

ACN

**Anti-Corruption Network
for Eastern Europe and Central Asia**

Anti-Corruption Division
Directorate for Financial and Enterprise Affairs
Organisation for Economic Co-operation and Development (OECD)
2, rue André-Pascal, 75775 Paris Cedex 16, France
Phone: +33(0)1 45249106, Fax: +33(0)1 44306307,
E-mail: Anti-Corruption.Network@oecd.org,
Website: www.oecd.org/corruption/acn

**Istanbul Anti-Corruption Action Plan for
Armenia, Azerbaijan, Georgia, Kazakhstan,
the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine**

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews
of Legal and Institutional Frameworks for the Fight against Corruption**

TAJIKISTAN

UPDATE ON ACTIONS TO IMPLEMENT RECOMMENDATIONS

Presented at the 6th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan
on 13 December 2006 at the OECD Headquarters in Paris

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

Recommendation 1

Elaborate and adopt a comprehensive Anti-Corruption Programme (or Strategy), which will build on and further develop the Presidential Decree and the Law on the Fight against Corruption aiming to strengthen the implementation of anti-corruption measures. The Anti-Corruption Programme should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Programme should also envisage effective monitoring and reporting mechanisms.

According to the answers to the Questionnaire, the beginning of the elaboration of the national anti-corruption strategy is scheduled for 2006. However, during the visit, the authorities did not provide to the team of examiners a national anti-corruption programme or strategy.

At the time of the visit, the closest equivalent to such programme was the President Decree No. 1430 “On Adoption of Action Plan for the Implementation of Instructions and Recommendations Expressed by the President of the Republic of Tajikistan during the Meeting with Judiciary and Law Enforcement Officials on 24 December 2004”, which was adopted on 4 January 2005. The action plan, which has been available only in the Tajik language, is principally focused on anti-corruption measures according to description presented by Tajikistan’s authorities. This action plan contains a list of 35 tasks, deadlines, as well as agencies and officials in charge of their implementation.

In its answers to the Questionnaire, Tajikistan reported that such issues as public authorities in charge of the development and implementation of the strategy, criteria for assessing the results and mechanism of accountability and public participation in the preparation of this document are under discussion in the Upper Chamber of the Parliament of Tajikistan. During the visit, the team of examiners was provided with the Ordinance No. 95 “On Tasks of the Upper Chamber of the Parliament in implementing the Law on the Fight against Corruption” issued by the President of the Upper Chamber of the Parliament on 15 July 2005. It requires development of measures for application of the law by the deputies, local authorities and non-governmental organisations.¹

Despite these efforts, during the visit, the team of examiners did not receive confirmation that there is a procedure for the development of a national strategy.

During the visit, the experts could note that opinions of officials from different public authorities on the proper institution to be in charge of the elaboration of national anti-corruption strategy varied. While some stressed that the Prosecutor General’s Office was the first and foremost charged with this task, others proposed a more multilateral and deliberative process where a variety of state organs would participate, for instance, in the form of a special committee. In any case, since the drafting of the strategy still had not commenced, it is hard to assess what the actual process would be like.

Although certain attempts to involve the civil society in the discussion and development of the anti-corruption policy have been made (including meetings with NGOs, conferences on the fight against corruption, news conferences), so far there has been very limited interaction with the broader public in the

¹ The Team of examiners was provided with a copy of a draft Ordinance proposing 23 measures to implement the Law “On the Fight against Corruption” split into the following areas: 1) development and expertise of legal acts; 2) improvement of organisational and institutional basis; 3) issues related to the rule of law (prevention); 4) awareness and dissemination.

strategy development. Only few civil society representatives were informed of the Action Plan adopted by the Decree of the President No. 1430 mentioned before. Overall, the representatives of nongovernmental organisations appeared unaware that the development of the governmental anti-corruption strategy was to start in the first half of 2006.

Some progress has been made to develop the analysis of the patterns of corruption in Tajikistan in a participatory way. The Strategic Research Centre under the President of Tajikistan in co-operation with UNDP Tajikistan in October 2005 has launched a qualitative sociological survey on causes of corruption and attitudes to corruption in Tajikistan.² The survey is based on in-depth interviews with 18 focus groups. In each group there are 180 persons, including public officials, businessman and representatives of general public. The goal of the survey is to determine popular perception of corruption, including: the definition of corruption; causes of corruption; conditions leading to or restraining corruption; methods to combat corruption; and legal and moral assessment of corruption by the society. The team of examiners was referred to the following preliminary conclusions made from the survey:

- The fight against corruption is a problem of national importance, therefore many partners and participants should be involved in the efforts to curb corruption, including the Parliament, the Government, nongovernmental organisations, the private sector;
- The main areas of the fight against corruption include general economic development, transparency and accountability of the state budget, improvement of the public service system, revision of the legal framework, conducting a wide awareness raising campaign on the corroding effects of corruption and legal enlightenment of the population;
- Successful fight against corruption requires such factors as the determination of the government, interest of the civil society, and sufficient financial and human resources.

The conclusions drawn by the Strategic Research Centre provide a good basis for the development of a comprehensive national anti-corruption strategy. Nevertheless, it is necessary to bear in mind that a sociological survey aimed at identifying public perceptions of corruption is only a part of the analysis of the patterns of corruption. An extensive and comprehensive analysis of corruption in Tajikistan should be conducted during the elaboration of the anti-corruption strategy. It should aim to identify the most corruption-sensitive areas, problems caused by corruption in various sectors of government and public administration, the main areas of anti-corruption work, etc.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

In the second half of 2006, the Centre for Strategic Studies at the Tajikistan President jointly with the UN Development Programme in Tajikistan have completed a quantitative sociological survey aimed at identifying the causes of corruption and the attitude toward corruption in Tajikistan. The survey covered 2154 respondents in 24 cities and district, including officials, entrepreneurs, workers, and representatives of the public. The purpose of the survey was to find out public opinion on the level, causes, and conditions for corruption, as well as methods to fight it.

The presentation of results of the survey is scheduled for the end of December 2006.

² First results were released to the public in December 2005.

Recommendation 2

Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Programme (Strategy). Stakeholders of the body should include the representatives of the Presidency and the Government, the Parliament and Civil Society as equal partners.

At the time of the visit, there was no multi-stakeholder Anti-Corruption Council in Tajikistan facilitating the development of the strategy.

The authorities of Tajikistan have indicated that the functions of the national anti-corruption council are fulfilled by the Coordinating Council of Law Enforcement Agencies, a body headed by the Prosecutor General of the Republic of Tajikistan. The mandate of the Coordinating Council includes fight against corruption. Meanwhile, it also covers other crimes, for instance, drug trafficking. In accordance with the Paragraph 10 of the Constitutional Law “On Prosecution Bodies of the Republic of Tajikistan”, decisions of the Coordinating Council are binding. The team of experts was told that journalists and foreign missions and representatives of international organisations can participate to the meetings. The team of experts would have welcomed more detailed information in order to assert to what extent the Coordinating Council has paid attention to the issues of anti-corruption policy and decisions taken in this area.

Several officials shared an opinion that a national multi-stakeholder anticorruption council, which would also include non-governmental actors, may have an ambiguous legal status. Team of examiners was told that establishing such council could be difficult, for instance, finding people with high standards, and it can become ineffective. Examiners heard that taken into consideration national specifics, the role and experience of the Prosecutor General’s Office, it could be better for the Coordinating Council of Law-Enforcement Agencies to perform the functions of the national anticorruption council.

Meanwhile, many others emphasised that it is necessary to continue the discussion about setting up a national multi-stakeholder anticorruption council, which should include people with high moral and ethical reputation representing authorities, civil society and foreign and international representatives in Tajikistan. This council should facilitate the development and implementation of the anti-corruption strategy and anti-corruption policy in general.

Also, concerns were expressed over the centralisation of anti-corruption efforts in Tajikistan and the dominating position of law enforcement bodies. A multi-stakeholder council could provide opportunity to involve other parties and increase trust in the law enforcement authorities.

There are different opinions concerning the accountability of the council. Authorities tend to believe that such council should be accountable to the President, while representatives of the civil society are more favourable to accountability to the Parliament. Still others consider that making the council accountable to the Government would be more appropriate.

While in the answers to the Questionnaire, Tajik authorities report that the Upper Chamber of the Parliament has deliberated on a possibility to establish a multi-stakeholder anti-corruption council, the experts did not receive a direct evidence of progress to this end.

Tajikistan is non-compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

In the second half of 2006, the Prosecutor General's Office as an anti-corruption coordinating body studied the status and performance efficiency of bodies of internal affairs, security, tax police, customs service, and other institutions authorised to fight against corruption. The results of the study were discussed on 20 October 2006 at the session of the coordinating Council of the republican law enforcement bodies. The Coordinating Council passed a decision to work out specific measures for improving performance of law enforcement agencies in the fight against corruption.

Recommendation 3

Consider establishing a Special Anti-corruption Department, which would be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that such a Department would include specialised prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology, which would enable comparisons among institutions.

Tajikistan established an Anti-Corruption Department within the structure of the Prosecutor General's Office in 2004. The Department was established by virtue of President's Decree No. 1340 "On the Structure of Prosecutor's General Office", which was adopted on 2 June 2004.

Authorities reported that functions of the Anti-Corruption Department include: prevention, detection and persecution of corruptive offences and crimes; ensuring rule of law in the anti-corruption process; working towards elimination of conditions leading to corruption; legal drafting; development and implementation of anti-corruption programmes and measures stipulated by international treaties and international anti-corruption legal acts; and participating in awareness raising of the community, civil servants and officials in legal and anti-corruption matters. In addition, according to Article 5 of the "Law on the Fight against Corruption", prosecutorial services ensure coordination of bodies in charge of fight against corruption and statistical monitoring of the fight against corruption.

Tajik authorities reported that detection of corruption offences and crimes is the main function of the Anti-Corruption Department. When necessary, the Department conducts preliminary investigation of corruption cases, exercises prosecutor's oversight on of the lawfulness of preliminary investigation, and participates in court examination of criminal cases of corruption as public prosecutors.

The Department is an autonomous unit of the Prosecutor's General Office, which is directly subordinate to the Prosecutor General. The Chief of the Department, his deputy and all other officials working at the Department can be appointed and dismissed only by the Prosecutor General of the Republic of Tajikistan.

The Department staff consists of 21 persons, including 8 public prosecutors specialised in anti-corruption and 1 inspector. In addition to this Department, other prosecution departments at regional level are engaged in the fight against corruption within the limits of their competence. Authorities report that at

this level there are also few public prosecutors specialized in anti-corruption. As of 2006, it is planned to increase 4-5 times the salaries of the staff of Anti-Corruption Department as part of a general salary increase in the Prosecutor General Office.

Regarding the accountability, Tajikistan reported that non-interference in the Department's work is guaranteed by its subordination only to the Prosecutor General, who in his turn is subordinated only to the President of the Republic of Tajikistan and the Upper Chamber of the Parliament.

The information presented by the Anti-Corruption Department, which started its activities in the second half of 2004, attests to a certain progress achieved in the increase of crime detection in the area of bribery and the number of completed investigations and persons sent to trial.

According to data submitted by the Prosecutor General of Tajikistan, since August 2004 till March 2005, the Department detected 430 corruption related crimes, based on what 247 criminal cases were initiated. This includes 70 cases on bribery, 35 cases of office abuse, 78 cases of embezzlement, and 64 cases on other crimes in public office. Out of these, a total of 17 criminal cases were initiated against public officials of the organs of state administration, 26 cases in the institutions of internal affairs, 13 cases against officials of tax and customs administration, 36 cases against officials in armed structures, 7 cases against judges and other officials of judicial organs, 32 cases in the sphere of education, 19 in the sphere of health care, 8 in social welfare, 4 in the sphere of banks and communication. During the on-site monitoring visit, Tajik authorities also reported 11 cases against directors and senior managers of commercial organisations.

Reportedly the majority of these criminal cases have resulted in court convictions. For example, from 2004 to 2005, criminal responsibility for taking bribes in the amount of 2 to 3 000 USD and issuing unlawful decisions has been imposed on 8 judges, who were afterwards sentenced to imprisonment for 5 to 7 years.

Table 1: Status of Investigations in Criminal Cases on Bribery

Offence	2003		2004		2005 (nine months)	
	Investigations completed	Persons sent to court	Investigations completed	Persons sent to court	Investigations completed	Persons sent to court
Bribery	19	28	41	49	45	47

Source: The Anti-Corruption Department of the Prosecutor General's Office of the Republic of Tajikistan

As claimed by the Prosecutor General, the activities of the Department have allowed for the compensation for the damage worth more than 2.6 million somoni³ and 700 000 USD.

The Department does not have a separate analytical unit. The function of conducting analytical work is assigned to one of its employees (specialised anti-corruption prosecutor or inspector), when need arises. Analytical work consists, for instance, of preparation of statistics, quarterly reports of law enforcement authorities for the president, half year reports and alike.

Regarding statistical information, there is not a special statistical reporting mechanism on corruption related offences that would involve all relevant institutions. It complicates the analysis of data on results in

³ Somoni (TJS) is the currency unit of the Republic of Tajikistan. 1 TJS = 0.3255 USD.

detection and investigation of this category of crimes in 2003-2005. Presently the Anti-Corruption Department summarises only statistical data on the number of criminal cases conventionally qualified as the corruption category, the investigation of which has been completed by the law-enforcement bodies and referred to court.

The Department is presently engaged in the development of a new methodology of statistics, with the aim to improve the monitoring of corruption cases in Tajikistan. Work on the elaboration of an official list of corruptive offences and statistical reporting forms on corruption cases has been launched jointly with other law-enforcement bodies, which would enable to explicitly reflect all parameters of the law-enforcement practice in the anti-corruption sphere. It is planned that matrices for statistical data on detected corruption offences will include: such offences broken down by spheres of activities; persons who have committed corruption offences; status of investigation in corruption cases; status of such criminal cases under court examination; sanctions applied in corruption cases; and persons convicted. The actual drafts of the data matrices were presented to the expert team during the monitoring visit.

Regarding inter-agency co-ordination in complex investigations, authorities stressed that all measures for catching bribe-takers red-handed are being taken by joint efforts of the prosecution, police, and security bodies, as well as the tax police.

For achieving the objectives set for the Anti-Corruption Department and improving results in the area of detection and criminal investigation of corruption cases, the number of specialised prosecutors appears insufficient; their activity is further restricted by inadequate provision of material, technical, and other resources. Such situation can impact on effective performance of this institution. The prosecutor's office does not dispose of sufficient analytic opportunities and capacities for exploring the situation with corruption in the country. The efforts of law-enforcement bodies of Tajikistan to fight bribery should be increased.

Tajikistan is largely compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

During the period of 2005 and 9 months of 2006, the Department has detected over 500 corruption-related offences, which resulted in the initiation of 263 criminal cases, including 73 cases of bribery and extortion, 21 cases of office abuse, 82 cases of misappropriation of entrusted property, and 67 cases of other official crimes. Through the efforts of the department, damage in the amount of 2,878,025 somoni and USD 1,724,260 was compensated.

The forms of statistic reporting of law enforcement agencies in the anti-corruption sphere and the Instruction on procedures for keeping the statistic records are approved by Resolution of the Government of the Republic of Tajikistan of 7 September 2006, No. 414.

Recommendation 4

Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and trans-border trafficking, including drug trafficking on one hand and agencies responsible for the fight against corruption on the other hand.

Pursuant to Article 5 of the Law "On Fight against Corruption", bodies responsible for the fight against corruption include prosecution, internal affairs, security services, state border services, military administration, services in charge of drug control, as well as tax and customs services. Specialised units for the fight against corruption have been created at the Prosecutor's General Office and the Tax Police

attached to the Ministry of State Income and Taxes. There is no specialised anti-corruption unit in the police.

As to the fighting trans-border and drug trafficking, a specialized department within the Ministry of Interior and Tajikistan's Drug Control Agency are in charge.

The Criminal Procedure Code provides for the coordination among law enforcement bodies during the investigation process, but there is no detailed instruction about this process as required by the recommendation.

In its answers to the Questionnaire, Tajikistan noted that in practice almost all actions taken to detain bribe-takers are carried out jointly by law-enforcement bodies and that these bodies conduct regular exchange of information, resources, and technical equipment.

Authorities reported that the Coordinating Council of Law-Enforcement Agencies is the key mechanism for cooperation and exchange of information between different agencies responsible for the fight against organised crime, trans-border trafficking and corruption.

Team of examiners were not provided with guidelines, interagency instructions or agreements, envisaging binding cooperation between bodies in charge of the fight against organised crime and trans-border trafficking, including drug trafficking, on one hand, and agencies responsible for the fight against corruption, on the other hand.

In order to step up inter-agency cooperation between audit and financial control and law-enforcement bodies, including in detection and timely consideration of facts of corruption, the "Rules for Transmitting Audit and Inspection Materials to Law-Enforcement Agencies and their Use for Prosecution" have been approved by the President Decree No. 1570 on 21 June 2005. These rules are obligatory for the State Financial Control Committee, Ministry of Finance, Ministry of State Revenues and Taxes, National Bank of Tajikistan, Social Security Found, inspections and other state oversight and control bodies. The rules require audit and control bodies to submit suspicious information obtained during inspections and control to prosecutorial authorities or to the Ministry of Revenues and Tax, in case materials concern application of tax and customs legislation. Information should be submitted no later than in 10 days and considered no later than in 5 days. Disciplinary or other sanctions may be imposed against heads and responsible officials of public agencies in case of violence of these rules or delays in respecting them.

Representatives of law-enforcement bodies believe that there is no need at this stage to issue special guidelines on extending cooperation between bodies responsible for the fight against corruption and bodies responsible for the fight against trans-border trafficking, including drug trafficking. Nevertheless, given the number of involved agencies and role of inter-agency cooperation in successful fight against corruption, team of experts invite Tajik authorities to consider the elaboration and adoption of such guidelines.

Tajikistan is non-compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

There are plans to work out and approve guidelines for cooperation between law enforcement bodies.

Recommendation 5

Organize corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records.

According to Tajik authorities several actions were taken towards the implementation of this recommendation such as presented below.

From November 2004 - January 2005, the NGO Legal Education Centre jointly with the Prosecutor's General Office and with support from the UNDP Tajikistan, conducted several three-day joint training seminars on corruption for judges, prosecutors, police, tax and customs officers. Training module was developed by the NGO Legal Education Centre. The module contains such topics as definition of corruption, international standards and participation of Tajikistan to international and regional anti-corruption initiatives, causes and consequences of corruption, constitutional and legal basis for the fight against corruption in Tajikistan, criminalisation of corruption, public service and corruption, including conflict of interest, mechanisms for counteracting corruption and international experience in the fight against corruption. According to the information of Legal Education Centre, the seminars were attended by 130 participants, mainly senior level officials, in 3 last months of 2004. Specialists with training experience, in particular in training using interactive methods, participated as trainers. The resulting publication "Training Module on Corruption Issues for Judges, Prosecutors, Officials of Ministry of Interior and Ministry of Revenues and Taxes" issued in 2004 (130 pages) was made available to the team of examiners. As presented by Tajikistan, the evaluation of results of the seminars by participants shows that most of the training participants gave a positive evaluation and pointed to the efficiency of this training. The leadership of law-enforcement bodies also made a favourable assessment of the results and efficiency of the conducted trainings.

In addition, individual law-enforcement bodies organised their own training seminars. For instance, in March 2005 the Advanced Training Centre for Prosecutors of the Republic of Tajikistan held seven-day seminars on the fight against corruption for more than 30 prosecution officers. According to the information provided by the Tax Police, there is also an Advanced Training Centre within the system of the tax service, which reportedly holds regular training sessions on the fight against corruption. Team of experts, however, did not get closer acquainted with the work of this training centre.

There are no specific allocations for fight against corruption from the state budget. In order to provide necessary resources for implementing the Law "On the Fight against Corruption", UNDP Tajikistan has provided computer hardware and furniture for the needs of the Anti-Corruption Department of the Prosecutor's General Office over an amount of 10 000 USD.

Authorities claimed to face no difficulties with the search and seizure of financial documents. However, authorities did report on difficulties to access information on private bank accounts. In particular, it is impossible to obtain information from banks during initial inspections before criminal proceedings are initiated. However, since the initiation of criminal proceedings is contingent on sufficient preliminary evidence, which in some case could only be available from banks, the restriction to obtain information during initial investigation may become a decisive barrier to the initiation of criminal proceedings.

Overall, examiners welcome the progress made by Tajikistan with first series of joint corruption-specific training seminars for law enforcement officials in Tajikistan and separate trainings on corruption for prosecutors and tax officials. Further, more practical trainings for building capacity for jointly investigating and prosecuting corruption cases are necessary. Regarding resources for enforcing the anti-corruption legislation, more centralised and specific information on financial resources spent and required for the fight against corruption would be necessary. This would allow government to plan and donors to

provide targeted support. Access to bank information for investigation of corruption cases should be considered.

Tajikistan is largely compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Training seminars on detection of corruptive offences and specifics of investigating such cases for prosecutors and investigators of the republic's major region – Khatlon – is scheduled for 8 December 2006.

Similar measures are scheduled for 2007 in the Advanced Training Centre for prosecution officials of the Republic of Tajikistan.

Recommendation 6

Conduct awareness raising campaigns and organise training for the public, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.

Further to the joint training seminars for law-enforcement officials described under the Recommendation 5, several activities targeted other groups of officials and the public.

In November 2004 special training was organised for journalists and university students “Journalistic Investigations of Corruption Cases”. In April 2005 a scientific conference “Tajikistan against Corruption” was held at the Centre for Strategic Studies of the President of the Republic of Tajikistan. It brought together participation from all branches of state with academia, practitioners, Tajik and foreign mass media. On 15-16 November 2005 in Dushanbe a Regional Conference “Corruption in Central Asia – Legislative Instruments to combat Corruption and Causes of Corruption” was organized by the Embassy of France, UNDP Tajikistan, OSCE Centre and Prosecutor’s General Office.

A series of four booklets targeting general public were published and disseminated by the Prosecutor’s General Office jointly with the UNDP Tajikistan (altogether 32 000 copies). Further, a guide targeting public officials entitled “What Is Corruption and How to Fight It?” was published and circulated (14 000 copies); the guide provides information on legal regulation for corruption in Tajikistan, including definition, provisions on conflict of interest, as well as responsibility and sanctions for corruption.

In September 2005 the Academy of the Ministry of Interior together with NGOs “Republican Bureau for Human Rights and Rule of Law” and “Society and Law”, with support from the Danish Human Rights Institute, prepared and published an overview of key international conventions and legislation of Tajikistan relating the work of police and human rights. The publication targets law-enforcement officials, teachers at law-enforcement educational institutions, trainers from NGOs.

In 2006 the Centre for Training of Prosecutors of Tajikistan, with support from the Danish Human Rights Institute, will publish a new methodological guide “Manual on Human Rights for Prosecutors”. It is planned to include a chapter on corruption.

Moreover, the President Decree No. 1677, 4 March 2005 instructed all ministries and agencies to hold press conferences with participation of all mass media on results of activities of each quarter. Although authorities claim that this practice ensures that the mass media and citizens do not experience any shortage

of information, examiners heard also some concerns. It appears that mass media has shortage of information from the public authorities and often encounters difficulties in this sphere.

While a number of measures are taken to raise awareness on corruption in Tajikistan among officials and the public, representatives from the non-governmental organisations and foreign missions indicated that the impact of the anti-corruption awareness campaign is limited and there is a need to continue disseminate information on corruption issues and involve private sector, as well as continue involving academia, NGOs and media more actively. Tajikistan is invited to consider possibilities to ensure that population has access to free legal assistance and that national and local authorities make better contacts with the population.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

On 20 October 2006, the Public Servants Advanced Training Institute at the President of the Republic of Tajikistan held a scientific workshop on the subject “Ethics of a Public Servant” with the participation of workers of the Executive Staff of the President, Government, Parliament, Prosecutor General’s Office, other state authorities, academia, NGOs and mass media. The workshop was practically fully devoted to problems of ethics and corruption prevention in public service.

On 19 October 2006, the Public Servants Advanced Training Institute at the President of the Republic of Tajikistan conducted corruption-specific training for heads of legal departments of the central state authorities. Similar training for heads of legal departments of the local authorities are scheduled for 24 December 2006.

On 10 November 2006, UNDP, the Prosecutor General’s Office, and the Centre for Strategic Studies at the President of the Republic of Tajikistan conducted training for the Media Group (journalists of central and local mass media) on the role of mass media in the fight against corruption, causes and impacts of corruption, national legislation and international standards for the fight against corruption.

A national conference on the subject “Tajikistan against Corruption” is scheduled for 24 December 2006.

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION AND THE RELATED MONEY-LAUNDERING OFFENCE

Recommendation 7

Harmonise and clarify relationships between violations of the Criminal Code and the Law on the Fight against Corruption.

The Criminal Code of the Republic of Tajikistan was adopted in 1998 (Law No. 574). The new Law No. 100 “On the Fight against Corruption” was adopted by the Parliament on 25 July 2005. Tajik authorities reported that the new law takes into account the violations provided in the Criminal Code.

Pursuant to its Article 1, the Law introduces a number of novelties in the legislation of Tajikistan defining “corruption” as an act aimed at obtaining material and non-material advantages, “trading in influence”, as well as promising, offering and giving the bribe, in favour of natural or legal persons. The new law also extends the definition of “official” including officials of foreign countries and representatives of international organisations. The Article 14 stipulates that corruption related crimes are the acts defined

by the Criminal Code of the Republic of Tajikistan and that the Criminal Code defines the responsibility for corruption related crimes.

Further, the law also sets out corruption related offences, which can be subject to disciplinary sanctions (Article 11) and envisages over 20 elements of corruption related administrative offences stipulating that persons who have committed these offences shall be punishable according to the Code of Administrative Offences (Article 12).

Hence, in order to apply the above mentioned novelties, it is necessary to reflect them in the Criminal Code and the Code of Administrative Offences.

Authorities reported that there is ongoing work on a new Criminal Code. Examiners were told that there is general need to change the Criminal Code as it was adopted in the aftermath of civil war and the situation has changed, for instance, some sanctions appear too severe. In addition, a new Criminal Procedure Code is being drafted (introducing appealation, simplifying procedure of investigation, etc), as well as Code of Administrative Offences and the Labour Code. At the time of the visit, the new legislation was still under preparation. Examiners were told that the discussion will start in 2006, after adoption of a new Code of Civil Procedure.

Overall, the Criminal Code and the law “On the Fight against Corruption” need to be further harmonised. In order to fully implement the new Law “On the Fight against Corruption”, it is necessary to introduce amendments and additions to the Criminal Code. In addition, for this purpose, it is also necessary to amend Criminal Procedure Code, Code of Administrative Offences and the Labour Code.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Draft laws on introducing amendments to the Criminal Code are at the stage of development.

Recommendation 8

Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.

At the time of the visit, Tajikistan has not made changes to the Criminal Code in order to implement this recommendation.

Tajikistan reported that this recommendation was partially addressed by adopting the new Law “On the Fight against Corruption” on 25 July 2005. As mentioned above, under Recommendation 7, this law establishes a definition of “corruption” that is aligned with international standards; it includes non-material advantages and giving, promising and offering bribe. While not criminalising it, the law also introduces the concept of “trading in influence” in Tajik legislation.

In its answer to the Questionnaire, Tajikistan reported that these novelties, which were introduced in the Law “On the Fight against Corruption”, are to be reflected in the Criminal Code in the near future. During the visit, team of examiners were confirmed that a new Criminal Code is being drafted, but could not obtain a timeline for its discussion and adoption.

In addition to the need to criminalise trading in influence, in the course of the introduction of amendments and additions to the Criminal Code, it is also necessary to discuss additions to Article 319 of

the Criminal Code (Bribe-taking). The Article 319 defines bribe-taking as the taking of a bribe by an official, personally or through a representative, in the form of money, securities, other property or property-related benefits for the action (omission) in favour of the briber or persons represented by him, if such actions (omissions) constitute his/her official duty or this official can promote such actions (omissions) due to his/her official position, as well as overall support or tolerance. These elements of offence do not entail criminal responsibility for such active deeds as acceptance of an offer and promise of accepting a bribe in any unlawful form. It is also necessary to specify and extend the notion of non-pecuniary benefits as the subject of bribery.

Article 320 of the Criminal Code (Bribe-giving) does not envisage such an aggravating circumstance as bribe-giving by a group of persons on preliminary agreement or on a large scale. The disposition of the offence also does not address the question, for which active deeds a bribe is given or offered to the bribe-taker. It is also necessary to discuss the issue of imposing responsibility for appropriating a bribe and intermediaries in the bribery.

Overall, it should be noted that the Law “On the Fight against Corruption” covers a wide spectrum of tasks for law-enforcement bodies that are in charge of the fight against corruption. At this stage, these bodies do not have sufficient legal means and instruments for the implementation of this task. Tajikistan should adopt the proposed changes to the Criminal Code and other foreseen changes of legislation, in order not to reduce the efficiency of the fight against corruption.

Tajikistan is non-compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Draft laws on introducing amendments to the Criminal Code are at the stage of development.

Recommendation 9

Harmonise the concept of “official” from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures of on board of companies.

For the purposes of identifying the subjects of offences committed against the interests of public authority and public service, a definition of “public official” is provided in the Criminal Code. The Law “On the Public Service” and the Law “On the Fight against Corruption” also provide definitions.

The Criminal Code of Tajikistan provides the following definition:

- “Persons continuously, temporarily, or on special authorisation executing the functions of a representative of power or those who carry out managerial, administrative functions in bodies of public authority, state institutions, local self-government bodies, and also in the Armed Forces of the Republic of Tajikistan, other troops, and military formations” (Criminal Code, Article 314, explanatory note);
- Pursuant to this Article and other parts of the Criminal Code, persons holding public positions in the Republic of Tajikistan shall include persons holding positions established by the Constitution and by other laws of the Republic of Tajikistan with the purpose of exercising public function;

- Civil servants and employees of local self-government bodies not referred to the category of officials that shall bear criminal responsibility under paragraphs of the present Chapter in cases specifically provided for by relevant paragraphs.

The Law “On the Public Service” uses the following terms and concepts:

- Body of public authority – a part of the government apparatus formed in accordance with the law, vested with competence in accordance with its functional purposes, and its derivative entity discharging the functions of public authority in its characteristic organisational-legal forms;
- Public position – a position in bodies of public authority with an established range of responsibilities on exercising the powers of bodies of public authority, implementing tasks and functions in the public service;
- Governmental public positions – positions established by the Constitution and laws of the Republic of Tajikistan for purposes of direct discharge of the functions of the public authorities;
- Civil service positions – positions established in the legally prescribed manner for ensuring the discharging of the authority of persons occupying governmental positions, as well as positions approved by the bodies of public authority for purposes of discharge and support of their authorities;
- Civil service – professional activity of persons holding civil service positions to ensure the discharge of the functions of bodies of public authority;
- Civil servant – a person occupying a paid public position and discharging official duties in keeping with the law to ensure the discharge of the functions of bodies of public authority;
- Employee – a person occupying a position included in the staffing table of bodies of public authority for purposes of technical support of their activity;
- Official – a person vested with the competence to discharge the functions of bodies of public authority or their structural units by the Constitution, this Law or other laws and regulations of the Republic of Tajikistan.

The new Law “On the Fight against Corruption” uses the following main concepts:

- Subjects of corruption-related offences – persons authorised to fulfil public functions; persons equivalent to persons authorised to fulfil public functions; persons illegally providing pecuniary and non-pecuniary benefits and services to persons authorised to fulfil public functions or persons equivalent to them;
- Persons authorised to fulfil public functions – persons holding governmental public positions or civil service positions in accordance with the Law of the Republic of Tajikistan on the Civil Service, including in the Armed Forces of the Republic of Tajikistan, as well as officials of public economic entities and other economic entities in which the share of the state is not less than one half;
- Persons equivalent to persons authorised to fulfil public functions – officials of bodies of local self-government, officials of enterprises, organisations and institutions, regardless of their jurisdiction and form of ownership, public organisations, political parties, and religious

organisations, persons registered in the legally prescribed manner as candidates for elected public positions and to members of elected bodies of public authority, officials of foreign countries and international organisations, maintaining relations with officials, bodies of public authority, individuals and legal entities of the Republic of Tajikistan.

Based on the above definitions and concepts, which help to identify the circle of persons who can be subjects of bribery in Tajikistan, the team of examiners note that the main purpose of the recommendation is not fulfilled. It also appears that these concepts are equivocal and, hence, their interpretation and practical application can be complicated. It is necessary to determine more clearly and explicitly the status and concept of a “public official” in the course of development of amendments and additional provisions in the Criminal Code. It is preferable to elaborate a separate article stipulating, which persons shall be qualified as public officials, including representatives of international organisations and public officials of foreign countries.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Draft laws on introducing amendments to the Criminal Code are at the stage of development.

Recommendation 10

Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

At the time of the visit, Tajikistan has not made changes to the Criminal Code in order to implement this recommendation.

The definition of an “official” in the new Law “On the Fight against Corruption” adopted on 25 July 2005 introduces the equivalence of officials of foreign countries and international organisations with public officials of the Republic of Tajikistan in relation to corruption related acts. Specifically, Article 1 provides that subjects of corruption-related acts include officials of foreign countries and representatives of international organisations. This Law also stipulates that officials of foreign countries and international organisations are subjects of bribery if they maintain “relations with officials, public organisations, individuals and legal entities of the Republic of Tajikistan.”

In these circumstances, identification of persons who can be qualified as subjects of corruption related acts and be involved in corruption related acts could be problematic in practice.

Furthermore, to ensure the enforcement of the Law “On the Fight against Corruption” it is needed to include a similar provision in the Criminal Code.

During the visit, the team of examiners did not get acquainted with draft amendments and additions to the Criminal Code on this matter.

Tajikistan is non-compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Draft laws on introducing amendments to the Criminal Code are at the stage of development.

Recommendation 11

Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

At the time of the visit, Tajikistan has not made changes to the Criminal Procedure Code in order to implement this recommendation.

The new Law “On the Fight against Corruption”, Article 15, provides for the confiscation of property or value of services received as a result of corruption crime.

According to the answers to the Questionnaire, the existing Criminal Code of Tajikistan provides for mandatory confiscation of proceeds obtained as a result of corruption. Confiscation as an additional punishment (if this is foreseen as part of the sanction included in the Criminal Code) can be used, but only to convicted persons in addition to the proceeds from corruption charged by the court and refers to the remaining property of the convicted person.

In spite of the above, there are certain weaknesses in the confiscation system established by the law. For example, the court may apply property confiscation as an additional punishment only in cases where it is envisaged by the Criminal code as part of the sanction for the specific crime. The Criminal Code regulates property confiscation in a variety of ways: this is a binding requirement in cases with aggravating circumstances, in other cases the courts are granted discretion, whereas Article 319, § 1 (Bribe-taking), does not envisage property confiscation at all.

To apply more efficient and operative procedures for the detection and seizure of results of corruptive activity at early stages of criminal investigation and criminal prosecution, the law-enforcement bodies can use only limited instruments envisaged by Article 175 of the Code of Criminal Procedure. This article establishes the procedures for imposing arrest on property for purposes of possible confiscation. However, the prosecutor can take these processional actions only with respect of an accused or suspected person or a person in possession of crime proceeds.

At the early stages of a criminal case, the prosecution does not dispose of procedural opportunities for the tracing, freezing, capture and seizure of proceeds, including those gained as a result of corruption. In this regard, it is necessary to consider elaborating additions to the Code of Criminal Procedure, which would envisage concrete measures and procedures (including the obtaining of information on bank accounts, cash flows and alike from financial and credit institutions), and arrest of third parties’ property.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Draft laws on introducing amendments to the Criminal Code are at the stage of development.

Recommendation 12

Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent in the investigation and prosecution of acts of bribery.

The circle of public officials to whom immunity is granted by the Constitution includes: the President, members of the Upper Chamber and deputies of the Lower Chamber (Majlisi namoyandagon) of the Parliament of the Republic of Tajikistan and judges of all levels. The reported total number of the deputies of the Parliament of the Republic of Tajikistan and local councils of people's deputies is 2807. The immunity of the members of the Upper Chamber and Lower Chamber of the Parliament of Tajikistan is further regulated by the Constitutional Law "On the Legal Status of the member of Majlisi milli and deputy of Majlisi namoyandagon Majlisi Oli of the Republic of Tajikistan".

The immunity is also granted to the deputies of the local councils (majlisi) of people's deputies. It is provided for in the Law "On the Status of the People's Deputies of the Council of People's Deputies of Gorno-Badakhshanskaya Autonomous Region, Regional, City and District Councils of People's Deputies".

The lifting of the immunity of the members of the Upper Chamber and the Lower Chamber of the Parliament is the prerogative of the respective chamber based upon an application of the Prosecutor General. For the review of such issue, a control commission may be formed consisting of the members of the respective chamber. Additional materials may be requested from the Prosecutor General. The matter is decided by the Upper Chamber or the Lower Chamber, which adopts a motivated decision and informs the Prosecutor General thereof no later than three days after such decision.

For the deputies of the local councils of people's deputies, applications to lift their immunity are submitted by public prosecutors. No later than one month after the reception of such application, the matter is reviewed by the respective local council. Additional materials may be requested from the public prosecutor. A refusal to lift the immunity may be appealed to a higher council of people's deputies or the Parliament.

In December 2004, Tajikistan reported that no instances existed where the immunity granted by the Constitution to certain categories of public officials would have prevented their prosecution for bribery.

From 2004 till October 2005 public prosecutors had submitted 17 applications for the lifting of the immunity, including 12 deputies of local representative organs and 5 judges. The immunity has been lifted for 8 deputies and 5 judges. With regard to applications rejected by local representative organs, appeals have been submitted to higher representative organs. Tajikistan confirmed that some of the cases were related to bribery offences.

Overall, the legal framework does provide elements of accountability in the review of requests to lift immunities. In particular, examiners welcome the requirement to adopt a motivated decision in cases involving members of Parliament and a procedure of appeal in cases involving deputies of local councils. During the mission, examiners did not find any concrete evidence of particular cases where the immunities would have prevented the investigation and prosecution of corruption related acts. Examiners were, however, told that the circle of public officials covered by immunities could be reduced, since, as above mentioned, in some cases – although, allegedly not corruption related - requests to lift the immunity were turned down.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Efforts continue to further implement the recommendation.

Recommendation 13

With respect to money-laundering, continue efforts towards the establishment of a Financial Intelligence Unit; review the money-laundering offence in the Criminal Code to ensure that it is broad enough to capture all forms of concealing of the proceeds of corruption.

Money laundering is criminalised as a separate offence of the Criminal Code. Article 262 of the Criminal Code (Legalisation (Laundering) of Illicit Income or Other Property) envisages criminal responsibility for transfer of property or other operations involving monetary funds or other property most likely obtained by illegal methods, as well as the use of such monetary funds or other property for engaging in entrepreneurial or other business activity or their use in any other way.

During the visit, authorities of Tajikistan reported that the elaboration of the draft Law “On the Fight against Legalisation of Illicit Income (Money Laundering) and Prevention of the Financing of International Terrorism” has been finalised.

Authorities reported that the draft law envisages the establishment of a Financial Intelligence Unit and determines its role, competence and functions. It is planned that only after the law enters into force the President of the Republic of Tajikistan will decide upon and set up the Financial Intelligence Unit for purposes of executing the functions vested in it by the new law.

According to UNODC and World Bank report, the Financial Investigation Unit could be based at the Ministry of Income and Tax, but Tajikistan needs assistance and resources to create it. The UNODC and the World Bank also reported on plans to provide a workshop on the role and function of an FIU in 2006.⁴

The examiners were not provided with the above draft law, due to its status, but also were not informed about the schedule for its adoption. The examiners could not receive documents containing information on plans for institutional design, status or specific functions for the prospective Financial Intelligence Unit.

Current criminalisation of money laundering is not sufficient and law-enforcement bodies can encounter difficulties with its application in practice. It is necessary to further clarify and extend the scope of this offence. Article 262 of the Criminal Code does not stipulate clearly, which monies or other property gained by illegal methods and as a result of committing which particular offences shall be qualified as a subject of this offence. A number of other important special laws are needed, envisaging the rights and duties of financial and credit institutions, and their controlling and supervisory bodies, otherwise the access of law-enforcement bodies to information about suspicious and unusual financial transactions and a possibility of monitoring transfers of cash and accumulations on bank deposits is quite restricted.

No information related to cases involving money laundering was provided to the examiners.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

Efforts aimed at this direction continue.

Recommendation 14

⁴ UNODC and World Bank (2006), *Anti-Money Laundering and Countering the Financing of Terrorism Newsletter for Central Asia*, Issue 6, February 2006

Ensure effective measures for the provision of international mutual legal assistance.

Tajikistan is party to several regional treaties and an inter-governmental agreement among CIS countries dealing with mutual legal assistance and extradition, including the Treaty on Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Cases signed in Minsk on 22 January 1993; Tajikistan has bilateral agreements on mutual legal assistance with People's Republic of China, India, Ukraine and Turkey. On institutional level, the Prosecutor's General Office has signed agreements on mutual legal assistance with prosecution authorities in Georgia, Kazakhstan, Turkmenistan, Russian Federation, Azerbaijan, Kyrgyz Republic and People's Republic of China (see the full list of treaties and agreements in the annex 3).

In its answers to the Questionnaire, Tajikistan reported that measures are being taken to further strengthen legal basis for international cooperation and mutual legal assistance in the area of fight against corruption. As of October 2005, new agreements with the Islamic Republic of Iran, United Arab Emirates, Afghanistan and Pakistan were under consideration of the government of Tajikistan. At the level of the Prosecutor's General Office, new agreements have been prepared with prosecution authorities in Turkey, Pakistan and the Islamic Republic of Iran.

Concerning practical experience in providing and obtaining mutual legal assistance, authorities reported that over the period from 2003 to November 2005, 13 requests for obtaining legal assistance in cases of corruption were made by prosecution authorities of Tajikistan to other CIS countries. Under these requests, the assistance has been granted. Only one request in a corruption case was received to provide mutual legal assistance from a foreign country (Ukraine) over this period. The requested assistance has been granted.

There is no central authority for the provision of mutual legal assistance. No official statistics are produced in this area in Tajikistan.

Tajikistan is party to the UN Convention against Transnational Organised Crime, which includes Article 18 on Mutual Legal Assistance. Tajikistan also reported that it plans to sign and ratify the UN Convention against Corruption, which also includes obligations of mutual legal assistance and extradition to other parties of the Convention.

Tajikistan is largely compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

On 25 September 2006, Tajikistan joined the UN Convention against Corruption.

III) TRANSPARENCY OF THE CIVIL SERVICE

Recommendation 15

Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Strengthen the capacities of the tax and custom authorities by instituting regular basic in-service training for its officials.

As mentioned under Recommendation 6 (see p. 19), a guide for public officials entitled "What Is Corruption and How to Fight it?" was published and circulated in the amount of 14 000 copies, as well as series of booklets aimed at raising awareness of general public on corruption.

In addition, in 2004 the Institute on Qualification for Civil Servants issued the “Handbook for Civil Servants of the Republic of Tajikistan” (232 pages, about 6 000 copies). It provides an overview of civil service legislation, civil service ethics, public participation and the use of information technologies. The handbook was issued with the supported of the Government of Tajikistan and the Asian Development Bank.

A Public Servant’s Ethics Code was adopted on 14 June 2004 by the President Decree No 1343. The Code states that its aims are to improve the image of public service in Tajikistan, increase people’s trust and prevent corruption of public officials. The Code requires that public officials remain independent and neutral, prohibits exercising outside activities for financial or other gain and stipulates that they should be recruited on merit basis. The Public Servant’s Ethics Code has been published and disseminated in the form of a brochure and a poster in Tajik and Russian languages, with support from the EU. Tajikistan reported that control over the application of the Ethics Code is the responsibility of the heads of public bodies and their services for human resources. Oversight over the application of those ethical norms of the Code that are also stipulated in the legislation is exercised by prosecution authorities.

According to the information provided by the officials of the Tax Police, an Advanced Training Centre within the system of the Ministry on State Revenues and Collection holds regular training sessions, including on the fight against corruption. Due to practical limitations the experts were not able to get better acquainted with the work of this training centre.

Tajikistan is largely compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

On 20 October 2006, the Public Servants Advanced Training Institute at the President of the Republic of Tajikistan hosted a scientific workshop on the subject “Ethics of a Public Servant” with the participation of workers of the Executive Staff of the President, Government, Parliament, Prosecutor General’s Office, other state authorities, academia, NGOs and mass media. The workshop was practically fully devoted to problems of ethics and corruption prevention in public service.

Recommendation 16

Strengthen the School of Public Administration, which should conduct in-service training for public officials and the curriculum of which would include topics related to ethics and anti-corruption measures.

Pursuant to the President Decree of 9 October 2002 No. 926, the Public Servants’ Advanced Training Institute has been set up at the Civil Service Directorate attached to the Administration of the President of the Republic of Tajikistan. As prescribed by the aforementioned presidential decree and the Provisional Statute of the Public Servants’ Advanced Training Institute, main objectives of the Institute is to provide retraining and advanced training for public servants, as well as educational, methodological, scientific, information and analytical activity in the sphere of public service.

The Institute is mainly funded from the state budget. It may raise additional financial resources on the basis of agreements with governmental, nongovernmental or international organisations by accepting domestic and foreign officials for training and retraining above the established enrolment quotas.

The basis for developing training curriculum and training methods is laid down in the Presidential Decree of the Republic of Tajikistan of 2 December 2003 No. 514 “On the State Standard of Supplementary Professional Education (Advanced Training and Professional Training) of Public Servants

in the Republic of Tajikistan". The standard envisages advanced training of public servants no less than once every five years. For persons enrolling for the public service for the first time, advanced training during the first year of the service is compulsory.

Institute envisages programmes of three levels for advanced training and professional retraining:

- Short-term programmes from 72 to 100 academic hours, aimed at advanced training in individual areas of professional activity;
- Mid-term advanced training programmes from 100 to 500 academic hours, aimed at comprehensive advanced training in the sphere of public administration with specialisation for specific official positions;
- 500-academic hours' professional retraining programme in the sphere of public administration with specialisation for specific official positions.

In its answers to the Questionnaire, Tajikistan reported that in nine months of 2005, the Public Servants' Advanced Training Institute trained 706 public servants in the course of field seminars, two-week and four-week courses.

The Institute's curriculum includes 10 hours of teaching on the Public Servants' Ethics Code. According to the Prosecutor General an eight hours course on counteraction to corruption has been included in the curriculum of the Institute in 2006. In January-April 2006, a total of 188 public officials attended this course. Most of these officials represented district, city and regional authorities. Training of national officials was reported as planned.

Overall, in Tajikistan there is a public institute, which provides training and develops reference materials for civil servants. The Institute has a programme that includes ethics, but a specific training course on corruption has been introduced reportedly only in 2006. However, the experts have not been able to assess what particular issues related to countering corruption are covered and what the quality of the actual training is.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

The Public Servants Advanced Training Institute, the Prosecutor General's Office and UNDP started the development of a special training course on the fight against corruption for students of the Advanced Training Institute. The project is financed by UNDP.

On 19 October 2006, the Public Servants Advanced Training Institute at the President of the Republic of Tajikistan conducted corruption-specific training for heads of legal departments of the central state authorities. Similar training of heads of legal departments of the local authorities are scheduled for 24 December 2006.

Recommendation 17

Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting (basic) regulations on the protection of “whistleblowers”⁵, and launch an internal campaign to raise awareness about those measures among civil servants. Additionally, study the application of the offences of defamation and insult in the Criminal Code to ensure that they do not present an obstacle to the reporting of offences.

Pursuant to Article 6 of the Law “On the Fight against Corruption” (Guarantees of Immunity of Persons Collaborating in the Fight against Corruption), any person reporting corruption or otherwise collaborating in the fight against corruption is protected by the state; according to this law, information on persons reporting on corruption or otherwise assisting the fight against corruption is considered state secret.

However, no specific mechanism has been developed to implement the guarantee of protection to employees of state institutions who report on corruption within their own institutions to police or prosecution, and who may suffer disciplinary action or harassments as a result of it. There is no regulation on protection of witnesses or whistleblowers in Tajikistan; no awareness raising campaigns have been conducted among civil servants.

Regarding the offences of defamation and insult, pursuant to the Article 135 of the Criminal Code of Tajikistan, defamation is an “intentional dissemination of false information discrediting the honour and dignity of another person or damaging his/her reputation.” Article 136, the Criminal Code, defines insult as “abatement of another person’s honour and dignity expressed in an indecent form.”

According to the information provided by the authorities during the mission, a person reporting an actual fact of corruption cannot be brought to account for insult. If a person reports his/her suspicions concerning a specific corruption related act, but the investigation does not confirm this fact, criminal responsibility cannot be imposed on the whistleblower in this case either, unless it is proven that this person had been aware in advance of the falseness of the reported or disseminated information. Reports about facts of corruption presented in a decent form, not discrediting the honour and dignity of other persons cannot under any circumstances be used against the persons who reported them. This is guaranteed by definitions of “slander” and “insult” established by law, as well as the possibility of legal defence. Representatives of non-governmental sector, however, expressed concerns to the team of examiners that there are cases when Article 135 and Article 136 of the Criminal Code are used as a tool against those who report facts of public corruption, in particular, against journalists.

While it was recommended to study the practice of application of the offences of defamation and insult in the Criminal Code, authorities only provided some explanations about the formal contents of relevant offences of the Criminal Code.

Lack of protection of whistleblowers – persons who report about suspicions of corruption within their own institutions, including public institutions - may constitute an important obstacle to the fight against corruption. It is necessary to strengthen the legislation and provide for effective protection of whistleblowers, including sanctions against persons discriminating whistleblowers, and provide guidance to public institutions how to manage such situations.

Tajikistan is partially compliant with this recommendation.

⁵ In this report, “whistleblower” is a person who speaks out about the problem of corruption inside his or her organisation, including public bodies.

National action since June 2006 to implement the recommendation further:

Measures are being taken to continue the implementation of this recommendation.

Recommendation 18

Ensure an effective enforcement of the provisions of the Law on the Fight against Corruption that concern the declaration of assets and prevention of conflict of interest, by assigning an independent institution (possibly the Anti-corruption Council) and empowering it to monitor the implementation of the mentioned regulations. At the same time, make enforcement of these provisions manageable - obligations for asset declarations should be limited only to high-level officials and officials working in corruption exposed institutions.

Public officials and candidates to the public service in Tajikistan are obliged to submit *declarations of income and assets* in accordance with the Article 8 of the Law “On the Fight against Corruption” and the Government Decree issued on 1 August 2005 No. 289 “On the Approval of the Income Tax Declaration and Assets Declaration of a Civil Servant” (see the annex). There are 17 000 public officials in Tajikistan.

Regarding practical implementation, the above Decree includes two forms of declaration: one for income; and one for assets. Further, in accordance with this Decree, the Civil Service Directorate and the Ministry for State Incomes and Taxes adopted on 10 October 2005 the “Instruction on Filling in Declarations on Income Tax by Public Official” and the “Instruction for Filling in Declarations on Assets of Public Official”. Elected and appointed public officials are required to submit the declaration on income tax before taking up a position in the public service and during the employment by 1 April every year. The instruction on assets allows the state body in charge of appointing (electing) and dismissing at public duty to request the declaration of assets upon appointing (electing) and then once a year. It is not foreseen to disclose the declarations to the public. Control over the implementation is to be ensured by the Tax Department of the Ministry of Income and Taxes and the Civil Service Administration.

However, while the Article 1 of the Law “On the Fight against Corruption” somewhat delineates persons who are “authorized to exercise public duty”, Tajikistan reported in October 2005 that current legal acts did not define the categories of public officials who were requested to submit declarations. Further, existing legal acts only ask to provide declarations, but do not require and provide a procedure for their control. Given that disclosure of these declarations is not foreseen, without control of declarations this measure may remain without impact.

According to the Prosecutor General public officials of state organs submitted their declarations of income and assets as of 1 April 2006. However, Tajikistan maintains the need to adopt a special law on the procedure of income and assets declaration for public officials allegedly to further develop the system. The necessity to adopt such law is supported by the Upper Chamber of the Parliament of Tajikistan (see more information below) and also mentioned in the letter by the Prosecutor General as of 28 April 2006.

Prevention of conflict of interest is regulated by the Law “On the Fight against Corruption”. The Law sets limits regarding appointment or election of public officials (for example, it prohibits direct subordination or control over close relatives, taking up of public office without relevant education or experience) and incompatibilities with public duty (for example, officials are barred from other paid jobs, except research and education, officials are prohibited to accept travel payment from a third party or gifts of a value of more than 100 minimum wages in year). These and other actions outlined by the Law can be subject to disciplinary, administrative and penal sanctions. The Law stipulates that heads of state and local bodies, public organizations and in some instances non-governmental organizations are obliged to ensure the respect of these provisions of the Law “On the Fight against Corruption”.

The Prosecutor's General Office appears to play an active role in this area. Tajikistan reported that public prosecutors have carried out controls on how legal restrictions on employment of relatives within the same institutions have been observed in health care, education, taxation, customs, etc. The Prosecutor's General Office mentioned that approximately 10-12 cases of conflict of interests have been detected as of the time of the visit. Examiners were also told about intentions to carry out more such controls in 2006. Disciplinary sanctions have been reportedly applied in the detected cases.

Experts took note of the work of the Committee for the Guarantee of Constitutional Basis, Human and Citizen Rights and Liberties and Legality of the Upper Chamber of the Parliament, which in co-operation with the Supreme Court and the Prosecutor's General Office has prepared a draft Resolution of the Upper Chamber of the Parliament of the Republic of Tajikistan "On Measures to Implement the Resolution of the Upper Chamber of the Parliament of the Republic of Tajikistan from July 15, 2005, No. 95 "On Priority Tasks of the Upper Chamber of the Parliament of the Republic of Tajikistan for the Implementation of the Law "On the Fight against Corruption" of the Republic of Tajikistan". The draft resolution defines tasks for Tajikistan's state organs and sets deadlines and institutions responsible for the implementations of the said tasks. The experts were told that the resolution was planned for adoption in December 2005.

Overall, at the time of the visit, an effective enforcement of the provisions of the Law "On the Fight against Corruption" on declaration of assets was at its very beginnings. Establishment of a system of declarations has started; authorities to collect the declarations have been identified. The system was reportedly launched in 2006. However, it is not clear whether the enforcement authorities have been given the legal, financial and materials means to use the declarations to control the legality of income and property. The circle of officials that need to submit declarations seem to include all officials and not only high level officials or those exposed to corruption. Moreover, for the full implementation of the Law "On the Fight against Corruption", amendments or new replacements to the Code of Administrative Offences, Criminal Code, Criminal Procedure Code, Civil Code, and Labour Code are yet to be adopted.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

On 1 April 2006, all public officials have submitted asset and income tax declarations. Thenceforth, these persons must submit such declarations to the tax authorities and at their jobs annually before 1 April.

Resolution of Majlisi milli Majlisi Oli of the Republic of Tajikistan No. 155 of 15 December 2005 has adopted the resolution of the upper parliamentary chamber "On Measures for Implementing Resolution of Majlisi milli Majlisi Oli of the Republic of Tajikistan No. 95 of 15 July 2005 "On Priority Tasks of Majlisi milli Majlisi Oli of the Republic of Tajikistan to Implement the Law of the Republic of Tajikistan "On the Fight against Corruption."

Relevant amendments to the Code of Administrative Offences are on the stage of consideration.

Recommendation 19

Review the public procurement law to enhance the transparency of the procurement procedures, raise their efficiency, and limit the discretion of procurement officials in the selection process. To the extent possible, enhance the capacity of the procurement agency so that it is able to carry out supervisory functions. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the

legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

To address this Recommendation and the recommendations made by the World Bank in 2003, Tajikistan had developed a new draft Law “On Public Procurement of Goods, Works and Services”. The law was adopted in the Lower Chamber of the Parliament on 15 February 2006 and promulgated by the President on 3 March 2006. During the monitoring visit, the draft was under examination by the committees of the Lower Chamber of the Parliament.

Based on the UNCITRAL procurement model laws,⁶ the law has explicit norms, which aim to ensure the prevention of conflict of interest and impartiality in the public procurement in Tajikistan. The Article 8, §1 prohibits public servants of the Republic of Tajikistan, except officials representing a procurement organisation, to:

- influence the public procurement procedure in any way in the interests of any of the parties to the procurement process;
- participate as suppliers (contractors) and/or act as their legal representative in the procurement process regulated by this law; and
- participate in taking decision on the public procurement procedures, if they are related to any of the tender participants as relatives or professionally or are directly or indirectly interested in the procurement results.

The law also stipulates that a person shall not represent a procurement organisation, fulfil other duties connected with public procurement procedures or discharge the functions of a consultant in connection with a public procurement procedure, if he/she:

- is spouse or a direct relative, is connected with the supplier (contractor) with relations of adoption, guardianship or trusteeship; or
- has been an employee or an official of a supplier (contractor) participating in the public procurement procedure during two years preceding the public procurement procedure.

Article 40 of the law foresees that negotiations concerning a filed tender application between the procurement organisation and the supplier (contractor) shall be categorically banned, unless stipulated otherwise by this law.

Regarding access to procurement information, Article 24 of the law stipulates that, if procurement is made to a sum equal or exceeding the upper threshold cost, a tender announcement shall be published in the mass media and in the “Public Procurement Bulletin” of Tajikistan. If procurement is made to a sum below the upper threshold cost, it should be published only in the “Public Procurement Bulletin”. If procurement is made to a sum below the lower threshold cost, the announcement shall not be published. All co-tenders or their representatives shall be allowed presence at the opening of the tender applications.

As of the time of the monitoring visit, the supervisory function over the enforcement of the new law was to be ensured by the Agency on Procurement of Goods, Works and Services of Tajikistan (the

⁶ UNCITRAL is the United Nations Commission on International Trade Law that has adopted a Model Law on Procurement of Goods and Services in 1993 and improved it with a Model Law on Procurement of Goods, Construction and Services in 1994.

authorised body) attached to the Ministry of Economy and Trade. At the time of the visit, the agency had 23 staff members, mainly economists. According to the law, Article 20, control over the legality of actions of purchasing organizations and the review of complaints about procurement are among the key functions of the authorised body. Since the law was adopted only recently, it is hard to assess precisely what the necessary capacity of the authorised body is and the extent to what it is actually capable of implementing the law. Strengthening the capacity of the authorised body to enable it to carry out supervisory functions remains a pending and relevant recommendation.

Article 16 of the law stipulates that only such suppliers are eligible, which have not been deprived of the right to engage in certain activities based on a conviction in force for the commitment of a greed-based crime. It remains to be analyzed whether such restriction fully meets the requirement of the recommendation to ban suppliers convicted for corruption. Examiners also note the following wording in the Article 8: “except public officials authorised to represent a procurement organisation” assuming that an official representing a procurement organisation may influence the public procurement procedure, as well as participate in decision-making on public procurement procedures, if he/she is a relative or professional relation of any of the tender participants or is directly or indirectly interested in the results of the procurement. This suggestion is not acceptable, as it is a direct evidence of a conflict of interest.

Overall, while the team of examiners welcomes the progress in adopting the new law on public procurement and strengthening the Agency on Procurement of Goods, Works and Services, at the time of the visit the law was not adopted yet. Hence the full analysis of the legal framework was not possible.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

The Law of the Republic of Tajikistan “On Public Procurement of Goods, Jobs, and Services” has been adopted by the lower parliamentary chamber on 15 February 2006 (No. 255), approved by resolution of the upper parliamentary chamber No. 184 of 24 February 2006 and signed by President of the Republic of Tajikistan on 3 March 2006 (No. 168).

This Law has entered into force as of the day of its publication and is no longer a draft law.

Recommendation 20

Strengthen the capacity, resources and independence of the Committee of State Financial Control and enhance its reporting obligations to the Parliament and to the public in general.

In its answers to the Questionnaire, Tajikistan reported that in order to strengthen the Committee of State Financial Control (CSFC), its budget has been increased. In 2005, 1,086,400 somoni (about 335,308 USD) have been allocated from the state budget to CSFC compared to only 961,400 somoni in 2005 (about 299,000 USD). Out of its total budget, for the strengthening of the CSFC potential were allocated 291,100 somoni (200,800 USD) and 324,500 (90,400 USD) somoni respectively.

On the proposal of the Government of Tajikistan, for purposes of strengthening the CSFC potential and resources, harmonising its activity with international standards of state financial control, and ensuring its financial and functional independence, it has received a grant from the World Bank in the amount of USD 295,000. The project envisages the training of CSFC staff in internationally accepted financial control methods.

For purposes of ensuring CSFC accountability to the Parliament, Article 2 of the Law “On State Financial Control” envisages annual reporting of the Committee on results of inspections of the state budget execution to the Lower Chamber of the Parliament.

During 2004, the Committee carried out 1,437 inspections and audits of financial and business activity of ministries and agencies, local authorities, banks, international investment project management centres, economic entities, and budget-funded institutions. Financial violations worth 38.3 million somoni (11.9 million USD) have been revealed, including 28.9 million somoni (8.9 million USD) of unjustified financial and material expenses, 6.2 million somoni (1.9 million USD) shortage of money, commodities and materials, and 3.2 million somoni (about 1 million USD) worth of damage from the sale and rent of public property. Inspections also covered the formation and execution of state budgets in 42 cities and districts and financial and business activity of 662 enterprises, institutions and organisations.

As a result of inspections and audits, 2.8 million somoni (860,000 USD) worth of damage has been compensated for. A total of 7.9 million somoni (2.5 million USD) worth of additional budgetary payments, budget arrears and expenditure cuts of budget-funded organisations has been introduced to the state budget this year. A total of 2,466 persons were brought to disciplinary and material responsibility for the violations revealed during the inspections and audits, among which 89 officials and materially responsible persons were dismissed from position. The materials of 316 cases were sent to law-enforcement bodies, on the basis of which 136 criminal cases were initiated.

In nine months of 2005, CSFC conducted 927 audits and inspections, uncovering financial damage to the sum of 59.1 million somoni (18.4 million USD), including 38.8 million somoni (12 million USD) worth of unjustified expenses, 10.8 million somoni (3.4 million USD) of shortages and 9.5 million somoni (3 million USD) worth of damage from illegal sale and rent of public property. Inspections also covered the execution of state budgets in 21 cities and districts, as well as financial and business activity of 354 organisations and institutions.

As a result of inspections and audits, 5.4 million somoni (1.7 million USD) worth of damage has been compensated for. A total of 5.9 million somoni (1.8 million USD) worth of additional budgetary payments, budget arrears and expenditure cuts of budget-funded organisations has been introduced to the state budget this year. A total of 1,560 persons were brought to disciplinary and material responsibility for the violations revealed during the inspections and audits, among which 49 officials and materially responsible persons were dismissed from position. The materials of 239 cases of financial and other violations worth 52.6 million somoni (16.3 million USD) were sent to law-enforcement bodies.

Tajikistan is fully compliant with this recommendation.

Recommendation 21

Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.

The right of citizens and other users to obtain information in Tajikistan is set out in the law “On Information” of 10 May 2002 No 55. It also establishes the procedure for requesting information, time limits for the review of such requests and procedure for appeal in cases of illegal refusal of information. The law explicitly provides the right to appeal refusals of information to a higher body or the court.

Neither an independent agency nor specific procedure for the review of complaints lodged in respect of denied access to information has been established in Tajikistan. The team of examiners did not receive information that the authorities in Tajikistan plan to establish a new agency in this area. During the visit, the team of examiners could not obtain overall statistics regarding access to information that usually includes the number of requests for access received, the number of access granted, the number of access refused, etc. Experts could understand that Tajik authorities do not compile such data.

A number of sources expressed opinion that the law “On Information” does not function properly, access to information is generally difficult and requests for information tend to be answered so late that the information loses value for the media. It was told that no complaints have been filed to courts with respect to refused access to information. Most often mentioned reasons are the length of litigation making the requested information irrelevant and mistrust in the independence of judiciary.

Authorities reported that the issue of disclosure of information is partly addressed through regular press conferences organised by ministries and government agencies. Allegedly representatives of all media are invited. Organization of such press conferences by all ministries and agencies every three months is required by the President Decree of 4 March 2005, No. 1677. Examiners took note of the centralized and somewhat formalistic character of this practice. Examiners also noted the opinion expressed by media representatives that high level public officials tend to avoid publicity and avoid TV or radio programmes in live preferring staged appearances with contents prepared in advance.

At the view of examiners, the law “On Information” contains provisions, which may invite for excessive discretion on behalf of the authorities. For example, Article 24 contains an ambiguous sentence, which guarantees access to information to citizens who need it in order to fulfil their professional duties, which is essentially a right that should belong to everyone. In Article 26 confidential information is defined in an open-ended manner, which may at the discretion of public officials cover virtually any information, i.e. information of [enumeration of types of information] and other character, which is an object of [enumeration of interests] and other interest.

Tajikistan is partially compliant with this recommendation.

National action since June 2006 to implement the recommendation further:

In 2006, Reporters Without Borders, an international journalists’ organisation, recognised Tajikistan the most favourable Central Asian country abiding by the freedom of the press principle (117th place among 168 countries).

The recommendation concerning the need to revise certain provisions of the Law “On Information” will be taken into consideration during further improvements to the legislation.