



The Legal Profession Reform Index

For

Tajikistan

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INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative [hereinafter "ABA/CEELI"] developed the Legal Profession Reform Index [hereinafter "LPRI"] to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations [hereinafter "UN"] and the Council of Europe. The LPRI factors provides benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index [hereinafter "JRI"] and newly created Prosecutorial Reform Index [hereinafter "PRI"], will also provide information on such related issues as corruption, regulation and discipline of legal professionals, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI also decided to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA/CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, and the PRI for prosecutors.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other

countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocats*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings, but does not argue before the court. He has no rights of any sort in any other court. The *avocats aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small yet common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union [hereinafter "CCBE"], there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law faculty/school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

ABA/CEELI's Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No. 34 (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations *Basic Principles on the Role of Lawyers* and the Council of Europe's *Recommendations on the Freedom of Exercise of the Profession of Lawyer* and on ABA/CEELI's more than 15 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology,

and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI and new PRI, employ factor-specific qualitative evaluations; however, these assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways, but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI and PRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and—as LPRI's are updated—within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see Christopher M. Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 *American Journal of Comparative Law*. 605, 611 (1996).

structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with CEELI's JRI and PRI, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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The Tajikistan LPRI assessment was conducted in June 2005 by Thomas F. Cope and Zulfikor Zamanov, Staff Attorney in ABA/CEELI's Dushanbe office, and reflects subsequent developments through September 2005. The assessment team received invaluable support and guidance from other members of the ABA/CEELI staff in Dushanbe and Khujand, including Country Director John Hickey, Rule of Law Liaison Frank Hespe, Staff Attorney Alisher Karimov, Women's Rights Liaison Christine Tefft, and Staff Attorney Farangis Zikriyeva; from Nazgul Yergaliev, Open Society Justice Initiative and Sabina Salikhova and Shakarbek Niyatbekov, Tajik Branch of the Open Society Institute – Assistance Foundation; and from Gulshan Ashurbekova, Director of INIS Women's Legal Support Center. ABA/CEELI Legal Analyst and LPRI Coordinator Dr. Carson Clements provided research, analytical assistance, substantive law provisions, and prepared and edited the report for publication. During the course of the assessment, the team met with more than 55 advocates, prosecutors, judges, government officials, and NGO leaders and reviewed numerous laws and other documents. ABA/CEELI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

COUNTRY BACKGROUND

Historical Context

The Republic of Tajikistan is one of five independent states of the former Soviet Union that comprise the region known as Central Asia. It is bordered on the west and north by Uzbekistan and Kyrgyzstan and on the east and south by China and Afghanistan. Tajikistan is a landlocked country with an area of 143,100 square kilometers. Ninety-three percent of the country is mountainous. The different levels into which the Republic is divided for administrative-territorial purposes are the oblast (region), raion (district), city, and jamoat (a group of towns and villages). The five main administrative regions are the city of Dushanbe, Raions of Republican Subordination, Khatlon Oblast, Sogd Oblast, and Gorno-Badakhshan Autonomous Oblast [hereinafter “GBAO”]. Tajikistan’s estimated population (as of July 2005) was 7,163,506. Approximately four-fifths are Tajiks, with the remainder consisting of Uzbeks, ethnic Russians, Kyrgyz, and others. Tajik is the state language and Russian is recognized in the Constitution as “a language of inter-ethnic communication.” CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter “CONSTITUTION”], Article 2.

Following the Bolshevik Revolution, the Bukharan People’s Soviet Republic (encompassing land included in the Republic of Tajikistan) was proclaimed in 1920, and in 1929 the Tajik Soviet Socialist Republic was established. Tajikistan declared its independence on 9 September 1991. In November 1992 former Communists took over the government and Emomali Rahmonov became acting head of state. A civil war (1992-97) against the new government by the Islamist opposition and others followed, resulting in an estimated loss of 50,000 lives and economic decline.

Tajikistan is the poorest of the new independent states of the former Soviet Union, with an estimated per capita GDP in 2004 of \$1,100 (purchasing power parity). More than 60%—perhaps as much as 85%—of the population lives below the poverty line. Unemployment and underemployment are estimated at 40%.

Legal Context

Tajikistan adopted its post-Soviet Constitution on 6 November 1994. By a referendum held 22 June 2003, voters overwhelmingly approved fifty-six constitutional amendments that, among other things, increased the powers of the President and made it possible for President Rahmonov to be elected for two more seven-year terms at the end of his current term in 2006. Because of concerns about transparency and vote counting procedures, the Organization for Security and Cooperation in Europe [hereinafter “OSCE”] and international agencies declined to monitor the referendum. The executive branch has significant influence over the other branches of government. Tajikistan has a bicameral Parliament, the Majlisi Oli, consisting of a lower chamber, the Assembly of Representatives (Majlisi Namoyandagon), with sixty-three members, and an upper chamber, the National Assembly (Majlisi Milliy), with thirty-three members.

The legal system of Tajikistan is based on civil law and still retains institutions and norms from the Soviet period. For example, many provisions of the Criminal Procedure Code (originally adopted in 1961) and Civil Procedure Code (1964) from the Soviet era remain, although both codes have been amended since independence.

Since 1995 the profession of advocate has been governed by the Law on Advocacy, which declares that the “legal profession in the Republic of Tajikistan is an independent professional affiliation, practiced according to the Constitution of the Republic of Tajikistan, and rendering legal assistance to natural and juridical persons.” CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], Article 1. The law

covers the organization of collegia of advocates, admission to the profession, rights and duties of advocates, and discipline of advocates. Admission to the profession has primarily been through membership in a collegium (sometimes referred to as a bar association), an independent and self-regulated association of advocates. Law graduates with either two years of legal experience or a supervised internship of from six months to one year are eligible for membership upon passing an examination administered by a collegium qualification commission. Since 1998, when the Regulation on Procedure of Licensing of Legal Aid Activity Rendered by Private Advocates (18 Feb. 1998) was adopted, another way to become an advocate was to obtain a license from the Ministry of Justice [hereinafter “MoJ”] pursuant to the Law on Advocacy, after passing a qualification examination. Such advocates are referred to as private advocates or private licensed advocates.

In May 2004, the Tajik Parliament enacted a general law to license some 140 activities and professions, including the provision of paid legal services. LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter “LAW ON LICENSING”]. As a result, all advocates and other jurists who offer paid legal services would henceforth be licensed by the MoJ. Jurists who work as employees of enterprises would not, however, need a license. It was anticipated in June 2005, when interviews were conducted, that regulations implementing the new Law on Licensing would be promulgated during the summer of 2005, and a law amending the Law on Advocacy to bring it into conformity with the Law on Licensing would be adopted later in the year.

Since then, a licensing regulation for advocates has been promulgated. REGULATION ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337 (1 Sept. 2005) [hereinafter “LICENSING REGULATION”]. Notably, this regulation is inconsistent with the clear intent of the Law on Licensing, as universally understood by interviewees, and with the REGULATIONS ON FEATURES OF LICENSING OF PARTICULAR KINDS OF ACTIVITIES [hereinafter “DRAFT LICENSING REGULATIONS”] obtained by the assessment team during the interview process. In particular, the Licensing Regulation does not require advocates to pass a qualification examination in order to be licensed, as the draft regulation had. *Compare* LICENSING REGULATION, Article 49 (4) (1) *with* DRAFT LICENSING REGULATION, Article 51 (4). The MoJ and collegium advocates have failed to reach a common understanding on what is legally required, and the resulting situation is somewhat confused. Reportedly, collegium advocates are ignoring the requirement of the Law on Licensing that they obtain a license from the MoJ and continue to rely on the Law of Advocacy for authority to practice their profession. They continue to present an order from their collegium in order to appear in court, rather than a license from the MoJ. It is said that they have little interest in any amendment to the Law on Advocacy to bring it into conformity with the Law on Licensing. Like the Draft Licensing Regulations, the Licensing Regulation requires the licensing of legal entities, as well as of private licensed advocates. Although the final regulation requires an “authenticated copy of an evaluation report or certificate of passing qualification examination” for the licensing of legal entities, it does not specify which, if any, individuals within a law firm need to be licensed. LICENSING REGULATION, Article 49 (4) (2). Reportedly the MoJ has ceased to administer examinations when it licenses private advocates. Pending further developments, it remains difficult to evaluate the precise impact the new legislation. Because of the opposition to licensing on the part of collegium advocates, however, the MoJ appears unwilling to use its authority under the Law on Licensing for the purpose of unifying and reforming the legal profession.

Overview of the Legal Profession

Although the focus of this report is on advocates, many different legal professionals exist in Tajikistan. Graduates of a university law faculty are referred to as jurists, a term that applies to all legal professionals. With an estimated 12,000-13,000 full-time and correspondence students enrolled in law faculties, the number of graduates far exceeds the number of available jobs for legal professionals. (The number of advocates in Tajikistan is somewhat less than 500, and the total number of other jurists is unknown.) As a result, most graduates are unlikely to find employment in the law, but those who pursue legal careers do so as one of the following:

- Prosecutors, who supervise criminal investigations, prosecute defendants on behalf of the state, and oversee the legality of proceedings;
- Investigators, who investigate crimes and are part of the law enforcement apparatus (i.e., Ministry of Interior, Ministry of Security, and Prosecutor's Office) ;
- Judges, who work in city, raion, and oblast courts, the Supreme Court, the Court of the Gorno-Badakhshan Autonomous Oblast (GBAO), the economic courts, the Military Court, and the Constitutional Court;
- Advocates, who provide legal advice and represent clients in criminal and civil litigation, but are the only jurists (with the limited exception of representatives of trade unions or NGOs) authorized to represent defendants in criminal cases;
- Non-advocate jurists who provide the public with legal advice and representation in civil trials on a regular and independent basis (referred to in this report as civil practice lawyers) or who work in commercial enterprises, government ministries, or NGOs; and
- Notaries, who draft and file contracts and documents relating to the transfer of property, as well as authenticate documents.

It should be noted that one need not be a licensed advocate or a jurist to represent parties in civil litigation. Even someone without legal training can act as a representative of a party if the party makes an oral request in court and the judge agrees.

Organizations of Legal Professionals

The successor to the Soviet collegium, established in 1929, is the Collegium of Advocates of the Republic of Tajikistan (commonly referred to as the Republican Collegium). A regional collegium, the Collegium of Advocates of the Sogd Oblast, was established in 1973. Although in theory other collegia could be established by groups of at least 40 advocates, this has not in fact happened. The Republican Collegium, headquartered in Dushanbe, is the larger of the two, with some 250 advocates and 15 interns. The Sogd Collegium in Khujand has approximately 130 members. Since the Law on Licensing contemplates that the collegia will no longer perform the function of admitting advocates into the profession, their future is uncertain. (A draft law to amend the Law on Advocacy would leave intact all provisions relating to the collegia.) Advocates licensed by the Ministry of Justice (numbering about 100) are not required to belong to any professional organization.

In March 2003, the Association of Advocates was organized with support from international donors in an effort to unite members of the collegia and private licensed advocates in a single professional organization. With about 240 members, the association includes roughly half the advocates in Tajikistan. Members include 120 from the Republican Collegium, 100 from the Sogd Collegium, and 20 private advocates. Thus it consists primarily of advocates from the collegia. Unfortunately, it has become largely inactive.

SUMMARY FINDINGS

This report is written at a time of considerable uncertainty about the future of the legal profession in Tajikistan. Perhaps in part because of insecurity among advocates as a result of this uncertainty, some were concerned that requiring them to be licensed by the Ministry of Justice [hereinafter “MoJ”] would result in a loss of their independence. Much will depend on the MoJ’s implementation of the Licensing Regulation and whether efforts are made to conform the Law on Advocacy to the Law on Licensing. Nevertheless, this period of transition affords opportunities for the MoJ, the collegia, and private licensed advocates to take stock of the profession and undertake reforms to address the shortcomings identified in this report.

The Tajikistan 2005 LPRI analysis identifies a number of significant shortcomings and some strengths, in the profession of advocate. For example, with regard to education, training, and admission to the profession, many advocates lack the knowledge and practical skills necessary to practice law effectively upon admission to the profession. Too many law faculties, too many students, too few good law professors, and the prevalence of corruption contribute to the generally low level of legal education, with the result that a diploma from a law faculty does not guarantee that a graduate has the required knowledge and practical skills. Procedures and specific requirements for admission to the profession are uncertain because of the recent enactment of the Law on Licensing. Many important questions regarding such matters as the composition and role of the MoJ’s Qualification Commission, the procedures for examination, and even the form of the test cannot be answered. Nevertheless, interviewees praised one aspect of admission to the profession: the absence of discrimination on the basis of race, gender, religion, political or other opinion, ethnic or social origin, membership in a national minority, and the like. As a consequence, minorities, as well as both genders, are adequately represented among the profession.

In practice, advocates may not benefit from the professional freedoms and guarantees accorded by the Constitution and laws of Tajikistan. For example, despite guarantees of the independence of advocates and prohibitions against interfering with their practice, attempts by the state to influence or intimidate advocates are reportedly common. Advocates are sometimes identified with unpopular clients, and immunity for statements made on behalf of clients during court proceedings may be disregarded. As a result, many advocates apparently resort to self-censorship to avoid offending the judge or prosecutor. More significant, however, are the limitations that law enforcement and investigatory bodies impose on access to persons in detention, particularly in politically sensitive cases—despite the constitutional guaranty of legal assistance from the moment of arrest. A detainee’s first opportunity to meet with an advocate may not be until several days after arrest and only when the detainee is prepared to sign a confession. The confidentiality of professional communications and consultations between advocates and their clients is not always respected in practice, particularly in politically sensitive cases. Finally, the adversarial principle, guaranteed by the Constitution, is disregarded in criminal proceedings, with judges reported to defer to prosecutors and discount what advocates say.

Although advocates are able to practice law freely, either individually or in association with other non-advocate jurists, other aspects of the conditions and standards of practice are less favorable. For example, advocates in the collegia, who constitute the majority of advocates, generally lack adequate access to legal information and other resources, and most are inadequately compensated. Private licensed advocates usually have better access to legal information and other resources, and typically earn more. For all advocates, however, there are too few opportunities to participate in continuing legal education programs and what opportunities do exist depend almost entirely on funding from international donors. All advocates are subject to the ethical standards in the Law on Advocacy and the Criminal Procedure Code, and advocates who are members of the collegia are also subject to Rules of Professional Conduct of their respective collegium. In practice, though, advocates reportedly often fail to comply with ethical standards.

Although the collegia have procedures to investigate complaints against their members and to impose sanctions for violation of professional norms, there is some concern about how they are applied in practice. Interviewees voiced no complaints about existing MoJ procedures for investigating complaints and imposing sanctions on private licensed advocates, but until more is known about how the MoJ will implement the Law on Licensing, the adequacy of such procedures in the future is uncertain.

Another significant area of concern is the availability of legal services. An insufficient number of advocates practice law in some regions of Tajikistan and, even where their number appears to be adequate, there are questions about the quality of legal services some of them provide. Advocates provide free legal assistance primarily through the collegia, but also as individuals and through non-governmental organizations. Although advocates in the collegia are entitled to be paid by the state for representing persons under criminal investigation or in criminal trials, they are rarely if ever paid. As a result, the quality of legal assistance they provide is sometimes inadequate.

An important result of MoJ licensing could have been the uniting of previously disparate elements of the legal profession. Under the Law on Licensing, members of the Republican Collegium, members of the Sogd Collegium, private licensed advocates, and other jurists who provide paid legal services are required to have licenses issued by the MoJ. (See page 2, however, for a discussion of the Licensing Regulation). The Law on Licensing provides an opportunity for greater uniformity in the legal profession, since all who provide paid legal services could be required to pass the same qualification examination and comply with the same ethical rules (if the MoJ issues rules of professional conduct), and be subject to the same procedures for investigating complaints and imposing disciplinary sanctions. This unity could result in a common organization to which all licensed legal professionals could belong, either a reinvigorated Association of Advocates or perhaps a new organization. Such an organization could, for example, provide continuing legal education [hereinafter "CLE"], publications, and other resources to enable advocates to practice more effectively. A single organization might be better able to attract funding from international donors. Finally, such an organization could work to enhance the status of advocates and other licensed jurists. Presently, the profession of advocate is not a prestigious one. Many of the better qualified law graduates are said to prefer careers as judges or prosecutors. By eliminating the requirement of the Draft Licensing Regulations that providers of paid legal services pass a qualification examination in order to be licensed and, indeed, failing to require collegium advocates to be licensed at all, the MoJ has passed up the opportunity afforded by the Law on Licensing to bring about greater unity and reform in the legal profession.

TABLE OF FACTOR CORRELATIONS

The Tajikistan 2005 LPRI analysis reveals a developing legal profession in transition. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

I. Professional Freedoms and Guarantees		
Factor 1	Ability to Practice Law Freely	Negative
Factor 2	Professional Immunity	Negative
Factor 3	Access to Clients	Negative
Factor 4	Lawyer-Client Confidentiality	Negative
Factor 5	Equality of Arms	Negative
Factor 6	Right of Audience	Negative
II. Education, Training, and Admission to the Profession		
Factor 7	Academic Requirements	Negative
Factor 8	Preparation to Practice Law	Negative
Factor 9	Qualification Process	Neutral
Factor 10	Licensing Body	Neutral
Factor 11	Non-discriminatory Admission	Positive
III. Conditions and Standards of Practice		
Factor 12	Formation of Independent Law Practice	Positive
Factor 13	Resources and Remuneration	Negative
Factor 14	Continuing Legal Education	Negative
Factor 15	Minority and Gender Representation	Positive
Factor 16	Professional Ethics and Conduct	Neutral
Factor 17	Disciplinary Proceedings and Sanctions	Neutral
IV. Legal Services		
Factor 18	Availability of Legal Services	Negative
Factor 19	Legal Services for the Disadvantaged	Neutral
Factor 20	Alternative Dispute Resolution	Neutral
V. Professional Associations		
Factor 21	Organizational Governance and Independence	Neutral
Factor 22	Member Services	Negative
Factor 23	Public Interest and Awareness Programs	Negative
Factor 24	Role in Law Reform	Neutral

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Conclusion	Correlation: Negative
<p>Although the Law on Advocacy guarantees the independence of advocates and prohibits interfering with their practice, attempts by the state to influence or intimidate advocates are reportedly common, though often subtle.</p>	

Analysis/Background:

According to the CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter "CONSTITUTION"], "[t]he rights and freedoms of the person and the citizen are regulated and protected by . . . international legal acts recognized by Tajikistan. Limitations of the rights and freedoms of citizens are only allowed for the purposes of ensuring the rights and freedoms of other citizens, ensuring social order, and protecting the constitutional system and territorial integrity of the republic." CONSTITUTION, Article 14. Furthermore, international legal documents are a part of Tajikistan's legal system and take precedence over other laws that conflict with them. CONSTITUTION, Article 10. Under the Law on International Treaties, Tajikistan recognizes the UN BASIC PRINCIPLES ON THE ROLE OF LAWYERS, Article 16 of which provides in part that, "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference . . ." Thus, the Constitution guarantees the ability to practice law freely.

In addition, the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"] recognizes the independence of the profession of advocate and prohibits improper influence or intimidation. For example, it states that, "The legal profession in the Republic of Tajikistan is an independent professional affiliation, practicing according to the Constitution of the Republic of Tajikistan, and rendering legal assistance to natural and juridical [legal] persons." LAW ON ADVOCACY, ARTICLE 1. In addition, an advocate is "independent in his practice and obeys only the law." LAW ON ADVOCACY, Article 12. Furthermore, state bodies and officials are obligated to provide an opportunity for advocates to render legal assistance and must respect their rights. LAW ON ADVOCACY, Article 13. An advocate's freedom of movement in order to render legal assistance cannot be limited except as provided by law; and demanding special permission or creating other legal barriers to an advocate's practice, interfering in an advocate's practice, or demonstrating disrespect to an advocate will result in liability as "provided by the legislation of the Republic of Tajikistan." LAW ON ADVOCACY, Article 13.

Furthermore, the CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter "CRIMINAL Code"] makes it a crime to threaten or use violence against an advocate, judge, prosecutor or certain other officials, or damaging their property in connection with an investigation, court hearing, or carrying out a decision of a court. CRIMINAL CODE, Article 356. Depending upon the act and circumstances, such conduct is punishable by up to two years of correctional labor or imprisonment up to eight years. CRIMINAL CODE, Article 356. In the past, Article 296 of the Criminal Code, which imposes criminal responsibility for abuse of professional function, was formerly used to intimidate zealous advocates, but it has since been repealed as to advocates.

A focus group of advocates in a legal consultation center said that they have never experienced any influence or encountered any challenges to their independence. Two other advocates stated that they had not personally experienced influence or intimidation, but had heard of such cases

involving other advocates. The vast majority of advocates interviewed, however, did report attempts to influence or intimidate them. According to one, the influence may be subtle, with the prosecutor suggesting that the advocate not create any problems, because, after all, they have to work with each other in the future. Private licensed advocates in another focus group reported that, when defending an unpopular client or a client in conflict with the state, acquaintances, such as in the Ministry of the Interior or former KGB employees, warn them not to be too diligent. Another said that prosecutors sometimes advise defendants that they will suffer if their advocates are too aggressive.

One interviewee suggested that there is a kind of self-censorship among advocates, citing the example of one who avoids overt involvement in certain sensitive cases. Although the advocate prepares motions and writes speeches, he does so anonymously. In a similar vein, another advocate said that nowadays an advocate takes a position gradually, step by step.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Conclusion	Correlation: Negative
<p>Advocates are sometimes identified with unpopular clients, and their immunity for statements made on behalf of clients during court proceedings may sometimes be violated. Generally, however, it appears that advocates exercise care about what they say in court to avoid offending the judge or prosecutor.</p>	

Analysis/Background:

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter “CONSTITUTION”] guarantees freedom of speech generally and prohibits state prosecution for “criticism.” For example, “Each person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden.” CONSTITUTION, Article 30. Under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], advocates are specifically entitled to “freedom of speech in oral and written form within the frame set forth by the tasks of the legal profession” and by the Law on Advocacy. LAW ON ADVOCACY, Article 12. Furthermore, they are immune from liability for statements “touching on the honor and dignity of a party, his or her representative, the prosecutor, a witness, victim, expert, or interpreter when such statements do not violate the rules of professional ethics of lawyers” LAW ON ADVOCACY, Article 12. This immunity does not, however, by its terms apply to statements concerning judges. LAW ON ADVOCACY, Article 12.

A focus group of advocates from a legal consultation center said that, if an advocate represents an unpopular client, of course he or she will be identified with the client and suffer as a result. That view appears to be borne out by the experience of advocates representing defendants in what interviewees described as politically motivated prosecutions.

Although a judge affirmed that advocates can say whatever they think is appropriate in court, even if it offends the judge or prosecutor, there has been at least one instance in which an advocate was fined for insulting a prosecutor. In 2003, an advocate accused the prosecutor of committing illegal actions in a tone and manner of speech that the prosecutor and judge considered disparaging. Although the court fined her and referred the matter to her collegium, she reportedly has not paid the fine. Most advocates were, however, unaware of such problems.

Perhaps they seldom arise because many advocates do not push the limits of free speech in the courtroom. One interviewee commented that, although there are a few brave lawyers, his sense was that most exercise caution about what they say in court. A different though related issue is the extent to which lawyers may criticize the judiciary in the press. For example, an advocate in Khujand wrote a newspaper article charging that judges were corrupt. The prosecutor began an investigation against her, and the president of the Council of Justice filed a lawsuit for defamation against her.

Factor 3: Access to Clients

Lawyers have access to clients; especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: Negative
<p>Although the Constitution guarantees legal assistance from the moment of arrest, the practices of law enforcement and investigatory bodies often limit access to persons in detention. A detainee's first opportunity to meet with an advocate may in fact be several days after arrest, when the detainee is prepared to sign a confession. Limitations on access to clients in detention are said to be more likely in politically sensitive cases.</p>	

Analysis/Background:

Under the Criminal Procedure Code, the police may arrest and detain a suspect without an arrest warrant for up to three days. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter "CRIMINAL PROCEDURE CODE"], Article 412.5. A suspect may then be held for up to ten days without charge pursuant to an arrest warrant issued by the prosecutor. CRIMINAL PROCEDURE CODE, Article 83. After being charged with a crime, the suspect may be held in detention for up to two months while the investigation is conducted, a term that may be extended up to a total of fifteen months in appropriate circumstances. CRIMINAL PROCEDURE CODE, Article 92. Specifically Article 92 provides that if it is impossible to complete an investigation within two months and there is no basis for seeking preventive detention, the period of custody can be extended by the district, state prosecutor, and certain military prosecutors, up to three months. Further extensions are possible only in especially complicated cases. The district prosecutor, prosecutor of Gorno-Badakhshan Autonomous Oblast (GBO), prosecutor of Dushanbe city, regional prosecutor, and certain military prosecutors may extend the total period up to six months; and the deputy of the General Prosecutor of the Republic of Tajikistan [hereinafter "General Prosecutor"] and a senior military prosecutor may extend the period up to nine months from the beginning of detention. An extension beyond nine months is allowed only in exceptional cases and only for persons suspected of having committed a grave crime. In such circumstances, the General Prosecutor may authorize an extension up to a total of one year and three months. Consultation with the Board of the Prosecutors of the Republic of Tajikistan is required whenever the period of custody is extended beyond one year. No extension beyond one year and three months is allowed, and the defendant must be released immediately upon expiration of the period of detention. However, if at end of the term of custody the court returns the case for further investigation and there is no basis for holding the suspect in preventive detention, the prosecutor overseeing the investigation may, nevertheless, order the suspect held for no longer than one month from the time he received the case. CRIMINAL PROCEDURE CODE, Article 92. Finally, when the investigation is complete, the investigator, the prosecutor, or the court may order a defendant to be held in preventive detention until trial. CRIMINAL PROCEDURE CODE, Article 412.18.

Among the rights accorded to those in preventive detention, the Criminal Procedure Code grants the following:

- To have documents and notes concerning the criminal case with them;
- To have meetings with their advocates without limitations in number and duration from the moment when the advocate is allowed to participate in a case, confirmed by the written statement of person or the body that ordered detention; and
- To carry on correspondence and appeal with petitions and statements concerning preventive detention. CRIMINAL PROCEDURE CODE, Article 412.18.

Any extension of the period of custody during investigation or the use of preventive detention may be appealed to the appropriate court. CRIMINAL PROCEDURE CODE, Article 221.1.

In a recent anonymous survey of judges and advocates in Sogd Oblast, 98% responded that “most often detention as a preventive measure is applied.” CENTRE FOR SUPPORT OF LEGAL AND ECONOMIC REFORMS IN REPUBLIC OF TAJIKISTAN, ACTIVITY REPORT ON THE PROJECT “ACCESS TO JUSTICE” 1 (Nov.-Dec. 2004). Because preventive detention is common, an advocate preparing for trial will usually have to meet with his or her client in the preventive detention facility.

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter “CONSTITUTION”] and other laws include a number of significant guarantees for those deprived of their liberty. For example, under Article 19 “...from the moment of detainment, a person has the right to employ the services of a lawyer.” CONSTITUTION, Article 19. The Criminal Procedure Code modifies this guarantee by providing that an advocate may participate in a case from the moment a suspect is advised of the reason for arrest or is advised that he or she will be held in preventive detention—in either case not more than twenty-four hours after arrest—or when the suspect is charged with a crime. CRIMINAL PROCEDURE CODE, Article 49. The advocate may be retained by the accused or by others on behalf of the accused, such as the investigator or the court. CRIMINAL PROCEDURE CODE, Article 50. When participation of the advocate chosen by the accused is impossible within a reasonable time, the investigator or court has authority to offer to secure another advocate for the defendant. CRIMINAL PROCEDURE CODE, Article 50. In addition, under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], an advocate has the right to meet freely with a client in detention, face-to-face, in confidence, and without restriction as to time. LAW ON ADVOCACY, Article 10; CRIMINAL PROCEDURE CODE, Articles 53, 203 (1), and 412.18. An advocate may also participate in the examination of his or her client, “as well as in other investigative actions.” CRIMINAL PROCEDURE CODE, Article 53. The Constitution also guarantees the inviolability of the person and specifically provides that “[n]o one may be subjected to torture or cruel and inhuman treatment.” CONSTITUTION, Article 18.

These guarantees are, however, undermined by the practices of law enforcement and investigatory bodies. According to the U.S. State Department, security officers of the Ministry of Interior [hereinafter “MoI”] and the Ministry of Security [hereinafter “MoS”] fail to obtain arrest warrants and bring charges within the prescribed periods. U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—TAJIKISTAN 2004, Section 1.d. As noted above, the Criminal Procedure Code delays the Constitutional guarantee of legal assistance from the “moment of arrest” to twenty-four hours after arrest, but even that deadline can be disregarded in practice. It is reported that official records sometimes falsely show the date of arrest as several days after it actually occurred, during which time the suspect does not have access to an advocate. See ALTERNATIVE NGO REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE EXAMINATION OF THE INITIAL REPORT BY THE REPUBLIC OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 10, 19-20 (2005) [hereinafter “ICCPR SHADOW REPORT”]. Another reported practice is to interrogate a suspect ostensibly as a witness, because the law does not give witnesses the right to be accompanied by an advocate. Then, only after a confession is obtained, will the accused be allowed to meet with an advocate. ICCPR SHADOW REPORT at 11.

Furthermore, many detainees are said to be unaware of the right to legal assistance, and investigators often fail to advise indigent detainees of their right to an advocate at state expense

(See Factor 19). In a survey of advocates in death penalty cases, for example, 45% responded that their clients had not been informed of the right to an advocate at state expense. A.M. DINORSHOEV & S.T. ROMANOV, OBSERVANCE OF THE RIGHT TO LIFE IN RT IN THE ASPECT OF APPLICATION OF THE DEATH PENALTY, Section 4.4 (2004). When detainees are aware of their right to legal assistance, investigators frequently persuade them to waive that right. Because current law or practice does not require an advocate to be present, the League of Women Lawyers has proposed that the Criminal Procedure Code be amended to require that any waiver of the right to legal assistance be signed in the presence of an advocate. Even if a detainee is aware of the right to legal assistance, it may be difficult in practice for a detainee or the detainee's family to retain an advocate. Investigators reportedly disregard detainees' requests for an advocate, detainees initially may not be allowed to make telephone calls, and detainee's families are often not informed of the arrest in a timely manner. As a result, a detainee may be held without access to an advocate for two or three days, and sometimes longer. Investigators are said to be concerned that an advocate will tell the detainee what to say or otherwise make it more difficult to obtain a confession—the goal of a criminal investigation. Then, when a detainee is willing to sign a confession as a result of interrogation and sometimes even torture, the investigator will suggest calling in his or her own "pocket advocate" to witness the confession. If the detainee demurs, the investigator requests that the collegium provide an advocate. It is uncertain how frequently pocket advocates are used, but in either event detainees are denied effective legal assistance during the period leading up to confession.

Advocates generally described access to clients in detention as difficult or very difficult, with investigators seldom affording advocates unlimited access to their clients. This is consistent with a survey of 100 advocates, in which 72 percent responded that they do not have free access to clients in detention, and 23 percent responded that such access is partially restricted. LEGAL EDUCATION CENTRE, ANALYSIS OF THE ANONYMOUS SURVEY OF LAWYERS REGARDING GUARANTEEING THE RIGHT FOR FAIR TRIAL FOR POPULATION 2 (2004) [hereinafter "LEGAL EDUCATION CENTER, SURVEY OF ADVOCATES"]. Previously the MoI had authority over pretrial detention centers and its practice was to require written permission from the investigator before an advocate was allowed access to a client in detention. When authority over pretrial detention centers was transferred to the MoJ in 2002, this practice was continued, and is based on provisions of the Criminal Procedure Code that require an advocate to obtain written permission from the investigator or prosecutor's office in order to meet with his or her client. CRIMINAL PROCEDURE CODE, Articles 412.18 and 424 (2). As a result, investigators have virtually unfettered discretion to grant or deny an advocate access to a client. Furthermore, the advocate must obtain written permission every time he or she wants to meet with a client. Even though the Law on Advocacy and the Criminal Procedure Code do not limit the length of time an advocate may meet with a client in detention, investigators reportedly sometimes do. Nevertheless, experienced advocates said that through persistence they can usually meet with a client eventually.

Although an advocate can appeal to the prosecutor if the investigator denies access, denial is more likely to occur in a politically sensitive case, in which event the appeal will likely prove futile. CRIMINAL PROCEDURE CODE, Article 203 (6). A recent example of a politically sensitive case, mentioned by several interviewees, is that of Mahmadrusi Iskandarov, Chairman of the opposition Democratic Party of Tajikistan. Iskandarov was arrested in Moscow in December 2004 on the basis of a Tajik indictment charging him with crimes including embezzlement of \$40 million from Tajikgas, of which he had been chairman between 2001 and 2003, terrorism, and illegally maintaining bodyguards. In April 2005 the Prosecutor General of Russia released him, refusing Tajikistan's request to extradite Iskandarov. He was then involuntarily returned to Dushanbe and held in detention by Tajikistan's MoS. His lawyer was repeatedly denied access to him and was allowed to meet with Iskandarov only in the presence of a representative of the MoS.

Generally, before a trial begins the judge usually advises indigent defendants of their right to an advocate at no cost to the defendant, and many reportedly request appointment of one. At that point in the proceedings, however, there is little that an advocate can do, even if he or she were inclined to provide more than perfunctory representation (See Factor 19), since judges reportedly

almost invariably convict on the basis of a confession, even when the defendant disavows the confession and contends that it had been obtained by means of torture. See *also* ALTERNATIVE NGO REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE EXAMINATION OF THE INITIAL REPORT BY THE REPUBLIC OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 10, 19-20 (2005) at 12. During trial, the advocate may freely consult with the defendant in the courtroom, even if he or she is held in a cage. Outside the courtroom, the advocate must obtain permission from the judge to meet with a client in detention.

Factor 4: Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Conclusion	Correlation: Negative
<p>The Constitution, Law on Advocacy, and Criminal Procedure Code recognize the confidentiality of professional communications and consultations between advocates and their clients; however, these rights may not always be respected in practice, particularly in politically sensitive cases.</p>	

Analysis/Background:

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter “CONSTITUTION”] protects confidential professional communications between lawyers and their clients. For example, “Privacy of correspondence, telephone conversations, and telegraphic and other communications are ensured, except in cases prescribed by law....” CONSTITUTION, Article 23. An investigator may, however, search an advocate’s office, automobile, or home, with the prior approval of the prosecutor’s office, but when delay is impossible, the search may be conducted without prior approval if the prosecutor’s office is notified within twenty-four hours. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL PROCEDURE CODE”], Article 168. Under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], advocates have the right to meet with a client “without difficulty,” face-to-face, in confidential circumstances, and with no restriction as to time, including cases when the client is in custody. LAW ON ADVOCACY, Article 10. Furthermore, although the general rule under the Criminal Procedure Code is that any person with knowledge of relevant facts (including an official representative of a victim, suspect, or accused who is participating in the case) can be summoned as a witness to give evidence, the defendant’s advocate cannot be. CRIMINAL PROCEDURE CODE, Article, 65. No similar rights exist for civil practice lawyers generally, except when they act as representatives of trade unions or non-governmental organizations (NGOs) on behalf of their members in criminal investigations and trials. CRIMINAL PROCEDURE CODE, Article, 65 (3). There is at least a potential conflict, however, between an advocate’s right under the Law on Advocacy and the Criminal Procedure Code not to be questioned about matters subject to advocate-client confidentiality and a citizen’s duty under Article 347 of the CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL Code”] to report information about a past or future felony or “especially grievous crime”. No advocate has been prosecuted, or is known to have been threatened with prosecution under this provision, however.

The state may not always respect the confidentiality of professional communications or consultations between advocates and clients in detention. For example, several advocates voiced suspicions that advocates’ telephones are tapped in politically sensitive cases. In addition, some advocates reported restrictions on meeting with clients alone. Despite the right to an advocate from the moment of arrest under Article 19 of the Constitution, the practice is to

require written permission from the investigator before an advocate is allowed access to a client in detention. The result is investigators have virtually unfettered discretion to grant or deny an advocate access to a client and even to limit the length of time an advocate may meet with his or her client in detention (See Factor 3). Thus, the investigator may be able to limit an advocate's right to meet with a client face-to-face in confidential circumstances by insisting on being present as a condition to granting permission for the meeting. Such limitations may be less likely when the advocate is experienced and assertive. When the investigator or a member of the militia is present, an experienced advocate can often successfully insist on meeting with the client alone. Furthermore, some advocates stated they had not experienced any attempts to prevent them from meeting with a client alone. Finally, advocates reported no attempts by investigators or prosecutors to question them about communications with their clients.

The arrangement of most legal consultation centers, with multiple advocates crowded in a room, can present practical limitations on advocate-client confidentiality when meeting with clients who are not in detention.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

Conclusion	Correlation: Negative
Advocates can usually obtain information from state bodies and review the case file in criminal proceedings, although they may encounter delays.	

Analysis/Background:

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter "CONSTITUTION"] declares that court proceedings "are carried out on the basis of the adversarial system and the equal rights of the parties." CONSTITUTION, Article 88. Therefore, except in cases prescribed by law, all persons have a right to obtain documents affecting their rights and interests from state bodies, social associations, and officials, as do advocates acting on behalf of their clients. CONSTITUTION, Article 25; CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110, Article 10. The CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter "CRIMINAL Code"] makes it a crime for an official unlawfully to refuse to provide a citizen with "documents and materials directly infringing a citizen's rights and freedoms, and gathered in an established order, as well as providing an individual with incomplete or intentionally misrepresented information," if it causes damage to the rights and interests of the citizen. CRIMINAL CODE, Article 148. Such conduct is punishable by a fine of from 300 to 500 times the monthly minimum salary (about \$1,200 to \$2,000) or other appropriate amount of the official's wage or other income for a period of 3 to 5 months, or 3 to 5 years of deprivation of the right to hold certain positions or engage in certain activities. CRIMINAL CODE, Article 148.

Advocates reported some difficulty in obtaining information from state bodies in both civil and criminal cases. Although they occasionally received an immediate response to a request for information, in other cases several requests—sometimes made in person—were necessary. Usually, however, they were eventually able to obtain the information they needed. One jurist related an experience involving her request for information from the Ministry of Justice. After much time had passed, she went in person and asked the reason for delay. She was told that if they replied immediately, people would think they didn't have enough work to do.

During a criminal investigation, an advocate may participate in the examination of his or her client, “as well as in other investigative actions.” CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL PROCEDURE CODE”], Article 53. Specifically, an advocate may petition the investigator to conduct other investigatory actions or gather other evidence relating to circumstances that might be important to the case. CRIMINAL PROCEDURE CODE, Article 125. If the investigator refuses the petition in whole or in part, he or she must provide a written response explaining the reasons for refusal. CRIMINAL PROCEDURE CODE, Article 125. As a practical matter, however, an advocate’s ability to influence the course of an investigation is limited by the discretionary *de facto* authority of the investigator and prosecutor to withhold access to any of the evidence until the investigation is completed. CRIMINAL PROCEDURE CODE, Article 136. At the conclusion of the investigation, the advocate is entitled to review “all materials of the case,” including films or recordings, and to take notes on such information. CRIMINAL PROCEDURE CODE, Articles 53, 92, 201, 203 (2). The advocate is allowed unlimited time to review the case file, except that the investigator (with the prosecutor’s approval) may limit review to prevent delay: “...the investigator has a right by his motivated decree, approved by the prosecutor, to determine a certain time period for familiarization with materials if the defendant and his advocate obviously delay their familiarization.” CRIMINAL PROCEDURE CODE, Article 201. Following completion of the review, the advocate may request, orally or in writing, further investigation or the inclusion of additional evidence in the case file. CRIMINAL PROCEDURE CODE, Articles 201, 203 (4), and 205. If the investigator refuses the request in whole or in part, he or she must advise the defendant of the reasons for refusal. CRIMINAL PROCEDURE CODE, Article 205. The investigator’s refusal may be appealed to the prosecutor. CRIMINAL PROCEDURE CODE, Articles 219, 220. With the investigator’s permission, the advocate may participate in any further investigation and, in any event, is entitled to examine materials added to the case file after completion of the supplemental investigation. CRIMINAL PROCEDURE CODE, Articles 203 (7) and 205.

In practice, the ability of advocates to examine the case file depends in part on the stage of the proceeding. Investigators are said to be reluctant to make the case file available until after the investigation is completed. Access during investigation also depends on the advocate. More experienced and aggressive advocates are more likely to obtain access. Once an advocate secures access to a case file, no restrictions on reviewing it with the client were reported. Sometimes, however, investigators intentionally withhold a portion of the case file until trial or just before trial. During trial, advocates have the greatest access to the case file. In fact, one advocate stated that he preferred to wait until trial before delving into the file, because then he would have a better idea of the prosecutor’s strategy.

According to the ALTERNATIVE NGO REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE EXAMINATION OF THE INITIAL REPORT BY THE REPUBLIC OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 10, 19-20 (2005) [hereinafter “ICCPR SHADOW REPORT”], requests by a defendant’s advocate to summon witnesses to testify at trial other than those included in the list prepared by the prosecutor “are often rejected even though the interrogation of [those proposed by the advocate] might be important for the case.” ICCPR SHADOW REPORT at 37. Thus, it may be difficult for an advocate to introduce testimony that contradicts the evidence in the case file.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: Negative
<p>As a general rule, lawyers are allowed to appear in court on behalf of their clients, but sometimes are refused permission to appear before administrative bodies. In criminal trials, judges do not treat advocates equally, but almost always defer to the prosecutor.</p>	

Analysis/Background:

Advocates have the right of audience in criminal, civil, and economic cases, as well as in proceedings before the Constitutional Court. CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], Article 4; CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL PROCEDURE CODE”], Articles 49 and 53; CIVIL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CIVIL PROCEDURE CODE”], Article 112 (1). Furthermore, the Law on Advocacy provides that in rendering legal assistance, advocates have the right “to represent rights and legal interests of the client in all state public [bodies] and other organizations, which competence includes resolution of corresponding issues.” LAW ON ADVOCACY, Article 10. In addition to members of the collegia and private licensed advocates, the Criminal Procedure Code, allows representatives of trade unions and non-governmental organizations [hereinafter “NGOs”] who are not themselves advocates to represent their members in criminal investigations and trials, and relatives of a suspect or defendant may also be allowed to represent the defendant. CRIMINAL PROCEDURE CODE, Article, 49.

Under the Civil Procedure Code, a wide range of persons in addition to advocates may represent participants in court pursuant to a power of attorney, including representatives of state enterprises, institutions, cooperatives, and other public organizations; representatives of trade unions; and representatives of NGOs with the right to defend their members or other individuals under the Law on Advocacy. CIVIL PROCEDURE CODE, Article 112. The ability to provide representation under a power of attorney depends upon complying with the detailed requirements of Article 113 of the Civil Procedure Code. In addition, representatives of trade unions and NGOs must also present documentation to the court demonstrating that the organization is authorized to provide legal representation. CIVIL PROCEDURE CODE, Article 113. Even non-jurists may be allowed to act as representatives of participants in civil cases on a case-by-case basis, pursuant to an oral request made in court. CIVIL PROCEDURE CODE, Articles 112 and 113. In the economic courts, any citizen may act as a representative of a party pursuant to a power of attorney setting forth the representative’s authority. ECONOMIC PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN, Articles 48-50. In practice, jurists employed by enterprises usually represent the enterprise in economic court.

Advocates did not report any problems with being allowed to appear in court, although one complained that sometimes advocates are not informed of hearings. Jurists employed by NGOs sometimes encounter problems, however, when attempting to represent the NGO’s clients in court, particularly in criminal cases. The judge may insist on being shown the original of the NGO’s charter or may question whether the purposes of the NGO set forth in its charter are broad enough to include providing legal assistance. In matters before state administrative bodies, advocates are sometimes denied the right to act on behalf of a client, because Tajikistan does not have a code of procedure for such matters recognizing the right of an advocate to appear before state administrative bodies.

Equality of treatment is implicit in an adversarial system, and is constitutionally guaranteed in Tajikistan: “Court proceedings are carried out on the basis of the adversarial system and the equal rights of the parties.” CONSTITUTION, Article 88. Almost without exception, however, interviewees reported that judges tend to defer to prosecutors and discount what advocates say. Likewise, in a recent survey of 100 advocates, 50 percent responded that there is no equality between them and prosecutors, and 33 percent reported that there was only partial equality. LEGAL EDUCATION CENTRE, ANALYSIS OF THE ANONYMOUS SURVEY OF LAWYERS REGARDING GUARANTEEING THE RIGHT FOR FAIR TRIAL FOR POPULATION 2 (2004) [hereinafter “LEGAL EDUCATION CENTER, SURVEY OF ADVOCATES”] at 2. There are a number of reasons for this. One is the procuracy’s greater authority because of its traditional role—in addition to prosecuting defendants on behalf of the state—of ensuring “[o]versight for and uniform compliance with the laws on the territory of Tajikistan.” CONSTITUTION, Article 93; *see also* CONSTITUTIONAL LAW ON THE PROCURACY, Article 1. Moreover, prosecutors “function independently without interference from state bodies and officials; they are only subordinate to law.” CONSTITUTION, Article 96. In addition, the Criminal Procedure Code, much of which dates from 1961, still accords the procuracy a dominant role in criminal cases. For example, a prosecutor must approve the issuance of arrest warrants, and prosecutors have authority to extend the period of custody during an investigation beyond the two-month limit. CRIMINAL PROCEDURE CODE, Articles 6 and 92. It is anticipated, however, that adoption of a new Criminal Procedure Code may reduce some of the prosecutors’ authority.³ A second reason is that the prosecutor’s office is generally able to hire the best qualified law graduates, because of the greater prestige accorded to prosecutors compared to advocates—another carry-over from the Soviet era. A third reason is that a judge who acquits a criminal defendant may be suspected of having been bribed and, indeed, may be arrested and charged with corruption. For example, Judge Aliev of the Khujand City Court was recently convicted of knowingly passing unlawful sentences (i.e., accepting bribes) when he acquitted two defendants. Therefore, judges are said to be predisposed to convict criminal defendants. One manifestation of this predisposition is that “Judges base their decision on confessions obtained during the pre-trial investigation and the materials of investigation disclosed in the court (minutes, witness testimonies). Basically, the courts often just confirm the position taken by the investigation.” ALTERNATIVE NGO REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE EXAMINATION OF THE INITIAL REPORT BY THE REPUBLIC OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 10, 19-20 (2005) [hereinafter “ICCPR SHADOW REPORT”] at 32. This, in turn, may contribute to the perception that judges are not independent. In a survey of 100 advocates, 55 percent responded that judges are not independent, and 35 percent that they were only partially independent. LEGAL EDUCATION CENTER, SURVEY OF ADVOCATES at 1; *see also* ICCPR SHADOW REPORT at 38-39.

³ In a recent anonymous survey of judges and advocates in Sogd Oblast, 100% responded that “it is important to urgently adopt a new Criminal Procedure Code (CPC) which will comply with the Constitution and international standards.” CENTRE FOR SUPPORT OF LEGAL AND ECONOMIC REFORMS IN REPUBLIC OF TAJIKISTAN, ACTIVITY REPORT ON THE PROJECT “ACCESS TO JUSTICE” 1 (Nov.-Dec. 2004). Specifically, 100% responded that the courts should have authority over issuance of orders for arrest, and 92% that judicial control over pretrial detention should be established.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

Conclusion	Correlation: Negative
<p>Although advocates are required to have a formal, university-level legal education, receipt of a diploma from a law faculty does not necessarily mean that a graduate is qualified to practice law. Too many law faculties, too many students, too few good law professors, and the prevalence of corruption contribute to the generally low level of legal education.</p>	

Analysis/Background:

Jurists, including civil practice lawyers and those employed by enterprises or the government, have a university degree in law by definition. Unless they go on to become judges, prosecutors, advocates, or notaries, no laws govern their professional practice. The CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”] requires a university degree in law for admission to the profession of advocate. In particular, citizens of the Republic of Tajikistan may become members of the collegia or private licensed advocates if they have a law degree and not less than two years of legal experience. LAW ON ADVOCACY, Articles 18 and 29. In lieu of two years of experience, candidates for admission to the collegia may substitute an internship of from six months to one year. LAW ON ADVOCACY, Article 18. A regulation under the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter “LAW ON LICENSING”] continues the requirement for a law degree, but reduces the period of legal experience to one year (See Factor 9). REGULATION ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337, Article 49 (4) (1) (1 Sept. 2005) [hereinafter “LICENSING REGULATION”]. The applicability of this regulation to collegium advocates is uncertain (See page 2). Under Tajik law, it is possible, though uncommon, for someone without a law degree to represent clients in civil cases with court approval pursuant to a power of attorney. For example, under the CIVIL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CIVIL PROCEDURE CODE”], such representatives could include representatives of state enterprises, institutions, cooperatives, and other public organizations; representatives of trade unions; and representatives of non-governmental organizations [hereinafter “NGOs”] with the right to defend their members or other individuals under the Law on Advocacy. CIVIL PROCEDURE CODE, Articles 112. Nor is a law degree necessary to provide legal consultations. Furthermore, even non-jurists may be allowed to act as representatives of participants in civil cases on a case-by-case basis, pursuant to an oral request made in court. CIVIL PROCEDURE CODE, Articles 112 and 113. In the economic courts, any citizen may act as a representative of a party pursuant to a power of attorney setting forth the representative’s authority. ECONOMIC PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN, Articles 48-50.

In Tajikistan, law is an undergraduate field of study, with a degree awarded after five years of study (six years in the case of correspondence students⁴ or three years in the case of students who already have a degree in another field). Instruction is offered in both Tajik and Russian. Unlike the situation in some of the former Soviet republics, there are reported to be sufficient textbooks on Tajik law, supplemented by Russian law books. Classes consist of lectures to large

⁴ Correspondence students do not attend regular classes, but come to the law faculty twice each year to take examinations.

groups of students and seminars with smaller groups of approximately thirty students to review the material covered in lectures. Examinations are given twice a year. Prior to each exam a list of questions is made available to students. At the examination they select a ticket that includes a few of the questions and then answer them orally. Compared to written exams, such oral exams can be subject to greater subjectivity in grading, as well as increased opportunities for corruption. For the first three years, the curriculum is the same for all students; in the final two years, they specialize in fields such as criminal law, civil law, commercial law, or constitutional law. Most law faculties provide no instruction in advocacy skills; those that do only devote only thirty hours to the subject. Students usually spend a couple of weeks as interns after their second year and a longer period in their fifth year, when they write a paper. Although some gain practical skills as a result of these experiences, most graduates are said to lack such skills. An exception is the students who participate in Tajik State National University’s live client legal clinic (supported by the Tajik Branch of the Open Society Institute – Assistance Foundation [hereinafter “OSI - Tajikistan”]), with some 50 fourth and fifth-year students participating each year. Slavonic University also has a street law clinic supported by the Organization for Security and Cooperation in Europe [hereinafter “OSCE”] that gives students practical experience. In addition, ABA/CEELI has sponsored several programs for law students, including street law, mock trial competitions, moot court competitions, and an externship program under which law students work in local, legally related NGOs. During the summer of 2005, ABA/CEELI and the League of Student Lawyers conducted the Sixth Annual Human Rights Summer School on international and national mechanisms for combating corruption and human trafficking. Thirty students from Dushanbe and Khujand and one from Russia represented various law faculties. The final day of the Summer School was devoted to a national mock trial competition, with judges of the Supreme Court judging the competition.

Since independence, the overall quality of legal education in Tajikistan has declined. During that period the number of law faculties has grown from one (Tajik State National University, founded in 1949) to eight (four in Dushanbe, including one for aspiring law professors, and four in Khujand), and the number of full-time and correspondence students studying law—an estimated 12,000-13,000—far exceeds the number of jobs available to law graduates. Most professors lecture on theoretical issues and rarely use interactive methods of instruction. Some older professors are said to have changed their lectures little since Soviet times. Students in Dushanbe said that, except for about one-quarter of the law professors, the remainder either do not know the subjects they teach very well or, if they do, are not effective teachers. Often full-time students do not attend class and pay bribes for their grades. Although not universal, corruption is so commonplace that the amount of bribes expected by certain professors is well known. Students whose tuition is paid by the state are said to be generally more diligent in their studies than students who pay tuition themselves. The latter believe that because the law faculty needs their tuition they are unlikely to be dismissed. They are also reported to be more likely to pay bribes to their professors. On the other hand, there are some professors who refuse to accept bribes and some students who work hard and strive to succeed based on merit. The gap between good and poor students is reported to be wide.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Many advocates lack the knowledge and practical skills necessary to practice law effectively upon admission to the profession.	

Analysis/Background:

Admission to the profession of advocate requires passing an examination administered by the Ministry of Justice or, in the past, by one of the collegia (See Factor 9). To pass an examination, candidates must presumably possess the requisite level of knowledge and practical skills. Furthermore, the Rules of Professional Conduct adopted by the Republican Collegium and relied upon informally by the Sogd Collegium require an advocate to provide competent representation, which requires “legal knowledge, skills, thoroughness and preparation.” RULES OF PROFESSIONAL CONDUCT OF THE ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 FEB. 1999), ARTICLE 3.

Nevertheless, among interviewees, there was widespread agreement that advocates as a whole lack the knowledge and practical skills to practice law effectively—and not just upon completion of their legal education. Others presented a more balanced view, contending that, although many advocates are poorly qualified, there are also a number of well qualified and experienced advocates. Several suggested that on average law graduates, and therefore newly admitted advocates, are less qualified now than they were ten or more years ago. In part this may be due to the general decline in the quality of legal education associated with the proliferation of law faculties and increased numbers of students (See Factor 7). Another explanation that was suggested is the impact of the civil war. Up to 70% of the advocates, including many of the best qualified advocates, left Tajikistan due to the civil war. Because of the need to replenish the ranks of advocates, entrance standards for the profession were relaxed.

In any event, interviewees agreed that even law graduates who have good theoretical knowledge of the law do not generally possess adequate practical skills. A retired judge, for example, said that advocates do not compile files for the cases they handle and thus are unable to prepare a case effectively. Another interviewee said that advocates did not know how to counsel clients effectively. Several, including a first instance court judge, criticized advocates’ rhetorical skills in court.

A related issue is the need for continuing legal education (See Factor 14). For example, a former judge in an economic court said that advocates lack adequate knowledge of the plethora of legislation adopted as part of Tajikistan’s transition to a market economy, legislation that many of them did not have an opportunity to study as law students.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Conclusion	Correlation: Neutral
<p>Procedures for licensing advocates and other non-advocate jurists who provide paid legal services are in transition as a result of the Law on Licensing. Pending further developments, many important questions, such as the procedures for examination, the form of the test, and even who, if anyone, will be required to pass one cannot be answered.</p>	

Analysis/Background:

Since 1995, the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”] has governed admission to a collegium (sometimes referred to as a bar association) and, therefore, the profession of advocate. Following its adoption in 1998, the Regulation on Procedure of Licensing of Legal Aid Activity Rendered by Private Advocates (18 Feb. 1998) provided a second way to become an advocate.

The first was through membership in a collegium for citizens of Tajikistan who have a law degree, pass a collegium qualification examination, and have either two years of experience in a legal profession or successfully complete an internship of six months to one year under the supervision of a member of the collegium. LAW ON ADVOCACY, Article 18. As of the date of this assessment, the Republican Collegium had fifteen interns, and the Sogd Collegium had eight. Membership is granted by a vote of the Presidium of the collegium, “taking into account professional and moral features” of the applicant. LAW ON ADVOCACY, Article 18. Both collegia specifically make the absence of a criminal conviction (except for minor matters not resulting in imprisonment) a requirement for membership. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), ARTICLE 15; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Article 13. The second way for admission to the profession was through obtaining a license “for entrepreneur’s activity” by the Ministry of Justice [hereinafter “MoJ”], for citizens of Tajikistan who have a law degree and two years of experience and pass the MoJ’s Qualification Examination. LAW ON ADVOCACY, Article 29.

Examinations for admission to the collegia are similar in format to university examinations. The Qualification Commission prepares a list of questions covering all areas of the law, and the candidate draws a ticket with some questions on it and answers them orally. The Qualification Commission then recommends whether the Presidium should admit the candidate. The examination process includes a high degree of subjectivity. Because each candidate answers different questions and the answers are oral, it is not possible to compare the answers of candidates with each other, nor would it be easy for a failing candidate to appeal the Qualification Commission’s decision. The fact that candidates reportedly rarely fail the examination suggests that it is not particularly rigorous. On the issue of transparency of the process, one interviewee said he doubted that bribery was a concern, because the profession of advocate is not prestigious enough for candidates to be willing to pay a bribe for admission. The same examination process was used for MoJ licenses issued under the Law on Advocacy, and was reportedly similar in terms of subjectivity and lack of rigor.

As a result of the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter “LAW ON LICENSING”], all advocates and other jurists who provide paid legal services are to be licensed by the MoJ.⁵ Until issuance of a regulation implementing the new Law on Licensing, the MoJ suspended the issuance of licenses, including renewals, to private licensed advocates. Article 51 (4) of the REGULATIONS ON FEATURES OF LICENSING OF PARTICULAR KINDS OF ACTIVITIES [hereinafter “DRAFT LICENSING REGULATIONS”] would have established the following requirements for an individual to be licensed as an advocate:

- A university degree in law;
- At least one year of legal experience; and
- Passing a qualification examination. DRAFT LICENSING REGULATIONS, Article 51 (4).

In the final regulation, however, the requirement for individual advocates to pass a qualification examination was eliminated. REGULATION ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337 (1 Sept. 2005) [hereinafter “LICENSING REGULATION”], Article 49 (4) (1).

⁵ The Law on Licensing does not itself provide for issuance of these licenses by the MoJ. Rather, the agencies authorized to license particular activities are to be specified in a general regulation covering all licensed activities. LAW ON LICENSING, Article 6 (2). The draft of that regulation obtained by the assessment team would authorize the MoJ to issue licenses for the provision of paid legal services. DRAFT LICENSING REGULATIONS, Article 51 (2). Those interviewed assumed without exception that the MoJ will issue such licenses, and we have made the same assumption for purposes of this report.

For lawyers employed by law firms (See Factor 12), the qualification examination would have been replaced by an interview. DRAFT LICENSING REGULATIONS, Article 51 (4). Although the final regulation requires an “authenticated copy of an evaluation report or certificate of passing qualification examination” for the licensing of legal entities, it does not specify which, if any, individuals within a law firm need to be licensed. Reportedly the MoJ has ceased to administer examinations when it licenses private advocates. Pending further developments, it remains difficult to evaluate the precise impact the new legislation on the qualification process.

The Law on Licensing requires payment of a nonrefundable fee of four minimum salaries (about \$16)⁶ “for the consideration of the licensing agency of an application to issue a license.” LAW ON LICENSING, Article 16 (2). In addition, a license fee of ten minimum salaries (about \$40) “shall be taken for issuing of the license.” LAW ON LICENSING, Article 16 (3).

The MoJ is considering replacing the examination format of tickets and oral answers with a written test with multiple choice questions. It is not known when regulations for a new MoJ Qualification Commission will be issued, or when the first exams will be given. It remains to be seen whether they are more rigorous than those used in the past.

Admission to the profession through the collegia entailed a supervised internship of six months to one year for candidates who did not have two years of legal experience.⁷ Interviewees said that they thought interns gained some practical skills as a result of their internship. For an MoJ license, an internship will not be required, but rather one year of legal experience. The Draft Licensing Regulations do not define what kinds of legal experience qualify.

Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: Neutral
<p>Procedures for licensing advocates and other non-advocate jurists who provide paid legal services are in transition as a result of the Law on Licensing. The Ministry of Justice [hereinafter “MoJ”] will have exclusive authority over admission to the profession, and its decisions will be subject to review by the courts. Pending further developments and the adoption of additional regulations, many important questions, such as the composition, role, and even the existence of the MoJ’s Qualification Commission cannot be answered. Some advocates have expressed concern that requiring them to be licensed by the MoJ would result in a loss of independence.</p>	

Analysis/Background:

As explained in Factor 9, qualified applicants could become advocates either by becoming members of a collegium or by receiving a license from the MoJ. The examination for admission to a collegium is administered by its Qualification Commission, followed by a vote on admission by its Presidium. CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], Articles 17 and 18; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), Articles 10 and 15; CHARTER OF

⁶ In June 2005, a minimum salary equaled 12 somoni (about \$4) per month.

⁷ The Republican Collegium waived this requirement for graduates of Tajik State University who complete the clinical education course and work in the legal clinic.

THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Articles 7 and 13. Interviewees stated that an unsuccessful applicant may appeal to the Presidium and then to court, but the right to appeal is apparently rarely, if ever, exercised. Those who fail are given the opportunity to serve a second six months internship, after which they can retake the examination. In the case of an MoJ license, the applicant had to pass an examination administered by the MoJ's Qualification Commission, which consisted of the Deputy Ministers of Justice and the heads of departments in the MoJ. The duration of the license varied from one to five years, depending upon the applicant's experience and performance on the qualification exam. To renew the license, the advocate had to pass another qualification exam. An unsuccessful applicant for a license had the right to appeal to the Supreme Court. LAW ON ADVOCACY, Article 29.

Parliament enacted the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter "LAW ON LICENSING"], including licensing those who provide paid legal services. LAW ON LICENSING, Article 17. As a result, all advocates and other jurists who provide paid legal services would henceforth have to be licensed by the MoJ. Under the new law, licenses "shall be issued for a term of not less than five years". LAW ON LICENSING, Article 8 (1). The MoJ will have thirty days after receipt of all required documentation to decide whether to issue a license and must inform the applicant of its decision. LAW ON LICENSING, Articles 10 (2) and 10 (4). An applicant has the right to bring a judicial challenge to the MoJ's denial of a license or its failure to act on an application. LAW ON LICENSING, Article 10 (11). The regulations implementing the new Law on Licensing were expected to be issued during the summer of 2005. (See page 2 for a discussion of subsequent developments.) Draft regulations would have established a Qualification Commission under the MoJ to administer the examinations (or interviews, in the case of advocates employed by law firms) and authorize the MoJ to promulgate regulations on the Qualification Commission, the examination procedures, and the list of subjects for examination. REGULATIONS ON FEATURES OF LICENSING OF PARTICULAR KINDS OF ACTIVITIES, Article 51 (5) [hereinafter "DRAFT LICENSING REGULATIONS"]. Among the issues the MoJ was considering is whether the Qualification Commission would consist of only MoJ representatives or whether advocates would be included. Another issue is whether to replace the oral examination with a multiple choice written exam. Under the final regulations, however, all reference to the Qualification Commission has been eliminated, perhaps because the requirement to pass a qualification exam was also eliminated. See REGULATIONS ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337, Article 49 (1 Sept. 2005) [hereinafter "LICENSING REGULATION"].

During the transition to the new licensing regime, some private licensed advocates lost their ability to practice law. The Law on Licensing unfortunately did not provide a mechanism for continuing existing licenses that expired before the new regulations are promulgated. Drafting one regulation for all activities covered by the Law on Licensing has proved cumbersome and resulted in considerable delay. As a result, some private licensed advocates whose licenses expired were unable to practice law for as much as a year.

Another issue regarding the new licensing regime was the fear expressed by many collegium advocates that requiring them to be licensed by the MoJ would enable the executive branch to encroach on the independence of the profession. A number of advocates related an incident in which an employee of the MoJ purportedly threatened an advocate in Khujand by asserting that soon the MoJ would be able to decide which advocates could practice. Whether this represents MoJ policy or merely the views of an individual is unclear. Nevertheless, advocates point to it as evidence of the threat posed to their independence by the Law on Licensing. Since admission to the profession will depend upon MoJ licensing rather than membership in a collegium, some have even suggested that the collegia will cease to exist. Another concern, although not frequently expressed, is uncertainty on the part of some members of the collegia whether they will be able to pass a MoJ Qualification Examination. As a result of these and other concerns, both collegia wrote letters to the Office of the President expressing their concerns about the Law on Licensing, the Chairperson of the Sogd Collegium was interviewed on the subject, and both collegia participated in a roundtable in Dushanbe on 24 May 2005 that issued an appeal against adoption of the draft law to amend the Law on Advocacy.

Factor 11: Non-discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: Positive
<p>Admission to the profession of advocate is without reported discrimination on the basis of race, gender, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, or physical disability.</p>	

Analysis/Background:

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter “CONSTITUTION”] guarantees equality of rights without regard to ethnicity, race, sex, language, faith, political beliefs, education, or social or property status. CONSTITUTION, Article 17. The CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL Code”] makes it a crime directly or indirectly to restrict the rights and freedoms of an individual because of his or her sex, race, nationality, language, social origin, place of residence, attitude toward religion, beliefs, membership in a public association, or personal, financial, or official position, resulting in damage to his or her rights and lawful interests. CRIMINAL CODE, Article 143. Discrimination in the admission to the profession of advocate on such a basis would therefore be a crime. It would be punishable by a fine of from 200 to 500 times the monthly minimum salary (about \$800 to \$2,000), or deprivation of freedom for up to 2 years or, if committed by someone using his or her official position, by imprisonment for from 2 to 5 years, deprivation of the right to hold certain positions or engage in certain activities for up to 3 years, or both. CRIMINAL CODE, Article 143. The collegium charters also address non-discriminatory admission practices. For example, each specifically states that it is “a voluntary, independent, professional association based on the principles of voluntary membership, self-administration, openness and equality of advocates without any distinction of any kind such as race, ethnic origin, nationality, language, sex, religion, or social origin.” CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), Article 1; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Article 1.

Ethnically, Tajikistan’s population consists of approximately 79.9% Tajiks, 15.3% Uzbeks, 1.1% ethnic Russians, 1.1% Kyrgyzes, and 2.6% others, according to the 2000 census. *United Nations Committee on the Elimination of Racial Discrimination, Report by Tajikistan* 4, U.N. Doc CERD/C/463/Add.1 (2004). Available at http://www.undp.tj/about_tj.html. The country is predominately Islamic, with an estimated 80% of the population being Sunni Muslims, 5% Shi’a (Ismaili) Muslims, and 15% adherents to other religions, according to the United Nations Development Programme in Tajikistan.

None of the advocates interviewed reported any discrimination at all in admission to the profession, whether by the collegia or by the Ministry of Justice. In addition, fluency in Tajik or Russian does not appear to be an issue for passing the qualification examination. Although many advocates expressed general concern that the Law on Licensing will enable the executive to curtail the independence of the profession (See Factor 10), thereby indirectly leading to discrimination, a focus group of women advocates thought that it would not result in any discrimination on the admission of women.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Positive
<p>Advocates are able to practice law individually or in association with other non-advocate jurists. Collegium advocates usually practice in one of the collegiums' legal consultation centers, and private licensed advocates practice in law firms or non-governmental organizations [hereinafter "NGOs"].</p>	

Analysis/Background:

Freedom of association is a constitutionally guaranteed right: "Citizens have the right of association. Each citizen has the right to participate in the formation of political parties, trade unions, and other social associations, as well as voluntarily to join them and resign from them." CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter "CONSTITUTION"], Article 28. Advocates typically exercise this right by practicing law in the legal consultation centers of a collegium or as owners or employees of legal entities, including NGOs. Under the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter "LAW ON LICENSING"], legal entities that provide paid legal services will be licensed by the Ministry of Justice [hereinafter "MoJ"]. LAW ON LICENSING, Article 17.

Virtually all advocates who are members of a collegium—some four-fifths of the profession—practice in one of the collegiums' legal consultation centers. The Republican Collegium had four legal consultation centers in Dushanbe (later increased to five), as well as regional consultation centers in Khujand, Kurgan Tube, and Rudaki Raion. The Sogd Collegium has 19 legal consultation centers within the Sogd Oblast. The Presidium of each collegium has authority to establish and close legal consultation centers, determine their location and the number of advocates working at them, appoint a head for each center, establish rules of procedure, and monitor the centers' activities. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000) [hereinafter "RC CHARTER"], Articles 9, 17, and 18; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001) [hereinafter "SC Charter"], Articles 7, 16, and 17. Among the responsibilities of the head of a legal consultation center are entering into agreements with clients for the provision of legal services, determining the appropriate fees for such services, assigning work to advocates based on their qualifications and workload (including the appointment of advocates to provide free legal assistance), monitoring the quality of legal services, investigating complaints and notifying the Presidium of the need for discipline, and managing the finances of the center. RC CHARTER, Article 18; SC CHARTER, Article 17. In addition, the collegium Charters provide that newly admitted members of the collegia may be assigned to a legal consultation center for a two-year period. RC CHARTER, Article 15; SC CHARTER, Article 13.

Private licensed advocates can practice either individually or as employees or owners of legal entities. Any form of legal entity recognized in the Civil Code may be used, such as partnerships, limited liability companies, or joint stock companies. Jurists who are not advocates can also practice law as employees of such entities. As of mid 2005, an estimated 30 law firms in various forms (primarily limited liability companies and joint stock companies) existed. Most were small, with only a couple of lawyers, and dealt primarily with commercial and civil law issues, although some handled criminal cases. Impediments to starting a law firm include obtaining the necessary

capital for startup costs and the shortage of office space (most buildings are owned by the state). Advocates and other jurists can also practice law as employees of NGOs. Examples include the League of Women Lawyers, with legal aid centers in Dushanbe and Kurgan Tube (augmented in 2005 by centers in thirteen raions as part of a project to provide legal assistance to indigent people); the Republican Bureau of Human Rights and Rule of Law, with legal aid centers in Dushanbe and Khujand; and the Center of Human Rights, with legal aid centers in Dushanbe and Khujand.

The Law on Licensing requires the licensing of both individuals and legal entities (i.e., law firms) that provide paid legal services. LAW ON LICENSING, Articles 7 (2), and 17. The REGULATION ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337 (1 Sept. 2005) [hereinafter "LICENSING REGULATION"] requires there to be at least three persons with a university degree in law. LICENSING REGULATION, Article 49 (4) (2). Neither the Law on Licensing nor the Licensing Regulations restrict the kinds of legal entities that could be used for a law firm. NGOs that provide legal assistance would also need a license from the MoJ if they are paid for their services, either by clients or third party donors.

The CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"] allows only citizens of Tajikistan to become advocates. LAW ON ADVOCACY, Articles 18 and 29. It does, however, grant advocates of foreign states and the countries of the Commonwealth of Independent States (CIS) the right, "on the basis of mutuality," to provide legal assistance in Tajikistan, but not to open law firms. LAW ON ADVOCACY, Article 33.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: Negative
Advocates in the collegia generally lack adequate access to legal information and other resources, and most are inadequately compensated. Private licensed advocates usually have better access to legal information and other resources, and typically earn more as well.	

Analysis/Background:

Advocates' income is derived from funds received from clients for providing legal assistance, and the amount of the honorarium charged is usually determined by agreement of the advocate and client. CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"], Article 20. However, if a collegium advocate and client fail to agree on the amount, it shall be determined in accordance with the instruction of the Presidium of the collegium, with the concurrence of the Ministry of Finance. LAW ON ADVOCACY, Article 20. In legal consultation centers, the head of the center determines the appropriate amount to be charged and monitors payment, subject to the oversight of the Presidium. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), Articles 9 and 18; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Articles 7 and 17. A focus group in a legal consultation center in Dushanbe reported that clients are charged 5 somoni (less than \$1.75) for an initial consultation and an honorarium of between 5 and 100 somoni (less than \$1.75 to about \$33) for legal representation, depending on the complexity of the case. Fixed fees are the most common arrangement. Interviewees agreed without exception

that most advocates are inadequately compensated, due to widespread poverty in Tajikistan.⁸ Furthermore, advocates who provide free legal aid are rarely paid by the state, and when they are paid at all, it is only a partial payment (See Factor 19). Private licensed advocates generally earn more than their counterparts in the collegia and are not required to provide free legal aid. Although they often charge fixed fees for routine tasks, private licensed advocates sometimes charge clients on an hourly basis or are paid a retainer.

In 2001 the Law on Advocacy was amended to bring it into conformity with the Tax Law, which had been amended in 1998 to require advocates to pay social tax at the rate of 25% of their income (including any income received from the state for providing free legal services). Before that, they paid social taxes at the rate of 5%.

In general, advocates in the collegia lack adequate access to legal information and other resources. Most advocates who were interviewed had copies of at least some of the basic codes, but little beyond that. A common complaint among advocates is the dearth of commentary on Tajik legislation. Because of the similarities between Tajik and Russian legislation, advocates and judges often use commentaries on the corresponding Russian law. Neither the collegia nor their legal consultation centers have adequate law libraries, let alone a computerized legal database. Indeed, legal consultation centers do not have computers, and some do not even have typewriters. Most advocates have to share desks with other advocates. For example, a legal consultation center in Dushanbe had one desk per four advocates. With six desks in a room approximately 4m x 5m, preserving client confidentiality is a serious concern. Adequate facilities for storing documents did not exist, either. Advocates had to use folded sheets of newspaper as makeshift file folders.

Lawyers who want to do legal research in Dushanbe can use the law library of the NGO Center for Legal Education or the ARD/Checchi legal database in the offices of the ARD/Checchi Legal Infrastructure for a Market Economy project. In October 2005 with support from the Open Society Institute – Tajikistan [hereinafter “OSI - Tajikistan”], the Association of Advocates opened a legal resource center, which includes a library, electronic legal database, and access to the internet.

Private licensed advocates, on the other hand, generally had better access to legal information and other resources. Many had a computerized legal database and modest law libraries in their offices. Their offices are often more spacious and are equipped with computers, printers, photocopy machines, and telephones. The resources of lawyers in non-governmental organizations (NGOs) are usually similar to those of private licensed advocates, thanks to funding from international donors such as ARD/Checchi, OSI - Tajikistan, and ABA/CEELI.

Under the Law on Advocacy, state authorities of executive power (*khukumats*) are responsible for providing advocates with office space at low rent, in places convenient to citizens and near courthouses. LAW ON ADVOCACY, Article 14. In the past, advocates had offices at courthouses, but the Council of Justice discontinued that practice. In fact, less than a third of the legal consultation centers have a permanent location in a building, and the state does not provide financial assistance to legal consultation centers.

⁸ Compared to a minimum salary of 12 somoni (about \$4) per month, however, the cost of legal services is high, and beyond the reach of many people.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Conclusion	Correlation: Negative
<p>There are few opportunities for advocates to participate in continuing legal education [hereinafter "CLE"] programs. What opportunities do exist depend almost entirely on funding from international donors. No CLE center for advocates exists.</p>	

Analysis/Background:

The Republican Collegium's RULES OF PROFESSIONAL CONDUCT OF THE ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 FEB. 1999) [hereinafter "RULES OF PROFESSIONAL CONDUCT"] (See also Factor 16) state that, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skills, thoroughness, and preparation reasonably necessary for the representation". RULES OF PROFESSIONAL CONDUCT, Rule 9. Furthermore, under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"] advocates have a duty continually to improve their knowledge and professional qualifications. LAW ON ADVOCACY, Article 7. However, advocates have few means at their disposal to discharge this duty.

Indeed, there is a great unmet need for CLE in Tajikistan. In the time of the Soviet Union, CLE was more widely available. Since independence, however, the vast majority of advocates have had few if any opportunities to attend CLE seminars. Outside the cities of Dushanbe and Khujand, the problem is particularly acute. A 1996 Presidential Decree established an educational center under the Ministry of Justice to provide CLE to all legal professionals, but lack of funding has prevented it from accomplishing much. The CLE that is available is almost entirely funded by international donors such as the Organization for Security and Cooperation in Europe [hereinafter "OSCE"], ARD/Checchi, and ABA/CEELI. Therefore CLE is not sustainable without international support. Most advocates have had to rely on informal and *ad hoc* arrangements to keep abreast of changes in the law. According to the Republican Collegium, monthly CLE seminars are held for its members. By contrast to the situation for advocates, judges, through the Judicial Training Center, and prosecutors have more opportunities for CLE.

In 2002, the Center for Legal Education, the first such center in Central Asia, was established with funding from the OSCE and the United Nations Development Programme (UNDP). Some 120 advocates throughout Tajikistan have participated in its ten-day training courses on criminal, civil, administrative, and human rights law, as well as criminal and civil procedure. Its future is, however, uncertain due to lack of funding. Efforts to charge even a token amount for its seminars met with resistance from advocates.

In an assessment prepared for the USAID ARD/Checchi Commercial Legislation Project, advocates reported the need for CLE in tax law, real estate law, land law (particularly in Khatlon Oblast), and civil and family law. "SHARQ" RESEARCH CENTER, ASSESSMENT OF NEEDS AND REQUIREMENTS OF JUDGES AND ADVOCATES IN TRAINING AND INFORMATION 15 (2004) [hereinafter "NEEDS ASSESSMENT"]. Obtaining CLE in commercial and consumer law is more of a concern for advocates in Dushanbe, and less so for those in the regions. NEEDS ASSESSMENT at 15. Among the skills advocates would like to learn are public speaking, debating, negotiation, listening, and teamwork. NEEDS ASSESSMENT at 16.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Conclusion	Correlation: Positive
Ethnic and religious minorities, as well as both genders, are adequately represented among advocates.	

Analysis/Background:

No country-wide statistics were available to the assessment team on the representation of ethnic and religious minorities, or both genders, among advocates. However, the assessment team was able to obtain statistics on minority groups within the population at large (See Factor 11) as well as regional or organization-specific statistical data. Anecdotal evidence provided by interviewees, combined with this regional or organization-specific information, supports the conclusions that there is no discrimination on the basis of ethnicity, religion, or gender, and that all such groups are adequately represented in the profession of advocate.

In terms of the representation of women in the profession, the League of Women Lawyers estimates that 38% of advocates in the Republican Collegium are women. In addition, of 32 advocates in one legal consultation center in Dushanbe, 6 (19%) are women; of 30 in another, 10 (33%) are women. It is believed that the percentage of women who are private licensed advocates is smaller, since most women advocates are members of a collegium, rather than licensed advocates. Women advocates stated that when it comes to attracting clients, knowledge, experience, and qualifications are more important than gender. Nor did they report any discrimination in attaining positions of leadership in the collegia. "We're lawyers, not women," one explained. The Chair of the Sogd Collegium, for example, is a woman. Furthermore, most do not seek leadership positions, because they involve additional work without additional pay. One interviewee, a male, suggested that in Tajik society women have more initiative and are more willing to make decisions than men. An advocate estimated that 45-55% of advocates are women, compared to 15% of prosecutors. Given the greater prestige of prosecutors compared to advocates, this estimate suggests the possible existence of some discrimination on the basis of gender among the various legal professions. Yet interviewees did not perceive such discrimination.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Conclusion	Correlation: Neutral
All advocates are subject to the ethical standards in the Law on Advocacy and the Criminal Procedure Code, and advocates who are members of the collegia are also subject to the Rules of Professional Conduct of their respective collegium (see below). In practice, however, advocates often fail to comply with ethical standards. Non-advocate jurists are subject to no enforceable ethical standards whatsoever.	

Analysis/Background:

Norms of professional ethics and conduct exist for advocates. Some are included in the Law on Advocacy, and thus apply to all advocates. For example, an advocate must not accept the representation of a client if a conflict of interest would result, either because the new client's interests are adverse to those of a past or present client or because the advocate previously participated in the case as a judge, prosecutor, investigator, interpreter, witness, or the like. CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"], Article 8. Nor may an advocate directly or indirectly acquire property that is the subject of the representation. LAW ON ADVOCACY, Article 11. He or she must maintain the confidentiality of all information received in the course of providing legal assistance, and not use it for his or her own benefit or the benefit of a third party. LAW ON ADVOCACY, Article 9. An advocate must defend the legal interests of the client and may not take a position contrary to that of the client, "except cases of false confession" in a criminal proceeding. LAW ON ADVOCACY, Article 8. Finally, an advocate must represent clients zealously, using all lawful means; however, the advocate must be mindful of maintaining the "prestige of the profession" and that he or she is a participant in the "implementation of justice." LAW ON ADVOCACY, Article 11. Norms of professional ethics and conduct for advocates are also found in the CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter "CRIMINAL PROCEDURE CODE"]. For example, an advocate may not represent two suspects or criminal defendants if their interests conflict. CRIMINAL PROCEDURE CODE, Article 49. Nor may an advocate or representative of a trade union or a non-governmental organization provide legal assistance to someone if he or she previously provided legal assistance to someone with conflicting interests or if he or she previously participated as a judge, prosecutor, investigator, person holding the inquest, expert, specialist, interpreter, witness, and the like. CRIMINAL PROCEDURE CODE, Article 52.1. Finally, an advocate must represent a client zealously, using all lawful means and methods of defense to discover circumstances that could discharge a suspect or defendant or reduce a defendant's sentence. CRIMINAL PROCEDURE CODE, Article 53.

In 1999 the General Convention of the Republican Collegium adopted RULES OF PROFESSIONAL CONDUCT OF THE ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 Feb. 1999) [hereinafter "RULES OF PROFESSIONAL CONDUCT"]. Described as "common ethical norms deriving from the principle and scope of professional functions of advocates concerning the provision of legal services," they purport to apply not only to advocates who are members of a collegium, but also to private licensed advocates. RULES OF PROFESSIONAL CONDUCT, Article 1. Although the Sogd Collegium has drafted its own rules of professional conduct, they have not yet been adopted. In the interim the Sogd Collegium uses the Republican Collegium's Rules of Professional Conduct. Private licensed lawyers are not, however, subject to them. Given the uncertainty about the licensing of all advocates by the Ministry of Justice [hereinafter "MoJ"], the future of these rules is unclear. Neither the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter "LAW ON LICENSING"], the REGULATION ON SPECIFICS OF LICENSING CERTAIN TYPES OF ACTIVITIES, No. 337 (1 Sept. 2005), nor the draft law to amend the Law on Advocacy explicitly addresses the issue of professional ethics. Furthermore, it is not yet known whether the MoJ will issue a code of ethics for advocates.

The Republican Collegium's Rules of Professional Conduct are reasonably comprehensive, dealing with such issues as solicitation of clients (Rule 11), independent professional judgment (Rules 2 and 10), confidentiality (Rules 7 and 10), conflicts of interest (Rule 11), competent representation (Rules 3 and 9), client autonomy (Rules 6 and 10), division of fees among advocates (Rule 21), and referral fees (Rule 22). They also address communication with opposing parties represented by an advocate, the advocate's responsibility to the courts and other participants in judicial proceedings (Rules 12-14), collegiality with other advocates (Rule 15), and the obligation to report professional misconduct by other advocates (Rule 20). Another potential source of professional norms is the Qualification Commission of a collegium, which is authorized to give opinions on issues of professional ethics. LAW ON ADVOCACY, Article 17.

Private licensed advocates are not subject to any enforceable ethical norms except those in the Law on Advocacy, and non-advocate jurists are subject to none whatsoever.⁹ Thus, there is no uniform body of ethical rules applicable to all who provide legal services.

Predictably, interviewees affirmed that professional ethics are very important, “the foundation of advocates’ activity,” as one of them put it. For many of them, professional ethics includes matters of etiquette. For example, in describing ethical norms relevant to advocates, some referred to such qualities or behavior as: diligence, not raising one’s voice or becoming emotional in court, being properly dressed, speaking without looking at notes, listening tactfully to their clients, and compassion. Some of the law faculties include a mandatory course in professional ethics in their curricula, or at least touch on ethics in other courses. Yet more than a few interviewees said that professional ethics do not have much influence on what advocates or non-advocate jurists actually do. The extent to which advocates fail to adhere to norms of professional ethics in practice is uncertain, but it was reported that some advocates act as intermediaries in the payment of bribes to judges and law enforcement bodies and use questionable tactics to solicit clients. Sometimes collegium advocates are said to ask clients to pay them part of their honorarium directly and the remainder (the amount stated in the contract) to the cashier of the legal consultation center, thereby reducing their reportable income for tax purposes, as well as payments to the center.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: Neutral
<p>The collegia have procedures to investigate complaints against their members for violating professional norms and to impose sanctions, ranging from reprimand through expulsion from the profession. Reasonably fair procedures are prescribed, including rights to appeal, but there is some concern about how they are applied in practice. Until regulations on disciplining licensed providers of paid legal services are promulgated under the Law on Licensing, it is impossible to evaluate the adequacy of Ministry of Justice [hereinafter “MoJ”] procedures for investigating complaints and imposing sanctions on licensees.</p>	

Analysis/Background:

Advocates who are members of a collegium are subject to discipline for violations of the Law on Advocacy or “norms of professional ethics.” CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], Article 23. The sanctions that may be imposed on members of a collegium are reprimand, reproof, severe reprimand, and expulsion from the profession (i.e., membership in the collegium). LAW ON ADVOCACY, Article 24. Expulsion may be based on the commission of an offense incompatible with the profession of advocate, systematic violation of the Law on Advocacy or rules of professional ethics, or careless performance of duties. LAW ON ADVOCACY, Article 28. A systematic violation is one for which the advocate had previously been disciplined. LAW ON ADVOCACY, Article 28. The collegium charters add “violations provided by the Labor Code” as a

⁹ Rule 11 of the Republican Collegium’s Rules of Professional Conduct prohibits a non-advocate jurist from providing legal services that constitute functions of an advocate, but it is unclear how this provision could be enforced against non-advocate jurists.

ground for expulsion. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000) [hereinafter “RC CHARTER”], Article 27; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001) [hereinafter “SC Charter”], Article 26.

Any interested person may file a complaint concerning an advocate’s misconduct. LAW ON ADVOCACY, Article 25. The complaint must, however, be made no later than six months after the alleged misconduct, or two years after the alleged misconduct if it relates to abuse of client funds, excluding any period when the advocate was temporarily incapacitated or on leave. LAW ON ADVOCACY, Article 26; RC CHARTER, Article 22; SC CHARTER, Article 21. If an advocate fails to appear in court without good reason or disturbs the order in the court, the court must inform his or her collegium. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL PROCEDURE CODE”], Articles 253 and 265; CIVIL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN, Articles 156, 164, and 321. The Presidium is responsible for considering complaints against a collegium advocate. LAW ON ADVOCACY, Article 23; RC CHARTER, Article 24; SC CHARTER, Article 23. A disciplinary penalty expires in one year (unless a shorter period, but not less than six months) is imposed. LAW ON ADVOCACY, Article 27; RC CHARTER, Article 26; SC CHARTER, Article 25. The advocate may appeal a disciplinary penalty or expulsion from the profession to the appropriate court within one month. LAW ON ADVOCACY, Article 25; RC CHARTER, Article 25; SC CHARTER, Article 24.

In the collegia, the Qualification Commission is responsible for investigating complaints against members, and the Presidium is responsible for deciding whether to initiate a disciplinary proceeding and whether to impose a penalty. RC CHARTER, Articles 24; SC CHARTER, Article 23. The Presidium must require a written explanation from the advocate, “scrupulously investigate” possible bases for imposing disciplinary sanctions, provide the advocate with materials relating to the complaint, and give the advocate an opportunity to be present when the Presidium considers the complaint. RC CHARTER, Article 24; SC CHARTER, Article 23. In the event of “repeated absence” by the advocate, however, the Presidium may proceed in his or her absence. RC CHARTER, Article 24; SC CHARTER, Article 23. When the nature of the alleged offense is such that the advocate could be expelled from the collegium, the Presidium may suspend the advocate’s right to practice, without pay, pending completion of the proceeding. RC CHARTER, Article 24; SC CHARTER, Article 23. When imposing a sanction, the Presidium is to consider the gravity of the offense, the circumstances of its commission, and the advocate’s “prior occupation and behavior.” RC CHARTER, Article 24; SC CHARTER, Article 23. An advocate may appeal an adverse decision to the general meeting of the collegium. Expulsion of an advocate from a collegium requires a majority vote of the general meeting, on the recommendation of the Presidium. RC CHARTER, Articles 8 and 9; SC CHARTER, Articles 6 and 7.

Disciplinary procedures of the Republican Collegium are reportedly set forth in a 1994 instruction, which has not yet been revised to reflect the 1995 Law on Advocacy. The extent to which such procedures are applied in practice is unclear; one advocate who was interviewed contended that the Republican Collegium has no formal procedures for disciplining advocates. According to a description of the 1994 instruction, when a complaint is received the Chairperson of the Presidium makes an initial determination whether a violation occurred. If he concludes that one did occur, he appoints a member of the Presidium to investigate the complaint and, if a violation is found, he opens a proceeding. The advocate is notified of the proceeding, given copies of the relevant documentation, allowed to present comments and objections and to appear before the Presidium represented by another advocate. According to advocates, however, no advocate has ever been allowed to be represented by another advocate in a disciplinary proceeding. The Presidium then decides whether to impose a disciplinary penalty by a majority vote of the Presidium members.

Every year, according to an interviewee, the Republican Collegium receives an estimated fifteen to eighteen complaints, which typically result in ten to twelve disciplinary proceedings and the imposition of disciplinary penalties in three to five instances; between 2000 and the first half of 2005, three advocates were expelled from the Republican Collegium. Advocates rarely, if ever,

appeal disciplinary measures imposed by the collegium. During the first half of 2005, the Sogd Collegium received only two complaints, one involving an intern and one an advocate. Members of a focus group of advocates in Khujand said that advocates are rarely punished for ethical violations and that the Presidium tries to protect advocates.

Advocates with a license issued by the MoJ are subject to discipline by the MoJ.¹⁰ LAW ON ADVOCACY, Article 31. Penalties differ depending upon the nature of the offense. For violation of the Law on Advocacy or other legislation of Tajikistan or “careless fulfillment of his professional duties,” the term of the advocate’s license may be reduced. LAW ON ADVOCACY, Article 31. For conviction of a crime, judicial determination of incapacity, illegal actions in obtaining the license, or establishment by the tax bodies that the advocate concealed income obtained from the practice of law, the advocate’s license may be cancelled. LAW ON ADVOCACY, Article 32. The advocate may appeal the reduction in term or cancellation of license to the Supreme Court. LAW ON ADVOCACY, Article 32.

The MoJ’s authority to license all who provide paid legal services includes authority to investigate noncompliance with the licensing regulations, issue notices of violation, suspend licenses for up to six months, and apply to a court of general jurisdiction for revocation of licenses. LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY [hereinafter “LAW ON LICENSING”], Articles 6, 13, and 14 (See page 2, however, for a discussion of subsequent developments). Although no final decision had yet been made, the MoJ was considering regulations that would allow it to impose discipline for a violation of the Labor Code (e.g., violation of a signed contract). The law contemplates that suspension may cause a licensee to eliminate the violation that led to the suspension. If he or she does, the licensee is required to notify the MoJ, and within three days the MoJ will notify the licensee in writing whether it has decided to renew the license. LAW ON LICENSING, Article 14 (4). If, on the other hand, the licensee fails to eliminate the violation during the period of suspension, the MoJ should specify a period, not to exceed six months, within which the licensee must eliminate the violation or face license revocation by the court. LAW ON LICENSING, Article 14 (3). Whenever the MoJ applies to court to have a license revoked, it may also suspend the license until the court reaches a decision on revocation. LAW ON LICENSING, Article 14 (2). Licensees will be able to appeal any suspension or revocation. LAW ON LICENSING, Article 14 (9).

In addition to disciplining advocates for their shortcomings, the Presidium may adopt measures of encouragement to reward advocates for “continuous and faultless work” and “active public performance.” RC CHARTER, Article 19; SC CHARTER, Article 18. Measures of encouragement consist of a statement of gratitude, award of a premium, award of a prize, award of a Certificate of Merit, and inclusion in the collegiums’ Book of Honor and Board of Honor. RC CHARTER, Article 20; SC CHARTER, Article 19.

¹⁰ A draft of the law to amend the Law on Advocacy would remove articles 30-32 from the Law on Advocacy, which relate to licensing, discipline of advocates, and revocation of their licenses. As a result, the Law on Licensing and the regulations issued under it would govern those matters.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Negative
<p>An insufficient number of advocates practice law in some regions of Tajikistan and, even where their number appears to be adequate; there are questions about the quality of legal services some of them provide. For example, a lack of advocates who are knowledgeable about commercial law was identified as a concern.</p>	

Analysis/Background:

The CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994) [hereinafter "CONSTITUTION"] guarantees legal assistance "at all stages of investigation and trial." CONSTITUTION, Article 92. Both individuals (including foreign citizens within Tajikistan) and legal entities are entitled to legal assistance, which is defined as "using any legal means and methods in order to defend the rights and legal interests of these persons." CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"], Articles 1, 2, and 5. According to the charter of each collegia, among the primary objectives of each collegium are to: "Guarantee legal aid in accordance with the Constitution of the Republic of Tajikistan to individuals and corporate entities, serve as an embodiment of the ideas of humanism, fairness and justice, and provide assistance to the formation of the rule of law state." CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), Article 2; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Article 2.

However, despite the Constitutional guarantee of legal assistance, the number of advocates, and hence the availability of legal assistance, varies considerably throughout the country, as shown by the following table (which is based on statistics from the ALTERNATIVE NGO REPORT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE EXAMINATION OF THE INITIAL REPORT BY THE REPUBLIC OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 35 (2005) [hereinafter "ICCPR SHADOW REPORT"] as to collegium advocates, and from the Ministry of Justice as to private licensed advocates in May 2005):

Locality	Population	Collegium Advocates	Licensed Advocates	Total Advocates	Advocates per 10,000
Dushanbe	619,400	135	49	184	2.97
Sogd Oblast	1,992,600	139	10	149	0.75
Raions of Republican Subordination	1,467,600	29	12	41	0.28
Khatlon Oblast	2,344,600	42	5	47	0.21
GBAO	215,800	1	1	2	0.09
Total	6,640,000	346	77	423	0.64

The number of advocates per capita in Dushanbe and Sogd Oblast exceed the national average. The number of advocates per capita in the Raions of Republican Subordination and Khatlon Oblast are both considerably less than those in Dushanbe and Sogd Oblast. Although interviewees reported that there are actually two advocates rather than just one in the Gorno-Badakhshan Autonomous Oblast (GBAO), in either case there are clearly not enough advocates

there. More generally, the ICCPR Shadow Report concludes that “there is [an] acute shortage of advocates in the country.” ICCPR SHADOW REPORT at 35.

For the most part, interviewees agreed that there are a sufficient number of advocates to meet the *demand* for legal services, at least in Dushanbe and Khujand (Sogd Oblast), but an insufficient number to meet the *need* for legal services. Demand is low, it was suggested, because many people cannot afford to pay for legal services and because many do not know their legal rights. Many legal disputes are resolved informally, without the assistance of lawyers. In addition, in civil cases, parties often represent themselves. Several interviewees asserted that the demand for legal services is not being met in the sense that the quality of legal assistance is often low. In their view, the number of qualified advocates is insufficient. Several others also pointed out that there are an insufficient number of advocates who are knowledgeable about commercial law and capable of competently representing enterprises in the economic courts.

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Conclusion	Correlation: Neutral
<p>Advocates provide free legal assistance through the collegia, as individuals, and through non-governmental organizations [hereinafter “NGOs”]. Although advocates in the collegia are entitled to be paid by the state for representing persons under criminal investigation or in criminal trials, they are rarely if ever paid. As a result, the quality of legal assistance they provide sometimes suffers.</p>	

Analysis/Background:

The state “guarantees real and equal access to legal assistance to all persons, foreign citizens, who live in the territory of the republic.” CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], Article 5; CONSTITUTION OF THE REPUBLIC OF TAJIKISTAN (6 November 1994), Article 92. This guarantee is implemented in part by requiring members of the collegia—but not private licensed advocates—to render free legal assistance (subject, in theory, to reimbursement by the state) to:

- plaintiffs in the first instance seeking alimony or restoration of employment;
- plaintiffs in the first instance who are veterans of World War II or the Afghan War, disabled people, and people who lost a bread-winner during the civil war in Tajikistan;
- citizens appealing errors in electoral rolls;
- people’s deputies in Parliament seeking consultations regarding legislation; and
- those exempted from payment, in whole or in part, by the Presidium of a collegium, the body of preliminary investigation, the prosecutor, or the court.

LAW ON ADVOCACY, Article. 19.

Although the Law on Advocacy provides for free legal assistance in a variety of circumstances, it is most common in criminal investigations and trials. The CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN [hereinafter “CRIMINAL PROCEDURE CODE”] also includes provisions on free legal services. For example, it provides that the head of a legal consultation center and the Presidium of a collegium shall provide an advocate to represent a suspect, accused, or defendant. CRIMINAL PROCEDURE CODE, Article 49. The head of the legal consultation center, the Presidium, investigator, prosecutor, or court where the case is pending may decide that such legal assistance shall be free of charge or at reduced cost to the client; and the advocate shall be

paid with funds from the collegium in case of a release by the head of the legal consultation center or the Presidium of the collegium or, in other cases, with funds of the state. CRIMINAL PROCEDURE CODE, Article 49. The amount advocates are to be paid with state funds is determined by an order of the Council of Ministers of the Republic of Tajikistan, and such payments are, in theory at least, to be recovered from convicted defendants. CRIMINAL PROCEDURE CODE, Article 49. In addition, under Article 50 such an advocate shall be retained by the accused or by other persons (including the investigator or the court) on behalf of accused or with his or her approval. When participation of the advocate chosen by the accused is impossible for a long period, the investigator and court are empowered to offer to obtain another advocate. CRIMINAL PROCEDURE CODE, Article 50.

Such legal assistance is vital to the functioning of the criminal justice system, with an estimated 20-30% of those in detention, or in criminal trials, receiving free legal assistance. Moreover, participation by an advocate is required during the investigation stage when the defendant is a juvenile, is mentally or physically disabled, or does not speak the language in which the proceedings are conducted. CRIMINAL PROCEDURE CODE, Article 51. At trial, an advocate's participation is required when the public prosecutor is involved or when the defendant is a juvenile, is mentally or physically disabled, does not speak the language in which the proceedings are conducted, or is charged with a capital crime, or when several persons have conflicting interests and one is represented by an advocate. CRIMINAL PROCEDURE CODE, Article 51. In addition, if an advocate is required and the defendant does not retain one, the investigator or court arranges for the appointment of one. CRIMINAL PROCEDURE CODE, Article 51.

Following a request by an investigator or court for appointment of an advocate in a criminal investigation or trial, the head of the legal consultation center selects one. CRIMINAL PROCEDURE CODE, Article 49. Advocates may not refuse such representation. CRIMINAL PROCEDURE CODE, Article 53. Because experienced advocates try to avoid taking such cases, young advocates are often selected, ostensibly to afford them an opportunity to gain experience. Of course, that means that criminal defendants may be represented by advocates with little experience. The problem with more experienced advocates who are compelled to take such cases is that they often do not devote sufficient time to preparation. On the other hand, a judge in Khujand, where advocates receive partial payment for providing free legal services, said that she did not notice any difference in the quality of legal services between advocates who are paid by clients and those paid by the local state executive authority (*khukumat*).

Although the state guarantees payment for legal services to indigent citizens and those entitled to free legal services through the *khukumats*, in fact advocates are rarely paid for such services. LAW ON ADVOCACY, Article 5. Because those legal services are not included as a separate item in the budget, payments to advocates can be made only out of any unspent funds, and in practice there usually are none. The total arrears for unpaid legal services reportedly amount to some 1 million somoni (approximately \$330,000) or more. The situation is reported to be somewhat better in Khujand, where advocates receive partial payment for free legal services, but as of 1 January 2005, the *khukumat* owed some 12,000 somoni (about \$4,000) to advocates. The amount to be paid to the advocate is determined by the judge. CRIMINAL PROCEDURE CODE, Articles 326.

In their opposition to the new licensing regime and the requirement that they pass a Ministry of Justice [hereinafter "MoJ"] qualification examination, collegium advocates have argued that they provide a type of social assistance because their purpose is not to make a profit, but to defend the rights of citizens. However, once they are licensed as entrepreneurs by the MoJ they can no longer be required to provide free legal assistance. As a result, the future availability of free legal assistance may be significantly reduced. During 2004, advocates in the Republican Collegium provided free legal aid to 7,000 people, and in one of its legal consultation centers, it was

reported that about 30% of the advocates' time was devoted to free legal aid cases.¹¹ (See page 2 for a discussion of subsequent developments on the licensing of advocates, developments that may in part be a response to concerns about the future availability of free legal assistance.)

Some private licensed advocates also perform a significant amount of legal work for poor people. A focus group of advocates in one law firm said that they charge reduced fees for about half of their clients and that 10-15% of their work is done for free. One advocate outside Dushanbe said that about 40% of his work was performed for clients who cannot afford to pay. Even firms that do not devote a significant amount of time to providing free legal assistance sometimes give free legal consultations.

Advocates and other non-advocate jurists also provide free legal assistance through NGOs, which are usually funded by international donors. For example, the League of Women Lawyers has crisis centers in Dushanbe, Khujand, and Kurgan-Tube that provide assistance to women who have suffered domestic violence and to persons in detention. In 2005 with support from OSI –Tajikistan, OSCE, and the Swiss Agency for Development and Cooperation, the League of Women Lawyers opened centers in thirteen raions to provide free legal aid to indigent persons. Other examples include the Republican Bureau of Human Rights and Rule of Law, which had legal aid centers in Dushanbe and Khujand; the Center of Human Rights, which had legal aid centers in Dushanbe and Khujand, and the INIS Women's Legal Support Center in Khujand. In 2005 ABA/CEELI began an externship program in which law students are placed in local, legally related NGOs. Sometimes collegium advocates work part-time for NGOs. Although not an NGO, the United Kingdom's Department for International Development (DFID) has established five legal support centers in rural areas throughout Tajikistan to provide legal consultations in connection with its project to develop third party arbitration courts (See Factor 20). Nevertheless, in many areas of the country free legal aid is unavailable.

The legal clinic of Tajik State National University, the only live client legal clinic in Tajikistan, provides legal assistance to some 400 clients a year.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

Conclusion	Correlation: Neutral
<p>Because the development of capacity for mediation and arbitration is in its initial stages, alternative dispute resolution [hereinafter "ADR"] is unavailable to most people. As a result, few advocates advise their clients about ADR. Efforts are underway, however, to develop capacity to resolve disputes through arbitration and secure enactment of legislation to provide an adequate legal basis for ADR.</p>	

Analysis/Background:

In rural areas, *mahallas* (community councils of elders) play an important role in informal dispute resolution. Their authority is based on tradition, rather than legislation.

¹¹ It should be noted, however, that "state institutions do not collect data on the number of cases where [free] legal assistance was provided, and the data of the Collegiums is not reliable." ICCPR SHADOW REPORT at 36.

Formal ADR is rare in Tajikistan. Lawyers typically lack training in ADR, and Tajikistan does not presently have a comprehensive legal framework for ADR. A 1965 regulation on third party arbitration, amended in 1997, and a 1997 law on the resolution of commercial disputes provide a legal basis of sorts for arbitration. To address gaps in the existing legal framework, the United Kingdom’s Department for International Development [hereinafter “DFID”] and OSI – Tajikistan drafted a law on third party arbitration and a law on international commercial arbitration. They were introduced in Parliament in 2006.

DFID is in the early stages of implementing a project to develop third party arbitration courts. It has established six legal support centers to provide legal consultations in rural areas of Tajikistan, where an estimated 800,000 people live. When disputes are amenable to resolution by third party arbitration, mediation and arbitration are suggested. The process may begin with mediation, if the parties so choose, and then continues with arbitration if mediation did not resolve the dispute, or the parties may elect to bypass mediation and begin with arbitration. Each legal consultation center has a list of mediators and arbitrators from which the parties can select a mediator or arbitrator. From February through September 2005, the legal support centers provided 1,738 consultations, leading to 176 cases of mediation and 103 cases of arbitration. The issues addressed by the project are those typical of the agrarian sector, including disputes involving land, loans, and personal property. Lawyers (other than those working in the legal support centers) do not recommend ADR, because it is still relatively undeveloped. Another reason is that lawyers do not have an opportunity to recommend arbitration of these kinds of disputes, because the parties are typically too poor to consult an advocate or non-advocate jurist.

Thus far, arbitration of commercial disputes is extremely rare. To address this situation, OSI - Tajikistan and the Tajik Chamber of Commerce established a committee to encourage Tajikistan to become a party to the New York Convention, to establish international arbitration courts under the aegis of the Chamber of Commerce, and to draft legislation (which was introduced in Parliament in 2006) on international commercial arbitration.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: Neutral
<p>The two main professional associations of advocates, the Republican Collegium and the Sogd Collegium are self governing, reasonably democratic, and independent of state authorities. The Association of Advocates, organized in 2003 to unite all advocates, has not fulfilled the hopes of its founders.</p>	

Analysis/Background:

Under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter “LAW ON ADVOCACY”], collegia, which function in part as professional associations, may be established by forty or more advocates. LAW ON ADVOCACY, Article 15. Two, the Republican Collegium and the Sogd Collegium, have been established thus far. A collegium is a juridical person, entitled to have a seal, stamp, and bank accounts. LAW ON ADVOCACY, Article 15. It is established by articles of association (charter) and must register with the Ministry of

Justice [hereinafter “MoJ”]. LAW ON ADVOCACY, Articles 15 and 16. A general meeting of the collegiums’ members elects the Presidium, Chair of the Presidium, Audit Commission, and Qualification Commission. LAW ON ADVOCACY, Article 17.

The supreme body of the collegium is the general convention (meeting), which meets at least once a year. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000) [hereinafter “RC CHARTER”], Article 8; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001) [hereinafter “SC Charter”], Article 6. Among other things, it elects the Presidium, Chairperson of the Presidium, Audit Commission, and Qualification Commission, each for a five-year term. RC CHARTER, Article 8; SC CHARTER, Article 6. There are no term limits in either charter. All members of a collegium have the right to elect and be elected to its various bodies. RC CHARTER, Article 13; SC CHARTER, Article 11. To be eligible for election, candidates for the Presidium and its Chairperson must have been members of the collegium for at least three years. RC CHARTER, Article 7; SC CHARTER, Article 5. The Presidium and its Chairperson meet at least twice a quarter and have authority to decide routine issues that are not within the exclusive authority of the general convention and also to elect a Deputy Chairperson on the nomination of the Chairperson. RC CHARTER, Article 9; SC CHARTER, Article 7. Some younger advocates have complained about a lack of turnover among the Republican Collegium’s leadership.

Under the Law on Advocacy, the funds of a collegium are derived from dues paid by advocates according to its charter and other earnings not prohibited by law.” LAW ON ADVOCACY, Article 21. Members of the Sogd Collegium pay an admission fee of 100 somoni (about \$33). SC CHARTER, Article 15. After their first six months of work, advocates in the Republican Collegium’s legal consultation centers pay 30% of their monthly earnings up to 100 somoni and 15% of any earnings above that amount. The percentage has varied over time; in recent years it was 25 or 28%. In addition to funding the operation of the collegium, this income finances the 30 days of paid annual leave to which members are entitled. LAW ON ADVOCACY, Article 22. When the general convention approves the annual budget it also determines the salaries of advocates working in legal consultation centers. RC CHARTER, Article 8; SC CHARTER, Article 6.

One issue of concern to many interviewees was the future role of the collegia following enactment of the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY. In the past, the collegia performed three primary functions: providing a mechanism for admission to the profession; providing legal consultation centers; and administering the provision of free legal assistance. A draft law to amend the Law on Advocacy obtained by the assessment team would leave intact the provisions of the Law on Advocacy relating to the collegia. If that draft law is enacted, the collegia could continue to function much as they do now, except that their members would also have to be licensed by the MoJ. Some have suggested that the collegia may cease to exist because admission to the profession would depend upon MoJ licensing rather than membership in a collegium. This seems unlikely, however. Although advocates in legal consultation centers often complain that they receive no benefits from the collegium, the centers do in fact afford many advocates a place to practice law and a source of clients. The collegia would likely continue to fulfill this function even if they no longer have responsibility for admission to the profession of advocate, but only admission to collegium membership. The other important function of the collegia is providing and administering free legal assistance to criminal defendants and others. The Law on Advocacy requires members of the collegia, but not licensed advocates, to provide such legal assistance (See Factor 19). Despite the promise of payment by the state, this legal assistance has proved to be little more than state mandated charity on the part of advocates. In their opposition to the new licensing regime, the collegia have argued that the profession of advocate is, and should be recognized as, social assistance, because its purpose is not to make a profit but to defend the rights citizens. However, when they are licensed as entrepreneurs by the MoJ they can no longer be required to provide free legal assistance. If advocates were in fact paid for such legal assistance, the collegia could continue to administer it.

In March 2003, the Association of Advocates was organized with support from international donors in an effort to unite members of the collegia and private licensed advocates in a single

professional organization. With about 240 members, the association includes about half the advocates in Tajikistan. Its membership includes 120 from the Republican Collegium, 100 from the Sogd Collegium, and 20 private licensed advocates. Thus the association consists primarily of advocates from the collegia. It is said to have been hampered by rivalries from the differing interests of the three groups. With annual dues of two minimum salaries (about \$8), the association's financial resources are limited, and it has been largely inactive.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: Negative
<p>Although the collegia lack sufficient financial resources for membership services, both have campaigned in opposition to the Law on Licensing, because of concerns that it will interfere with the independence of advocates. Both provide legal consultation centers for their members and have rules of professional conduct for their members, but provide few educational or other opportunities, such as continuing legal education [hereinafter "CLE"].</p>	

Analysis/Background:

Neither the Republican Collegium nor Sogd Collegium have sufficient financial resources to provide significant membership services, but both have mounted a campaign in opposition to the new licensing regime, which they fear will enable the executive branch to interfere with the independence of advocates (See Factor 10). Among other things, both collegia have written letters to the Office of the President, expressing their concerns about the LAW OF 17 MAY 2004 ON LICENSING CERTAIN TYPES OF ACTIVITY. The Chairperson of the Sogd Collegium has been interviewed on the subject; and both collegia participated in a roundtable in Dushanbe on 24 May 2005 that issued an appeal against adoption of the draft law to amend the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"]. They appear to have successful in influencing the government. (See page 2.)

One of the purposes of the collegia is to guarantee high standards of professional ethics. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000), Article 2; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001) [hereinafter "SC Charter"], Article 2. To further this objective, the Republican Collegium's RULES OF PROFESSIONAL CONDUCT OF THE ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 FEB. 1999) [hereinafter "RULES OF PROFESSIONAL CONDUCT"], which establish professional standards for its members (See Factor 16). The Sogd Collegium has drafted, but not yet adopted its own code of ethics. In the meantime it uses the Republican Collegium's Rules of Professional Conduct as a source of professional standards for its members (See Factor 16).

Both collegia also provide legal consultation centers in which their members can practice law. Although the resources of these centers are minimal at best (See Factor 13), they do provide advocates with a desk (if little else) and referrals of clients who come to the center seeking legal assistance. The members of a collegium are entitled to thirty days of paid leave annually. LAW ON ADVOCACY, Article 22. Because this is funded by payments that advocates make to the legal consultation centers, however, it is not really a membership benefit.

The collegia have inadequate funding and, therefore, have not been able to offer much in the way of member services, such as CLE or adequate law libraries. Ironically, the Republican

Collegium’s Rules of Professional Conduct identify ensuring “development of professional skills of lawyers” as one of their purposes and mandate that “[a] lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, thoroughness and preparation.” RULES OF PROFESSIONAL CONDUCT, Articles 1 and 3. And yet there is little in fact that the collegia do, or indeed are able to do except with outside funding, to assist advocates to meet these standards set by their Rules of Professional Conduct.

Until recently, the Association of Advocates had few financial resources and had become a largely moribund organization, providing few services to its members. In October 2005, however, it received funding from OSI - Tajikistan to begin a project for reform of the legal profession, which includes the opening of a legal resource center with a library, computers with access to an electronic legal database and the Internet, as well as facilities for holding meetings and seminars.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.

Conclusion	Correlation: Negative
<p>Professional associations of advocates appear to have done relatively little to raise public awareness of its rights and duties or of the role of advocates in defending these fundamental rights and freedoms <i>vis-à-vis</i> the state.</p>	

Analysis/Background:

One of the primary purposes of the Republican Collegium and the Sogd Collegium is “strengthening the legal culture of the population.” CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000) [hereinafter “RC CHARTER”], Article 2; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001) [hereinafter “SC Charter”], Article 2. In addition, the heads of legal consultation centers are responsible for organizing public awareness activities and for “organizing the participation of advocates in legal propaganda and in explaining the laws to the population.” RC CHARTER, Article 18 (12); SC CHARTER, Article 17 (12). In practice, however, the collegia appear to have done relatively little to raise the public’s awareness of its rights and duties or of the role of advocates in defending fundamental rights and freedoms *vis-à-vis* the state. The Republican Collegium has participated in a television program, “Your Lawyer,” in which an advocate explains the rights and obligations of citizens, and has been responsible for newspaper articles about the law.

Most programs to raise public awareness about the law are conducted by non-governmental organizations [hereinafter “NGOs”]. For example, with funding from the OSCE, NGOs have published pamphlets on the rights of prisoners. In addition, the Center for Legal Education produced eight radio shows per month to provide legal consultation to callers, but has had to discontinue the programs since funding ran out. Lawyers from the NGO Ghamkhori, based in Kurgan-Tube, have gone out to villages to provide legal consultations. The NGO Helping Hand in Khujand has conducted public awareness events and produced a public service announcement for radio. In addition, ABA/CEELI sponsors a street law clinic at Slavonic University.

The primary exception to the inactivity of professional associations in this area is the Association of Advocates, which undertook a project to produce four video public service announcements on human rights issues. Unfortunately they have not been aired, because television stations would

broadcast these public service announcements only if they were paid the rates they charge for advertising and sufficient funding has not yet been obtained.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Conclusion	Correlation: Neutral
<p>The Sogd Collegium has been actively involved in efforts to draft a new Criminal Procedure Code. Although the Republican Collegium has been less active, it has established a commission to draft a new Law on Advocacy.</p>	

Analysis/Background:

The Presidium of each collegium is responsible for studying the causes of crime and other violations of law and submitting proposals for reform to appropriate state and public organizations. CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE REPUBLIC OF TAJIKISTAN (13 June 2000) [hereinafter "RC CHARTER"], Article 9; CHARTER OF THE COLLEGIUM OF ADVOCATES OF THE SOGD OBLAST (13 Jan. 2001), Article 7. In addition, the RC Charter specifically contemplates conducting independent expertise of legislation at the request of government bodies and public organizations. RC CHARTER, Article 4.

Under the CONSTITUTIONAL LAW ON THE BAR OF THE REPUBLIC OF TAJIKISTAN (4 November 1995) No. 110 [hereinafter "LAW ON ADVOCACY"], one way in which members of the collegia are expected to participate in the process of law reform is by providing free legal consultations to people's deputies in Parliament on legislation. LAW ON ADVOCACY, Article 19. The extent to which this occurs in practice is uncertain.

The Sogd Collegium has played an active role in drafting a new CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TAJIKISTAN. It also led the successful campaign to repeal Article 296 of the CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN insofar as it relates to advocates. By contrast, the Republican Collegium has apparently not been active in law reform efforts until recently, when it established a commission to prepare a draft Law on Advocacy in accordance with international standards.

Participation in law reform is said to be hampered by a lack of transparency on the government's part. One practice that was reported is the government's failure to identify the members of ministry committees responsible for drafting laws. Another is its failure to circulate draft laws among advocates or non-governmental organizations for review and comment. On the other hand, an expert in the Civil Code who was interviewed said that the Ministry of Justice working group invited him to comment on a draft of the Civil Code.

LIST OF ACRONYMS

ABA/CEELI:	American Bar Association/Central European and Eurasian Law Initiative
ADR:	alternative dispute resolution
ARD/Checchi:	ARD, Inc. and Checchi and Company Consulting, Inc.
DFID:	United Kingdom's Department for International Development
CLE:	continuing legal education
GBAO:	Gorno-Badakhshan Autonomous Oblast
ICCPR:	International Covenant on Civil and Political Rights
JRI:	Judicial Reform Index
LPRI:	Legal Profession Reform Index
MoI:	Ministry of Interior
MoJ:	Ministry of Justice
MoS:	Ministry of Security
NGO:	non-governmental organization
OSCE:	Organization for Security and Co-operation in Europe
OSI - Tajikistan:	Tajik Branch of the Open Society Institute – Assistance Foundation
RC:	Collegium of Advocates of the Republic of Tajikistan
SC:	Collegium of Advocates of the Sogd Oblast
UN:	United Nations
UNDP:	United Nations Development Programme
USAID:	United States Agency for International Development