

ASIAN DEVELOPMENT BANK

**COUNTRY GOVERNANCE ASSESSMENT
OF THE
REPUBLIC OF TAJIKISTAN**

December 2004

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CURRENCY EQUIVALENTS

(as of 1 December 2004)

Currency Unit	–	Somoni
TJS1	=	\$0.3298
\$1.00	=	TJS3.0317

ABBREVIATIONS

ADB	Asian Development Bank
CAR	Central Asian Republic
CIS	Commonwealth of Independent States
CSO	civil society organization
EIU	Economist Intelligence Unit
GDP	gross domestic product
IBTA2	Institution Building Technical Assistance: Phase 2
IMF	International Monetary Fund
MOF	Ministry of Finance
MOJ	Ministry of Justice
NGO	nongovernment organization
NRC	National Reconciliation Commission
OSCE	Organisation for Security and Co-operation
PIP	public investment program
PRS	poverty reduction strategy
SOE	state-owned enterprise
TA	technical assistance
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WTO	World Trade Organization

GLOSSARY

hukumat	government. The hukumat is divided into central hukumat and local hukumat. The local hukumat is the governing body of a jamoat.
jamoat	collection of villages: the lowest administrative unit
mahalla	traditional community council: informal lowest level to the local governance arrangements
Majlisi Oli	Parliament of Legislature
oblast	region
raion	district

NOTES

- (i) The fiscal year of the Government of Tajikistan ends on 31 December.
- (ii) In this report, \$ refers to US dollars.

This report was prepared under the overall guidance of N. Siackhachanh, Director, Governance, Finance, and Trade Division, East and Central Asia Department. B. Wilkinson completed the report in close coordination with senior officials in the Government of Tajikistan, and conducted workshops in February 2004 to discuss and revise the content of the report with key stakeholders. M. Collette, Governance Specialist, directed consultants and oversaw initial draft report production. K. Motomura, Country Director, and O. Nazmieva, Project Coordinator, Resident Mission to Tajikistan, provided valuable contributions and support. Consultants B. Darling, A. Barry, G. Teale, and S. Newton drafted and restructured initial materials. Substantial contributions were also provided by O. Rafiev, G. Akhmedova, K. Tajiddinov, K. Sirojiddin and S. Isaeva, S. Karimov, R. Sanginova, R. Mamishev, R. Zoyirov, and staff of Counterpart International and the Open Society Institute, Tajikistan. The authors would like to thank A. M. Santos for assisting in the preparation of the report.

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CONTENTS

FOREWORD.....	vii
BACKGROUND.....	viii
EXECUTIVE SUMMARY.....	ix
I. AN INCOMPLETE TRANSFORMATION.....	1
A. THE TRANSFORMATION CHALLENGE.....	1
B. HISTORICAL CONTEXT.....	2
C. AN EVOLVING VISION.....	3
D. STRENGTHENING GOVERNANCE: OPPORTUNITIES AND CHALLENGES.....	3
II. STRUCTURE OF THE STATE.....	5
A. THE CONSTITUTION.....	5
B. THE EXECUTIVE.....	5
C. LEGISLATIVE BRANCH.....	6
D. ANALYSIS AND ISSUES.....	8
III. PUBLIC SERVICE MANAGEMENT.....	16
A. PUBLIC SECTOR MANAGEMENT.....	16
B. THE REFORM PROGRAM.....	17
C. ANALYSIS AND ISSUES.....	18
IV. GOVERNANCE AT LOCAL LEVELS.....	26
A. GEOGRAPHIC STRUCTURE.....	26
B. LEGAL STRUCTURE.....	26
C. LOCAL PUBLIC FINANCES AND FISCAL TRANSFERS.....	27
D. NATIONAL-LOCAL RELATIONS.....	28
E. ANALYSIS AND ISSUES.....	28
V. PUBLIC FINANCIAL MANAGEMENT.....	32
A. REVENUE MOBILIZATION.....	32
B. BUDGET PROCEDURES.....	34
C. FINANCIAL CONTROLS.....	35
D. EXTERNAL ECONOMIC RELATIONS.....	35
E. CURRENT REFORM AGENDA.....	36
F. ANALYSIS AND ISSUES.....	37
VI. THE LEGAL SYSTEM.....	44
A. BACKGROUND.....	44
B. LEGAL FRAMEWORK.....	45
C. INSTITUTIONS.....	45
D. EXTERNAL ASSISTANCE.....	48
E. ANALYSIS AND ISSUES.....	49
VII. CIVIL SOCIETY AND THE PRIVATE SECTOR.....	56
A. THE ROLE OF THE STATE IN ECONOMIC MANAGEMENT.....	56

B.	CIVIL SOCIETY	56
C.	THE MEDIA	58
D.	CITIZEN'S RIGHTS	60
E.	ANALYSIS AND ISSUES	61
VIII.	CONCLUSIONS AND PROPOSED ACTION PLAN	64
A.	DEVELOPING THE INSTITUTIONS AND STRUCTURES OF A DEMOCRATIC STATE	65
B.	REFORMING KEY FUNCTIONS OF GOVERNMENT	68
C.	CIVIL SERVICE MANAGEMENT	71
D.	ADMINISTRATIVE REFORM	72
E.	CREATING THE ENABLING ENVIRONMENT FOR THE MARKET ECONOMY	73
F.	CIVIL SOCIETY	75
G.	RECOMMENDATIONS FOR ADB ACTION	76
H.	CONCLUSION	78
	APPENDIX	79
	REFERENCES	99

FOREWORD

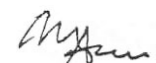
The Asian Development Bank (ADB) has established governance as one of the three pillars of its Poverty Reduction Strategy. The ADB policy on *Governance: Sound Development Management* (ADB 1995) argues that without good governance, efforts to reduce poverty would not be effective. To address poverty, a country must have a basic foundation of capable institutions and sound governance practices, which lead to effective markets.

Good governance is a particular approach to management of the public sector that enables a nation to grow and prosper. The approach calls for (i) all organizations and individuals to be accountable; (ii) public participation; (iii) transparent policies, rules, regulations, and laws and processes for implementing them; and (iv) predictability and continuity of policies, rules, regulations, and laws that govern the development process.

Country governance assessments (CGAs) are carried out to systematically assess the quality of governance for developing member countries (DMCs), and to strengthen the linkage between the quality of governance and levels and composition of assistance. The findings of CGAs are incorporated into ADB's country strategy and program (CSP) and updates (CSPUs). ADB has completed CGAs in many DMCs, including Bhutan, Cambodia, the People's Republic of China, Lao People's Democratic Republic, Thailand, and Viet Nam. CGAs are under way in another 16 countries. In 2002 ADB began work on this study to assess Tajikistan's governance systems, to document the progress made to date, and to identify areas where further progress is needed to optimize the Government's programs and ongoing reforms.

The transition in Tajikistan has put extraordinary demands on the Government to change the policy, fiscal, and regulatory environment in managing an open-market economy and a democratic state. Over the past decade the Government has made good progress in developing an economic management framework and more effective government institutions, despite the significant disruptions of post-Soviet transition, the civil war, and regional instability. ADB recognizes these achievements, particularly given the difficulty of implementing them with the scarce resources available to the country.

This report aims to contribute to a better understanding of governance issues and priorities in Tajikistan, and to provide a potential road map for further development and enhancement of the nation's governance structure. The recommendations mentioned in this report include reform of the civil service, completion of the separation of powers and strengthening the rule of law, provision for stronger devolution to improved local government services, and enhancement of civil society's engagement. It is hoped that the report will both encourage further commitment to governance development, and enable further investment in such reforms.



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East and Central Asia Department
Manila, December 2004

BACKGROUND

Asian Development Bank (ADB)'s policy on *Governance: Sound Development Management* (ADB, 1995) defines governance as the "manner in which power is exercised in the management of a country's social and economic resources for development."

This is the first governance assessment for Tajikistan. The purpose of this paper is to analyze the state's role in organizing efficient and effective markets, remedying market failures, developing human resources, and mitigating the hardships caused by the transition. Reinventing the state to undertake these roles requires that the state encourage participation by a range of public and private institutions.

This study reviews the current governance system and its implementation issues in six main areas: the structure of the state, the public service, local government, public finance, legal institutions, and civil society. It also addresses improvements being made, and considers the areas where progress is successful or uneven. The assessment concludes with an action plan, which recommends further reforms to enhance the governance structure in Tajikistan. In addition, the report identifies areas where ADB could offer specific assistance.

As far as possible the study has taken a participatory approach, consulting with representatives from Government, civil society, and the private sector. The study team also consulted representatives of other international financial and development institutions active in Tajikistan. A draft version of this report was reviewed in a stakeholder workshop in Dushanbe in February 2004, and the recommendations of stakeholders have been incorporated into this document. We are particularly appreciative of the work of Mr. M.D. Mulloev, Institution Building Technical Assistance: Phase 2 (IBTA 2) Project Manager, in establishing working groups for all three branches of the state to review and consult on the final draft of this report, and to encourage further thinking on viable next steps.

ADB wishes to thank all those who have so generously contributed their knowledge and insights to produce this important study. Particular thanks are due to the Minister for State Revenue and Duties and former ADB Governor, Mr. Gulomjon Babaev, and the current ADB Governor and State Adviser to the President of the Republic of Tajikistan on Economic Policy, Mr. F. S. Kholboboev. This assessment would not have been possible without the support of the Presidential Working Group on the Improvement of the Governance Sector, and we are most grateful for their support and engagement.



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EXECUTIVE SUMMARY

The Government of Tajikistan and the Asian Development Bank (ADB) share the goal of reducing poverty in Tajikistan through sustainable social and economic development. This assessment of Tajikistan's governance capacity is intended to provide a basis for dialogue between the Government and ADB and other international development partners about reforms that will enhance Tajikistan's efforts to achieve its development aspirations.

When Tajikistan became independent in 1991 following the breakup of the Soviet Union, transition began to a liberal democratic state subject to the rule of law with a market economy as the engine of growth. Unfortunately the collapse of the economy following the Soviet withdrawal and the resultant deprivations aggravated clan and ethnic divisions, leading to the civil war of 1992–1997. The General Agreement on Establishing Peace and National Accord (Peace Accord) was signed in 1997 based on power-sharing arrangements within the executive bodies and the Central Election Commission. Elections were successfully held in 1999 under constitutional rules. These power-sharing arrangements have maintained the peace, but balance of power is not fully institutionalized. A draft electoral system law was completed in 2001 but has been shelved for unknown reasons.

Within the Commonwealth of Independent States (CIS), as the former Soviet Union states are now known, Tajikistan has made progress in establishing a multiparty system where different voices can be heard, and its development of concrete modern economic legislation has been outstanding. Less progress has been made in developing operational balances of power between the judiciary, executive, and legislative branches, legal structures in the social development sphere, or modern management systems within the public sector. A significant gap exists in the creation of a facilitative rather than a directive engagement of Government with the private sector and nongovernment organizations (NGOs). Tajikistan needs to continue its work to complete the transformation envisaged in 1991, so that development can be accelerated and real progress made in addressing extreme poverty in the country.

The 1994 Constitution formalized a unitary, autonomous State based on liberal democratic principles. It specified a presidential system of multilevel representative government. The Constitution states that the executive, legislative, and judicial branches of power are separate, but in practice separation has not been fully achieved. The executive branch still holds significant legislative powers, and exercises some administrative controls over the judiciary. Equally important, the balance of power is skewed very heavily toward the executive branch. Ministries are not organized carefully by function, and funding is not allocated according to activities or objectives.

The Legislature (*Majlisi Oli*) serves with oversight limited to control over budget implementation. As a political mediator it acts through dialogue, negotiation, and compromise to reconcile divergent interests to support the national public interest. Its oversight role—to monitor and scrutinize the functioning of the executive branch—is still evolving. There is no historical experience of this role in Tajikistan, and given the complex allegiances of many members, it is still cautious in exercising these powers. The President has limited powers to issue edicts and decrees. The Government may issue decrees and instructions, ministries can issue instructions, and state committees and locally elected bodies can also issue instructions within their domains.

The main issues in the structure of the state for the executive branch are transparency and rebalancing of power from the executive branch, and clarification of roles between central and line ministries and local Government or self-governing bodies. Between Government branches, better accountability for strategic planning, budget management, and intergovernmental relations is needed. In the area of the legislature an independent set of resources and administrative managers is needed, along with more autonomy in determining priorities and legal development strategies.

Tajikistan inherited a multilevel administrative structure from the Soviet period. The structure followed the basic hierarchy (from the top down) or republic, *oblast* (region), and *raion* (district). Raions are further subdivided into *jamoats*,¹ a collection of villages, which are local self-governing bodies. There are some variations in this basic hierarchy. Since independence, and particularly since the Peace Accord, the system of local government has evolved, with some devolution of power to local levels. The constitutional basis for the devolution of power is laid out in Articles 76–80 of the Constitution. In practice the outcome is determined more through political accommodation rather than a strict interpretation of the Constitution.

Local Governments are involved in the delivery of many public services and so are involved in the budget process. However, the final budget is largely determined by the national Government. Local Government has very limited revenue-raising powers. The power to levy taxes rests with the central Government but collection occurs at local levels, creating certain problems with overassessment. Local Governments are only allowed to levy a narrow range of charges on their own account. Budgeting is annual for local government expenditure, making medium-term planning impossible; however a 3-year medium-term expenditure plan is now provided at the national level.

The reporting structure for local administrative units (national line ministry offices working in and serving a region) suffer from lack of clear accountability. These units report to the *hukumat* and the local leader and through him to the President. They also respond to the national line ministry responsible for their particular sector. This dual subordination arrangement is only exacerbated by budget constraints. The net effect is that the responsibilities of local officials tend to exceed their authority or access to resources to discharge these responsibilities.

The main issues for local government arrangements include very large levels and numbers of local government offices, at a high total cost. Reporting structures are unclear and there is little accountability. Fiscal arrangements are arbitrary, overly complex, and have too short a time horizon.

The public service (excluding employees of state enterprises) employs roughly 300,000 people, a very high number for the size of the economy and population. The civil service is a subset of the public service responsible for managing of core government functions. Currently the civil service employs about 24,000. Civil servants are employed through many different agencies, and there is no consistent basis for determining which entities become separate employers. Formal authority for employment in the public service flows to employers from the President, and is managed through the Executive Office, or at the local level through the local *hukumat*. While there are some regulations governing employment and the Labor Code spells out employment rules generally, in practice the relationship is determined by historic systems that rely on personal trust and patronage over merit.

¹ The term used for this lowest administrative level varied among the different Central Asian republics.

The performance of the public sector is poor, resulting from a combination of systemic factors and a lack of management skills. There is a shortage of capacity and skills in the civil service and a lack of motivation. Pay is well below the poverty line and civil servants may resort to rent-seeking activities to supplement their meager pay. Devolution of accountability and decision making is very weak.

The Government is committed to reform the civil service, which is the management level of the public service, and to use this as a key for reform of the rest of the public service. There is rather less understanding of or commitment to reform of reporting structures to ensure that civil servants are fully accountable for their actions. The main issues include the need to convert the service to a professional civil service, arrange change management processes to support this move, develop a realistic scheme for retrenchment and pay reform, and separate the political and administrative roles of key advisors.

The revenue base remains narrow and despite serious efforts to make improvements, revenue collection is still weak. There are significant problems with collections processes, which have led to corruption and arbitrary reallocation of resources at local levels. Administrative restructuring is under way now, as well as rewriting of the Tax Code. The formation of the new Ministry of Revenues and Duties is a positive step in reform of the administration of collection systems. Considerable reform of tax and customs policy would improve the revenue base and make the systems less distortionary. Simplified reporting and accountability systems are needed together with a long-term program to eliminate corruption.

Effective execution of the budget is difficult given its structure and the complex reporting arrangements within the Government. This will only improve when central-local government relationships are simplified. A consolidated cash management system is being introduced, but is currently hampered by a lack of professional skills and a lack of computer systems. In practice, cash management resorts to crisis management, which affects the priorities of the budget. The constitutional provisions for approval of the budget provide the opportunity for scrutiny of the budget, but are yet to be effectively implemented. The lack of transparency of the existing budget puts limitations on meaningful scrutiny. Budgeting is not linked to performance or to program activities.

The Government is taking steps to improve financial controls with the creation of a procurement agency and financial controls committee. Currently there is no distinction between internal and external controls, and the principles that are driving control mechanisms have changed little from those in the earlier Soviet system.

The most critical issues identified in the assessment are improving revenue mobilization and administrative reforms of tax collection; aligning the budget with government priorities and providing for medium-term expenditure planning, including decentralization of finance; improving accountability, monitoring, and evaluation; and providing more modernized audit processes and institutions for further transparency. Intergovernmental fiscal relations between national and local governments also need substantial improvement.

The elements of the legal system are as follows: the Constitution specifies a tripartite system headed by a Constitutional Court, the Supreme Court, and the Higher Economic Court as in Russia, with court hearings following an adversarial process. The courts are not fully independent of the Executive, which directly and through the Council of Justice, retains some role in administering the courts. Formed in 1999, the Council of Justice is part of the Executive Branch reporting to the President, and includes representatives of the Legislature and Ministry

of Justice. It retains a role in administration of the court system and in the selection of judges. The Procuracy is essentially unchanged from Soviet times, holding very extensive powers of prosecution, investigation, and enforcement. There are few effective checks on the operations of the Procuracy.

The key issues in the legal system include separation of powers between the three branches; reform of the judiciary including legal professional standards; reform of the Procuracy; dealing more effectively with corruption; a more public and transparent dealing with laws and legal interpretation including clarity, consistency, and enforceability of the laws themselves; development of the Administrative Code; effectiveness of fair law enforcement; and reconciliation processes.

Despite the intentions spelled out in the Constitution, the approach of the Government to economic management has not changed sufficiently to promote a viable market economy. The Government has not yet engaged in a new and critical role enhancing market relations; rather, it functions as owner and manager of productive assets. A strategy for bringing the informal economy into the formal sector is needed. Many regulations discourage formal private sector activity. In particular, land tenure laws are weak and discourage investment in agriculture and agribusiness.

With considerable external assistance Tajikistan has created much of the legislation needed to manage a modern market economy. However less progress has been made in reforming and creating the institutions needed to administer the law or in creating a culture of respect for the "rule of law." The priority now is to reform key legal institutions and to start on the long process of changing legal culture.

Finally, some basic market infrastructure remains nonexistent. Business services such as accounting, auditing, and private credit cooperatives for small enterprises are yet to exist in an openly accessible form. Corruption is still a significant issue. The policy environment is still not conducive for developing a viable private commercial financial services system.

While the Constitution provides appropriate protection for civil society organizations and the media, these have not been fully implemented. A culture of mistrust of such organizations, inherited from the Soviet system, still pervades many areas of the Government. Legislation governing the sector does not provide for relative freedoms. The Constitution provides appropriate protection of citizens' rights, but again these provisions have not been fully implemented. While NGOs and the media are increasingly active, open debate and discussion still suffers from a hangover of reticence about the potential consequences of opposition.

The transformation is proceeding, but many concepts that have been accepted as the foundations for the new structures are not yet understood and implemented. Until the Government completes the transformation, Tajikistan will be unable to fully achieve its social and economic development objectives. It is recommended that the Government intensify its efforts in four key areas:

- (i) Develop the institutions and structures of a democratic state;
- (ii) Engage in appropriate levels of devolution and decentralization;
- (iii) Provide transparent, efficient, professional public sector services; and
- (iv) Complete the enabling environment for a functioning market economy.

Consensus must be established and developed on the process and sequencing of

change, and on appropriate methods and forms to provide compensation to those who will be harmed by the planned reforms. A phased program should be developed that recognizes absorptive constraints, and sets realistic targets against which the executive branch can be held accountable. Such a program must take place in a context where the short, medium, longer-term goals and priorities of the State are clearly defined, and work is carried out according to these priorities.

To complete structural transformation, a range of related reforms are needed. Most of these changes require a set of interrelated medium-term plans. While the agenda looks daunting, it should be initially planned for a time horizon of 5–10 years, which will enable the system to handle the workload without being overwhelmed. Development partner assistance can be considered for both development and implementation of reform plans.

Developing the institutions and structures of a democratic state involves the following key enhancements.

- (i) Ensure a carefully developed medium-term plan is completed that unambiguously lays out the goals, objectives, and priorities of Government, and guides all reforms. Such a plan must have public consultation both in the formation and in the monitoring of implementation.
- (ii) Transform public sector culture from legal instrumentalism and administrative control to legal empowerment, public accountability, and prevention of abuse of public power.
- (iii) Make substantive legal changes to complete the proper transformation of institutions that are empowered to enforce the rule of law, particularly the separation of the courts into an autonomous branch of Government with each chairperson controlling the individual court budget. Regularize the role of the Procuracy, bailiffs, and the militia.
- (iv) Create educational measures and access to encourage public understanding and acceptance of the rule of law, to be followed progressively by sanctions to enforce existing laws.
- (v) Restructure the Executive Office to ensure that decision makers receive quality technical and political advice that are clearly distinguished from each other.
- (vi) Transfer control over the staff and budget of the Legislature from the Executive to the Legislature, possibly through a mixed management system.
- (vii) Transfer control over the staff and budget of the legal system to the chief justice, and separate the court system from the Executive.
- (viii) Establish the rights of the Legislature to regularly question the executive about its decisions and use of public funds, and to encourage media publication and analysis of details of budget implementation.

- (ix) Make all sessions of the legislature and its committees and the courts open to the public and the media (except in circumstances specified by the law) with regular published summaries of proceedings.
- (x) Establish a development agenda that is the core of policy presentations and the annual and medium-term budget operations.
- (xi) Finalize program budgeting, ensuring that government financial and operational structures and functions are consistent with government policies and priorities, and there is distribution of state resources between public management bodies according to their tasks and functions. Strengthen systems of forward estimates, revenue collection, and financial control/audit. Improve civil service capacity in financial management.

Engaging in appropriate levels of devolution and decentralization requires attention to the following areas:

- (i) With regard to local government identify issues, ensure local concerns are factored into national policy, increase national agencies' awareness of local perspectives and best practices, ensure an ongoing exchange of views between government levels, and arrange medium-term budgeting with more reliability to enable better planning.
- (ii) Lower the overall cost of levels of local government. Develop a new simplified and unambiguous reporting structure. Develop a new, simplified, but equitable formula for revenue sharing that will provide certainty to lower levels of the Government for funding over a 3 to 5-year horizon. Resolve the structure for civil service in local government. Address the question of dual subordination and local accountability.

Providing transparent, efficient, professional public sector services involves the following steps.

- (i) Identify who is a public servant and who is a civil servant. Adopt employment and promotion procedures based on merit. Adopt consistent terms of employment for all civil and public servants. Adopt a publicly promulgated code of ethics to be followed by all civil and public servants, as primary legislation if deemed appropriate.
- (ii) Revise pay scales. In the long term, consideration might be given to forming a Senior Executive Service to provide staff for senior positions in the civil service.
- (iii) Develop reporting procedures to make the civil service accountable to the legislature and the public.
- (iv) To address the problems of administrative reform and proactively address corruption, recreate an anticorruption commission, develop the Administrative Code, create an administrative appeals tribunal and/or ombudsman, and strengthen the Government's statistical capacity to publicly identify profile and

report publicly on the informal economy, including rent-seeking and other illegal activities.

Completing the enabling environment for a functioning market economy involves the following tasks.

- (i) Develop and implement a strategic and credible action plan, based on wide public discussion, for bringing informal economic activities into the formal economy. Steps recently taken by the Government on legalizing funds indicate proper commitment and point in the right direction. The Government must rely on positive incentives and deal aggressively with corruption issues.
- (ii) Reform land tenure laws to formalize either private ownership or trading of land-use rights, and permit the pledging of land and other assets to secure financial transactions. Reform of land tenure has proved particularly difficult throughout the CIS, but is fundamental to the development of efficient land-cropping and effective engagement of land-based collateral by the financial sector, enhancing its ability to fund private sector development. The use of land and other assets as collateral is one of the most common and effective methods of securing loans in growing market economies.
- (iii) Accelerate divestiture or corporatization of its remaining production capacity. While the Government remains both an owner of production processes and the regulator for the economy, conflicts between these roles will continue and the Government will be tempted to alter the rules for the benefit of its own firms. As far as possible the Government needs to phase out its direct management activities in the economy, and concentrate on its new and proper role as economic referee, providing for transparent corporate governance throughout the economy.
- (iv) Develop a vibrant, trusted, and diversified banking system, including nonbank financial service providers. The Government should aggressively continue its policy to promote the development of a core set of healthy banks, supplemented by competition and service provision from other financial institutions. Impediments to alternative financial services such as private cooperative credit unions and microcredit banks should be removed. Practices that favor state-owned enterprises (SOEs) over private enterprises and undermine the supervisory credibility of the National Bank of Tajikistan must be eliminated.
- (v) Promote and license private brokerage services to handle workers' remittances and similar payments. The export of labor is likely to continue for some time, and transfers and remittances should be brought into the formal sector.
- (vi) Provide start-up assistance through the Ministry of Economy and Trade to the private sector establishing trade facilitation services. Few trade facilitation services are currently available in the market sector to help potential exporters navigate this uncharted territory. Without credible and reliable support, it is virtually impossible for inexperienced firms to expand into export markets. Technical assistance is needed on internationally accepted business practices,

banking services, expedition services, legal consequences, and a host of other matters.

- (vii) Review policy toward private enterprises, nonprofit businesses, and professional associations to encourage their formation and remove impediments to their development. Professional associations and other nonprofit civil society organizations (CSOs) can play an important role in skills development, in the enforcement of professional standards, and in other key economic growth areas.
- (viii) In consultation with civil society leaders, review and improve the laws, principles, policies, and practices that apply to CSOs, to ensure that there are no legal obstacles to the creation and operation of bona fide CSOs.
- (ix) Review laws institutions, and practices regulating the operations of the mass media to remove any impediments to its independence and freedom of speech. The mass media must be independent from the State so that it can act as a voice of the public and report critically on the activities of the State.
- (x) Introduce an access to official information act that guarantees the public and the mass media access to any government-held information that does not unduly violate personal privacy, commercial confidentiality, or national security.

Tajikistan must further reform governance systems to accelerate development and creation of an enabling environment for private business, protection of property rights; slash corruption; and enable transparency and accountability to improve the well-being of the whole population. Unless the Government takes steps to improve its credibility and marshal the support of development partners and potential investors, it will be unable to resolve the most critical problems it faces. These include the fragility of its political development, the low level of economic activity and vulnerability of its economy to external shocks, and the impact of continuing poverty on the population. The development challenge facing the current Government is immense, and it is to be commended for its persistence under daunting circumstances.

I. AN INCOMPLETE TRANSFORMATION

1. In 1991 at the breakup of the Soviet Union, Tajikistan became independent and commenced its economic and democratic transition. Unfortunately the economic collapse that followed the Soviet withdrawal aggravated clan and ethnic divisions, resulting in the civil war of 1992–1997. The Peace Accord based on a power-sharing arrangement was signed in 1997, and elections were successfully held in 1999 under the terms of the peace treaty. These power-sharing arrangements have helped maintain the peace.

2. Within the Commonwealth of Independent States (CIS), Tajikistan has made considerable progress in establishing a multiparty state. Developing modern management systems within the public sector has been a more difficult task. Overall, the governance transformation is incomplete. There still are vested interests that are resistant to change, and considerable power is exercised through informal systems. The key challenge facing Tajikistan is development of effective institutional structures, so that the increasingly solid legal developments can be implemented and real progress made in addressing deep-seated poverty.

3. The Government of the Republic of Tajikistan and the Asian Development Bank (ADB) are committed to reducing poverty in Tajikistan through sustainable economic and social development. The Government has agreed that a comprehensive structured review of Tajikistan's governance and development management capacity should be undertaken. This review assesses the adequacy of current governance systems and identifies further steps appropriate to complete the transformation, taking account of priorities, resources, and readiness and ability to absorb change. The results can promote dialogue with the people of Tajikistan on the role of the State and the reforms needed for development, and with ADB and other international development partners on the nature and extent of support needed for such reforms.

A. The Transformation Challenge

4. When Tajikistan became independent in 1991, it aspired to establish a modern democratic state in sympathy with its rich history and traditions. The 1994 Constitution laid out working principles, but the management structures needed to implement these ideals have presented significant challenges. Development of a new system of state management was quickly overtaken by the immediate need to manage the twin crises of economic collapse and civil war.

5. Before independence Tajikistan was the most heavily financially dependent of all former Soviet republics, receiving almost 50% of its state revenues as direct transfers from Moscow and running a massive trade deficit with the rest of the Soviet Union. Further, it had been receiving substantial additional hidden subsidies in the terms of trade it received for its main exports.¹ The cutoff of these significant resources resulted in economic collapse.

6. The initial response was to try to maintain economic activity via massive deficit spending, but this together with the costs of the civil war resulted in a rapid buildup of external

¹ Cotton and aluminum continue to constitute about 60% of all exports. Given the nature of the pricing system used by GosPlan (the Soviet-era economic planning organization) it is difficult to estimate the precise size of this subsidy.

debt.² Despite these efforts, economic activity has fallen to approximately 20% of the level experienced in 1990. Currently over 64%³ of the population lives below the poverty line. With International Monetary Fund (IMF) support the budget has been brought back into balance and the external debt issue is being addressed, and growth rates of 8% per annum have been achieved. However, debt servicing will remain a threat to economic recovery for some years, especially as export earnings are virtually dependent on cotton and aluminum. Thus there is a need to rethink the scope of government services that can be supported and the structure of public administration to provide these services.

7. As part of the Peace Accord of 1997, the National Reconciliation Commission (NRC) was established with the help and support of the international community. NRC negotiated the balance of power based on a multiparty system and regional pluralism. It reconfirmed the 1994 Constitution, and maintained a unitary, multilevel system of government with a strong presidency. Constitutional amendments in 1999 codified this new power structure. However, resource constraints and shifting government priorities have made it difficult to implement.

8. Changing to a new system based on democracy and the impartial rule of law has proven to be far more complex than originally envisaged. The transformation has been hampered by informal parallel systems and historic bad practice. Slow and incomplete reform of these systems is a major problem in Tajikistan, as it is in many other CIS countries. Manipulation of the cotton trade and exploitation of the movement of migrant labor for private benefit has been observed. Drug trafficking⁴ and the conduct of otherwise legal activities outside the formal economy⁵ are prevalent even by CIS standards. These informal and illegal markets are of sufficient size to have a strong influence on the allocation of social and economic resources, with some becoming even more robust during the civil war (A. Kiner 2001). They continue to constrain development.

B. Historical Context

9. Tajikistan society has a rich history, with its Persian origins⁶ and deep pride in the Samanid era during the last centuries of the first millennium, when the region was celebrated as Islam's center of learning, for its favorable Silk Route trade, and development of the arts. Since then it has survived subordination first to Turkic conquerors, then to Mongols. Finally, during the "Great Game" over the control of Central and Southern Asia, Tajikistan fell to Russian and later Soviet interests, forming the southern border of the Soviet Union in Asia. While its natural resources were used for the benefit of other Soviet republics, Tajikistan remained highly

² Data provided by the International Monetary Fund in May 2003 stated that Tajikistan's external debt (public plus publicly guaranteed) was \$997 million, or 83.2% of GDP. Since then, the Russians have written off official debt by an estimated \$300 million in mid-2004.

³ Down from 81% in 1999 (World Bank 2004)

⁴ ADB sources. The drug trade is well known internationally, as reflected by the following excerpts from other reports:

"In recent years the 'drugs industry' has grown from an illegal trade carried out by individuals to the organized group business, that damage the international prestige of the country and hamper attempts to attract inward investment necessary for rapid economic growth" (UNDP 2000)

"...and a drugs trade that constitutes a major part of the national economy (although unrecorded, it is estimated to account for up to 30% of GDP) and which drives much decision making and violence" (EIU 2001).

⁵ Estimated unofficially at 50-100% of GDP official figures.

⁶ Unlike the rest of Central Asia with its mainly Turkic roots, Tajik history is Persian and shared with Iran and northern Afghanistan. The cities of Tashkent and Samarkand in Uzbekistan's southeast are historical Tajik sites. About 25% of Tajikistan's population is of Turkic ancestry, and over 70% is of Tajik ancestry.

dependent on Moscow's subsidies and centralized social and economic structure. The former Soviet system continues to have a major impact.

10. Tajikistan is undergoing one of the most turbulent periods in its recent history. It is faced with limited opportunities for development, while the combination of risks it faces is among the most daunting in the developing world. The next 10 years and the steps taken for both economic and social development may well define the country's long-term options.

C. An Evolving Vision

11. While private institutes, the media, and public sector authorities have not yet enabled a democratic transition,⁷ the President, the Government, and the administration generally recognize the need to implement major reforms. The longer-term National Poverty Reduction Strategy (NPRS) for 2002–2005 has been emphasized repeatedly in the President's annual policy speech to the Legislature.

12. The main components of development policy that are guiding the Government are (i) **establishing of security**—personal security, food security and basic survival, national security, economic security, law and order, basic human rights, and environmental security; (ii) **nation building**—transforming governance through consensus, reforming local government, developing effective local public-private sector interaction and achieving public trust in the law; (iii) **sustainable economic growth**—through a market-based economy with well-functioning and credible financial institutions and the creation of public and investor trust in the marketplace and corporate governance; and (iv) **social equity**—through an equitable distribution of power and national resources, civil society development, gender equity, targeted state support to the poor and vulnerable, equitable access to services, redistribution of taxation and intergenerational transfers, and remedying regional disparities.

13. Although progress is being made on all fronts, the greatest advances have been in establishing security and administrative frameworks. Less progress has been made on the institutional development needed for sustainable economic growth and social equity.

D. Strengthening Governance: Opportunities and Challenges

14. Moving from a controlling to an enabling/empowering and liberal democratic market system presents major challenge for Tajikistan's leaders, given limited experience of these new systems, severe resource constraints, and historic practices that are difficult to dislodge. These challenges are compounded by the multiple transitions that must be managed more or less simultaneously, creating a staggering management load for the Government (Holmes 1999).

15. Tajikistan faces some particular challenges in nation building and maintaining the peace. Issues of civil service reform, balance of powers in the branches of the state, decision making, transparency, land tenure, administrative predation, and local government are illustrated in Box 1.

⁷ The Center for Strategic Research under the President has focused on defense and external security issues.

Box 1: Current Governance Systems

The fundamental aspects of governance...are inherited directly from Bolshevik politics. Tajikistan's public administration reflects a structure similar to other Former Soviet Union (FSU) republics.... The absence of an overall body of regulations covering civil service management, together with inadequate pay and incentives, has resulted in low morale and motivation among government employees, difficulties in retaining competent staff, and distortions of reward systems and administrative structures.... Responsibility is also fragmented. The structure of decision making is still highly centralized, and there is an absence of sufficient checks and balances.... The lack of a strong judiciary and police force makes it hard for impoverished persons to seek redress under the law.... For example, the legislation on the rights of citizens lacks sufficient transparency. The Parliament, possessing insufficient expertise in international legal standards, still tends to formulate laws in the Soviet manner...The constraints on the rule of law encourages abuses of power and position in the local economy...and negatively affects the livelihood of the population, especially in rural areas where over 70% of the population lives. Most of the rural population is engaged in agriculture—even doctors and teachers, who are often not paid their meager salaries, receive their primary income from subsistence agriculture. Agriculture is managed in such a way that farmers have few rights and must circumvent the law as a coping mechanism. Private business and trade create an opportunity for small retailers to ply their wares and for farmers to sell their produce.... However a “cut” is taken from most trade in bazaars by inspectors, policemen, and criminal groups. Due to the collapse in the economy, state budgets no longer suffice to support public services; but it is the poor who are least able to cope with these problems, since they possess neither the money to bribe nor connections to wield influence... (World Bank 2000).

16. The most important aspect of reform is the strong willingness of the Tajiks themselves to be realistic about their options and to take steps accordingly to resolve them. The key guidelines in considering the process of governance enhancement in Tajikistan follow.

- (i) Recognize that the hardest constraint for some time to come will be funding, and making difficult decisions accordingly.
- (ii) With public participation, develop a common strategy for reforming the governance system that unambiguously lays out the goals, objectives, and priorities of Government, and guides all reforms.
- (iii) Set up an interlocking web of reasonable, implementable medium-term reform plans given the shortage of human and financial resources, and resist social, political, and development partner demands to do otherwise.
- (iv) Implement in full these plans, to create a network of sensible, cost-effective, and sustainable integrated systems of good governance.
- (v) Increase transparency and public engagement in both plans and implementation.
- (v) Stick closely to priorities, particularly unambiguous separation of powers.

17. The next sections discuss key areas—the structure of the state, the public service, local government, public financial management, the legal system, and civil society. Summary definitions are provided, detailed discussions of issues and options considered. The report ends with a proposed set of options for further reform, and potential areas for ADB involvement.

II. STRUCTURE OF THE STATE

A. The Constitution

18. The 1994 Constitution was adopted in a nationwide referendum conducted in the midst of the civil war, replacing the Soviet-era constitution. Major amendments were made in 1999 on the recommendation of the NRC established in 1997 at the end of the civil war. Further amendments have been made as a result of the “yes” vote in the June 2003 referendum.

19. The 1994 Constitution created a unitary law-governed State based on democratic principles. It specifies a presidential system of multilevel representative Government. The sole source of state power is the people—to be exercised directly or through their representatives such as political parties. The balance of power and accountability resides with the national level of the Government, primarily with the President. The 1999 amendments provided for significant reforms to better accommodate the country’s pluralism and regional tensions.

20. The referendum held on 22 June 2003 approved a group of 56 amendments, most of which were of a technical nature or referred to changes in economic systems (such as creating the right for the private practice of medicine). Structurally the most notable change is that the President will now be allowed to hold office for two terms.⁸

B. The Executive

21. The Executive consists of the Presidential Apparatus and the *Government*.⁹ The Constitution specifies that the President is both head of State and head of *Government*. Tajikistan’s system of Government concentrates executive power in the presidency. While there is a prime minister who is appointed by the President, the President remains involved in the day-to-day operations of the *Government*. The structure is conceptually somewhat similar to the United States model. The executive as the information and service provider is the most powerful branch, subject to limited scrutiny and public accountability (World Bank 2000 and EIU 2001). The President may serve for two terms.¹⁰

22. Many key bodies report directly to the President. These include the Executive Office of the President, the Security Council, the Council of Justice, the Procuracy, Department for Constitutional Guarantee and Civil Rights, the Center for Strategic Research, and the Financial Control Committee.

⁸ The referendum was widely considered to be unfair, and there were questions on its results (EIU 2003). The amendments were bundled rather than separately considered. Key issues were the extension to two terms for the President and removal of guarantees for universal free health care and free secondary education.

⁹ The term “Government” is interpreted more narrowly in Russian than in normal English usage. A better translation of the Russian term “Government” might be Council of Ministers, but this term is no longer used in Tajikistan. Another possible translation would be “Administration” as in American usage of the term to describe the senior appointed officials immediately below the President. The translation of the term “Cabinet” as used in Westminster systems (Australia, Canada, New Zealand, United Kingdom, etc.) would be less appropriate as in these systems the members are elected, not appointed. We have therefore included the term “*Government*” in italics to assist the reader in separating it from the notion of the Government as a whole.

¹⁰ Prior to the June 2003 referendum the President could only serve for a single term. The current President has occupied the position since 1991, but as there were major constitutional changes in 1999, local legal opinion is that his term starting after the 1999 election should count as his first term for the purposes of this constitutional requirement.

23. The President has extensive powers of legislative initiative and can effectively manage the program of the Legislature. He has limited powers to issue edicts and decrees, largely in the form of regulations or secondary acts. Such edicts have the status of normative acts and must be executed by the *Government*. *Government* and ministries may issue regulations within their domains. Their implementation is compulsory. Despite these blurred roles, Tajikistan has taken more steps towards implementing democratic procedures for lawmaking than many other CIS countries.

24. The *Government* is charged with ensuring the effective functioning of the economic, social, and spiritual spheres, and with the implementation of the laws and resolutions of the Legislature and the edicts and decrees of the President. As of July 2003 the *Government* comprised

- (i) the President as Chairman,
- (ii) the Prime Minister,
- (iii) the first deputy prime minister,
- (iv) four deputy prime ministers responsible for social affairs; agriculture, environment and natural resources; industry, construction, energy; and trade and international relations;
- (v) 20 ministers with specific portfolios, and
- (vi) five chairs of state committees.

25. Under the present power-sharing arrangements the *Government* is the principal forum for creating policy, settling issues among the coalition partners, and for balancing regional, religious or clan interests. Members bear responsibility not only for the activities of the ministries or state committees they head, but also for the *Government* as a whole.¹¹ The power-sharing arrangements allowed for the opposition to take 30% of the positions in executive bodies and 25% of the Central Election Commission.

26. The Presidential Administration, also known as the Executive Office of the President or Executive Apparatus, reports directly to the President and is in charge of day-to-day governance. Within the Presidential Administration there are 14 departments that oversee the portfolios of the 25 ministries and state committees with line and coordinating functions. The Secretariat also has 12 departments with central agency functions.¹² There are also five State Advisors to the President. These advisors cover economic policy, foreign policy, personnel policy, social development and public relations, and legal policy. They report directly to the President, and have their own small staff.

27. The Administration has two basic functions. First, it provides advice that enables the President to establish and implement an agenda. Second, it enables the President to maintain control over the Government while successfully accommodating the political and policy realities of the power-sharing arrangement with the opposition parties. This enables the necessary compromises to be worked out within the Administration. According to a 2001 decree (footnote 12) the Administration has three components: the President's Office (President's Apparatus), the Secretariat of the President, and the Secretariat of the Prime Minister.

C. Legislative Branch

¹¹ Constitutional Law on the Government of the Republic of Tajikistan, 1995, Article 25.

¹² Decree on The Reorganization of the Structure of the Executive Apparatus of the President of the Republic of Tajikistan, 30 October 2001.

28. The Majlisi Oli, the Parliament of Tajikistan, is the highest representative and legislative body in the Republic of Tajikistan.¹³ Initially unicameral, the Chamber of Representatives (*Majlisi Namoyandagon*) was joined by the Regional Chamber, the *Majlisi Milli*, formed by the 1999 constitutional amendments.

29. The Chamber of Representatives, the original chamber, consists of 63 deputies. The deputies are directly elected by secret ballot, with 41 deputies representing single member electorates, and the remaining 22 selected in proportion to the political parties' shares of the national vote.

30. The new Regional Chamber, the *Majlisi Milli*, represents the regions with 33 members plus, potentially, former presidents who choose to become members. Twenty-five members are elected indirectly, five from each region elected by a meeting of all local assemblies within that region. The President appoints the remaining eight members.

31. Both chambers are elected simultaneously for a 5-year term, but the Majlisi Oli can dissolve itself earlier with the consent of two thirds of its members and deputies. Members and deputies enjoy immunity and are expected to express their views freely and vote according to their conscience, independent of the will of the electorate—although, as in many countries, party discipline is accepted as consistent with these obligations. The *Majlisi Milli* meets only twice a year, although recent legal changes should increase this number and help make this new house of the Majlisi Oli to be more active.

32. Tajikistan's Legislature serves as a legislative body with oversight limited to control over budget implementation. It has two principal nonlegislative tasks. One task is political mediation, whereby it acts through dialogue, negotiation, and compromise to reconcile divergent interests to support the national public interest. The Legislature's limited oversight role is evolving, however.

33. The Peace Accord provided practical mechanisms for power sharing. The first presidential election under the amended Constitution, held in November 1999, and the first elections for the reformed Majlisi Oli, held in February 2000, introduced a competitive dimension into the political process¹⁴ that can promote party discipline and accountability to the public. Although the President's party gained control of both chambers, other political parties and independent candidates are now represented, demonstrating that a multiparty system has taken root.¹⁵ As noted in a report of the United Nations Development Programme (UNDP),

The...elections to the Majlisi Oli demonstrated that Tajikistan is looking forward to democratization of all aspects of social life. The world community has noted the positive political changes in Tajikistan. The Secretary General of the UN...highlighted the significance of the participation of the formerly opposing sides in the elections, and also the fact that the first multiparty elections had been held in an environment free from violence. This is an

¹³ Constitution of Tajikistan, Article 48.

¹⁴ After the tumultuous decade of change, hostilities, power struggles, and the resulting realignments of power, lack of experience with a multiparty system and lack of training of officials, it is not surprising that international observers found these first elections to be seriously flawed. Nevertheless the results were largely in line with the predictions of independent analysts, and should be seen as a major step forward.

¹⁵ pp. 23–24. Represented in the Majlisi Oli are the People's Democratic Party (the President's party), the Communist Party, and the Islamic Revival Party.

important factor of human development and social cohesion. It marks the new institution building (UNDP 2000, pp. 25–26).

34. Article 52 part 4 of the Constitution and Article 45 of the regulations of the Majlisi Namoyandagon require delegates to use the periods 25 December–10 January and end of paid vacation–30 September to work with their electorate, including informing the constituents about their work. Sessions of both houses should be broadcast over television and radio and reported in mass media and informational bulletins by the Majlisi Oli. These requirements appear not to be met.¹⁶

D. Analysis and Issues

1. Separation of Powers and Power Sharing

35. The principle of separation of powers (executive, legislative, and judicial) is recognized in the new Constitution. Consistent with recent history, the implementation of the concept is ongoing but not yet complete. The Soviet system did not recognize this principle, and the resultant blurring of the roles of the three parts of the Government is a legacy. Tajikistan is still working out the best mechanisms for implementing the new principles. This progress is extremely important, as the concept of separation of powers provides the foundation for effective checks and balances and enables all parts of Government to be accountable to the people.

36. The current power-sharing agreement has been a major step forward for Tajikistan, and demonstrates leadership in the Central Asian republics (CARs) in this regard. The NRC-led reconciliation process, top-level political leadership, and the realignment of regional power have helped maintain and consolidate the peace.¹⁷ Unfortunately, methods for exercising power in the public interest are not well developed. There is a tendency to rely on earlier flawed practices that lack key checks and balances. The lack of absorptive capacity for change and natural resistance are hindering development of the most appropriate practices. This has caused erosion of power sharing and tipped the balance of power strongly toward the executive branch, a worryingly common practice in CARs.

37. The historic task for the Government at this stage under the present Constitution is to shape and improve the practices for the exercise of state power, with even balancing between the three branches. While the institutional framework provides flexibility and scope for the evolution of checks and balances, it still faces major tests. Next steps must mobilize the goodwill of those with formal and informal power, while generating an environment that will facilitate a peaceful, legal, and balanced exercise of political power.¹⁸

¹⁶ Majlisi Namoyandagon, Committee for Streamlining Governance System and Local Self Government, letter to the authors dated 22 January 2004.

¹⁷ NRC was wound up after the elections. It had completed most of its responsibilities under the Peace Accord, although the allocation of government appointments to opposition members had not quite reached the 30% quota (and appears still to be below the quota in 2003). A framework has now been created for institutionalizing the power (balance) among conflicting interests. This framework has passed the test of a first round of elections, and the Legislature is over halfway through its term of office.

¹⁸ A peaceful transfer of power has yet to occur in Tajikistan (or any other Central Asian republic).

2. Structure and Operation of the Executive

a. Streamlining of Reporting Structures

38. Currently, reporting structures are detailed and difficult to penetrate from the outside. The complexity of the arrangements is seen as a matter of some pride. The system is believed to be effective in maintaining coordination among units and preventing accountability problems between the Presidency and Government, as observed in some other CIS countries. The external perspective is that the current structure makes it difficult to conduct policy debates in a sufficiently transparent way, or to hold key figures accountable for their actions. Enhancing transparency by establishing a clear, public mechanism for policy discussion would markedly enhance the trust levels in the Government, and help citizens better understand and agree to the hard choices the Government has to make.

b. Political vs. Technical Advice

39. Currently, there is no clear separation of political and technical advice at the top decision making levels. The President and other decision makers personally know all the advisors and are aware of their technical or partisan roles. This arrangement may be expedient and workable, but as development challenges multiply and policy issues become more complex, sources of advice inevitably expand and become less personalized. Additionally, centralizing technical advice allows line departments to become both isolated and less motivated, as well as being ultimately less accountable for their important policy and implementation tasks.

40. Present practices may well result in attention to partisan political concerns and vested interests rather than focusing on the rational management of scarce national resources. This is a negative result that often occurs when there are (i) a strong Presidency, (ii) historical legacy of blurred distinctions between the executive and partisan interests, historic corruption of public sector systems, and the lawlessness fostered by civil war, (iii) limited pressure from the legislature for public accountability of the executive, and (iv) new power-sharing reforms that allocate government posts based on party lines.

41. Encouragingly, executive power in Tajikistan is starting to respond to technical advice and public views. For example, various structural adjustments have been made on technical grounds to achieve macroeconomic stability. The Government is also experimenting in a limited way on new collaborative arrangements for reducing poverty, including the institution of structured dialogue with development partners, civil society, business, and individuals.

42. To increase the focus on technical advice, reform is needed to improve public accountability and constrain the influence of vested interests. It is not yet clear whether further reform is needed via changes in legislation, or whether better exercise of existing powers of the legislature will be sufficient. The shift can be fostered in various ways.

- (i) Separate clearly all political and technical advice provided to the President and the *Government* from technical advice made available to the public. Technical advice can then be overridden on political or partisan grounds, and the political leadership can defend decisions publicly.
- (ii) Provide regular, detailed information for the legislature and media on the activities and decision making of the executive.

- (iii) Limit the power of the senior leadership to appoint or dismiss certain officials for partisan reasons.
- (iv) Encourage mechanisms to deal with interministerial disagreements and policy dispute issues within Government.
- (v) Develop a nonpartisan technical body with independent sources of revenue to perform policy- and government-performance analysis, and publish and disseminate its findings to the public.
- (vi) Create an independent technocratic team to develop and implement a common strategy for reform of the governance system, with a clear political mandate and independent source of funds.

c. Transparent Decision Making by the *Government*

43. The *Government* is the main forum for creating policy and balancing various sectarian interests. To date it has been successful in this role, but while it bears the major responsibility for such compromises, it is difficult for the *Government* to focus on the overall national interest. Reforms to provide other mechanisms for balancing sectional interests will allow the *Government* to concentrate more on the national interest.

44. The *Government* needs to become more accountable in order to help it, and the President, refocus energies away from narrow sectarian to national interests. Clearly certain deliberations must be confidential—this is the rule in every country. However, mechanisms should be used to counterbalance this confidentiality and constrain top-level decision makers from abusing their powers. Typically members of such bodies are required to accept collective and individual accountability for outcomes. In addition such bodies are required to (i) publish all legislative and other acts that result from decisions, (ii) publish all resource allocation decisions and outcomes to allow public scrutiny, (iii) release all formally recorded decisions of the body after a fixed period (such as 10 or 15 years), and (iv) publish drafts and open discussion on most policy reform matters and technical issues before final government deliberations are held, so alternative points of view can be considered.

d. Delineation of Functions between the President and Prime Minister

45. As in many CIS countries the Constitution states that the President is both Head of State and Head of the Government. However, the interpretation of this in Tajikistan differs from the practice in other CAR nations. In most CIS countries the Presidency is responsible for setting key policies. The *Government* (effectively headed by the Prime Minister) is responsible for implementing these policies, though in practice there is some blurring of the roles. In Tajikistan the President is closely involved in the management of the *Government*, chairing meetings of the *Government* and generally being involved in its day-to-day management. Some within the Executive Office see this as a useful technique to avoid accountability problems between the Presidency and the *Government*. This situation may also be a weakness, discouraging transparency in policy-making procedures and limiting delegation of authority.

46. The overlap of roles of the President and Prime Minister is carried over into the offices of the executive,¹⁹ so it is difficult to identify any formal debate on key policy issues within the Office or to distinguish between policy decisions in principle and decisions on implementing

¹⁹ In the 2001 government reorganization, the Secretariat of the Prime Minister was blended into the President's Office to the point where it is difficult to identify two separate offices.

such policies. While it may be sensible resource management to combine services to both officials, in practice it makes separation between the *Government* and the President more difficult. Once the roles of the President and Prime Minister are more clearly delineated, the structure of the Executive Office can be reassessed so that each is given the support needed to fulfill separate and distinct roles.

47. The Executive Office does not have specific units responsible for strategic planning and priority setting, development and related change management, and national-local relations, although the Office of the State Advisor for Economic Policy and the Ministry of the Economy and Trade are officially tasked with developing economic policy proposals. These areas are managed through informal processes by a team of senior advisors, but may not be receiving the attention needed. Strong movement is being made through ADB-funded work on aid coordination to enhance the development management process. To ensure accountability for advice and decisions on development issues, specific groups should be designated to manage these key areas and ensure policy options are properly scrutinized.

e. Delegation of Authority and Accountability

48. Procedures for delegating authority and ensuring that holders of delegated authority are accountable for their actions are problematic in Tajikistan. Under the historic system, all decisions were passed up the line for approval. Once approved, a lower level official had no authority to interpret decisions that had already been approved from above. Control was exercised by requiring higher-level approval of even minor details, rather than lower level officials being responsible for interpretation of broad decisions made at higher levels. In practice not all details could be or were forwarded up the line for approval, and lower level officials interpreted decisions as they saw fit, while claiming that details had already been approved and that they had no power to interpret these in any way. While good work is being done in this area, it is difficult to delegate when there is uncertainty about the quality of or ability of government officials to comfortably handle this new mechanism.

49. To become more effective, accelerating changes in the decision making process is needed. Officials must be delegated responsibility for making decisions within their areas of responsibility, subject to guidelines. Accountability must be reinterpreted in a broader manner; not in the narrow sense that each specific decision that is made should be approved from above, but as a responsibility to implement broad decisions made at higher levels in a reasonable and consistent manner. Delegation of government authority to local self-governing bodies is also important in this process, as it serves as an instrument for local accountability.

50. Such change will take time, and Tajikistan will need to look beyond the CIS for effective models of delegation of authority. It is a change that will need to come from above, and begin with areas where damage from poor implementation choices would be relatively small. Clarification of delegations within the offices in the executive branch would be a good start to the process.

f. Structure and Capacity of the Executive and Line Ministries

51. In every sector, there are significant differences between the actual and intended roles of the executive office and the relevant ministry or agency. Due to a serious lack of capacity in the ministries, much of the policy and legislative drafting work and even implementation functions that should be undertaken at the ministry level are performed by the Executive Office.

52. Certain systemic capacity constraints limit what the *Government* can absorb and accomplish (IMF 2001). Intense short-term pressures for results continue to force the concentration of existing policy and strategic management capacity within the Office of the President. The policy and change management capacity of line ministries is weak. What does exist is not fully engaged, and becomes truncated and less effective. The capacity and motivation of ministries to implement policies they have not designed or debated must understandably be low. The *Government* is aware of these issues and is working to address them as capacities and resources permit (World Bank 2000). However these realities must be respected when considering methods to strengthen development capacity.

53. Line ministries are the location where the population interacts with Government. Public perceptions persist that public power is often abused for private benefit. This lack of confidence is rooted in serious reservations about the lack of transparency, accountability, or simple understanding of government systems and practices. Whether true or not on a case-by-case basis, this situation is very serious and must be addressed promptly. An important step in the process of governance reform to deal with this serious issue is simple education of the public about the actual roles and responsibilities of line ministries, and what they are actually able to do or not do under resources currently available.

54. Significant quantities of technical assistance are already being provided to try to increase capacity, particularly in economic and fiscal management, but resources even in these critically important fields remain very thin. Assistance has been targeted mainly at the President's Office and the Ministry of Finance (MOF). In the legal field, ADB, the Open Society Institute, and other development partners have provided TA to the State Advisor, while the United States Agency for International Development (USAID) is providing TA for capacity development in commercial law to the Ministry of Justice (MOJ).²⁰ The World Bank is also providing substantial TA on public administration reform. ADB is providing assistance in foreign aid management and public investment programs. However, capacity in other ministries and agencies is deteriorating. The challenge is to balance the push for immediate reform with the ongoing need to engage line ministries and enhance both their capacity to develop and understand new policies, and their concrete ability to implement reforms on the ground.

3. Role of the Legislature

55. Overall, there has been a promising but cautious start for the new Legislature. There are four challenging roles for the Majlisi Oli: (i) the structure and functioning of the Legislature has to be sufficiently representative and robust to reconcile strong regional political tensions; (ii) it has to become a constructive and adequate counterbalance to a strong executive; (iii) public confidence and trust in the Legislature has to be won, partly by ensuring adequate public participation in its policy and lawmaking processes; and (iv) the Majlisi Oli must provide increased scrutiny of government performance to motivate the executive branch to improve.

56. The relationship between the Majlisi Oli and the Executive is evolving, but as yet their respective roles overlap and are affected by the imbalance of power. The challenge for the Executive, especially the Presidency, is to encourage the relationship to evolve so that the vision laid out in the Constitution is realized.

²⁰ An independent Law Reform Commission reporting to the President was established with ADB support, but it appears that the Commission's resources and functions have since been absorbed into the Office of the State Advisor on Law Policy.

57. Theoretically, the *Government's* freedom to reorganize its structure is limited by the Legislature's role in approving presidential appointees as ministers and heads of state committees, and in approving the *Government's* budget proposals. This may be an appropriate role, but in practice the role has yet to be realized.

58. The growing professionalization of the Majlisi Oli makes it receptive to new ideas of governance and integrity. The Legislature is widely viewed as hardworking. Since its installation in 2000, it has passed an impressive quantity of legislation—primarily bills submitted by the *Government* that were developed to create the basic legal framework for a market economy, while social services and human rights bills have lagged behind. Nevertheless, the Legislature remains at a formative stage and is heavily constrained by a lack of most basic support services. Staff capacity and other services are inadequate to meet the management challenges of a modern professional legislature. As an example, the Committee on the Economy and Budget has passed over a third of the total bills submitted, yet has only one computer and two legal assistants (one since mid-2003) for all analysis, drafting, and comparative fit within the existing legal structure. For clear accountability, and thus the credibility of the Legislature, it is essential that each chamber be provided with an adequate budget, and responsibility for directly managing its own services and staffing. The executive branch should not involve itself in the management services of the Legislature.

59. The lack of public access to the proceedings of the Majlisi Oli is a concern. This situation will do little to develop public understanding of the issues being considered or public confidence that their interests are debated and pursued. The Legislature might, as a first step toward addressing this problem, publish a timetable for improving public access.

60. The Majlisi Namoyandagon lacks any capacity to oversee the implementation of the Budget. The Commission on Financial Control reports initially to the President, but is committed to providing its reports to the Majlisi Oli. However, its independence from the Executive is incomplete. An independent external audit body is needed to support the Legislature in its oversight of budget implementation, as mandated in the Constitution.

4. Interaction between the Executive and the Legislature

61. In theory the constitutional requirement that the President and *Government* seek approval for certain actions can provide a set of checks and balances between the executive and the legislative branches. However, the Executive's exercise of legislative power in substantive matters is accepted as normal practice. The Legal Department in the Prime Minister's Secretariat prepares the legislative agenda of the *Government*, and supports the *Government* in negotiating a legislative timetable. The Legislature currently sets little of the total overall legislative agenda.

62. The Legal Department in the President's Office reviews legislation passed by the legislature prior to forwarding it for presidential signature. Once signed, legislation is registered by the MOJ and is then officially disseminated. Given the volume of legislation that has been passed recently, it is not surprising that there is currently a backlog of up to 3,000 normative laws (plus backlogs of other legal instruments) at the final review stage. There is a working understanding that implementation of most laws can proceed even if they have not yet been officially registered or disseminated. While this may be a practical temporary arrangement, it creates a substantial risk of misinterpretation or use of outdated rules, and in fact implementation of legislation is also problematic at the line ministry level.

63. In this transition phase, the collaborative relationships being established between the two branches are an encouraging sign. However, they lack sufficient transparency and public participation. For example, examination of *government* witnesses on budget matters by the Legislative Committee of the Majlisi Namoyandagon is not open to the public or the media. Similarly, deliberations by the Majlisi Milli on the President's nominations for *government* appointments are not public. Instituting transparency in these processes would strengthen the system's checks and balances, and can substantially increase public trust in these officials.

5. Processes of Government

64. Planning and implementation of the *Government's* development agenda is documented in various ways. The most important materials are the Poverty Reduction Strategy Paper, the Public Investment Program, the Medium-Term Expenditure Plan, and the Budget. Outside the government-direct processes, the annual Tajikistan Human Development Report is an important externally financed but locally completed review.

65. There is a well-structured policy formulation process within the Government. Ministers or local governments, with the advice of their officials, initiate a policy position and coordinate with other sectors to build support. Policy submissions move through a structured process coordinated by the deputy prime minister responsible for the sector. The process requires sign-offs by the Minister for Finance (resource allocation), the Minister for Justice (legislative feasibility), and other key interests, with the goal of anticipating and addressing potential objections in advance. The proposal is then advanced to the *Government* for approval, and then to the President for his approval. Most often, policies are set in place through primary legislation. However the most effective policies may not require legislation, but simply top-level leadership and persuasion, negotiated public-private sector partnerships, or other actions that can be implemented with current resources under existing authorities.

66. In practice, the formal policy process is rarely followed in full, and actual policy substance may be problematic. This is because of the need for continual crisis management, attributable to the multiple pressures of the delayed transformation. The steady stream of external crises compounds the situation, as droughts, over-extended external debt, the unpredictability of resource mobilization from development partners, the collapse of export commodity prices, border incursions, bankrupt financial institutions, and regional power struggles among vested interests make every issue a pressing one.

67. The result is that the principal players on an issue will meet with the President to determine a stopgap action that can be rapidly implemented. The convenience of this fast-track process has made it the norm rather than the exception. As standard processes are necessarily sidestepped, the urgent problems receive attention while critical longer-term issues are set aside for a later opportunity that never arrives until they, too, become overwhelming and urgent.

68. The *Government's* development agenda is put into action through the budget process. Lobbying from key legislative interests, local governments, and vested interests plays a strong role in the allocation of very scarce funds. Additionally, until recently constitutional guarantees placed unreasonable demands on the social service portion of the budget. As a result, development activities tend to be limited to the present mandates and repertoires of government agencies, and concentrate on expenditures for public service delivery. Given the large number of pressing needs in the country and the limited information on viable alternatives to respond to each problem, it is very difficult for either the Executive or the Legislature to make the best budgetary choices between options. Successful targeting of the most urgent development

needs may require significant and difficult choices in restructuring government implementing agencies.

69. Ongoing analyses and assessments by ADB, IMF, World Bank, and other development partners have become part of the process of monitoring progress and identifying needs in Tajikistan. These studies are reinforced by commitments of potential development partner funding to significantly augment government resources. In the past, this process culminated in the coordination of development partner assistance by the UNDP. The Government Secretariat through the Aid Coordination Unit has now assumed the responsibility of matching government plans with development partner commitments, and a coordination council makes significant contributions. This change should improve integration of development partner assistance with the Government's development strategy.

70. Work by the Government on a medium-term expenditure plan and a public investment program (PIP) has progressed significantly in the last year. The first issuance of a PIP was made in 2003, to which development partners responded with \$900 million in pledges. Further work is under way to track the level of pledges that result in actual funding, and the balancing of needs against development partner interests. The expenditure plan should result in better analysis and prioritization of both the budget and implementation management.

71. Public consultation and monitoring processes are developing slowly. There have been several public meetings between the President and specific stakeholder groups such as the leadership of small- and medium-sized business enterprises and civil society organizations. These consultations combine requests for resources with public observations about the services provided by the Government, and requests for changes in priorities or improvements. These are important initiatives and represent a valuable model for all levels of Government.

72. Given the limited capacity of Tajikistan's systems to absorb change and the many vested interests that depend on the present arrangements, concerns of senior officials that changes may lead to chaos must be addressed. The reform program must be carefully phased to allow consolidation of one set of changes before further alterations are introduced. At the same time the downside of avoiding change must be clearly identified, and amelioration of losses considered. Only then can a systematic process engaging key officials, the public, and stakeholder interests be established and confidence developed that change can be managed.

III. PUBLIC SERVICE MANAGEMENT

A. Public Sector Management

73. The public service employs approximately 300,000, with the largest numbers in the education service (about 165,000) and the health service (about 75,000). Most public servants in service roles (e.g., education, health) serve at the local government level. Public service employment represents almost three quarters of total formal employment according to some statistics. By comparison, in the United States the proportion was 15.5% in January 2003, and Kazakhstan with a much larger economy has 66,000 public servants of 6.7 million employed. The civil service²¹ represents less than 10% of the public service, and provides the managers for the overall public service. Productivity of the public service is considered to be low. Cuts of 5% of the public service were made in early 2003, and increases in salaries after this year are to be tied to cuts in the numbers of the public service, as per Presidential Decree 2003 #1173 (4 December) on time-phased payments from the state budget and increase of salaries.

74. The present formal structure of the Government is a complex web that has evolved from the Soviet system of double accountability. The responsibilities placed on public service managers usually far exceed either the resources available to them or their authority to manage. Managers lack the delegated power to balance policies, priorities, resources, and staffing against demands for service even within their area of responsibility. In this environment, managers must rely on informal hidden systems to allocate resources, set priorities, and complete tasks. This is further exacerbated by the need for most public servants to seek informal arrangements to supplement low salaries. Several reports identify these systems.²²

75. The composition of the civil service, which is responsible for the core management functions of the Government, is imbalanced.²³ The executive branch accounts for almost two thirds of the 23,684 civil servants. A further 20% of the public service is assigned to community organizations (probably *mahallas*,²⁴ whether these should continue to be classified as civil servants might be reviewed). The remaining 14% are employed in the legislative and judicial branches. Those employed in ministries and state committees account for 2,000, or 8.4% of the total, for an average of 53 staff in each of the 38 bodies. This is relatively low, considering their public service management and oversight responsibilities.

76. Civil servants employed in local governments (3 oblasts, 131 raions, and 360 jamoats) are part of the national service. Assuming that on average five are assigned to each jamoat, the average number of civil servants per hukumat²⁵ (oblast and raion) is 46, which is not excessive, but the number of local governments is relatively high. With a population of 6.1 million, there is an average of 46,000 people per raion, and 12,500 per jamoat.

²¹ The terms "civil service" and "public service" are sometimes wrongly used interchangeably. For consistency, this report follows the usage given in the Oxford English Dictionary, which defines a "public servant" as any person in government employment and a "civil servant" as a person in any nonmilitary branch of state administration.

²² The practice of purchasing positions in the Tajik public sector was routinely mentioned to the ADB assessment team as a standard practice at virtually every level. This practice is also noted by the EIU's *Country Profile*, October ensure listing in References in correct format 2001, and other sources.

²³ The ADB team was unable to access data for either the public or civil service that were gender-disaggregated, but anecdotal evidence suggests that the participation of women is low, particularly in management roles.

²⁴ Traditional community councils, an informal lowest level to the local governance arrangements. They are defined and discussed further in Chapter IV.

²⁵ Hukumat is the governing body of a jamoat. Each jamoat also has a legislative Majlisi.

77. There are many separate employers within the public service, and no consistent basis for determining which entities become separate employers, or how employees are held accountable or provided with authority to act. Ministries have an oversight function for public servants they employ, but this role is limited under the present diffused accountability structure. There is no consistent reporting system across the civil service to enable the legislative body to oversee the processes used to select and manage civil servants.

78. The President is ultimately responsible for management of the civil service but cannot discharge this role effectively given the lack of a formal accountability structure and the complexity and limited transparency of the system. The State Services Department,²⁶ a body reporting to the President, has been formed to manage the civil service, which should assist in resolving some of these difficulties.

79. The quality of the public service is variable. Integrity, competence, and motivation is stifled by (i) lack of skills (particularly in areas such as policy and strategic analysis); (ii) low pay and unattractive working conditions compared with alternative employment; and (iii) inappropriate management structures and systemic problems. Accountability systems are muddled, with little hard information available on performance.

80. Most public service salaries are well below recognized poverty lines for even a single person. MOF manages the payment of cash remuneration for most public servants, as determined under various legal instruments. Due to weaknesses in the banking system, leakages of cash occur before it reaches local levels, adding to a serious problem of wage arrears. Some wage payments are several years in arrears, forcing employees to seek alternative income to survive. A 20% nominal increase in wages and pensions in April 2003 began to address some concerns in this area, as have agreements with the IMF that wage arrears cannot increase under the current program.

B. The Reform Program

81. The Government is committed to reform of the civil service and has taken several important steps in this direction. In 1999, the Government launched a major 4 year public sector management reform program under the auspices of the World Bank's Institutional Building Technical Assistance: Phase 2 IBTA2 Program. Component 1 IBTA2-1 of this program was to address (i) reform of government structures and organization, (ii) development and implementation of a public sector pay reform strategy, and (iii) strengthening of civil service management through the establishment of the planned Civil Service Department.

82. The State Services Department was established by Presidential Decree No. 3475 of January 2001, and reports directly to the President. It now consists of 30 professional and support staff. Its mandate is to establish a unified policy, legal, information management, monitoring, and oversight framework for the staffing, retention, development, and performance of civil servants. The new department has made limited progress in implementing the recommendations of these reports, which are still subject to considerable debate within the executive branch.

83. Under the IBTA2-1 Project, functional reviews of four key ministries (health, education, agriculture, and finance) have been carried out, and the review identified the need for budget management systems. A medium-term pay reform strategy is also being developed, and the

²⁶ Various translations of the name of this organization are in use, including Civil Service Department.

Government has made commitments to increase public service salaries, with one round of significant increases so far.

C. Analysis and Issues

84. Reform of the public service can only be effective if it is undertaken in tandem with four other key steps:

- (i) unambiguous definition of the role of the state in managing the economy, and of civil servants in managing the public-private interface;
- (ii) overhaul of accountability structures in government, creating clearer and more transparent reporting and payment structures, so a reformed and professional public service can use its new management skills effectively in the public interest;
- (iii) provision of clearly defined policies and human and financial resources to effectively implement these policies at the service-delivery level; and
- (iv) privatization of state property.

85. Public servants, particularly civil servants, need to update their understanding of the role of the Government and their individual professional roles and responsibilities. This requires a wrenching reversal of history, from control to service. Public servants are starting to learn how to be responsible in three key areas: (i) fostering democracy and citizens' rights, (ii) promoting private sector economic development; and (iii) making the Government more responsive to the needs of citizens.

86. The four key priorities in reforming public service management in Tajikistan are (i) professionalizing the civil service, (ii) pay reform, (iii) the management framework for partisan and political appointments, and (iv) reform of the remainder of the public service.

1. Professionalizing the Civil Service

87. The Government recognizes the need to further professionalize and modernize the public service, beginning with the civil service. A coordinated approach is needed to improve (i) technical capacity and integrity of the individual members of the civil service, (ii) management of the civil service, (iii) the institutional framework, and (iv) change management.

88. Public issues now extend well beyond the scope where effective top-level decision making can rely solely on the advice of loyal advisers. The civil service must be able to provide technical advice that is relatively free of partisan interests, and be structured for small size, high salaries, and rigorous competence and integrity. The Government recognizes that moving from a patronage and loyalty-based system of public sector management to a competency-based system will be wrenching, and will result in a significant change in the balance of power. It also recognizes that the traditional levers of power will be lost and it will have to rely on new, unfamiliar circumstances. Hence Tajikistan is approaching these changes cautiously. Fortunately, it can consider models in governments such as Kazakhstan, the Republic of Korea, Malaysia, Singapore, and others that have successfully introduced this change. These governments readily acknowledge the greater power and development leverage they have achieved by effectively tapping expert knowledge and strengthening integrity in the public service.

89. While the Government is aware of the need for change, it needs reassurance that the new levers of power will be secure, that the transition can proceed reasonably smoothly, and that technical and other assistance will be available when needed. The more visibility the Government can give to the challenges of professionalizing the civil service, the more likely constructive solutions will be found, and the greater public and development partner support. Such visibility can be achieved by using the approach the Government has used effectively on other key issues, making them more widely debatable in policy dialogues with development partners and investors, in the Legislature, by the media, and with the public.²⁷

a. Composition and Structure of Civil Service

90. Below is the suggested composition and structure of the civil service.

- (i) all employees of core management agencies (such as the Executive Office, the Legislature, the Judiciary, MOF, the Financial Control Office, the Ministry of Economy and Trade, the Ministry of State Revenues and Tax, and MOJ.
- (ii) senior executives and senior technical and policy-making staff of service delivery agencies (such as the Ministry of Health, Ministry of Education); and
- (iii) any critical technical groups of other agencies (such as policy and economic analysis, financial management, human resource management, audit, and informatics) that provide essential information and resource planning, implementation, and monitoring services.

b. Status of Civil Servants in Local Government

91. The status of civil service members currently employed in local levels of the Government will depend on the structure adopted for the public service in local governments. The options are

- (i) no change—retaining these positions in the present civil service without any special status;
- (ii) creating a local division within an integrated civil service; or
- (iii) creating new local civil services for either the oblast level, or at each local level of the Government.

92. Since management skills will remain in very short supply within the country, and finding skilled and professional persons to fill positions in more remote areas will be difficult, there is a strong argument to keep the civil service as integrated as possible, even if there is further devolution of power to local levels. Even if further devolution of power makes it necessary to set up separate divisions of a centralized service or separate services, all branches should be overseen by the State Services Department. The additional advantages of an integrated service are deeper career options and spread of key skills between local government and national government agencies.

²⁷ The President has used this approach successfully in fostering public discussion about Tajikistan's demographic policies. He has also used a public approach effectively in economic management to reassure the IMF and the international financial community on IMF concerns about uneven progress and "recent incidents of misreporting" that led to the institution of an IMF Staff Monitored Program. The President released an open Letter of Intent to the IMF on their web site, together with the accompanying Memorandum on Economic Policies (Ref. Letter of Intent, 28 March 2002 <http://www.imf.org/External/NP/LOI/2002/tjk/01/INDEX.HTM>), for which the Government remains publicly accountable.

c. Employer-Employee Relationship for the Civil Service

93. Civil servants (and public servants generally) are currently employed through various agencies. There appears to be no compelling reason for immediate change to the present decentralized structure of employers. Change can be introduced gradually as the structure of the Government is further simplified, privatization occurs, and budget structures are streamlined. Maintaining the present structure has the advantage of providing some degree of stability for those affected by other high-priority reforms. Whether all existing civil servants should continue in their current positions is a separate issue discussed in the section on Change Management.

94. Clarifying the employer-employee relationship for members of the civil service should be given top priority. This relationship must first be rooted in the rule of law.

d. Institutional and Management Framework

95. Creating of the State Services Department has been an important first step. While the outline of its mandate included in the legislation establishing the Department is appropriate, and there is some small degree of autonomy, many details remain to be agreed, and the Department appears to lack effective authority to carry out its mandate.

96. The State Services Department, if effectively developed, would be responsible for long-term strategic assessment of the demand and supply for the service; establishing professional and technical standards; determining policies, laws, and practices to be applied by all employers of the civil service covering selection, hiring, retention, development, remuneration, sanctions, dismissal, and other conditions of employment; hearing complaints of members of the service and taking remedial action; and other related responsibilities established in law. It is important to remember that any rationalization of public services will not be part of the Department's mandate, and thus such sensitive issues should be retained in the Office of the President.

97. Specific tasks of the State Services Department would include the following.

- (i) **Developing a Code of Ethics.** Develop a *Code of Ethics* for the civil service that would be legally binding. The consultants' reports prepared in July 2001 can form the starting point for the work of the Department in this area.
- (ii) **Developing selection procedures, performance guidelines and review processes, disciplinary procedures, promotion processes, and sanctions.** The Department would take responsibility for designing and implementing these procedures. The consultants' report prepared in June 2002 can form the starting point for this important work of the Department.
- (iii) **Training on new principles of the Government.** Develop (or adopt from existing courses in the region) courses for all members of the civil service on the fundamental new rules and practices, including topics such as rights of the individual, rule of law, separation of powers, institutional framework, market sector, civil society, role of the mass media, public accountability, public integrity, public finance, public-private interface, and performance management.

- (iv) **Accelerating technical training programs.** Identify skills shortages in the civil service, and develop accelerated programs for developing this capacity.
- (v) **Establishing a statistical profile.** Establish a management information system on members of and positions in the civil service, with data on skills, training, promotions, and other data that will assist in effective management and motivation of the civil service. Manage privacy issues accordingly in this process.
- (vi) **Reforming civil service pay.** In collaboration with the IBTA2 Program, develop an affordable and effective pay and benefits reform strategy for the civil service. Such a strategy must take account of impacts on the rest of the public service and in other branches of the State. It must, as a matter of course, be clear that such a reform would result in retrenchments and in more significant levels of work and accountability for those fortunate enough to be retained. It must also be clear that pay and benefits packages for all levels of the civil service will become a public matter, not private as is the current practice.
- (vii) **Coordinating with other programs.** Collaborate closely with the Change Management Office to advance the intended reforms to the civil service, and to coordinate with other reform programs.
- (viii) **Undertaking strategic planning.** Identify the future needs of the public service generally and the civil service in particular, and develop strategies for meeting those needs.

2. Change Management

98. Some change management experience has been gained through the ministerial-level Presidential Task Force on Public Management Reform (PTFPMR), and the Project Management Unit (PMU) that has been established as part of the IBTA2 Program under the auspices of the President's Office, which provides technical advice to the Task Force. Together, these two groups have been playing a vital role in developing proposals and advising on required management changes for the civil service that are technically grounded and politically sensitive. These bodies played a similar role in the recently approved *Poverty Reduction Strategy*. However their involvement in other public sector reform areas has been limited. To date, their role in actually overseeing or implementing change has been relatively cursory.

99. Despite the work done by the PTFPMR and the PMU of IBTA2, there is no single agency or ministerial-level committee effectively developing and implementing an **overall** public service transformation strategy. This creates several problems. First, there is a serious risk that changes being made in one area could be counterproductive and undermine changes being introduced elsewhere. Second, the potential for continuous learning about change management is lost as there is no formal system for passing on lessons to future change programs. Third, many reforms that should be linked are not being linked. For example, without the rule of law being accepted and established, it will be difficult for a proposed public service commission to apply sanctions. Finally and most critically, without coordination it is very difficult to prioritize between hard choices, and to deal with the hardest issue of all: how to provide the necessary and desirable services of the Government in an exceptionally resource-poor environment.

100. At this point, civil and public service reform should be handled through a single ministerial-level development and change management committee responsible for developing and implementing public service transformation strategies. It would need to be supported by its own secretariat. PTFPMR and IBTA PMU could be partially or fully subsumed to provide such a committee with a functioning core group.²⁸ The President should serve as the sponsor of this committee, and of the civil and public service changes, providing both a time frame for the reform and clear commitment to effective implementation. To support change management, each agency within the Government should identify a change agent who would serve as the proponent and facilitator of change within their organization, under the oversight of the Committee.

3. Pay Reform

101. Reforming the pay structure is central to professionalizing the public sector, improving its performance, and eliminating corruption. The report of component 1 of the IBTA2 Program on public sector pay reform completed in 2001 recommended a 5 to 10-year program to restructure pay scales, and is currently being considered by the Government along with the reports of the IMF Expenditure Monitoring Team.

102. Pay reform for the civil service should have three goals (i) adequacy; (ii) making public sector employment attractive to those with the skills needed by the sector; and (iii) sustaining professionalism, integrity, and high performance.

103. At the lowest levels of the salary scale, remuneration (including benefits) must provide full-time workers with an adequate livelihood for themselves and their dependents. The pay structure also needs to provide sufficient vertical differentiation to motivate individuals to accept greater responsibilities, and to attract people with the required level of competence. The pay structure must also be affordable and be perceived as fair relative to other pay scales.

104. The reform challenge is formidable. Based on 2001 figures, the cost of raising all civil service salaries to \$26 per month (the study estimate of the minimum living wage for a family of 2 adults and 4 children),²⁹ is about \$72 million annually. This is over 50% of the 2001 state budget of about \$140 million. It is unclear how compulsory deductions at source were treated in these estimates, so this cost could be an underestimate.

105. The IBTA2 study recommended a phased program starting with civil servants in the national level of the executive branch. It also recommended monetizing benefits and increasing vertical differentiation. The suggested initial coverage was 7,000 positions, selected for maximum impact on public sector management of core functions. This selection excludes the 3,500 positions in the courts and legislature services, and the more than 500 positions in the Executive Office.

106. Even this limited proposal affecting less than 3% of the overall public service would cost between 9% and 26% of the total state budget. Thus, the Government must first identify substantial new sources of revenues. Key concerns about the proposed reform is the cost, and the impact on the remaining 17,000 civil servants and 275,000 other public servants

²⁸ The World Bank is working with the Government to establish this system in a new civil service reform program.

²⁹ This figure is low compared with the "poverty line" of \$1 per person per day used as world poverty standard.

107. The cost of pay reform could be reduced by various strategies, such as (i) reducing the number of public servants (although severance costs might reduce initial savings); (ii) reduce the official number of hours of work to half days or less (which is closer to the present reality) and pay accordingly; (iii) introduce qualifying measures such as an examination or competitive process to qualify for new pay rates; and (iv) rank all positions by “priority for development purposes”, and then reform the pay structure for only those in the “high” category until additional funds are available. Option (iv) is the approach recommended under IBTA2-1B.

108. A pay reform strategy that links pay increases to passing professional examinations together with a reduction in official hours of work to halftime, would have multiple benefits, such as (i) promoting the professionalization of public servants; (ii) formally freeing up public servants to undertake private sector activities (within the bounds of professional “conflict of interest” guidelines), and possibly formalizing and providing personal time for private activities already carried on informally during what are now working hours (such as providing extra tuition or medical treatments);³⁰ and (iii) making the “reality” officially open to public discussion, so that a realistic baseline can be established for measuring future performance and productivity improvements, and for making future resource-allocation decisions, so that public accountability can be meaningfully instituted. However, there are significant dangers in halftime work as the best civil servants may well find themselves wooed out of government service entirely, and work arrangements might not fit the actual requirements of the job. Thus this issue must be very carefully considered.

109. Regardless of the approach, the Government must first identify sufficient new sources of revenue to meet the cost. To do this effectively, the Government will need to persuade a dubious public that “unofficial” taxes and fees will cease, and that overall, the public will receive value for money through improved public services and a better-performing economy.

110. Pay reform is as much about strategic management of the pay system itself as it is about increasing the rates of pay. Restructuring to motivate performance and eliminate discretionary patronage, to distribute salaries through a trusted banking system, and eliminate wage arrears and irregular and arbitrary payment would be an important step toward creating an affordable and effective pay system that encourages a professional public sector.

111. The President should establish an open public dialogue on this sensitive topic by referring key issues to the Legislature for committee review and advice.

4. Separating Political/Partisan and Administrative Roles

112. Governments invariably find it necessary to retain senior political positions within the Government (such as advisors in the President’s Office). With the professionalization of the executive branch, it is essential to clearly distinguish political positions from administrative (or professional/technical) positions. The civil service should be split into two branches—a small, identified political branch³¹ and the main nonpolitical professional administrative branch.³² This is important to eliminate patronage-based management in the professional service and to impose clear performance standards, transparency, and full public accountability on the non-political core of the civil service.

³⁰ This would be consistent with recent moves by the *Government* approved in the recent referendum to allow some private medical practice.

³¹ Comments provided by the Majlisi Oli stated that this separation exists in the Office of the President, but the authors note that it is not necessarily true elsewhere in *Government*.

³² This distinction has been introduced in Kazakhstan where about 5% of positions are classified as political.

113. A specific policy and legal framework for this political/partisan group is needed, which addresses issues such as integrity, performance, salary packages, privileges, and sanctions for illegal or unacceptable behavior. For example, unless appointed for a specific term, these appointments should be served “at the pleasure” of the appointer, and otherwise should cease at the expiry of a presidential term. Appointments in the political category would include most presidential appointments of ministers, heads of state committees and agencies, and other key bodies; certain designated ministerial appointments; and the personal staffs of the President and political/partisan appointees. The group may also include heads of commissions, and heads of bodies that report directly to the President, the *Government*, or a minister for direction and decision.³³

114. Exceptions should be made where technical competence is essential and it is not in the public interest to permit partisan interests to dominate the decision process (for example, for the position of governor of the national bank and high court judges). In these cases, special provisions may be needed for a competitive selection process based on merit. In some cases, a reasonable check on political/partisan appointments being made by the Executive is warranted in the interests of sound public sector management. For example, it may be useful to require the Legislature’s approval for ministers, high court judges, and other key appointments or dismissals, based on public hearings.

5. Extending Reforms to Other Public Servants

115. Professionalizing the civil service is an important first step that will affect the whole public sector through the civil service’s overall management role. The full benefits will not accrue until these reforms are extended to the public servants they manage. Certainly pockets of professionalism now exist among the public service, as was frequently evident to the assessment team during its visits to various schools, hospital, and other service delivery institutions. However, it was generally evident that the professionalism exhibited depended on the dedication of specific individuals, and was not embedded in the system.

116. The role of the State Services Department should be extended to cover all public servants as soon as possible. Under a unified approach, the State Services Department would oversee employment conditions and codes of conduct to control corruption, improve accountability, etc. Additionally, individual ministries might still play a role in imposing specific professional standards particular to their sector. This would ensure a more strategic and coherent approach to sequencing changes in the broader public service and use the limited change management capacity of Tajikistan to best effect.

6. Integrity and Accountability: Action on Corruption

117. The old culture of highly compartmentalized administrative structures, narrow agency interests, and secrecy still pervades much of the bureaucracy. This, along with salary levels insufficient for basic household needs, provides an environment where high levels of corruption can and do flourish easily. Rent seeking and the pursuit of narrow vested interests will undermine public sector management and hold back development in both the public and private sectors if not resolved.

³³ This is the approach taken in the United States, but not in democratic countries following the Westminster tradition, where it is thought that some of these positions should be nonpartisan.

118. The traditional response to corruption is to strengthen law enforcement. Tajikistan set up an Anticorruption Commission, but it was later disbanded when its capacity was discredited, and its functions were transferred. It is hoped that Tajikistan will join the Anticorruption Action Plan for Asia-Pacific sponsored by ADB and the Organisation for Economic Co-operation and Development (OECD). It can benefit from the experience of other countries, and from this pooled experience develop better safeguards to prevent capture by vested interests.

119. Experience around the world shows that the battle against corruption will not be won if it is fought on only one front. A second front must be opened, by replacing the culture of secrecy with one of accountability and transparency so the risks of detection are raised. Clear decision-making criteria and procedures need to be introduced, along with better communications protocols. Ideally these would be codified in new administrative code that clearly states the legal responsibilities and accountabilities of public officials and civil servants. To make it easier to hold public officials and civil servants accountable for their actions, it would also be desirable to introduce official information access legislation,³⁴ which specifies the rights of citizens, private institutions, and civil service organizations to access information on government actions.

120. As with all CIS countries, corruption and rent seeking has been part of the system in Tajikistan for a long time. Sadly, people have learned to tolerate or at least resign themselves to corrupt behavior among their officials. This forced acceptance may make it harder to change the culture. The first step is to bring the issues into the open and discuss why practices accepted in the past do not serve the interests of society and the economy as a whole or the best interests of most individuals. A recent World Bank-supported project researched perceptions and knowledge of the scope of rent-seeking activity in business enterprises, and has been a useful start to the disclosure and discussion process.

121. Experience in other countries suggests that change cannot take place without strong political will, top-level involvement, and leadership. The recent amnesty for the legalization of funds accumulated without retroactively punishing those who benefited under past practices, while providing the potential for redress by those who may be injured, was an important step toward establishing a consensus. This policy also aims to minimize resistance that might stem from vested interests. The next step is to accelerate the processes of transparency and accountability, and make the costs of corruption very high so that such behavior will be minimized.

³⁴ In CIS countries freedom of information is sometimes confused with freedom of speech. Freedom of information guarantees the rights of citizens and civil society organizations to ask questions and receive information on the actions of Government, while freedom of speech guarantees the rights to publish or disseminate information. Both are important in establishing a more open and democratic society.

IV. GOVERNANCE AT LOCAL LEVELS

A. Geographic Structure

122. Local government in Tajikistan has retained a historic multitiered system where local government units (territorial units) are considered branches of the national Government. The structure followed the basic hierarchy of the republic: oblasts and raions, with jamoats as local self-governing bodies without formal legal status.³⁵ Jamoats are further subdivided into neighborhoods governed by local mahallas, but mahallas similarly are not a formal part of state administration.

123. In Tajikistan most local services are actually provided by raions rather than oblasts. Oblasts are largely an administrative link between the central Government and the raions. In some areas, especially those closer to the capital, there are no oblasts, and raions report directly to the central Government.

124. The administrative-territorial division in the Republic of Tajikistan is as follows: republic, autonomous region (Gorno-Badakhshan Autonomous Oblast), region (oblast), district (raion), jamoat, city, settlement, and village. The management structure in accordance with the administrative-territorial subdivision in the country includes 1 autonomous region, 2 regions, 58 raions (districts), 47 settlements, and 360 rural jamoats.³⁶

125. Tajikistan has five main political/administrative regions:

- (i) *Khatlon* Oblast (with 35% of the population);
- (ii) *Sogd* Oblast (with 30% of the population);
- (iii) *Gorno-Badakhshan* Autonomous Oblast³⁷ (GBAO), which is thinly populated (less than 4% of the country's population) and mountainous (covering almost half of Tajikistan) and enjoys special constitutional protections for its territorial scope and minority features;
- (iv) *Dushanbe*, the capital city region, with about 9% of the population, is the equivalent of a raion, except that it carries additional responsibilities as the country's capital; and
- (v) a group of contiguous Raions of Republican Subordination (RRS), which together have about 22% of the population, contain much of the industry in Tajikistan, and are subordinated directly to the national Government.

B. Legal Structure

126. Local government is governed by the *Constitutional Law on State Administration at the Local Level*, adopted 1 December 1994 and *Republican Law on Self-Governing Bodies in Villages and Settlements* adopted on the same date. Local governments (at all levels) consist of an executive body called a hukumat and a representative body called a Majlisi. The hukumat is headed by a leader who is appointed (and dismissed) by the President. These leaders are the

³⁵ Jamoats are mentioned and provided with legal status under the current form of draft legislation on "local self-government" under consideration in the Majlisi Oli in early 2004.

³⁶ State Committee of Statistics letter No. 16-27 dated 5 February 2004.

³⁷ Autonomous regions existed in several parts of the Former Soviet Union (FSU). Theoretically they enjoyed some autonomy in recognition of their special ethnic status.

local representatives of the President and exercise executive power on matters within their territorial and legal jurisdiction. They are responsible for ensuring the implementation of the Constitution, laws and decrees of the Majlisi Oli and the President within their jurisdiction, and the social and economic development of the region. The appointment and dismissal of a local leader is referred to the local Majlisi for approval. The leader also serves as Chair of the local Majlisi, which is elected for a 5-year term and “is guided by the Chair” (Article 77).

127. The Constitution provides that both the local leader and the local Majlisi have direct power within their jurisdiction, apparently granting autonomous authority within their sphere (i.e., it is not a delegated authority). Their norms must be implemented unless they are unconstitutional or not in conformity with the framework laws of higher bodies. Such a lack of conformity may be determined by the higher-level executive or the sole legislative body, or by the courts, leaving uncertainty as to which might be the paramount body (Article 79). Each level may delegate many of its authorities to the next lower level (although with no requirement that adequate funding be delegated as well).

128. Local Majlisi are constitutionally empowered to (i) approve the district budget, hear and approve the report of the chairman on its implementation; (ii) determine the social and economic development strategy of the area in line with higher-level frameworks; (iii) determine local taxes and fees in accordance with higher laws; and (iv) determine the regulation and terms of use for communal properties in accordance with the higher legal framework (Article 77). They confirm hukumat leaders and adopt norms on political and other activities in their area.

129. At the next level is the jamoat, which is self-governing and has a semiofficial role due to receipt of allocations from hukumats to undertake activities in a given jamoat area. Its activities are mentioned in the *Law on Self-Governing Bodies in Villages and Settlements* and the *Law on State Administration at the Local Level* adopted in 1998, a constitutional law that also regulates local government at the oblast and raion levels. New legislation is under consideration in 2004. The leader of the jamoat takes decisions that are confirmed by the council. The leader’s authorities include (i) managing land and its use, (ii) proposing social and economic programs and to work for the improvement of living conditions, (iii) controlling cash expenditures, (iv) establishing working groups and cooperatives, and (v) maintaining public and social order and welfare.

130. Mahallas are self-formed social community councils of elders (traditionally male, although in some cases structures are evolving to include females and youth as well) with their own charter prescribing roles and system of self-governance. They were an important factor in maintaining social cohesion during Tajikistan’s recent turbulent history. During the years of civil confrontation, they helped save the lives of thousands of ordinary people. By modern standards of governance, mahallas would be regarded as a component of civil society. They are recognized in Tajikistan as an informal element of local government, with a role in mobilizing and managing resources, checking and curbing abuses of local power, and maintaining community values. They play an important role in informal conflict resolution, serving as mediators in disputes ranging from family to business matters. Their authority is based on tradition and not on formal law, and is widely accepted.

C. Local Public Finances and Fiscal Transfers

131. Overall, public expenditures constitute about 15% of gross domestic product (GDP), with almost 5% of GDP being spent by local governments. The distribution of revenues and expenditures by region reflects the annual national budget process, which is designed to

equalize the fiscal capacity of each region in line with fiscal needs to support approximately equivalent service levels. Funds allocated to jamoats and mahallas are minimal, and these local government bodies rely on voluntary community effort.

132. Expenditures by local governments vary markedly between regions. A breakdown of local expenditures between oblasts, raions, and jamoats was not available. Most local expenditures on program delivery are made at the raion level, though significant administrative expenditures are incurred at the oblast level. Local governments are unable to provide a meaningful level of public services with the low levels of funds available to them. Most expenditure is on salaries, wages, and employee benefits. Virtually no expenditures are made on maintenance and repair of existing facilities and other infrastructure.

133. The process for allocating revenue shares to local government is a combination of equalization and political calculation. The annual budget process and lack of medium-term commitment levels mean that local governments have little advance certainty on the revenues they are likely to receive, making long-term planning impossible. Once actual revenue receipts are determined, the local assembly may reallocate to align resources with local priorities.

D. National-Local Relations

134. At a local level two different administrative structures apply. Some public services are provided through local branches of the national Government (Procuracy, courts) or through centrally managed national services (specialized health care and university-level services) or other nationally managed arrangements (customs services at border points). Local personnel responsible for these services form departments in the local hukumat, but the head of such departments is appointed directly by the appropriate national agency. The local assembly cannot vary the budgets for these departments of the local hukumat.

135. Other services are provided through local governments (sanitation, primary health care, primary education, and veterinary services), but under the functional direction of a national service ministry (Ministry of Health, Ministry of Agriculture). The local leader appoints the head of these departments in the local hukumat. Usually the relationship is top-down, organized by service line. However, local elected assemblies have authority to vary the budget allocation set by the next higher level and reassign funds amongst this group of services.

E. Analysis and Issues

136. Decentralization can take three forms: (i) **devolution**, whereby the national level transfers or delegates its power and all associated financial and human resources to the local level; (ii) **deconcentration**, whereby the national level carries out its responsibilities through its own local offices, or by purchasing service delivery from local service providers, including local levels; and (iii) **divestiture**, where the national level vacates a field, leaving it to other bodies (e.g., the national level may cease to provide transport services but these might be taken over by local government or the private sector).

137. Most countries that have faced similar governance circumstances have found it necessary to devolve some powers to the regions. While the Constitution talks about devolution of power, in practice the main shifts have been a deconcentration of central executive powers, and sharing of these central powers through the quota system. Tajikistan has strong traditional civil structures at the lowest levels of the Government, and can use these and its resource limitations to engineer devolution in more empowering ways. Unfortunately, the changes

currently under discussion in new laws on local government do not foresee any significant shift in power. This is a critical first step.

138. Before restructuring and decentralization can take place, a detailed functional analysis of state functions needs to be undertaken. This analysis must account for specific problems in Tajikistan, consider the experience of its neighbors, and address specific sectoral issues. While in the interests of simplicity it is tempting to try to apply the same decentralization model to all public sectors, this may not be appropriate. Most countries apply different models in different sectors, with far more centralized management of civil functions (such as law enforcement, tax collection, etc.) and more decentralized models in service delivery such as in health and education.

139. Any planned decentralization of service delivery functions must take account of capacity and financial constraints at local levels. It will take time to build local capacity, and there will be additional costs to devolution. Decentralization will need to proceed in stages, with a gradual transfer of power as the capacity to exercise that power is improved. Three principles need to be applied: (i) the roles of each level should be clearly delineated, (ii) local levels of the Government should have sufficient autonomy and resources to carry out their assigned roles, and (iii) adequate institutional capacity should exist to permit meaningful decentralization. For former Soviet Union countries that have implemented these principles, the benefits are already apparent (Dabla-Norris et. al. 2002).

1. Levels of Local Government

140. The single most overwhelming challenge for local governments is the crushing poverty faced by most of their citizens. With a still evolving formal market economy, there are few opportunities for improving livelihoods. Many citizens remain critically dependent on international humanitarian assistance. They must also contend with local governments that lack adequate powers and resources to provide even the most basic of services.

141. The first issue that must be addressed is whether Tajikistan can justify retention of the local government system that currently exists. The role of government has evolved to one that manages the delivery of key facilitative and social services, rather than controlling all economic activity. This radical shift in orientation requires an equivalent change in local government institutions, so *hukumats* can meet the most essential needs in cost-effective ways. Interestingly, there appears to be widespread acceptance of the need for consolidation of local governments at the national level.

142. The current overhead costs of maintaining financial management and control capacities for the *hukumats* of an oblast and the several raions within each oblast are questionable, given the scarcity of expertise and funds. As most service delivery is currently carried out at the raion level, the amalgamation of some raions to produce larger economic units might be more effective than maintaining oblasts and raions as they currently operate. However, such proposals could only be developed after studies of local conditions weighing up economies of scale in operations against communication problems and local political variations.³⁸

143. It is thought that the proposed new laws on local government will clearly state that *jamoats* are not part of the formal structure of Government, though their future legal status has

³⁸ Any reorganization would need to take account of sensitive local political issues such as the need to keep the Raions of Republican Subordination (RRS) separate and the sensitivities created by unifying two oblasts (Kulyab and Qurghanteppe) to form Khatlon after the civil war.

yet to be determined. The classification of mahallas as a special type of Civil Society Organization (CSO), with equivalent privileges and public responsibilities, might be considered. Such a change would pave the way for mahallas to be more selective in choosing domains where they offer services in community governance, while opening the door to alternative service providers in areas like roads, sanitation services, and market management where mahallas may have less interest.

144. For local governments to function best, it may be argued that they need more support and training than the national Government. While numerous programs are providing both assistance at the raion and at the jamoat levels,³⁹ attention has largely been focused on leaders rather than civil servants or other service providers. This important gap needs to be addressed.

2. Reporting Structures

145. The current intergovernmental structure is systemically state-centered rather than society-centered. The responsibilities and powers of different levels are confused by the dual reporting arrangements, one focusing upward to the national Government and another to the local government bodies. The financial resources that accrue to lower levels of the Government do not match their service delivery responsibilities, thus compromising resource allocations at lower levels in the interests of political survival.

146. The current top-down organization of the Government concentrates on input control. This *system is not service-oriented*, and there are many unfilled positions at the local level. The structure lacks an effective mechanism to enable service agencies to adapt to meet new requirements or to ensure effective, client-responsive results. Local governments also find it very difficult to set new service priorities compatible with the shrinking availability of resources. It also encourages poor resource control and accountability at the service delivery level, and at each step in the chain that controls the provision of inputs.

147. One of the proposals being considered in the new draft laws on local government is that the local leader should appoint all department heads. While this might standardize procedures, it might not resolve the current confused reporting structures and the resultant problems in holding officials accountable. Instead, the local leader might be elected directly.⁴⁰ In the meantime, given the maturing relationship between oblast and raion leaders and their local Majlisi, it may be timely to move to an arrangement in which the leader is directly accountable to the local assembly. As experience is gained with the new relationship, attention can be given to whether governance would be improved from separating the roles of leader and chair of the Majlisi, with the assembly selecting a member as chair.

3. Fiscal Arrangements⁴¹

148. Cities and raions prepare their budgets based on MOF directions for inputs and cost estimates rather than on prioritized tasks to be accomplished. Budgets are prepared manually, which means they are both time-consuming and prone to error. Oblasts hold hearings on budgets, at which time both available revenue and expenditure ceilings can be arbitrarily changed. At the national level this review arrangement occurs a second time. Improvements in

³⁹ Innovations are being provided by Open Society Institute (OSI), the Urban Institute, and UNDP.

⁴⁰ This was recommended to the Government in the Counterpart Consortium Report on Poverty as a strategic step toward achieving poverty reduction.

⁴¹ This section has drawn greatly from the draft World Bank 2003 report on Tajikistan Financial Management Review,

the budget process are already under way via tax policy and budget reform projects, but it is important to ensure that the budget process is both more predictable and more focused on service results. To do this, intergovernmental transfer amounts must be more fixed and more closely tied to devolution of service delivery. Additionally, consultations with local citizens about expenditure priorities are a gap that needs to be filled fairly urgently.

149. Local governments can set certain tax rates within limits defined and approved by the MOF. At the current time if local councils collect national taxes in excess of plan, they can use the excess funds for local expenditure. Joint agreement on taxation matters is a sensitive issue and one under discussion. The next step must be consistent and fair application of tax rules at the local level, along with improved transparency on budget expenditures and services provided from those funds.

150. At the subnational budget level, limited reallocation of expenditure is possible in non-staff costs. Accounts are managed manually, although there are plans to computerize local government accounting systems. Payments are made largely in cash, which is understandable given the history of weak banking operations. However, cash payments create more opportunities for corruption and thus must be carefully handled.

151. Jamoats obtain grants from the raion budget, or from economic activities and voluntary contributions from enterprises or individuals. These funds are kept in a separate local account and are spent by local agreement. The jamoat expenditure consultation process can be well managed, and may be considered for documentation and adaptation.

V. PUBLIC FINANCIAL MANAGEMENT

152. Proper public financial management in an environment such as Tajikistan is vital to ensure democratic transition, attract development partner and foreign investment, and ensure government legitimacy. Since resources are very scarce and likely to remain so for some time, maximizing the results that can be produced for each revenue unit becomes critical. A delicate balance is needed between revenue mobilization and economic stimulus and investment. Budget processes have to be very closely tied to the highest priorities of the Government. Accountability for the use of public funds must be public, timely, and strict. The most significant gaps in Tajikistan are in three areas: medium-term forecasting and planning for revenue and expenditure, for careful plans on filling investment gaps, and in the area of monitoring and shifting of funds as implementation changes arise.

A. Revenue Mobilization

1. Revenue Structure

153. The breakup of the Soviet Union and the change in the economic management system had a dramatic impact on revenue mobilization. Under the old system, most revenues were paid by a few large state enterprises that were under the administrative control of the Government. Further, Tajikistan received substantial transfers from Moscow amounting to about 50% of total receipts. These direct transfers stopped abruptly when the Union disintegrated, and have only been fractionally replaced by funds from development partners. Equally significant, the profitability of many major taxpaying enterprises dropped dramatically and Tajikistan, along with its neighbors, faced a massive fiscal crisis. The Government no longer exercised administrative control over many taxpayers. The government had to rebuild a tax system to collect taxes from private sector enterprises. Much work remains to be done on this restructuring.

154. Taxes generate over 90% of state revenues. In 2002 nontax revenues (state-owned enterprises or SOE profits, fees, fines, and grants) accounted for 7% of revenue. Most tax revenue is generated by indirect taxes. Together value-added tax (VAT), and sales and excise taxes account for 45% of revenues, while customs duties contribute another 12%. Annual revenues planned for 2003 are TJS637.0 million (\$206.1 million), of which TJS363.9 million (\$117.8 million) was collected as of 30 June 2003.

155. As part of the program to introduce a Medium-Term Expenditure Framework (MTEF), estimates of state revenues by source for the next 3 years have been included since the 2002 budget, but a breakdown of allocations to local government is not included. Additionally, the linkages between the annual budget and the MTEF are weak in these early stages.

156. MOF is primarily responsible for tax policy, and budget and expenditure management, but the Ministry of Economy and Trade is responsible for economic forecasting and the State Advisor on the Economy also provides some inputs. While the forecast is subject to approval by the *Government*, it appears that the revenue estimates finally used in the budget are not the result of rigorous analysis of economic conditions, but more of the nature of targets produced using earlier practices. If targets are exceeded, excess revenues are liable to bypass the public treasury, and remain with officials or in off-budget accounts. Work is being done on annual realistic revenue projections, but reliable economic statistics are lacking, particularly production statistics, as underreporting is rife.

2. Tax Policy and Collections Management

157. Overall tax policy is MOF's responsibility. With technical assistance, major reforms were introduced with a new Tax Code enacted in 1999 that broadened the tax base and enabled the Government to increase tax revenues significantly. The Tax Code has been changed in small ways since that time, particularly during Parliamentary consideration of the annual budgets. Another major revision and update of the Tax Code is due to be reviewed and significantly amended by the end of 2004.

158. Some aspects of the tax policy indicate a limited understanding of market institutions, which continue to be hampered by counterproductive tax measures. The banking sector, cooperatives, and other nonprofit organizations particularly are subject to inappropriate tax policies.⁴² Civil society organizations that operate as nonprofit to reduce poverty and provide essential public services are treated in the same way as commercial, profit-making organizations. Other issues of concern include taxpayer privacy, as well as the extent to which the Government can access tax files for other investigations without informing the taxpayer.

159. On 24 January 2002, the tax and customs committees were amalgamated into a single Ministry of State Revenue and Duties (MSRD) by Decree of the President of the Republic of Tajikistan No. 745. This has markedly improved revenue collections. Further restructuring of MSRD to clarify roles and reporting structures and improve accountability is under way MSRD. There appear to be coordination problems between the Ministry of Revenues and Duties and MOF.

3. Customs Policy and Management

160. Tajikistan is essentially a trading nation. While the value of trade per capita is less than \$100, this represents 56% of gross national product, so the structure of the formal economy relies heavily on trade.⁴³ Taxes on international trade and transactions (including customs duties—import and export, exchange taxes, as well as VAT and excise on imported goods) were more than 40% of state revenues in 2002. Management of trade is more problematic, with Tajikistan having the lowest trade volume per customs staff member in the region, and only limited computerization. Fortunately close attention is being paid to this, and the recent opening of border trade as well as ongoing work under customs reform programs testifies to government commitment.

161. The Government has applied for admission to the World Trade Organization (WTO), receiving assistance from Switzerland to facilitate accession, and is taking part in other CIS and Central Asia region initiatives to harmonize trade and customs policies. This will require major revisions to policies on customs and other trade-related taxes, and to customs and tax collection procedures. As per Government Resolution #450 dated 25 December 2003, on Customs Tariff of the Republic of Tajikistan, the average weighted rate of tariffs is 7.76%. This is expected to increase customs revenue regardless of the envisaged trade regime. Customs duties formed 12% of tax revenue in 2003.

⁴² Current policy that requires VAT for microfinance services but not for banks, for example.

⁴³ These figures are for the formal economy only, but much of the informal economy is also largely export-oriented.

162. Tajikistan is participating in the ADB-sponsored Trade Facilitation and Customs Reform (TFCR) project for the Central Asia region.⁴⁴ Additional technical assistance from the Government of Switzerland and USAID may be provided to improve the present Customs Code and assist the Government in meeting WTO standards. A Consultative Group for Customs Reform and Modernization has been established under MSRD leadership to facilitate interagency consultation and aid coordination.

B. Budget Procedures

1. Budget Structure

163. The budget is developed manually over April–September and submitted to Parliament during the first week of November each year for application in the next calendar year. The structure of the budget is currently in transition. Traditionally the budget was input based and classified expenditures by type of inputs (salary, heating, transportation, etc.). It was not possible to identify expenditures by programs or planned outputs. However a major reform of the structure of the budget will be under way shortly, both shifting to program budgeting with IMF/Swiss support and in computerization and categorization with World Bank assistance. Experiments with program budgeting have been made in health, education, and agriculture but results were mixed.

164. Integrating the PIP into the budget is progressing, with most PIP projects included in the budget since 2002 and a PIP volume available for Consultative Group of Development partners meetings in 2004. ADB is providing assistance for development and integration of the PIP. However, it is not clear that the budget fully covers capital expenditures as well as recurrent expenditures. The PIP in its current form is overambitious. In many cases development partner-funded PIP projects are being implemented more slowly than planned. With ADB support, an aid coordination unit has recently been established in the Office of the President to improve coordination and liaise with MOF to ensure that these plans are adequately integrated into the budget.

2. Budget Approval

165. The State Budget is presented to the Majlisi Namoyandagon for review and approval during the fall session of Parliament and is finalized just before the end of the calendar year. The Majlisi Milli has the authority to supervise implementation of the budget, and the Constitution requires annual reports to the Parliament on budget outturns. Each local government budget is also presented to the local Majlisi. Formal interaction during the approval process is principally between the *Government* and the chamber's Budget Committee. The Legislature lacks the staff capacity to carry out in-depth assessment of the proposed budget or of performance under previous budgets. The budget is largely input-based and covers only the current year, despite development of a Medium-Term Expenditure Plan for 2002–2004. Little information about the proposed budget is available publicly, limiting the capacity of the mass media, civil society organizations, or citizen watchdogs to assess the quality of the budget.

⁴⁴ Trade Facilitation and Customs Cooperation (RETA 6058) is a \$2 million project that aims to address the root causes and issues that affect cooperation at the regional level covering the CAR, People's Republic of China, and Mongolia. The key objective is to strengthen regional customs cooperation to establish efficient and effective customs systems to facilitate foreign trade and investment.

166. The Constitution requires the Government to prepare a comprehensive report on the implementation of the national and the local budgets, but does not specify the means for disseminating these reports or provide for their general availability. It appears that only limited summary information is available, which limits the role of the media in informing the about the budget and its impact, as well as the capacity of the public to hold the Government accountable for the use of public funds.

3. Budget Execution

167. MOF's Treasury Department executes the budget. The Department includes the central Treasury, headed by a director, which serves ministries and budgetary organizations financed from the national budget, and 79 local treasury branches, which finance the local budget. In 2002, the Treasury processed approximately 220,000 payment requests: 41,000 of these averaged TJS8, 600 in the central Treasury and 179,000 payment orders averaged TJS1,000 in local treasury branches. The system of prioritizing payments is excessively centralized, with the minister involved even in day-to-day decisions.

168. Since 1999, the Treasury has operated a single National Bank of Tajikistan (NBT) treasury account through which state revenues and expenditures pass. At the local level, revenues and expenditures are also handled through a treasury single account held either at local branches of NBT or at the nearest branch of Amonat Bank, the state-owned savings bank.

169. The central Treasury financial management system is automated and based on the system in neighboring Kazakhstan. The Tajik system has automated access controls and appears to have adequate backup arrangements. The use of the single treasury accounting system has imposed stronger control over cash at the aggregate level. However, there is no formal system of cash management or cash forecasting, which leads to arbitrary variations in payment dates and inefficient use of resources.

C. Financial Controls

170. The Procurement Agency has been functioning since 1997 with a mandate to establish a policy framework and guidelines for procurement by government bodies, and to supervise procurement activities by government bodies. It should have a major role given the increasing procurement activity when private sector service providers are contracted to deliver public services, and the Coordination Group is discussing legislative changes to improve procurement agency performance.

171. Anticorruption commission was established in 1999, but later disbanded as it was thought to have succumbed to vested interests. Its role appears to have been taken over by the Procurator-General, an office with certain structural limitations. The Government's efforts to control corruption are hampered by the lack of effective monitoring and assessment systems for public sector performance, which helps hide corrupt activity.

D. External Economic Relations

172. A start has been made in aligning economic laws; local financial institutions, and accounting practices with generally accepted international practices. Tajikistan has joined or applied for membership in relevant major international institutions of economic importance. However foreign investment is very low, and potential foreign investors perceive corruption to be a significant issue. Development partners continue to be cautious about further commitments,

and during 2002 the IMF applied remedial measures after the Government failed to meet financial performance commitments. However, the European Community Commission has renewed its Technical Assistance for Commonwealth of Independent States (TACIS) program after a 4-year suspension due to earlier financial management lapses, and development partners have committed to new programs and offices in the Tajik capital of Dushanbe.

173. Development partner and investor confidence will continue to be linked to the Government's capacity to maintain macroeconomic stability, efficient governance, a role as business enabler rather than direct market participant, credibility of local financial institutions, favorable environment for expansion of private investment and enterprise, and meaningful action on corrupt practices. Ongoing consultations with development partners are essential, as is clear evidence that public funds are being well managed.

174. External debt is being renegotiated on a bilateral basis. Most external debt is with other CIS countries and much of this has already been rescheduled. The Russian Federation budget, a major component of external debt, was resolved in 2004. However, debt service remains a critical constraint on the budget.

175. The issues of border delineation, border protection, and migrant workers are complex in the region, and no less a problem in Tajikistan. The Ministry of Labor and Social Affairs is addressing the issue of protection of migrant workers abroad, with the International Organization for Migration (IOM) estimating up to 500,000 Tajiks working abroad on a temporary or permanent basis. A guest-worker agreement with Russia is under negotiation, but there are concerns about potential introduction of visa requirements. There have been questions raised about the need for transfer, guarding, and financing of Russian border troops on the southern Tajik border with Afghanistan, and the land-mined areas adjoining Uzbekistan are an ongoing concern.

E. Current Reform Agenda

176. Initially, international financial institutions-supported structural reforms focused on measures to strengthen the Government's macroeconomic management capacity, including improving its statistical reporting and economic analysis. These efforts have enabled the Government to contain inflation to reasonably low levels, establish a national currency, and generally establish macroeconomic stability and a sound macroeconomic environment.

177. The Government is committed to the next critical step of improving budget and public expenditure management, and has been receiving assistance from the IMF and World Bank in these fields even during the difficult civil war years. This technical assistance continues, but progress is uneven and often there have been disagreements between the Government and external consultants over approaches or next steps.

178. Although the work on IBTA2 has been progressing more slowly than expected, there is good progress in analyzing the present situation and formulating proposals for change. Unfortunately the *Government* has been slow in considering the reform proposals. Its recent public sector management reforms (such as the amalgamation of tax and customs agencies) have been prompted by other immediate exigencies. The slow response to reform proposals reflects the lack of government framework for considering reforms, as well as concerns over the political risks of any reforms. The information on reform options may also insufficiently address the range of options, or provide limited data on how to deal with those who might lose under the changes.

F. Analysis and Issues

179. In Tajikistan, three basic changes would go a long way towards restoring credibility and public trust. The most important change would be to institute an “open book” policy, ensuring that government accounts, financial transactions and internal audits are readily open to public examination. The second reform would be to institute full public accountability for the Government’s management and use of public funds. This requires that the responsibilities of each organizational unit be aligned with its authorities and available resources, and that value-for-money be ensured in all expenditure, as well as clarity and inclusion of all revenue and expenditure in the overall budget. It also requires that reporting systems allow regular, open scrutiny of all public organizations by a significantly strengthened legislature armed with its own independent and fully empowered audit capacity. The third reform would be for the Government to secure active and open public and stakeholder engagement in the formulation of financing priorities, policies, implementation strategies and performance reviews.

1. Revenue Mobilization

180. While a promising start has been made, much more progress is needed on broadening the tax base and increasing government revenues to fund much needed development activities. Currently, the Government is heavily dependent on customs duties. This source of revenue will decrease as duties are lowered and the Tajik economy becomes better integrated with the regional economy. Additionally, moves to regional free trade zones and WTO accession will cut the amount of revenues available from customs duties. Thus customs reform is critical.

181. An overall reform of Tajikistan’s tax policy and practices is under way, with substantive assistance from development partners. There is clear understanding that the tax system must encourage economic growth, poverty reduction, and individual rights, and recognize the new role of the Government in creating an enabling environment for economic activity. Issues such as the current complexity and plethora of tax types, taxation below the poverty line, significant problems with tax predation and related rent-seeking behaviors, the high level of social service taxes, the issue of local tax collector retention of any taxes above “target” for local governments, and a mismatch between tax office structure and needs are being tackled. On the government side, a shift from the perception that taxpayers always try to cheat must be made, and a complete commitment to integrity in collections and operations is required. On the public side, taxpayers must feel that taxes are fair, equally paid by everyone, and that goods and services received from the Government with taxpayer funds are worth the pain. Taxpayers must also believe that taxes should be paid in full without bribes, or corruption problems will continue.

182. The Government will need to consider how it should convince potential taxpayers that future taxes are collected according to the law, and not against a quota that rightly or wrongly might be seen to target them. The Government should keep in mind the need to minimize disincentives for private enterprise, and maximize incentives to stay in the formal economy. This means effective methods of insuring fairness and integrity in customs and tax rules and in actual practices with individual taxpayers. It also needs to improve its statistics on economic activity and forecasting abilities so that it can develop realistic estimates of taxes that will be collected under a fair application of the tax law, and move away from the current production quota approach to revenue collection. A good first approximation of this has just been completed, and more work should be encouraged.

183. Review of tax policies must recognize that the main source of growth in taxes will come from economic growth, and that tax policy plays a role in promoting growth. The Government

must also bear in mind that one-time revenue windfalls (e.g., from a privatization sale) need to be managed carefully as valuable capital assets. Maintaining investor and development partner confidence is important for Tajikistan's ongoing revenue security.

184. Perhaps the biggest issue is bringing the informal economy into the formal sector and collecting a fair level of revenue from these activities. This is a broader issue than simply securing future revenue sources. It involves establishing a formal system that provides powerful incentives for participation, and will involve difficult political choices on how to handle the process, particularly given that drug smuggling is a substantial portion of the shadow economy. The mid-2003 amnesty for the deposit of funds in banks, without challenges to the funds sources, was a useful start to this process. Punitive measures need to be balanced by strong and visible positive incentives to maintain the overall level of economic activity. Public consensus is needed, particularly on the treatment of illegal activities such as smuggling of consumer goods or trafficking in illegal commodities. Setting realistic future tax rates will be an important factor in persuading entrepreneurs that the benefits outweigh the disadvantages if they move into the formal economy.

2. Aligning the Budget with Government Priorities

185. The key challenge for the budget process is ensuring that the resources available are directed toward the top priorities of government. The first step is reform of the budget structure so that it identifies the programs actually supported by public funds. The replacement of the present input-based budget structure by an output-based structure that identifies the purposes of expenditures, and in turn allows an evaluation of the benefits of those expenditures, must be completed as quickly as possible. Additionally, it is critical that ex-budget expenditures be brought into the budget and made transparent, so the uses of government resources in total become clearer. This is particularly important with regard to barter arrangements and SOE costs, but also applies to development partner expenditure, particularly that related to loan drawdowns.

186. Broad-based agreement on strategic public priorities and on allocating available public resources must be developed, and low-priority functions eliminated. The cost of public services to the budget must be reduced as much as possible. Where the private sector can deliver services more efficiently, their delivery should be contracted out. Where possible and appropriate, demand should be rationed by introducing user fees, combined with targeted assistance or fee exemptions to those who cannot afford fees for essential services. Where community groups can and wish to provide appropriate services to their households, this should be strongly encouraged.

187. Once the structure of the budget has been improved by the full introduction of program budgeting, the next priority is the medium-term expenditure framework and the PIP being developed. The objective should be to generate forward estimates for each program covering the next 3 years as well as the current year. There has been some progress, but so far the system only provides forward estimates for some inputs (but not programs) and relies on indicative forward planning rather than rigorous forecasting for future revenues and expenditure. It does not project expenditures against outputs, or adjust future projections to account for changes in current-year expenditure and related physical achievements. These need to be completed.

188. Next, the Government can consider better procedures for setting sector expenditure targets. At the start of each budget cycle Tajikistan can specify its priorities and then convert

these into expenditure ceilings for each sector, taking account of likely revenues. In other words, the *Government* can be proactive in shaping the budget rather than dealing with requests for funds individually. The IMF has completed cross-country comparisons that can provide significant information on sector-investment levels most conducive to growth, which can be explored for adaptive application in Tajikistan.

189. Policy or other decisions that require additional funds must identify those resources. In practice, this means expenditure on other programs of lower priority that can be reduced or eliminated will need to be identified. Proponents of new policies must also identify the most resource-effective means to implement the policy—by public servants, contracting to the private sector, regulatory means, tax incentives, or other methods. Care must be taken in considering the costs, as very often the real expenses for policy implementation are higher than the initial estimates.

190. Current practices in Tajikistan, as in many transition countries, result in resource allocations for urgent activities being taken outside the normal budget cycle. Often this means arbitrary cuts in existing priority areas, with resultant chaos in program service delivery. These practices should be avoided except in the most exceptional circumstances. Such decisions are currently being taken at the presidential level and do not encourage discipline in setting priorities or effectively managing the budget during its actual implementation. Over the longer term, such practices pose risks for the budget process—particularly given the lack of checks and balances, and the limited process of public accountability.

191. The development by the Government and endorsement by the Legislature in spring 2002 of the comprehensive *Poverty Reduction Strategy (PRS)* should be seen as a first step toward more rigorous setting of financial priorities by the Government. The PRS includes a costed multiyear plan that will serve as a much-needed guide to priorities. It is an ambitious plan, listing many goals and planned activities to attain them. The PRS anticipates massive development partner support over a 5-year period totaling several times current annual GDP (about \$1 billion). It is uncertain that development partners will provide this level of assistance, or that the country could absorb it in such a short period. However it is a valuable definition of priorities and plans for resource allocation guidance.

3. Improving Accountability⁴⁵

192. According to the Constitution, public power is to be broadly based, rooted in the people, and expressed through their elected representatives in laws that authorize government policies, budgets, and actions. To achieve this, *Government* needs to alter its planning, budgeting, and monitoring systems from a top-down command orientation to a transparent process of structured dialogue with the public and their representatives. The public needs to be confident that funds generated by taxation or other legitimate means achieve their intended purposes. They also need to be assured that taxes and other revenue measures result in funds that are honestly collected and fully contributed to public expenditures.

193. There is still insufficient accountability to the public for the Government's management of public funds, more than partly due to lack of computers and undue requirements for reports. The information systems, methods, and organizational culture to provide better accountability are still developing. Compilation of quarterly financial statistics manual is so time-consuming

⁴⁵ This and the next subsection have benefited substantially from materials from the World Bank 2003 report on Tajikistan Financial Management Review.

that financial management work cannot be completed manually effectively, and questions arise about accuracy and relevance. Conflicts between accrual and cash systems, both required in parallel, add to the confusion. Data quality from line ministries is weak. Finally, there are discrepancies between budgetary line items and the reporting charts of accounts, as with other CAR countries.

194. Modest progress has been made so far, and more should take place under the new Law on State Finances, which requires all state agencies and ministries to complete a comprehensive annual financial and performance report within 2 months of the end of the fiscal year. Work has been done in line ministries to provide indicators to link with expenditure, but the effort is far from complete. The challenge is, and focus must be, on both skills and information technology (IT) upgrades to make financial information timely, relevant, and useful to managers. Additionally, a focus on a few key indicators and more public discussion of quarterly reporting may help ministries demonstrate how the resources are acquired, and how their expenditure results in useful and important services to the public. The new law on government finance does not differ significantly from the previous one, and thus may not result in significant changes in public budget management.

4. Audit Institutions

195. The Internal Audit Division (IAD) of the Treasury was established to exercise internal audit functions within the Government, and to ensure compliance with the budget law. With a staff of 25 (18 in regional offices and 7 in the capital) the office has been weakened by consistent losses of competent staff to other government bodies and to the private sector. Additionally an organizational slip has made the director accountable to an area he is responsible to audit, making the structure problematic. Unfortunately the role of internal audits in the government has neither been addressed in law, in an effective internal audit structure, nor in international standards for internal audit of government expenditure. These issues need to be urgently addressed to make the budget implementation process more accountable and transparent, and to prevent accusations of widespread public corruption. There must be absolute clarity that internal audits will be regularly conducted to ensure ongoing efficiency in financial management, and to prevent fraud and corruption.

196. External audits are undertaken to identify systemic weaknesses and risks and to confirm the validity of historic financial statements. Currently there is incomplete understanding of the requirement for external audit to be independent of the Executive. The new State Financial Controls Committee (SFCC), created by a presidential decree, *Law on State Financial Control*, in 2002, provides for the supreme external audit function. However, the setup and leadership arrangements flow through the President, thus limiting its autonomy in serious ways. The reporting to the President is detailed; that to the Legislature annual and perfunctory. Additionally the mandate of SFCC is so broad that it includes ex-ante advisory services to the Majlisi Oli on budget formation, and the capacity to involve itself in budgetary monitoring. These powers dilute its external audit role and potentially create problems in independence of the audit process. SFCC also restricts its audits to perusal of intentional abuse, rather than considering implementation problems or internal audit weaknesses. Careful consideration of internal and external audit responsibilities between IAD and SFCC, and changes in the decree to reflect more autonomy, better external reporting, and a more focused role on all key external audit functions will help make SFCC more effective. Upgrading IT and human resources will also assist this group.

5. Improving Monitoring and Evaluation

197. The first step in improved monitoring and evaluation of government programs is ensuring that public money is actually spent in accordance with the allocations made by the Government and approved by the Legislature. This is essentially a compliance audit function already discussed in the preceding two sections. While the budget is still input-based this will be the main monitoring that is feasible.

198. In line with the recommendations made for improving the public service and priority budgeting above, monitoring systems need to be established that require reporting from ministries on the use of public funds and the goods and services provided for these funds. In other countries, this is done quarterly, from line ministries to central agencies. At these times it is common to adjust expenditure programs in line with capacity and shifting priorities. Tajikistan can apply this practice now. Quarterly reports, over time, can be made available to other branches of the Government and to the public. This will encourage more responsible public service behavior, and assist in careful use and efficient reallocation of public funds to most effective priority uses.

199. Once the budget is transformed into a program-based or output-based format, it becomes possible to evaluate the effectiveness of programs. Most developed countries rely on two separate approaches for such monitoring. The first is public scrutiny; the second is the conduct of “efficiency” or “value for money” audits by specialist groups that have become attached to traditional compliance audit groups.⁴⁶

200. Tajikistan should encourage transparency in publicly funded activities. A key reason for improving reporting processes is to ensure that the information is available to allow public scrutiny. Whether Tajikistan should try to establish a formal efficiency-audit function is more problematic. The reality is that there is an acute shortage of almost all the professional skills needed to manage and/or audit public sector programs. Hence, priorities must be set for the development of the human skills base. Professionals need to be trained soon on how to conduct traditional compliance audits and manage procurement procedures.

201. While the Government should, wherever possible, evaluate the effectiveness of its programs, and encourage the development of appropriate technical skills, creation of a formal efficiency audit should be seen as a medium-term goal, once traditional compliance auditing has been brought up to international standards.

6. Intergovernmental Fiscal Relations

202. Effective budget management cannot be achieved with a system of blurred accountabilities. Under the current circumstances in Tajikistan there are very few options for local revenue generation, making subnational governments virtually completely dependent on national budget transfers. Of more immediate concern to local governments is whether they will actually receive the funds assigned to them in the annual Budget Law. Uncertainty over actual receipts forces local government to manage its budget on a strict cash basis rather than an accrual basis, which leads to stop-start operations.

⁴⁶ Most developed countries agree that both approaches should be followed, but there is considerable debate on the relative effectiveness of the two different approaches.

203. Auditing at local levels is also problematic. Although the national level is responsible for auditing the financial accounts of local governments, but its audit resources are very limited and audits are carried selectively. The situation is compounded by the lack of accounting expertise at the local level. Combined with the general lack of transparency in expenditure accounts, even when being examined by the Majlisi Oli, there are frequent concerns about the potential scope for misuse or abuse of public funds.

204. It is suggested that the current funds transfer systems be simplified to create clear public accountability of each level of the Government for the use of funds. Ideally, the terms for funds transferred between levels of the Government should explicitly set out any accountability obligation negotiated between different levels. This would include funds amounts, timing, agreed use, and internal/external audit arrangements.

205. For effective overall budget management, any transfer of authority to local government should be matched by a corresponding transfer of fiscal responsibilities. The arbitrary system of determining the annual level of fiscal transfers to local governments needs to be changed to provide some funding stability over a 3–5-year time frame so that effective planning can be instituted at lower levels, and devolved services can be provided with some degree of public confidence based on these transfers.

206. The complex system of national-local fiscal relations will be reformed over time. It is suggested that the system of annual micromanagement be replaced by one giving some medium-term stability to local budgets. A simpler and more certain approach would be to divide the national resources to be provided to local levels into, say, four predictable components based on formula financing or block grants. The first two blocks might be agreed for say, 5 years in advance, sufficient to provide medium-term financial stability.

207. The first component, or the **basic amount**, would be simple to project, and tied to a factor such as population size, applied uniformly across the country (e.g., a per capita block grant). The second amount would be intended to **equalize fiscal capacities across regions**, so that relatively poor regions would receive more than others, and the most affluent region might not receive anything over and above welfare payments. The formula might be tied to the extent by which average incomes in the region for a preceding period fell short of the national average, or the percentage of the population under the poverty line. The third component would be **specific-purpose grants** designed with performance incentives, such as matching local expenditures with the target expenditure or providing counterpart requirements for local development partner investments (e.g., building classrooms). Dushanbe could also receive a formula-based special-purpose grant for its expenses as a capital region. The last component would be **emergency one-time assistance** available on an exceptional basis where a serious natural disaster has occurred, to be negotiated on a formula basis according to need. To cap the arrangement, local governments might be guaranteed a minimum level of revenue (regardless of the outcome of the formula calculation) by the national level, to provide sufficient certainty for medium-term planning and borrowing credibility.

208. Such an approach would enable local governments to develop a medium-term budget framework. It would spare them the work of creating notional budget estimates according to national criteria that bear little relationship to the actual budget ultimately approved by the local assembly. Such a medium-term transfer arrangement would place public accountability for revenue and expenditure management for local matters squarely on the local assembly. National-level funds transfer decisions would involve (i) determining the extent to which the national level should provide basic funding to a region, (ii) deciding the degree of equalization of

the fiscal capacity of each region, (iii) defining the incentive financing used to further national priorities, and (iv) establishing when and how it should provide emergency short-term financial assistance to a region. The notional criteria, when developed, might be applied as national standards, against which national and local policy makers and legislators might assess the eventual performance of local governments, to determine policy and performance effectiveness.

209. The main consideration now is to maintain sufficient institutional flexibility that adjustments can be made in the structure of national-local relations over time, while creating sufficient certainty and understanding as to the roles, responsibilities, and accountabilities of each level in a region. This might be achieved by working out 5-year agreements between the national and oblast or raion levels on the specific roles and responsibilities of each level. These can be codified and form the basis of national-local fiscal negotiations, the outcome of which might be included in the agreement. Ultimately this might be reflected in the law or in the Constitution, as it is in some other countries.

210. In the medium term, borrowing arrangements for local government will need to be developed. Currently, the only source of borrowing for local governments is from the next higher level, which severely constrains their borrowing capacity and their ability to establish a credit rating. It is envisaged that bankruptcy laws would apply to local governments, but to date this has not been an issue. One interpretation of the existing law is that local governments are administrative branches of the national Government. That would imply that the national Government could be held responsible for the debts of local governments. It will, however, first require legal clarification of the status of local government.

VI. THE LEGAL SYSTEM

A. Background

211. The problems within the legal system result from its evolution over the past century through the seven decades of Soviet rule, and finally the past decade of independence and conflict. Many historical, regional, and national factors impede the establishment of the rule of law.

212. Central Asian countries experienced sudden deprivation of legal-institutional resources previously supplied by Moscow. Training facilities for legal and judicial professionals, as well as academic resources, had been concentrated in Moscow and other major Russian centers. Heavily dependent on subsidies from Moscow, the legal sector was left at a significant disadvantage when these were withdrawn. This was compounded by (i) a “brain drain” of trained and senior-level professionals to Russia or abroad (especially in the case of ethnic Russians); (ii) little prerevolutionary legal legacy to invoke, since the Central Asian states received modern legal traditions only via the Soviet Union; (iii) no prior history of modern market relations or of modern civil society organizations; and (iv) persistence of traditional networks of power and patronage, which impede the establishment of an impartial rule of law.

213. As a consequence, the legal-judicial system in Tajikistan, along with other post-Soviet states, suffers from multiple systemic problems:

- (i) disorganized legal policy process;
- (ii) unreformed administrative sector;
- (iii) compromised judicial sector;
- (iv) slow reform of legal institutions from Soviet structures and cultures;
- (v) uneven penetration of new legal norms in society, such that actors are guided more by self-interest, ad hoc approaches, and informal rules;
- (vi) deprofessionalization of legal professionals;
- (vii) lack of public access to legal services for vulnerable social groups;
- (viii) underfunding of courts and due process institutions in straightened economic circumstances; and
- (ix) low staff salaries.

214. The Tajikistan legal-judicial sector also has to contend with the legacy of civil war and conflict:

- (i) during the conflict, the control of the central Government did not extend far. Pursuit of common policy objectives for legal/judicial reform nationwide continues to be hampered by lack of respect for central Government;
- (ii) heightened levels of crime and violence (arms trade, drugs trade); and
- (iii) insufficient human rights protection and the absence of redress for past abuses.

B. Legal Framework

215. Most of the formal legal/regulatory framework for economic and political governance—for organizing market relations and democratic rule—has been created but needs further rationalization. The legal foundation to support civil society, provide impartial criminal justice, and protect human rights is also largely in place. However, official bodies retain outmoded features from the command-administrative order, which do not meet the requirements of the market management and relations. Even where rules and procedures are sound, officials frequently fail to administer them consistently and impartially, and market and political actors have not yet internalized them.

216. Thus while much of the required legislation exists on paper, it is not effective, as the institutions to administer these laws have not been reformed and in some cases laws have not yet been published in three newspapers, a prerequisite to effectiveness of any law.

C. Institutions

217. The system of administration of justice is functionally comprised of the courts and Judiciary, the Council of Justice, and the Procuracy. The Procuracy is not part of the Judiciary and has a unique position laid out in the Constitution. The Council of Justice is also an independent body. The Council of Justice and the Procuracy report to the President and are part of the executive branch. Despite constitutional definitions, in practice the courts are not independent from the executive and legislative branches.

1. Courts and Judiciary

218. The Constitution specifies a tripartite court system with no single center of authority over the three component courts. The structure is similar to that in the Russian Federation. The Constitutional Court, the Supreme Court, and the Higher Economic Court head each of the three systems, and exercise jurisdiction within their domain. There are 80 lower courts in the three systems, with courts at the oblast, raion, and urban levels. The structure also includes a separate system of four military courts under the jurisdiction of the Supreme Court.

219. The Supreme Court and subordinate courts of general jurisdiction hear all matters of civil and criminal law not involving businesses, with 63 lower courts functioning at local levels. Many local level courts have only a single judge. The Higher Economic Court hears all business-related matters, but oblast-level economic courts are a part of the Council of Justice. The Constitutional Court has jurisdiction only to provide advice on constitutional questions brought to it on appeal by the Government or by a citizen if it has been heard already in all other relevant courts of appeal. It consists of seven judges, one of whom is a representative from *Gorno-Badakhshan* Autonomous Oblast. It does not have a structure of subordinate courts, but does have a hierarchy of internal decision making processes.

220. The Constitution specifies that proceedings follow an adversarial pattern, with the parties having equal rights. Judges may give decisions collectively or individually (Article 88). The chairperson of each court branch allocates cases among judges. The *Law on Courts* as amended in 2001 regulates court operations. There has been slow formal development of simpler, more cost-effective alternate dispute resolution mechanisms. At the local level mahallas (respected traditional councils of male elders) continue to have an invaluable community-sanctioned informal dispute-resolution role (UNDP 2000).

221. The President provides a list of candidates to the Majlisi Milli for election to judicial positions of the three top courts, and for election to the new Council of Justice, an executive body with various responsibilities in the judicial system. There is no constitutional provision for removing judges from the top courts. Judges of the lower courts are appointed or dismissed by the President on the recommendation of the Council of Justice. A judge may not hold any other position in the legislative or executive branches of any level of the Government, or be a member of a political party or mass movement, or be engaged in entrepreneurial activity or other duties except research or teaching activities. Judges are elected or appointed for 10-year terms.

222. The weakness of the judiciary is aggravated by the absence of a mechanism for implementing court decisions on civil or economic cases, since no law on enforcement proceedings has been developed and passed.

2. Council of Justice

223. The Council of Justice was created by the 1999 constitutional amendments (Article 86). It has nine members, including representatives from MOF and both legislative chambers. It is part of the executive branch and reports to the President. It administers all lower courts, while the three top-level courts administer themselves. Formerly MOJ administered the courts, but responsibility was shifted to try to remove a conflict of interest. However, as the Council is still part of the Executive, complete separation of powers has not been achieved. The executive branch through the Council of Justice still retains control of key aspects of justice at the lower court level, including the scheduling of cases and the allocation of judges to each case.⁴⁷ Moreover the Council is actively involved in the selection of judges, and except for the top courts, recommends candidates to the President for appointment, dismissal, or reappointment.

3. The Procuracy

224. The Office of the Procurator-General is established by the Constitution and governed by the Constitutional *Law on Procuracy*. The Office is charged with ensuring the “thorough control and observance of the laws” (Article 93), and has investigative, supervisory, and some judicial functions. This Office is part of the executive branch, and is answerable to the President and the Majlisi Oli (Article 94). The Constitution provides that procurators “function independently without interference from state bodies and officials; they are only subordinate to law” (Article 96).

225. The President nominates the Procurator-General for election by the Majlisi Milli for a 5-year term. He may appoint subordinate procurators for 5-year terms and remove them from office. There is no constitutional provision for removing the Procurator-General. The Constitution specifies that the Office of the Procurator-General is a “unitary centralized system” (Article 94), although it has subordinate local offices.

⁴⁷ The shift of these responsibilities from the Ministry of Justice to the Council of Justice (which is answerable to the President) has been mistakenly understood in some quarters as providing the Tajik judiciary with independence. The draft report of one Presidential Working Group noted, “The most important judicial agency is the Council of Justice which exercises administrative control over the courts. The Council is an Executive Branch agency The Tajik judiciary is independent. After establishment of the Council of Justice, judges had acquired full independence i.e., presently they are not under purview of the executive power—Ministry of Justice” (Government of the Republic of Tajikistan 2001).

226. The Tajik Procuracy retains the extraordinarily broad and sweeping powers of its Soviet predecessor. There are few safeguards to ensure that it respects basic human rights. The activity, authority, and structure of the Procuracy are, however, regulated by law. The Procuracy investigates and prosecutes all criminal actions in the courts, brings civil actions on behalf of the State and citizens, and defends a citizen's constitutional rights. It supervises the legality of administrative decisions by the State. It can also protest any court decision to a higher-level court. The Procuracy thus has a significant role in interpreting the law, and in pursuing investigations based on its interpretation.

4. The Militia and Penal System

227. The Ministry of Internal Affairs (MIA) is responsible for the protection of human rights and freedoms, law and order, and public safety. MIA is subordinate to the President and heads the internal affairs structure including four provincial and territorial departments within Dushanbe, 63 territorial (district, city, and city district) offices, departments of internal affairs of the rail and air transport, traffic militia, control departments over economic delinquency and organized crime, the criminal investigation department, the department of protection of public order, the fire-prevention department, investigation agencies, and others.

228. An important place is given to the militia in ensuring law and order, human rights, and freedoms. The MIA structure also includes internal forces assigned to assist MIA in maintaining public order, public safety, and in emergency situations. It has administrative, preventive, investigative, procedural, criminal, protective, and other functions in this regard. The Prosecutor-General of the Republic of Tajikistan and prosecutors subordinate to him exercise control over the precise and unified execution of laws by MIA. The Prosecutor's Office is responsible to the Majlisi Milli and the President, and the President can dismiss the Prosecutor-General with the permission of the Majlisi Milli.

229. To improve the system of penal consequence and in confirmation of the country's commitment to the protection of human and citizens' rights, on 26 July 2002 a presidential decree was issued envisaging a phased reformation of the criminal justice system of the republic. This involved both changes in the Criminal Code and restructuring and transfer of penitentiaries and isolation/investigation facilities to MOJ. In December 2003, the President endorsed a reform of the system of criminal penalties with a specific plan to be implemented in 2004–2008. Penitentiaries have been transferred to MOJ. However, places of detention (temporary isolation and investigation wards) remain under the jurisdiction of the MIA, and reform programs are in the initial stages. Of note in the latter area is the suspension of the death penalty for virtually all crimes.

230. After consideration of the transfer of the penitentiary structure to MOJ, the total number of employees and military personnel of MIA is around 10,000. The female staff comprises about 5%, mostly personnel in the passport and visa departments, and administrative and clerical offices.

231. The general criminal situation in the country can be characterized by the following data: the total number of convicted people presently serving sentences is more than 8,500, of whom approximately 500 are women. According to MIA, during the first 6 months of 2003 the number of registered offenses were 6,191, 12.8% less than during the same period in 2002. Of them 3,491 are grave crimes (murders, robberies, aggravated assault, etc.). Compared with the same period in 2002, 2003 showed a 20% decrease in crimes related to the manufacture, use, and sale of drugs. In the first 6 months of 2003, 650 cases of economic crimes (bribery, theft,

smuggling of goods, currency speculation, etc.) were registered. The total number of crimes successfully solved in the country is 74.6% in the first half of 2003 compared with 68.4% in the same period of 2002.

232. Departments and units of internal affairs have made progress in fighting crime. At the same time, their activity is characterized by issues requiring immediate change. There is a low level of public trust in MIA institutions and personnel, based on Soviet history. Yet in countries with persistently low crime levels, the public is an active and confident partner to the militia. Currently there is inconsistent transparency in MIA activity, and very low levels of awareness in the population on rights and responsibilities of the public and of MIA. The Government and the MIA management does not discuss or openly investigate incidents of corruption and bribery within the MIA system, something that if done would help rebuild the confidence of the population.

233. There is a relatively low level of technical training and professionalism in many MIA staff. MIA institutions lack critical material, and technical and investigative equipment, especially at the local level. This causes problems in solving crimes and in ensuring correct solution of complex crimes.

234. Judging by the many complaints of detainees, people under investigation and their relatives,⁴⁸ and recent information provided at a conference on torture, MIA staff has subjected detainees to unlawful methods of inquest and investigation to receive “confessions” of guilt and improve crime detection indicators. As Tajikistan is a signatory to many international treaties on fundamental human rights and freedoms, and international investigation techniques, legal acts, and human rights standards, it is critical that compliance with these agreements be enforced. Revisions in the legislation guiding the activity of law-enforcement structures in the Republic of Tajikistan can assist in this regard.

D. External Assistance

235. Tajikistan has received considerable legal assistance, mostly in the last few years of postconflict reconstruction (1999 to date). Most programs have concentrated on drafting assistance, though some have provided training in and advice on legal processes.

236. Major assistance programs have included

- (i) civil/commercial legislative drafting (ADB/Gesellschaft für Technische Zusammenarbeit or GTZ, Swiss Agency, USAID Commercial Law, Soros/Open Society Institute or OSI);
- (ii) support of the judicial sector, primarily training (Swiss Agency, USAID Commercial Law, USAID/American Bar Association-Central European and Eurasian Law Initiative or ABA-CEELI);
- (iii) human rights and criminal justice (Organisation for Security and Co-operation in Europe or OSCE/Office of the Director, Soros/OSI);
- (iv) dissemination of legal information (ADB/GTZ, USAID Commercial Law);
- (v) creating the legal environment for small business and nongovernment organizations (NGO) (USAID/Counterpart);
- (vi) refugee and migration law (United Nations High Commission for Refugees or

⁴⁸ The Prosecutor-General Office receives 200–250 official complaints annually.

- UNHCR, and the International Organization for Migration or IOM); and
- (vii) legal education (USAID Commercial Law, Soros/OSI).

E. Analysis and Issues

237. As in other former Soviet states, the legal transformation necessary to account for the change in economic system and the changing relationship between citizens and the State has proven to be more complicated and protracted than expected. Tajikistan has made outstanding progress in establishing solid legislation, but resource and other constraints have restricted its ability to effectively implement the rule of law. Together with other post-Soviet jurisdictions, the country has suffered from a range of problems, including the following.

- (i) Institutional restructuring has lagged far behind changes to rules and procedures. Reforming and strengthening the operation and status of the court system, which underpins the rule of law, has been neglected. Other areas that have not received necessary attention include organizational reform and modernization of legal sector agencies, macro-level legal reform strategy, and access to legal services for vulnerable social groups.
- (ii) Legal substance has consumed far more attention than legal process.
- (iii) Emphasis has been on private law and not on public law. Development partners and policy elites initially channeled a good deal of energy into creating a system to enable and encourage horizontal legal relations between private commercial actors. Until recently the reform of the state bureaucracy and administrative regulatory apparatus was neglected.
- (iv) Changes in legal rules and institutions have not translated into changes in legal culture—background social norms and values, attitudes toward the law, and disposition to comply. Little training has been provided to the legal profession, law enforcement bodies, the court system, or the citizenry on the new legal foundations and principles of democratic governance, individual rights, civil society, and private markets.
- (v) Narrow agency and other special interests have predominated over broader interests and the public interest.
- (vi) Foreign assistance has not been efficiently deployed or exploited. Development partner programs have varied in effectiveness. Legal technical cooperation has experienced poor coordination and duplication of effort.

238. The Soviet legacy of low public credibility undermines the credibility of the Judiciary⁴⁹ even in the current period of relatively rapid reform. One report notes that

The judiciary is extremely weak compared to the legislative, and it is especially weak compared to the executive branch of the Government. The civil war has created an atmosphere of lawlessness in which armed extortion is common. The lack of a strong judiciary and militia force make it hard for impoverished persons to seek redress under the law.... The constraints on the

⁴⁹ “The judiciary enjoys little independence from the executive branch, on which most judges depend for their positions. Many judges are poorly trained and are inexperienced and bribery is reportedly widespread.” (*Freedom in the World* 2001).

rule of law encourage abuse of power and position (World Bank 2000).

239. Unless more progress is made in institutional reform, Tajikistan will be unable to move to an impartial and empowering rule of law. Instead bureaucratic and political favoritism may be reinforced, favoring narrow and powerful groups at the expense of public interest. Most importantly, reform of law enforcement must address corruption. Corruption has especially pernicious consequences within the legal system. The experience of other countries and an examination of best practices can provide a guide to reform.

240. As in other CIS states, law and legal institutions were historically seen as vehicles for imposing social, economic, and political change through centralized state-driven power. Tajikistan has now been faced with the overwhelming and unprecedented task of reinventing itself as an independent, market-orientated and democratic state. Under these circumstances, the instrumentalist approach to law may be a temporary expedient, but such a method cannot be used to complete the transformation. If the system is to finally meet all of society's needs, it must become more responsive and allow some bottom-up development of the law. Until Government does this it will not fully establish its credibility with society, and the rule of law culture will not take root. A fundamental aspect not yet apparent in the Tajikistan transition is the understanding that in an open economy, the law serves the people. Most new statutes are supportive of this change. It is suggested that what is now required is a shift in the ways institutions that apply and interpret the law deal with the public.

1. Strategy and Sequencing

241. Introduction of substantive reforms should be coordinated with management of enforcement institutions. Coordination is needed among various actors with legal policy and management responsibilities—MOJ, Procuracy, Presidential Apparatus, apex courts, and the Council of Justice. The Law Reform Commission was one such attempt, but the preferred solution is probably not a new policy organ, but clearer lines of communication and delineation of responsibilities among existing bodies and a long-term strategy for reform. Until there is better coordination amongst the Tajik institutions, effective coordination with development partners will also be impossible.

242. Technical capacity outside of the President's Office is being developed, but MOJ is already digesting many operational changes to the management of the system. Hence for the time being it is expedient to continue to consolidate legal and judicial policy reform in the Executive Office. However in the medium term these responsibilities should be shifted to MOJ. In the longer term the courts should be constitutionally separated into a third autonomous branch of power.

243. The experience of neighboring Central Asian states and the wider CIS, particularly the Russian Federation, will be useful in developing a strategy. Georgia in administrative law, Kyrgyz in bankruptcy legislation, Russia in development of a bailiff's service, and Kazakhstan in land law reform all afford useful examples and case histories. Enforcement of judgments in commercial cases is a chronic problem across the former Soviet Union. It is suggested that Tajikistan authorities consult the experience of other jurisdictions in devising solutions.

2. Increasing Emphasis on Process

244. While legal codes will hopefully continue to be refined, the emphasis now should shift to reform of outdated procedures. Lack of procedural rights and lack of access to the courts are now the greatest threat to the basic rights of individuals. Legal norms governing procedural rights for the accused must be toughened to bring Tajikistan into compliance with international treaty obligations. Judicial monitoring of the criminal process must begin at the time of arrest and a new balance needs to be struck between the roles of judge, prosecution, and defense.

245. Reform of the criminal procedure code, already under way, addresses many of these issues. Effective protection of rights however requires more than reform of procedures; it needs a culture of rights. Public confidence in the system must also be established so that citizens turn to the law to protect their rights rather than dealing solely with informal enforcement processes. Systemic discrimination and traditional practices based on gender and other factors must also be addressed. Mechanisms for disseminating legal information also need to be improved so that citizens are aware of their rights and responsibilities.

246. Procedural reforms must be coordinated with institutional reform that separates key legal functions so that there are checks and balances within the system. The most critical of these is reform of the Procuracy.

3. Reform of the Procuracy

247. Some national experts and officials in the Procuracy acknowledge that reforms are needed to modernize the system. However this is not yet universally accepted, and so it is necessary for key players to review the situation in established democracies as well as the recent reforms of procuracies in other CIS countries. The concentration of power in the Procuracy poses a serious risk to democratic ideals if the power of the position should ever be abused. It is suggested that the Procuracy's role be restricted to prosecution, leaving investigation to law enforcement authorities under a method that allows for public checks on sensitive issues such as conditions under remand and accusations of torture. This would provide more effective checks on abuse of power in investigations.

248. Other countries of the former Soviet Union are gradually curbing the powers and limiting the role of their procuracies to correspond to that of prosecuting authorities in most jurisdictions. In the meantime Swiss Agency, Soros Foundation, and OSCE have provided members of Tajikistan's Procuracy with training on key changes in the legal framework, such as managing search and arrest and respecting human rights, thereby providing a guide to democratic practices.

4. Complete Separation of the Judicial and Executive Branches

249. The separation of the judicial branch from the executive and legislative branches, while clear in the Constitution, is still incomplete in practice, and numerous steps are urgent. The independence of the judiciary must be guaranteed. Responsibility for administration of the justice system should be transferred to the three top-level courts. Such a transfer should be accompanied by an assurance that sufficient resources will be provided to the Judiciary from the national budget for this key function. Funding could be established on an agreed formula based

on the funding in benchmark countries with relatively strong and accountable judiciaries.⁵⁰ The Executive should not be involved in any way in managing court lists, and should not retain any interpretive powers for law. Similarly the Procuracy needs to be completely separated from the executive branch.

250. Given the historical legacy of the legal system, establishing public trust in the independence and fairness of the system is particularly difficult for a more enlightened administration. The appointment of an independent ombudsman might be given priority as a signal that the Government is committed to an independent legal system. The ombudsman would have the power to investigate complaints against government action and to recommend remedial action.

5. Reform of the Judiciary

251. Attention has been focused on the need for judicial reform, but less attention has been paid to the institutional responsibilities needed to implement that reform. In a progressive step a new agency, the Council of Justice, has been created and assigned this role. However, this has happened before an overall plan could be developed for institutional reform throughout the sector. Such an overall plan would link court administration, legal and judicial professionalization, staffing requirements, and training needs. Management of the judicial reform process might be reconsidered both to ensure it is linked to these related issues and does not create the perception of continued executive interference.

252. The courts must deal with a fundamental change in the role of the law, especially in the matter of respect for the rights of individuals and civil society. The change in the economic management system has also had profound consequences, with many activities now being encouraged that formerly had been illegal. The Council of Justice is introducing some improvements, but resources are limited and few changes have fully taken root. Until the court system is strengthened, the perception of lawlessness and arbitrariness will persist and can seriously undermine economic development. Far more resources are needed, given the massive challenge posed.

253. The Council of Justice is trying to improve the quality of nominations to the Judiciary, introducing new selection processes and increasing pay. However pay is far too low to attract qualified candidates, with base remuneration of \$17 per month well below the severe poverty line of \$1 per day. Inevitably judges require other sources of livelihood to survive, whether farming, teaching, or rent seeking.

254. Considering the public investment needed to upgrade Tajikistan's level of judicial competence, the 5-year term for appointments is questionable. Many modern countries have developed a tenured system of judicial appointment, whereby appointments hold until a specified retirement age or recognized incapacity. Such a system provides greater career certainty and contributes to judicial independence. Breaking the 5-year cycle would also lessen the likelihood of partisan appointments being synchronized with the Legislature's election cycle.

255. For lower level courts, examinations are being introduced to test the competence of candidates for judicial posts as well as incumbents. Ideally a respected independent authority

⁵⁰ For example, Barbados, Jordan, and Thailand are three countries with above average "scores" for the quality of their judiciaries relative to other developing countries (Julius and Hyden 2001).

should conduct the examinations—such as a university, Bar Association, or independent board—rather than the Council of Justice.

256. Inadequate facilities, especially the lack of current legal references and documentation, must also be addressed. While the courts do not have access to current documentation, they will continue to rely on Soviet-era practices. Some documentation has been provided on compact disks through development partner projects, but the lack of computers in the courts limits their use.

257. The rationale for a tripartite judicial structure is unclear. The tripartite structure permits some economies of specialization, but this can be better achieved within a unified system through the use of specialized panels and substructures, as now occurs within the Supreme Court and the Higher Economic Court.⁵¹ Some form of unification would provide more consistency in interpretation of laws and in procedural issues.

6. From Legal Instrumentalism to Legal Empowerment

258. Legal changes under the system of legal instrumentalism have involved state-directed reform that to a significant extent has been development partner-driven. Legal reform under a new paradigm of legal empowerment needs to involve state-society collaboration. Such collaboration benefits from development partner support and exposure to relevant best practices in other countries. It needs to be owned and woven into a uniquely Tajik fabric.

259. A new paradigm of legal empowerment would also demand changes in the governance of the legal system. In Tajikistan, as elsewhere in the region, there is a wide gap between the new law on the books and the forms of social regulation prevalent on the streets and in the villages. Often citizens are relatively uninformed of the law, or even if they are knowledgeable, they prefer extralegal or paralegal ways of resolving disputes. This is a natural response, and to some degree an appropriate one. There are many areas of Tajik social life that have been and continue to be quite well regulated informally, by custom or tradition. The goal of legal empowerment is not to formalize as much of the informal, extralegal sectors of life as possible. Rather, it is intended to allow citizens to reclaim the formal, legal sector as their own. Part of the challenge is in overcoming a legacy of alienation of ordinary people from the legal system.

260. For legal culture to change and catch up with changes in the legal framework for a market economy and a civil society, citizens must perceive a benefit to change, and then learn how to actively take up the role of users and clients of the legal system. For that to happen, the institutions of the legal system must become more user-friendly and client-oriented, so as to serve the people as intended by the foresight of the Constitution. Citizens will then look to the law to resolve their differences when they cannot resolve them amicably rather than resort to unsanctioned extralegal actions.

7. Training of Professional Lawyers

261. The presidential administration and MOJ have the largest number of legal professionals in the Government. The law enforcement agencies (Procuracy, Interior Ministry) also have a significant number of lawyers. Legal staff in both MOJ and the presidential administration is

⁵¹ The panel system has also the advantage that it can be adapted more readily to new areas of increasing complexity, e.g., for antimonopoly cases, since the establishment of panels is presently under the authority of higher courts.

operating at about half-strength, and only some are experienced. More well trained staff are urgently needed. The shortage is particularly acute because in the past most training (both preservice and in-service) of all classes of legal professionals—from procurators to jurisconsults to judges was centralized in Moscow. Since independence, training has been largely de institutionalized, ad hoc, and mixed in quality. Lawyers have mentioned specific problems facing the bar: reform of laws regulating activities of lawyers, strengthening practice laws, skills, and quality of services.⁵²

262. Although many institutions are licensed to provide higher legal education, only Tajik State University's Law Faculty has a significant institutional history and the capacity to discharge this function. While development partners have been cooperating in providing textbooks and other teaching materials, they have not addressed problems in a systematic or comprehensive fashion. The importance of having a sound legal education system cannot be overemphasized, since it is the principal source of qualified human resources for the future viability of the legal system. (Often persons in the other two branches of the State come from legal backgrounds as well.) Other states in the region have made legal education a priority, with assistance from development partners. Various techniques to strengthen legal education—twinning arrangements with foreign law schools, faculty and student exchanges, commissioned legal textbooks and commentaries, teacher training in new teaching methodologies, development of curricula for new subjects, professionally supervised student legal clinics, library acquisitions, and access to Internet legal resources—can be useful for Tajikistan.

263. Fortunately there remains a small core of respected civilists (academic lawyers) who have played a central role in formatting and consolidating commercial legislation and who have excellent working relations with policy makers in the *Government* and with foreign experts provided by development partners. This core has the capability, with development partner support, to develop training programs and long-term domestic capacity.

8. Access to Legal Services and Information for Vulnerable Social Groups

264. For the most part, legal reform efforts have been concentrated in major towns and cities, but not in rural areas, where most Tajiks live, and where poverty is endemic. Although the *Advokatura* (public advocate) is obliged to provide free legal service, it is not capable of coping with the demand, nor does it have the necessary resources for outreach programs. Organizations such as the League of Women Jurists make an important contribution to closing the legal services gap, but the problem requires concerted state-directed action. It is recommended that imaginative state-civil society organization (CSO) joint approaches be explored (e.g., through state funding of CSO-provided legal services). Another part of the solution lies in promoting the use of noncourt modes of dispute resolution other than relying only on the traditional services of local mahallas. Both arbitration and mediation can be usefully considered, but these need to be monitored to ensure that influential people do not automatically prevail. Special efforts are needed to ensure that essential legal information is disseminated widely in plain language brochures that are understandable to nonlawyers. The proposal to create a system of family courts or justices of the peace could be explored further.

⁵² Human Rights NGO letter, 4 February 2004.

9. Monitoring Progress on Reforms

265. Continued progress on legal reforms and related institutional development should be carefully monitored to ensure it remains on track. Recommended goals to be reached in the next 5–10 years are the following.

- (i) The legal framework for the transformation of the system needs to be completed. The legal framework should support empowerment, and be recognized as supporting sound development practices.
- (ii) Well-established consultative processes need to be in place to facilitate the continuing evolution of the law to meet the needs of development and society.
- (iii) Institutional arrangements ensuring the effective and impartial application, enforcement, and interpretation of the law need to be in place and working well, with public confidence in the rule of law.
- (iv) General confidence that the market sector is operating effectively and predictably under the rule of law should generate investor confidence, both domestic and foreign, attracting increased investment and increasing economic growth.
- (v) Independent estimates of hidden market activity and of corrupt practices generally should indicate that significant progress has been achieved in reducing these problems through the systematic application of available legal instruments.
- (vi) A high level of initial qualifying standards for lawyers and judges should be established transparently, with ongoing skills upgrading required to continue in practice.
- (vii) Private legal practices should have developed to meet demand, including CSOs that provide legal services and legal information to the poor and vulnerable as part of a pro bono arrangement.⁵³
- (viii) Public sector outreach activities should have targeted the needs of rural communities.
- (ix) Legal journalism needs to be a recognized and respected specialty, with increasing prominence in the media.
- (x) There should be salary reforms in the judiciary.

⁵³ In many countries, lawyers provide some services to the poor and vulnerable without charge as a contribution to the public good. Examples might include defending a poor client who has been tortured unjustly to extract a false confession, or providing legal help to a poor family cheated out of assets to recover them.

VII. CIVIL SOCIETY AND THE PRIVATE SECTOR

A. The Role of the State in Economic Management

266. The transformation from a command economy to a market economy requires massive changes in the public-private interface. It is not surprising that implementation of these changes has been slow and uneven in Tajikistan, reflecting a challenging learning curve and resistance to change by vested interests. A detailed assessment of these issues is provided in the Private Sector Assessment (ADB 2002), but the key points are summarized below to assist with an overall view of the transformation challenge.

B. Civil Society

267. Enabling the development of a healthy civil society, particularly the formation of civil society organizations represents a major transition for governments that are moving from central command and control structures. Successfully making this transition provides one of the best assurances that the full transformation of governmental systems can be completed. In its role of an intermediate structure between individuals and the Government, civil society in Tajikistan should serve as a social space providing for protection of human rights and freedoms, satisfaction of human needs, and implementation of people's social interests and objectives.

268. The formation of civil society in Tajikistan is characterized both by specific features and by numerous of problems. The ongoing economic crisis, unemployment, low living standards, radical changes in social ethics and national values, slow effectiveness of market reforms, lack of reliable guarantees in everyday life—these are real problems hampering the creation of a civil society and requiring solutions in the near future. The problems become more acute due to the passive attitude of the majority of people, who have no independent political experience and no faith whatsoever in the possible results of public-private dialogue and joint action.

269. Under the Soviet system, there was an expectation that any organization would be formed under the auspices of the Government or the Communist Party. In Tajikistan, certain religious and community-based traditional organizations such as mahallas were also able to establish a working arrangement with local government, allowing them to exist. Mahallas became a part of the self-governing local government structure and played a key role in maintaining social order and welfare at the local level. Community values and other activities involving voluntary labor for the community's welfare, and the encouragement of initiative in the public interest or for mutual interest, all reflect the essence of civil society. These well-established traditions have created a strong foundation for more extensive civil society activity.

270. Fundamental ideas and principles of civil society on the constitutional level were fortified in the Basic Law of 1994. The fundamental components of a civil society reflected in the Constitution of the Republic of Tajikistan include acknowledged and equal legal protection of all forms of property; priority of fundamental human rights and freedoms of citizens; division of power; ideological and political diversity; multiparty system; development of all forms of self-governance, especially of public associations; freedom of speech and information; and freedom of conscience.

271. While in 1991 there were only 53 registered NGOs in the country, by November 2003 this figure increased to 1,200 of which 300 NGOs are very active. Much of the growth occurred from 1995, and is centered in the urban areas of the country. Almost all areas of public, political, social, legal, environmental, gender-related, and educational life in the country have been marked by NGO activity. According to the Tajik Legal Consortium, of the total number of registered NGOs, 20.4% are active in education, science, and culture; 16.5% are humanitarian and charitable organizations; 10.6% unite people on a professional basis; and 27.5% are involved in women's issues, 5.1% in legal questions, 9.4% in youth and children's affairs, and 2.2% in environmental issues. According to certain data, NGO activities regularly involve as many as 30,000 people.

272. In recent years, a broader range of NGOs have developed with the encouragement and support of international development partners, including USAID, the Swiss Agency, the OSCE, and other country development partners, as well as international NGOs such as Counterpart International, Aga Khan Foundation, CARE International, Mercy Corps, and the Soros Foundation. However, there are some local NGOs that exist only on paper due to a lack of funds and other methods of support. This is due to the absence of information on potential development partners, NGO competition, lack of coordination, lack of confidence on behalf of the Government, and passivity of NGO management. International funding is becoming a real cause for anxiety, since it is the source of the vast majority of NGO support in Tajikistan. Only a limited number of NGOs (unfortunately, their exact number is unknown) are self-sustainable.

273. In general, the "third sector" actively cooperates with central and local administration, and international and regional organizations. Some NGOs have signed the Agreement on Public Accord in Tajikistan and participate in the work of the Public Council of the Republic of Tajikistan. To some extent, the "third sector" also fills cultural and social gaps no longer funded by the Government.

274. The activity of women's NGOs on the development of a joint platform of action and lobbying of relevant legislation could serve as a good example of mutual cooperation between NGOs and the Government. It resulted in strengthening the role of women in society and a significant increase in the women's "quota" in the Government following a presidential decree. Due to ongoing engagement between NGOs and the Government, the Government of the Republic endorsed the National Plan of Action on Strengthening the Role and Status of Women in the Society for 1998–2005. Its implementation will involve women's organizations.

275. The legal development for NGOs has been slower than their physical development. The 1998 *Law on Public Associations*, while a good first step, did not include some forms of NGOs, and it does not conform in some respects with the Civil Code definitions of charitable institutions. An improved *Law on Charitable Activities* was passed in 2003. Additionally, the Tax Code is inconsistent with international practice in its treatment of various types of NGOs. The registration process, previously costly and complex, has been simplified and fees are now improved based on work done by both NGOs and the Government.

276. Apart from limited funding, the main problems facing NGOs in their cooperation with the central and local government are ignorance displayed by many government officials (especially locally) towards NGO needs and concerns, and treatment of NGOs as subordinate and not partner organizations. Some officials view them as alien or foreign structures. Official reactions to NGOs are just beginning to change under the leadership of the President, who in 2002 hosted a roundtable discussion with Tajikistan's NGO leaders from each region and domain. The role of the Counterpart Consortium of NGOs in developing the Government's poverty

reduction strategy has also helped change the perception of NGOs. These are important developments in creating a better structure of citizen participation and the necessary checks and balances.

C. The Media

277. Most democratic countries accept that an independent mass media plays a major role in providing checks and balances to public power—to the extent that the independent media is sometimes recognized as the informal fourth branch of public power. By gathering, analyzing, and widely disseminating information on the activities of the three branches of state power, the media serves as the “eyes, ears, and voice” for a vigilant citizenry that wishes to know whether state power is indeed serving the public’s interests. The media is also a vehicle for the public’s views on public policy, priorities, and services. However, recent awarding of licenses for private radio stations, along with recognition of Tajikistan by the International Association of Journalists as the most media-friendly country in CAR, shows promise. The increase in numbers of privately owned print media is also important, provided their publishing runs are not interfered with through printing companies.

278. As of November 2003, there were 284 registered print media and seven information agencies in Tajikistan. According to the Ministry of Culture, the country has 217 newspapers: of these, 25 belong to political parties and movements, 78 are line newspapers, 23 are private, four are independent, one is informative-promotional, four are governmental, and the remaining 67 belong to provincial and city administrations and the Ministry of Culture. Tajikistan has 61 magazines: 8 national, 2 governmental, 45 line magazines, and six private. However, due to a lack of funds, not all editions are published regularly.

279. The national press is published in Tajik, Russian, Uzbek, and English; provincial—in Tajik, Uzbek, and Russian; district in Tajik, Uzbek, Russian, and Kyrgyz. In Tajikistan, there is no media entity that has been created with foreign investors. However, some of weeklies, such as *Asia Plus*, *Ozodi va Inqishof (Freedom and Development)*, *Varorud*, and *Sugd* have been established with the use of grants provided by international organizations.

280. Over 50% of print media in Tajikistan are funded by the state budget: 4 belong to the Government, 2 to Parliament, and 138 are funded by various governmental structures. These funding arrangements unfortunately put mass media organizations in awkward positions, not only in the mechanisms and timing of funding and provision of material and technical assistance, but also in the government approach to editorial, printing, and postal services.

281. As a rule, Tajikistan does not practice direct preliminary censorship, or any systematic endorsement by certain institutions of any article prior to publication. However, in some cases medium-level government administration may prevent some articles or certain issues from being published. Most often reporters are warned on the phone by way of “recommendations”; the authorities have ordered printing houses to refrain from printing the whole issue or a certain article. In other cases suddenly a media group with controversial reporting will find the tax militia visiting frequently, or have persistent problems with heat or telephone systems, which other media groups do not face. This practice in turn generates widespread self-censoring, as editors hesitate to publicize information that might result in problems in their operations.

282. Newsmen are mostly concerned by the present condition of the printing industry in Tajikistan. On the whole, Tajikistan has 73 printing houses, of which four are located in the

capital city. The absolute majority of editorial offices resort to the help of the publishing-printing house Sharqi Ozod, which is under the jurisdiction of the Executive Office of the President of the Republic of Tajikistan and is the only printing facility providing quality offset print. Sharqi Ozod therefore is in a position to place economic pressure on the independent mass media by providing government mass media firms with preferential treatment for their debts. Not only Sharqi Ozod but also other government printing houses of the capital city—Printing House of Dushanbe, Matbuot Ltd. (printing house № 1), and Sanadvora—may refuse to publish editions critical of the authorities to avoid government pressure.

283. On 23 November 2003, the management of Sharqi Ozod prohibited printing of the independent newspaper *Ruzi Nav (New Day)* without any legal justification. This newspaper had been printed during the previous four months and was popular. Experts regard it as the persecution of free media since *Ruzi Nav* published materials criticizing the policy and deeds of some high government officials. Earlier in 1999, a similar scenario was applied to the newspaper *Djumbish (Movement)* for publishing negative (from the point of view of the authorities) materials on the eve of parliamentary elections.

284. There are currently four independent radio stations (one regional, one in Sugd oblast, one in Kulyab, one in Dushanbe) and four state radio stations. In fall 2002 after over 5 years of waiting, two private radio stations Asia Plus and Radio Vatan finally received licenses from the Television and Radio Committee and started broadcasting in Dushanbe. Licensing is reported as being a significant barrier by applicants for radio licenses, even those expecting to broadcast only entertainment items.

285. Tajik national TV has only one 12-hour channel, covering around 80% of the country. Provincial centers have their own TV stations with a limited (1–3 hours a day) volume of broadcasting. Public TV Poitakht (Capital) covers the territory of Dushanbe and is actually under the jurisdiction of the Mayor's Office. In April 2002, an independent TV station, Somoniyon, was established in Dushanbe but it does not cover the whole city.

286. In some areas of the Sogd Province, particularly in Asht, Istravshan, Ganchi, and Spitamen districts, Tajik TV is blocked by powerful Uzbek channels. As a result, the local population watches Uzbek TV. In most cases reliable information on the internal situation in the country is still provided by foreign radio broadcasting stations Ozodi (Liberty) and British Broadcasting Corporation. The TV channel Russia is another important source of information for millions of Tajik citizens.

287. At present, there are around 20 independent TV stations countrywide. Due to financial constraints, not all of them are permanent. Eleven stations are in the Sogd Province, where the first independent radio station Tiroz appeared in 2001. The number of independent stations has also increased in the south. There are two independent stations in Tursun-Zade district: TV station Kurhon-Tepa in Kurgan-Tube, and TV station Mavdji Ozod in Vose district.

288. Most staff of the independent TV stations have not received professional training and have not specialized in this area of activity. The same concerns are true for national TV. This is due to lack of specialized training facilities. That is why some independent TV programs look unprofessional: presenters, journalists, cameramen and technical staff learn their lessons by trial and error.

289. The problem of availability of official information has always been the most significant issue in the practical activity of Tajik newsmen. Article 5 of the *Law on Print and Mass Media of*

the Republic of Tajikistan directly commits government, political, and public organizations, movements, and officials to provide mass media with information. However, in practice it is difficult and sometimes even impossible for journalists to get data. Journalists report that officials usually state that information is restricted as it represents a state secret, though this is not often the case. Another reason behind the denial is the absence of the supervisor or of his permission to provide the required information. Government and independent mass media are treated differently in the provision of information by public servants. While better disposed to the former, they are very reluctant to cooperate with the latter.

290. On 30 June 1999, the Parliament adopted a resolution incorporating changes and amendments to the *Law on TV and Radio Broadcasting*. Under Article 5.1, the National TV and Radio Committee is obliged to “monitor implementation of the requirements of the current Law by other TV and radio organizations,” including independent stations. The law allows the National TV and Radio Committee to issue licenses to independent TV and radio stations and to set up conditions of their cancellation or withdrawal. The newly incorporated Article 5.1 contains a regulation under which the National TV and Radio Committee have “control over broadcasted TV and radio programs and TV and radio information,” potentially in violation of Article 30 of the Constitution.

291. On 25 May 2001, the National TV and Radio Committee adopted the resolution On the Order of Licensing in the Area of TV and Radio Broadcasting. The new resolution contains additional limitations that constrain the rights of independent radio stations. The resolution gives the National TV and Radio Committee the right of consideration with no time limit, changing the previous 1-month deadline for proposals and decision making. Paragraph 9 of the new resolution envisages additional “reasons and justifications” for licensing refusal, some of which are not based on the concept and paragraphs of the *Law on TV and Radio Broadcasting*, are of a subjective-volitional character, and contradict international legal acts relating to freedom of media recognized by Tajikistan. These “reasons and justifications” include “situations proving no need in the presented broadcasting program” or “when it does not meet the national interests of the country” or “no need exists in this particular program.”

292. Draft legislation to improve mass media operations and engagement was drafted in 2001 but seems to have been shelved, and should be revived for consideration.

D. Citizen’s Rights

293. The Constitution guarantees an individual’s basic human and democratic rights, including the rights of association, privacy, freedom of speech and dissemination of information, the secret ballot, equality, mobility and job choice, and the right to ownership, inheritance, and the protection of reputation.⁵⁴ The State is obliged to observe and protect these rights and freedoms of individuals,⁵⁵ which are “fundamentals of the constitutional structure” (Chapter 1).

294. The Constitution guarantees individuals certain basic rights and freedoms from state control, and their basic obligations to the State are clear. The Constitutional Court has been established to interpret these provisions through the rule of law and due process. The first round of elections after the 1999 constitutional amendments has taken place under a multi party system and the basic legislative, executive, and judicial structures are functioning at national and local levels.

⁵⁴ Articles 14–35 of the Constitution of Tajikistan.

⁵⁵ Articles 5 and 14 of the Constitution of Tajikistan.

295. The Constitution grants individuals access to public sessions of the chambers of the Majlisi Oli, and allows them to petition the Constitutional Court concerning their constitutional rights. Individuals may also petition the President through the Department of the Constitutional Guarantees of Citizen's Rights in the President's Executive Office.⁵⁶ They can also expect their elected representatives to brief them periodically on the activities of the various Majlisis. In practice, the consultation process is weak, though recent activities related to the draft Microfinance Law in the Majlisi Oli with Parliamentarians, microfinance organizations, and the National Bank of Tajikistan demonstrated a strong willingness for tripartite engagement and careful consultation and consideration of civil society and stakeholder views and needs.

296. Citizens' rights in Tajikistan are not well understood by the population, nor are ready information or support available for them to determine their status. Access to data, protection of rights, and confidence derived from open discussion of civil rights issues are at earliest stages.

297. An area of significant movement forward has been are incarceration treatment and the death penalty. Recent legal amendments have removed the death penalty for women outright, and for all persons except in very rare circumstances. This step, and both public recognition of cases of torture by militia and concentrated efforts to halt all bad treatment while in detention show how effective NGOs can be when consultation and engagement with the State occurs.

E. Analysis and Issues

1. The Role of the State in Economic Management

298. The role of the Government in the economy needs to change radically. It has to become an unbiased umpire, not a commander taking investment and production decisions. This requires a major culture shift, and a shift in attitude toward the private sector. One of the most urgent reforms needed to facilitate fair interactions within the business sector is land tenure. Both legislation and administrative systems need to be overhauled to provide secure tenure of land. This is essential for the stable creation of wealth in the private sector and the development of a commercial banking system capable of financing private sector development.

299. As part of this change the Government needs to reduce its role as an entrepreneur within the economy. Privatization of productive assets or at minimum corporatization of existing state enterprises is needed, to remove government officials from day-to-day operations of these enterprises. Separation of SOE activities from the budget is also a key step at this time. In this way ownership and regulation are separated, and both foreign and domestic investors will be much more willing to engage in the local economy.

300. While it is expected that the Government will gradually withdraw from the productive sector, it still needs to identify market failures and if necessary take steps to assist the development of critical business services needed for economic growth. Specific areas where private market players must be encouraged are (i) sound banking services, (ii) nonbank financial institutions, including financial cooperatives, to support small and microbusiness; (iii) trade facilitation services, and (iv) professional associations to support development of services such as accounting.

⁵⁶ Presidential Decree on The Reorganization of the Structure of the Executive Apparatus of the President of the Republic of Tajikistan, 30 October 2001.

2. Civil Society and the Media

301. Despite cumbersome procedures and expense, a considerable number of NGOs have been registered, although not all have remained active. NGOs, particularly local community organizations, are recognized by most citizens as valid and effective vehicles of social collaboration. A key addition to the rise of NGOs has been the level of participation of women at NGO senior levels, particularly important since women have lost ground in direct government participation.

302. Government officials have difficulty accepting that genuine NGOs are not threatening to national stability. They balk at the idea that NGOs might be regarded as partners, and even as legitimate spokespersons for the public interest. Although public officials usually recognize NGOs as part of the private sector, some officials confuse NGOs and businesses. These officials do not differentiate fund-raising and donation-seeking activities of NGOs from the profit-making and investment-seeking activities of businesses.⁵⁷ There is little understanding that NGOs are committed to using all the resources at their disposal to carry out their mission, whereas a business is committed to make a profit for distribution to its owners.

303. The current law does not impose governance frameworks on NGOs that would help them maintain public confidence. In best practice countries, interaction between the Government and NGOs is continuous, and is critical in building and evolving a legal framework and monitoring system for NGOs that is as light as possible, while still protecting the public. Usually such systems are founded on determining a clear mission and mandate, a governing board of respected directors and officers of the NGO, financial transparency, and public accountability for funds used and results achieved. The Government is just beginning to consider these critical public policy issues. Care will be needed to ensure that the framework developed does not inhibit the ability of NGOs to contribute to development and reduce poverty, and to participate as full partners with the public sector in addressing such matters.

304. Current Tajik laws governing civil society contain both empowering and restrictive or intimidating elements. The present legal framework inspires little confidence that public sector actors fully understand and appreciate what an empowered civil society can contribute to resource-effective civic, social, and economic development. Their contribution occurs through the combined exercise of local and individual initiative and collaborative effort—for example, as alternative providers of publicly funded services, or as a community development partner with a profit-oriented firm. Instead, the law implies that NGOs are subordinate to and competitors of the public sector, requiring that NGOs not usurp the public sector. The law furthermore suggests that NGOs are prohibited from entering into relationships with market-sector actors, a type of partnership that is commonly practiced worldwide without jeopardizing the integrity of either partner—for example, with nonprofit NGOs organized for the mutual benefit of their members, such as business and professional associations, chambers of commerce and private cooperatives. This demonstrates that improved NGO legislation along with related changes in the Tax Code, improved media law, access to public information legislation, and work to ensure adherence to international treaties on human and civil rights are important next steps.

⁵⁷ CSOs report unfortunate experiences with government officials. One was inspected for monopoly behavior when providing food-relief-for-work to drought-stricken families; another was charged income tax on donations of money and potatoes received to support street children; farmers' associations receive production directives from local officials specifying commodities to be grown and quotas to be filled. The reports differed on whether these incidents reflected genuine misunderstanding about the nature of CSOs, or were simply rent-seeking gambits.

305. As reform progresses, it is important the law should strike a more reasonable balance between the legitimate state interest in guarding the public against potential threats from dangerous social forces (corruption and religious, ideological or political extremism) and the right of constructive social forces to organize and pursue projects of mutual benefit and concern. Greater attention is needed to the features that should be expected in the internal self-governance of NGOs so that the public interest and the interests of participants and clients of NGOs are safeguarded with a minimum of state intrusion.

3. Citizen's Rights

306. For individuals, the environment and basic framework for interaction with the state sector under the new system, to its credit, have been established. Despite enormous difficulty, peace, order, and the Government are in place. The ability of individuals to exercise democratic power **indirectly** through their elected representatives now exists, not only in theory, but also in practice. Even so, important elements of these structures are not yet functioning as intended.

307. As well as exercising their electoral powers periodically, individuals have some opportunities to exercise their democratic power **directly**. However, these mechanisms are not yet fully functional and the independent media is not yet sufficiently developed to fully inform the public of the actions of the State. The concept of establishing standing or temporary forums as part of the legislative or executive process, so that the public and specific stakeholders can participate on public policy issues of concern, is yet to be realized.

308. Since the combination of timely public and stakeholder engagement in the processes of policy making and government openness is the essence of effective democratic governing systems, it will be important for Tajikistan to create such forums and practices. Some of them should be enforced in primary legislation, such as those for consideration of basic human rights as per international treaty. It is also essential to foster the development of an independent media with full access to the Legislature and Executive if open and transparent governance is to be strengthened. Tentative initiatives have been taken, and will provide a foundation for further development, provided there is government acquiescence at the highest levels.

VIII. CONCLUSIONS AND PROPOSED ACTION PLAN

309. The integrated, systematic, and sequential reform of the governance system, starting from policy making, through institutional reform, to team creation and individual performance changes can make a significant difference. A clear, unambiguous action plan is needed, with the overall vision and then specifics for each branch of Government and details of changes within each branch. The process must be agreed upon with the public and monitored independently by civil society and the media.

310. Tajikistan has made serious progress in the few short years since independence. It has established a foundation despite its chaotic beginnings as an independent state, the loss of Soviet markets and subsidies, the civil war, and regional instability. The economy has moved impressively forward, notwithstanding the overreliance on cotton and aluminum exports and the distortions of illegal trafficking. The first multiparty elections have produced a stable Government based on power sharing. Devastating losses are being repaired, but progress in reducing poverty is still difficult.

311. The transformation is proceeding, but many concepts that have been accepted as foundations for the new structures are not yet understood and implemented. Until the government completes the transformation, Tajikistan will be unable to fully achieve its social and economic development objectives. It is recommended that the Government intensify its efforts in four key areas.

- (i) Develop the institutions and structures of a democratic state.
- (ii) Engage in appropriate levels of devolution and decentralization.
- (iii) Provide transparent, efficient, and professional public sector services.
- (iv) Complete the enabling environment for a functioning market economy.

312. Consensus must be established and developed on the process and sequencing of change, and on appropriate methods to compensate those who will be harmed by the planned reforms. A phased program should be developed that recognizes absorptive constraints and sets realistic targets for which the executive can be held accountable.

313. To complete the structural transformation, a range of related reforms are needed. Most of these changes require a set of interlocking medium-term plans. While the agenda looks daunting, it should be initially planned for a time horizon of 5–10 years, which will enable the system to handle the workload without being overwhelmed. Development partner assistance can be considered for both design and implementation of reform plans.

314. Much has been achieved, and more work remains. It is particularly important that the most urgent reforms are undertaken first. The suggested action plan below identifies the main reforms that should be focused on in the medium term, with those important over the next 2 years provided in italics. It is understood that achievement of the 2-year targets should be supported by substantial supportive technical assistance from various closely collaborating development partners.

315. ADB assistance could support key elements of the above action plan as part of a coordinated effort by the development partner community to improve governance and development management capacity in Tajikistan. In formulating its assistance program, ADB will consider not only its comparative strengths and the resources available for commitment to

Tajikistan, but also the possibility of engaging other development partners and the capacity of Tajikistan to absorb technical assistance. Potential ADB involvement is identified in the final part of each section.

A. Developing the Institutions and Structures of a Democratic State

316. To its credit, the Government has established the broad legislative foundations for a liberal democratic system based on the rule of law, the full division of state powers, and the separation of the state from society and the economy. Given the short duration of the peace, it has not had the opportunity to implement these laws to the extent necessary. There is concentration of state power in the executive branch, particularly in the presidency. The degree of responsibility between the President and the Government is not properly defined. The separation and decentralization of state powers are incomplete, and the executive branch retains substantive legislative and judicial powers. The current level of central control does not yet encourage the growth of fully responsive and effective local government. Attention should be paid to refining the rule of law and enabling the appropriate institutions to effectively deliver services based on new legislation. The executive needs to develop line ministries, separation of technical and political decision making, and apolitical research resources. Separation of powers needs to be finalized and formalized.

1. Rule of Law

317. Both the Government and citizens need to consider improving the impartial rule of law in all spheres. The Government should not permit any person to be above the law. This situation cannot be transformed overnight, but through the Presidential Working Group on the Implementation of the Law established in early 2002 the Government can improve the fair and effective implementation of legislation. In consultation with the public and stakeholders, the Government needs to develop an explicit and comprehensive medium-term reform program that deals not only with consistency and quality of legislation but also the effective implementation of legal changes. This legal reform program must specify priorities, phasing, sequencing, costs, and monitoring mechanisms, and should cover.

- (i) transformation of public sector culture from legal instrumentalism and administrative control to legal empowerment, public accountability, and prevention of the abuse of public power.
- (ii) substantive legal changes needed to complete the transformation of institutions that are empowered to enforce the rule of law, particularly the separation of the courts into an autonomous branch of the State.
- (iii) review of the feasibility of implementation and integration/consistency of existing laws (laws that are unenforceable or inconsistent should be either repealed or amended).
- (iv) upgrading of the capacity and credibility of the courts, including effective court administration and appointment procedures, training, tenure, and remuneration of the judiciary.

- (v) creation of cost-effective methods for alternative dispute resolution, and explicit recognition of traditional dispute resolution methods.
- (vi) appropriate law enforcement policies and practices, particularly for the militia and bailiffs service, and regularization of the role of the Procuracy.
- (vii) training, evaluation, and increased remuneration of government lawyers.
- (viii) regulatory reform to lighten the costs of compliance where possible.
- (ix) dissemination of information to ensure all government officials and the public are aware of new laws (both legislation and regulations) before their implementation, and that stakeholders have the opportunity to comment on draft laws during the development phase.
- (x) educational measures to encourage public understanding and acceptance of the rule of law, to be followed progressively by sanctions to enforce existing laws.
- (xi) access to legal services and protection provided by the law for all sections of the population, particularly the poorer members of society.

318. Even before this legal reform program is finalized, two critical steps should be undertaken and are included in the short-term program.

- (i) **Reform of the Procuracy.** It is advised that the Procuracy be transformed into a prosecution service similar to that found in other law-based democratic societies. The Procuracy's supervisory and investigative powers need to be transferred to other institutions. Tajikistan can draw on the experience of Russia and Kazakhstan in effecting this transformation.
- (ii) **Increasing the capacity and credibility of the Courts.** This requires the chairperson of each court to review the administrative structures and probable financial and human resource base, to make best use of the scarce resources available to the chair. A unified court system with specialized panels might be considered, with a single chairperson given discretion to determine the exact arrangements. The Government should also consider giving higher priority in the budget to funding the court system, and lengthening tenure of judges, particularly in the highest courts, to create autonomy.

2. Refining the Core Executive Offices

319. The challenge for the incumbent President and Government is to manage the decentralization of decision making to create a resilient and responsive governance system. It is suggested that a long-term devolution enhancement strategy be developed, linking reform of the executive with reform of local government structures, to distribute power more effectively and to develop effective checks and balances. In this process the costs of devolution must be carefully considered, given Tajikistan's limited resources.

320. During the early stages of the transition process there has been a chronic shortage of skills throughout the Government, which has led to a concentration of the few available technical skills within the Executive Office, with line ministries handling less policy work. A long-term plan is needed for rebuilding technical capabilities throughout the Government, as well as redistributing functions wherever appropriate to line ministries and agencies. Eventually the core Executive will need to become more of a coordinating body, setting overall strategies, resolving intersectoral issues, and assessing the advice provided by line ministries. The most significant challenge in this process will be establishing the overall priorities of the Government in ways that encourage effective use and allocation of resources to a streamlined set of line ministries.

321. The problems of crisis management have also led to political considerations swamping technical considerations. To improve development policy making, it is important that political and technical distinctions are more clearly identified, and roles and responsibilities made more clear for specific institutions. It is advised that the Executive Office be restructured to ensure that decision makers receive quality technical and political advice that is clearly distinguished.

322. **Within the next two years**, the separation of political and technical tasks within the Office of the President can be completed through changes in the Law on the Government. Government medium-term priorities can be determined and documented in ways that provide concrete guidance on public service restructuring processes and on the relative roles and responsibilities of line ministries and central agencies. Additionally, one or two line ministries can be targeted for technical strengthening and devolution of decision making from the central Executive to the line ministry.

3. Separation of Powers

323. Democracies function most effectively when there is an unambiguous and operational separation of legislative, executive, and judicial branches, and when each branch is sufficiently strong to provide a check on the activities of the other branches. The separation of powers is under way in Tajikistan, but the process must be managed carefully to avoid the capture of key institutions by vested interests. Branch separation may best be achieved by announcing a plan and timetable for key changes. The presidential powers to introduce laws by decree and the rights of the Presidency, the Judiciary and various administrative branches of the Government to initiate legislation should be relinquished as part of the process of clear separation of the branches.

324. Issues of separation of powers that need to be covered in the medium term include

- (i) Transfer of control over the staff and budget of the Parliament from the Executive to the Legislature in practice, as per the Constitutional *Law on Majlisi Oli*;
- (ii) Transfer of control over the staff and budget of the legal system to the Chief Court, and separation of the court system from the Executive;
- (iii) Continued progress of the Council of Justice in transforming it into an independent public body whose sole role is to advise the Chief Court and the Government; and
- (iv) Work with the judiciary to ensure legislative interaction is restricted to interpretation of the law. Clarity regarding the interpretive powers will also be important given the civil jurisdiction history of Tajikistan.

325. To improve the checks between the different branches of power the plan would need to incorporate steps to do the following.

- (i) Establish the rights of the Legislature to regularly question the Executive about its decisions and use of public funds.
- (ii) Establish the independence of the State Finance Controls Committee, reporting directly to the Legislature, to conduct external audits of the Government's use of public funds. The head of this body should be appointed for a fixed term and should be nominated by the President and approved by the Majlisi Milli. The State Finance Controls Committee should publish its findings in full form.
- (iii) Ensure all sessions of the Legislature and its committees are open to the public and the media (except in circumstances specified by the law) and publish summaries of proceedings given funds restrictions, or make them accessible to the public inexpensively.
- (iv) Make all court proceedings public except where the law specifically allows proceedings to be conducted in camera. All court decisions should be published.
- (v) Provide for release of the minutes of sessions of the Government after a prescribed period of 10 years. The minutes of meetings of the presidential apparatus and decisions by the President to amend or overturn decisions of the Government should also be released after the same period.

326. **During the next two years**, full separation of the budgets and management of the three branches of the State can be achieved. The Executive should transfer the funds approved by the legislature for this purpose to the institutions concerned, but should not be involved in the internal management of their budgets. Public sessions for the courts and Legislature could also be arranged during this period.

B. Reforming Key Functions of the Government

327. There are certain key functions of the Government that are can be addressed more fully. Changes to the machinery of the Government are needed to fill these gaps.

1. Strategic Planning and Development

328. The Government is committed to sustainable development as the only path to long-term poverty reduction, but its resolve is greater than its physical ability to implement policies. The Poverty Reduction Strategy Paper (PRSP) has been approved and is starting to be used as the Government's core planning guideline. Work on the Public Investment Program is well under way with a first round completed. It is now vested in the Ministry of the Economy, and strategic planning and monitoring activities should be developed from that Ministry in a phased manner. The development agenda should form the core of the President's annual presentation of government policy to the legislature, and the annual budget, medium-term expenditure framework, and aid coordination unit should demonstrate unambiguous links of funding to planning priorities. Close links between the Ministry of Finance, the Ministry of Economy and

Trade, Revenues and State Taxes, and the Office of the President will be necessary, so budgeting and financing processes are linked to the priorities as laid out in the PRSP.

329. **Over the next two years**, analysis of actual budget expenditures and development partner funds paid should be made against the PSRP to ensure that resources are being used on the highest priorities. A quarterly monitoring tool should be used regularly by the two line departments being technically strengthened and their related central agencies by the end of the period.

2. Financial Management

330. Financial management of the public sector is weak in Tajikistan and contributes to limited implementation capacity, poor delivery of services, and rent seeking. Better financial controls are needed, and responsibility for oversight of this area needs to be clearly and unambiguously established.

331. The Government can consider formation of comprehensive budget committee of the Central Presidential Office. This recommendation will need to be coordinated with the findings of the World Bank's Institution Building Technical Assistance (IBTA 2) Project and the World Bank's Public Expenditure Review. The committee would be responsible for key reforms including the following.

- (i) Finalize the program budgeting system or implement a reasonable alternative. Reforming the budget system will allow transparency on the use of funds for various government activities, enabling practical monitoring and prioritization of work and money.
- (ii) Review all current programs and resource allocations. As soon as the program budgeting system is workable, the committee should review all programs to identify (a) program activities that must be retained, (b) programs that are useful but not essential, and (c) programs that are no longer needed. The goal of this program review should be to prune ongoing activities to the essential minimum and to free up resources for allocation to the Government's new development priorities, particularly those identified by the poverty reduction strategy.
- (iii) Strengthen the system of forward estimates. The medium-term expenditure framework system needs to be strengthened to ensure that funds are available to complete important projects and meet both aggregate capital costs and ongoing operational costs of key projects. The system of rolling forward estimates must be fully consistent with the program-budgeting approach and ensure that future funding will be available for key programs.
- (iv) Improve revenue collection systems. Ongoing work must continue to streamline overall administration and simplify reporting arrangements, clarify the responsibilities for revenue collection between levels of the Government, and improve the overall equity and efficiency of the system. Additionally, detailed analysis must be done to determine tax rates and systems that will not penalize the poor, encourage corruption, or limit responsible business investment.

- (v) Develop financial management skills within the civil service. Capacity gaps must be remedied in bookkeeping, accounting, financial control systems, costing and pricing, internal and external auditing, financial analysis, fraud detection and special investigations, management information systems, statistical analysis, monitoring and performance assessment analysis, accountability systems, and related areas. Effective training programs must be further developed for new entrants.⁵⁸
- (vi) Develop a program to introduce modern financial controls over all public activities. Stronger financial management and reporting practices are needed to make the Government publicly accountable and provide a basis for debate on priorities. This includes a stronger internal audit function and more public audit results.

332. **Over the next two years**, the system of forward estimation of expenditure and income can be finalized and government officials be trained in its use and relevance. Program budgeting should be finalized, and agreement made on programs that are vital, useful, and no longer needed. Financial management reporting gaps and skills training needs can be identified, and courses installed at secondary and tertiary institutions to start to fill this gap.

3. Intergovernmental Relations

333. The management of regional relations is particularly critical. The perception by any local group that it has lost its voice at the national level could have serious consequences, so management of these relations must be given top priority both to maintain stability and to facilitate more rapid development. Particular attention must be paid to the equity of development programs and reduction of regional disparities. The Government should consider more decentralization of control and accountability to spur local initiatives to target social and economic issues.

334. To assume overall responsibility, the Government may consider forming an Intergovernmental Relations Committee, chaired by a Deputy Prime Minister. This committee should include a representative from each distinct region of Tajikistan, as well as the Minister for Finance and representatives from the Development Management Committee and the Budget Management Committee.

335. The Intergovernmental Relations Committee and its supporting secretariat should be responsible for

- (i) identifying issues that might create tensions between central and local governments and assessing these issues in consultation with stakeholders;
- (ii) ensuring that local concerns about specific issues are adequately factored into top-level decision making;
- (iii) increasing national agencies' awareness of local perspectives and of best practices in managing national-local relations;
- (iv) maintaining working relations with hukumats and local majlisi at the oblast and raion levels, and if possible with the leaders of jamoats; and

⁵⁸ MOF introduced a special secondary school program in finance and economics, but far more higher-level training is needed.

- (v) collaborating with relevant agencies and fostering an exchange of views and learning across regions and subregions among counterparts and local leaders.

336. In addition, this Committee should address specific critical issues.

- (i) Lower the overall cost of local government levels. There is a need to reduce the overall administrative burden and cost, and streamline delivery of local government services. Given the present asymmetrical structure of regional government, substantial analysis will be required to develop a leaner structure that is more cost-effective while being acceptable to all regional interests.
- (ii) Develop a new simplified and unambiguous reporting structure. For operational purposes, local leaders need to be accountable to local legislatures and through those legislatures to the people of the territory. Methods for this transition need to be established.
- (iii) Develop a new, simplified, but equitable, formula for revenue sharing that will provide certainty to lower levels of the Government for funding over a 3 to 5-year horizon. Multiyear development programs require longer-term financial time horizons and commitments, so these should be developed.
- (iv) Resolve the structure for the civil service in local government. Under the World Bank-sponsored IBTA 2 Project the structure of the civil service is being reformed at the national level, but these reforms need to be extended to the local level. First the relationship between the different levels of the civil service needs to be resolved. The Government must choose between (a) a unified state service that covers the needs of central and local government; (b) a two-part system, both under the authority of the central government level, with a national public service to serve at the central level and a local public service that serves all local governments; or (c) separate civil services for each government.
- (v) Address the question of dual subordination and local accountability. This can be done by allowing local election of officials instead of by presidential appointment, and devolving grants for local service provision with monitoring and accountability to smaller national line ministries.

337. **Over the next two years**, the Government should be able to assess, agree on, and commence implementation of a program to decentralize financing of services. Additionally, a revenue-sharing arrangement allowing limited medium-term local government programming should be finalized.

C. Civil Service Management

338. The Government recognizes that it requires a technically competent civil service that adheres to the highest standards of professional and ethical conduct. The current State Services Department must address many several key issues.

- (i) Identify who is a public servant and who is a civil servant. This is currently an area of uncertainty given the privatization activities under way, the resource

shortages leading to wage arrears, and the changes in the Government's role. First priority is clearing wage arrears, followed by improving management of the civil service. The civil service includes all senior management positions in any ministry or government agency (other than ministerial and deputy ministerial appointments), as well as all employees in all levels of the core central agencies.

- (ii) Adopt employment and promotion procedures based primarily on merit. This is the first step in eradicating patronage and vested interests in the civil service.
- (iii) Adopt consistent terms of employment for all civil and public servants.
- (iv) Adopt a publicly promulgated code of ethics to be followed by all civil and public servants, and provide methods of reward and penalty to encourage adherence.
- (v) Revise pay scales to reflect job responsibilities. The Government should conduct an overall review of staffing levels and should take budget implications into account. Proposals to augment cash payments with payments in kind should be treated with caution, as experience has shown such systems are open to patronage and manipulation. In the interests of system integrity, the value of all benefits should be monetized as part of a remuneration package, and pay scales for public officials published.
- (vi) In the long term, consideration might be given to forming senior executive service to provide staff for senior positions in the civil service.
- (vii) Develop reporting procedures to make the civil service accountable to the Legislature and the public.

339. **Over the next two years**, the ethics code, overall structure of the public service, and a system of recruitment and promotion based on merit/performance can be put in place.

D. Administrative Reform

340. Experience throughout the world has shown that corruption must be fought in two directions simultaneously. First, effective laws against corruption and institutions to enforce these laws are needed. Second, a culture of public accountability must be created whereby civil society can question the activities of public officials so that they run a real risk that corrupt activities will be exposed. Action on this second front has been lacking, which is hardly surprising given the culture of state secrecy inherited from the former system.

341. To address these problems several related measures need to be taken.

- (i) Recreate an Anticorruption Commission that is independent based on best practice in Asia. To minimize the risk that this new Commission will be captured by vested interests, the Government may seek advice from members of the Anticorruption Project for the Asia-Pacific region sponsored by Organisation for Economic Co-operation and Development and ADB. Involvement of civil society in the Commission on a day-to-day basis will markedly enhance public trust in the institution.

- (ii) Establish strong administrative code. A code would increase accountability of all public officials and provide mechanisms to enforce the code, and make the actions of government officials open to challenge in courts. It can be closely linked to the proposed public service ethics code.
- (iii) Create an administrative appeals tribunal and/or the post of ombudsman to be appointed by Parliament.
- (iv) Strengthen the Government's statistical capacity to profile and report publicly on the informal economy, including rent seeking and other illegal activities.

342. **Over the next two years**, completion of all of these steps is possible, and would dramatically improve public, development partner, and investor trust and confidence in the Government.

E. Creating the Enabling Environment for the Market Economy

343. The Government must adjust its role to recognize that the State is now separate from the economy. The public sector's role now is to maintain the regulatory framework and the impartial rule of law, not to own or operate enterprises. The public sector should only intervene in the economy to address market failures, and should regulate it as lightly as possible. While the legislation is increasingly in place for such a change, implementation of this framework has been soft. Some additional legislation may be needed to ensure that the Government cannot intervene directly in private sector economic activity.

344. One of the most pressing problems is that a high proportion of the economy is informal. The Government must address policies and practices that deter formalization, and help entrepreneurs transform their businesses from illegal to legitimate activities. Openly tapping the entrepreneurial capacity of the informal sector will have significant multiplier effects. Such changes would not only benefit the economy as a whole, but would also help small entrepreneurs and the poor, who are most vulnerable to harassment and exploitation.

1. Changing the Role of the Government to that of Umpire

345. Specific reforms that the Government needs to initiate include the following.

- (i) Develop and implement a strategic and credible action plan, based on wide public discussion, for bringing informal economic activities into the formal economy. Steps recently taken by the Government on legalizing funds indicate proper commitment and point in the right direction. The Government must rely on positive incentives.
- (ii) Reform land tenure laws to formalize either private ownership or trading of land-use rights, and permit the pledging of land and other assets to secure financial transactions. Any individual, family, or juridical person should be permitted to hold land or land-use rights and to transfer these to any other entity. The Government should be required to register such transfers as soon as the financial conditions of the sales contract have been met. Where the Government

may subsequently determine that land should revert to public purposes and expropriates the land or usage rights, it should be required to compensate the owner of the land or usage rights at fair market value. Reform of land tenure has proved particularly difficult throughout the CIS, but is fundamental to the development of the financial system and its ability to fund private sector development. The use of land and other assets as collateral is one of the most common and effective methods of securing loans in growing market economies.

- (iii) Accelerate privatization or corporatization of its remaining production capacity. While the Government remains both an owner and the regulator for the economy, conflicts between these roles will continue and the Government will be tempted to alter the rules for the benefit of its own enterprises. As far as possible the Government needs to phase out its direct management activities in the economy, and concentrate on its new and proper role as economic referee, including work on property rights, corporate governance, and development of secondary equity markets.

346. **Over the next two years**, the Government can establish steps to formalize the economy in full dialogue with the public, facilitating the process of privatization of state-owned enterprises (SOEs) and cutting off government engagement in direct production. Severing of government management of all SOEs can occur, and a plan for divestiture be publicly agreed.

2. Addressing Missing Components of the Economy

347. Even in established market economies, market forces sometimes fail to generate critical components of the economy. Intervention is needed, though if possible it should be directed to removing impediments to private sector development of these components rather than creating these components within the public sector. In Tajikistan there are many components currently missing or weak, the most serious being a fully functional banking system. Specific constraints, among others, that need to be addressed include the following.

- (i) Development of a vibrant, trusted, and diversified financial system, including non-bank financial service providers to fund investments and support economic growth. The Government should aggressively continue its policy to promote the development of a core set of healthy banks, supplemented by competition and service provision from other financial institutions. Impediments to alternative financial services such as private cooperative credit unions and microcredit banks should be removed. Practices that favor SOEs over private enterprises and undermine the supervisory credibility of the National Bank of Tajikistan must be eliminated. Current consideration of options for privately owned and financed depositor insurance should be encouraged.
- (ii) Provide start-up assistance through the Ministry of Economy and Trade to the private sector establishing trade facilitation services. Few trade facilitation services are currently available in the market sector to help potential exporters navigate this uncharted territory. Without credible and reliable support, it is virtually impossible for inexperienced firms to expand into export markets. Technical assistance is needed on internationally accepted business practices, banking services, expedition services, legal consequences, and a host of other matters.

- (iii) Promoting and licensing private brokerage services to handle workers' remittances and similar payments. The export of labor is likely to continue for some time, and transfers and remittances should be brought into the formal sector.
- (iv) Reviewing of policy toward private cooperatives, nonprofit businesses, and professional associations to encourage their formation and remove impediments to their development. The Government should privatize or shut down similar public sector organizations. Experience in other countries shows that such services are often best provided through cooperatives. Professional associations and other nonprofit Civil society organizations (CSOs) also play an important role in skills development, in the enforcement of professional standards, etc.

348. **Over the next two years**, the banking sector's nonperforming loans and capital issues should be resolved and a workout plan agreed. Laws and rules for financial cooperatives, microfinance, and savings and loan institutions should be finalized and implemented. Revision in the rules and practices for nonprofit institutions and professional associations should be finalized and this group encouraged. Trade facilitation work should be well under way.

F. Civil Society

349. CSOs are relatively new in Tajikistan, and many officials and members of society do not understand their function. In an established democracy they fulfill many different functions, ranging from acting as watchdogs for the public interest to providing public services under contract to the Government. There is currently considerable confusion about the legitimacy of such organizations that are not part of the apparatus of the state. Debate is needed about what involvement, if any, the State should have in legitimizing or registering such organizations.

350. The Government should not be involved in CSOs in any way, but should create a legal environment where citizens are free to establish, operate, merge, or close such organizations, and are encouraged to do so for the public good. The Government should indicate its commitment to openly engaging the public and stakeholders in the development, implementation, and review of policies through formal and informal channels that respect the requirements for public accountability and address public concerns that the Government's consultations with stakeholders will be secret and collusive. Specific legal safeguards are needed. Specific reforms that the Government needs to consider include the following.

- (i) In consultation with civil society leaders, review and improve the laws, principles, policies, and practices that apply to CSOs. This is need to ensure that there are no legal obstacles to the creation and operation of bona fide CSOs.
- (ii) Review laws, institutions, and practices regulating the operations of the mass media to remove any impediments to its independence and freedom of speech. The mass media must be independent from the State so that it can act as a voice of the public and report critically on the activities of the State. A draft law exists but has not been further developed since 2001.

- (iii) Introduce an access to official information act that guarantees the public and the mass media access to any government-held information that does not unduly violate personal privacy, commercial confidentiality, or national security.

351. **Over the next two years**, all of these steps could be completed. Finalization of these activities would significantly increase the international credibility of the Government.

G. Recommendations for ADB Action

1. Institutional Development and Legal Reform

352. The Presidential Working Group should assist and support the development of a common strategy for governance reform.

353. There are several institutions where capacity building should be a high priority. The Ministry of Revenues and Duties, the Ministry of the Economy and Trade, MOJ, Court Administrations and the Procuracy all deserve high priority for capacity building.

354. The most urgent need now is to develop the skills needed to implement the new legal system. There is strong support in all government branches to strengthen legal drafting capacity in MOJ and the Majlisi Oli, as well as providing rationalization of the many discrepancies in existing legislation across the board, support for stakeholder consultation and local expert advice to parliamentarians on upcoming key legislation, and information dissemination of legislation to all levels of the Government and civil society.

2. Intergovernmental Relations

355. As the assessment points out, there is an urgent need to simplify intergovernmental relations and work with local government, particularly fiscal relations and staff planning, implementation, and monitoring systems at the local level. This is particularly timely given the upcoming changes in legislation for local government.

3. Civil Service Management and Administrative Reform

356. The World Bank-sponsored IBTA 2 Project is already providing substantial assistance and stretching absorptive capacities in some areas.

357. However, ADB may consider involvement in specific sectors where change may be more readily instigated. First, ADB could consider strengthening the Governance component of technical assistance (TAs) directed at the power and agriculture/natural resource sectors. There are major strategic decisions to be made in these sectors, and these are likely to involve external funding both by international financial institutions and possibly private investors. This may create the environment where it is easier to focus not only on the decisions that have to be made, but how these decisions are made and how the decision process is perceived by potential investors. Subject to availability of resources, ADB could explore the possibility of modernizing the tax system to improve revenue mobilization and tax collection, and provide more modernized audit processes and institutions for transparency.

358. Subject to availability of resources, ADB could consider extending technical assistance for developing a performance monitoring and evaluation system for government programs.

Alternatively, ADB could also support the development of a database management system to incorporate information requirements stipulated by the Government's public investment programming and approval procedures.

359. ADB efforts could also be directed toward other areas where it has strong experience, including enhancing development partner coordination capacity and planning for investments. A TA is under way in this area and further work is needed to ensure that pledges become firm financing, and that balanced and harmonized development partner funding facilitates strong government investments.

4. Creating the Enabling Environment for the Market Economy

360. In conjunction with the private sector development strategy ADB is undertaking with the Government, ADB could provide TA to strengthen the economic environment, including the following.

- (i) Improve the financial system. With ADB increasing assistance in the financial sector, further support to deepen reforms in the sector would be required, particularly in areas relating to legal and regulatory frameworks, strengthening supervisory agency capacity, and encouraging improvements in market infrastructure and the policy environment. A regional technical assistance (RETA) for Financial Sector Development is currently being implemented to harmonize and strengthen (a) banking sector regulation with regard to risk management, (b) financial disclosure standards, and (c) the regulatory framework for corporate governance in participating countries, including Tajikistan. The Phase II of this RETA is also recommended to assist the Government in further strengthening its financial system.
- (ii) Facilitate the development of rural finance, including assisting Tajikistan workers abroad to transfer remittances. A RETA on Rural Finance in Central Asia is currently supporting a regional study that will give a comprehensive overview and analysis of rural financial activity in each Central Asian republic. Considering local requirements and conditions, the RETA will provide recommendations on efficient alternative approaches and modalities for developing sustainable rural financial systems that serve the requirements of small and micro borrowers. A new RETA that will also cover Tajikistan is proposed for 2006 to facilitate the transfer of remittances.
- (iii) Continue supporting efforts toward Tajikistan's accession to the World Trade Organization (WTO). Phase II of the RETA on Regional Trade Facilitation and Customs Cooperation, which includes Tajikistan, will continue to support member countries' collective commitment to accede to WTO and reform trade policies according to WTO Rules and Agreements.

5. Civil Society

361. A new TA on Local Government Public Consultation Processes recommended for 2005 aims to improve citizen involvement in local government finances. The purpose of the TA is to ensure more effective consultation and monitoring processes for locally controlled government

funds, so their use can be prioritized according to the expressed needs of the local population. The TA proposes to document cases where the local government is successfully engaged in effective citizen dialogue on budgets and spending priorities, test these practices in new pilot areas, and suggest options for incorporation into new ADB projects in Tajikistan.

H. Conclusion

362. Tajikistan must further reform governance systems to accelerate development and improve the well being of the whole population. Unless the Government takes steps to improve its credibility and marshal the support of development partners and potential investors, it will be unable to resolve the most critical problems it faces. These include the fragility of its political development, the low level of economic activity and vulnerability of its economy to external shocks, and the impact of continuing poverty on the population. The development challenge facing the current Government is immense, and it is to be commended for its persistence under daunting circumstances and with limited external support.

APPENDIX: EXTERNAL ASSISTANCE MATRIX

Information is provided below on the current and recently completed assistance and activities of various external development partners and agencies in strengthening public sector governance and development management in Tajikistan, based on Roundtables with various development partner agencies held by the mission team and on supplementary information provided by them or available from public sources.

Particular attention has been paid to assistance in the key governance areas identified in the main body of the Report, and an effort has been made to cover major projects directed at these key governance issues. In addition, a wider range of projects by a number of international and non-government agencies has also been included to illustrate the scope and depth of support currently being provided on governance matters. Such information is intended to be indicative, rather than comprehensive. Many other projects could be included, particularly in respect of assistance for individual sectors, ministries, organizational units and service delivery areas. Available information also differs from project to project. The focus is on recently provided, current, and presently planned assistance. The matrix should be viewed as illustrating the nature and coverage of externally provided assistance in the governance areas addressed in the report, and not as a comprehensive database.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			
											Market Sector	Civil Society	Individuals/ Families	Other
Multilateral/International Agencies														
	UNDP: <ul style="list-style-type: none"> • Tajikistan Rehabilitation, Reconstruction and Development (RRD) Program (UNDP, EU, USAID, World Bank, Sweden, Norway and Switzerland) • Strengthening of Management Capacities of Ministry of Foreign Affairs and Permanent Mission to the UN (UNDP TRAC) • Support to the Civic Education Process (UNDP Trust Fund/ OSCE): <ul style="list-style-type: none"> -Training on role of new parliament, civil rights, political rights, principles of democratic and pluralistic societies (political party representatives, local authorities, and youth) -Seminars for active women in rural areas on basic civil rights, family rights, and political rights -Support to the media • National Human Development Report (UNDP TRAC/ OSI/Govt of Norway) (governance, capacity building, public awareness) • Support to Poverty Reduction Strategy (UNDP SPPD) • Support for Jamoat Development Committees (UNDP/DGR) (individual projects in different districts) <ul style="list-style-type: none"> -Training of local representatives in local governance -Small credit fund for local populations 	\$2.0 million \$200,000 \$99,000 + costs for OSCE \$245,000 \$123,000 \$550,000	1995 ff. 1999–2002 2000–2001 1995–2002 2001–2002 2001–2002											

EU = European Union, OSCE = Organisation for Security and Co-operation, TRAC = Target for Resource Assignment from the Core, for UNDP projects, UNDP/SPPD = United Nations Development Programme/Support to Poverty Reduction Strategy, UNDP/DGR = United Nations Development Programme/Democratic Governance Reforms, USAID = United States Agency for International Development

Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
										Market Sector	Civil Society	Individuals/ Families	
World Bank: Institution Building Technical Assistance I <ul style="list-style-type: none"> • State Property Committee (privatization, public information, training) • Ministry of Agriculture (farm restructuring/demonopolization, revision of legal framework, training) • Financial sector (banking reform, revision of legal framework, new accounting and auditing procedures, banking supervision, etc). 	\$5.0 million IDA Credit	1996–2000											
World Bank: Institution Building TA II <ul style="list-style-type: none"> • Public administration reform (central government structures and organization, public service management, civil service management) • Budget management systems (strengthening management of the budget, medium-term framework, budget and expenditure control) • Private sector development (reducing entry barriers, licensing, privatization of state enterprises) 	\$6.7 million IDA Credit	1999–2004											
World Bank: Structural Adjustment Credit I: (cofinanced with Switzerland for SwF3 million), including <ul style="list-style-type: none"> • Privatization (legal framework, Privatization Action Plan, acceleration of privatization, etc.) • Financial sector reform (legal framework of banking sector, regulation and supervision, transparency, banking sector restructuring, etc.) • Protecting social expenditures (enhancing budget provisions for social safety net, health and education) 	Includ. in \$50 million IDA Credit	1998–2000											
World Bank: Structural Adjustment Credit II, including <ul style="list-style-type: none"> • Public sector governance and service delivery • Budget planning, execution and expenditure tracking • Financial sector governance and development • Private sector governance and development 	Includ. in \$50 million IDA Credit	2001–2002											

IDA = International Development Association of the World Bank, TA = technical assistance.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	<ul style="list-style-type: none"> Privatization and enterprise sector reforms Infrastructure sector reforms. 													
	<p>World Bank: Tajikistan Social Investment Fund</p> <ul style="list-style-type: none"> Development of Tajikistan Social Investment Fund (TASIF) (part of \$12 million Pilot Poverty Alleviation Credit): equipment; training; salary payments; monitoring and evaluation; support to local governments; communities and small contractors; project management, etc. Institutional Development of TASIF and strengthening of its management capacity (part of \$13.8 million Poverty Alleviation Credit II). 	<p>\$2.1 million</p> <p>Included in larger credit</p>	<p>1997–2005</p> <p>2002 ff</p>											
	<p>World Bank: Education Learning Innovation Credit</p> <ul style="list-style-type: none"> Capacity building (teacher training, active learning methodologies, management training, parent-teacher associations, etc.) Improving education assets and materials (refurbishment and equipment of pilot schools, teacher training institutions, reform of textbook production and distribution, etc.) Project management and coordination. 	\$5 million	1999–2004											
	<p>World Bank: Farm Privatization Support Credit, including</p> <ul style="list-style-type: none"> Procedures and institutional mechanisms at state level and selected regions for transfer of assets to private individuals and groups Provision of preprivatization support services, including land registration, information and advisory services, and rehabilitation of irrigation and drainage infrastructure Testing of new procedures in selected former state and collective farms 	Incl. in \$20 million credit	1999–2004											

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	<ul style="list-style-type: none"> Creation of sustainable private family farming units and post-privatization credit and community-based social services. 													
	<p>World Bank: Primary Health Care Credit</p> <ul style="list-style-type: none"> Training programs for doctors Methodology for funding raions Health system development and service rationalization in selected raions Strengthening management and institutional capacity in Ministry of Health, pilot raions, and hospitals 	\$5.4 million	2000–2004											
	<p>World Bank: Education Modernization Project</p> <ul style="list-style-type: none"> Education sector planning and institutional development (including Ministry of Education and raion and oblast school administrations) Education service rehabilitation 	\$20 million	2003–2008											
	<p>World Bank: Other</p> <ul style="list-style-type: none"> Completed training activities (370 participants in 74 WBI training programs for social policy reform, health, agriculture, procurement, etc.) ESMAP (global TA program) (energy management—Tajikistan case study) 	Grant funding	various											
	<p>IFC: Microfinance Legislation Assistance</p> <ul style="list-style-type: none"> - Development of draft legislation - Facilitation of public consultation process - Drafting of some related regulations 	Grant through USAID	\$1million											
	<p>ADB: RETAs and support for regional economic cooperation among CARs, including</p> <ul style="list-style-type: none"> Conference on Regional Cooperation in Transportation, to establish institutional arrangements to strengthen consultation and consensus building among the five countries to reduce investment obstacles in regional transport networks and cross-border barriers to movement of people and goods (September 2000) 	TA grants and staff costs	Various dates 1996 to date											

CAR = Central Asian republic, ESMAP = Energy Strategic, Management Program, IFC = International Finance Corporation, RETA = regional technical assistance, WBI = World Bank Institute.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	<ul style="list-style-type: none"> • Senior Officials Meeting on Regional Economic Cooperation to decide on sector priorities and institutional arrangements for the CARs program, including simplification of customs procedures and other ways to facilitate trade as well as joint infrastructure, transport, and energy projects (August 2001) • Central Asia Customs Cooperation Meeting to review priority areas for cooperation and agree on establishing a mechanism to facilitate customs cooperation • Ministerial Conference on Economic Cooperation in Central Asia to provide guidance in prioritizing regional investment needs and mobilizing resources to finance them, as well as to discuss areas for better coordination • Promoting Good Governance in Transition Economies—TAs to undertake assessments of governance, private sector, and financial management issues in economies in transitions, including Tajikistan (including TA for Sound Development Management in Tajikistan) 	\$140,000+ \$27,500 + PSA	February 2002 March 2002 2001 ff											
	<ul style="list-style-type: none"> • Regional Banking and Financial Sector Management I & II Phase I: (a) diagnostic study of financial sector to assess capacity of CAR financial institutions to support private sector development, regulation and supervision of financial institutions, and capital markets, and (b) develop a blueprint for financial sector regulation, banking sector policies, and development of capital markets. Phase II: to implement reforms identified through (a) harmonization of banking policies, (b) capacity building 	At planning stage	2003– 2004 2005– 2006											

PSA = private sector assessment.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	for regulators, and c) development and integration of capital markets.													
	ADB: Power Rehabilitation Loan and TA , including <ul style="list-style-type: none"> Strengthening ongoing policy reform initiatives and institutional capability of state-owned power company Improving accounting and collection in state-owned power company Energy Law Implementation (Component \$500,000) 	Includ. in \$34 million loan; \$1 million JSF grants	2001–2005											
	ADB TAs on Energy <ul style="list-style-type: none"> TA 3956 Hydropower Development Strategy TA 3981 Development of Energy Conservation Program 	\$600,000 \$120,000												
	ADB: TA for Improvement of Basic Health and Education Services <ul style="list-style-type: none"> Define a pro-poor priority health services package Develop a health system rationalization plan Propose measure to improve school attendance of girls and the poor <p>Translate strategic plans into action plans and set up a monitoring and policy dialogue mechanism.</p>	\$950,000 JSF grant	2001 ff											
	ADB: Strengthening Corporate and Financial Sector Governance TA to strengthen governance in the banking sector and formulate a developmental framework for the corporate sector, including amending laws on banking, joint-stock companies and bankruptcy, improving the regulatory framework for companies, enhancing institutional capacity, and designing a development road map and regulatory framework for the securities market.	\$480,000 TA grant by Spain	2003											
	ADB: TAs to support poverty reduction policies and programs <ul style="list-style-type: none"> Support for development of a national poverty 	\$2.9 million JFPR grant	2001											

JFPR = Japan Fund for Poverty Reduction, JSF = Japan Special Fund.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	reduction strategy													
	<ul style="list-style-type: none"> • Development of a Poverty Monitoring Mechanism <ul style="list-style-type: none"> - Develop a poverty monitoring action plan with a data collection and dissemination program - Undertake a nation-wide poverty survey - Prepare first poverty monitoring report 	\$300,000	2001– 2003											
	<p>ADB: Other TAs</p> <ul style="list-style-type: none"> • Environmental Assessment and Monitoring Capacity Building <p>ADB: Customs Modernization Loan and TA—to improve customs operational efficiency to facilitate trade and revenue collection, including key border infrastructure, inspection and servicing systems and modern information and communication technologies</p>	\$600,00 grant by Finland; \$10 million ADF loan; \$500,000 grant TA	2001– 2002 2003– 2007											
	<p>ADB: Agricultural Rehabilitation Loan and TA, including</p> <ul style="list-style-type: none"> • Activation of self-help potential of targeted communities and promotion of local initiatives to overcome critical problems and constraints in agricultural development 	\$35 million loan and \$960,000 TA	2002– 2006											
	<p>ADB: Rural Financial Systems</p> <ul style="list-style-type: none"> • Microfinance Systems Development Loan and TA—to develop a microfinance policy and strategy and an effective legal and regulatory environment, and establish institutions to oversee development of microfinance 	\$4 million policy and \$4 million investment SF loans; \$640,000 TA grant;	2003– 2007											
	<ul style="list-style-type: none"> • Rural Financial Systems Development Loan and TA - further development of a policy, legal and regulatory framework for microfinance and support transformation of NGO microcredit programs into licensed microfinance 	Planned ADF loan \$10 million and	2005– 2010											

ADF = Asian Development Fund, NGO = nongovernment organization, SF = special fund

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other	
											Market Sector	Civil Society	Individuals/ Families		
	institutions	\$300,000 grant TA													
	EBRD: Institutional Development TAs for telecommunications sector (complementing EBRD direct lending for telecom projects) <ul style="list-style-type: none"> • Legal and regulatory program and feasibility study for best scenario for telecommunications sector development • Further development of telecommunications regulatory framework 	<i>Phase I:</i> €233,000 from Japan and EU; <i>Phase II:</i> €300,000 from Japan	1999 ff 2001 ff												
	EBRD: ID TA for the IAS implementation in the Tajik State Air Company (complementing with EBRD lending to the company)	€498,350 from EU	2003 ff												
	IMF <ul style="list-style-type: none"> • Dialogue and assistance on macroeconomic management and structural and financial policies, including <ul style="list-style-type: none"> - increasing transparency of the budget and budget execution process; - increasing transparency of the farm restructuring and land reform process; - improving the operations of the State Financial Control Committee; - improving governance in the central bank and the banking sector. • Review of Standards and Codes (ROSC) <ul style="list-style-type: none"> - statistical data component; - fiscal component. 	IMF staff costs	Various dates 2004– 2005												
	OSCE <ul style="list-style-type: none"> • Civic Education Process (with UNDP, see above) 		2000– 2001 2001												

EBRD = European Bank for Reconstruction and Development, EU = European Union, IMF = International Monetary Fund.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	<ul style="list-style-type: none"> • Seminars for entrepreneurs including women entrepreneurs on taxation and other legal acts, entrepreneurial rights, etc. 													
	WHO <ul style="list-style-type: none"> • Collaboration with Ministry of Health (health policy development, health care reform, etc.) 		2000– 2001					Y						
	UNHCR <ul style="list-style-type: none"> • Assistance to refugees and asylum seekers (various districts) provision of legal information, education etc., including creation of a Tajikistan Informatics and Legal Aid Center 		to 2001									Y	Y	
	IOM <ul style="list-style-type: none"> • TA in labor emigration policy drafting • TA in border management 		2001 2001					Y Y						
	UNIFEM <ul style="list-style-type: none"> • Project on Economic Security and Women's Rights to Land 	\$146,000	2003– 2004									Y	Y	
	<ul style="list-style-type: none"> • Regional project Elimination of Violence in Central Asia - draft law on domestic violence, funded by German Government funds 	\$28,344	2003– 2005									Y	Y	
	UNFPA: various projects , including <ul style="list-style-type: none"> • Population and Development Strategies • Strengthening Ministry of Health and RRHC Management Capacity and Developing a Reproductive Health MIS • Program Coordination and Assistance 	\$500,000 \$437,000 \$40,000	2000– 2004 2000– 2004 2000– 2003					Y Y Y				Y Y Y		

IOM = International Organization for Migration, MIS = management information system, RH/FP = Reproductive Health/Family Planning, RRHC = rural reproductive health clinics, UNCHR = United Nations High Commission for Refugees, UNFPA = United Nations Family Planning Agency, UNIFEM = United Nations Development Fund for

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other	
											Market Sector	Civil Society	Individuals/ Families		
	<ul style="list-style-type: none"> • Advocacy on Population/RH/FP/Gender/ Environment • Strengthening Reproductive Health 	\$400,000 \$800,000	2000–2004 2000–2004					Y				Y	Y	Y	
	UNICEF: various projects , including <ul style="list-style-type: none"> • Juvenile Justice Reform • Children in Need of Special Protection Measures 						Y Y							Y Y	
	Global Environment Facility: support for policy formulation: <ul style="list-style-type: none"> • First National Communication on Climate Change • Tajikistan Biodiversity Strategic Action Plan 	\$520,000	2001–2002					Y					Y		
	Bilateral Agencies														
	Switzerland (with other agencies) <ul style="list-style-type: none"> • Tax Reform Project (with IMF) (improvement of tax administration)[see also above] • External Debt Management Project implemented by IMF • Support for process of WTO accession • Training Seminar on WTO-related topics implemented by WTI, Bern (Central Asian countries, including Tajikistan) • Regional anticorruption initiative (for number of countries, including Tajikistan) • Trade Diagnostic Study implemented by the WB • Trade Facilitation Program by EBRD • Trade Promotion Program in Central Asia, including Tajikistan • Strengthening Independence of the Judiciary (jointly with other agencies and NGOs) (Pilot Phase) 	\$560,000 \$560,000 \$1 million SwF2 million (reg. budget) €100,000 \$125,000 \$ 1.0 million \$850,000 \$665,000	2000–2002 2003–2005 2002–2004 2002–2004 2003–2004 2003–2004 2002–2005 2004–2006 2001–2003			Y Y						Y Y Y Y Y Y Y			

WB = World Bank, WTI = World Trade Institute, WTO = World Trade Organization.

Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
										Market Sector	Civil Society	Individuals/ Families	
• TA in Penitentiary Sector (Pilot Phase)	\$448,000	2001– 2003					Y						
Switzerland: Development management/institutional capacity building, various projects (countrywide or individual areas)													
• Telecommunications - Tajikistan Telecommunications Project implemented by EBRD	\$2.25 million	2000– 2004					Y			Y			
• Energy sector - Power Rehabilitation Project by ADB - Pamir Private Power Project by AKFED, WB/IFC	\$8 million \$5 million	2000– 2005 2003– 2013		Y Y			Y Y			Y Y			
• Environment - Lake Sarez Risk Mitigation Project (administered by WB) - Hydrological Forecasting in TAJ - Disaster Reduction Program in Central Asia (for KGZ, UZB, TAJ)	SwF2.9 million SwF0.95 million \$5 million (reg. budget)	2000– 2004 2000– 2004 2004– 2008		Y Y			Y Y Y						
• Water sector - Integrated Water Resources Management (Central Asia region, including TAJ)	\$2.8 million (reg. budget)	2002– 2005											
• Private sector - second IFC Private Enterprise Partnership (development of leasing initiative; pilot agribusiness farming in cotton sector; private sector environment) - Tajik Small Business Program by EBRD	\$6.57 million \$2 million	2001– 2005 started in											

AKFED = Aga Khan Foundation for Economic Development, KGZ = Kyrgyz Republic, TAJ = Tajikistan, UZB = Uzbekistan.

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	- Central Asia small enterprise fund	\$5 million (reg budget)	2003 2002– 2012											
	Switzerland: various projects , including <ul style="list-style-type: none"> • Rehabilitation of Social Infrastructure, Tajikistan and Ferghana Valley • Kyrgyzstan-Tajikistan Conflict Prevention Project 	\$775,000 \$140,000 +	1999– 2001 2000– 2004											
	<ul style="list-style-type: none"> • Pamir High Mountains Integrated Project • Local Development Muminabad • Social Development in Gorno-Badakshan (with AKF)(various projects, incl. health and education, some with USAID, CIDA, GTZ and NOVIB) • Reduction of Violence Against Women (three pilot areas) (with CARE) 	SwF 465,000 SwF 830,000 SwF2.8 million \$410,000	2001 2000– 2005 1999– 2001											
	USAID: various projects , including <ul style="list-style-type: none"> • Agricultural Reform Program (with AKF), including promotion of land privatization (in various districts). • Promoting the Rule of Law Focuses on providing training on judicial independence and judicial ethics, legislative assistance to parliament, and training to NGOs on legislative process; 	\$1.14 million	ongoing 2002– 2005											
	<ul style="list-style-type: none"> • Civic Education and Political Party Development Organizes seminars and discussion groups to support political party development; provides training to promote women's and youth membership, and to improve media relations and public outreach 	\$1.76 million	2000– 2003											

AKF = Aga Khan Foundation, CIDA = Canadian International Development Agency, IFES = International Foundation for Election Systems, GTZ = German Agency for Technical Cooperation, NOVIB = Netherlands Association for International Development,

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
	<ul style="list-style-type: none"> • Local Government Initiative Provides training and technical assistance to local governments focusing on modern municipal management techniques and allows greater transparency and citizen participation • Program of Civil Society and NGO Development Includes training, consultation, information, community outreach, volunteerism, advocacy and monitoring; works through a network of civil society support centers 	\$1.62 million	2002–2006											
	<ul style="list-style-type: none"> • Program of Civil Society and NGO Development Includes training, consultation, information, community outreach, volunteerism, advocacy and monitoring; works through a network of civil society support centers 	\$2.50 million	2000–2004											
	<ul style="list-style-type: none"> • Media and Information Support Program Includes media law advocacy, journalism and media management training, improved access to modern information technology, public interest programming and journalism, thematic journalism training • Small grants in support of innovative private initiatives and local NGOs Seeks to support local governance, improve public administration, and stimulate growth of civil society • Participant Training Program Provides short-term training courses in the US, in-country and in third countries for mid-to-senior level leaders and professionals; programs relevant to transition to democracy and free-market economy • Roundtable on Commercial Law Reform Strategy representatives of Majlisi Oli, ministries and departments, academia, etc) 	\$1.11 million	2001–2004											
		\$650,000	1998–2003											
		\$2.5 million	2002–2005											
		—	2002											
	<ul style="list-style-type: none"> • Development of Infrastructure in Khatlon and Rasht Valley (with Mercy Corps, UNDP and AKF), including strengthening of participation of communities in planning and decision processes 	Incl. in \$4 million for total project												
	Japan: Telecommunications Regulatory Framework (with EBRD, see above) (various phases).	\$2 million to date												

	Agency/Project/Components or Objectives	Funding	Dates	Constitution/ Institutional Framework	Public Sector Management	Economic/Budget/ Expenditure Management	Legal/Judicial System	Public Service Delivery	Integrity and Accountability	Sub-national Levels of Gov't	Public-Private Interface			Other
											Market Sector	Civil Society	Individuals/ Families	
Civil Society Organizations (illustrative examples)														
	Aga Khan Foundation (AKF) <ul style="list-style-type: none"> • Agricultural Reform Program (with USAID, see above), including promotion of land privatization (projects in various districts). • Reproductive Health and Child Survival (various locations) (with USAID)—support and strengthening of government institutions safeguarding health of women and children. 	— —	Ongoing to 2003											
	Agency for Technical Cooperation and Development (ACTED) <ul style="list-style-type: none"> • Community-based Rural Development in Khatlon (west Khatlon) • Rural Development and Cross-Border Cooperation/Conflict Prevention in Ferghana Valley (in various districts) (with NGOs) • Pamir High Mountain Integrated Project (Murghab) 	€1,000,000/ year €300,000/ year \$200,000/ year	2000– 2005 2000– 2005 1999– 2004											
	Action Against Hunger (AH): Community Development Committees (in various districts)	—	to 2001											
	Open Society Institute-Assistance Foundation (Tajik Branch OSI Soros Foundation): LGI Program , with three components <ul style="list-style-type: none"> • Roundtables to analyze issues of local self-government for majlises of people's deputies, hukumats, jamoats, mahallas and NGOs • Professionalization and development of local self-government—training for higher and middle managers of local executive bodies and representatives of self-government bodies • Support for initiatives of local association to address socioeconomic issues 	—	2002 program											

LGI = Local Government Initiative.

Structure of Government including all divisions, ministries, President's Office, Majlisi Oli (Majlisi Mili Majlisi Namoyandagon), and Council of Justice of the Republic of Tajikistan
(as of 31 May 2004)

President	Emomali Rakhmonov
The Government of the Republic of Tajikistan	
Head of the Government	Emomali Rakhmonov
Prime Minister	Akil Akilov
First Deputy Prime Minister (CIS Affairs)	Khoja-Akbar Turajon-Zoda Kakharov
Deputy Prime Minister (Agriculture, Water Resources, Environment)	Kozidavlat Koimdodov
Deputy Prime Minister (Social Sector)	Khairinisso Mavlonova
Deputy Prime Minister (Order and Power Structure)	Saidamir Zukhurov
Deputy Prime Minister (Governing System)	Zokir Vazirov
Deputy Prime Minister (Industry, Transport, Communication, Energy, Construction, Emergency Situations, Communal Services)	Asadullo Gulomov
Head of Secretariat	Saidhasan Mamadhusainov

Ministries and State Committees	
Ministry of Economy and Trade	Khakim Soliev
Ministry of Finance	Safarali Najmiddinov
Ministry of State Revenue and Duties	Gulomjon Babaev
Ministry of Industry	Zaid Saidov
Ministry of Justice	Khalifabobo Khamidov
Ministry of Foreign Affairs	Talbak Nazarov
Ministry of Health	Nusratullo Faizullaev
Ministry of Culture	Rajabmad Amirov
Ministry of Water Resources and Land Reclamation	Abdukokhir Nazirov
Ministry of Education	Safarali Rajabov
Ministry of Interior	Khumdin Sharipov
Ministry of Defense	Sherali Khairulloev
Ministry of Agriculture	Voris Madaminov
Ministry of Communication	Said Zubaidov
Ministry of Labour and Social Welfare	Mamadsho Ilolov
Ministry of Transport	Abdujalol Salimov
Ministry of Emergency Situations	Mirzo Ziyoyev
Ministry of Energy	Jurabek Nurmakhmadov
Ministry of Security	Khairiddin Abdurakhimov
State Committee on Nature Protection and Forestry	Abdulvokhid Karimov
State Property Committee	Sherali Gulov
State Statistical Committee	Munim Khalikov
State Border Protection Committee	Abdurakhim Azimov
State Land Committee	Davlatsho Gulmakhmadov
State Committee on Architecture and Construction	M. Khalifaev
Committee for Religious Affairs	Golib Goibov
Committee on the Women and Family Issues	Rokiya Kurbonova
Committee for Youth Issues	R. Asadulloev
TV and Radio Committee	Abdujabor Rakhmonov
Antimonopoly and Entrepreneurship Support Agency	A. Amirov

Executive Office of the President	
Head of President's Administration	Mahmadnazar Salihov
State Adviser on Economic Policy	Faizullo Kholboboev
State Adviser on International Policy	Erkin Rakhmatullaev
State Adviser on Social Policy	Karomatullo Olimov
State Adviser on Legal Policy, and President's Authorized Representative in Majlisi Oli of RT	Shermahmad Shoev
State Adviser on Human Resource Policy	Abdujabor Azizov
Chief of the Finance Division	Odiljon Jaborov
Chief of the Economic Reforms and Investment Division	Negmatjon Buriev
Chief of the Aid Coordination Unit	Muzaffar Isakov
Chief of the Monitoring of Poverty Reduction Strategy Document Division	Nozigul Khushvahtova
Chief of the Transport and Communication Division	Mukhammad Khabibov
Chief of the Industry and Power Division	Mahmadsharif Khakdodov
Chief of the Legal Division	Jumahon Davlatov
Chief of Education and Science Division	Faizullo Khushvahtov
Chief of Health and Women and Family Care Division	Rano Abdurahmonova
Chief of Agriculture and Land Reform Division	Kholmat Kholboev
Chief Construction and Public Services Division	Zafar Safarov
Chief Environment Protection and Emergency Situation Division	Usmonkul Shokirov
Chief of Culture Division	Abdurakhmon Abdumanonov
Chief of Control Division	Odinaev
Head of President's Secretariat	Saidmurod Fattoev
Bodies under the President of RT	
Drug Control Agency	Rustam Nazarov
State Financial Control Committee	Matlubkhon Davlatov
Civil Service Department	

<p>Majlisi Oli of the Republic of Tajikistan Majlisi Milli of the Republic of Tajikistan Chairman Deputy Chairman Deputy Chairman Apparatus of Majlisi Milli Majlisi Oli</p>	<p>Mahmadsaid Ubaidulloev Askar Hakimov Nazarbegim Muborakshoeva Muzaffar Ashurov</p>
<p>Majlisi Namoyandagon of the Republic of Tajikistan Chairman Deputy Chairman Deputy Chairman Deputy Chairman Committees and Commissions of the Majlisi Namoyandagon Committee on the Economy, Budget, Finance and Tax Committee on Constitutional Legality, Legislation and Human Rights Committee on Law and Order, Defense and Security Committee on State Structure and Local Government Committee on Agriculture and Employment Committee on Science, Education, Culture and Youth Policy Committee on Social Issues, Family, Health Care and Ecology Committee in International Affairs, Public Associations and Information Committee on Power Engineering, Industry, Construction and Communication Committee on Deputy Ethics Commission on Control over Regalement and Organization of Work (Steering Commission)</p> <p>Departments Organizational and Analytical Department Legal Department Department on Correspondence Registration and Visitors Department on Translations, Editing and Printing Department on General and Public Service Department on Inter-Parliamentary Ties and Protocol Department on Financial and Economic Activities Department on Computerization and Printing Central Commission for Elections and Referenda</p> <p>Administration of Majlisi Namoyandagon Majlisi Oli</p> <p>Secretariat at the Leadership of the Majlisi Namoyandagon</p>	<p>Saidullo Hairulloev Abdulmajid Dostiev Djamoliddin Mansurov Gulafzo Savriddinova</p> <p>Sanobar Hamidova</p> <p>Jurahon Kabirov</p> <p>Shavkat Ismoilov Abdusattor Jabborov</p> <p>Shodibek Ahmadov Mamadsho Ilolov</p> <p>Sanobar Rahimova</p> <p>Asomiddin Saidov</p> <p>Yusufdjon Ahmadov Abdufattoh Sharipov Mahmad Rahimov</p> <p>Asadullo Saidalov Fozil Buriev</p> <p>Tavarali Urunov</p> <p>Boimuhammad Safarov Jorubali Saburov</p> <p>Tolibjon Razokov</p> <p>Asadullo Aliev Abduahat Abdulloev</p> <p>Nazrullo Abdulvahobov</p> <p>Muhtaram Hotamov</p>

COUNCIL OF JUSTICES of the Republic of Tajikistan is a collegial body implementing state policy in the sphere of juridical and legal reforms.

Members of the Council of Justice of the Republic of Tajikistan

1. Chairman of the Council of Justice of the Republic of Tajikistan
2. First Deputy Chairman of the Council of Justice of the Republic of Tajikistan
3. Deputy Chairman of the Council of Justice of the Republic of Tajikistan
4. Chairman of the Supreme Court of the Republic of Tajikistan
5. State Adviser of the President of the Republic of Tajikistan on Human Resources Policy
6. Representative of Majlisi Milli of Majlisi Oli of the Republic of Tajikistan
Representative of Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan

Structure of the Council of Justice of the Republic of Tajikistan

1. Chairman of the Council of Justice of the Republic of Tajikistan
2. First Deputy Chairman of the Council of Justice of the Republic of Tajikistan
3. Deputy Chairman of the Council of Justice of the Republic of Tajikistan
4. Head of Apparatus of the Council of Justice of the Republic of Tajikistan
5. Apparatus of the Council of Justice of the Republic of Tajikistan
6. Office of Council of Justice of the Republic of Tajikistan in Gorno-Badakhshan Autonomous Oblast and Other Oblasts
7. Executing Board
8. Qualification and Disciplinary College
9. Judge Training Center

The Apparatus of the Council of Justice of the Republic of Tajikistan

1. Administration
2. Assistant of the Chairman–Press Secretary
3. Courts Administration
 - Division on Organizing of Court's Activity
 - Sector of Military Courts
 - Sector of Economic Courts
 - Division on Statistics and reporting of Court's Activities
4. Department of Personnel and Special Works
 - Special Works Sector
5. Planning and Financial Department
6. International Relations and Laws Systematization Department
7. Division on Administrative Support
 - Computer Programming Center
8. General Service Department
9. Judge Training Center

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