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| **TAJIKISTAN** |
| **Civil Society Report on the Implementation of the ICCPR**  **(Replies to the List of Issues CCPR/C/TJK/Q/3)**  **Thematic report on corruption**  For the Review of the third State Report of Tajikistan (CCPR/C/TJK/3)  At the 126th session of the Human Rights Committee  (Geneva, 1 – 26 July 2019) |
| Submitted by: *Human Rights Centre* | | |
| *Geneva, 3 June 2019* | |
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  4. **Anti-corruption measures (arts. 2 and 25)**

**Issue 3:** *Please respond to reports that corruption, including bribe-seeking by public officials, remains widespread; report on the measures taken to combat corruption effectively and the impact thereof; and clarify inter alia whether steps have been taken to fully criminalize corruption in accordance with international standards and to strengthen legal and institutional capacity to ensure the effective investigation and prosecution of complex and high-level corruption cases.*

**Reply / Comments from Civil Society**

**Prevalence of corruption and bribe-seeking behaviour**

According to the **Corruption Perception Index of the Transparency International**, Tajikistan ranks 152th out of 180 countries.[[1]](#footnote-1) Despite some improvement in ranking (e.g. in 2017 Tajikistan ranked 160 of 180 countries), Tajikistan remains the most corrupt country in the region. The Strategic Research Study under the President of Tajikistan holds regular studies on prevalence of corruption. The latest nationwide study on prevalence of corruption in Tajikistan was conducted in 2015 by the Strategic Research Center under the President of Tajikistan. It demonstrated some reduction in the prevalence of corruption. The share of persons who found themselves in a situation of corruption decreased from 60.1 percent in 2006 to 46.4 percent in 2015. However, the demand for corruption (share of cases, when a person gave a bribe in a situation of corruption) increased from 29.5 percent in 2006 to 50 percent in 2015. Respondents mentioned that corruption is the fifth most important problem in Tajikistan after poverty, unemployment, increase of prices and shortage of food supplies.[[2]](#footnote-2)

Despite the lack of recent data on prevalence of corruption, anecdotal evidence suggest that **petty corruption is a daily routine** of the Tajik society. For instance, above-mentioned study revealed that traffic police, health, law enforcement agencies (police, prosecutor office, tax), education sector, courts (including higher level courts) were considered as the most corrupt public bodies in Tajikistan.[[3]](#footnote-3) Besides, among seven situations where the population faced corruption, respondents mentioned that it was related to the receipt of various public services (e.g. getting a passport, placement at school, University, getting a driving licence, treatment in hospitals etc).[[4]](#footnote-4) In this respect, corruption in the public sector is widespread. Tajikistan lacks clear and transparent standards/regulations on the provision of each individual public service which would specify rights and duties of the service provider, the duration of the provision of services, the state duties or the payments for each service. Also, the process to provide most public services is not transparent.

**Bribery was perceived as the most prevalent type** of corrupt practices, especially in the health and education sectors. Petty corruption in these sectors (the amount of bribes mentioned was below 100 Tajik Somoni, which is about 10 USD) is very common. Higher bribes (e.g. over 100 Tajik Somoni and up to 500 Tajik Somoni) were mentioned in courts, law enforcement bodies and authorities dealing with land distribution. More than 50 percent of the respondents noted that the majority of public officials take bribes. Every third respondent mentioned bribe-seeking behaviour of public servants, noting particularly that the public servant is forcing, hinting or establishing conditions for corrupt practices to solve the problem or provide the service.[[5]](#footnote-5) There is a lack of data about grand or political level corruption in Tajikistan.

**Conducting regular studies** on the prevalence of corruption is considered as a good practice.[[6]](#footnote-6) The Strategic Center under the President of Tajikistan conducted such a study in 2006, 2010 and 2015. However, findings of the study are not used to plan responses and to demonstrate the impact of anti-corruption measures on the reduction of corruption levels. Besides, sectoral studies on the prevalence of corruption in high risk sectors, are not conducted. Meta-data for all the studies conducted by the Strategic Center under the President of Tajikistan is not publicly available for tracking the opinion of respondents and comparing results over the years, between different age groups and so on.

**Measures aimed at preventing corruption in public services are not fully effective**. Legislation regarding conflicts of interests and declarations of assets of public services (both political and administrative) does not fully comply with international standards. Positions of public service are divided into political and administrative positions of public service. Several positions like Prosecutor General, Human Rights Ombudsman, Chairperson of the Central Commission on Elections and Referenda, Chairperson of the Chamber of Accounts are political positions of public service. This is in contradiction with international standards. The salary of public servants remains low. It is not comparable with salaries of staff in similar positions in the private sector. Practices such as salary surveys are not implemented to bring salary levels in the public sector in line with the private sector. Provisions to ensure compliance with ethical standards of civil service are not effective. The Code of ethics of public servants (2015) obliges public servants to fight corruption, take measures to prevent corruption, avoid taking and providing presents for their performance of public duties except for cases established by the legislation of Tajikistan. However, detailed regulations on accepting presents by public servants were not developed. The Code of ethics and the respective ethics commissions (separate units or additional responsibilities were added to units dealing with internal audit or human resource management) were established in several ministries and agencies. The effectiveness of enforcement of ethical standards is low due to the absence of systematic and certified education of staff dealing with ethical standards and the absence of resources of ethics commissions.[[7]](#footnote-7)

**Anti-corruption measures**

Tajikistan is a member of the **OECD Anti-Corruption Network** for Eastern Europe and Central Asia established to implement the Istanbul Anti-Corruption Action Plan. The process of implementation includes a peer-review process of each country on the implementation of the provisions of the plan and the formulation of recommendations upon each round. In 2017, Tajikistan underwent the fourth round of review. It demonstrated that of the twenty recommendations issued to Tajikistan upon the third round, it did not fulfil eight recommendations. It partially implemented nine recommendations. It generally implemented just one recommendation. Two recommendations on “state financial control and audit” and “funding of political parties/political corruption” were not assessed during the fourth round. Thus, the review concluded that Tajikistan did not implement fully any of the eighteen recommendations assessed. The OECD particularly noted that current measures aimed at addressing corruption are formal. They include the adoption of plans, holding inspections and so on. However, specific actions aimed at systemic prevention of corruption in high risk sectors like law enforcement bodies, courts, health, education, land use, state procurement and taxes are not developed and implemented. There is lack of political will and personal leadership of the heads of public bodies to meaningfully address corruption.[[8]](#footnote-8)

Tajikistan adopted an **Anti-Corruption Strategy** for 2013-2020 (the Strategy). In 2017, the Government of Tajikistan authorized the Agency on Anti-Corruption and Financial Control to monitor its implementation. The report on findings of the monitoring in Tajik language was posted on the webpage of the Anti-Corruption Agency under the President of Tajikistan. The information presented in this report is very descriptive. It provides general information about actions conducted in the framework of the implementation of the Strategy, but it does not include any analysis of the progress achieved so far, challenges faced and measures required to correct the situation. The Strategy itself as well as its Action plan do not include a list of clear, objectively verifiable indicators to measure the progress. Outcomes, outputs and activities are not clearly defined and delineated. The Plan does not include any baseline and target values and, respectively, desired qualitative and quantitative changes to be achieved as a result of implementation of the Strategy and its action plan.[[9]](#footnote-9)

According to the Strategy and its action plan, **all ministries and public bodies shall be engaged** in its implementation. It was reported that each ministry and public body adopted an action plan outlining specific measures to prevent corruption in that ministry or body in question. However, in practice, such plans did not exist across all the ministries and public bodies. The focus on anti-corruption measures in Tajikistan was mostly on prosecution, but less on prevention. Specific funding was not allocated for the implementation of the Strategy and its action plan. Instead, Anti-Corruption Agency and other public bodies should allocate funding for the implementation of the actions outlined in the Strategy within the funding allocated for their operations.

The Law on Anti-Corruption (2005) as well as the Strategy speak about the **role of NGOs** in implementing the Strategy. However, in practice NGOs were not involved in the monitoring of the Strategy and its Action Plan. In 2018, the NGO Human Rights Center conducted public monitoring of the Strategy with a focus on the judiciary and the role of civil society. The findings were presented at a conference hosted together with the Anti-Corruption Agency and the Human Rights Ombudsman. However, there was little follow-up on the recommendations of the public monitoring and little actual implementation of the actions aimed at increasing the role of civil society organizations.

In addition, participation of civil society organisations in anti-corruption measures should be ensured through their participation in the **National Anti-corruption Council** and public anti-corruption commissions at the local level. However, it is challenging to receive admission of active NGOs to the National Anti-Corruption Council, because it must be authorized by the Presidential Administration. The current members of the Council are: Union of Journalists, Union of Writers, Union of Youth, Islamic Center, Committee of former internationalist fighters, Federation of Trade Unions. These are, in fact, GONGOs. They do not play active roles in prevention of corruption in Tajikistan. Activities of the National Anti-Corruption Council are not transparent. Information on meetings, results of the meetings and follow-up actions is not publicly accessible. It is challenging to assess its effectiveness. At the local level, it is reported that 78 public anti-corruption commissions were established. Data on the number of operational and effective commissions as well as their membership is not available. This would not allow us to make conclusions regarding the effectivity of public participation in anti-corruption measures.

**Criminalisation of corruption in line with international standards and effective investigation and prosecution of complex and high-level corruption cases**

Upon review of the anti-corruption efforts of Tajikistan, the OECD concluded that Tajikistan did not undertake measures to bring provisions criminalising corruption in line with international standards (UN Convention Against Corruption, ratified by Tajikistan in 2008). There are several gaps in the criminal legislation of Tajikistan, which prevent an effective fight against corruption in the country. International standards like “requests”, “demands”, “promises”, “proposals”, “receipts of promises or proposals” of illegal benefits, non-material bribes or benefits, responsibility of legal entities for corruption, criminalisation of illegal profiteering and trading in influence, were not implemented[[10]](#footnote-10) despite the fact that the OECD repeated these recommendations in the framework of the third (2014) and fourth round (2017) of monitoring of the implementation of the anti-corruption strategy.

Law enforcement bodies of Tajikistan did not change their approach to detection of corruption crimes by active use of analytical approaches and sources of information not related to operational activities. The majority of corruption crimes were detected by operational actions. Operational information, notes from agents and reports are the main sources of information regarding corruption. Analytical methods of detection of crimes are rarely used. Law enforcement bodies lack analytical departments. Usually, analytical work includes collection of statistical data, but not through the analysis of sectors with high corruption risks, typical corruption models and information received by bodies.[[11]](#footnote-11) According to the OECD, this is one of the reasons why law enforcement focuses mainly on small or petty corruption cases, but not on grand and high-level corruption cases. Despite the high level of corruption in Tajikistan, there are very few examples of detection of corruption among high-level public officials, judges and prosecutors.[[12]](#footnote-12) Criminal statistics on corruption cases are not published in Tajikistan. Occasional reports about punishments of officials appear in media reports in Tajikistan.[[13]](#footnote-13)

* 1. **Right to a fair trial and independence of the judiciary (art. 14)**

**Issue 16**: *In connection with the previous concluding observations (para. 18), please report on: (a) the impact of the Judicial Reform Programme for the period between 2015 and 2017 and of the constitutional amendments of 22 May 2016 on guaranteeing, both in law and in practice, the full independence, competence and tenure of judges, and provide information on the current procedures and criteria for the selection, appointment, suspension and removal of judges; (b) the steps to eradicate corruption in the judiciary and to ensure adequate remuneration for judges; (c) the measures taken to reduce the excessive powers of the Office of the Prosecutor General; and (d) the progress achieved in providing free and accessible legal assistance to indigent persons. Please also respond to persistent reports of harassment, intimidation and pressure on lawyers representing defendants in politically sensitive cases or cases related to national security and counter-terrorism, including harassment of their families and colleagues, arbitrary arrest and detention, prosecution on national security-related or politically motivated charges and often conviction with long prison sentences following unfair trials, such as in the case of human rights lawyers Buzurgmekhr Yorov, Nuriddin Makhkamov, Shukhrat Kudratov, Jamshed Yorov and Muazzamakhon Kadirova.*

**Reply / Comments from Civil Society**

1. **Impact of Judicial Reform Programme for 2015-2017 on full independence of judges and current procedures and criteria for the selection, appointment, suspension and removal of judges**

The **Judicial Reform Programme** (JRP) for 2015-2017 is the third phase of the reform. Previous reform programmes covered the period of 2007-2010 and 2011-2013. The JRP for 2015-2017 envisaged several areas to be reformed, including procedural legislation; improvement of the of the Supreme Court and the Supreme Economic Court; juvenile justice; execution of judicial decisions; independent expertise bodies; free legal aid; social protection of judges and staff of offices of courts; improvement of material and technical operations of courts. Thus, the JRP for 2015-2017 did not articulate directly activities aimed at ensuring full independence of judges. The JRP for 2015-2017 was supported by an Action Plan. It established thirteen concrete actions to be implemented and period of implementation. However, it failed to identify indicators of progress and measuring impact of JPR for 2015-2017.

Upon amendments to the Constitution of Tajikistan as a result of referenda, the **Council of Justice was dissolved** in 2016. Its functions were assigned to the Supreme Court of Tajikistan and the Supreme Economic Court of Tajikistan. Despite dissolution of the Council of Justice, the executive and legislative powers still execute excessive control over the judiciary in Tajikistan. Thus, the principle of separation of powers established by the Constitution is not respected. It impedes the achievement of full independence of the judiciary in Tajikistan.

According to article 14 of the Constitutional Law of Tajikistan “On Courts” (2014), judges of the Supreme Court and the Supreme Economic Court are elected by the *Majlisi milli* of *Majlisi Oli* of Tajikistan (Upper Chamber of the Tajikistan Parliament) upon recommendation of the President of Tajikistan. Judges of provincial, district courts are **appointed by the President** of Tajikistan upon recommendation of the Chairperson of the Supreme Court. In this respect, the President of Tajikistan defines the composition of the courts upon the recommendations of the Supreme Court, which is formed by the Parliament upon recommendation of the President. *Majlisi namoyandagon* of *Majlisi Oli* (the Lower Chamber of the Tajikistan Parliament) establishes district and city courts across the territory of Tajikistan (article 80 of that same law).

The judiciary also **lacks financial independence**. Article 128 of the Constitutional Law establishes that funding for the Supreme Court, Supreme Economic Court, provincial, district and city courts and military courts shall be approved by the Government of Tajikistan upon recommendations of the Chairperson of the Supreme Court and Supreme Economic Court respectively. Besides, salaries of Chairpersons of the Supreme Court, the Supreme Economic Court, the provincial, district and city courts, military courts and economic courts shall be established by the President of Tajikistan. The rates and procedures of assigning increments to salaries (for qualification rank and length of work in position of judge) are being defined by the President of Tajikistan.

Judges remain functionally dependent in the administration of justice. Several provisions of the Constitutional Law “On Courts of Tajikistan” establish several mechanisms of control of individual judges by the Chairpersons of the courts. The Chairpersons of courts continue to maintain control over the **distribution of cases** among judges. Articles 37, 57, 77 and 83 of the Constitutional Law authorise the Chairpersons of courts of all levels to approve the procedure to distribute cases among judges of respective courts. Besides, chairpersons of the higher courts shall make decisions about transfers of cases from one court to another. In this respect, chairpersons of courts are free to decide about the distribution of cases. Absence of transparent procedures regarding case distribution prevents parties in trial to track appointments of judges and reasons to appoint a judge to an individual case.

The other restriction of independence of judges is a **prescribed term** regarding a judge’s position. According to article 15 of the Constitutional Law, judges are elected or appointed for ten years. The Constitutional Law does not specify in which cases judges can be re-appointed/re-elected to the same position or to the higher position in the same or higher court or lower court or dismissed upon expiration of this term. Chairpersons of the Supreme and Supreme Economic Courts have discretionary powers to make decisions about recommending the judge in question for re-election to the same position, higher or lower level positions or dismissal. Thus, individual judges are dependent on the chairpersons of courts, because the Constitutional Law has a gap: there is no clear and transparent procedure entitling judges to apply for the extension of his/her term upon expiration of the ten years.

The Constitutional Law of Tajikistan “On Courts” specifies criteria for the **appointment of judges**. These provisions of the Constitutional Law are not transparent. They also do not establish an exhaustive list of requirements to candidates who apply for judge positions, as well as a procedure of their selection for recommendation to election or appointment. As it was specified above, the proposal or recommendation for elections or appointments of judges shall be done by the President or a Chairperson of the Supreme Court depending on the level of the court. It is not transparent which criteria are used for preliminary selection of candidates prior to submission of recommendation for elections and appointments. For instance, article 12 of the Constitutional Law establishes that a national of Tajikistan above 25 years of age with a degree in law and professional experience of not less than three years, knowing Tajik language, shall be appointed to the position of judge of city, district or military courts. The Constitutional Law does not specify which professional experience shall be considered to be eligible for the position of a judge. In contrast, the Law “On the Bar and Legal Defence Activity” clearly defines which legal experience is required to acquire the status of a defence lawyer.[[14]](#footnote-14) Article 21 of the Constitutional Law further stipulates that the Supreme Court shall be responsible for the selection and preparation of candidates for the position of a judge. However, it is further not established how the Supreme court shall execute selection and preparation to the position of judges, if they shall publish vacancies of positions of judges. Prior to the appointment, candidates shall pass a preparatory training in the Judicial Training Center under the Supreme Court. In fact, candidates for positions of lower courts are usually selected among support staff of the courts, e.g. assistants to judges or secretaries of court proceedings. Candidates for positions of judges of higher courts are selected among judges of lower courts. In this respect, attracting legal professionals from other sectors is nearly impossible.[[15]](#footnote-15)

**Removal or dismissal of judges** can be done in several cases established by article 18 of the Constitutional Law (e.g. resignation, transfer to another job, departure from Tajikistan, sentence of court and others). Several grounds of removal/dismissal are precarious. For instance, dismissal or removal may be done in case of a violation of the law regarding the hearing of cases; a performance of action detractive to the honour and dignity of a judge; or the detection of inconsistency of a judge. Such grounds provide persons in charge of disciplinary procedures in court with discretion of interpretation and subjective assessment of behaviour and actions of a judge. Chairpersons of higher courts are entitled to open disciplinary cases against judges of lower courts. Article 123 of the Constitutional Law states that disciplinary cases against a judge may be opened in case of a grave violation of the legislation when hearing civil, family, economic, criminal or administrative cases; a violation of the internal labour rules; committing an act detractive to the authority of judiciary, honour and dignity of judges; or a violation of the Code of Ethics of Tajikistan. The legislation does not define a grave violation of the legislation. It is also not clear which acts can be considered as acts detractive to authority of judiciary, honour and dignity of judges. As mentioned above, such definitions may result in subjective and discretionary interpretation of actions and behaviour of judges. Such provisions pose a risk to the independence of judges in hearing cases and their decisions.

1. **Eradication of corruption in the judiciary and adequate remuneration for judges**

A study on the prevalence of corruption conducted in 2015[[16]](#footnote-16) demonstrated that lower level courts and high courts were considered among the six **most corrupt public bodies in Tajikistan** (51.1 percent and 49.8 percent of respondents, respectively, provided such an assessment). The population has a low trust towards the judiciary system. So, 58.7 percent of respondents noted that “many people do not want to apply to court, because they do not believe in a fair trial”. Other responses included that “only those who paid bribes win the case in court”; “judges are not fully protected, they receive low salaries, that is why they take bribes”; “judges are unqualified to resolve cases”. The judiciary was mentioned as the third sector (after land distribution and health sectors) where people had to pay the highest unofficial costs.[[17]](#footnote-17)

The Action Plan to the Anti-Corruption Strategy of Tajikistan for 2013-2020 envisages several **measures to eradicate corruption in the judiciary**, such as the improvement of the procedure of appointment and dismissal of judges; improvement of the mechanisms of public access to information about judicial trials, resolutions of courts, vacancies, procedures of admission to work, procedures of the selection of judges and justification for the appointment of judges; improvement of material, technical conditions of courts to improve the working conditions, introduce international standards, technologies and modern equipment and ensure transparency; study and anti-corruption expertise of the criminal, administrative, disciplinary and procedural legislation and legislation governing activities of judiciary; analysis of reasons of corruption in courts; improvement of social support of court personnel, provision of required housing including public housing and allocation of plots of land for construction of housing. Studies on corruption in courts were not conducted in Tajikistan. The only source of information about this is a study on the prevalence of corruption conducted by the Strategic Research Center under the President of Tajikistan cited throughout this report.

It was foreseen to amend the **Constitutional Law “On Courts”,** with regulations on a specialized commission on the examination and an Ethic Code of Judges. In 2014, the new Constitutional Law “On Courts (No. 1084) was adopted. In 2013, the Ethics Code was adopted by the Conference of judges.[[18]](#footnote-18) The Constitutional Law “On Courts” was also amended to amend the procedure of selection and appointment of judges (as described above). In the monitoring report of the Anti-corruption Agency it is stated that amendments to the Commission on the Examination of Judges and the Ethics Code of Judges are being drafted. However, they were not adopted yet. Besides, draft amendments to these legal acts are not publicly accessible for assessment of their content.

**The access of the population to information about the judiciary** did not improve. The lack of accessibility and openness of trials does not comply with the principles of ensuring transparency and public hearings established by the procedural legislation of Tajikistan. At the same time, legislation governing criminal, civil and administrative procedure in Tajikistan provides discretionary powers to judges to hold open or closed hearings. For example, article 273 of the Code of Criminal Procedure envisages that “a judge, court shall ensure an open hearing of the case except for cases when an open hearing can result in the disclosure of state secrets protected by the law and other secrets”. A list of state secrets is clearly outlined by the respective law. However, the legislation does not establish a definition or list of “other secrets”. Thus, a judge upon his/her discretion may rule to have a closed hearing of any case. Similarly, article 11 of the Code of Civil Procedure stipulates that cases constituting state secrets as well as other cases prescribed by the law shall be heard in closed sessions. However, the Code on Civil Procedure does not establish any list of cases, which can be heard in closed sessions. There is a legal gap in Tajikistan related to publicity of judicial decisions. All the procedural codes mention that judicial decisions and rulings shall be pronounced in public. However, it is not foreseen that decisions made during public/open trials shall be published.[[19]](#footnote-19)

Public monitoring of selected courts conducted by the NGO Human Rights Center in 2018 demonstrated that **not all the courts had webpages** and those functional webpages did not include information about the casework in the respective court, nor information on vacancies. The posted information was not up-to-date. In most of the reviewed courts, an information board was placed near the entrance. This contained information about lists of cases to be heard with a clear indication of date, time and place of the hearing; schedule of receipt of citizens and recently adopted decisions by the courts. Experimental visits to courts conducted in the framework of the public monitoring of selected courts did not reveal a unified approach in ensuring public access to courts. In some courts, observers were able to enter freely without any questions regarding the reasons of the visit and there was no security service at the entrance. In other courts, there was a security guard who interrogated about reasons of visit and removed mobile phones from visitors.[[20]](#footnote-20) In general, experience of ordinary citizens trying to access courts revealed that usually only parties to trial are able to access courts upon permission of a judge. At the entrance, phones are removed. In some courts of Dushanbe city, security guards also do not allow purses. The administrative procedure on removal of personal belongings (e.g. making inventory of all the objects, sealing the purse, closing the phone in an individual box and handing over the key and so on) is not applied when removing the purse and/or phones.

As to **remuneration of judges**, there were no significant changes in this respect. Social protection of judges lowered upon the adoption of the Constitutional Law “On Courts” in 2014. The new Constitutional Law removed the protection of the remuneration of judges, which existed in the previous Constitutional Law “On Courts” (2001). The previous law included a prohibition of the reduction of the remuneration of a judge. Previously, the amount of state social security of judges was equal to the sum of the remuneration of judges for ten years. The new Constitutional Law (article 132) reduced this sum to the remuneration of a judge for eight months. Social security in case of death of a judge was also reduced from ten years to 8 months. Social security for damage of health, injuries of a judge caused by the performance of his/her duties was reduced from the sum of a five-years remuneration to six-months. The payment of a one-time benefit equal to ten-months remuneration of a judge, in the event of retirement caused by a disability, was removed by the new Constitutional Law “On Courts”. Financial support of resigned judges also worsened. A one-time benefit related to the resignation of a judge was lowered from a ten-months remuneration to three-months. Upon resignation, judges are entitled to life-time financial support. The amount of such life-time monthly remuneration has been reduced from 80 percent of the monthly remuneration of a judge to 50 percent.[[21]](#footnote-21)

Based on public data available about the judiciary, it is challenging to conclude that the **material support of judges** has improved. There is no overall data available on the total number of judges, their housing situation, the number of judges in need of housing, including due to the appointment to location other than their permanent residence and so on. In its report on the monitoring of the Anti-Corruption Strategy for 2013-2020 conducted in 2017, the Agency on Anti-Corruption and Financial Control reported that ten judges of the court of Khatlon province, three judges of court of GBAO, 3 judges of court of Sogd province and five judges of court of Dushanbe city received municipal housing.

1. **Measures taken to reduce the excessive powers of the Office of the Prosecutor General**

The activities of the office of the Prosecutor General are governed by the Constitutional Law “On Bodies of Prosecution of the Republic of Tajikistan” (2005). This Constitutional Law assigns the following **functions on bodies of prosecution** (article 5):

* Oversee accurate observance and consistent implementation of the laws by state bodies, local governments, military bodies, controlling bodies, banks, enterprises, institutions, public and religious associations, political parties and other associations, regardless of their subordination, affiliation and forms of ownership, their officials, as well as compliance legal acts issued by them with the laws;
* Oversee the respect of the rights and freedoms of a human being and a citizen that are recognized as the highest value, by all the above-mentioned bodies and officials;
* Oversee the observance and implementation of laws by the bodies responsible for the fight against crime and other offenses, as well as the bodies responsible for investigative activities, inquiries and pretrial investigations;
* Protect the rights and freedoms of human beings and citizens, state interests, various forms of state and non-state property in courts;
* Oversee the observance and implementation of laws in places of detention, pretrial detention, execution of punishments and other coercive measures assigned by the court;
* Oversee the observance of laws in the execution of court decisions by bailiffs and other competent authorities;
* Investigate crimes;
* In cooperation with other public bodies develop measures for crimes prevention, anti-corruption, anti-terrorism, anti-extremism and against other offenses in conjunction with other state authorities and participate in activities on improvement and interpretation of laws;
* Coordinate activities of the law enforcement agencies on fight against crimes and its prevention and other offenses;
* Participate in court hearings;
* File protests, complaints and statements related to orders, decisions, sentences, rulings and judgments of courts that contradict to the law.

Besides, the prosecutor may oversee other areas in accordance with the legislation of the Republic of Tajikistan if deemed necessary.

**The list of functions assigned to the prosecutorial bodies is quite extensive** and goes beyond criminal procedure. These functions (that are beyond criminal procedure) give them unrestricted rights to conduct inspections, request documents and information in any public body or private organisations. Procedures or regulations to bring prosecutors to responsibility for abuse of such functions are not well developed and enforced.[[22]](#footnote-22) Several amendments were introduced to this Constitutional Law over the years. However, there was no effort to reduce powers of the office of the Prosecutor General.

* 1. **Freedom of association and participation in public affairs (arts. 22, 25 and 27)**

**Issue 24**: *With reference to the State party’s report (CCPR/C/TJK/3, para. 98), please report on the content of the bill amending the Voluntary Associations Act, including on its compatibility with the Covenant, and provide information on the progress of its adoption and on the participation of civil society in this process. Please respond to reports of: (a) pressure on organizations to cease their activities; and (b) undue State interference in the activities of public associations, including through the mandatory and detailed reporting to the Ministry of Justice of foreign funding and property received by non-governmental organizations, and through the use of recurrent tax and labour inspections, reportedly as a tool of intimidation, particularly affecting those organizations working on the issues that are sensitive for the Government, such as human rights. Please also comment on concerns that the amendments to the Act on Fighting Corruption, adopted on 30 May 2017, authorizing the State Agency for Financial Control and Combating Corruption to inspect the financial activities of political parties, international organizations and local public associations and requiring submission of annual corruption risk assessment reports, increase State control over their activities.*

**Reply / Comments from Civil Society**

The Government declares that the working group was set up to amend the **Law on Public Associations**. Despite numerous requests (including in writing) of NGOs filed to the Ministry of Justice, they did not receive the draft Law and were not included to the working group. The process of drafting of this Law is fully closed and not participatory.

**The space for civil society organisations in Tajikistan is shrinking** in the last couple of years. In 2015, the Law on Public Associations was amended. Now NGOs are obliged to inform the Ministry of Justice about all funds received from international sources prior to use. NGOs have to inform the authorities about the source and nature of these funds as well as their use. The Ministry of Justice can verify this information and hold inspections. In practice, in the last few years several NGOs were inspected by the authorities including the State Committee on National Security, the Tax Committee, the Ministry of Justice, the Prosecutor General’s office, labour inspectorate and fire inspectorate. Some of the inspections resulted in imposition of fines (in some cases reaching USD7’000) and even the closure of branch offices in the regions. As NGOs are fully dependent on donor funding, some NGOs were at risk of suspension of their activities and even closure. Mainly, NGOs working on sensitive human rights issues including rights of sex workers and Lesbian, Gay, Bisexual, Transgender (LGBT) were inspected.[[23]](#footnote-23)

In 2017, amendments were introduced to **article 5 of the Law on Anti-Corruption**, authorizing the bodies of state financial control and anti-corruption to analyse findings of the organizational and methodological procedure of assessment (analysis) of corruption risks in state bodies, local self-government, state enterprises as well as non-profit organisations including public organisations, political parties, international organisations operational in Tajikistan. It is specified that the methodology of procedure and the analysis of the activities (corruption risks) shall be established by the Government of Tajikistan. At the moment, such a methodology was not developed. Public discussion of such methodology is not conducted.

During public meetings with NGOs it is being said that all the activities/amendments and initiatives related to tighter control of financial flows of NGOs are introduced in response to **Tajikistan’s commitments to implement recommendations of the Financial Action Task Force on Money Laundering**. Government reports that these initiatives shall result in more transparency of funding raised by NGOs, especially from abroad. However, Government operations, operations of line ministries, judiciary, prosecutor office and others, their budgets including budgets of projects implemented by the government project implementation units funded by the international development agencies and international financial institutions (e.g. ADB, WB, EBRD, UNDP and others) are not transparent in Tajikistan. Mechanisms of accountability are not effective. For example, the OECD concluded that information about budgets (their drafts, implementation and so on) is not published. There was no discussion of the budget on the website of Tajikistan’s Parliament. According to the Action Plan of the Anti-Corruption Strategy for 2013-2020, it was foreseen to publish all draft laws for wide public consultations (p.27 of the Action Plan). However, in practice, drafts of tax and customs codes were not subject to public consultations.[[24]](#footnote-24) There are no institutional mechanisms for consultations with NGOs, or for the inclusion of NGOs in public policy formulation and implementation. Thus, consultations with NGOs and opportunities for influencing policy-making are dependent on the Government’s will and are not systematic.

1. <https://www.transparency.org/cpi2018> [↑](#footnote-ref-1)
2. Strategic Research Center under the President of Tajikistan (2016), Summary of Findings and Trends in Sociological Studies of Corruption, p.6 [↑](#footnote-ref-2)
3. Ibid, p.17. [↑](#footnote-ref-3)
4. Ibid, p.13. [↑](#footnote-ref-4)
5. Ibid, pp.22-23. [↑](#footnote-ref-5)
6. OECD (2017), Anti-corruption reforms in Tajikistan, Fourth Round of the Monitoring of the Istanbul Anti-Corruption Action Plan, p.31. [↑](#footnote-ref-6)
7. Ibid, pp.45-56. [↑](#footnote-ref-7)
8. OECD (2017), Anti-corruption reforms in Tajikistan, Fourth Round of the Monitoring of the Istanbul Anti-Corruption Action Plan, p.15 [↑](#footnote-ref-8)
9. Ibid, p.25 [↑](#footnote-ref-9)
10. OECD (2017), Anti-corruption reforms in Tajikistan, Fourth Round of the Monitoring of the Istanbul Anti-Corruption Action Plan, p.101. [↑](#footnote-ref-10)
11. Ibid, p.114. [↑](#footnote-ref-11)
12. Ibid, p. 117. [↑](#footnote-ref-12)
13. e.g. Asia-Plus News Agency reported on closed court hearing of ten former staff members of the Agency on Anti-Corruption and Financial Control charged with bribery and fraud, <https://news.tj/ru/news/tajikistan/laworder/20170725/vhod-vospretshen-verhovnii-sud-zakril-svoi-dveri-na-vremya-protsessa-nad-antikorruptsionerami> [↑](#footnote-ref-13)
14. Article 12 stipulates that work on the following positions is included to the legal experience: judge, prosecutor, investigator; civil service positions where degree in law is a requirement; legal departments of organisations of any form of property status; positions in academia which require degree in law; as a lecturer of legal subjects in higher educational institutions; as a lawyer; as an assistant to a lawyer. [↑](#footnote-ref-14)
15. Human Rights Center (2017), Anti-Corruption Expertise of the Legislation in the Area of Judiciary, p.6. [↑](#footnote-ref-15)
16. Strategic Research Center under the President of Tajikistan (2016), Summary of Findings and Trends in Sociological Studies of Corruption. [↑](#footnote-ref-16)
17. Strategic Research Center under the President of Tajikistan (2016), Summary of Findings and Trends in Sociological Studies of Corruption, pp. 17, 21, 22. [↑](#footnote-ref-17)
18. Agency on Anti-Corruption and Financial Control (2017), Information about monitoring of implementation of the Anti-corruption Strategy for 2013-2020, p. 10. [↑](#footnote-ref-18)
19. Human Rights Center (2017), Anti-Corruption Expertise of the Legislation in the Area of Judiciary, pp. 15-16. [↑](#footnote-ref-19)
20. Human Rights Center (2018), Monitoring of Implementation of the Anti-Corruption Strategy of Tajikistan for 2013-2020: Report on Findings of the Monitoring, p.14. [↑](#footnote-ref-20)
21. Ibid, p. 24. [↑](#footnote-ref-21)
22. OECD (2017), Anti-corruption reforms in Tajikistan, Fourth Round of the Monitoring of the Istanbul Anti-Corruption Action Plan, p.74. [↑](#footnote-ref-22)
23. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan, advanced unedited version, June 2017, A/HRC/35/22/Add.2, paras.54-58. [↑](#footnote-ref-23)
24. OECD (2017), Anti-corruption reforms in Tajikistan, Fourth Round of the Monitoring of the Istanbul Anti-Corruption Action Plan, pp.78-79. [↑](#footnote-ref-24)