. The decision may be appealed to the Supreme Court. Id. art. 117.

In practice, the number of disciplinary proceedings against judges is very low. The Chairman of the Supreme Court reported that 20 disciplinary complaints were filed in 2007. Only two cases were heard by the Qualification Boards. Both complaints involved delays in civil cases and each judge was reprimanded. Additionally, according to the COJ Chairman, during January-September 2008, five judges voluntarily resigned from their positions, one judge retired, and five were transferred to other positions. See BHR ANNUAL REPORT 2008 at 15. The assessment team did not obtain more detailed information about judicial disciplinary proceedings and was

24 A judge may be subject to discipline within one month of discovery of misconduct on his/her part, excluding the time needed for official investigation or a judge’s absence from work due to valid reasons. However, the total period cannot, in any event, exceed six months from the day the alleged misconduct was committed. LAW ON COURTS art. 119.

25 As discussed in Factor 14 above, judges of lower-level courts can be removed by the President upon recommendation of the COJ. Judges of the Constitutional Court, the Supreme Court, and the High Economic Court can be removed by Majlisi Milli upon recommendation of the President. LAW ON COURTS art. 18; LAW ON CONSTITUTIONAL COURT art. 11.
therefore unable to determine if the number of cases has been consistently low over the past few years.

As discussed in Factor 14 above, judges may be removed from office based on a number of grounds. While some of these grounds are objective and/or within the judge’s control, others are not and may provide an open door for abuse – even though the assessment team did not receive any indications that such abuse has, in fact, occurred in practice. At the same time, given that several of the grounds for removal are subjective and there are no additional guidelines for disciplinary action, some interviewees felt that commencing a disciplinary action against a judge is often used to open a vacancy for another candidate or to punish a judge for taking an action that goes against the government’s interests. In general, disciplinary proceedings are not perceived as being fair and transparent. In practice, they are not open to the public and it is unclear what protections against abuse and guarantees of due process judges have, aside from the opportunity to review the case file and their mandatory presence during the disciplinary hearing before the qualification board.

**Factor 18: Case Assignment**

*Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.*

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<th><strong>Conclusion</strong></th>
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<tr>
<td>There are no uniform rules regulating case assignment in Tajikistan’s courts. Assignment methods vary from court to court, and some of them are largely subjective. Once a judge is assigned to a case, he/she may be disqualified from hearing a case only for specified reasons, such as conflict of interest or prior participation in the same case as a judge or in any other capacity.</td>
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**Analysis/Background:**

There are no uniform rules for case assignment in Tajik courts. In the Supreme Court, the chairmen of the Court’s chambers are responsible for managing the workflow and establishing panels for the consideration of cases. LAW ON COURTS art. 41. The Chairman of the High Economic Court establishes judicial panels on that Court. Id. art. 59. The chairmen of lower-level courts assign cases to their judges. Id. arts. 82, 88. The law does not specify what methods are to be used for case assignment.

In almost all courts visited by the assessment team, court chairmen review all cases before they are assigned to individual judges. In practice, cases in some trial courts are allocated based on geographic location, where each judge is assigned to certain streets within the court’s territorial jurisdiction. In other courts, cases are assigned to judges who met with the prospective parties during their office hours, which are conducted in the court in accordance with set schedules when judges are “on duty.” Court chairmen typically exercise their discretion to deviate from these systems in order to ensure that all judges have even workloads. For example, the chairman of one court explained that he assigned more cases to experienced judges and fewer cases to new judges. Another court chairwoman stated that she distributed cases in accordance with judges’ qualifications, capacity, and workloads. The chairman in yet another court said that complex cases and cases involving juveniles are assigned to the chairman or his deputies. The chairwoman of an viloyat court reported that she assigns judges to civil and criminal chambers on an annual basis, subject to approval by the court’s presidium. As there are more civil cases than
criminal, the chair has weekly meetings with the civil chamber to review their workload and reassigns criminal chamber judges to hear civil cases as needed.

While judges interviewed by the assessment team did not criticize the above-mentioned case assignment methods, these methods are, to a large extent, subjective. In fact, a number of practicing attorneys expressed an opinion that certain cases, especially those involving serious crimes such as murder or corruption, end up on the docket of “particular” judges.

Judges are required to recuse themselves if there are circumstances that raise doubts as to their objectivity and impartiality. For example, recusal is required if the judge is related to another judge on the panel, one of the parties in a civil case, a party’s representative, or a criminal defendant; if the judge previously participated in the case as a victim (or his/her legal representative), witness, expert witness, translator, investigator, prosecutor, or advocate; and if the judge or his/her relatives or a spouse are directly or indirectly interested in the outcome of the hearing. CRIM. PROC. CODE arts. 25, 27; CIV. PROC. CODE art. 18. In addition, a judge who issued a warrant for preliminary detention or extension of detention cannot hear the case in the future. CRIM. PROC. CODE art. 28. Similarly, a judge who heard the case in one court cannot review the same case in another court or in the same court after the case is remanded. Id.; CIV. PROC. CODE art. 19; see also ADMIN. PROC. CODE art. 117. If recusal is required, a judge must recuse himself/herself before the hearing on the merits, unless the judge became aware of the reasons for recusal after the proceedings have commenced. Parties and other participants in the case can also move for a judge’s recusal. CRIM. PROC. CODE art. 29; CIV. PROC. CODE art. 21.

Interviewees reported that, in practice, recusals occur in approximately 20% of the cases. Attorneys stated that their requests for recusal were usually granted.

**Factor 19: Judicial Associations**

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

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<tr>
<td>The Association of Judges of the Republic of Tajikistan [hereinafter AJRT] was established in 1992. Although the Association had been quite active in the past, its operations have declined significantly in recent years due insufficient funding. With only one employee and no external financial support, the AJRT currently does not implement any significant projects.</td>
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**Analysis/Background:**

Citizens have the right to associate and to create, voluntarily affiliate with, and leave public associations. Freedom of association cannot be limited during the state of emergency. CONST. arts. 28, 47. Establishing a judicial association is one of the attributes of judicial independence. LAW ON COURTS art. 5.

The AJRT was established in 1992 by a commission of active judges and was registered in 1993. It became the first such association in the Commonwealth of Independent States [hereinafter CIS]. Its first meeting, which adopted the Association’s Charter, was organized in cooperation with the MOJ and featured delegates from each region of Tajikistan. Almost all judges joined the AJRT, and currently more than 90% of sitting judges are members. Membership is voluntary and open to Tajik and foreign citizens who are at least 18 years old, including retired judges. In practice, newly appointed judges become members of the AJRT automatically, although it is not a formal requirement. In addition to regular membership, the AJRT has honorable members, such
as the former Minister of Justice who is also a Chairman of the CIS Association of Judges. Members are required to pay membership dues and refrain from acts that may discredit the AJRT. CHARTER OF THE ASSOCIATION OF JUDGES OF THE REPUBLIC OF TAJIKISTAN arts. 4(1), 4(5) (adopted by the AJRT General Meeting, as amended Dec. 3, 2007) [hereinafter AJRT CHARTER].

According to its Charter, the AJRT is an independent, non-profit, non-governmental, self-governing organization. Id. art. 1. Its stated objectives include, among others, defending the constitutional order governed by the separation of powers; protecting the rights of its members and the interests of the judiciary as a whole; supporting judicial reforms and legislative efforts to improve judicial independence; raising professional qualifications of judges; providing judges with up-to-date legal information and materials; conducting conferences and seminars to strengthen the judiciary; and cooperating with other national and international public interest organizations. Id. art. 2.

The AJRT’s management structure consists of the General Assembly, the Board, the Chairman, the Executive Director, and the Inspection Commission. The General Assembly convenes at least once annually with a quorum consisting of at least two thirds of AJRT’s members. It is charged with adopting amendments to the Charter, drafting the AJRT’s agenda, approving programs and projects, and electing members of the Board, the Inspection Commission, and the Executive Director for five-year terms. The Board meets quarterly and is authorized to implement approved projects and programs and recommend future programming. While the Chairman holds decision-making authority, AJRT’s day-to-day operations are managed by the Executive Director. The Executive Director implements the Chairman’s decisions, signs contracts on behalf of the Association, determines work schedules, and oversees budget management. Finally, the Inspection Commission, consisting of a chairman and two members, exercises control over AJRT’s financial resources. The Commission conducts audits and submits a report to the Board every year. Id. art. 5. The AJRT also has three committees: on ethics, on material and technical support for the courts, and on legislative affairs.

The AJRT’s main office is located in Dushanbe. The AJRT purchased and equipped this office with support from the Swiss Cooperation Office in Tajikistan. The office has a small conference room and a library, with a computer in each room. In addition, the Association has four regional branches located in the administrative centers of each region (i.e., Kurgan-Tube for Khatlon viloyat, Khujand for Sughd viloyat, Khorog for GBAO, and Dushanbe for RRS). These branches are operated by a judge who works from his/her office in each of these locations.

The AJRT’s budget consists of membership dues which amount to to TJS 20 (approximately 8 USD) per year, subscription fees, and funds (grants or loans) obtained from external donors. Id. art. 6(1)-(3). Although membership in the AJRT is technically voluntary, dues in Dushanbe area courts are collected by the COJ through mandatory salary deductions. In the regions, the local AJRT representative is responsible for collecting dues, and the collection rate is reported to be approximately 70%. It is expected that the AJRT’s next General Assembly will introduce amendments to the Charter, including an increase in membership dues.

In recent years, the AJRT has lost much of its funding from international donors, such as SDC (due to AJRT’s failure to submit financial reports to the donor) and USAID via ARD/Checchi. As a result, the AJRT’s sole revenue currently comes from membership dues. In the absence of external support, the AJRT is able to maintain only one full-time employee. Previously, the AJRT had a staff of six, including the Executive Director, and salaries were funded by the Swiss Cooperation Office in Tajikistan. The current AJRT Chairman served as its Executive Director during 2002-2005, when he was appointed as a judge. He is presently the Chairman of the Supreme Court and serves as the AJRT Chairman on a voluntary basis.

The AJRT was quite active during its early years. Among its most prominent accomplishments is the adoption of the Ethics Code, first adopted in 1997 and amended in 2004 to conform to the Bangalore Principles of Judicial Conduct. The AJRT received technical and financial assistance
in drafting the Ethics Code and organizing related trainings for judges from the Swiss Cooperation Office in Tajikistan and ABA ROLI. See also Factor 21 below.

Nevertheless, the level of AJRT’s activity has declined significantly in recent years. Some respondents even argued that the Association had de facto ceased to exist. For example, the Association no longer publishes its monthly bulletin and does not implement any other significant projects. For example, activities of the Legislative Affairs Committee seem to be limited to the participation of judges in various legislative drafting commissions. The AJRT’s Chairman believes that all recommendations submitted by the AJRT were included in the Judicial Reform Program, but he did report that, despite its requests, the Association was not provided with the draft of the proposed Criminal Procedure Code. The main function of the AJRT’s Ethics Committee is reviewing complaints concerning ethical violations by judges. If the Ethics Committee determines there was a violation, the case will be reported to the COJ. In terms of material and technical support, the AJRT’s priority is for each viloyat court to have a library. The AJRT has its own library in the headquarters but its holdings are very limited. The Chairman reported that judges check out books from the library, but they do not use the computers because they have their own.

It appears that the main reason for the low level of activity is insufficient funding, although a general lack of interest among judges is also a contributing factor. Although judges are generally aware of the AJRT’s existence, none of the interviewed judges expressed interest in its activities, explaining this by the fact that the Association does not play any meaningful role in their work. As stated above, the AJRT lost most of the donor support, on which it relied heavily in the past. Whether the AJRT will be able to sustain itself is highly questionable.
V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

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<td>Although the Constitution and the law declare the independence of the judiciary, undue influence from senior judges and the executive branch are widespread. Judicial supervision institutionalizes the practice of review and oversight by senior judges and higher courts. While difficult to quantify, corruption within the judiciary also appears to be a serious problem.</td>
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Analysis/Background:

By law, judicial power in Tajikistan is independent and functions on equal footing with legislative and executive branches of the government, and may be exercised only by the courts, represented by professional judges and people's assessors. No other bodies or individuals may assume the functions related to the administration of justice, and the government may not require judges to engage in any acts not specified by the law. LAW ON COURTS art. 2; CIV. PROC. CODE art. 6; CRIM. PROC. CODE art. 8. Judges are independent and bound only by the Constitution and the law. One of the core safeguards of judicial independence is that any external interference in judges’ activity aimed at preventing a comprehensive, thorough and objective consideration of a case or obtaining the issuance of an illegal judgment is prohibited and entails liability prescribed by the law. CONST. art. 87; LAW ON COURTS arts. 5, 7; CIV. PROC. CODE art. 9; CRIM. PROC. CODE art. 11; ECON. PROC. CODE art. 5. In addition, mass media may not predetermine the outcome of proceedings, while judges are not required to either provide explanations regarding pending or decided cases or to grant access to case files to anyone except as permitted by law. LAW ON COURTS art. 7. Finally, the Ethics Code encourages judges to perform their duties diligently and impartially, which entails fair and honest decision-making and adherence to the law regardless of partisan interests, public clamor, or fear of criticism. ETHICS CODE at Canon 3 Sec. A.1.1.

Interference in the activity of the court in order to prevent proper administration of justice is punishable by a fine of 500-1,000 units used for calculation, or correctional labor for up to two years, or confinement for a period of three to six months, or imprisonment for up to two years. If the crime is committed by a person abusing his/her official position, the penalty increases to imprisonment for two to five years and/or prohibition on holding certain positions. CRIMINAL CODE art. 345. Similarly, a public official, including a judge, who takes a bribe in exchange for acts or omissions undertaken in his/her official capacity in favor of the person offering the bribe or in exchange for general patronage, may be punished by imprisonment for five to ten years, combined with a prohibition on holding certain positions for up to five years. If the crime is committed repeatedly, in a conspiracy, or by an organized group, or involves extortion, or if the bribe exceeds 1,000 units used for calculation, the punishment is increased to imprisonment for seven to twelve years, combined with the confiscation of property and a prohibition on holding certain positions for up to five years. Id. art. 319.

Nevertheless, there is a perception that external pressure on the judiciary is commonplace. According to a recent survey, the judiciary, along with local administration and law enforcement bodies, is perceived as one of the most corrupt government sectors. To put the issue of corruption into a broader perspective, Tajikistan’s rating for corruption in Freedom House’s Nations in Transit reports has remained unchanged at 6.25 (on a scale of 1 to
CENTER UNDER THE PRESIDENT OF THE REPUBLIC OF TAJIKISTAN & UNDP, REPORT ON CORRUPTION IN THE REPUBLIC OF TAJIKISTAN: A PUBLIC OPINION SURVEY at 42-43 (2006), available at http://www.undp.tj/files/reports/pta_en.pdf. A representative of an international organization commented that corruption is so widespread that no one wants to fight it. Many respondents, including attorneys, maintained that there is no genuine judicial independence. Several stated that the public does not trust the judiciary because “everything can be bought and sold.” The major causes of corruption cited were low judicial salaries, excessive control by the executive branch, interference by prosecutors as well as national and local authorities, and judges’ fear of losing their positions. Representatives of one group of jurists expressed the view that the problems start with judicial appointment, which they maintain is neither fair nor transparent. In their opinion, only a few judges are truly independent. One interviewee commented that judges routinely ask attorneys for bribes. In addition, if an attorney is from a legal NGO, the judge may advise that attorney’s clients to find another attorney. The interviewee added that if a bribe is given, a case will be resolved quickly; otherwise, the proceedings can take as long as 5-6 years in a civil case.

Despite these perceptions, corruption convictions seem to be rare. For example, in Sughd viloyat, three judges were convicted for bribery in 2004-2005, and there were no convictions in 2007. According to the COJ Chairman, only one judge in Tajikistan was convicted for corruption during January-September 2008. See BHR ANNUAL REPORT 2008 at 15. Interviewees also mentioned a judge from the Khujand City Court who was convicted and imprisoned for one year for accepting a bribe, and a judge from Khatlon Viloyat Court who was charged with corruption. More detailed statistics on this point were not available.

Many judges interviewed for this assessment denied that corruption in the judiciary was widespread. However, they seemed to suggest that the level of judicial corruption was no different than that in other governmental sectors. For example, they noted that bribes were also common among prosecutors, attorneys, and law enforcement officials. Some judges felt that the two recent cases involving judges from Khujand City Court and Khatlon Viloyat Court were staged. See Factor 16 above. Judges attempted to justify bribery by characterizing it as “need-versus greed-based corruption.” Some judges even conceded that interference with judicial decision-making may take place through exerting pressure on judges rather than through money.

A focus group of human rights NGOs reported that judges often ask parties for their telephone numbers and meet with them separately. One attorney recalled a case where people who were close to a judge approached the parties to determine which party would “buy” the decision. In one case observed by the HRC court monitors, the court secretary entered the judges’ deliberation room; in another case, the same infringement was committed by an attorney. HRC TRIAL MONITORING REPORT 2006 at 15. There are no rules against ex parte communications, and interviewees reported that judges frequently talked to prosecutors without the presence of defense attorneys. There is also an institutionalized practice by which judges meet with the prospective parties during their office hours, which are conducted in most courts in accordance with set schedules when judges are “on duty.” See also Factor 21 below.

By law, all judges enjoy equal status and differ only in their duties and jurisdiction. LAW ON COURTS art. 4. In practice, however, it is common for judges to defer to more senior judges and court chairmen. Some non-judge interviewees even went as far as to suggest that judges make all of their decisions in consultation with their respective court chairmen. For example, in criminal cases, the question may pertain to correct classification of a crime. One court chairwoman asserted that judges frequently approach her to consult on pending cases. However, she claimed that she never discusses any cases in private with judges who were assigned to those cases. Instead, she always includes her deputies and sometimes other judges in such discussions. The chair stated that, given the volume of new legislation, she spends up to two hours each week in

7, with 1 representing the highest and 7 the lowest level of democratic progress) between 2004 and 2007. See NIT 2007 at 683.
group consultations. Ultimately, if the judges cannot decide among themselves or a judge disagrees with the majority view, the court forwards the question to the Supreme Court. Nevertheless, the chairperson stressed that, despite these consultations, each judge always makes his/her own decision.

The Plenum of the Supreme Court is authorized to summarize judicial practice and court statistics and, based on these summaries, issue guiding explanations to the courts regarding the application of legislation in particular categories of cases.27 By law, the goal of these explanations is to facilitate uniformity in the application of the law by courts. LAW ON COURTS art. 27. In practice, however, they pose another threat to independent judicial decision-making. While the Chairman of the Supreme Court characterized the guidelines as non-binding, the Law on Courts explicitly states that they are mandatory for the courts and other bodies and officials applying the law that is the subject of the explanations. Id. art. 26. What is more, an oversight system within the Supreme Court is dedicated to enforcement of the guiding explanations by the courts, and viloyat courts must report to the Plenum concerning enforcement of these explanations. Id. arts. 27, 39. Judges reported that guiding explanations are provided in written form and distributed at regular meetings of the courts. In the opinion of a law professor interviewed by the assessment team, the explanations are indeed mandatory and violate judicial independence.

As discussed in Factor 8 above, judicial decisions can be reversed through the supervisory review process initiated by court chairmen and prosecutors. In fact, the overwhelming authority of prosecutors poses yet another significant threat to judicial independence. This authority is derived directly from the Constitution, which charges the prosecutor with ensuring the observance of the laws. CONST. art. 93. Although judges and people’s assessors are, in theory, independent and subject only to the law (see CRIM. PROC. CODE arts. 11, 18, 19), this guarantee is undermined by the supervision of criminal court proceedings by the higher courts and the prosecution. In practice, if a prosecutor is unsatisfied with the outcome of a case, he may either file protests against the decision, accuse the judge of rendering a decision contrary to the law, or even utilize anticorruption provisions to initiate a criminal prosecution. As a result, only a handful of criminal cases end with acquittal judgments. For instance, according to BHR, there were no acquittals in Sughd viloyat in the first quarter of 2008. In 2007, there was only one acquittal in the Khujand City Court, and nine persons were partially acquitted. A number of observers see the low acquittal rates as an actual indicator of the influence of the executive branch over the judiciary, although there may be other reasons, such as corruption and poor qualifications of defense attorneys. There is also a perception that judges and prosecutors who oppose the Prosecutor General may risk negative repercussions. Whether or not this is true, the existence of this perception in itself may have a chilling effect that reduces the likelihood of challenges to the Prosecutor General’s authority.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

| Conclusion | Correlation: Neutral |

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27 The Plenum of the High Economic Court has similar authority with respect to economic courts. LAW ON COURTS art. 50.
The AJRT’s Ethics Code is not legally binding and appears to have had little impact on professional conduct of Tajik judges. Both the Ethics Code and Tajik legislation address conflicts of interest and inappropriate political activity, but *ex parte* communications are not specifically prohibited and are commonplace. Although a short session on ethics is included in the annual training for sitting judges conducted by the JTC, many judges are not familiar with the provisions of the Ethics Code.

**Analysis/Background:**

In 1997, the AJRT adopted an Ethics Code, which was amended in 2004. The amended Ethics Code is based on the Bangalore Principles of Judicial Conduct and was published in the AJRT’s bulletin. The AJRT received technical and financial assistance from SDC and ABA ROLI to draft the Ethics Code and organize related training for judges.

The Ethics Code’s stated goals are to strengthen judicial independence, enhance impartiality and public trust in the judiciary, and protect the honor and image of judges. **ETHICS CODE at Goals and Objectives Sec. 1.1.** These goals are followed by a description of six principles, or canons, of judicial conduct that cover judges’ behavior in their official capacity and in private activities. These include: (1) upholding integrity and independence of the judiciary; (2) conducting themselves with honor, dignity, and decency; (3) impartiality and diligence in performance of judicial duties; (4) participation in extrajudicial activities to help improve the administration of justice and enhance the rule of law; (5) refraining from extrajudicial activities that may lead to a conflict of interests; and (6) refraining from political activity. Each of these principles is accompanied by a somewhat repetitive set of rules, which address such issues as compliance with the Constitution, laws, oath of office, and ethical standards; prohibition of undue influence; confidentiality of information acquired in official capacity; duty to enhance professional qualifications; patience and courtesy towards participants in judicial proceedings; respect for media’s efforts to publicize court proceedings; and recusal due to a conflict of interests.

The Ethics Code recapitulates, and to some extent goes beyond, the pertinent statutory provisions scattered throughout the Constitution, the Law on Courts, and procedural codes. The law requires judges to perform their duties in conformity with the standards of professional conduct and to avoid any behavior that may degrade the judiciary’s authority, a judge’s dignity, or call into question his/her objectivity, fairness, and impartiality. These requirements extend not only to actions taken in a judge’s official capacity but also to his/her private activities. **LAW ON COURTS art. 12.** Prior to taking office, judges take the oath of office and solemnly swear to perform their duties honestly and fairly, to comply with the laws, and to be impartial. *Id.* art. 17. While on the bench, judges must ensure full, comprehensive, and objective examination of cases and correct application of the laws. **CIV. PROC. CODE** art. 13; **CRIM. PROC. CODE** art. 15.

Judges may not hold other positions or perform other work, except scientific, creative, or teaching work. This ban includes participation in political activities, including membership in, or financial support of, political parties; being elected to a representative body; and engaging in entrepreneurship. **CONST.** art. 90; **LAW ON COURTS** art. 12. The Ethics Code further specifies that judges should not practice law, become involved in financial or business transactions incompatible with judicial office, publicly endorse or oppose candidates for public office, or attend political gatherings. **ETHICS CODE** at Canons 5-6. Judges may, however, be elected to judicial self-governance bodies, serve as members, officers, or directors of public organizations whose mission is to improve the legal system and the administration of justice, or participate in other similar activities – to the extent doing so does not interfere with their judicial duties. *Id.* at Canon 4.

Judges should maintain the prestige of the judiciary, and thus should refrain from advancing private interests and avoid connections which may compromise their reputation. Similarly,
judges must uphold the law regardless of partisan interests and should not allow family, friends, or public officials to influence their decisions. *Id.* at Canon 2. Judges should not accept gifts, except for tokens of public appreciation, or as part of ordinary social hospitality, or from individuals who are not likely to appear before them. *Id.* at Canon 5 Sec. 1.7. Furthermore, judges may not participate in the consideration of cases if they are, directly or indirectly, interested in their outcomes. If circumstances exist that may cast doubts on a judge’s impartiality, the judge must recuse himself/herself. *CIV. PROC. CODE* art. 18; *CRIM. PROC. CODE* arts. 17, 27; *ETHICS CODE* at Canon 3 Sec. C. See also Factor 18 above.

Neither the Ethics Code nor any of the relevant law contain rules against *ex parte* communications, and it is reportedly very common for judges to meet with parties, attorneys, and prosecutors without the presence of an opposing party. There is also an institutionalized practice according to which judges meet with the prospective parties during their office hours, which are conducted in most courts in accordance with set schedules when judges are “on duty.” During such sessions, judges accept petitions from future litigants and are then assigned to hear these cases. Reportedly, judges often ask parties for their telephone numbers and meet with them separately. Similarly, interviewees reported that judges frequently talk to prosecutors without the presence of defense attorneys. In addition, in most courts visited by the assessment team, a list of judges and their open office hours were displayed on a wall near the entrance to the courthouse, which may further encourage *ex parte* communications.

While the Ethics Code applies to all judges and retired judges, it is not legally binding. Nevertheless, a violation of the principles of judicial conduct may be a ground for bringing a judge to discipline. *ETHICS CODE* at Goals and Objectives Sec. 1.2. For this to happen, however, such violation must be classified as one of the grounds for judicial discipline specified in the Law on Courts, such as commission of acts that may discredit the judiciary. See Factor 17 above for detailed description of judicial discipline grounds and procedure. From a practical standpoint, if the AJRT becomes aware (either on its own or through a complaint) of an ethical violation by a judge, its Ethics Committee will investigate the matter and will refer all violations to the COJ, which will decide whether or not to commence formal disciplinary proceedings against a judge. However, the Committee received only one complaint in 2006, and no other complaints have been filed since then. The case involved a charge of “immoral behavior” against a judge who had two wives, one of whom claimed abandonment. The judge ultimately resigned.

When the Ethics Code was first adopted, the AJRT published and distributed it to judges and conducted related trainings. However, some of the judges interviewed by the assessment were not familiar with the Code and could not locate their copies. The training function has been taken over by the JTC, but a mere two hours of the two-week annual course for sitting judges are devoted to judicial ethics.

The President's Legal Advisor reported that a Law on Judicial Ethics had been considered, but the President’s Office decided that the AJRT should handle the issue instead of the COJ.

**Factor 22: Judicial Conduct Complaint Process**

*A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.*

<table>
<thead>
<tr>
<th><strong>Conclusion</strong></th>
<th><strong>Correlation: Negative</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no formal process for filing complaints concerning judicial conduct. In practice, complaints can be filed with the COJ and the AJRT, but they are very rare.</td>
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</tbody>
</table>
Analysis/Background:

There are no specific provisions in the law for filing complaints against judges. Both the COJ and the AJRT can receive complaints from the public concerning judicial misconduct; however, formal complaints are relatively rare in practice. For example, the COJ received 20 complaints in 2007; the AJRT received one in 2006. The level of legal knowledge among the country’s population is very low, and it is therefore unlikely that an individual would be aware of the right to file a complaint against a judge. In addition, many people do not believe that their complaints would be considered in an impartial way. Defense attorneys also normally refrain from filing complaints in order to maintain their working relationships with judges, but defense attorneys interviewed mentioned that some complaints are submitted to the Supreme Court. The assessment team was unable to obtain official statistics on the most common grounds for complaint. According to unofficial sources, some complaints concern actual judicial misconduct and unethical behavior, while others are filed by parties who are dissatisfied with the outcomes of their cases. Neither the COJ nor the AJRT are authorized to consider complaints filed in lieu of appeals or cassations.

The COJ has a special department for judicial oversight, which reviews complaints against judges. The department has a staff of 12. It investigates complaints and interviews parties. If the COJ determines that there is a valid basis for a complaint, it forwards the case to the Qualification Board, which will conduct a disciplinary hearing. Of the 20 complaints received by the COJ in 2007, only two were submitted to the Qualification Board. It is unclear why the remaining complaints were rejected.

Even if filed, complaints typically go unheeded. An interviewed NGO representative gave an example of a woman who lost a civil suit regarding housing issues and subsequently filed a complaint against the judges involved in her case with the COJ, alleging procedural errors during her trial. In turn, two judges from the Dushanbe City Court initiated a civil case against the woman, alleging defamation and damage to honor, dignity, and reputation. As a result of this trial, the woman was ordered to pay TJS 4,000 (approximately USD 1,300) in compensation of moral damages to each of the two judges, although her monthly salary was only TJS 54 (approximately USD 16). Reportedly, one of the judges also threatened her with a criminal case and stated that this would serve as an example for others.

Factor 23: Public and Media Access to Proceedings

*Courtroom proceedings are open to, and can accommodate, the public and the media.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>With some exceptions specified by the law, court proceedings are open to the public and media. However, many courts lack adequate courtroom space, as a result of which some civil proceedings are conducted in judges’ offices. In addition, some courtrooms are too small to accommodate those who wish to observe a trial.</td>
<td></td>
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</table>

Analysis/Background:

Court proceedings are conducted openly and publicly, with exceptions set forth by the law. CONST. art. 88. Relevant procedural provisions permit closed hearings when necessary to safeguard state, commercial, or other protected secrets, or to protect the privacy and secrecy of personal lives of the participants. CIV. PROC. CODE art. 11; CRIM. PROC. CODE art. 13; ECON. PROC. CODE art. 11; LCC art. 24. In addition, criminal proceedings may be closed if the case involves minors under the age of 16 or concerns sexual violence, and in order to ensure the safety of the participants, their families, and close relatives. CRIM. PROC. CODE art. 13. A civil
trial may be closed if a public hearing might prevent accurate resolution of a case. Civ. Proc. Code art. 11. Constitutional Court proceedings may also be closed to ensure security and public morality. LCC art. 24. However, even if a trial was closed to the public, all court decisions on the merits must be announced publicly, except when an announcement of a civil judgment may affect the rights of juveniles or the privacy of individuals.

Participants in proceedings and members of the public present in the courtroom for civil trials are allowed to take written notes during court sessions. Taking of photographs, audio- and video-recording, and radio and TV broadcasting of trials is permitted with the court’s consent. Civ. Proc. Code art. 11; LCC art. 24. There are no similar provisions in the Criminal Procedure Code. The Ethics Code calls upon judges to respect the efforts of the media to publicize court activities and provide them with all necessary assistance (unless this interferes with their official duties). Ethics Code at Canon 3 Sec. A.1.6. At the same time, the media may not predetermine the outcome of specific cases in its reports. Law on Courts art. 7.

Respondents reported that, in most cases, court proceedings are open to the public and the media. However, as discussed in Factor 12 above, the public sometimes is unable attend civil proceedings due to space limitations, particularly when hearings are held in judges’ offices. One journalist interviewed by the assessment team stated that judges typically grant his request for access to court hearings. However, the journalist emphasized that, although his requests were granted, other journalists have had difficulties in obtaining their permits. Journalists also reported that, in general, judges would not comment on cases because they were fearful of jeopardizing their positions. Radio or TV broadcasting of trials is rare, and usually only the announcement of judgments is recorded.

The assessment team’s findings are supported by the recent HRC court monitoring reports. They indicate that observers were generally able to attend court hearings and that, in many cases, prior permission from the judge was not necessary. In 2005, only one judge, from Dushanbe City Court, denied access without any explanation; that judge was also rude to the monitors, calling them “idlers with nothing to do.” In 2006, monitors were denied access to Shohmansur District Court because its chairman requested prior permission from the COJ. Generally, permissions from court chairmen were required when the hearings were held in the judges’ offices, but in many cases, the monitors’ requests were accommodated. The HRC noted improvement in access between 2005 and 2006, which may be explained by the fact that judges and court chairmen were already familiar with the court monitoring project. HRC Trial Monitoring Report 2005 at 6; HRC Trial Monitoring Report 2006 at 12-13. In addition, the monitoring group initially attempted to notify the COJ about the project, but the COJ ignored the request for cooperation. The monitoring group then sent letters of introduction to court chairmen. HRC Trial Monitoring Report 2005 at 6. By contrast, OSCE’s monitors were reportedly banned from observing a 2007 property case before the High Economic Court, with no explanations given by the judge. Interestingly, the presence of journalists at the monitored trials decreased in 2006. Id. at 9; HRC Trial Monitoring Report 2006 at 14.

The HRC also noted frequent delays, ranging from several minutes to several hours, in hearings, posing an obstacle to media participation. Delays are typically caused by tardiness of security guards, presiding judges, lawyers, prosecutors, and witnesses. In civil cases, the hearings may be delayed as priority is given to criminal cases, while the latter are often delayed due to military convoys’ late arrivals. Lack of or late notifications of trial dates are also problematic for attorneys and the media, and some observers even view trial delays and cancellations as a tactic used by the judge to dissuade and discourage attendance by local or international trial monitors. Although notice should be provided at least three days prior to the hearing, judges often inform the parties the night before the hearing and instruct them to inform their attorneys. Furthermore, public participation in court proceedings is hampered because the schedules of court hearings are not readily available. The monitoring report noted that in Sugd Viloyat Court, the schedule was not posted or was outdated. The assessment team observed this problem in most of the visited courts, finding that a current schedule was posted only in some of the visited courts.
Frequent prosecutions under defamation laws and provisions on crimes against justice are a major obstacle to critical coverage of court proceedings. Journalists mentioned that during 1990s, they were afraid of the military; now, journalists are increasingly silenced by the threat of defamation suits. A focus group of human rights NGOs reported that journalists who criticize the government often publish in electronic media because their pieces are rejected by the main Tajik newspapers. Articles on court-related topics that do appear in the mainstream media are typically placed there by court officials.

No effort to address judiciary-media relations is currently taking place in Tajikistan. However, two years ago, BHR and the Human Rights Journalist Network began training journalists and law students on freedom of expression and coverage of human rights issues in the mass media. These sessions covered the right to attend and report on court hearings. The program was supported by the European Commission and Freedom House.

The Supreme Court, the High Economic Court, and the COJ hold quarterly briefings for the media, although journalists report that there is little opportunity to ask questions. The Firdavsi District Court in Dushanbe has a staff member for communication with the public, who assisted the HRC monitors and provided information about court hearings and other matters. HRC TRIAL MONITORING REPORT 2006 at 12. Most courts, however, do not employ press officers or spokespersons, although when a need arises, court secretaries may be asked to work with the media.

**Factor 24: Publication of Judicial Decisions**

*Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judicial decisions are announced in open court. Significant Supreme Court and Constitutional Court decisions are published. However, decisions of other courts are not published and are generally not available to the public.</td>
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</tbody>
</table>

**Analysis/Background:**

All court decisions on the merits must be announced publicly, except when an announcement of a civil judgment may affect the rights of juveniles or the privacy of individuals. CIV. PROC. CODE art. 11; CRIM. PROC. CODE art. 13; ECON. PROC. CODE art. 11; LCC art. 24. The court hearing a case in the first instance must read the sentence or decision and explain its content and procedure for filing an appeal. CIV. PROC. CODE art. 199; CRIM. PROC. CODE arts. 317-320, 322; ECON. PROC. CODE art. 174. In a civil case, the judge has 15-30 days from the close of the hearing to draft a written opinion; however, the substance of the decision must be announced immediately. CIV. PROC. CODE art. 203. In an economic case, the drafting of a complete written decision can be postponed for up to five days from the end of the hearing. ECON. PROC. CODE art. 174. A certified copy of the decision must be provided to the criminal defendant within three days of the announcement. CRIM. PROC. CODE art. 324. In economic cases, parties must be provided with a certified copy of the decision within five days of issuance. ECON. PROC. CODE art. 175. Parties in civil cases are also entitled to a copy of an opinion, but the Civil Procedure Code does not specify when it must be provided. CIV. PROC. CODE art. 218. Parties in civil cases may request a duplicate copy of their judgments; however, they must indicate how the original copy was lost and

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28 Prior to a recent amendment of the Civil Procedure Code, that period was 5 days.
what steps were taken to recover it. Otherwise, multiple copies may be issued only if several
claimants or several debtors with independent claims or obligations are listed in the enforcement
documents. CIV. PROC. CODE art. 219.

Decisions of the Constitutional Court are required to be published in AKHBORI MAJLISI OLI, the
DIGEST OF LAWS, and in mass media, as is routinely done in practice. LCC art. 54; LAW ON
STATUTORY ACTS art. 55; see also Factor 30 below. Decisions and guiding explanations of the
Plenums and Presidiums of the Supreme Court and the High Economic Court are published in
the respective Court bulletins, which are issued quarterly. Judgments issued by other Tajik
courts are not published in any centralized manner, and there are no specific provisions in the law
regarding making copies of court opinions available to the public. As a result, most decisions
issued by lower-level courts are not published or generally available to the public, unless their
content is publicized in the mass media. For example, monitors in the HRC court monitoring
projects were allowed to review the decisions in less than 10% of the cases monitored (5 cases
out of 46 monitored in 2005; 2 cases out of 103 monitored in 2006). HRC TRIAL MONITORING
REPORT 2005 at 10; HRC TRIAL MONITORING REPORT 2006 at 14. There are no official court
websites (which potentially could be utilized for publication of judgments) even for the highest-
level courts (e.g., the Supreme Court).

Although decisions are usually written by judges themselves, some judges reportedly copy and
paste the text from indictment documents into their opinions. Attorneys also claim that the
decisions are not prepared in a timely manner. In fact, it may take up to a month for parties to
receive their certified copies. A former judge, who is currently a practicing attorney, praised a
recent amendment to the Civil Procedure Code extending the time allowed to draft opinions as
giving judges sufficient time to prepare well-reasoned and well-written decisions. However, other
attorneys described the change as simply another mechanism to permit judicial delay.

In 2008, Tajikistan adopted a Law on Access to Information, which might improve public access
to judicial decisions. Any person has the right to access public information upon oral or written
request directed to an official or agency that possesses the data. Access to information can be
achieved by examining official documents, receiving copies of official documents or written notes
containing requested information, and obtaining information on the source of requested data.
LAW ON ACCESS TO INFORMATION art. 7. Petitions can be denied only when information requested
pertains to a civil or criminal case and its disclosure is prohibited by law, or violates the right to
fair trial, or threatens someone’s life or health; or when necessary to protect state secrets, Id.
arts. 5, 14. Public officials and government agencies must create necessary mechanisms for the
realization of the right to access to public information. Id. art. 11. At this time, it is difficult to
estimate what impact, if any, the new Law will have on access to court decisions.

Factor 25: Maintenance of Trial Records

*A transcript or some other reliable record of courtroom proceedings is maintained and is
available to the public.*

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<th>Conclusion</th>
<th>Correlation: Negative</th>
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| Instead of verbatim transcription of court proceedings, court secretaries prepare longhand
  summaries. If the secretary has difficulties keeping up with proceedings, the judge may dictate
  the record. The summaries must be signed by the judge and the secretary, and parties may
  comment on it. The public is not allowed to review case files, and even parties may have
difficulties in obtaining access. |

Analysis/Background:
A court session secretary who records the proceedings must participate in the first instance civil, criminal, and economic cases and, in some instances, in cases pertaining to administrative offenses. Law on Courts art. 131.

Record-keeping is mandatory at each first instance court session and in the course of each procedural action. Civ. Proc. Code art. 233; Crim. Proc. Code art. 97; Econ. Proc. Code art. 154. Minutes must reflect all substantial information produced in the course of the hearing, as well as fully and accurately describe all decisions and actions taken by the court and participants in proceedings, in the order of their performance. The record should contain detailed description of the evidence; summaries of parties’ statements, motions, and requests; summaries of testimonies, opinions, and arguments, and court orders and resolutions. Civ. Proc. Code art. 234; Crim. Proc. Code arts. 97, 243, 266; Econ. Proc. Code art. 154. Minutes should be made in writing, although other recording techniques, such as stenography, shorthand recording, audio recording, and other technical means, are permitted. While audio recordings and other technical data storage devices must be attached to the written minutes, shorthand recordings cannot be enclosed in case files. Minutes and any modifications must be dated and signed by the judge and the court secretary. Civ. Proc. Code art. 235; Crim. Proc. Code art. 97; Econ. Proc. Code art. 154.

In a civil case, minutes must be finalized within five days following the end of a hearing. Civ. Proc. Code art. 235. In a criminal case, the record must be compiled within three days of the end of the court session. Crim. Proc. Code art. 266. Parties, prosecutors, defense attorneys, defendants, victims, or their representatives can access the trial record and provide their comments, which are enclosed in the case file. Civ. Proc. Code arts. 236, 237; Crim. Proc. Code arts. 267, 268; Econ. Proc. Code art. 154. If a judge presiding over a civil case disagrees with the comments, he/she will issue a reasoned ruling explaining the rejection. Civ. Proc. Code art. 237. If a judge presiding over a criminal case disagrees with the comments, an administrative session will be held to decide on whether the comments should be accepted. If necessary, the persons who submitted the comments may be invited to participate in this session. Crim. Proc. Code art. 268. In addition, the court secretary in a criminal trial can attach his/her comments to the trial record if he/she disagrees with its content. Id. art. 243.

In addition to the right to access the trial record, all participants in proceedings also have the right to review the entire case file and all materials. Civ. Proc. Code art. 168; Crim. Proc. Code art. 237.

The HRC court monitoring project confirmed that a record was made in all observed cases. In virtually all cases, it was handwritten, and in some cases, the judge had to dictate to the secretary in order to keep up with the proceedings. In a few cases, secretaries did not completely record testimony; instead, they simply listened to the disputes. Parties did not submit their comments on the minutes in any of the monitored cases. HRC Trial Monitoring Report 2005 at 9; HRC Trial Monitoring Report 2006 at 14.

Presumably, court secretaries, most of whom either have law degrees or are current law students, are qualified to summarize complex legal arguments. Nevertheless, according to an attorney interviewed by the assessment team, court records are rarely completely accurate in practice. The transcription process is susceptible to corruption, and some judges reportedly take the opportunity to make arbitrary corrections to court records. Attorneys also claim that trial records, similarly to court decisions, are not prepared in a timely manner. 29

29 In one incident that occurred after this JRI report was drafted, a Supreme Court judge took two months to produce minutes and written verdicts in a criminal case with multiple defendants. As a result of this delay, the Prosecutor General publicly discussed initiating a criminal investigation against the judge.
In practice, case participants represented by attorneys are usually able to obtain access to case files, but pro se litigants may experience more difficulties in accessing them. It should be emphasized that, in practice, parties are permitted only to read court records; copying and distributing is not allowed. Tajik law does not address the issue of access to trial records by the general public, and in practice, neither the public nor the media are allowed to review case files. According to the HRC, monitors were allowed to review the record in only about 10% of cases (6 cases out of 46 monitored in 2005; 12 cases out of 103 monitored in 2006). HRC TRIAL MONITORING REPORT 2005 at 9; HRC TRIAL MONITORING REPORT 2006 at 14.

Although stenography and audio- or video-recording of court proceedings is allowed by law, there are currently no efforts to substitute handwritten summaries with such techniques or to install the necessary recording equipments in the courts.
VI. Efficiency

Factor 26: Court Support Staff

*Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.*

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tr>
<td>Each judge has his/her own secretary, who performs various clerical duties and takes minutes of court proceedings. In addition, court chairmen have assistants and consultants to assist with administrative duties.</td>
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**Analysis/Background:**

The structure and number of court support staff positions are determined by the President upon recommendation of the Chairmen of the Supreme Court and High Economic Court for their courts, and upon recommendation of the COJ for lower-level courts. LAW ON COURTS art. 130. The structure and number of court support staff for the Constitutional Court are determined by the Court’s Chairman. LCC arts. 17, 56. Court support personnel include department heads and their deputies, court chairmen’s assistants, court secretaries, lead and senior consultants, consultants, court bailiffs, and court enforcement officers. Most court support personnel are hired and dismissed from their positions by the respective court chairmen. Court chairmen also provide overall management of court personnel, including organizing opportunities for continuing education. LAW ON COURTS arts. 39, 59, 82, 88; see also LCC art. 17. However, court bailiffs, court enforcement officers, and assistants to court chairmen are under the COJ’s jurisdiction, which means they are hired, dismissed, and disciplined by the COJ. LAW ON COURTS arts. 101, 133. Court personnel are assigned qualification ranks as set forth by Majlisi Namoyandagon (per procedure established by the President) and undergo periodic performance evaluations (per procedure established by the Chairman of the Supreme Court). Id. art. 130; LCC art. 13. Because court support staff are civil servants, other aspects of their status are defined by relevant civil service legislation. LAW ON COURTS art. 130.

Court chairmen in viloyat-level and trial courts have assistants, who recruit potential peoples’ assessors, collect court statistics, monitor suspended and postponed proceedings, oversee enforcement of judgments, and certify copies of court documents. Id. art. 133. Although individual judges do not have assistants or law clerks to assist them with legal research, each judge who hears first instance cases has a secretary. Id. art. 131. As discussed in Factor 25 above, a court session secretary must participate, as court recorder, in the first instance civil, criminal, and economic cases and, in some instances, in cases pertaining to administrative offenses. LAW ON COURTS art. 131; see also CIV. PROC. CODE art. 235; CRIM. PROC. CODE art. 243; ECON. PROC. CODE art. 154. Secretaries also assist judges with correspondence, maintaining case files, and other clerical duties. They usually sit in the reception areas next to the judges’ rooms. Secretaries are also hired for higher instance courts, but there is no requirement that their number correspond to the number of judges. All courts have court bailiffs, who are charged with delivery of summonses to trial participants, witnesses, and debtors, and with helping the judges maintain order in the courtroom. Id. art. 132. In addition, all trial courts also have court enforcement officers, whose functions include assisting with mandatory enforcement of court decisions. Id. art. 129. Each court can also hire consultants who might be called upon to help with legal research, and filing clerks who work in the registrar’s offices.  

Chairmen of the Constitutional Court and the High Economic Court establish these procedures for court personnel of their respective courts.
As a general rule, court chairmen’s assistants, court enforcement officers, and consultants must have higher legal education (i.e., a five-year law degree), while court secretaries must have secondary legal education (i.e., a three-year degree, similar to an associate’s degree in the United States). *Id.* art. 134. Other than these requirements, no prior training or preparation for court personnel is required. Nevertheless, court employees are usually presumed to be well-qualified to perform their duties. Most of them have law degrees. In addition, court secretaries are included in the monthly trainings provided by the JTC, which cover practical aspects of their profession, such as preparation of trial records and filing procedures. They also attend discussion sessions and trainings organized for judges by court chairmen in their own courts. Judges interviewed by the assessment team generally did not complain about the number of support staff or their qualifications. Indeed, there seem to be ample candidates for secretary positions, although one judge did report a high turnover in secretaries, most likely due to low salaries.

The assessment team was unable to obtain copies of the presidential decrees concerning the number of court support personnel in Tajik courts. However, according to interviewees, at the time of this assessment there were 246 sitting judges and 527 court personnel (including 265 court secretaries) in lower-level courts. For example, Sughd Viloyat Court had 16 judges and a staff of 43, while Khatlon Viloyat Court, with 15 judges, had a secretary for each judge, a secretary for each chamber, two assistants, two consultants, a filing clerk, and two bailiffs. The Supreme Court, with 34 judges, had a staff of 68. The High Economic Court had 15 judges and 38 support personnel. The Constitutional Court, with six sitting judges, had a staff of 33.

Although the assessment team was unable to obtain official information on court personnel salaries, interviewees suggested that, similarly to judicial salaries, salaries for court staff are quite low. Secretaries and other technical support staff reportedly earn between TJS 70 and TJS 200 per month (approximately USD 20-58). Given the low salaries, court staff may be susceptible to corruption – even though the only relevant example uncovered by the assessment team involves a 2007 case in which one court enforcement officer was charged with accepting a bribe.

**Factor 27: Judicial Positions**

*A system exists so that new judicial positions are created as needed.*

<table>
<thead>
<tr>
<th><strong>Conclusion</strong></th>
<th><strong>Correlation: Neutral</strong></th>
</tr>
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<tbody>
<tr>
<td>New courts and judicial positions are created by the President of Tajikistan upon recommendation of the COJ. It is unclear whether the current numbers of judges is sufficient to handle the existing caseloads efficiently. The number of judges is based solely on the population of a particular district or viloyat and does not seem to take into account a court’s workload, and there appears to be a need for additional judges in the busiest courts.</td>
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**Analysis/Background:**

The number of judges on the Supreme Court and the High Economic Court is determined by the Majlisi Milli upon proposal of the President. *LAW ON COURTS* arts. 25, 48. The number of Constitutional Court judges is fixed by the Constitution. *CONST.* art. 89; *see also* LCC art. 4. For all other courts, the number of judges and people’s assessors is determined by the President of Tajikistan with the guidance of the COJ. *LAW ON COURTS* art. 97. The President also makes decisions concerning creation of new courts or the elimination of the existing ones. *Id.*
According to the COJ, as of the time of this assessment, there were a total of 343 authorized judicial positions in Tajikistan, including 301 positions that were filled and 42 vacancies. The Constitutional Court consists of seven judges (see Const. art. 89), and six of these positions were filled at the time of this assessment. There were 34 judges and no vacancies on the Supreme Court and 16 judicial positions, with one vacancy, on the High Economic Court. The remaining 286 judicial positions were split between 68 district (city) courts (with 193 authorized judicial positions), four viloyat-level courts (52 judicial positions), four garrison military courts (15 judicial positions), and four economic courts (26 judicial positions). Of these 286 judicial positions on lower-level courts, 40 positions were vacant. The reasons for these vacancies are unclear, as the COJ claims that there is a sufficient number of well-qualified applicants to fill all the vacancies.

In practice, the number of viloyat-level and trial courts is based on the area of a particular district or viloyat, while the number of judges in those courts is reportedly based solely on the district’s or viloyat’s population. For instance, there is only one judge in 29 of the district courts, while 20 courts have two judges each. Technically, new judicial positions can be created as needed, and the COJ anticipates placing at least one additional judge in each of the single-judge district courts, except for the remote areas where there are only a few cases. However, it is not clear whether the government will be able to come up with sufficient budgetary resources to support these and any other new judicial positions. Additionally, according to one of the President’s legal advisors, the staffing issue is complicated by a proposed public administration reform plan. The government is contemplating greater centralization through the consolidation of districts, which could result in the corresponding consolidation of the existing courts.

Unfortunately, the assessment team was not provided with statistical information regarding court workloads and the number of cases that are resolved in a timely manner. As a result, the assessment team was unable to determine whether the current numbers of judges in the Tajik courts is sufficient to handle the existing caseloads in an efficient manner and without undue delays. Based on the scarce information provided by interviewees, it appears that some courts are extremely busy while others have little work.

For example, some of the district courts in Dushanbe have very high caseloads, particularly on the civil side. This is attributed, in part, to the large number of housing disputes. Many houses and apartments were bought or sold illegally (for example, without the consent of one of the owners, usually a spouse or another relative), sold to more than one party, or occupied during the civil war, and there are now disputes over the rights to the property. In addition, there are many cases involving “forced evictions,” by which government entities try to expropriate property. By way of illustration, Sino District Court (which, with 14 judges, has the largest territorial jurisdiction in Dushanbe) had approximately 700 criminal cases and approximately 3,300 civil cases in 2007. During the same period, Somoni District Court in Dushanbe (with eight judges) had 258 criminal cases and 743 civil cases in 2007, with an average ratio of 125 cases per judge per year. One judge reported having 40-50 civil cases and 10-15 criminal cases, but not all of them were active. In another trial-level court, an 11-judge Khujand City Court, approximately 800 civil and 450 criminal cases were heard in 2007. By contrast, Khatlon Viloyat Court (with 15 judicial positions) had approximately 50 first instance cases, 100 cassation cases, and 100 supervisory review cases in 2007, with the number of first instance cases being lower and the number of cassation and supervisory review cases higher than in the previous year. Most of the increase was due to civil cases. This workload was not seen as particularly heavy, and the three judicial vacancies, which the court had for over a year, did not seem to significantly affect the court’s efficiency.

According to the Chairman of the High Economic Court, a total of 168 cases were filed with the Court during the first quarter of 2008, including 19 first instance cases, 37 appeals, 39 cassations, 71 supervisory review cases, and 2 cases at the Presidium. This compares to 163 cases filed in the first quarter of 2006. In line with this caseload increase, the Court added three judicial positions since 2005. High Economic Court judges who had previously served in other courts felt that their caseloads were much higher now, and that the cases were much more complex and took longer to resolve. By contrast the Supreme Court appears to have a much lower caseload.
According to the Court’s Chairman, 65 petitions for supervisory review were filed with the Court during 2007, and all of them were accepted for hearing. The assessment team was not informed how many other cases were filed with the Supreme Court in 2007.

Some of the respondents interviewed by the assessment team complained about judicial workloads. On the one hand, most courts visited by the assessment team reported that virtually all criminal cases and most civil cases are resolved within 12 months. On the other hand, attorneys are apparently very dissatisfied with the work of courts, particularly at the trial level. Reportedly, some judges are so overwhelmed with their caseloads, particularly in civil cases, that they use various pretenses to refuse to accept new cases. For example, during office hours, judges “on duty” provide consultations to potential plaintiffs, sometimes helping them fill out the necessary documents, and then decide whether to accept the cases or not. Moreover, as discussed in Factor 18 above, a judge who made a decision to accept a suit will often be assigned to hear that case.

With the proposed transfer of certain powers from the prosecution to the judiciary under the draft Criminal Procedure Code, and the increased functions of judges under the new Code on Administrative Procedure, the government recognizes that there will be a need for more judges. This need is reflected in the Judicial Reform Program.

There are no restrictions in Tajik law on involuntary transfer of judges. In practice, involuntary transfer of judges happens, but it is not very common. According to the Chairman of the COJ, during January-September 2008, five judges were transferred to other positions (although it is not clear whether these transfers were voluntary). See BHR ANNUAL REPORT 2008 at 15. In some instances, judges view transfers as demotions, for example, when they are sent from Dushanbe to remote locations.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

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<th>Conclusion</th>
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<td>There are no uniform rules for case filing and tracking, which is done manually in most courts. Although these outdated techniques do not appear to cause significant delays in processing cases, advocates did report significant problems with filing complaints in civil cases. Judges submit quarterly case status reports to the COJ.</td>
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Analysis/Background:

There are no uniform case filing and tracking rules for Tajik courts. In practice, almost all case registration and tracking is done manually, and the system has not changed since the collapse of the Soviet Union. When a civil complaint is submitted to a court, a filing clerk directs the plaintiff to a judge on duty. The judge reviews the complaint and, if the complaint is deemed valid and includes proper supporting documents, the judge will send the person to the registrar, who will record the case in a ledger and forward it to the court chairman for assignment. Criminal cases are submitted by the prosecutor directly to the registrar or the court chairman. The registrar or the assigned judge’s secretary will complete a registration card that contains basic information about the case, such as filing date, subject matter, relevant statutory provisions (including sanctions), and parties’ contact information.
Each judge keeps active case files in a safe in his/her office. As hearings are held, court secretaries incorporate the minutes into the files. Documents are not indexed. If there is an appeal, the secretary sends the case file to the appropriate higher court. Generally, files for completed cases are kept in the courts’ registrar’s offices and sent to archival storage on an annual basis. Procedures for the archiving and storage of case files, and for access to the files, are established by the Chairmen of the Supreme Court, the High Economic Court, or the COJ. LAW ON COURTS art. 137. Court archives are managed by the COJ. Id. art. 98.

All courts, except the Constitutional Court, are required to provide the COJ with case tracking information and statistical data on convicted individuals on a semiannual basis. LAW ON COURTS art. 135. In practice, judges submit quarterly written case status reports to the COJ. The reports contain information on the number of completed and pending cases, number of acquittals and convictions, and pertinent information about civil cases. This information is primarily collected manually by the courts. For instance, of the courts visited by the assessment team, only the chairman of the Dushanbe City Court was using a computer spreadsheet to track case information. The chairman’s secretary was responsible for inputting the information about each case received from judges into the spreadsheet.

While the existing case management system is outdated and not very efficient, it reportedly does not cause significant delays in processing cases, and misplacement of case files is rare. Nevertheless, advocates reported significant problems in filing civil cases due to the lack of uniform, clear, and transparent regulations. Frequently, the registrar’s offices do not accept petitions and instead send the petitioners to the judges on duty. Judges on duty often tell the claimants that they do not have a valid case. This violates the law, because judges are required to provide petitioners with written explanations of the deficiencies in their complaints. In addition, some judges inform prospective plaintiffs that cases can only be filed on certain days and send them away. This is a serious issue, because for many people, especially those who live in remote locations, it is not easy to reach the court. In most courts, filing clerks also refuse to accept cases without the signature of a court chairman. Some advocates interviewed by the assessment team stated that, to ensure the proper acceptance of their cases, they choose to mail petitions on behalf of their clients via registered mail. A focus group of human rights NGOs reported that an attorney can insist on case registration and it is possible to file a complaint if a petition is rejected. However, this procedure is used very rarely. In the absence of an attorney, prospective plaintiffs are often asked for a bribe.

There are currently no court or case management automation projects implemented in Tajikistan.

**Factor 29: Computers and Office Equipment**

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

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<th>Conclusion</th>
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<td>Most courts do not have a sufficient number of computers, printers, and other office equipment. Many judges use their own computers in the courts.</td>
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**Analysis/Background:**

The COJ is charged with providing adequate facilities for courts and ensuring that courts have sufficient funds for their activities and infrastructure. LAW ON COURTS art. 98. Nevertheless, due to financial shortages, only a small number of computers and copiers for registrar’s offices and offices of court chairmen has been purchased from the court budget. Most courts do not have
enough computers or other office equipment, and much of the existing equipment is outdated. For example, Khatlon Viloyat Court has only six computers – two supplied by GTZ, two provided by viloyat authorities, and a computer and copier for each of the two courtrooms donated by USAID.

Some equipment has been provided by a handful of viloyat and local authorities, and more equipment has been supplied by the donor organizations. According to the JTC, during 2004-2007, the USAID-funded ARD/Checchi provided the Center with eight computers, four printers, a copier, a TV, a DVD player, a fax machine, and a projector. In addition, in 2005 the Supreme Court and High Economic Court received a significant number of new computers and other equipment from a USAID-supported project. GTZ also provided a considerable amount of equipment to the judiciary in 2007-2008, including 18 computers for the JTC; four computers each for the Supreme Court and the High Economic Court; two computers each for Sugd Viloyat Court, Khatlon Viloyat Court, and Dushanbe City Court, as well as a printer for Sugd Viloyat Court; and one computer each for Kulyab City Court, Tajikabad District Court, and the economic courts of Sugd and Khatlon viloyats and GBAO. Other equipment provided to the JTC includes a copier that was provided by SDC, three computers that were funded by ABA ROLI, and several refurbished computers that were donated by the U.S. Embassy.

Most of the courtrooms visited by the assessment team did not have computers or other equipment, and, as previously mentioned, most of the court proceedings are manually recorded. The courts have a limited number of printers. There is usually a printer in the chairman’s office, and a second printer in the registrar’s office. Most courts do not have copiers, but if they do, they are usually located in the registrar’s office and are unavailable to the public. Accordingly, there is no place for parties or the public to copy documents. In fact, as mentioned in Factor 25 above, parties are not even allowed to make copies of their case records; they may only review records.

Nevertheless, the use of computers in the courts is widespread, but is mostly limited to word processing. Many judges use their own computers. This raises obvious questions as to how judges, with their meager salaries, are able to obtain funds for computers.

According to the JTC, judges and court staff need trainings on computer skills, but this has not been offered. Court chairmen, judges, and staff interviewed by the assessment team invariably reported that they would benefit from new computers, software, and other equipment.

**Factor 30: Distribution and Indexing of Current Law**

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

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<td>The COJ is charged with supplying courts with copies of all legislation and other materials needed for their activity, although there are not always sufficient copies for all judges. The government reportedly relies heavily on donor support to provide judges with texts of legislation.</td>
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**Analysis/Background:**

All laws, including amendments and international treaties ratified by Tajikistan, enter into force upon their publication in one of three official gazettes – JUMHURIYAT ("The Republican"), DIGEST
of Laws, and Akhbori Majlisi Oli.\textsuperscript{31} Law on Statutory Acts arts. 53-54. Akhbori Majlis Oli is published by Majlisi Oli, with published legal acts organized chronologically. Id. art. 57. Majlisi Oli also publishes Sadoi Mardum (“People’s Voice”), which contains reports from the sessions of Majlisi Oli and its chambers, as well as parliamentary resolutions. Digest of Laws is published by the MOJ in loose-leaf binder formats, which means that published legal texts reflect all up-to-date amendments. It is organized thematically and includes a chronological listing of all statutes. Id. art. 58. Jumhuriyat is published jointly by the Office of the President and the Government and includes legal texts, as well as news articles, analyses, and information related to the executive branch. A body that adopted a piece of legislation which was later amended on multiple occasions, may decide to publish a revised version of the act in the official gazettes. Id. art. 60. As discussed in Factor 24 above, court decisions, other than those of the Supreme Court, High Economic Court, and Constitutional Court, are not published.

Jumhuriyat and Sadoi Mardum are published three times a week, while Akhbori Majlisi Oli and Digest of Laws are published monthly. Official gazettes are distributed to all government bodies and courts. Id. art. 60. The COJ is charged with providing courts with copies of all legislation and other materials needed for their activity. Law on Courts art. 98. In addition, everyone in Tajikistan can easily access all officially published legislation. Law on Statutory Acts art. 63. A single issue of each of the official gazettes can be purchased for TJS 1.5 (approximately USD 0.50).

In practice, the COJ appears to provide each court with a copy of all new laws and amendments in a timely manner. During the assessment team’s visits, there appeared to be copies of all current legislation and other legal materials in the court chairmen’s offices, as well as in the offices of some judges, particularly in the higher courts. However, in the lower-level courts, individual judges are not provided with their own copies of laws or other legal materials. As a result, they have to either use the chairmen’s copies or purchase their own copies of official gazettes. Occasionally, judges receive handbooks, handouts, and legislation, including codes, from international organizations or through trainings. They are also supplied with resolutions of the Supreme Court.

Legal texts are sometimes published with funding from international donors.\textsuperscript{32} For example, GTZ has supported the publication of several of the recent laws, including the Civil Procedure Code and the Administrative Procedure Code, for the drafting of which it provided technical assistance. The publications did not contain commentaries. At the MOJ’s request, OSI also supported publication of the Labor Code and the Housing Code, although it did not provide technical assistance in connection with these laws. OSI published 400 copies of each law, 280 of which were distributed to judges with the rest given to the JTC and other bodies. GTZ plans to support publication of the Law on Enforcement Procedure adopted in March 2008, which it also helped to draft. Additionally, in 2004, the OSCE supported publication of the Criminal Code and its distribution to judges. The OSCE still receives requests for copies from the courts and the COJ.

There is a computerized database of legislation, Adlia (“Justice”), which is updated monthly. Laws are published in the database as amended. This database was developed by a USAID-funded ARD/Checchi project and transferred to the MOJ in 2005. While the database was initially distributed for free, the MOJ now charges an annual subscription fee of TJS 660 (approximately USD 220). Some interviewees expressed concern about the high cost of this information, which may pose a significant obstacle to access to legal information by the judges and the public alike.

\textsuperscript{31} In March 2009, after the majority of research for this assessment was completed, Tajikistan adopted a new Law on Statutory Acts, which added Sadoi Mardum and Unified State Register to the list of sources that may publish official texts of the law. See Law on Statutory Acts art. 53 (adopted March 26, 2009).

\textsuperscript{32} Upon adoption of the CPC in December 2009, the international donor community was the primary source of printed copies of the new code for a variety of governmental entities and institutions including judges across the country.
There is another database, PRAVO & CONSULTANT, which is privately-owned by a company INFORM-K. The cost of subscription is similar to the ADLIA database. Both databases are available on CD-ROMs, are comprehensive and reliable, and have similar content, which includes domestic laws and some international treaties in three languages. Although most courts that have computers have the MOJ database installed, they cannot afford to buy the annual subscriptions, and judges cannot afford to finance subscriptions out of their own pockets. As a result, most judges do not have convenient access to up-to-date legislation.

Both the COJ and the AJRT have libraries that can be used by all judges in Tajikistan. However, these libraries are located in Dushanbe, which means that judges from outside of the capital have limited access to them. As mentioned in Factor 19 above, AJRT’s priority is for each viloyat court to have a library. Nevertheless, the AJRT does not have funding to support this initiative.
List of Acronyms

ABA ROLI American Bar Association Rule of Law Initiative
AJRT Association of Judges of the Republic of Tajikistan
CIS Commonwealth of Independent States
COJ Council of Justice
GBAO Gorno-Badakhshan Autonomous Oblast (Viloyat)
GTZ Gesellschaft für Technische Zusammenarbeit
JRI Judicial Reform Index
JTC Judicial Training Center
MOJ Ministry of Justice
NGO Non-Governmental Organization
OSCE Organization for Security and Cooperation in Europe
OSI Open Society Institute
SDC Swiss Agency for Development and Cooperation
TJS Tajik Somoni
U.S. United States of America
USAID U.S. Agency for International Development
USD U.S. Dollar
UNDP United Nations Development Program
UNICEF United Nations Children’s Fund