JUDICIAL REFORM INDEX

FOR

UZBEKISTAN

May 2002

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Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association’s Central European and Eurasian Law Initiative (ABA/CEELI). 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/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI 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 in the field on this issue, ABA/CEELI 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 Human Rights Report 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 that describes a country’s legal system.

Assessing Reform Efforts

Assessing a country’s progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the 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 numerically 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.

ABA/CEELI’s Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”; and Council of Europe, the European Charter on the Statute for Judges. 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/CEELI 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/CEELI 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 European concepts, of judicial structure and function. Thus, certain factors are included that an American or 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/CEELI 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/CEELI 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 was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, ABA/CEELI 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/CEELI 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 relationship of that statement to that 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/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI 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. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained 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/CEELI decided to structure these issues 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. Overall, 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 assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI 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 exquisitely 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/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association’s Central European and Eurasian Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-Present) directed the finalization of the JRI. Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI, provided assistance in research and compilation of the JRI.

During the course of developing the JRI, ABA/CEELI benefited substantially from two expert advisory groups. ABA/CEELI would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, ABA/CEELI would like to thank the members of its Second Judicial Advisory Board, including
Uzbekistan Background

Uzbekistan, with over 24 million citizens, is the most populous Central Asian republic of the former Soviet Union. Ethnic Uzbeks also constitute significant minorities in the other countries in the region, including Afghanistan. For these reasons, among others, Uzbekistan is rapidly becoming one of the most important countries of the former Soviet Union.

Although Uzbekistan is rich in history and culture, it is a country in which democracy and the rule of law remain novel concepts. While the Silk Road brought wealth to Samarkand and Bukhara, Genghis Khan in the 13th century and Tamerlane in the 14th century established a tradition of centralized rule. Czarist Russia made incursions into the area during the 17th and 18th centuries, and occupied Tashkent in 1865. The Soviet leaders in Moscow established the borders of the Soviet Republics of Central Asia in 1924, and these borders today delineate the international boundaries of these still relatively new nations, including Uzbekistan.

Legal Context

Uzbekistan has made only fitful progress towards democracy. President Islam Karimov, the former First Secretary of the Communist Party in Uzbekistan, has held power since he was first elected in December 1991. He has reportedly used a variety of devices, including suppression of the media and of opposing political parties, referenda that were considered neither free nor fair by international observers, and violations of human rights, to retain control. The government has also acted strongly to crush Moslem fundamentalist movements. Uzbekistan has received consistently low democracy and rule of law ratings from Freedom House, and the 2001 U.S. Department of State Country Report on Human Rights Practices concluded that, “Uzbekistan is an authoritarian state with limited civil rights. The Constitution provides for a presidential system with separation of powers between the executive, legislative, and judicial branches; however, in practice President Islam Karimov and the centralized executive branch that serves him dominate political life.”

History of the Judiciary

Uzbekistan’s legal system is based almost exclusively on Czarist and Soviet civil law traditions. The Soviet Union, of course, knew no rule of law as we conceive of it today: “As an authoritarian state with a largely state-owned and administered economy, the USSR treated law as simply one of a number of instruments of rule, and not even as the dominant one. Both political decisions and administrative regulations . . . took precedence over law, and even the application of regulations often took an ad hoc form and was strongly influenced by personal relationships.” P. SOLOMON AND T. FOGLESONG, COURTS AND TRANSITION IN RUSSIA: THE CHALLENGE OF JUDICIAL REFORM, 4 (Westview Press, Boulder, Co. 2000). This meant that, although laws that enshrined fundamental human rights may have been well crafted, they were either not applied at all or only selectively. The judiciary knew little independence. Rather, judges were reliant on local Communist Party bosses, and decisions concerning politically sensitive cases were dictated by the party chiefs to the courts through a system known as “telephone justice.”

In a speech dedicated to legal reform at the August 2001 session of the Oliy Majlis, President Karimov acknowledged the continuing legacy of the Soviet legal system: “We have to admit frankly that despite undoubted achievements the judiciary system itself is still feeling the legacy of the Soviet past. To put it more exactly, the adopted laws and norms of legal proceedings more and more meet international, universally accepted democratic norms, but unfortunately, little is changing in the mentality and way of thinking of the judges, officials in the procurator’s office and investigating bodies themselves; in one word, of those who must implement the newly adopted laws. This must be admitted, and our main task is to get rid of this legacy of the past as soon as possible.” ADDRESS BY H.E. MR. ISLAM KARIMOV, PRESIDENT OF THE REPUBLIC OF UZBEKISTAN, AT
Structure of the Courts

There are approximately 1,000 judges in Uzbekistan, divided among the Courts of General Jurisdiction, the Economic Courts, and the Constitutional Court.

The Courts of General Jurisdiction handle most disputes, including criminal matters, commercial disputes where an individual is a party, and civil matters such as divorces. These courts are split into criminal and civil sections. The Courts of General Jurisdiction have three levels, with city (district) courts, regional courts, and the Supreme Court (SC) at the apex. In addition to criminal and civil sections, the SC has a military section, made up of military judges. There are 210 districts in Uzbekistan, each one of which has a criminal court, and many of which have civil courts. These 76 civil courts typically cover more than one district and are called inter-district courts. Regional courts are located in the 12 regions in Uzbekistan, plus the city of Tashkent and the Republic of Karakalpakstan.

Criminal cases, at the first instance, are heard by one professional judge and, in more serious cases (where the defendant is subject to imprisonment of five or more years), two lay assessors. The lay assessors are selected by the makhalla (essentially a local citizen’s council) for a term of 2.5 years. Civil cases are heard by one judge, without the participation of lay assessors. The regional courts, usually sitting in panels of three, hear some appeals de novo and others as a court of cassation. The regional courts also hear important cases, such as those dealing with terrorism or premeditated murder, as a trial court, in which case one judge and two assessors will hear the matter. The SC has 34 members divided into criminal, civil, and military sections. It generally hears cases as a court of cassation.

Until recently, the Courts of General Jurisdiction were managed entirely by the Department on Enforcement of Judicial Decisions, Material, Technical and Financial Provision of Courts (hereinafter referred to as Judicial Department) under the Ministry of Justice (MOJ). Pursuant to a 2001 governmental decree, the courts have become responsible, through Judicial Qualification Commissions, for the selection of candidates for appointment to the courts. The MOJ, however, continues to be responsible for attending to the material and budgetary needs of the courts, as well as the enforcement of judicial decisions. The MOJ maintains offices for this purpose in each of the 12 regions, plus Tashkent and Karakalpakstan. The SC is self-managing and responsible for disseminating laws and other information to the lower courts.

The Economic Courts, at the apex of which stands the Higher Economic Court (HEC), handle commercial disputes that involve only corporate enterprises, whether private or state owned. There is only one level of this court beneath the HEC, which operates on a regional basis. The Economic Courts are managed by and funded through the HEC. There are 143 Economic Court judges and 19 judges on the HEC.

The Constitutional Court (CC) is charged with reviewing laws and decrees to ensure that they comply with the Constitution. The CC is self-managing, and funded directly by the Ministry of Finance. There are seven judges on this court.

There are also military courts. Although final appeals go to the SC, the military section of the SC is made up entirely of those with military rank. Finally, the Republic of Karakalpakstan has its own Supreme Courts and Economic Court, the decisions of which can be reviewed by the SC and the HEC.
Conditions of Judicial Service

Qualifications

All judges (except Constitutional Court judges) must have formal university level legal training, have at least three years of practice as a lawyer before being eligible for appointment to the bench, and be at least 25 years old. Members of the Constitutional Court must either be lawyers or political figures (an ex-President becomes a member of the court for life). Higher court judges must have between five and seven years of experience to qualify for appointment. Judges are not required to undergo any specialized training, although prospective judges are urged to take courses at the Judicial Training Center.

Lay assessors do not need any specified level of training and education, and they do not generally receive any special training in advance of assuming their position.

Appointment and Tenure

All judges are selected for a five-year term, subject to re-appointment. Higher court judges (Constitutional Court, Supreme Court, and Higher Economic Court) are nominated by the President and then confirmed by the parliament. The nominees are initially screened by the qualification commissions attached to each court and then by the Supreme Qualification Committee under the President. All members are appointed by the President and report to him.

Since 2001, judicial qualification commissions select candidates for the lower courts, who are then appointed by the President. The chair of each regional court heads a Regional Qualification Commission, the six other members of which are elected by and from among the judges of both the district and regional courts in that region. Each Regional Qualification Commission devises and administers judicial qualification exams. Candidates who pass those exams are placed on a “reserve list” of potential judicial nominees. As judicial vacancies occur, the qualification commission of the region in which the vacancy exists nominates two to three candidates from the reserve list to the Supreme Qualification Committee (SQC) under the President. The SQC interviews the nominees and recommends one of those nominees to the President for approval.

Training

There is no formal judicial training program for prospective judges and no requirement that sitting judges undergo continuing legal education courses. In the meantime, reserve judges are encouraged (but not required) to attend month-long training sessions prepared specifically for them at the Judicial Training Center (JTC) in Tashkent. The training includes both theoretical and practical skills training and generally covers the basics of criminal and civil law and procedure.

Assessment Team

Mark Dietrich, former ABA/CEELI liaison to Romania and former ABA/CEELI Country Director for Russia, led the assessment team. The other members of the team consisted of ABA/CEELI Uzbekistan staff: Richard Paton, Country Director; Lucy Martin, Criminal Law Liaison; Gulzira Jumamuratova, Staff Attorney; Kosim Mamurov, Rule of Law Senior Program Assistant; Marina Nagai, Staff Attorney; and Svetlana Rakhimova, Criminal Law Program Assistant. The conclusions and analyses are based on interviews that were conducted in Uzbekistan in the spring of 2002. ABA/CEELI Washington staff members Scott Carlson, Julie Broome, Katherine Lauffer, and Rachel Glahe served as editors. Records of relevant authorities and interviews conducted are on file with ABA/CEELI.
Uzbekistan Judicial Reform Index (JRI) 2002 Analysis

The Uzbekistan JRI 2002 Analysis reveals an emerging, independent state of the former Soviet Union struggling with the early stages of judicial reform. Judges are generally unwilling to protect individual liberties, are dominated by the President and the procuracy, and only rarely decide cases against the interests of the state. Corruption is reported to be rampant. Low salaries, lack of secure tenure, and non-transparent methods of appointing, disciplining, and removing judges contribute to these problems. On the positive side, Uzbekistan has relatively strong procedures in place for training judges and ensuring that they know the law.

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

<table>
<thead>
<tr>
<th>I. Quality, Education, and Diversity</th>
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<tbody>
<tr>
<td>Factor 1 Judicial Qualification and Preparation</td>
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<td>Factor 2 Selection/Appointment Process</td>
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<td>Factor 10 Budgetary Input</td>
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<td>Factor 11 Adequacy of Judicial Salaries</td>
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<td>Factor 12 Judicial Buildings</td>
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<td>Factor 25 Maintenance of Trial Records</td>
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<th>V. Efficiency</th>
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<td>Factor 26 Court Support Staff</td>
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<td>Factor 27 Judicial Positions</td>
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<td>Factor 28 Case Filing and Tracking Systems</td>
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<td>Factor 29 Computers and Office Equipment</td>
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<td>Factor 30 Distribution and Indexing of Current Law</td>
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</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.*

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<td>Judges must have formal university level legal training, and they must have at least three years of practice as a lawyer before being eligible for appointment to the bench. They are not required to undergo any specialized training, although prospective judges are urged to take courses at the Judicial Training Center. Those courses do address basic substantive and procedural topics, but they do not emphasize the role of the judge in society or cultural sensitivity.</td>
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Analysis/Background:

All judges (except members of the Constitutional Court) must be graduates of law school, which is a four-year undergraduate program. Members of the CC must either be lawyers or political figures (an ex-President becomes a member of the court for life). Historically, however, all judges appointed to the CC have been lawyers. Regarding the other courts, jurists must have had three years of experience before being eligible for appointment to the city (district) level courts, and they must be at least 25 years old. Nominees to the regional courts must have five years experience, including, as a rule, two as a judge. HEC and Supreme Court nominees must have seven years experience, including, as a rule, five as a judge. All nominees must pass a qualification examination administered by a qualification collegium. LAW OF THE REPUBLIC OF UZBEKISTAN ON COURTS NO. 162-II, 14 DECEMBER 2000, (hereinafter LAW ON COURTS), Art. 61. The Regional Qualification Collegiums administer these examinations for the lower courts, and Higher Qualification Collegiums, attached to the SC and HEC, administer the examinations for those courts. All nominations are subject to further vetting by the Supreme Qualification Commission under the President, described below (Factor 2).

Individuals who have been selected by the Regional Qualification Collegium to be appointed as judges, but who have not yet been officially nominated, are placed on a “reserve list” of judges. These “reserve judges” may apply for appointment to the judiciary as vacancies occur. In the meantime, they are encouraged (but not required) to attend month long training sessions prepared specifically for reserve judges at the Judicial Training Center (JTC) in Tashkent. Most (up to 50 percent) of the prospective judges come from the ranks of the court staff (bailiffs and clerks), approximately 25 percent are advocates, and the remainder are prosecutors or police.

The training programs for prospective judges are usually 170 – 180 academic hours, spread over one month. The training includes both theoretical and practical skills training, with classroom work as well as visits to courts. The training may be tailored according to the experience of the group. For example, less emphasis will be placed on procedural issues for advocates, on the assumption that they already know the applicable procedural rules. Courses generally cover the basics of criminal and civil law and procedure and include some training on ethics and judging skills, but they do not address the role of the judge in society, cultural sensitivity, or relations with lawyers and litigants more broadly. Considering the general perception, discussed below, that the judiciary is corrupt and largely controlled by the executive, a greater emphasis on ethics as well as on the role of the judge in a democratic society would seem worthwhile. In addition, although one high-level interviewee indicated that ethnic issues are not a concern in Uzbekistan,
other interviewees indicated that lawyers and litigants can be the objects of abuse by judges, and hence training in courtroom control and decorum also would be appropriate.

Lay assessors do not need to have any specified level of training and education, and they do not generally receive any special training in advance of taking their position, although individual courts may provide some such training, on an ad hoc basis. Assessors must be 25 years old.

**Factor 2: Selection/Appointment Process**

*Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other 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: Neutral</th>
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<tbody>
<tr>
<td>A recently adopted process for screening potential judges for the lower courts does not appear to be transparent or based on objective criteria, and it may be subject to manipulation. Moreover, the process is conducted under the auspices of a qualification collegium all of whose members are appointed by the President and which reports to the President. Although parliament is supposed to investigate and vote on the qualifications of the higher court judges nominated by the President, it has not exercised those powers in a meaningful way. Nevertheless, the new process for appointing and re-appointing judges is considered an improvement over previous methods and represents an important effort to improve the system.</td>
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</tbody>
</table>

**Analysis/Background:**

The President nominates appointees to the CC, the SC, and the HEC, who are then “selected” by parliament. Unofficially, the chair of the CC will recommend nominees to the President. The nominees for the SC and HEC are initially screened by the qualification collegiums attached to each court and then by the Supreme Qualification Commission under the President. They will then be officially nominated by the President. A judicial committee of the parliament (the Oliy Majlis) will interview the candidates submitted by the President, and if it approves the candidates, they will be invited back to meet with the full parliament, the members of which may also ask questions. However, the parliamentary review seems largely pro forma. Over the past three years, the Oliy Majlis has not rejected any judicial candidates proposed by the President. Moreover, several members of the SC were recently replaced, but without any press coverage or any public or parliamentary debate. Nevertheless, whereas in earlier years these parliamentary votes were unanimous, now at least some dissenting votes are being registered, indicating that the Oliy Majlis may be beginning to take its role in the vetting of high court judges more seriously.

Until recently, the MOJ selected the candidates for the lower courts, who were then appointed by the President. In 2001, however, Uzbekistan adopted a system whereby judicial qualification collegiums do this work. **Resolution No. 383 of the Cabinet of Ministers of the Republic of Uzbekistan on Measures to Further Improve the Activity of Courts of the Republic of Uzbekistan, 22 September 2001** (hereinafter Resolution 383). The chair of each regional court heads a Regional Qualification Collegium, the six other members of which are elected by and from among the judges from both the city (district) and regional courts in that region. Each Regional Qualification Collegium devises and administers judicial qualification exams. The examinations are oral, and they are not open to public scrutiny. Candidates who pass those exams are placed on a “reserve list” of potential judicial nominees. As judicial vacancies occur, the qualification collegium of the region in which the vacancy exists will nominate two to three
candidates from the reserve list to the Supreme Qualification Commission (SQC) under the President in Tashkent. The seventeen members of the SQC, each of whom is appointed for a 5-year term by the President, include judges, members of parliament, and other legal specialists. *LAW ON COURTS*, supra at 6, Art. 11. The SQC will interview the nominees and recommend one of those nominees to the President for his approval. Again, these meetings are conducted behind closed doors. Only those nominees submitted by the Regional Qualification Collegium are eligible for appointment. The SQC also prepares model questions for the Regional Qualification Collegium to use in their examination of candidates, but the Regional Qualification Collegium are not required to use them, and they may add to them. The questions asked relate mostly to criminal and civil law and procedure, but some political questions (e.g., understanding the nature of the issues being discussed in parliament, awareness of the President’s speeches and books) are also asked. The SQC has a staff of about seven or eight young lawyers to assist it in its work.

The power to re-nominate sitting judges also now rests with the Regional Qualification Collegiums. Re-nomination is based on peer review and does not have to be approved by the SQC. However, the failure to re-appoint is subject to an automatic review by the SQC, which may overturn decisions deemed to be biased.

On the one hand, adoption of the new selection process represents an important effort to improve the system. Most judges and lawyers interviewed felt that the new process for appointing and re-appointing judges is an improvement over the old method, which most respondents viewed as corrupt (i.e., that judgeships could be purchased from the MOJ). On the other hand, the new process is far from ideal, and there are still opportunities for corruption and improper influence. Some observers voiced concerns that the new process is still not sufficiently transparent and that judges are essentially handpicked by the presidential administration. One observer opined that the examinations are “staged.” One group of lawyers said that they had no idea what the procedures were for the appointment, advancement, and removal of judges, but as a rule it depended not on the qualifications of the individual but rather on “internal workings” and “connections.” Indeed, it is of concern that the SQC is entirely appointed by the President and is answerable only to him. The fact that the examinations are oral only also gives rise to at least the potential for manipulation. It would be preferable to have written exams, uniformly, blindly, and openly administered. Others were concerned that the new process gives a preference to those already in the judicial system (i.e., clerks) and that a disproportionate number of those becoming judges are former clerks. These critics would like to see more prosecutors and advocates attracted to and selected for the judiciary. It remains to be seen whether implementation of the new selection process will lead to more objective judicial selection or whether the process will be tainted by corruption. While the new process for appointment does show some promise for improving what had been a very negative mechanism for appointing judges, the proof will be in how it is applied. If CEELI were rating this factor according to the past procedure, the rating would almost certainly be negative. A neutral rating is instead being made, pending application of the new procedure, which CEELI intends to monitor over the coming months.

Judges noted one area of concern: the qualification collegiums often ask questions about whether the judge’s relatives have been prosecuted or convicted of a crime. One judge, arguing that he could be disqualified if his father had been convicted of a misdemeanor before he had been born, rightly questioned the relevance of that line of inquiry.

The internal security agency (the successor organization to the Soviet KGB, the Sluzhba Natsionalnoy Bezopasnosti, or SNB) also conducts investigations concerning potential judges. One judge felt that this investigation was not always objective and that a candidacy could be put in jeopardy if someone opposed to his nomination provided false information to the SNB because the agency does not always follow-up on such charges.
Lay assessors are “elected for a two and half year period by an open voting of a citizens’ meeting held at the location of his/her residence or work.” LAW ON COURTS, supra at 6, Art. 62. Assessors generally can not be called upon for more that two weeks each year. Id., Art. 62.

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 matter of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

<table>
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<tr>
<th>Conclusion</th>
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<tr>
<td>Uzbekistan has a reasonably good process in place for training its judges. There is an active Judicial Training Center in Tashkent, and the Higher Economic Court also offers periodic training programs. Court presidents in the district and regional courts also organize training sessions on a weekly or monthly basis for their judges. However, the content of the training remains a concern. Training does not provide sufficient grounding in the underlying purpose or philosophy of the law, but it emphasizes simply what is in the code. In addition, considering Uzbekistan’s human rights record, a greater emphasis could be placed on training judges on international human rights standards.</td>
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</tbody>
</table>

| Correlation: Neutral |

Analysis/Background:

The Uzbekistan JTC traces its roots to the Soviet era, when its predecessor organization trained low-level judges within the republic. It was recommissioned as a CLE center for all jurists (judges, advocates, notaries, and jurisconsults) in 1997. It receives its government funding through the MOJ, but seems to operate independently of it. It also generates funding through training courses for tuition paying lawyers. It trains both sitting judges and those who have been placed on a reserve list of individuals who may be appointed to the judiciary for the courts of general jurisdiction and the military courts. It provides training on all areas of civil and criminal law, and it uses both lecture and interactive training methodologies. It has used its tuition payments to acquire a building in central Tashkent, which it hopes to move into in summer 2002. Otherwise it has few material resources and a small staff. It has not received significant donor support.

Judges who have been on the bench for three years or less usually come for one month of periodic training, while those who have been on the bench over three years come for 15 days.

The following statistics reflect the numbers of reserve judges and judges that the JTC trained in 2001:

- Reserve Judges for the Civil Courts: 31
- Reserve Judges for the Criminal Courts: 31
- Chairs of the Civil, Criminal, and Military City (District Courts): 33
- Chairs of the City (District) Civil Courts: 31
- City (District) Criminal and Military Court Judges: 66
- Newly Appointed City (District) Civil Court Judges: 31
- Sitting City (District) Court Civil Judges: 62
- Regional Criminal and Military Court Judges: 33
Chairs of the Regional Civil Courts: 14

Deputy Chairs of the Karakalpakstan SC, Tashkent City Courts, and Republic Military Courts: 29

Total Number of Judges Trained: 361

In addition, the JTC trained a number of court staff, MOJ officials, notaries, and lawyers. All in all, it trained almost 850 jurists in 2001.

Most of the JTC training programs are conducted in Tashkent because the JTC does not have the resources to hold programs in the regions. It does not have a dormitory in Tashkent either, but tries to arrange other places to stay for the judges who visit, or the judges may stay with relatives.

A 12-member Scientific Board (akin to an advisory board) determines the curriculum, based on discussions with the Scientific Board of the SC, its own knowledge of the types of cases coming before the courts, and a review of evaluation forms completed by participants. The JTC has six full time instructors (although it is budgeted for 20 positions) and a cadre of 18 part-time teachers. These have been affiliated with the JTC for many years. As many as 200 guest lecturers may visit during the year. These experts typically include higher court judges, law professors, experienced advocates, as well as foreigners such as ABA/CEELI liaisons. There is no formal relationship with any foreign organizations; their representatives offer lectures on an ad hoc basis. The JTC develops its own training materials, but it lacks a publishing capacity and so cannot distribute manuals, commentaries, and other materials that would be useful for sitting judges.

The quality and relevance of what is being taught at the JTC is another concern. Several lawyers noted that while judges know what the code says, they do not always understand the theory underlying the law, whether it relates to protecting human rights or developing a market economy. In addition, the U.N. Committee on Human Rights in April 2001 noted its concern regarding “the lack of training of public officials in international human rights standards,” and urged Uzbekistan “to make serious efforts to disseminate knowledge of the provisions of the [International Covenant on Civil and Political Rights] among judges to enable them to apply the Covenant in relevant cases . . .” U.N. COMMITTEE ON HUMAN RIGHTS, CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE: UZBEKISTAN, CCPR/CO/71/UZB, 26 APRIL 2001, (hereinafter U.N. COMMITTEE HUMAN RIGHTS REPORT).

The HEC also arranges training programs for the judges in that system, and it conducted two one-week programs for judges during the first four months of 2002. It tries to provide training for each judge two times per year and training for candidates on the reserve list at least once per year. It polls its judges concerning the areas of training in which they are interested. The HEC training center also offers training programs for lawyers and businessmen, for which it charges a small fee, to enable the HEC’s center to develop some sustainability.

The judges’ association also conducts periodic CLE programs, offering 30 workshops in 2000 and 2001.

In addition to these efforts, most court presidents organize weekly or monthly meetings of their courts at which new developments in the law are discussed. Other organizations (such as the prosecutorial training center) may also invite judges to participate in the programs it conducts in the regions.
Factor 4: Minority and Gender Representation

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

### Conclusion: Correlation: Positive

Women and minorities are represented throughout the court system, as well as in the pool of nominees. Although some pointed out that ethnic Russians seemed under-represented on the higher courts, the number of ethnic Russians at this level is not inconsistent with the percentage of Russians in the country overall.

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<th>Analysis/Background:</th>
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Uzbekistan includes significant minority populations, including: Russian, 5.5 percent; Tajik, 5 percent; and Kazakh, 3 percent. The country is 88 percent Sunni Moslem, and 9 percent Eastern Orthodox. U.S. DEPARTMENT OF STATE, BACKGROUND NOTE: UZBEKISTAN (2002).

Regarding minority representation on the courts, several informants opined that ethnic Russians were under-represented in the court system. Although no statistics were available across the court system, available figures indicate that ethnic Russians are not under-represented on the higher courts as a percentage of their ethnic population at large. Although there are no ethnic Russians among the seven members of the CC, and none among the 19 judges on the HEC, there are four ethnic Russians among the 34 members of the SC.

The following statistics show the number of women in the judicial system:

<table>
<thead>
<tr>
<th>Court</th>
<th>Total Judges</th>
<th>Female Judges</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>34</td>
<td>7</td>
<td>21</td>
</tr>
<tr>
<td>Regional Courts</td>
<td>280</td>
<td>58</td>
<td>21</td>
</tr>
<tr>
<td>District Courts</td>
<td>487</td>
<td>106</td>
<td>22</td>
</tr>
<tr>
<td>Higher Econ. Court</td>
<td>19</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>Regional Econ. Cts.</td>
<td>124</td>
<td>28</td>
<td>23</td>
</tr>
<tr>
<td>Constitutional Ct.</td>
<td>7</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>951</strong></td>
<td><strong>203</strong></td>
<td><strong>21</strong></td>
</tr>
</tbody>
</table>

Clearly, women are well represented, although below the 40 – 50 percent level considered ideal.
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>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
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<tbody>
<tr>
<td>Although the Constitutional Court is charged with considering the constitutionality of acts of the legislative and executive powers, it is not an active or effective organization. There are several loopholes in the existing legislation that enable it to decline jurisdiction, thereby essentially ceding power to the executive. In addition, citizens cannot bring matters directly to the Constitutional Court, which again serves to limit its relevance.</td>
<td></td>
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</tbody>
</table>

Analysis/Background:

The Constitutional Court (CC) was established in December 1995 pursuant to “The Law on the Constitutional Court” enacted in April of that year. It has seven members, including the chairman, deputy chairman, and five judges, one of whom must be from Karakalpakstan. Each of the members is elected by the parliament on the recommendation of the President. LAW OF THE REPUBLIC OF UZBEKISTAN ON THE CONSTITUTIONAL COURT, NO. 103-I, 30 AUGUST 1995, (hereinafter LCC), Art. 2. The judges of the CC are elected for five-year terms. Id., Art. 3. The CC is self-managing. It does not have its own line item in the national budget, but does receive a direct allocation from the Ministry of Finance. It has 22 staff members, including judges, experts, and secretaries. After the conclusion of his term in office, the President of the country becomes a lifetime member of the CC. CONSTITUTION OF THE REPUBLIC OF UZBEKISTAN, 8 DECEMBER 1992, (hereinafter CONSTITUTION), Art. 97.

According to the Law on the Constitutional Court, the CC considers “the constitutionality of acts of the legislative and executive powers,” including laws passed by parliament, decrees of the President, resolutions of the government, and resolutions of the local (regional) authorities (khokims). LCC, supra at 12, Art.1. It does not have jurisdiction to consider the constitutionality of guiding opinions issued by the SC or the HEC, or regulations issued by state agencies, including the tax authorities and the procuracy (the CC declined jurisdiction over a tax matter on these grounds). Parliament (and various leaders and subgroups), the President, the chair of the SC, the chair of the HEC, the procurator general, and three judges of the CC may present cases for consideration to the court, but individual citizens cannot. Id., Art. 19.

The CC representative who met with the assessment team recognized that the CC has not been a very active organization, rendering only 10 – 15 decisions per year. Neither lawyers nor lower court judges could cite one key CC decision that had an important influence on civil rights or liberties. Nor could they cite one decision that had arguably been made against the interests of the executive power. Several referred to the CC as a “dead” organization.

Nevertheless, the CC believes that its caseload will increase, especially because pursuant to Art. 13 of the new Law on the Procuracy it will be able to review decisions and instructions of the prosecutor general to ensure they comply with the constitution. LAW OF THE REPUBLIC OF UZBEKISTAN ON PROCURACY, NO. 257-II, 21 AUGUST 2001, Art. 13. Despite this enhanced jurisdiction, no cases of this type have made it to the CC. Citizens have applied to the court for review of decisions by the regional and district level procuracies, but the CC has declined...
jurisdiction because the law gives it the power to review only decisions by the procurator general. This is a major loophole that Uzbekistan would do well to close.

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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>Although the law essentially provides for judicial review of administrative decisions, the law is not frequently used, and the courts are reportedly hesitant to make decisions against the government.</td>
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Analysis/Background:

Uzbekistan has not adopted a modern administrative code, as that term is understood in the West (administrative law in Uzbekistan is still understood in the Soviet meaning of an administrative violation or misdemeanor). Some laws, however, do include provisions similar to what would be found in a western administrative code. According to the Law on Appeals of Citizens, “Complaints against acts or decisions of governmental bodies, public organizations, enterprises, agencies, or officials shall be submitted to the higher body or to the court.” LAW OF THE REPUBLIC OF UZBEKISTAN ON APPEALS OF CITIZENS, NO. 1064-XII, 6 May 1994, Art. 8. In other words, an administrative decision may be appealed to a higher authority within the administration, or to the court. The Law on Appealing to the Court Against Acts and Decisions Violating Civil Rights and Liberties provides that, “Every citizen shall have the right to appeal to the court if he believes that his rights and liberties have been violated by illegal acts (or decisions) of governmental bodies, entities, agencies, organizations, self-governing bodies, or officials.” LAW OF THE REPUBLIC OF UZBEKISTAN ON APPELLING TO THE COURT AGAINST ACTS AND DECISIONS VIOLATING CIVIL RIGHTS AND LIBERTIES, NO. 108-I, 30 August 1995, Art. 1. That law goes on to describe the procedure for submitting complaints, procedures for the court to consider such complaints, and means for executing the court’s decision.

One issue relates to how often these provisions are being used, and with what degree of success. Lawyers with whom the team met could not identify a single high profile decision by the courts that directed the executive to comply with a citizen request. To the contrary, in one important media case, the state had refused to issue a broadcasting license to a local television station. The station sued and not only lost, but the state instituted criminal proceedings against the station’s director, alleging that he had falsified his application to join the Union of Artists – ten years prior, during the Soviet era. Courts, however, will issue such orders (one example cited concerned overturning a decision of the passport agency), and they would be complied with, as long as they did not involve important political or oligarchic interests. Lawyers also reported uneven results when seeking orders to local authorities (khokims). In one case, the lawyer sought, and failed, to get the khokim to issue a propiska (residence registration). In an inheritance case, however, the court ordered the khokim to provide an apartment to a relative of the deceased. These victories, however, seem few and far between. Moreover, lawyers are not yet using these laws as tools to provoke societal change because they do not believe that the judges will rule against the state (see Factor 20).
Factor 7: Judicial Jurisdiction over Civil Liberties

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

<table>
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<th>Conclusion</th>
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<tbody>
<tr>
<td>Although in many respects the law endows the judiciary with jurisdiction over most civil rights and liberties, the procuracy still has the right to issue search and arrest warrants. Moreover, the courts typically follow the lead of the procuracy in criminal prosecutions, and “not guilty” verdicts remain extraordinarily rare. In short, the executive power exercises dominion over the judiciary on issues relating to civil rights and liberties.</td>
</tr>
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</table>

Analysis/Background:

Issues relating to civil rights and liberties are, at least on the surface, ultimately decided by the judiciary. No other entity can enter judgment against a citizen, and the Law on Courts prohibits the formation of “ad hoc courts.” LAW ON COURTS, supra at 6, Art.1. It also provides that the “Administration of justice shall be executed by the courts only.” Id. Art.3. Citizens and non-citizens alike are entitled to “judicial protection from any illegal actions (decisions) of the state and other authorities, . . . as well as any attempts against life and health, honor and dignity, personal freedom and property, other rights and freedoms.” Id. Art. 9. An accused person is considered innocent until proven guilty, and “no one can be subject to torture, violence, and other types of brutal treatment or treatment degrading of human dignity.” Id. Art.10.

Despite these legislative protections, in practice the procuracy has tremendous influence over the courts regarding civil rights and liberties. The law itself makes clear that although individuals (and entities) are entitled to “judicial protection,” it is the procuracy that must actually enforce that protection: “For the purpose of providing effective judicial protection of rights and legal interests of the citizens, organizations, enterprises, and institutions, the prosecutor shall [emphasis added] participate during all stages of the court hearing and consideration by the courts of the practice of the application of the legislation.” LAW ON COURTS, supra at 6, Art. 9. This in effect sets up a conflict of interest for the procuracy, which must represent both the interests of the state by prosecuting defendants and at the same time protect the rights of individuals. It also demonstrates the court’s lack of real power, particularly when weighed against the power of the procuracy.

Other evidence suggests that indeed the procuracy, not the courts, holds the true power to determine issues relating to civil rights and liberties. Verdicts of “not guilty,” for example, are very rare indeed. Three experienced advocates could only remember three times since independence in their collective experience when they had achieved “not guilty” verdicts for their clients. Another key interviewee, perhaps exaggerating slightly, estimated that “not guilty” verdicts are returned “only .0001 percent of the time.” As in the Soviet era (when, as one lawyer noted, “not guilty” verdicts did not exist), the courts simply do not feel sufficiently empowered to counter the will of the state, as embodied by the procuracy. Another observer said that if a judge acquits a defendant, the judge “will not be re-appointed” to his post the next time. If a court feels that the procuracy has not established the guilt of a defendant, the most it is likely to do is return the case to the procuracy for further investigation. At that point, the procuracy is likely to let the matter slip. Statistics on the numbers of cases in which the defendant is exonerated or which are returned for further investigation were requested, but not provided. According to one interviewee, however, things might be changing, albeit slowly. He said that in 1997, there had been eight acquittals, whereas by 2001 this number had increased to 200, most of which occurred on appeal.
The procuracy also has the power to appeal verdicts and sentences (through so-called “protests”), and it frequently does so if it feels that the sentence has not been severe enough. One prosecutor estimated that the procuracy wins 80 percent of the appeals it brings on protest. Others referred to the unwritten rule that a judge may be removed from his position if his decisions are reversed by procurator protest three times or more.

The procuracy and the investigative authorities also wield extensive powers during pre-trial detention. Police may hold a suspect, without a warrant or just cause, for up to three days, when he must be either released or charged. If a person is declared a suspect, he may be held for an additional three days before being charged. A prosecutor’s order is required for arrests, but not detentions. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF UZBEKISTAN, NO. 2013-XII, 1 APRIL 1995, (hereinafter CRIMINAL PROCEDURE CODE), Arts. 220 – 228. “In some cases, police circumvent the rules by claiming that the detainee is being held as a potential witness and not as a suspect; there are no regulations concerning the length of time a witness may be detained.” U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UZBEKISTAN (2001). CRIMINAL PROCEDURE CODE, Art. 243 states that detention can be applied “only against a suspect or the person called to participate in the case as a defendant”). Pre-trial detention may last as long as one year. Id.

These rules regarding pre-trial detention are important in Uzbekistan where, despite the prohibition against torture contained in Art. 10 of the Law on Courts, torture is widely believed to be used against those held in pre-trial detention. See, e.g., U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UZBEKISTAN (2001).

It should also be noted that criminal penalties are frequently very severe. The President himself has noted the harshness of some penalties, citing an example in a recent speech of a court in the Ferghana Region that sentenced a 20-year-old defendant to five years imprisonment for stealing kitchen utensils worth 8,600 soum (approximately US $10), even though he had returned everything the next day. Pursuant to the President’s instructions, Uzbekistan has embarked on a process of liberalizing criminal penalties, removed prison sentences for some less serious violations, limited the grounds for capital punishment, and prohibited the confiscation of property of those convicted of crimes. Deprivation of liberty is no longer widely used as a punishment for economic crimes, and thousands of individuals previously convicted of minor offenses were released from prison under a presidential pardon.

In addition, at the end of August 2001, and following a speech by President Karimov calling for legal reform, the Oliy Majlis passed a new law on the procuracy that now omits a provision of the prior law that enabled the procuracy to unilaterally suspend any judgment of which it disapproved. LAW OF THE REPUBLIC OF UZBEKISTAN ON PROCURACY, NO. 746-XII, 12 DECEMBER 1992, Art. 41. This constitutes an important positive change. In addition, in January 2002, under intense international pressure, an Uzbek court found four police officers guilty of police brutality and sentenced them to 20 years imprisonment. A similar case in Margilan several months later resulted in long prison sentences for three internal security agency officers convicted of killing a farmer in Ferghana. These cases were but a very few uncovered by the team in which the courts reached a decision ostensibly opposed to state interests and which protected individual rights.

Despite the above noted changes, the U.S. Department of State Country Report on Human Rights Practices aptly summarized the situation: “State prosecutors play a decisive role in the criminal justice system. They order arrests, direct investigations, prepare criminal cases, and recommend sentences. If a judge’s sentence does not agree with the prosecutor’s recommendation, the prosecutor has the right to appeal the sentence to a higher court. There is no protection against double jeopardy. Judges whose decisions have been overturned on more than one occasion may be removed from office; consequently, judges rarely defy the recommendations of prosecutors. As a result, defendants almost always are found guilty.” U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UZBEKISTAN (2001).
One final concern relates to the use of military courts. An April 2001 report by the United Nations Human Rights Committee found that the jurisdiction of the military courts “is not confined to criminal cases involving members of the armed forces but also covers civil and criminal cases when, in the opinion of the executive, the exceptional circumstances of a particular case do not allow the operation of the courts of general jurisdiction. The [U.N] Committee notes that [Uzbekistan] has not provided information on the definition of ‘exceptional circumstances’ and is concerned that these courts have jurisdiction to deal with civil and criminal cases involving non-military persons, in contravention of articles 14 and 26 of the [International Covenant on Civil and Political Rights].” U.N. COMMITTEE HUMAN RIGHTS REPORT, supra at 10.

Factor 8: System of Appellate Review

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judicial decisions may only be reversed through a judicial appellate process, but the procuracy’s powers to compel the review of a lower court decision are extensive and greater than those of private attorneys. In addition, defense attorneys are often not informed of certain prosecutorial appeals and therefore, they cannot participate in them.</td>
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Analysis/Background:

Uzbek law allows for three forms of appeal: appellate (de novo) review, cassation, and supervision (protest). Supervision is a form of review that occurs after the imposition of a sentence or judgment. A protest filed by the procurator is automatically reviewed, whereas a protest filed by an advocate is submitted to the chair of the next highest instance court, who has the discretion to determine whether the protest may be heard. Neither a cassation nor a supervision entails a retrial or reconsideration of the facts. If a defense attorney wishes to reopen a case through a protest, he must do so through the procurator. The procurator may protest criminal, civil, and commercial cases. The HEC expressed frustration with the procuracy’s involvement in purely commercial cases in which the state has no direct interest, and it indicated that it accepted protests from the procuracy only rarely. While it may be appropriate to have a means to re-open closed criminal matters in the case of uncovering exculpatory evidence, it is unclear why the procuracy should be able to “protest” commercial or civil cases in which the state does not have a direct interest.

The Criminal Procedure Code provides that a defense attorney has the right to know about protests and complaints filed in the case and file objections to them; participate in court hearings in cassation and supervision instances. CRIMINAL PROCEDURE CODE, supra at 15, Art. 53. Advocates reported, however, that they are not always notified of cassation proceedings and systemically not notified of protests against lenient sentences. Because a protest can be filed within a year after the entry into force of the sentence, sometimes a person is released from prison after having served the sentence, but then he or she is returned to prison to serve additional time because the supervision hearing was held without his or her or the advocate’s knowledge or participation.

The U.S. Department of State Country Report on Human Rights Practices found that, “The Constitution provides a right of appeal to those convicted; however, in the past such proceedings have been formalistic exercises that confirm the original conviction. For example, the appeal of Imam Abdurakhim Abdurakhmanov on August 8, 2000, lasted only 20 minutes, the judge did not
permit testimony, and Abdurakhmanov was not allowed to be present at the appeal. However, in November, human rights activist Elena Urlaeva won an appeal against a lower court ruling, which had ordered her to undergo psychiatric treatment.” U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UZBEKISTAN (2001).

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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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</thead>
<tbody>
<tr>
<td>Judges generally do have adequate subpoena and contempt powers, and most lawyers and citizens comply with judicial orders. Criminal sanctions are enforced rigorously. The evidence regarding the enforcement of civil and commercial judgments was somewhat contradictory, but most observers feel that judgments can be enforced, with the exception of foreign arbitration awards.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The Law on Courts states that “Judicial acts shall be binding on all state bodies, public organizations, enterprises, officials, citizens, and subject to enforcement in the territory of the Republic of Uzbekistan.” LAW ON COURTS, supra at 6, Art. 5. Furthermore, judges have the right to “demand enforcement of their orders associated with the execution of laws from officials and individuals” and “receive from officials and other persons information required to execute laws.” Id. Art. 65. Moreover, “government authorities, officials, public associations, other legal entities and individuals shall completely fulfill the court requirements and orders associated with the execution of laws... Failure to observe requirements and orders of judges shall entail legal liability.” Id. Art. 65.

The Judicial Department under the MOJ is responsible for enforcing judicial decisions. RESOLUTION NO. 120 OF THE CABINET OF MINISTERS OF THE REPUBLIC OF UZBEKISTAN ON MEASURES TO IMPROVE THE MAINTENANCE OF COURTS, 10 MARCH 2001, (hereinafter RESOLUTION NO. 120), and RESOLUTION NO. 383, supra at 2. The Judicial Department employs 573 court executors, and it was only given responsibility for enforcing judgments as of January 2002. RESOLUTION NO. 383, supra at 2. Previously, the executors worked for the courts directly.

It was reported that most witnesses and lawyers will comply with a judge’s order for them to appear in court. If they fail to appear, the bailiff or court executor can be sent to bring them, but this is reportedly done only rarely.

Regarding enforcement of judgments, criminal sanctions are strictly enforced by the Ministry of the Interior. As noted elsewhere, sometimes such enforcement gives rise to human rights concerns. Prison conditions in Uzbekistan, moreover, are reported to be extremely harsh.

Regarding the enforcement of civil judgments, the evidence the team gathered was somewhat contradictory. Many lawyers reported that the procedures in place for the enforcement of civil and commercial judgments are adequate, and the HEC reported that 85 percent of the Economic Court’s decisions were enforced in a timely fashion in 2001. The HEC also reported, however, that this number is falling, although it expressed hope that this is a temporary phenomenon due to the introduction of the new enforcement system. The Office of the Ombudsman also reported that it receives many citizen complaints regarding enforcement of judgments, but that these are
usually resolved when they are brought to the attention of the Judicial Department. Another problem was noted with the enforcement of foreign arbitration awards. This problem relates in part to currency conversion difficulties in Uzbekistan, and the HEC is preparing a regulation for the Cabinet of Ministers that it hopes will help address that issue. In addition, although Uzbekistan has signed the New York Convention on the Enforcement of Foreign Arbitration Awards, it has not trained judges on that convention or adopted implementing regulations or procedures. Accordingly, it is very difficult to enforce foreign arbitration awards in Uzbekistan.

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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</thead>
<tbody>
<tr>
<td>The judiciary has little opportunity to influence the amount of money allocated to it, and public debate on the issue is constrained by the fact that the national budget is not publicly available. In any event, insufficient resources are allocated to the court system, in particular to the lower courts outside the capital, and the courts must seek support from the regional administrations, giving rise to concerns regarding judicial independence. The judiciary, working closely with the MOJ, does seem to have control over the funds allocated to it.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The Law on Courts provides that “Financing, material, technical, and other types of provisioning, security and maintenance of court premises shall be funded from the national budget. The amount of the budget allocations shall be determined by the Cabinet of Ministers . . .” LAW ON COURTS, supra at 6, Art. 79. “Each court shall be provided with its building and transport facilities.” Id. Art. 79. The Director of the Judicial Department under the MOJ submits proposals to the government for the financing of the courts for each fiscal year, and then distributes the funds to the courts. RESOLUTION NO. 120, supra at 17. Questions concerning the percentage of the national budget allocated to the court system, and other broader budgetary issues, cannot be addressed because the national budget is not a publicly available document. In addition to the funding from the national budget, the courts also generate income from fees and fines levied (most of which is returned to the state budget), and they accept contributions from the local government.

The material needs of the Courts of General Jurisdiction are to be provided by the Judicial Department of the MOJ. LAW ON COURTS, supra at 6, Art. 11. The Judicial Department would not disclose how much funding it had received from the national budget. It did indicate that the Court Executors who work under it keep 30 percent of the judgments they enforce, used for the material needs of their offices and to pay their salaries. The MOJ also collects revenues through taxes on advocates and notaries, and filing fees, etc., all of which are returned to the state budget. Special requests, for things such as the re-building of courthouses, may also be submitted to the Ministry of Finance. Each month, a funding committee within the Judicial Department meets to discuss how and where to find the funding for the courts.
The HEC is charged with providing for the material needs of the Economic Courts. LAW ON COURTS, supra at 6, Art. 11. The HEC is able to keep 15 percent of the fees and fines it levies, but must return 85 percent to the national budget.

As in other countries in the former Soviet Union, the central government in Uzbekistan has not allocated sufficient resources to the judiciary, forcing the courts to turn to local governments for support, including the provision of courthouses, transportation, and other material needs. As in Russia and Ukraine, judicial reliance on local authorities for support gives rise to concerns regarding the independence of the judiciary in cases in which the local authority is a party, or a party has close connections to the local authorities. The central government should do more to ensure that it meets the needs of the courts so that they do not need to seek support from local governments.

The Judicial Department expressed concern about the lack of funding, stating that in particular it needed support for acquiring computers and other equipment (see Factor 29) and transportation for judges who work in inter-district courts (see Factor 12).

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>
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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judicial salaries in Uzbekistan are woefully inadequate.</td>
<td></td>
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</tbody>
</table>

**Analysis/Background:**

The Law on Courts recites that judicial independence shall be guaranteed by, among other things, “providing judges at the government expense with financial and social support appropriate for their high status.” LAW ON COURTS, supra at 6, Art. 67.

Unfortunately, the judges in Uzbekistan are grossly underpaid. A lower court judge may be paid between $20 and $30 per month, and higher court judges are not paid much more. The militia (police) are paid better than judges (in some cases twice as much), as are procurators. Moreover, it was reported that in some rural areas judges must continue their farming work in order to survive. On the other hand, the state provides for the judge’s apartment and telephone, and chairs of courts receive official cars. Nevertheless, the low judicial salaries certainly contribute to the reported problem of judicial corruption. More importantly, the salaries are such that they are unlikely to attract qualified lawyers to the judiciary. Nevertheless, several key informants noted that many judges live very comfortably due to the bribes they receive.

The judges on the Constitutional Court are in a somewhat better position. The chair of the CC is paid the same as the deputy chair of parliament, the deputy chair of the CC is paid the same as a chair of a parliamentary committee, and the other members are paid the same as deputy chairs of parliamentary committees. The CC representative was unwilling to divulge the exact amount of salary, noting that salaries in Uzbekistan are generally quite low, but at least the salaries they are paid are comparable to those paid to other high level government officials.
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>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>While most courts are centrally located and easy to find, there are not enough civil and economic courts in the regions, giving rise to access to justice concerns. While the higher courts seem well equipped, many lower courts do not have adequate infrastructure and do not provide a respectable environment for the dispensation of justice.</td>
<td></td>
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</tbody>
</table>

Analysis/Background:

Most courts are centrally located and easy to find. One concern is that, unlike the criminal courts, civil courts are not located in every district. There are 210 districts in the country, but only 76 so-called "inter-district" civil courts. Similarly, Economic Courts are located only on a regional basis. Several judges and lawyers were concerned that the lack of courts in every district presented problems regarding access to justice.

On a related point, one member of the JRI team called a court in Tashkent to check on its address. The clerk who answered the phone refused to disclose the requested information. Such a response, obviously, is not conducive to improving access to justice.

The higher level courts (the Constitutional Court, the Supreme Court, and the Higher Economic Court) are in good buildings and are well equipped. The one regional court that the team visited (in Samarkand) also was in a large and suitable building. The lower courts, however, included very small courtrooms and office spaces and antiquated filing areas. Some judges reported that there are not enough courtrooms for all the judges. There are no public information offices, and no copying machines or other equipment that would promote access to the courts and its resources.

In 2000 the Office of the Ombudsman conducted an assessment of the three city courts and seven district courts of the Tashkent Region, as well as the Tashkent regional level court. The study found:

- Poor physical conditions of the court buildings, courtrooms, elevators, toilets, and public spaces;
- A lack of furniture, materials, and technical facilities for the judges and their assistants;
- Poor access to buildings due to security checkpoints;
- Lack of information concerning the location of the courtrooms and the offices of the judges or their working hours; and
- Lack of facilities for advocates, detainees, and citizens, as well as lack of a place where advocates and defendants could hold confidential discussions. REPORT OF THE OMBUDSMAN ON MONITORING RESULTS OF OBSERVATIONS ON THE RIGHT TO APPLY TO THE COURTS IN TASHKENT REGION (2000).

1 Another potential impediment to justice is the relatively high filing fees, which is usually a percentage of the amount at issue (as much as 10%). Further fees must be paid on appeal. This may be difficult for a litigant to put up, in a country where an average monthly wage is $25. Filing fees are not required for labor and certain health related cases.
On the other hand, at least one criminal court in Tashkent has allocated space as a workroom for advocates, and it has built a new cafeteria and upgraded the holding cells for defendants. Interestingly, this work was done through the support of the local *makhalla* (neighborhood committee), which is apparently not unusual. While it is gratifying that the *makhalla* has prioritized assistance to the courts, this assistance could give rise to some concerns regarding judicial independence because the courts, no doubt, will be called on to make decisions in which the *makhalla* has an interest (see Factor 10).

The Judicial Department is leading an effort to build new courthouses in each region. So far, six such new courthouses have been built, out of the country’s 14 regions.

**Factor 13: Judicial Security**

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>Few resources have been allocated to the protection of judges, but judges have rarely been attacked or threatened, and their safety is not generally considered a concern.</td>
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</table>

**Analysis/Background:**

The Judicial Department under the MOJ is charged with organizing “the security of judges and judicial proceedings.” *Resolution No. 120, supra* at 17. Typically, courts are protected by Ministry of Interior militia, who are posted at the entrance of court buildings. The courts do not have metal detectors or other security devices. There have been no reported attacks on judges, and protection of judges and courts is not considered a high priority. The dominance of the procuracy and executive branch over the judiciary has a subtle and insidious effect on judicial security (See Factors 7 and 20).

**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.*

<table>
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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Judges throughout the system are appointed for only five-year terms, subject to re-appointment. This is clearly an insufficient length of tenure.</td>
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</table>

**Analysis/Background:**

Judges at every level serve for only five-year terms, and they may be re-appointed multiple times. This is an insufficient length of tenure, and most judges interviewed articulated the need for
longer terms of service. Several judges and lawyers noted that a judge who had rendered decisions against the government interest would not be re-appointed, and that judges whose opinions were frequently appealed (“protested”) by the procuracy would either be removed or at the very least not re-appointed. Judges who are reliant on the recommendations of their court chairs for re-appointment are also less likely to reach decisions independent of those chairs. The U.N. Committee on Human Rights reported that it was “gravely concerned about the lack of independence of judges contrary to the requirements of article 14, paragraph 1 of the [International Covenant on Civil and Political Rights]. The appointment of judges for a term of five years only, in particular if combined with the possibility, provided by law, of taking disciplinary matters against judges because of ‘incompetent rulings,’ exposes them to broad political pressure and endangers their independence and impartiality.” U.N. COMMITTEE HUMAN RIGHTS REPORT, supra at 10.

Despite the obvious utility of the short tenure in terms of controlling the judges, some observers noted that the current cadre of judges, who are thought to be corrupt and government controlled, should not be rewarded with long and secure tenure. Any extension of tenure should be implemented in conjunction with a transparent and rigorous process for appointment.

The only judge who can have life-tenure is a former President of the country, who becomes a member of the CC for life upon retirement (all other members, like all other judges, serve five-year terms). It is also noteworthy that the immunity provisions (discussed below) seem stronger for constitutional court judges than for other judges.

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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>The process for advancing judges is neither objective nor transparent.</td>
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</table>

Analysis/Background:

The SQC makes recommendations for advancing judges from one position to the next, but the decision is ultimately up to the President. Most observers criticize this on the same grounds as with the appointment process (Factor 2): they do not believe that the process is objective or transparent. The judges counter that they do look for objective criteria, such as how quickly the judges work, and how often they are reversed on appeal. The chair of the court prepares a report for the court above him every six months on the functioning of the judges in his or her court.

The Higher Qualification Collegium of the SC (not to be confused with the Supreme Qualification Commission under the President) considers candidates for the chairs and deputy chairs of the lower courts, which are appointed by the President. Again, these discussions are not generally open, there are no known objective criteria, and the President is generally thought to have broad discretion in the appointment making process.
Factor 16: Judicial Immunity for Official Actions

*Judges have immunity for actions taken in their official capacity.*

<table>
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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>The constitution and laws appear to provide broad immunity to judges, but other laws seem to undercut that immunity. No statistics were available concerning how often judges are stripped of their immunity, and so it is difficult to gauge how real this protection is.</td>
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</table>

**Analysis/Background:**

The issue of judicial immunity is covered by a confusing and contradictory body of laws.

The Constitution provides that the judges of the CC “shall have the right of immunity.” [Constitution, supra at 12, Art.108.](#) Regarding other judges, the Constitution provides only that “[t]he immunity of judges shall be guaranteed by law.” [Id. Art.112.](#)

The Law on Courts states that “Judges shall be inviolable. Judicial immunity shall apply to his/her dwelling, office, transport and communication facilities . . .” [Law on Courts, supra at 6, Art. 70.](#) On the other hand, searching the office or residence of a judge or wiretapping a judge’s telephone can be authorized by regional procurators “or by court decision.” In addition, the procurator general may initiate criminal proceedings against judges, but only with the consent of the plenum of the Supreme Court or of the HEC. [Id., Art. 70.](#)

The Criminal Procedure Code states that judges (as well as members of parliament and prosecutors) “cannot be detained and taken to a police station.” [Criminal Procedure Code, supra at 15, Art. 223.](#) But it also says that a judge of the CC can be taken into custody with the consent of the CC, and that the judges of the other courts can be taken into custody with the consent of the plenum of the SC or the consent of the plenum of the HEC. [Id., Art. 239.](#)

No statistics were available to determine how often judges are stripped of their immunity, but, as discussed below (Factor 17), judges have been regularly prosecuted. Based on the limited information available, those prosecutions generally have not been for political purposes (ostensibly because it is easy enough simply to remove a politically undesirable judge), but they have been for bribery, corruption, and abuse of power.

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.*

<table>
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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>As with the appointment and advancement of judges, the removal and disciplining of judges is non-transparent and largely non-objective.</td>
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</table>


Analysis/Background:

The process of disciplining judges in the lower courts is initially handled by the Regional Qualification Collegiums, with appeals available to the Higher Qualification Collegium under the SC, and the SQC under the President. The process, however, is unclear, and many observers feel that it is not implemented in a transparent manner.

"Judicial powers shall be suspended" if criminal proceedings are commenced against a judge. LAW ON COURTS, supra at 6, Art. 71. In addition, judicial powers “can be suspended” by the SQC or, for judges of the economic courts, by the qualification collegium of the Higher Economic Court, if a judge:

- Is engaged in activities conflicting with his/her office;
- Has been exposed to compulsory medical treatment; or
- Is declared by a court to be missing. Id., Art. 71.

The first two of the foregoing grounds can be broadly construed, and should be of concern, especially given the history under the Soviet Union of using mental illness as an excuse to confine individuals who did not comply with the wishes of the regime. If a judge is arrested, he not only loses his judicial powers, his salary and social benefits are also suspended. He retains those benefits if his powers are suspended for any of the other three reasons listed above. Id., Art. 71.

Powers of the judges of the Supreme and Higher Economic Courts “shall be terminated” by parliament at the request of the President. LAW ON COURTS, supra at 6, Art. 72. The language of this clause makes it unclear whether parliament has the discretion to reject the request of the President. The powers of the regional and city (district) court judges “shall be terminated” by the President on the request of the HQC (whose members, it should be remembered, are appointed and may be removed by the President and which reports to the President). Powers of the judges on the economic courts “shall be terminated” by the President on the request of the chairperson of the Higher Economic Court. Id., Art. 72. The grounds for such termination are:

- The judge breaks his oath of office (the oath says, “I vow and declare solemnly to fulfill my duties with integrity and good faith, administer justice obeying the law only, to be impartial, objective and fair in accordance with the sense of the judge’s duty and my conscience.”) See LAW ON COURTS, supra at 6, Art. 64;
- The judge resigns;
- The judge continues activities which conflict with his office after being notified by the appropriate qualification collegium;
- The judge is declared by a court to be incapacitated;
- The judge forfeits his citizenship;
- A court sentence comes into effect against the judge;
- The judge is declared dead; or
- The judge is incapable for a long period of fulfilling his duties due to a health condition. Id., Art. 64.

The Law on Courts states that disciplinary proceedings can be initiated only by a decision of the appropriate qualification collegium. LAW ON COURTS, supra at 6, Art. 73. According to Art. 74, there are qualification collegia for the Supreme Court (elected by its plenum), of the Higher Economic Court (elected by its plenum), and of the civil and criminal sections of the regions and the city of Tashkent (elected by the judges of the region). Id., Art. 74. Each qualification collegium serves for five years. Appeals from the decisions of these Qualification Collegia may be taken to the Higher Qualification Collegium of the Supreme Court. RESOLUTION 323-II OF THE
Oliy Majlis on Qualification Collegia of Judges, 7 December 2001. Proceedings are not open to the public, and the judge may not be represented by counsel.

The law further provides that the qualification collegiums may institute disciplinary proceedings if the judge violates due process while administering justice or overlooks his court activities due to negligence, indiscipline, or professional misconduct. “Reversal or change of a court decision alone shall not entail liability . . .unless premeditated violation of law or ill faith that resulted in grave consequences has been committed.” Law on Courts, supra at 6, Art. 73.

Despite this protection, it was reported that the practice of removing judges whose decisions have been overturned on protest by the procuracy three times or more remains in place (see Factor 7).

It was difficult to determine how many judges have been disciplined or removed because statistics are not publicly available, but the number seems quite high, especially relative to the size of the judiciary. Most people estimated that there are two to three prosecutions of judges each year, but another key informant said that there may be as many as 30 judges in prison, mostly on charges of corruption, in a special prison that houses convicted judges, prosecutors and policemen. The representatives of the SC indicated that “quite a few judges have been removed” on behavioral grounds, but that during the past ten years there have only been ten cases of corruption.

Newspaper coverage of disciplinary actions against or prosecutions of judges is rare, though anecdotal evidence in fall 2002 suggests coverage is increasing. While the team was conducting this review, eleven SC justices were replaced, but the brief explanation in the press said only that some had retired due to failing health or were being assigned to other positions.

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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
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<tbody>
<tr>
<td>Cases are assigned by the chair of each court, thereby at least giving rise to the appearance of impropriety. There is no reason why cases should not be assigned on a random basis.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Assignment of cases is done by the chair of each court. Law on Courts, supra at 6, Arts. 38 and 58. As one observer noted, this can be a tool, and “loyal” judges will be assigned to cases where there is “going to be a good bribe.” A portion of the money collected in the bribe, of course, is supposed to be passed on up the line to the judge who assigned the case. In addition to the ethical considerations, having the chairs of courts assign cases is a waste of valuable judicial time because judges are doing what should be a purely administrative task. There is no reason why cases should not be assigned on a random basis, which would help to improve the efficiency and enhance the credibility of the judicial system.

After initial assignment, judges are only rarely removed or re-assigned.
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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Association of Judges of Uzbekistan has been an active pro-reform organization, but the recent replacement of its chair by a representative of the MOJ gives rise to concerns regarding the independence of the organization.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

According to the Law on Courts, judges have the right to “confederate in associations.” Law on Courts, supra at 6, Art. 65. The Association of Judges of the Republic of Uzbekistan (AJU) was formed in 1997, with USAID and ABA/CEELI assistance. That assistance included a significant level of training over roughly five years for the organization’s leaders and selected members, including assistance in developing codes of ethics.

The AJU has been credited with a significant role in Uzbekistan’s judicial reform movement. This recognition stems from a series of workshops it held around the country in 1998 and 1999 that involved over 140 judges in discussions of judicial independence. In addition, the AJU’s chairman was a member of the 1999 Presidential Reform Commission that produced specific proposals for the country’s judicial reform process, including the creation of the qualification collegiums, the specialization of the courts, and an effort to take the management of the courts out from under the MOJ. Until recently, in other words, the AJU has been an important and active organization. In late 2001, the chairman of the AJU stepped down, purportedly to focus his efforts on parliament, where he is a member. Some believe, however, that the activist chairman was forced out of office. The executive board selected the head of the MOJ’s Judicial Department as his temporary replacement, pending a meeting of all the members to select a permanent new leader.

The AJU membership reconvened in September 2002 and formally elected the MOJ official as chairman of the association. Although the temporary incumbent was elected by a majority of the association membership in attendance, the proceedings and election were manipulated to his advantage and were not a model of democratic transparency. More to the point, having an official of the MOJ head the association clearly throws its independence into doubt.

Even absent the installation of a chairman with direct ties to the MOJ, there are some concerns regarding the AJU itself. Although the level of membership is reportedly high (including most of the country’s 1,000 judges), many members are not paying dues, which are twenty percent of a minimal monthly salary. Even if they were, it would not be enough to cover the costs of the association. The organization is therefore largely reliant on the donor community for support. The donor community, considering the interference by the MOJ in the management of the AJU, is reconsidering the support that it has provided. The association needs to both sort out its management issues and begin to address the question of how it will develop as a sustainable institution in the long term.
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._

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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</thead>
<tbody>
<tr>
<td>The courts are widely believed to be corrupt, controlled by the executive power (largely through the procuracy), and non-independent.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

The Constitution provides that “Judges shall be independent and subject solely to the law. Any interference in the work of judges in administering the law shall be inadmissible and punishable by law.” _Constitution, supra_ at 12, Art. 112. The Law on Courts goes on to state that “Judges shall be independent and ruled only by the laws. Any intervention in the activity of the judges’ administration of justice shall be prohibited and subject to legal liability. Judicial power . . . shall function independently from the legislative and executive branches, political parties and other public organizations.” _Law on Courts, supra_ at 6, Art. 4.

Despite this commendable language, judges in Uzbekistan are not independent, but rather can be and are controlled and manipulated by the executive branch and by corrupt private interests. As the U.S. Department of State Country Report on Human Rights Practices summarizes, “The Constitution provides for an independent judiciary; however, the judicial branch takes its direction from the executive branch and has little independence in practice.” _U.S. Department of State Country Reports on Human Rights Practices: Uzbekistan (2001)._ In a sense, the law itself mandates the participation of the executive branch in the highest levels of judicial decision making. The Law on Courts provides that the procurator general “shall participate” in the plenary sessions of the Supreme Court. _Law on Courts, supra_ at 6, Art. 15. Among other things, the plenary of the Supreme Court considers supervisory appeals initiated by the procuracy, and issues guiding opinions to the lower courts. On the other hand, the law states that discussion of the protest and voting shall take place only in the presence of the members of the Plenum, and so the prosecutor general does not participate in the final consideration or voting on a case. _Id., Art. 18._

Likewise, the procurator general “shall participate” in the plenary sessions of the HEC. _Id., Art. 45._

The representative of the President’s office dealing with legal and judicial matters also reported that his representatives attend the plenary meetings of the CC, SC, and HEC, “as observers, to see how instructions to the lower courts are developed.” Again, this has a chilling effect on the independence of these institutions.

As discussed in Factor 7, in criminal matters courts almost invariably follow the lead of the procuracy. Judges do not act as impartial arbiters in disputes between the state and citizen, but rather are there to enforce the will of the state. Indeed, often times the prosecutor does not appear at trial until sentencing, which means that the judge is left to prosecute (and then decide) the case. At the very least, this merges the lines between the separation of powers, and raises serious concerns regarding judicial independence.
Multiple observers noted that the courts are unlikely to decide against the state even in civil matters. The unwillingness of the judiciary to oppose the will of the state is true in both the higher and lower courts. One observer described how under the civil code the priority for the payment of debts of a bankrupt company is salaries, then benefits, and only then state taxes. The Ministry of Finance sued in the CC, seeking that the taxes owed be given priority. The CC issued a decision holding that the civil code was in compliance with the constitution, but that since the Ministry of Finance had made this request, it should be given priority payment. In another matter, a state owned bank had sought to enforce a contractual obligation against an organization that was not even a party to the contract. The court could not find in favor of the state company, but was unwilling to overtly find against it, and instead suggested that the two parties reach a settlement. In yet another matter, the HEC upheld the government’s revocation of a license to convert currency, in violation of a contractual agreement. As one commercial litigator wryly commented, “it is a matter of concern if your opponent is a government institution.” A colleague said simply that, “it is rare for a court to decide against the state.”

Additionally, the procuracy will sometimes intervene in civil or commercial cases in which the state has no apparent interest, and which side the procuracy takes can be outcome determinative. The HEC registered its frustration with the intervention of the procuracy in such cases, but said that it is able nevertheless to decide these matters independently.

As noted in Factor 6, courts are unlikely to compel state agencies to act where there is a duty to do so.

As already noted in Factor 10, because of the support that they provide to the judiciary, the regional government officials (khokims) can also wield undue influence in the courts. Because the khokims usually provide housing for judges, the courts are particularly hesitant to find against them.

Independence is also impaired from within the judiciary. One former judge noted that it was not uncommon for a chair of a court to give instructions on how to decide a case. The judge, he said, would not want to go against the opinion of the chair because then he might not be recommended for re-appointment.

Corruption is also a serious problem in the Uzbek judiciary. This was a concern recognized by each judge and attorney that the team interviewed. Many judges have been removed and prosecuted for bribe taking (Factor 17). Some noted that despite the low salaries, many judges live in expensive houses. There are no laws requiring judges to disclose their assets, financial holdings, and other sources of income. Low judicial salaries do not help attract people of a high moral character to the judiciary, and the lack of clarity in the legislation facilitates the rendering of corrupt decisions. It is also important to note that several interviewees mentioned that the law schools are also corrupt: students may pay bribes for admission, as well as for grades. This means that the pool of potential judges has already been tainted by the culture of corruption, and it should not then be surprising that the judiciary is widely perceived to be corrupt.
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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>The Association of Judges has adopted a code of ethics that prohibits ex parte communications, conflicts of interest, and inappropriate political activity, but the code does not have the force of law, and there is no mechanism for enforcing it. Other laws do prohibit judges from political activities, and the procedural codes include means for challenging judges where there is an apparent conflict of interest. The Judicial Training Center’s curriculum does not include an element concerning ethics, although ethical concerns are addressed in some of the substantive courses.</td>
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</table>

Analysis/Background:

The Constitution and the procedural codes include several provisions that provide ethical guidelines for judges. The Constitution, for example, states that judges may not be members of political parties or engage in work outside their judicial duties. CONSTITUTION, supra at 12, Art. 112. The Law on Courts requires judges to “refrain from actions that can undermine the judicial prestige and dignity or cause doubt about his/her objectivity.” It also provides that judges cannot be members of political parties “or engage in paid activity except scientific, pedagogical, or creative.” LAW ON COURTS, supra at 6, Art. 66. The Civil Procedure Code states that a judge shall not consider a case and is subject to challenge if the judge:

- Has a personal interest, directly or indirectly, in the cases, or if there are “other circumstances that give rise to doubt in his/her impartiality;”
- “Participated in a previous consideration in the case as a witness, expert, specialist, translator, representative of the procurator, or secretary of the court hearing;” or
- Is a relative of one of the parties or other persons participating in the case. CIVIL PROCEDURE CODE OF THE REPUBLIC OF UZBEKISTAN, NO. 477-I, 30 AUGUST 1997, (hereinafter CIVIL PROCEDURE CODE), Art. 25.

The team could not ascertain how often these provisions are used to challenge judges, but the anecdotal information would suggest that this does not occur very often.

In addition, the Association of Judges has adopted a code of conduct, and is planning to adopt a revised code. The draft code was considered by the association membership at its September 2002 meeting, and is expected to be implemented soon. The new code provides that judges:

- May not accept a case “if there are grounds for doubting a judge’s impartiality.” RULES OF JUDICIAL ETHICS OF JUDGES OF THE REPUBLIC OF UZBEKISTAN, ASSOCIATION OF JUDGES OF UZBEKISTAN, JANUARY 2002, Rule 11;
- Must “improve regularly their professional mastership and skills.” Id., Rule 12;
- Must not “lecture on behavior and conduct to the participants of a trial.” Id., Rule 15;
- Must “avoid discussions of the cases under their consideration with the participants of a trial under off bench situations.” Id., Rule 17; and
- Must “not violate human rights and values, detain from expressing personal opinions relating to the issues of religion, race, gender, and social origin while performing their duties.” Id., Rule 18.
The provisions of the code of conduct of the association do not have the force of law, and there is no mechanism for enforcing them.

The model curriculum provided by the Judicial Training Center did not include an element dedicated to ethics, although ethical concerns are covered in some of the substantive courses. Given the problems with corruption described in Factor 20, it would be useful for the Judicial Training Center to place a greater emphasis on corruption. The center should also include ethics in its training programs for lawyers since advocates are perceived as the conduits for illegal payments to judges, and they are also the ones who should be challenging judges for apparent conflicts of interest and other ethical lapses.

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>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>There is no one clear process for registering complaints regarding judicial conduct, and neither the judges, the MOJ, nor the bar have taken any steps to clarify that process or inform the public concerning what recourses are available and how to use them. Nevertheless, citizens and advocates may pursue a variety of avenues, and the Office of the Ombudsman reports that it is receiving high numbers of complaints regarding the judiciary and obtaining some results for the citizens.</td>
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Analysis/Background:

The process for registering complaints concerning the conduct of judges is unclear, and various respondents gave a variety of answers to this question, ranging from complaining to the court president, to the Regional Qualification Collegium, to the Supreme Qualification Commission, to the ombudsman, to the procurator, and to the President. The fact that no one response emerged is indicative: there is no clear process for registering complaints about judicial misconduct. It should be noted, on the other hand, that the criminal and civil procedure codes do include methods for “challenging” a judge to have him or her removed from the case where there is a clear conflict of interest (Factor 21).

It is noteworthy that the ombudsman is beginning to handle a large number of citizen complaints regarding the courts. The 2001 Report by the Ombudsman found that 54 percent of the total number of 4,472 applications submitted by citizens “are connected with the functioning of the court and law enforcement bodies, in which have been reported unjustified prolongation of the investigation, procrastination, unlawful actions of law enforcement officials, contradictory court verdicts or the failure to execute them, illegal methods of investigating process, violations of the right to advocacy for persons under investigation.” REPORT OF THE AUTHORIZED PERSON OF THE OLIY MAJLIS FOR HUMAN RIGHTS (OMBUDSMAN) FOR 2001 (2002) AT 5. The regional representatives of the ombudsman likewise reported that 33 percent of the 1,047 complaints they received in 2001 related to the sphere of justice. Id., p. 6.

The ombudsman has only limited powers to respond to complaints generally, but the courts are starting to listen to complaints regarding abuses of procedure. If the court fails to respond to an inquiry from the ombudsman, the ombudsman may complain to the procuracy, which may then file a protest on behalf of the ombudsman and the complaining citizen. While this does give the citizen some recourse, it is unfortunate that again the procuracy is seen as the enforcement body
and that the courts are doing little to improve their own reputation and accountability. Neither the MOJ nor the courts nor the bar have prepared any guidelines for the advocates or the public, and complaints are not encouraged. One judge drove home this last point when he commented, apparently referring to the slander laws, that citizens could be prosecuted criminally for making false complaints about judges.

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: Negative</th>
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<tbody>
<tr>
<td>Although the law provides that court hearings, with certain exceptions, should be open to the public, there are numerous impediments to public participation, including guards at the entrances of the buildings and small courtrooms. Observation of trials usually requires special permission from the court chair. Press coverage is at a very low level, and generally it includes little analysis of important cases or of changes within the judiciary.</td>
<td></td>
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</table>

Analysis/Background:

The Constitution provides that “Legal proceedings in all courts shall be open to the public. Hearings in camera shall be allowed only in cases prescribed by law.” CONSTITUTION, supra at 12, Art. 113. The Law on Courts likewise states that “Court hearings of the cases in all courts shall be open. Hearings of cases in camera shall be allowed only in the cases prescribed by law.” LAW ON COURTS, supra at 6, Art. 7.

On this issue, the U.S. Department of State Country Report on Human Rights Practices noted that, “International observers generally are allowed to attend trials, although at times it can be difficult to persuade individual judges to allow access.” U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UZBEKISTAN (2001). The JRI Team found that judges are likely to refuse to allow observers to attend trials, especially sensitive political cases, absent special permission being granted by the chair of the court.

There are also problems in this area that go beyond overtly political cases. First, there are guards at the entrance of most courts who are unwilling to admit people unless they state their business at the court. It is simply not easy to go to court to observe a trial, any trial. Second, many of the courtrooms are too small to admit even the parties and the witnesses, let alone any observers. Third, in the economic courts, at least at the regional level, there is no open hearing: the parties simply submit the documents that they are relying on to the judge, who then issues an opinion.

In addition, the state can seek to have a trial closed on the grounds that it is a state secret. CRIMINAL PROCEDURE CODE, supra at 15, Art. 19; CIVIL PROCEDURE CODE, supra at 29, Art. 10; ECONOMIC PROCEDURE CODE OF THE REPUBLIC OF UZBEKISTAN, NO. 478-I, 1 JANUARY 1998, Art. 8. The team was not able to obtain any statistics concerning how often these provisions have been invoked.

Another concern in Uzbekistan is the overall lack of press freedom. Most newspapers are essentially controlled by the government, as are the television and radio stations. Freedom House’s Survey of Press Freedom rated Uzbekistan’s press as “not free.” FREEDOM HOUSE, SURVEY OF PRESS FREEDOM (2000). It is difficult to see how the media can contribute to the
transparency of judicial process, or undertake the societally important task of commenting on and criticizing judicial decisions, under the press conditions currently prevalent in Uzbekistan. Indeed, there is little press coverage of important cases, or of the judiciary overall. As noted above, when eleven members of the SC were recently replaced, the press simply noted that fact, and provided the names of the new members. There was no analysis of why the changes had occurred. Similarly, there was little or no media coverage of the finding of guilt of police brutality (a first in Uzbekistan) against four police officers in January 2002, thus minimizing the societal impact of that important decision.

**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>
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<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tbody>
<tr>
<td>Although the higher courts publish their opinions and guiding opinions in their respective magazines or newsletters, the opinions are usually brief and superficial and they provide little basis for academic or public scrutiny.</td>
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</table>

**Analysis/Background:**

The CC, the SC, and the HEC all publish their decisions in their own magazines or newsletters. These publications also include guiding opinions from the courts, as well as descriptions of court practice. Lower court opinions are not generally published. The opinions, moreover, are very brief. Both at the higher and lower court levels, they are most likely to involve a brief description of the facts of the case, a citation to the applicable law, and a judgment. They do not typically provide any explanation as to why the court reached the decision it did.

There is little or no academic scrutiny of the decisions of the higher courts, although a magazine for defense attorneys called *The Advocate* reportedly does provide some useful articles on practice and on problems that lawyers are encountering.

The private legislative database does not include higher court decisions, although the HEC has recently made 4,000 decisions available that will be put into an electronic format.

Court files can be reviewed, but only by lawyers and litigants, and cannot be removed for copying. Those who ask for the files are only allowed to take notes regarding them.
Factor 25: Maintenance of Trial Records

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
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<tr>
<td>Most courts do not have recording or transcribing equipment. Rather, the court secretary maintains a written summary of the proceedings. Although lawyers are supposed to be able to correct that record, that right is not always respected.</td>
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</table>

**Analysis/Background:**

Generally, the court secretary maintains a summary record of the proceedings that the witnesses and lawyers are supposed to attest to. This is typically a handwritten summary of what has been said. Advocates have a right to review and suggest changes to the record, but it was reported that courts do not generally respect that right. A verbatim transcript would compel judges to act more professionally, improve the transparency of the process, as well as ultimately improve appellate review of cases. Such a verbatim transcript does not currently exist in most courts, although ABA/CEELI, with British Government funding, is implementing a court recording project in the Ferghana Region, where all 29 of the criminal courts have been provided with recording equipment.

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.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
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<tbody>
<tr>
<td>Most judges are assigned a secretary/clerk to assist them, and this level of assistance seems adequate to the current caseload.</td>
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</table>

**Analysis/Background:**

Generally, each judge has a secretary/clerk who is supposed to keep records of the proceedings, keep track of the cases, and prepare files and subpoenas, etc. They do not engage in legal research. Each court has a human resources department responsible for hiring court staff. As in many former Soviet countries, the court chairs are responsible for much of the management of the courts overall. While some judges indicated that more support staff would be needed as their caseload grows, most were making do with the human resources allocated to them.
Factor 27: Judicial Positions

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

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials do track caseloads and judicial personnel, and the government has created new judicial positions as needed. Caseload does not seem to be as large a problem in Uzbekistan as in some other countries in transition, but there are indications that it is growing in the civil and commercial areas, and more judges may need to be assigned to work on those types of cases.</td>
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Analysis/Background:

The structure and number of courts are approved by the President, based on the proposals of the chairs of the Supreme Court and the Higher Economic Court, as well as by the MOJ. Staffing is approved by the chairs of the two higher courts and the MOJ. LAW ON COURTS, supra at 6, Art. 78. These courts reportedly do track caseloads.

In 1994, there were about 720 judges; there are now about 1,000. The greatest shift in the allocation of judicial power occurred in 2000 when the city (district) and regional courts were split into criminal and civil sections. 140 additional judges were hired to facilitate that process in 2001. The following provides the breakdown on the current number of judges:

- Supreme Court Judges: 34
- Higher Economic Court Judges: 19
- Supreme Court Military Judges: 12
- Regional Criminal Court Judges: 170
- Regional Civil Court Judges: 110
- Regional Economic Court Judges: 124
- Regional military Court Judges: 30
- City (District) Court Criminal Judges: 306
- City (District) Court Civil Judges: 181

Uzbekistan has not seen the explosive growth in the number of cases that many countries in transition have experienced. The SC reported that criminal cases declined by 2 – 3 percent from 2000 to 2001. A district court judge in Tashkent reported that the number of criminal cases had remained fairly steady over the years, with about 80 – 100 filed in his court each month. The numbers of criminal cases, he reported, are decreasing because of the liberalization of the penal code and a new process of “reconciliation” in which a criminal case will be dropped if the two parties involved agree to a financial settlement. Judges are supposed to determine criminal matters within two months, and the judges interviewed felt that they could meet that deadline. The courts, however, are seeing an increase in the numbers of what they call “administrative” cases: misdemeanors for which deprivation of liberty is not an available punishment. This again is a result of the “liberalization” program that Uzbekistan has recently undertaken.

The number of civil cases, however, has increased. The SC estimated that the civil docket has increased by fifteen percent from 2000 to 2001, and another source estimated that while the courts annually heard 50,000 to 60,000 civil cases three years ago, they are now hearing about 90,000 such cases. The new civil cases apparently relate, to a large degree, to libel and slander matters, as well as to other torts. Recent changes in the civil procedure code have increased the
amount of damages that may be won in civil suits, also contributing to the increased caseload in that area.

The civil district court in Samarkand confirmed this finding. The combined civil and criminal courts heard 2,621 cases in 2000. When the courts were divided into civil and criminal sections in 2001, it heard 2,955 civil cases alone. In the first three months of 2002, it heard 1,023 cases, which means that it might hear as many as 4,000 cases this year. The number of judges in the civil court has not increased during this time. The court must hear cases within ten days and decide them within one month. The courts are keeping up with those deadlines, but the judges are clearly worried about the increasing number of filings.

The HEC reported that it has seen a threefold increase in the number of cases the Economic Court handle. In 1995, that system heard about 7,000 cases. By 1996, that number had increased to about 11,400, and by 2001 it had gone to 35,000. There are now 143 judges in the Economic Courts, and although the number of slots have remained constant over the years, the numbers of those hired have increased by about 50 percent. There are now nine vacancies. The HEC estimated that each judge in Tashkent hears about 45 cases per month, and in the regions each judge hears about 20 – 25 cases per month. Although some cases, according to law, must be resolved in ten days, most can be resolved in one month, and the judges are meeting this deadline, although it is becoming more difficult to do so. The regional economic court in Samarkand likewise reported increases, noting that it heard about 3,000 cases in 2001 and about 2,500 in 2000. The Economic Courts are seeing more and more contract disputes, bankruptcies, and proceedings against local executives, as well as tax and customs authorities.

Most informants felt that the number of judges was adequate to handle the current caseload. Unlike many countries in transition, caseload was not frequently a subject of complaint among the judges interviewed. While this may be adequate manpower, a further shift of judicial resources from the criminal to the civil and economic courts, where the caseloads are growing more dramatically, should be considered. The creation of small claims courts or traffic courts should also be considered in order to facilitate the processing of minor disputes or misdemeanors. It is also noteworthy that there is no use of alternative dispute methods (other than the "reconciliation" in the criminal courts) in the country, which should be reconsidered if the caseloads of the economic courts continue to grow.

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.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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</thead>
<tbody>
<tr>
<td>The case filing and tracking system in Uzbekistan is primitive, and it should be upgraded.</td>
<td></td>
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</tbody>
</table>

Analysis/Background:

The judicial system does not maintain a modern, computerized tracking and filing system for court cases. Rather, cases are assigned a number by hand, and are then assigned to a judge and his assistant. Unlike in some other developing countries, files are rarely lost or stolen. While simple, case filing did not emerge as a significant concern of court personnel. That will likely change if the caseload increases significantly.
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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although the higher courts have access to computers and other office equipment, the courts in the regions are underequipped.</td>
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</tbody>
</table>

Analysis/Background:

As in all countries of the former Soviet Union, the courts in Uzbekistan do not have sufficient numbers of computers, copiers and other office equipment.

The higher courts are better off than the lower courts. The situation gets worse the further down in the hierarchy one goes, and the further away from the capital one travels. A criminal district court in Tashkent had two computers for its four judges and twenty support staff. The criminal district court in Samarkand had two computers for its 27 judges. The regional court in Samarkand, with seventeen judges, likewise has two computers, one of which is used by the Qualification Collegium, the other of which is used for statistics. The civil court in Samarkand, with four judges, reported that it had no computers and no copying machine. The fifteen judges and staff of a regional economic court in Samarkand had seven computers among them. On the other hand, statistics provided to ABA/CEELI indicate that there is at best one computer per each criminal judge throughout the country. In any event, it is clear that the courts are far from mechanized, and more resources need to be allocated to them in this regard.

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.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<tbody>
<tr>
<td>Judges reported that the Supreme Court and the Higher Economic Court do a good job of ensuring that each court has access to the body of laws, but they would like to get more jurisprudence and commentaries on laws. Few have access to the commercially available databases. Although there is a system for organizing the law, lawyers reported that it is difficult to keep up with all the regulations that are issued, and some also complained that judges give higher precedence to regulations and decrees than to the law itself.</td>
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</tbody>
</table>
Analysis/Background:

A roundtable of eleven criminal, civil and economic judges in Samarkand reported that the provision of laws, undertaken by the SC and the HEC, is “good.” New laws are also published in the newspapers. They do not usually receive copies of the higher courts’ opinions (although these are published in the magazines of those institutions), but they do receive guiding opinions or “instructions,” including on the process of liberalizing the criminal penalties, from the plenum of the SC, as well as from the CC. Judges noted that it would be useful if they received more commentaries and manuals on legislation.

Most judges do not have access to the commercially available legislative databases (PRAVO, NORMA). The databases do not usually include court opinions, although the HEC is providing copies of its opinions to one in exchange for free updates.

Some lawyers opined that it is difficult to keep track of the changes in the law, especially in complex areas such as tax and customs, because of the numbers of regulations and guidelines. These are published, and the judges can have access to them, but they are not well organized. They also complained that judges give higher precedence to regulations and decrees than to the law itself.