

**NATIONAL PROFILE TO ASSESS CAPACITIES
FOR IMPLEMENTATION OF THE
AARHUS CONVENTION IN TAJIKISTAN**



UNITAR



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FOR IMPLEMENTATION OF THE
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Introduction

Tajikistan has a rather well advanced legislative framework of fundamental laws in the sphere of environment protection and respective issues but this does not seem to hold true to sub-legislative acts. Environmental norms are established in a number of general laws and laws on separate environmental issues, and procedures or types of natural resources. Modern legislation of Tajikistan, including in the sphere of environmental protection was developed on the basis of laws and normative documents adopted during the Soviet period, Tajikistan preferred gradually coordinating and amending the existing legislative documents, following requirements of the changing conditions rather than starting to draft a new legislation completely from zero. Thus, the existing ecological legislation forms a complete system. Over the last years due to the substantial technical support from other countries and active international cooperation including joining several Conventions of the United Nations Organization and regional agreements, the ecological legislation became harmonized with the model legislation recommended within the framework of these conventions or agreements.

Creation of an effective management system involving all sectors of the society demands developing its necessary instruments for realization. Comprehensive interaction of governmental bodies and NGO is the base for the implementation of commitments under the Aarhus Convention. The issue on public participation in environmental decision-making is very many-sided and covers a big circle of issues in this field.

This National Profile for the assessment of the Aarhus Convention implementation capacities in Tajikistan is developed on the basis of the Guide offered by Training and Scientific Research Institute of the United Nations (UNITAR) UN/ECE.

Development of the National Profile for the assessment of the Aarhus Convention implementation capacities in Tajikistan was initiated by governmental and non-governmental organizations. Environmental experts of the ministries and departments running activities in the field of environment protection, as well as NGO representatives were involved in the preparation of the National Profile.

A detailed analysis of the legislative and normative legal base regulating public access to ecological information, decision-making and access to justice was made during the preparation of the National Profile.

Chapter I. Description of the Political System and State Institutions of the Republic of Tajikistan.

1.0 Introduction

The Republic of Tajikistan - a sovereign, democratic, law-governed, secular and unitary state.

Tajikistan follows the principle of division of state power on three branches: the legislative, the executive, and the judiciary.

The Legislative branch plays a key role in determining the policy, strategy and rules of environment and nature protection through the adoption of laws.

The Executive branch is represented by the President and Government. It plays an essential role in the establishment of rules as the Government is authorized to take executive orders on putting into effect normative documents, and to establish special requirements. The Government of the Republic of Tajikistan ensures effective management of the economic, social, and cultural spheres and the implementation of laws, decisions of the Majlisi Oli (the Tajik Parliament), decrees and orders of the President of the Republic of Tajikistan.

The Judiciary is independent, and protects individual rights and liberties, interests of the state, organizations, institutions, law and justice.

1.1. The Constitution: Human Rights and Ecological Rights

The Constitution of the Republic of Tajikistan was accepted in 1994; in 1999 and 2003 amendments have been made in the Constitution. The Constitution of Tajikistan possesses a supreme legal force and its norms have direct effect on its entire territory. The State and all its bodies, officials, citizens, and their associations are bound to observe and comply with the Constitution and laws of the country. International legal documents recognized by Tajikistan are an integral part of the country's legal system.

The economy of Tajikistan is based on various forms of ownership. The state guarantees freedom of economic activities, entrepreneurship, equality of rights, and legal protection of all forms of ownership including the private one.

The public life in Tajikistan is developing on the basis of political and ideological pluralism. Social associations and political parties are established and function within the framework of the Constitution and laws. The State ensures them equal opportunities in their activity.

The citizens of the Republic of Tajikistan, irrespective of their nationalities, constitute the people of the Republic of Tajikistan - the bearer of sovereignty and the only source of state power. The people implement the state power both directly and through representative bodies in accordance with the Constitution of the Republic of Tajikistan.

All citizens of the country, person without citizenship, state, public and religious organizations carry out their activity in accordance with the Constitution of the Republic of Tajikistan.

All political parties, social associations, and mass movements working within the framework of the Constitution of the Republic of Tajikistan are equal in their rights. They are provided conditions for the participation in the management of state and public affairs.

The Government guarantees to all citizens and persons without citizenship living on the territory of the republic the rights and liberties set forth in the Constitution of the Republic of Tajikistan and public norms of international documents.

The rights and liberties of an individual and a citizen are regulated and protected by the Constitution, the laws of the country, and international legal documents recognized by Tajikistan (Article 14).

Foreign citizens and persons without citizenship enjoy the declared rights and liberties and have the duties and responsibilities equal to those of citizens of Tajikistan except in cases envisaged by law (Article 16).

In accordance with the Constitution the State assumes commitment to provide healthy environment and guarantees an effective use of natural resources for the benefit of the Tajik people.

The Civil Code of the Republic of Tajikistan was accepted in June, 1999. #803, Article 1 provides that family, labour relations, relations on the utilization of natural resources and environment protection are regulated by the civil legislation.

Citizens, the state, legal persons and administrative and territorial units are the participants of relationships regulated by the civil legislation. The rules established by the civil legislation also apply to the relationships with the involvement of foreign citizens, persons without citizenship and foreign legal persons.

Article 3 of the Civil Code of the Republic of Tajikistan – Citizens (natural persons) and legal persons acquire and realize their civil rights within the will and their interests. They are free in establishing their rights and duties on a contract basis (Article 17 citizens (natural persons) are the citizens of the Republic of Tajikistan, citizens of other states, as well as persons without citizenship).

Land, its entrails, internal waters, airspace, flora and fauna, and other natural resources on the territory of the country are the property of the people and

exclusive domain of the country, and the state guarantee their effective utilization for the benefit of the people (Article 13 of the Civil Code). Using and management of the land, water, airspace, and other natural resources, which are on the territory of the Republic of Tajikistan and other states, and are of interstate importance, are regulated by agreements between them. Deposits of minerals and natural resources of the Republic of Tajikistan can be provided for possession and utilization by foreign states and citizens on the basis of the contract between them and Republic of Tajikistan (Article 289 of the Civil Code of the Republic of Tajikistan).

Everyone is guaranteed judicial protection. Everyone is entitled to demand his case to be considered by a competent, independent, and impartial court (Article 19 of the Constitution). The state guarantees judicial protection and compensation for the damage to the victim (Article 21).

Everyone has the right to privacy of correspondence, telephone conversations and other private communication, except in cases prescribed by law. The collection, storage, utilization and dissemination of information about person's private life without his consent is prohibited (Article 23).

A citizen has the right to take part in the political life and state administration directly or via his representatives. Citizens have the equal right to state service.

A citizen has the right to elect and be elected upon attaining the age of 18 years (Article 27).

Citizens have the right to associate and to participate in the creation of political parties, including parties of democratic, religious and atheistic character, trade unions, and other social associations, voluntarily affiliate with them and quit (Article 28).

Citizens have the right to take part in the meetings, rallies, demonstrations, and peaceful processions prescribed by law (Article 29).

Everyone is guaranteed the freedom of speech, publishing and the right to use means of information State censorship and prosecution for criticism is prohibited. Law specifies the list of information constituting a state secret (Article 30).

Citizens have the right to apply to the state authorities personally or jointly with a group of people (Article 31).

The state protects the family as the basis of society. Everyone has the right to form a family (Article 33).

Everyone has the right to work, to choose the profession, job, labour security and social security during the unemployment (Article 35).

Everyone has the right to a home. This right is ensured by means of construction of state, public, cooperative and private home (Article 36).

Everyone has the right to leisure. Establishing working weeks and days, paid annual leaves, weekly days off, and other conditions prescribed by law ensure this right (Article 37).

Everyone has the right to health care. This right is ensured by means of free of charge medical assistance in the state medical establishments, measures aimed at protecting environment, developing mass sport, physical culture, and tourism. Law shall define other types of medical assistance (Article 38).

Everyone is guaranteed social security in old age, in the time of sickness, invalidity and loss of ability to work, or loss of a guardian or other instances prescribed by law (Article 39).

Everyone has the right to education. The basic general education is compulsory (Article 41).

The protection of natural, historical and cultural heritage - is the duties of everyone (Article 44, Constitution of the Republic of Tajikistan).

Though the Constitution declares that the state recognizes, respects and protects individual rights and liberties, and that the state bodies and officials should give access to information on individual rights and interests, it does not contain guarantees of ecological safety or individual rights on usage of resources, including such important as air, water and land.

The Law of the Republic of Tajikistan «About information» stipulates assurance of the right on information:

- the openness, information availability, and liberty of its express (Article 4);
- well-timed access of citizens to information (Article 7);
- the state shall guarantee the liberty of information for all citizens and legal persons in the field of political, economic, cultural, social, spiritual, ecological, scientific and technical, and international spheres of social life within the scope of their rights and liberties, function and powers (Article 11).

Table 1-1: The Constitutional Rights

Among fundamental the next rights and liberties were established by the Constitution:

Human rights	Respective constitutional provisions
Right to (healthy) environment	Constitution of the Republic of Tajikistan does not provide directly

	the right to environment however this right is stipulated in the Law «On Nature Protection», accepted in 1993 (Articles 10 - 11).
Other human rights which can be used for environment protection:	
Right to health	Article 38, Article 39 of the Constitution
Right to decent life and labour conditions	Article 35, Article 36, Article 37 of the Constitution
Freedom of press	Article 30 of the Constitution
Freedom of associations	Article 28, Article 29 of the Constitution
Right to private life	Article 33 of the Constitution
Right to equal legal protection	Article 19 of the Constitution
Human rights procedure which can be used in environmental context:	
Right on access to information	Guaranteed right to information is stipulated by Law of the Republic of Tajikistan «On Information»: Article 4, Article 7, Article 11
Private information security	Article 23 of the Constitution
Protection of commercial, bank, insurance, medical, and other secrets	Article 40 of the Constitution, Information related to state or commercial secret shall not be disclosed and must be protected by the legislation (Article 7, Law of the Republic of Tajikistan «About State Statistics»),
Right on access to justice (of natural or legal persons); right to legal remedies in case of applying administrative decisions	Article 19, Article 21 of the Constitution
Right on participation in decision-making	Article 27 of the Constitution

1.2. Type of Political System and Democracy

The President of the Republic of Tajikistan is the head of state and executive authority (the Government) (Article 64 of Constitution).

The president is elected by Tajik citizens on the basis of the universal and direct suffrage by secret vote for the term of 7 years. Every citizen of the Republic of Tajikistan at the age between 35 and 65 years old speaking the state language and

permanently living on the territory of Tajikistan at least for the last 10 years can be nominated to the post of the President of the Republic.

Only a person whose nomination is signed by at least five percent of the electorate shall be eligible for candidacy to the post of President (Article 65 of Constitution).

Powers of the President:

- the President determines principal directions of internal and foreign policy of the state;
- represents Tajikistan in the country and in international relations;
- establishes and eliminates ministries and state committees;
- appoints and dismisses the Prime Minister and other Government members, submits for confirming his decrees on the appointment and dismissal of the Prime Minister and other Government members to the joint sessions of the Majlisi Milli and Majlisi Namoyandagon;
- appoints and dismisses the chairmen of regions, city of Dushanbe, towns and districts and submits for confirming to the relevant Majlis of people's deputies;
- nominates the Chairman, his deputies and judges of the Constitutional Court, Supreme Court, and Supreme Economic Court for election and recalling by the Majlisi Milli;
- sets up the Executive Office of the President;
- sets up the Council of Justice;
- calls a referendum, elections to the Majlisi Milli and Majlisi Namoyandagon and local representative bodies;
- signs laws;
- implements other powers determined by the Constitution and laws (Article 69 of Constitution).

The President is the guarantor of the Constitution, laws, and rights and liberties of the individual and citizen, the guarantor of national independence, unity and territorial integrity, stability, and continuity of the state, coordinated functioning and cooperation of the bodies of state powers and Tajikistan's observance of international treaties.

The President is the Supreme Commander-in-Chief of the Armed Forces of the Republic of Tajikistan

1.3. Levels of the Government

The Republic of Tajikistan is a sovereign state. Its policy is directed on creation of decent life conditions and free development of an individual.

The Executive power in the Republic of Tajikistan is performed by:

- The Government of the Republic of Tajikistan, ministries, State committees;
- Local state authorities and their structures.

The Government of the Republic of Tajikistan ensures effective management of economic, social, and cultural spheres and the implementation of laws and decisions of the Majlisi Oli, decrees and orders of the President of the Republic of Tajikistan.

Besides, the Government:

1. Formulates a uniform state policy of wildlife management, environmental and ecological safety;
2. Ensures individual rights to a healthy environment and ecological safety;
3. Coordinates joint activity of state nature protection executive bodies and performs the nation-wide and intergovernmental regional ecological programs on prevention of natural and "man-caused" accidents and consequences elimination;
4. Organizes protection and sustainable use of natural resources, for example, by regulating the use of natural resources.

The Government of the Republic of Tajikistan consists of the Prime Minister, his first Deputy, Deputies, Ministers, and Chairmen of state committees.

Local government consists of representative and executive authorities, which function within the framework of their authorities. They ensure the implementation of the Constitution, laws, resolutions of the Majlisi Oli, acts of the President and the Government of the Republic of Tajikistan (Article 76).

The local representative authority in regions, towns, and districts is the Majlis of people's deputies, which is chaired by the chairman. The plenary power of the Majlis of people's deputies is five-years.

The Majlis of people's deputies confirms the local budget and reports on its implementation, determines the ways of economic and social development of the area, determines in accordance with the law local taxes and their payments, determines the ways of ruling and possessing communal properties within the framework of the law, and implements other plenary powers prescribed in the Constitution and laws (Article 77).

The President's representative-chairman of region, town, and district governs the *local executive government*. The chairman heads the representative and executive authority in administrative and territorial units.

The *self-government authority* of a settlement and village is jamoat.

The Constitutional law regulates the structure, authority, and activity of local government authorities (Article 78). The representative authority and the chairman adopt legal documents within the framework of their authorities, the implementation of which is compulsory in that territory (Article 79).

The Majlis of People's Deputies of Badakhshan Mountainous Autonomous Region has the right of legislative initiative.

The judicial power is implemented by the Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, the Court of Badakhshan Mountainous Autonomous Region, courts of regions, the city of Dushanbe, towns and districts. Economic Court of Badakhshan Mountainous Autonomous Region, Economic Court of regions and the city of Dushanbe.

The Constitutional law determines the structure and activity of the court. Judges are independent in their activities and subordinate only to the Constitution and law (Article 87).

1.4. Legislative and other Electoral Bodies.

Majlisi Oli (the Supreme Assembly) - Parliament of the Republic of Tajikistan is the supreme representative and legislative body of the Republic of Tajikistan. The Constitutional Law regulates the creation and activity of *Majlisi Oli* (Article 48 of the Constitution).

Majlisi Oli consists of two Majlises (Assemblies) - the *Majlisi Milli* (the National Assembly) and the *Majlisi Namoyandagon* (the Assembly of Representatives). The empowered term of the *Majlisi Milli* and the *Majlisi Namoyandagon* is 5 years.

Three quarters of the members of *Majlisi Milli* are elected indirectly by secret vote at the joint meetings of people's deputies. The *Majlisi Milli* function based on convocations. Every citizen of the Republic of Tajikistan not younger than 35 years old having higher education diploma can be elected and appointed member of the *Majlisi Milli*.

The Constitutional law regulates the number of the members of the *Majlisi Milli* and the deputies of *Majlisi Namoyandagon*, procedure for their election, failure and determination of inconsistency of the members of the *Majlisi Milli* and the deputies of *Majlisi Namoyandagon* plenary powers.

The Majlisi Namoyandagon is elected on the basis of universal, equal, direct suffrage by secret ballot. The *Majlisi Namoyandagon* functions on a permanent and professional basis.

Every citizen of the Republic of Tajikistan no younger than 25 years old and having the higher education diploma can be elected deputy of *Majlisi Namoyandagon*.

The Government members, judges, law and order bodies' officers, military officers and other persons defined by the Constitutional law cannot be *Majlisi Milli* members.

Majlisi Namoyandagon deputy cannot be a deputy of other representative bodies, to occupy other post and engage in business activities, except for scientific, creative and pedagogical activities (Article 50 of the Constitution).

The Majlisi Milli member and Majlisi Namoyandagon deputy is not attached to the electors' orders, rather have the right freely to express their own opinion, vote in accordance with their own decision.

The activity of the Majlisi Namoyandagon is conducted in the form of session. The next session of the Majlisi Namoyandagon shall be summoned once a year.

The Majlisi Milli and Majlisi Namoyandagon organize their coordinating and working agencies independently, as well as set up relevant committees and commissions, and arrange parliamentary discussions on the Majlis related issues.

Powers of the Majlisi Milli:

- Establishing, elimination and changing the territorial and the administrative units;
- The election and revocation of the Chairman, deputies and judges of the Constitutional Court, Supreme Court and Supreme Economic Court based on the proposal of the President;
- Making decision of eliminating the immunity of the Chairmen, deputies and judges of the Constitutional Court, Supreme Court and Supreme Economic Court;
- Approval of appointment and dismissal of the Prosecutor-General and his deputies;
- Implementation of other powers defined by the Constitution and laws.

The Majlisi Milli adopts resolutions based on the specified powers. The majority of the total number of its members approves the resolutions of the Majlisi Milli, unless otherwise specified by the Constitution on the procedures for passing resolutions.

Powers of the Majlisi Namoyandagon:

- Establishing the Central Elections and Referendum Commission of the Republic of Tajikistan, electing and recalling the Chairman, his deputy and members based on the proposal of the President;
- Present to public's discussion draft laws and other important national and public issues;
- Confirming social and economic programs;
- Making decision commitments for State debt;
- Ratification and cancellation of international agreements;
- Appointing the referendum;

- Establishing courts;
- Confirmation of State attributes;
- Confirmation of State awards;
- Confirmation of the Presidential decrees concerning appointment and dismissal of the Chairman of the National Bank and deputies thereof;
- Implementation of other powers specified by the Constitution and laws.

The Majlisi Namoyandagon shall adopt resolutions based on its plenary powers. The majority of the total number of its deputies shall decide the resolutions of the Majlisi Namoyandagon.

The members of the Majlisi Milli, deputies of the Majlisi Namoyandagon, the President of the Republic of Tajikistan, the Government of Tajikistan, Majlis of people's deputies of the Badakhshan Mountainous Autonomous Region have the right of legislation initiative. And the Constitutional Court, Supreme Court and Supreme Economic Court have the right of legislation initiative to its process.

Draft laws should be submitted to Majlisi Milli and should be accepted by the majority of voices. The accepted laws of Majlisi Milli except for state budget law are represented to Majlisi Milli. State budget law should be accepted only by Majlisi Namoyandagon. Majlisi Namoyandagon should control over execution of the state budget.

The Majlis of people's deputies confirm the local budget and reports on its implementation, determine the ways of economic and social development of the area, determine in accordance with the law local taxes and their payments, determine the ways of ruling and possessing communal properties within the framework of the law, and implement other plenary powers prescribed in the Constitution and laws (Article 77).

The constitutional laws are confirmed by no less than two thirds of the total number of deputies of the Majlisi Namoyandagon and shall be approved by no less than two thirds of the total number of the Majlisi Milli deputies.

The Majlisi Oli interprets the Constitution in the said order and adopt it in the form of Constitutional law.

Laws are submitted to the President of the Republic of Tajikistan for signing and publication. Should the President disagree with the laws, the Majlisi Namoyandagon and Majlisi Milli based on the procedure established by the Constitution shall rationally consider the said law.

Powers of the Majlisi Namoyandagon, rules of Majlisi Namoyandagon Majlisi Oli of the Republic of Tajikistan from June, 28 2001 and Decree of Majlisi Namoyandagon, Majlisi Oli of the Republic of Tajikistan «About Rules of Majlisi

Namojandagon Majlisi Oli of the Republic of Tajikistan» from November 7, 2001 fixed the authority of the committees and commissions of Majlisi Namojandagon.

*Structure of the
Majlisi Oli and Majlisi Milli of the Republic of Tajikistan*

- Committee of the Majlisi Milli Majlisi Oli of the Republic of Tajikistan for provision of the constitutional bases, the rights and liberties of person, citizen and legality.
- Committee of the Majlisi Milli Majlisi Oli of the Republic of Tajikistan for agrarian issues, employment and ecology.
- Committee of the Majlisi Milli Majlisi Oli of the Republic of Tajikistan for social issues, health protection, science, education, culture and policy of youth and women in society.
- Committee of the Majlisi Milli Majlisi Oli of the Republic of Tajikistan for economy and communications.
- Committee of the Majlisi Milli Majlisi Oli of the Republic of Tajikistan for economy, budget, and finance

Powers of the Committee for agrarian and employment:

- Economic and social development agriculture legislation connected with agrarian and land reform, and transformation of production relations;
- Melioration and Water economy legislation;
- Forestry legislation.

Powers of the Committee for science, education, culture, and youth policy:

- Science, education, culture, tourism, physical training and sports, and youth policy legislation;
- Legislation for development regulation and education system operating, scientific research, and youth policy.

Powers of the Committee for social, family, health care and ecology:

- Ecology and ecological safety legislation jointly with Committee for law and order, defense and safety;
- Legislation for protection of natural territories, protection and restoration of rare natural reserves, and ecological method of biocenosis conservation for biological diversity;
- Legislation for realization of interstate agreements on regional environmental protection jointly with Committee for International affairs, social associations and information;
- Ecological insurance legislation, land moderate protection, water resources, forest ranges, air, flora and fauna balancing.

Majlisi Namojandagon Majlisi Oli

Majlisi Namojandagon consists of the following committees and commissions:

- Committee for economy, budget, finance and taxes;
- Committee for the constitutional employment, legislation and human rights;
- Committee for agrarian and employment;
- Committee for international affairs, public associations and information;
- Committee for science, education, culture, and youth policy;
- Committee for social, family, health protection and ecology;
- Committee for the state construction and local self-management;
- Committee for energy, industry, construction, and communications;
- Deputy ethics commission;
- Rule and organization commission.

Table 1-2: Parliament committees participating in decision-making in environmental matters

<i>Title of committee</i>	<i>Function</i>
1. Committee for Social Issues, Family, Health care and Ecology	-Ecology legislation and ecological safety jointly with Committee for law and order, defense and safety; -Legislation for protection of natural territories, protection and restoration of rare natural reserves, and ecological method of biocenosis conservation for biological diversity; -Legislation for realization of interstate agreements on regional environmental protection jointly with Committee for International affairs, social associations and information; -Ecological insurance legislation, land moderate protection, water resources, forest ranges, air, flora and fauna balancing.
2. Agrarian and Employment Committee	- Economic and social development agriculture legislation connected with agrarian and land reform, and transformation of production relations; -Melioration and Water economy legislation; - Forestry legislation.
3. Committee for Science, Education, Culture, and Youth Policy	- Legislation for development regulation and education system operating, scientific research, and youth policy. -Science, education, culture, tourism, sports, and youth policy legislation

Electoral norms and political parties

A citizen of the Republic of Tajikistan has the right to take part in referendum, to elect from the age of 18 years as well as be elected in spite of social and property status, race and nation, sex, language, education, and religion.

Every citizen of the Republic of Tajikistan no younger than 25 years old and having the higher education diploma can be elected deputy of Majlisi Namoyandagon.

Right to promote the candidate belongs to political parties, selective blocks, voters in a work, study and residence place of corresponding constituency, as well as self-promotion citizens.

Activity of the state bodies and public associations participated in the organization and elections should be opened and public.

All decisions on preparation and election should be published transmitted by radio and TV within the 7 days from their acceptance.

The authority in the Republic Tajikistan is realized on the basis of free will of people expressed at democratic elections and referendum according to the principles of equal and direct selective right at ballots.

Preparation and elections of People's Deputies to Majlisi Oli conduct the selective commissions openly and publicly.

Selective commissions shall inform the population on formation of constituencies and polling districts, structure, site and operating time of the selective commissions. They should give the list of voters, of political parties participating in elections, inform about candidates, and results of elections.

Just one representative of the political parties, officials, labors, which have suggested their candidates can participate at the sessions of selective commissions, in the voting rooms and at the calculation, also authorized representatives, representatives of press, TV, radio, international observers should be participated at elections.

Mass media of the Republic of Tajikistan should the preparation and elections.

Referendum of the Republic of Tajikistan is a National voting on the most important questions of the state and public life.

A citizen has the right to take part in referendum, to elect from the age of 18 years as well as be elected from the age fixed by Constitution, Constitutional laws and laws. Constitutional laws and laws regulate the procedure of elections. Referendum is held in accordance with Constitutional Law

During preparation and conducting of a referendum there should be provided with wide publicity and public participation (Article 1, 3-6 of the Constitutional Law of the Republic of Tajikistan on Referendum of the Republic of Tajikistan, 4 November 1995, № 106).

1.5. The Judiciary

Judicial authority in the Republic of Tajikistan belongs only to Court on behalf of judges and involved in the established order for realization of justice of jurymen. Other bodies and persons can't realize the justice.

Judicial authority is independent and operates with legislative and executive authorities.

Judicial authority is realized by means of the constitutional, civil, economic, administrative and criminal legal proceedings.

The court in the Republic of Tajikistan is called to protect rights and personal liberties, interests of the state, organizations, establishments, legality and validity proclaimed by the Constitution of the Republic of Tajikistan and by other laws of the Republic of Tajikistan, as well as by the international legal documents recognized as Tajikistan.

The aim of court of the Republic of Tajikistan is maximum strengthening of legality and social justice.

The judges are independent, and they should submit only to the Constitution of the Republic of Tajikistan and law.

Any intervention into activity of the judge realization of justice is forbidden and according to the Law involves the responsibility. Mass media have no right to predetermine in the reports the result of trial.

Chapter II. Access to Environmental Information and Decision-making by State Bodies on Environmental Issues

2.0. Introduction

Ecological legislation frameworks of Tajikistan mainly consist of the government decisions and various orders of the ministries and committees (State Committee for Environment Protection and Forestry, basically). Besides for the last years Tajikistan ratified a number of the International Conventions, and they also have been included in its legislative system.

Tajikistan has an effective system of the new legislation development and adoption due to clearly defined legislative process.

Inset 2.1: Legislative process

Law (ecological in this case) drafting usually proceeds in the following way. 1. Central department of the State Committee for Environment Protection and Forestry prepares the initial draft and forwards it for consideration to other departments, including the Legal department. 2. Consideration and approval by the Chairman of the State Committee for Environment Protection and Forestry. 3. The draft is directed to the ecology department of the Presidential Administration and then to other respective ministries. 4. Coordination of the draft with the stakeholding ministries and departments. 5. Presidium of the Government considers the draft and if satisfied, recommends for the Government consideration. 6. After the confirmation the draft directly or through the President goes to the Majlisi Oli for its approval by the commission, further the draft is proposed for voting at the plenary session of the lower chamber of the Majlisi Oli. 7. After the adoption by the lower chamber the draft is submitted to the upper chamber for approval. 8. Finally it is submitted to the President for signing and publication.

2.1. Legislation and Policy on Access to Information

Legislation of the Republic of Tajikistan gives the right on access to information, including the ecological one.

Fundamental laws on public access to environmental information are as the follows:

- . Law on Nature Protection
- . Law on Information
- . Law on Ecological Expertise
- . Law on Hydrometeorological Activity
- . Law on State Statistics
- . Law on Protection of Information

The **Law on Nature Protection** accepted in 1993 is a Framework ecological law. In 1996 some amendments were made to define the powers of various environmental governmental structures – of the Government, the previous Ministry for Nature Protection and local Majlises. Amendments of 2002 relate to ecological expertise of specially protected territories and to more precise definition of ecological rights of the community. The law provides that ecological policy of Tajikistan should prioritise ecological actions based on scientifically proved principles of combining economic and other activity, which has environmental impact and sustainable use of resources. Human rights to a healthy environment should be observed as well. The law is meant for the management of interaction between the nature and community to safeguard interests of both.

The Law specified appropriate legal principles, protected objects, spheres of competence and the role of the Government, State Committee for Environment Protection and Forestry, local authorities, public organizations and separate citizens. More important, the law sets forth measures to provide the public and a person for rights on safe and healthy environment. For instance, it requires applying a joint system of ecological expertise and environmental impact assessment while decision-making on any activity which can have negative environmental impact. Moreover, it demands and outlines the ecological quality standards development procedure. The Law also identifies emergency ecological situations and calamities, and prescribes actions in each situation, establishes the duties of officials and bodies for prevention and mitigation of consequences, as well as the liability of persons or organizations which have caused the damage to environment or otherwise have broken the Law.

The Law established some types of control over observance of the ecological legislation norms: state control, ministerial control, enterprise control, and public control.

State control is performed by the State Committee for Environment Protection and Forestry, Sanitary Inspection of the Ministry of Health, Inspection on Industrial Safety, and Mountain Inspection.

Ministerial control is performed by each ministry (and other state agencies) over the objects attached to them.

Enterprise control means that each enterprise during its activity should observe the ecological legislation. In practice, both the ministerial control and enterprise control less effective than the state control because of strong personal interests. When violation neither the higher ministry nor the enterprise are willing to stop their criminal activity or inform the State Committee or law enforcement entities of offences.

Public control is performed by public organizations or trade unions and can be applied towards a governmental body, enterprise, a subject or a private person. However their function is limited to the submission of a report to law enforcement

agencies or local departments of the State committee on probable offences, since neither private persons nor public organization have special equipment for detecting less visible irregularities. Nor they have authorities of independent law enforcement entities. However departments of the State Committee for Environment Protection and Forestry notice that even these limited forms of public participation in controlling observance of the ecological legislation provide them great support.

The characteristic feature of the Law on Nature protection is that it includes *the chapter on the right of citizens to ecological information* “Citizens of the Republic of Tajikistan have the right to timely, full and a trustworthy information on the condition of air, water, soils, entrails, forests, fauna, and radiological situation in Tajikistan. This right is provided by periodic media statements and publications”, *on the right of citizens in significant environmental decision-making and the implementation control* “Citizens of Tajikistan have the right to participate in and control over drafting, adopting and implementation of decisions related to environment impact. This right is provided through promulgation and public discussion of draft ecologically important decisions, public ecological expertise, and implementation of projects.

Obligations of the authorized bodies is to take into account proposals of citizens using various forms of public participation in environment protection; *public ecological education*, which has been probably used for the National program of ecological education.

Law of the Republic of Tajikistan “On Information” №320 consolidates the right of citizens of the Republic of Tajikistan to information, and establishes legal bases of informational activity.

Main principles of informational relations are the next: guaranteed right to information; openness, information availability and freedom of its exchange (Article 4, Law of the Republic of Tajikistan on Information).

The subject of information is the citizen of the Republic of Tajikistan; legal persons; and the State. Other states, their citizens, legal persons, international organizations, foreign citizens and persons without citizenship can also be subjects of information (Article 5 Law of the Republic of Tajikistan on Information).

State mainstream information policy is timely access of citizens to information (Article 7 Law of the Republic of Tajikistan on Information).

Law of the Republic of Tajikistan “On information”, Article 9 provides the right to information, a mechanism for exercising the right to information; realization of the state control over legislation observance on information; liability for the law on information infringement.

The state guarantees freedom of information to all citizens and legal persons in political, economic, cultural, social, spiritual, **ecological**, scientific and technical,

international spheres of public life within the framework of their rights and liberties, functions and powers except for cases stipulated by the legislation of the Republic of Tajikistan (Article 11 Law of the Republic of Tajikistan on Information).

Persons, who have broken the law “On Information” are drawn to responsibility in cases of unreasonable refusal of granting and delayed granting of information, as well as its deliberate concealment.

Law of the Republic of Tajikistan on Ecological expertise №20 from April, 22, 2003 regulates the common order of organization and implementation of ecological expertise, sets the rights and duties of the parties involved in the process of ecological expertise, establish rights of citizens to information on ecological danger of objects undergoing designing, construction and exploitation, as well as accepted on its basis order of appeal for conclusions and disputes consideration, as well as establishes responsibility for law infringements in the field of ecological expertise (Chapter 1 of Law of the Republic of Tajikistan on Ecological Expertise).

Article 4 determines the objects of ecological expertise. One of the problems is to prepare objective, and scientifically justified conclusions of ecological expertise; their timely submission to governmental and other bodies taking decisions on the object of ecological expertise, informing persons involved, the community, and citizens.

Article 5 specifies principles of ecologic expertise. Ecological expertise is based on principles of publicity, public participation, and account of public opinion.

Article 6 specifies that on the territory of the Republic of Tajikistan two types of ecological expertise is practiced, one of which is *public ecological expertise*.

The public expertise is organized and held on citizens and NGO’s initiative. Their basic activity in accordance with their charter is environment protection including the organization and conducting of ecological expertise.

Law of the Republic of Tajikistan on Hydrometeorological Activity of December 2, 2002 №86, establishes legal bases of activity in the sphere of hydrometeorology and is meant to meet the needs of the state, natural persons (as Article 17 of the Civil Code RT provides - citizens (natural persons) are citizens of the Republic of Tajikistan, citizen of other states, as well as persons without citizenship) and legal persons in hydrometeorological information, as well as in information on actual and forecasted state of environment, including the emergency information (Law of the Republic of Tajikistan on Hydrometeorological activity Article 3).

Environmental information and informational output is open and accessible, except for information ascribed by the legislation of the Republic of Tajikistan to the category of limited access (Law of the Republic of Tajikistan on Hydrometeorological activity Article 20).

Environmental information and informational production is provided free of charge as well as on the basis of contracts according to the Law of the Republic of Tajikistan on Hydrometeorological activity and the legislation of the Republic of Tajikistan on Nature protection.

The general purpose information is available in the form of texts, tables and schedules via post, mass media, e-mail network, regular announcement or by inquiries.

The special environmental information is available on the basis of contracts.

The International agreements recognized by Tajikistan and other normative and legal documents of the Republic of Tajikistan establish the rule of presenting environmental information to foreign natural and legal persons (Law of the Republic of Tajikistan on Hydrometeorological activity of December 2, 2002 №86, Article 23).

Law of the Republic of Tajikistan on State Statistics № 431 from May 15, 1997 specifies that main objectives of State statistics are presenting statistical information to governmental bodies. State statistics bodies are tasked to provide availability of aggregate statistical information to public, including its publication in print media through radio and TV.

Legislation of the Republic of Tajikistan on Information protection is based on the Constitution of the Republic of Tajikistan and includes the **Law “On Information protection”**, other normative-legal acts of the Republic of Tajikistan, as well as International legal documents recognized by the Republic of Tajikistan. (Law of 2 December 2002 on Information protection №71, Article 3).

Documented information, for which certain rules and restrictions are established by the owner or holder of such information in accordance with the legislation of the Republic of Tajikistan, is the object of protection. (Law on Information protection, Article 5).

Legal relations subjects in the field of protection of information is the Government represented by state bodies, natural and legal persons, which in accordance with the legislation of the Republic of Tajikistan have the right for establishing of certain rules and procedures on protection of information as well as restrictions while working with information (Law “On Information Protection”, Article 6).

Legal relation subjects have the right on protection against the harm inflicted while information protection process resulting from to lawful or unlawful actions (Law “On Information Protection” of 2 December 2002 №71, Article 7).

Law on specially protected natural territories provides priority of specially protected natural territories above economic and social and economic interests. However, the law also allows usage of specially protected territories if scientists conclude that a concrete type of utilization meets economic interests without ecological harm.

Each type of specially protected territories has a different regime of protection and utilization (for instance, all kinds of activity are forbidden in reserves while the territories of Natural parks can be used for tourism and other limited kinds of

economic activities). All such territories should be considered as a uniform system and should be a state property only. They also should be included in Cadastre of specially protected territories which is led by the State Committee for Environment Protection and Forestry (Chapter 9 on Forest and Biodiversity control and Chapter 11 on Ecotourism, Mountains and National parks).

Other laws

Insert 2.2. Some ecological laws
<p><i>Air Quality</i></p> <ul style="list-style-type: none"> • Law on air protection • Law on hydro-meteorological activity <p><i>Minerals</i></p> <ul style="list-style-type: none"> • Law on Entrails <p><i>Water</i></p> <ul style="list-style-type: none"> • Water Code <p><i>Land management</i></p> <ul style="list-style-type: none"> • Land Code • Law on land management • Law on land valuation <p><i>Forests</i></p> <ul style="list-style-type: none"> • Forest Code <p><i>Fauna and flora</i></p> <ul style="list-style-type: none"> • Law on fauna protection and utilization • Law on flora protection and utilization • Law on plants quarantine <p><i>Health and security</i></p> <ul style="list-style-type: none"> • Law on sanitary and epidemiologic security of the population • Law on veterinary medicine • Law on salt iodination • Law on foodstuff quality and safety • Law on industrial safety of dangerous industrial objects • Law on radiological security <p><i>Waste and chemical substances management</i></p> <ul style="list-style-type: none"> • Law on industrial and consumption waste • Law on production and safe handling of pesticides and agrochemicals

The laws in inset 2.2 are not complete and do not include sub-law acts.

National Ecological Program of the Republic of Tajikistan

By the Government Decision of the Republic of Tajikistan on State Ecological Program from August 4, 1997, № 344 it is stipulated:

- to improve public ecological education and professional training;
- to improve ecological information and methodology supply;
- to develop and introduce ecological education programmes in kindergartens, schools, vocational schools, secondary special and higher education institutions.

For broad public opinion building on environment protection and rational nature utilization to coordinate the entire ecological awareness raising activity in Tajikistan facilitating the creation of a broader network of ecological clubs, houses of nature, ecological centres (Aarhus-Centre), seasonal ecological camps for schoolchildren, enhancing the role of public ecological education in reserves, national parks, resorts, etc.

Table 2-1: Availability and accessibility of environmental information

Type of environmental information	Institute which possesses the information	Information availability for public	Payment	Comment
Available information of dangerous emissions and their sources				
Inventory of dangerous objects	Ministry of Emergency Situations (MES); (SCEPF)	limited	Free by approved list	Law of the Republic of Tajikistan "On State Secret"
Inventory of waste products storage sites	MES; SCEPF, Ministry of Agriculture(MA), ministries and departments engaged in waste products storing	limited	Free by approved list	Law of the Republic of Tajikistan "On State Secret"
Information on waste quantity and quality	SCEPF	available	free	
Registers of 1. Emissions 2. Pollutants transfer	1. SCEPF 2. Is not conducted	limited	Free by approved list	

Atmosphere emissions	State Committee of Statistics of the Republic of Tajikistan (SSC RT)	available (information is published in YB and special bulletins)	-free -paid	Free by approved list, large libraries are included in this list
Water pollution	Ministry of Water Management of the Republic of Tajikistan (MWM RT)	available (information is published in YB and special bulletins)	-free -paid SSC RT	free by approved list in the SSC large libraries included
Information on chemically dangerous substances	Ministry of Health (MH); Chemical Safety Commission within the Government of Tajikistan	limited	free by approved list	Law of the Republic of Tajikistan "On State Secret"
Pesticide /chemical products registers	Ministry of Agriculture (MA); MH; Chemical Safety Commission	limited	free by approved list	Law of the Republic of Tajikistan "On State Secret"
Information on environment quality:				
Water quality	Agency for Hydrometeorology; MWM ; MH SSC	available	-free -paid in the form of statistical booklet	
Air quality	Agency for Hydrometeorology	available		
Soil and food stuff quality	MH; MA	limited		
Epidemiological data	MH	available		
Information on protection of environment and biological diversity:				
Protected species/ sites inventory	Tajik National Park; Forestry department; SSC RT; Biodiversity centre	available	-paid in the form of statistical booklet-free	Is published by SSC RT in the form

				of booklets; by Tajik National Park and Biodiversity centre – in booklets
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Table 2-2: Availability and accessibility of Governmental information on indirect environmental impact

Type of environmental information	Institute possessing the information	Public access to information	Payment	Comments
Land tenure planning	State Committee of Land (SCL); Ministry of Economy and Trade (MET)	limited	free	
Transportation planning	Ministry of Transport (MT); ministries and departments; MET	limited	free	
Power planning	Ministry of Energy (ME); MET	limited	free	
Agricultural policy and planning	Ministry of Agriculture; Ministry of Economy and Trade; State Committee for Statistics	available	free	

Table 2-3: Brief assessment of access to information: area and the questions demanding further attention and capacity building.

<i>Area/question demanding attention</i>	<i>Deterrents in problem areas</i>	<i>Prospective activity on capacity building</i>
Establishing public ecological expertise in	Absence of by-laws regulating issues on	Development and adoption of respective

accordance with the requirements of ecological legislation of the Republic of Tajikistan and its activity regulation	establishing public ecological expertise and its activity	by-laws with the involvement of public and NGO
Establishing state databank of ecological information, including metadata and providing access to it.	Inefficient system of ecological monitoring	Rehabilitation and improvement of existing ecological monitoring system and connection to European network EIONET
Introducing of approved effective methods for training specialists and NGO representatives on issues of collecting, analysis and presenting ecological information in accessible form.	Absence of methodologies fully complying with the requirements of the Aarhus Convention	Studying and applying the experience of countries with effective training system in this direction

2.2. Environmental Impact Assessment and Ecological Expertise

2.2.1. Environmental Impact Assessment (EIA)

In Tajikistan the EAI is a component of the State ecological expertise as it is mentioned in the amendment to the Law on Nature Protection and to the Law on Ecological Expertise (2002).

Definition of the objects subject to the EIA is very wide under these two laws - it includes planning of all new objects and kinds of activity which can influence the environment. Once EIA is carried out it is subject to obligatory consideration by bodies of the State Ecological Expertise

These laws also urge the Government to approve the list of kinds of activity and objects for which the EIA is obligatory. The State Committee for Environment Protection and Forestry has started composing the list and the procedure of carrying out the EIA for further submission to the Government for consideration. However, public hearings are not carried out almost as it is required by laws in effect.

The system of ecological audit of current activity does not work, but the system of ecological expertise of the new activity functions already for a long time.

2.2.2. Ecological expertise

According to the Law on Ecological Expertise (2003), ecological expertise is meant for prevention of negative impact on environment as a result of proposed activity, forecasting impact from activity, which is not considered as necessarily causing damage to environment, and for the creation of a database about environmental situation and knowledge of anthropogenous (man-caused) impact on environment. This Law and the Law on Nature Protection provide two kinds of ecological expertise - the State ecological expertise and public ecological expertise that are not considered as equally important. Whereas, the state ecological expertise is a precondition for starting any kind of activity which can have negative impact on environment, public ecological expertise becomes binding only after the approval of its results by the state ecological expertise agency.

Public ecological expertise can be initiated both by private persons and public ecological organizations. However, such independent expert assessment can be carried out only by public organizations which under their statutes focus their activity on ecological issues and only if public ecological expertise is clearly mentioned in their statutes. Even then public ecological expertise can't be started, if the application for this expertise is not registered with the local executive body (Hukumat). Moreover, Hukumat can deny registration on an official ground. Public ecological expertise is a very complicated time, efforts and money consuming enterprise for a public organization to meet official legislative requirements instead of focusing all resources (usually scarce ones) on main activity - carrying out public ecological expertise.

The Decree of the Council of Ministers of 1994 "On the approval of the regulation on State Ecological Expertise" establishes the normative status of the body in charge of state ecological expertise, which currently is the State Committee for Environment Protection and Forestry. The state ecological expertise can engage leading scientists and qualified international experts in the preparation of the review. The results of expertise should be authorized during 45 days (unless the project developer agrees to prolongation), and are valid during two years, if the conclusion is positive.

Under the Regulation, all developers apply for state ecological expertise, at least for a new construction to the Sughd Province State Committee for environment protection and forestry, as it is deemed impossible obtaining a plot of land before positive preliminary decision is submitted to the Hukumat's Land Committee. Upon termination of the construction, the final approval of the state ecological expertise should be submitted, before the enterprise is authorized to start works.

The number of applications for expertise for the reconstruction of functioning objects (which is also an object of ecological expertise) is lower, as the reconstruction (of medium and small enterprises) is less visible. State expertise

seldom rejects projects preferring enable applicants to correct the problems figured out.

Procedure of licensing the activity in sphere of the ecological expertise adopted by the Government in July 2003 provides that both natural and legal persons who want to acquire the status of ecological experts have to submit an application for license to the State Committee for Environment Protection and Forestry. Licenses are issued to successful candidates during 15 days for the period up to two years (with a possibility of prolongation on the demand of the licensee). The licensee can be exposed to control of bodies of state ecological expertise for meeting the terms of the license.

2.3. Licensing, Sanctioning and Ecological STANDARDS

Though licensing and distribution of permits are not precisely differentiated in the Law on ecological expertise, licenses grant general right of carrying out an activity whereas the permit entitles to a certain kind of resource. Sometimes these terms are used, substituting each other. In the context of ecological legislation, it is usually necessary to have both the license for a kind of activity (on carrying out of geological prospecting works or dangerous waste processing), and the permit to mining or storage (extraction of minerals or storage of wastes).

2.3.1. Licenses

Licenses are legislative tools for the management of a potentially dangerous activity when the minimal qualification and strict observance of rules for guaranteeing effective and safe carrying out of activity is required, and that it will not entail in potentially significant and irreparable damage for environment and health of people. In particular licenses are required:

- For participation in carrying out of ecological expertise;
- To operations with dangerous waste;
- For the activity in the sphere of industrial safety, ionizing radiation sources, production of pesticides and others agrochemicals and manipulations with them.

As a rule, licenses are issued by this branch higher regulating bodies (the Ministry or Committee) or a structure to which this right is delegated. For example, licenses to tourism agencies providing service to foreign clients are issued by the Ministry of Economics and Trade. The Government or higher regulating bodies for branches of industry establish the amount of payment for the license.

Licenses are used as well for ensuring the most effective and sustainable use of natural resources. For example, licenses are required for carrying out geological prospecting works, development or extraction of minerals or for building of underground constructions, which do not relate to mountain works.

The Law on ecological expertise and Regulations on the Commission for Chemical Safety establishes a system of registration of chemical and biological substances, fertilizers and other substances or compounds, which are proposed for initial use or import to Tajikistan. These substances or compounds should pass obligatory state testing in laboratories and industrial enterprises for the assessment of their biological, toxicological and ecological characteristics. If results of testing are positive, the substance or a compound should be registered by the mentioned Commission and included in the list of chemical substances and biological combinations allowed to be used.

2.3.2. Permits

Permits usually mean ensuring sustainable utilization of natural resources. There are two kinds of permits: permits to the extraction of natural resources and permits to emissions or dumpings.

Permits to extraction of resources

These sanctions allow their owners to extract a certain number and quantity of a concrete natural resource in a certain territory and for a certain period of time. They are issued both to private persons (on extraction of a concrete kind of animals or gathering certain plants), and to organizations (a permit on the extraction of underground and surface waters for certain use).

According to the law, permits are necessary for any commercial use of any resource. Permits issued by authorities and a normative document (the Decree of the Government), which is applied, depend on a kind of resource. In addition, the Law “On nature protection” establishes some requirements to a site, designing, construction, modernizations and operation of the enterprises, buildings and other constructions.

Permits to emissions of contaminating substances

This type of permit is issued by corresponding inspection (the State Water Inspection or the State Air Inspection) of local committees of the State Committee for Environment Protection and Forestry to industrial or agricultural enterprises, municipal structures which dump by-products to the environment. Permits allow making a certain quantity of polluting substance (gases, liquids, hard waste) emissions to the environment. Permits are normally issued for one year and maximum permissible concentration of the pollutants in the emitted substance, limited volume of the polluted substance and allowed pollutants is specified in them.

Ecological norms and standards

Norms are established on air and water pollutions, noise, vibration, H-fields and other physical factors, as well as on residual traces of chemical substances or biologically harmful microbes in foodstuff tuffs. Excess of their threshold rate entails administrative actions, including financial sanctions.

Some ministries determine ecological standards of quality, each in sphere of its competence. For instance, allowable noise levels, vibrations, H-fields and other physical factors are standardized by the Ministry of Health. The former Ministry for nature protection established norms of pollutants emission in water, air, as well as removals of solid waste.

2.4. Performance and Observance

A number of legislative acts establishes obligations for infringement of ecological laws which observance is supervised by several State bodies.

In particular, the Code of 1998 about administrative offences establishes the administrative responsibility for organizations, their staff, and private persons for a number of infringements, from negligent land management to infringement of water utilization rules, waters security or non-observance of state ecological expertise requirements. There is a set of bodies authorized to control observance of the administrative responsibility, everyone for a certain type of ecological infringements. In particular, administrative sanctions for ecological infringements can be imposed by administrative commissions of Hukumats, courts, inspectors of the State Committee for Environment Protection and Forestry, veterinary inspectors of the Ministry of Agriculture, and the State Land Committee.

The most widespread administrative penalty is the fine up to 10 minimal monthly salaries for private persons and up to 15 minimal salaries for organizations employees. As the minimal monthly salary in Tajikistan is low (about 2,5 US dollars a month), the punishment does not seem severe. However, real incomes also low (15 US dollars a month), that is the fine from 10 up to 15 minimal salaries is a significant burden for the ordinary citizen. Infringers can get off with notification.

Limited resources of the authorities for carrying out regular control are accountable for problems with the enforcement of the environmental legislation. As a rule, a year passes before the inspectors of the State Committee for Environment Protection and Forestry come again to the enterprise to check the performance of the previous instruction on remedying the infringement found out during previous raid. Only in the course of the second visit, the inspector can impose fine to the director, if the instruction has been ignored.

According to reports of inspectors of the Sughd Province State Committee for Environment Protection and Forestry presently about 50 % of infringers pay fines,

whereas still in 2001, only 10 % of infringers paid. The reason of improvement stems from the fact that inspectors have started reporting on all defaulters to the lawyer of the Sughd Province State Committee for Environment Protection and Forestry, who in his turn institutes legal proceeding against defaulters. Such actions are usually solved in favour of the Sughd Province during two - eight weeks. Little more time is required for receiving the judgment of the economic court against the enterprise, if the inspector has instituted a recovery suit. Although normally economic courts consider these actions rather promptly, nevertheless, the beginning of hearings can be delayed for some months. The State Committee on Environment Protection and Forestry does not pay state due for submission of claims to court.

The State Committee for Environment Protection and Forestry can suspend the activity of an enterprise infringing the environmental legislation. In 2003, in the Sughd Province where the majority of the industrial enterprises are concentrated on a small area, the local Committee for Environment Protection and Forestry had temporarily suspended the activity of 70 enterprises.

The Prosecutor office and sanitary and ecological militia carry out inquiry of ecological crimes and can play rather essential role applying the environmental legislation. Competence of the State Committee for Environment Protection and Forestry in the field of investigation of administrative infringements and imposing administrative fines does not interlace with that of the Prosecutor's office or sanitary and ecological militia on the investigation of infringements and prosecution of infringers. Actually, to some extent they cooperate among themselves as local Committees for environment protection and forestry hand over actions to sanitary and ecological militia and to the Prosecutor's office if the inspectors have revealed an infringement, which can be qualified as criminal.

The Criminal Code of 1998 covers crimes against ecological security and environment, such as infringements of ecological safety on a working place, poaching, land contamination and infringement of rules on protection and use of underground resources. The maximal fine is 2000 minimum monthly salaries, and the maximum prison term - up to eight years of imprisonment. However actually, in accordance with the legal department of the State Committee for Environment Protection and Forestry only two legal proceedings have been instituted against ecological crimes over the last years. Both cases involve military men and will not be handed over to court on the termination of investigation.

CHAPTER III. Public Participation in Executive and Administrative Decision-making on Environmental Issues

3.0 Introduction

In the process of civil society building and establishing democratic principles the main question is public participation in decision-making. Most frequently this question finds understanding and is included in strategic documents, both on national and international levels as an integral component providing multilateral consideration of problems and taking the most optimal decision. The purpose of public participation is the creation of partnership to enable using a collective potential of all interested parties. Public participation promotes attraction of all interested persons in all sectors to decision-making process, overcoming differences in opinions, provides equal process and equal results for all interested persons.

In the legislation of the Republic of Tajikistan ecological rights of the public are secured, first of all in the Law “On nature protection”, in accordance to which citizens and the public has the right:

Article 10. The right of citizens on the environment favorable for life

- Each citizen of the Republic of Tajikistan has the right to residing in environment favorable for his health and life.

This right is provided:

Through meeting ecological requirements upon accommodation of productive forces, the enterprises, constructions and other objects impacting environment, upon laying out of territorial - industrial complexes, development of the industry, agriculture, power engineering, transport and other branches of the national economy.

Article 11. The right of citizens on health security from unfavorable environmental impact:

- Each citizen of the Republic of Tajikistan has the right to health security from unfavorable environment impact resulting from economic or other activity, accidents, catastrophes, natural disasters.

This right is provided:

Through planning and standardizing quality of the environmental measures on prevention of ecologically harmful activity and improvement of the environmental situation, by prevention and liquidation of consequences of accidents, catastrophes, natural disasters;

Through refurbishment in the judicial or administrative order of the damage caused to health of citizens as a result of pollution of the environment and other harmful impacts on it including consequences of accidents catastrophes;

Through the state and public control over the environmental situation and observance of the nature protection legislation, through drawing to responsibility person's guilty of infringing requirements of the population's ecological security.

Article 13. The right of citizens for participation in environmental decision-making and control over their implementation:

- Citizens of the Republic of Tajikistan have the right to participation and control over development, adoption and enforcement of environment impact related decisions.

This right is provided by promulgation and public discussion of draft ecologically important decisions, carrying out of public ecological expertise of projects, by tasking authorized entities to make due account of citizens' proposals, by various forms of public participation in environment protection.

Non-addressing environmental problems is one of constraints for social and economic development and generates ecological disasters. Low efficiency of public democratic population groups activity, weak base for such an activity, namely, absence of methodology, coordination mechanism, tools of realization of public interests, mechanisms and procedures of interaction with state structures, contribute to that. Significant is the absence of interaction between the community and authorities at various levels (local, national, regional).

In such a sphere as ecology and natural resources, where interests of everybody are touched upon, each person should be guaranteed a real opportunity to express the opinion.

Taking into account the mentioned above one can draw a conclusion: the community can and should take part in tackling environmental problems at the most various levels, including participation in development and enforcement of Domestic environmental action plans (DEAP).

Thus, one of the forms of involving of the population in tackling topical ecological and social questions, proceeding from own interests, historical development peculiarities, as well as national and cultural values, local customs and traditions, is the development of Domestic environmental action plans. That will be one of the forms of public involvement in handling pressing ecological and social issues, proceeding from own interests, historical development peculiarities as well as national and cultural values, local customs and traditions.

3.1 Public participation in executive and administrative decision-making

In the Republic of Tajikistan the basic normative-legal base is developed in the field of environmental security, which generally meets the requirements of the time. However, there is some isolation of legal system from real situation regarding public participation in environmental decision-making. In practice, the rights of citizens prescribed in the legislation are not applied given the lack of an approved public participation Procedure.

Thus, in the ecological legislation in effect provisions legalizing public participation in projects enlisted in the Annex 1 to the Aarhus Convention are lacking.

Provision on public participation in decision-making demands development of the norms and procedures of participation by amending existing legislative and normative acts, or creations of new by-laws.

Regular and reliable means for publication of draft laws, draft normative-legal acts, as well as policies of plans and programs should be engaged.

Basis of the public participation in decision-making, access to information and justice in environmental matters, in addition to laws accepted in the country, is also a number of the international conventions and agreements. Among them: Aarhus Convention, the Agenda on the 21st century, the UN Framework Convention on Climate Change, the UN Convention on Combating Desertification, the Convention on Biodiversity

Table 3-1: Brief description of options for public participation in decision-making by the executive power

Field / issue, demanding attention	The general obligation on public participation (Yes / no)	Respective legal provisions
Development of plans, policies and programs	Yes	Article 13 - Law on nature protection
Preparation of bills by the executive power for the Parliament	No	
Development of generally applicable rules and provisions (delegated passing the laws)	No	
Development of administrative instructions	No	
Standards development	No	
Judicial / design decision-making	No	

One of the most important documents on public participation in decision-making are accepted by Parliament Water, Land, Air, Civil, Administrative and Forest codes of the Republic of Tajikistan, where the role of public associations in environmental decision-making process is envisaged. Development of norms as well as preparation of draft laws is entrusted to the respective ministries and agencies, the sphere of competence of which includes environmental issues.

Table 3-2: Overview of options for extrajudicial consideration

Type of process and decision-making	Option of extrajudicial consideration	Respective Constitutional or legal provision
Preparation of plans, policies and programs	The agreement, contracts, claims	Regulations on ministries (by-laws)
Preparation by the executive power of bills for the Parliament	Public hearings, claims	Regulation on Majlisi Oli RT, Regulation on Majlisi Namojandagon Majlisi Oli RT
Development of the generally accepted standard norms and normative provisions	Agreements, Decrees	Regulation on ministries (by-laws)
Development of administrative instructions	Administrative penalties fine sanctions	Administrative acts
Standards development	Agreements	By-laws
Development of decisions on concrete projects	By-laws, Penal sanctions	By-laws

The level of the public participation can be various - from the simple information exchange - a necessary condition without observance of which any of higher participation degrees cannot be achieved, to consultations, within the framework of which opinions without any obligations to act to their basis are figured out. The highest level of participation – a joint decision-making and promotion of initiatives by citizens. Presently, in Tajikistan participation is carried out at all levels described above, its organization proceeding both "from top to bottom", and "from bottom to top" when the initiators are various associations, such as NGO, trade unions, public associations. It most widespread participation as informing the

public as well as consultations on various questions, various trainings on environmental problems.

Recently even more often representatives of the society take part in joint decision-making in a capacity of members of various working groups on development of documents, co-ordinating committees and participating in joint sessions on decision-making.

Table 3-3: Public participation in national processes relating to international agreements

International agreements and processes	Level of public participation in national processes (high, middle, low)
The Commissions on sustainable development (realization WSSD) and further steps	Middle
National sustainable development strategy	Low
Process “Environment for Europe”	-
The UN Framework Convention on climate change Kyoto Protocol	Average
The Intergovernmental Commission on climate change	Low
The Convention on a biological diversity	Low
Kartahena Protocol on bio-safety	Low
UN Forum on forests	-
The Convention on international trade by endangered species	-
The Convention on Ozone layer protection	Low
The Montreal Protocol on substances destroying ozone layer	Low
The Stockholm convention on Stable Organic Pollutants	-
Rotterdam Convention on the previous permits of certain harmful substances	Low
Globally harmonized system of chemicals classification and marking	Low
Intergovernmental forum on chemical safety	Low
Basel Convention on the control of crossborder movements of dangerous wastes and their disposal	-
The UN Convention on maritime law	-
WTO environmental trials	Low

Table 3-3: Brief description of public participation assessment -

fields and the issues demanding further addressing and capacity building

Field / issue demanding attention	Deterrents in sensitive fields	Possible capacity building activity
Absence of precise definition of “public” complicates consecutive application of the Convention	It depends on obligations of the state agencies on providing the public with ecological information	To make additions to normative acts in effect
Absence of methodology, coordination mechanism, tools of realization of public interests, mechanisms and procedures of interaction with the state bodies	Inefficient work of the public under the Convention	Creation of precise normative framework for providing access to ecological information, public awareness-raising on ecological problems, strengthening environmental legislation on ecological norms enforcement issues
Development of the “Regulation on public participation in decision-making”, particularly of Annex 1 to the Aarhus Convention		Amending normative acts in effect
Development of the mechanism concerning to participation and involving of the public according to requirements of Article 6 Aarhus Convention		

CHAPTER IV. Access to Justice for Enforcement of the National Ecological Legislation

4.0. Introduction

Article 9 of the Convention on “Access to Justice” provides, that any person considering that his request on access to information filed in accordance with article 4, is not considered, unlawfully rejected, be it partly or completely, has the right to apply to justice or to other independent and impartial bodies.

The Constitution of the Republic of Tajikistan secures such form of protection of citizen’s rights, and they are guaranteed in article 19: “Everyone is guaranteed judicial protection”.

In the court of the first instance all criminal cases on the crimes committed by imprudence, and equally on the crimes committed deliberately for which the law stipulates punishment up to five years of imprisonment, are considered by the single judge.

Cases on crimes committed deliberately, for which the law stipulates punishment over five years of imprisonment, are considered (examined) jointly in the composition of the judge and two jurymen.

Supreme Court of justice within its mandate considers actions as court of the first, second instance, by order of surveillance and on newly discovered circumstances.

Supreme Economic Court: considers in the first instance the actions subordinate to economic courts;

Court of the Badakhshan Province, province courts, court of Dushanbe:

Within their authorities consider actions as court of the first instance, in the cassation order, by way of surveillance and on newly discovered circumstances.

The judge or board of referees carries out consideration of civil and criminal cases in all courts individually.

Judges consider civil cases in all courts on the first instance individually.

Consideration of actions in board of referees of corresponding courts in the court of appeal and surveillance order is carried out in composition of no less than three judges.

The presidium of court considers cases at presence of the majority of presidium members.

4.1. Examination of Cases in Court

Court examination can be initiated by citizens, NGO, enterprises, organizations, sustained material and mental damage as a result of infringement of their rights and denial of access to information, on its refurbishment and rehabilitation. They also have the right:

- to present proofs;
- to declare petitions;
- to participate in court examination;
- to ask body of inquiry, the inspector and the court on tasking measures on maintenance of the suit declared by them;
- to support the civil suit;
- to get study materials of the case from the moment of preliminary investigation completion, and on cases on which preliminary investigation was not carried out, from the moment of transferring the accused to the court;
- to demur, to bring complaints on actions of the person performing inquiry, the investigator, the public prosecutor and court, as well as to bring complaints on a verdict and definitions of court regarding the civil suit.

Every plaintiff is obliged to present documents relating to the brought suit available to him (or to them) on demand of court.

Any citizen and a legal person can find protection of the infringement rights on the questions referred to the court competence.

Upon consideration in court of civil and criminal cases in the order established by the legislation of the Republic of Tajikistan, participation of public organizations and labour collectives representatives is supposed.

Foreign citizens and persons without citizenship enjoy on the territory of the Republic of Tajikistan the right on judicial protection equally with citizens of the Republic of Tajikistan. Only laws of the Republic of Tajikistan can establish another order of protection of citizens' rights and legitimate interests.

4.2. Reasons for Commencement of Proceedings.

On received applications and communications necessary materials can be demanded and explanations received, however, without inquest actions stipulated by the law.

Under received application or communication one of the following decisions is taken:

- 1) on the commencement of prosecution;
- 2) on the denial of the commencement of prosecution;
- 3) on the referral of the application or communication in accordance with the competence or jurisdiction.

The applicant is informed on the decision taken.

Necessary conditions to institute legal proceedings are:

- 1) *applications and letters* of citizens and other public organizations;

2) *communication* of enterprises, organizations, other public organizations and officials;

3) *articles, notes and letters* published in mass-media;

4) *direct detection* of signs of a crime *by body of inquiry*, the inspector, the public prosecutor or court.

The prosecution can be instituted only on availability of sufficient evidence indicating on a crime.

4.3. Public Access to Respective Documents

To initiate the victim and his representative, the civil plaintiff and the civil defendant or their representatives with materials of the case the minutes are made.

Having found the collected proofs sufficient for drawing up of the verdict of guilty the inspector declares of that to the defendant and explains to him, that he has the right to get familiar with all materials of the case both personally, and with the counsel for the defense as well as on the application of the petition for additional preliminary investigation.

The Counsel for the defense has the right:

- to get familiar with all materials of the case;
- to write out any data and in any volume from it.

After the submission of the accused to the court the judge is obliged to provide the prosecutor, the defendant, the counsel for the defense as well as the victim and his representative, the civil plaintiff the civil defendant or their representatives with the opportunity to get familiar with all materials of the case and to write out necessary data from it. Presiding is obliged to provide participants of the process with the possibility of getting familiar with the protocol.

Access to the state secret is granted to capable citizens at the age from 18 years, to whom it is necessary within terms of reference of their service or scientific-research activity and who arranged the respective admission in the order stipulated by the Law.

The decision on granting access to a specific information constituting state secret is taken by heads of the state bodies, enterprises, organizations, where works are carried out or the data carriers connected with this information in the order established by the law.

Denial of granting public access to the specific information is possible only at absence of the bases stipulated by part one of this article and can be appealed against to the official of a higher level, to whom the official who has denied the citizen access to the specific information constituting the state secret, is subordinated. In case of non-gratification of the complaint the citizen has the right to appeal against unlawful actions of officials in court.

The public has the right to participate in proceedings as well as has the right to participate through its representatives (public organizations and labour collectives).

4.4. Options for Appealing Against Judgment.

The person, subjected to arrest, has the right to the appeal and judicial control of legitimacy and validity of his detention.

It needs to be mentioned, that refusal in instituting prosecution can also be appealed against by the applicant accordingly to respective public prosecutor or in higher court.

The defendant, his defender and the legal representative, the victim, as well as the civil plaintiff and his representative have the right to appeal against a verdict and the decision of court in the appeal order. The public prosecutor is obliged to protest in the appeal order each arbitrary or ungrounded verdict and the decision of court.

The civil plaintiff, the civil defendant and representatives have the right to appeal against a verdict in the part referring to the civil suit.

The person acquitted in court, has the right to appeal in the appeal order against the verdict regarding motives and the bases of the acquittal.

The verdicts which have not come into legal effect can be appealed and protested in the appeal order:

- 1) verdicts of district (city) People's courts - in oblast court
- 2) verdicts of district People's courts;
- 3) verdicts of district (city) People's courts of districts and cities of republican subordination - in the Supreme Court;
- 4) on verdicts of garrison's military court - in Military Board of the Supreme Court;
- 5) on verdicts of the Supreme Court - in Judicial Board on Criminal Cases of the Supreme Court.

Appeal complaints and protests are brought through the court, which has taken the verdict, however submission of the complaint or the protest directly in appeal instance is not an impediment for consideration of the complaint or the protest.

The verdict brought by repeated consideration of actions can be appealed against or protested in the general order.

Submission of the appeal complaint or the protest on a verdict suspends the verdict execution.

Upon expiry of the term, established for the appeal or protest, the court, which has brought the verdict, directs the case with the received complaints and the protest to the appeal instance.

4.5. Costs

In case of finding the defendant guilty, the court has the right to demand from him to recover cost except for the sums paid to translators.

At the same time, the court can demand costs also from the defendant found guilty, but indemnified.

If a number of defendants are found guilty in a case, the court decides on the size of costs to be levied from each of them, thus taking into account the guilt, the degree of responsibility and the property status of these persons.

Costs, in case of termination of the case or acquittal of the defendant, or insolvency of the person from which they should be collected, as well as costs stemming from payment of the sums to the translator upon finding the defendant guilty, are accepted on the account of the state.

Costs consist of the sums:

- 1) paid to the witnesses, victims, experts, translators and specialists.
- 2) paid for the storage, transfer and examination of material evidences;
- 3) paid for legal assistance provided by the defender, in case of exemption of the suspected, accused or the defendant from its payment, or participation of the lawyer in inquiry, preliminary investigation or in court on designation without concluding an agreement with the client.
- 4) of other costs sustained during the process.

Costs are imposed on the convicted or are accepted on the account of the state.

**Table 4-1: Access to justice within administrative law
(Brief overview)**

Type of legal dispute	The opportunity of involving of citizens (yes / no)	Responsible court	Corresponding conditions
Assize of the decisions taken by administrative bodies			
Conformity to legal procedure	Yes	Depending on the competence	Objective legal proceeding
Conformity to material norms	No	No	Maintenance in social sphere
Procedures on ensuring observance of the legislation against pollutants breaking the law			
Procedures on ensuring observance the legislation initiated by administrative body	Carrying out of activities on explanation of laws on nature	No	Material maintenance of trainings, seminars,

	protection in effect		conferences
Procedures on ensuring observance of the legislations initiated by the public	By circulation of brochures on established norms on nature protection	Yes	Prevention of infringement of legislative norms
Procedures of ensuring observance of the legislation against administrative body for inactivity on issues, which performance is stipulated by the legislation			
Lack of activity on the development of generally applicable rules and normative acts in accordance with the legislative requirements	Negligent attitude of the NGO to the activity on legal base	No	Legal awareness raising conference
Inactivity in a case when it is necessary to demand from infringers control on pollution, in accordance with the existing environmental legislation	Delayed organization of measures on elimination on pollution	Yes	Control over the activity of respective structures
Inactivity to institute legal proceeding against infringers	Failure to notify verbally and in written form about facts of infringement	Yes	Timely access, as well as conditions generating appeals

Table 4-2: Access to justice within the criminal law (Brief overview)

Type of legal dispute	Opportunity of involving citizens (yes / not)	Responsible court	Corresponding conditions
Institution by citizens / the public of prosecution through Offices of Public Prosecutor	Yes	Not	Considerations of the communication of citizens and organizations in the shortest terms There is no norm

Institution of prosecution by citizens / the public	Not	Not	in the law specifying that citizens directly institute prosecution
Participation in criminal case as the defender	Yes	Yes	Presenting materials for studying for participation in court hearings

4.6. Indemnification for Injury Caused to the Environment.

Exercise of the civil rights should not infringe the rights and protected by the legislation interests of other subjects of the right and should not cause damage to the environment.

Levying in the established order of money compensations for the damage caused as a result of spoiling or destruction of natural objects, compensation for damage caused to it, state extra budgetary national and local environmental funds are created.

The specified funds are formed due to deductions from payments for using natural resources, payments for emissions (dumps, placement) of harmful substances into environment and means levied for infringements of the environmental legislation, donations of the population and other sources.

4.7. Kinds of Injuries Requiring Indemnification

- Compensation of the moral damage caused by infringement of the obligation resulting from inflicting harm to another person;
- resulting from unfounded enrichment;
- resulting from other activities of citizens and legal persons;
- resulting from events to which the law or another legal act connects civil-legal consequences;
- the harm caused to the citizen as a result of unlawful use of his name, is subject to compensation according to the law;
- for causing harm to life or to health, by capitalization of corresponding time payments, as well as requirements on exacting the alimony;
- Material.

4.8. Responsibility for the damage caused to environment

The responsibility for the damage caused to environment is placed with: enterprises, institutions, organizations, officials and citizens, who have caused harm to the nature by contamination of environment, damage, destruction, irrational use of natural resources, destruction of natural ecological systems and other infringements of the environmental legislation. They are obliged to compensate it according to the legislation in effect.

4.9. The Criteria Used for Establishing Civil Liability for Injury to the Environment

Criteria are used in particular, in a case if deeds are committed by a juvenile independently. In this case the responsibility is placed with his parents, foster parents or guardians if they do not prove that the obligation has been broken beyond their fault. In accordance with the law these persons are also responsible for the harm caused by their juvenile children:

- while determination the amount of the compensation for moral harm the court makes due account of the degree of fault of the infringer and other circumstances deserving attention;
- the proof, that error has arisen due to the fault of another party;
- on availability of fault (deliberate or imprudent), except of cases when a law or a contract stipulate other bases for the responsibility.

4.10. Instituting Civil Cases in Court

The civil case in court can be instituted:

- 1) on the application of the person appealing for protection of his/her right or interest protected by the law;
- 2) on the application of the public prosecutor;
- 3) on the application of bodies of state government, trade unions, state enterprises, institutions, organizations, collective farms, other cooperative organizations, their associations, other public organizations or individual citizens in cases when under the law they can appeal to court for the protection of the rights and interests of other persons.

On cases of action proceeding writs are submitted on cases deriving from administrative - legal relations and on cases of special procedure - complaints and statements.

On recognition the civil plaintiff the person making inquiry, the inspector, the judges take the decision, and the court – definition.

Table 4-3: Access to justice within a constitutional law (Brief overview)

Type of legal dispute	Opportunity of involving citizens (yes/ no)	Corresponding regulations
Observance of the legislation during proceedings	Yes	The conduct of cases according to the law
Proposals on amending constitutional laws	Yes	Norms containing obligatory participation of citizens
Compliance of other provisions of by-laws with the Constitution	Yes	Providing direct participation and getting familiar with cases under examination

4.11. Alternative DISPUTE Settlement

4.11.1. The order of disputes settlement on issues of air protection.

Local executive authorities, as well as specially authorized state bodies settle disputes on issues of atmospheric air in the order established by the legislation.

Disputes in the field of air protection connected with participation of citizens, are subject to consideration judicially.

4.11.2. Conditions of their application

Disputes between state, public organizations of the Republic of Tajikistan and state, public organizations of another state on issues of air protection are considered by the commission formed on an equal footing of competent representatives of the Republic of Tajikistan and other interested state.

In a case if the commission has not come to a coordinated decision, disputes on the specified questions are subject to consideration in the order determined by the Government of the Republic of Tajikistan, or on the basis of the international legal acts recognized by the Republic of Tajikistan.

Disputes in the field of environment protection are settled in the order established by the legislation of the Republic of Tajikistan. Disputes in the field of environment protection related to participation of citizens, are subject to consideration judicially.

4.11.3. Costs of use of alternative dispute settlement mechanisms

- 1) The sums paid to witnesses and experts;
- 2) The charges stemming from the spot examination;

- 3) The charges on search of the respondent;
- 4) The charges stemming from execution of the court judgment.

4.12. The analysis and assessment

Ability to have civil procedure rights and duties (civil remedial right) is equally ascribed to all citizens of the Republic of Tajikistan, as well as to state enterprises, organizations, collective farms, other cooperative organizations, their associations, other public organizations using the rights of a legal person.

Assessing of the efficiency of the legislation in effect regulating access to justice, one can draw a conclusion that:

first - protection of the rights and freedom secured by the legislation in force will be provided;

second - restitution of infringed rights by competent bodies of the state and public associations.

Positive sides exist regarding access to justice on executive and administrative decision-making.

Positive sides take place in case of providing:

- civil rights and duties;
- fair and public hearing of case in a reasonable timeline by an independent and impartial court formed on the basis of the law;
- sufficient time and opportunities for preparation of the defense.

There is a special legislation in the Republic of Tajikistan, which are:

- The law of the Republic of Tajikistan “On Public Petitions”;
- The Civil Code;
- The Civil Procedure Code;
- The Penal Procedure Code.

The existing legislation of the Republic of Tajikistan analysis has shown, that for years of its independence the republic has accumulated certain capacity for the implementation of the Aarhus Convention provisions by the state bodies. It is necessary to note, that a Governmental Working Group has been created and a National Focal Point has been appointed in the country for the implementation of the Aarhus Convention provisions.

Table 4-4: Final assessment of access to justice within ecological legislation

The field/issue requiring attention	Deterrents in sensitive areas	Possible capacity building activity
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Necessary access to justice	Poor knowledge of the ecological legislation of the population	Knowledge upgrading and timely enforcement of norms
Compliance with international norms upon implementation of international conventions and agreements.	Infringement of the rights while practicing justice.	Getting familiar and protection of own legitimate interests
Creation of the sufficient mechanism of public participation in nature protection activities	Contamination of the environment	Organization and holding environmental activities

Within the framework of the Law of the Republic of Tajikistan “On nature protection”, the Law of the Republic of Tajikistan “On ecological expertise” and other environmental normative-legal acts specific forms and the order public access to justice are stipulated (Art. 68, 71, 80, 81,82, 83, 84. Law RT “On nature protection” of 27.12.1993 № 905).

Positive sides regarding public participation in decision-making by bodies of executive and administrative power are:

First – while public participation in decision-making by bodies of executive and administrative power, legitimate interests of the society are taken into account.

Second - in case of public participation in decision-making by bodies of executive and administrative power economic and social problems can be solved.

Third - particularly important governmental and public issues will be handled in the shortest timeframe.

Table 4-5: Brief assessment in the field of public participation - issues demanding further attention and capacity building.

Field /issue, demanding attention	Deterrents in sensitive spheres	Possible capacity building activity
1. Free access to legislative acts	The body capacity in the publication and circulation of acts.	Financial support of publishing houses for publishing normative legal acts and their circulation (print media, radio and TV).
2. Public participation, access to different	In agricultural activity	Norms regulating particularly important

kinds of activity, protection of the legitimate interests.		issues of viability of the society
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CHAPTER 5. Exercise of Procedural Rights in Certain Environment Sectors and Problem Areas.

5.1 Air Quality

Public participation

In the Republic of Tajikistan some laws regulating issues of atmospheric air quality are accepted, where rights of citizens and the public are stipulated as well.

On February 1, 1996 The Parliament of the Republic of Tajikistan accepted the Law on air protection. Article 1 of the mentioned law provides objectives of air protection: regulation of public relations in this sphere with a view of ensuring favorable environment for the life of people, flora and fauna, preservation of clearness and improvement the state of the atmospheric air, establishment of state control on use of air pool of cities and industrial centres, other settlements, sources of atmospheric air, as well as strengthening lawfulness in the field of these relations for the benefit of the present and the future generation of people.

The law stipulates the following principles of atmospheric air protection:

- Providing clearness of the atmospheric air from pollutants and its maintenance on a basis of scientifically grounded norms and standards;
- Protection of the rights of citizens, the enterprises, organizations through maintenance of clearness of the atmospheric air;
- Observance of ecological, economic and social interests of the society;
- Meeting national and international interests in the field of protection and uses of atmospheric air;
- Publicity and close contact with public organizations and the population in addressing problems on atmospheric air protection;
- Establishing degrees of responsibility for infringement of the legislation on atmospheric air protection and compensation of the damage caused by these infringements;
- Integrated approach to handling issues of atmospheric air protection and other elements of environment.

In article 5 of the present Law the competence of the Government of Tajikistan is stipulated in the field on atmospheric air protection, in particular establishment of standards of maximum permissible concentration of polluting substances in the atmospheric air and levels of harmful physical and other impact on it, the order of exaction of payment for emissions and damping of harmful substances and other harmful impacts on the environment. It is stipulated as well to take decisions on

the termination of the activity of the enterprises, organizations, irrespective of ownership forms and subordination, in case of infringement by them of the legislation on atmospheric air protection.

One of the most important in the Law is the indication on the rights and duties of citizens, as well as public participation in the field of atmospheric air protection. Public organizations are granted the right to participate in the activity of bodies on atmospheric air protection. Citizens have the right to receive the objective information on the state of the atmospheric air and measures on its protection.

In chapter 111 of the Law atmospheric air quality norm-setting and the requirement to air quality is envisaged. Article 11 of the Law specifies atmospheric air quality norms setting, which is made with the purpose of establishing maximum permissible norms of impact on the atmospheric air, providing ecological safety of the population and environment as a result of economic and other activity. These specifications are developed on the basis of international standards, conventions and agreements, latest achievements of the global science, and should meet interests of public health and environmental security. They establish maximum permissible concentration of harmful substances in the atmospheric air, maximum permissible emissions of harmful substances by stationary and mobile pollution sources, maximum permissible levels of electromagnetic fields, radiations and other harmful physical impacts (noise, vibration and others).

The enterprises, institutions and organizations dealing with emissions of harmful substances in the atmosphere, irrespective of their affiliation and ownership forms are obliged to receive the permit to emission of harmful substances in an atmosphere from bodies carrying out state control over the state of atmospheric air, to carry out organizational - economic, technical and other activity for providing implementation of terms and requirements specified in permits to emission, to take measures on reduction of emissions of polluting substances, to provide uninterrupted, effective work and maintenance in a serviceable condition of constructions, the equipment and devices for clearing emissions and control over them, as well as to carry out the permanent account of quantity and composition of harmful substances emitted to atmosphere.

In addition to the specified law the Law “On nature protection” (December 27, 1993) by which the right of citizens to healthy, favorable environmental is stipulated been adopted. Article 12 of this Law also provides the right of citizens on receiving ecological information and in accordance with the Civil Procedure Code the right to petition to court in case of infringement of their rights. There is also a Law “On Public Petitions” (December 14, 1996) where it is specified, that citizens have the right to protection of their legitimate interests.

Non- governmental organizations have the right to use the abovementioned laws and operate on the basis of their Statutes.

5.2 Land Tenure

Public participation

- Distribution of land and defining appropriate rules (for example, measures on soil erosion prevention);
- Inspection of the activity having impact on land resources and subsequent control on such an activity

Land Code of the Republic of Tajikistan is the main law, where rights and duties of land tenures are stipulated, and the order of land allotment, land protection, as well as effect of international agreements. Article 53 of the Land Code regulates ecological requirements to distribution, designing, construction and putting objects, buildings and constructions, affecting the state of the land into operation. In chapter 9 state bodies carrying out control on implementation of land legislation are established - it is Ministry of Nature Protection of the Republic of Tajikistan (presently, the State Committee for Environment Protection and Forestry).

Special chapter is devoted to problems of land protection, which includes system of legal, economic and other activities aimed on protection and rational use of lands, soils conservation, preventing their degradation and preventing unreasonable withdrawal of the most valuable land from agricultural use, as well as on rehabilitation and upgrading the soil fertility.

On May 12, 2001 the Law “On land management” has been adopted, where problems of land management are handled, principles of land management procedure, studying of land state is foreseen, purposes and kinds of works on planning use and protection of land are determined.

The right of citizens for public petition to the governmental bodies is also secured in the Law “On Public Petitions” accepted by the Parliament on December 14, 1996, and in accordance with which in case of infringement of rights and interests, violations of laws, citizens have the right to address applications, proposals and complaints to governmental bodies, which are obliged during a month to take necessary measures on revealed infringements of law.

Non - governmental organizations, which are created in accordance with the Law “On public associations”, operate on the basis of Statutes, where their tasks based on the Constitution of the Republic of Tajikistan and other acts, are determined.

Land tenure problems are also regulated by the Forest Code of the Republic of Tajikistan. In particulars, articles 4 and 5 specify lands of governmental forest fund and their structure. Lands covered with forest, as well as not covered with forest, provided for the needs of forestry are considered as lands of governmental forest fund. Lands of governmental forest fund include: forest lands - covered with forests, nursery forests, plantations, cuttings down, glade and non-forest lands -

arable lands, hayfields, pastures, waters, gardens and vineyards, roads and glades, farmsteads, sands, glaciers.

5.3. Forest Protection

Public participation

- Definition of protected areas and kinds of animal and respective rules (for instance, hunting, fishery, planting);
- Permits (any activity impacting the forest, waterlogs and others unstable ecosystems);
- Inspection of the activity impacting these natural resources and further control over such an activity.

July 20, 1994, the Law “On protection and use of fauna” was accepted. This law has 19 sections. Its main tasks are: regulation of public relations in the field of protection and use of fauna, possession and using its objects, hunting, fishery, regulation of number of animals, protection of habitat, conditions of reproduction and ways of migration of animals. In the same law protection of kinds of rare animals and endangered species, state account of animals and state cadastre of fauna, control on protection and use of fauna is envisaged. In articles 19-22 of the Law kinds of hunting, managing hunting farms, rights and duties of enterprises, organizations, institutions managing hunting economy, establishment of hunting rules and hunting management are determined. In articles 23 – 27 of the Law kinds of fishery, fishing trade, amateur and sports fishing are determined.

By the Decree of the Government of Tajikistan of July 16, 1997 the Regulation about hunting on the territory of the Republic of Tajikistan was approved, where rules of hunting, as well as the order of licensing are determined. Hunters and fishers societies have been created. These societies take part in the protection of territories and fauna species. In the same law agencies controlling the implementation of laws are determined - the State Committee for Environment Protection and Forestry.

5.4 Biological Diversity and Nature Protection

Public participation

- Definition of protected areas / species and definition of appropriate rules - Society of hunters and fishers together with all ministries and agencies involved develops “Hunting and Fishery Rules”.
- Permits (any activity impacting forest, waterlogs, and others unstable ecosystems) – the public does not participate in preparation and issuing permits.
- Inspection of actions and their consequences affecting resources and consequences of such activity - according to Article 67 of the Law “On nature protection” “public ecological control” can be carried out.

In Tajikistan more than 30 NGOs are working in field of environment protection, in which program documents the significant part is devoted to studying of state and use of biodiversity. Lately, relationship between state organizations with public and non-governmental organizations, various movements in such direction as protection of biodiversity through propagation of ecological knowledge, carrying out scientific researches and monitoring, ecological awareness raising and wide involvement of the mass-media.

In its turn, the Government of Tajikistan takes decisions on qualitative and quantitative change of mechanisms of biodiversity utilization, on their inclusion in economic circulation, approves limits, as well as coordinates the activity of the ministries and agencies directly related to problems of protection, rational use and supporting of sustainable development of biodiversity.

The functions of the governmental control over the state of biodiversity, economic management with observance of biotechnical measures on the improvement of the state and management of the National park and reserves are assigned to the State Committee for Environment Protection and Forestry. At the local level - hukumats together with local divisions of the State Committee for Environment Protection and Forestry.

Table 5-1: Brief estimation of definite sectors and environmental problems (public participation)

	Importance of issue (high priority, average, low priority)	Question, deserving special attention (for 3 elements of Convention)	Deterrants in sensitive areas	Possible capacity building activity
Air quality	High	Atmospheric air state; public participation in decision-making	Imperfect ecomonitoring system; absence of a Regulation on public participation	Development and the introduction of procedures
Land tenure	High	Presence of all kinds of soil erosion; public	Irrational use of land and water	Development and introduction of the

		participation in decision-making process	resources; lack of a Regulation on public participation	procedure
Biodiversity and nature protection	High	Creation of special natural protected zones	Lack of technical maintenance	The same
GMO	Average	Public participation decision-making	Lack of Regulation on public participation	The same
Water quality	High	Restoration and creation of sewage water refining systems, imperfect eco-monitoring system	Lack of sufficient funding	The same
Power resources	High	Renewable sources of energy	Lack of investments	The same
Climate change	Low	Degradation of glaciers	Imperfect monitoring system	The same
Management of chemical substances	Low	Reduction of emissions of stable organic pollutants	Obsolete inefficient cleaning system of harmful emissions	The same
Waste management	High	Waste products processing	Lack of funding	The same

5.4.1. Biological safety

Acknowledging growing concern in the world regarding potential risks from use of genetically modified organisms, and for maintenance of national safety, Tajikistan has expressed willingness to sign Kartahena Protocol. This document is a basic document regulating and providing biosafety, and obliges the Parties to Protocol to assist and facilitate public awareness raising and their participation in the maintenance of biosafety (article 23 of Kartahena Protocol).

Public participation

At the governmental level while developing the national strategy and action plans the Government provides public participation and includes representatives of the most active NGO in governmental working groups, etc. Such practice of public involvement, policymaking and development of state programs becomes common.

Currently, a growing number of NGO express their concern regarding genetically modified organisms (GMO), used in food stuff and forage production and mainly regarding release of GMO to the environment. National center on biodiversity and biosafety promotes policymaking in field of public awareness on problems of biosafety.

In October 2003, the Government of Tajikistan has ratified Kartahena Protocol. (Decree №932).

Biosafety problems are reflected in several environmental programs of Tajikistan. In the National Strategy and Action Plan on conservation and rational use of biodiversity of Tajikistan, adopted by the Government (Decree №392 from September 1, 2003) main attention is given to problems of biosafety. As priority measures, development of the draft Law and by-laws about genetically modified organisms, creation of the Centre on genetic resources and ratification of Kartahena Protocol are included in Action plan.

A Chapter (chapter 16) on ecologically safe utilization of biotechnologies is included in the National Report on Sustainable Development (it was approved by the Government on July 13, 2002, №297). The Program is focused on increasing efficiency of agricultural crops, increasing of foodstuff tuff production and development of the pharmaceutical industry on the basis of ecologically clean biotechnologies. However, biotechnologies are not understood as use of genetic engineering methods and their control over them.

To date, mechanism of decision-making and regulation of biosafety has not been developed in Tajikistan so far due to the requests on importing of genetically modified organisms from other countries – manufacturers.

5.5. Water quality

Public participation

The main law, regulating water quality and rational use issues is the Water Code of the Republic of Tajikistan. This Code consists of five sections, providing general provisions, water use, protection of waters and prevention of their harmful impact, state control, account and planning of water use, responsibility for infringement of water legislation.

The Government of Tajikistan has adopted the Decree (December 01, 2001) “On of the approval of the Concept on rational use and protection of water resources in the Republic of Tajikistan”. This Decree stipulates general estimation of water resources, volumes of water in glaciers, river flow, lakes and water reservoirs, basic questions of water resources utilization, water-power engineering, hydraulic engineering regulation of flow and environmental problems, irrigation systems, water supply and water drain, protection of water resources and problems of glaciers, development of scientific - research works in field of rational utilization and protection of waters.

On November 05, 2002, the Government of Tajikistan adopted the Decree “On the approval of the Strategy of the Republic of Tajikistan on public health security for the period till 2010. One of its tasks is the maintenance of safe physical environment where it is mentioned, that the population is in dependence from physical habitat (air quality, water, food, dwelling, etc.). Poor and less solvent

social and economic groups of the population are more submitted to influence of factors endangering health and getting used to harmful behavior. Problems of physical environment (atmospheric air, drinking water quality, waste and underground waters, solid waste, etc.) should be paid more serious attention. Problems of drinking water quality are referred to key problems of physical environment. Problems of drinking water quality were accountable for epidemic outbreaks of typhus. Only 51,2 % of population have access to water pipe, and over the last year the given index for the rural population tends to reduction (35,3 %). Open reservoirs are the source of water for 48,2 % of the population. More than 80 % of water pipes do not are not compatible with sanitary norms, they are not provided with sanitary protected zones, with modern system and equipment for neutralization of drinking water and necessary complex set of clearing constructions. About 80 % of water pipe systems length is obsolete, and they are in unsatisfactory sanitary-technical state.

It is supposed that by 2010 the state of physical environment will be essentially improved in terms of its safety for public health,. Development of strategy of control over other sources of atmospheric air pollution, development of legislative norms and requirements on improvement of vehicles technologies is supposed in terms of their influence to atmospheric air quality, development of access to good quality drinking water and specific activities on sewage problems management.

PURPOSE: By 2010 the public health services should have appropriate scientific-research, information and communication data more effectively contributing to public health security.

It means:

- Availability of the scientific-research policy focused on securing public health;
- Availability of scientific knowledge and mechanisms enabling to provide the improvement of medical and sanitary services on the basis of scientific data;
- Development of access to information on problems of public health for politicians, representatives of medical and other professions, as well as for population;
- Availability of information system based on principles of policy of achievement of health for all and high technology of data collecting, processing and use.

Strategy:

On scientific researches:

- Development and using of scientific research programmes focused on aims and tasks of a policy of health for all;

- It is necessary to bring organizational structure of medical scientific institutes into compliance with basic medical and sanitary needs of the society;
- Introduction of stimulation mechanisms of scientific-research community so that it properly responded and reacted to tasks on achievement of health for all;
- Creation of appropriate mechanism for carrying out regular survey research of all major research achievements in the sector and defining basic results for practical use;
- Development of researches in field of achievement of health for everybody, on the basis of cross-dimensional approach and cooperation between various sciences;
- Implementation of scientific researches on alternatives of public health services reform and their actual results and influence;
- Implementation of researches on the assessment of efficiency and qualities of medical and sanitary aid in connection with economic expenses;
- Development and introduction of programs on the preparation of personnel in the field of carrying out new kinds of scientific researches and applying scientific results in the sector of public health, as well as in the sectors relating to it;
- Development of network of priority scientific research institutes and centers, including the creation of Gastroenterology and Hematology Centre;
- Development of medical scientific institutes resources in accordance with strategy of health for all;
- Development of mechanisms of maintaining relations between scientists, organizers of public health services and professional physicians on a permanent basis;
- Strengthening cooperation with international community in field of development of scientific researches based on principles of achieving health for all;
- Creation of computerized information system of public health services, providing collecting, analysis and use of data about public health and public health security services for decision making at all levels of sector services management;
- Development and introduction of the National database including global and regional parameters, specifics of National and regional strategy and policy of achieving health for all;
- Expansion of the National Package of indices of health and quality of medical and sanitary help, focused on aims and tasks of achieving health for all;

- Creation of integrated databases on the basis of medical information systems at the level of public health services, including information on state of the public health, determinants of health and medical and sanitary assistance;
- Upgrading information control systems should be focused on introduction of new systems of payment to suppliers of medical services, render support to medical and sanitary aid in adapting to the market conditions, as well as in making assessment of the clinical practice by them (clinical-information system);
- Development of access to medical and sanitary information in field of achieving "Health for all" for political and executive management structures at the national, regional and local levels, professional workers of public health services, economy, the finance, education, construction, science, mass media, as well as the population;
- Carrying out monitoring of health and its known determining factors, as well as qualities of medico-sanitary assistance in connection with principles and indicators on achieving "Health for all" on a regular basis;
- Development of cooperation with international organizations in field of development of information base of health services in the country.

Assessment criteria:

- Cost of scientific researches and proposals in field of public health services;
- Results of regular assessment of scientific researches stemming from priorities of public health services and tasks on achievement of health for all;
- Results of public health services information system assessment.

Management of drinking and sewage water problems

- Sustainable cooperation between various sectors at national and local levels on problems of planning and implementation of programs of developing access of the population to harmless drinking water;
- Development and introduction of State "Drinking water" standard (Ministry of Economics and Trade of the Republic of Tajikistan, Ministry of Health, State Committee for Environment Protection and Forestry, Ministry of Melioration and Water Management of the Republic of Tajikistan);
- Development and realization of the State program "Safe drinking water" (Ministry of Health, State Committee for Environment Protection and Forestry, Ministry of Melioration and Water Management of the Republic of Tajikistan, Ministry of Agriculture, Ministry of Economics and Trade), cooperation in this field with the Tajik branch of International Aral Rescue Fund and other international organizations;
- Development of investments in good quality drinking water supply, in removal of dirty water, in sewage refining facilities, protection of water supply sources from contamination with wastes, including those agricultural

and communal (State Committee for Environment Protection and Forestry, Ministry of Melioration and Water Management of the Republic of Tajikistan, Ministry of Economics and Trade, Ministry of Agriculture, Ministry of Industry, local executive agencies (Hukumats);

- Rehabilitation and capacity building of municipal enterprises for disinfecting of water-pipe water supplied to the population, construction of new facilities and sewage refining (Ministry of Melioration and Water Management, Ministry of Agriculture of the Republic of Tajikistan, local executive agencies (Hukumats);
- Providing safety of drinking water sources at the local level through involving and close interaction of various sectors of rural water and municipal services, as well as the population (local executive agencies) (Hukumats);
- intensification of activities on the control over the state of cities and regions water lines (Ministry of Health, State Committee for Environment Protection and Forestry, local executive agencies (Hukumats);
- Reconstruction and rehabilitation of water-off taking facilities and centralized water supply lines (Ministry of Melioration and Water Management, Ministry of Agriculture of the Republic of Tajikistan, local executive bodies (Hukumats);
- Providing with safe drinking water of inhabitants of settlements lacking water systems, by the construction of the latters or creation of alternative systems (Ministry of Melioration and Water Management, Ministry of Agriculture of the Republic of Tajikistan, local executive bodies (Hukumats);
- Modernizing the system on removal of sewage, including its collecting, processing and evacuation (the Ministry of Agriculture, other ministries and agencies of the Republic of Tajikistan, local executive bodies (Hukumats);
- Participation in international projects and development of international cooperation on the improvement of drinking water quality and access to safe drinking water (State Committee for Environment Protection and Forestry, Ministry of Melioration and Water Management of the Republic of Tajikistan, Ministry of Economics and Trade);
- Development of sanitary-and-epidemiologic service resources on control of drinking water quality (Ministry of Health of Tajikistan)

5.6. Energy resources

Due to abundance of power resources the power engineering industry of Tajikistan has a big perspective. With very insignificant stocks of oil and gas coal deposits, imperceptible for industrial development, the country has huge stocks of power resources with the low cost price - 0,4 cents for Kw/h holding the eighth place in

the world, and the second place among the CIS countries. However, power resources of Tajikistan are developed only for 6 percent.

The Government of Tajikistan has adopted Rules of water objects utilization for the needs of hydro-energy engineering (Appendix to Decree of the Government of Tajikistan, dated March, 4, 2003 № 95) following the provisions of article 83 of the Water Code of Tajikistan in order to regulate and effectively utilize water objects for needs of hydro-energy engineering.

The rules have been developed under the Water Code of Tajikistan, the Law of Tajikistan “On nature protection”, the Law of Tajikistan “On power engineering” and the Decree of the Government of Tajikistan of February 4, 2002, №40 “On the approval of plan of developing acts of the Government of Tajikistan, stemming from the Water Code of Tajikistan.

The rivers, lakes, and other natural surface sources, as well as artificial water basins situated on the territory of Tajikistan relate to the water objects of Tajikistan, which are used for needs of hydro-energy engineering.

Realization of uniform state policy in the field of water resources utilization, definition of the basic directions of use and protection of waters, as well as establishing the order of water resources utilization, adoption of schemes of complex utilization and protection of waters and control over utilization and protection of water objects is carried out by specially authorized state bodies on management of utilization and protection of waters.

Ecological monitoring should be carried out on the objects of hydro-energy engineering. Parameters of monitoring are coordinated with the State Committee for Environment Protection and Forestry, Ministry of Melioration and Water Management of the Republic of Tajikistan.

The Law of Republic Tajikistan on Nature Protection establishes ecological requirements to power generating objects. Development of the power supply concept is carried out in view of necessity of reduction of negative impact of ecological consequences of power objects on the environment and public health.

During designing and construction of hydro power stations and other power generating objects: relief or placement of the object, measures on maximal conservation of lands, forests, nature, history and culture heritage, as well as measures on prevention of negative changes in the environment should be taken into account.

5.7. Nuclear Energy

Enterprises, institutions, organizations, citizens are obliged to observe rules of manufacture, storage, transportation, use, recycling, removal and burial of radioactive substances (sources of ionized radiations, nuclear materials), prevent

exceeding of maximum permissible norms of radiation, and in case of their excess immediately to inform radiation safety agencies, on increased levels of radiation dangerous to the public health and the environment, to take of measures on liquidation of contamination centers. (Law of the Republic of Tajikistan on Nature Protection, Article 47).

5.7.1 Rights and duties of civil and public associations in the field of ensuring radiation safety are mentioned in the Law of the Republic of Tajikistan “On Radiation Safety” (It is accepted by Majlisi Namoyandagon - on June 26, 2003 and was approved by Majlisi Milli - on July 16, 2003).

Article 26. Civil right on radiation safety

Citizens of the Republic of Tajikistan, foreign citizens and peoples without citizenship, which are living in territory of the Republic of Tajikistan, have a right to radiation safety. This right is provided due to carrying out of complex of actions on prevention of radiation influence to organism of peoples, ionized radiations are higher than established norms, rules and specifications, implementation by citizens and organizations, which are working with use of ionized radiations sources, requirements to radiation safety guarantee.

On the issues of ensuring their rights on radiation safety citizens can appeal to state agencies in charge of this issue or to the court.

Article 27. Citizens and public associations’ rights on receiving information on radioactive situation.

Civil and public associations have the right to receiving of oral and written objective information on radioactive situation from organizations which are working with utilization of ionized sources of radiation within their terms of reference and taken measures on ensuring radiation safety.

Article 28. Granting access to the territory of organizations are working with ionized radiation sources.

Representatives of public associations have a right on access to organizations working with ionized radiation sources, in the order and conditions established by the Government of Tajikistan.

Article 29. Social protection of citizens living on the territories adjacent to those of organizations working with ionized radiation sources.

Citizens living in the territories adjacent to those of organizations working with ionized radiation sources and in which possible excess of the minimal permissible dozes established by the present Law, have the right to social protection. Order of providing social protection measures is established by the Government of Tajikistan.

Article 30. Citizens' rights on compensation of harm caused to their life and health by ionized radiations, as well as resulting from radiation accidents and for the compensation of the losses incurred.

Citizens have the right to compensation of the harm caused to their life and health and on compensation of losses caused to them, caused by ionized radiation above the basic limits of dozes established by the present Law, as well as resulting from radiation accidents in accordance with the legislation of the Republic of Tajikistan.

5.8. Climate Change

Law of the Republic of Tajikistan on Nature Protection (Accepted by the Parliament on December 27, 1993).

Article 10. Citizens' rights on environment favorable for life.

Each citizen of the Republic of Tajikistan has the right to live in favorable environment for his health and life.

This right is provided by means of:

- Observance of ecological requirements during placement of productive forces, enterprises, constructions and other objects influencing the environment, planning of territorial and production complexes, development of industry, agriculture, power, transport and other national economy branches.

It is not allowed for citizens to use environment to the detriment of the environment, the rights and juridical interests of enterprises, firms, organizations and other citizens.

Article 11. Civil rights on health protection from adverse influence of environment.

Each citizen of the Republic of Tajikistan has the right to health protection from the adverse influences of environment caused by economic or other activity, failures, accidents, acts.

This right is provided by means of:

- Planning and regulation of environment quality, measures on prevention of ecologically harmful activity and improvement of environment, prevention and liquidation of consequences of disasters and natural calamities;
- Compensation in judicial or administrative order of harms caused to health of citizens as a result of environmental contamination and other harmful influences, including consequences of accidents and catastrophes;
- State and public control on the state of environment and observance of environmental legislations, drawing to responsibility persons guilty of infringement of ecological safety of the population requirements.

Article 12. Civil right on ecological information

Citizens of the Republic of Tajikistan have the right to receiving duly, complete and reliable information about the state of atmospheric air, waters, soil, forest, fauna (including fish stocks), and radiation conditions in the country.

This right is provided with the periodic publication by specialized responsible state agencies of the Republic of Tajikistan of the information about state of the environment (atmosphere, water, soil, and radioactive situation), forest, fauna, including fish stocks in appropriate territories and tendencies of their change.

During rapid deterioration of environment, threatening people's health, local executive authorities (Hukumat) and specially authorized governmental bodies of the Republic of Tajikistan in the field of environment immediately inform population about the reasons of deterioration of the environment and ways of their prevention. (Law of Tajikistan from 1.02.96, № 223)

Article 13. Civil rights on environmental decision-making and control on their implementation.

Citizens of the Republic of Tajikistan have the right to participation and control on the environmental decisions development, adoption and implementation.

This right is provided though promulgation, public discussion of draft ecologically important decisions, public ecological expertise of projects, the responsibility of executive bodies to take into account proposals of citizens, use of various forms of public participation in environment protection.

As the Republic of Tajikistan is a member of the United Nations, according to Article 10 of the Constitutions of the Republic of Tajikistan the country has assumed commitments on the implementation of the Framework Convention of the United Nations on climate change. Presently, the Republic of Tajikistan has no legislative instruments regarding climatic conditions, and therefore the above - mentioned Convention has an effect of the law.

5.9. Chemical Substances Management

Norms of application of mineral and organic fertilizers, means of plants protection, growth stimulators and other chemical substances in agriculture, forestry and other branches of national economy should be established in dozes, providing guarantee of standards of maximum permissible residuals of chemical substances in food, protection of people's health, their genetic fund, preservation of flora and fauna. (Article 27, Law of the Republic Tajikistan on Nature Protection).

5.9.1. The law of the Republic of Tajikistan "On quality and safety of food products". It was accepted by the Parliament of the Republic of Tajikistan on May 10, 2002

Article 15. Requirements to on ensuring food products quality and safety.

Food products meant for the sale should satisfy physiological needs of the population for necessary substances and energy, to meet the requirements, established by normative documents to allowable contents of chemical (including radioactive), biological substances and their compounds, microorganisms and other biological organisms posing danger to health.

Products of dietary meals should have properties, allowing to use such products for medical and preventive meals of people in accordance to the requirements established by executive authorities in the field of public health security services to the organization of dietary meal, and to be safe for public health.

Article 16. Requirements on ensuring quality and safety of new food products, materials and products in the process of their development and putting into production.

In the process of development of new food materials and products, new technological processes of their manufacturing, packing, storage, transportations, marking and sale, physical and legal persons are obliged to justify requirements to the quality and safety of such food products, materials and products. To provide with information on conservation of quality and safety of such foodstuff, materials and products at their manufacturing and circulation, to develop programs of industrial control on quality and safety of such foodstuff, materials and products, techniques of their testing, as well as to establish fitness term of such foodstuff, materials and products.

Keeping time of foodstuff, materials and products should be established regarding such foodstuff, materials and products which quality in a certain term from the moment of their producing worsens and acquires peculiarities endangering people's health and due to this grow unfit for intended use.

Quality parameters and safety of new foodstuff, materials and products, terms of their fitness, requirement to their packing, marking, information on such foodstuff, materials and products, conditions of manufacturing and circulation of such foodstuff, materials and products, programs of industrial control on their quality and safety, technique of testing, ways of recycling or destruction of poor-quality and dangerous foodstuff, materials and products should be included in technical documentation.

Drafts of technical documentation and experimental models of new foodstuff, materials and products are subject to sanitary-epidemiological expertise. Drafts of technical documentation and experimental models, made from raw food material of animal origin of new food products, besides are subject to veterinary-sanitary expertise.

Such drafts can be authorized by manufacturers only after receiving comments from the state sanitary-epidemiological service of the Republic of Tajikistan and the state veterinary service of the Republic of Tajikistan conformity of such

foodstuff, materials and products to the requirements of sanitary or veterinary rules and norms, as well as safety for people's health.

Before offering new food products for realization and consumption, the manufacturer is obliged to present to authorized executive body a set of authorized normative and technical documents on standardization, metrology and certification for including in the State register after the preliminary coordination with all ministries and agencies.

Requirements of the authorized technical documentation are obligatory for physical and legal persons who are carrying out activity on producing and circulation of concrete kinds of foodstuff, materials and products.

New foodstuff, materials and products are allowed to manufacturing after state registration in accordance with Article 10 of the present Law.

Article 17. Requirements to ensuring the quality and safety of foodstuff, materials and products in the process of their manufacturing

Manufacturing of foodstuff, materials and products should be carried out in accordance with technical documentation on observance of standards requirements, sanitary and veterinary rules and norms.

Raw food materials should be applied for producing of foodstuff, quality and safety, which meet requirements of normative documents.

In the process of manufacturing of raw food materials the use of fodder additives, animals growth stimulators, including hormonal preparations, medical products, pesticides, agrochemicals is supposed, which past sanitary-epidemiological expertise, veterinary-sanitary expertise and phyto-sanitary (or agrochemical laboratory expertise) and state registration in order established by the legislation of the Republic of Tajikistan.

Raw food materials of animal origin is supposed for manufacturing foodstuff only after carrying out of veterinary-sanitary expertise and receiving by the producer of the conclusion (comments) from the state veterinary service of the Republic of Tajikistan, certifying raw food material of animal origin conformity with the requirements of veterinary rules and norms.

In the course of manufacturing products of children's meal and products of dietary meal it is not supposed to use raw food materials made with use of fodder additives, animal's growth stimulators (including hormonal preparations), separate kinds of medical products, pesticides, agrochemicals and others substances dangerous to public health.

During producing of food products, as well as for use in meals food additives and biologically active additives should be used, which are registered by the state agencies, in accordance with Article 10 of this Law.

Food, materials and products used in the course of producing should meet the requirements of normative documents on quality and safety of such materials and products.

In the course of manufacturing food products, materials and products should be used, which have undergone state registration in accordance with Article 10 of the present Law.

Producer is obliged to check quality and safety of each lot of foodstuff, materials and products and to give the buyer the certificate of quality and safety together with foodstuff, materials and products.

The seller of food materials and products has the right to control the quality and safety of foodstuff, materials and products upon receiving from producer.

Certificate of quality and safety of foodstuff, materials and products is not to be registered on the product for public catering.

Conformity of food materials and products included in the list of foodstuff, materials, products and goods and services, to requirements of normative acts should be approved by certificate of conformity and mark of conformity.

Manufacturer is obliged to suspend immediately producing poor-quality and dangerous food materials and products for a term necessary for removal of the reasons, which have entailed manufacturing of such food materials and products. In case, if removal of such reasons is impossible, the manufacturer is obliged to stop manufacturing poor-quality and dangerous food materials and products, to withdraw them from turnover, providing return from buyers, consumers of such food materials and products, to organize their expertise, recycling or destruction in the established order.

Ministry of Health is obliged to reconsider norms and regulations about quality and safety of food, materials and products, including a dietary and children's nutrition, food and biological additives for guaranteeing their conformity to international standards and norms no less than once in 5 years.

5.9.2. The Government of the Republic of Tajikistan has accepted the Decree “On approval of the Regulation on Chemical Safety Commission of Tajikistan” (from July 3, 2003 № 299).

This Regulation is developed following the decision of the Government of Tajikistan dated March 03, 2003, №92 “On the Creation of Chemical Safety Commission of Tajikistan”.

1. The Commission on Chemical Safety of the Republic of Tajikistan (further - the Commission) is the body coordinating activity of ministries and agencies of the Republic of Tajikistan in the field of ensuring chemical safety of citizens, society and state.

2. The Commission directs its activity on the implementation of laws of Tajikistan “On nature protection”, “On ecological expertise”, “On state of sanitary control, “On narcotic, psychotropic substances and precursors”, “On civil Defense” and other acts of Tajikistan regulating the field of chemical substances use and this Regulation.

3. The main tasks of the Commission are:

- Preparation of proposals on curbing strategic problems in field of chemical safety for consideration in the Government of the Republic of Tajikistan;
- Analysis of information on functioning systems of ensuring chemical safety of Tajikistan, development of recommendations on their updating;
- Development of recommendations and proposals regarding complex approaches to handling problems on ensuring constitutional rights of citizens of the Republic of Tajikistan in the field of chemical safety;
- Development of proposals on updating of control measures by competent bodies in the field of using chemical substances and biological preparations, implementation of normative and legal acts of the Republic of Tajikistan on problems of chemical safety;
- Establishment of uniform system of registration, testing and control for chemical substances and biological preparations, for the first time produced in Tajikistan, or imported in the country;
- Cooperation with foreign states and international organizations on problems of using chemical substances and biological preparations;
- Ratification of “List of chemical substances and biological preparations, allowed for application in the Republic of Tajikistan”, with changes and additions;
- Consideration of proposals on testing and registration of chemical substances, biological preparations and decision making about it.

4. For solving problems the Commission is assigned to:

- Analyze incoming information on the state of chemical safety in the country, summarizes and determines the problems, demanding urgent consideration;
- In case of need to prepare respective draft decisions on chemical safety problems for consideration in the Government of the Republic of Tajikistan;
- Participate in the preparation of draft normative acts and programs on the issue of chemical safety guarantee;
- Develop and approve normative acts regulating activity in the field of use of chemical substances and biological preparations;
- Cooperate with state bodies of the Republic of Tajikistan on problems of chemical safety.

5. Commission is to be formed and abolished (cancelled) by the Government of the Republic of Tajikistan. The Regulation and the structure of the Commission (on position) is to be approved by the Government of Tajikistan.

5.10. Waste Management.

One of the most important environmental problems in Tajikistan is formation and accumulation of industrial and consumption wastes, which represents real threat to the state of environment and to the health of peoples. Formed industrial waste in enterprises, basically, do not find secondary application and are placed in tailing dumps, chip catchers, dumps of hard domestic wastes and frequently in places of unorganized storages.

The first step in problems of waste regulation was the Decree of the Council of Ministers of the Tajik SSR of June 12, 1984, №167 “On measures of implementation of the Decree of the Council of Ministers of the USSR from of May 3, 1984, №394 “On recycling, neutralization and dumping of toxic waste». At the same time, for some reasons measures adopted by this Decree have not been implemented. The work on their implementation in 1990-1991 years.

5.10.1. The law of the Republic Tajikistan “On wastes of manufacture and consumption” (It is accepted on May, 10, 2002).

The present Law regulates the relations arising during formation, collecting, storage, use, transportation, neutralization and dumping of wastes, as well as governmental management, supervision and control on waste use and to assist in prevention of negative influence of wastes and consumption to the environment and public health, as well as to their using in economic - industrial circulation as additional source of raw material.

This law stipulates:

- Free access to information in the field of handling wastes to persons, whose interests can be involved at such activity;
- Making decisions affecting interests of the population, taking into account protection of national interests and participation in international cooperation in the field of waste use.
- Providing the population with information in field of waste use;

Article 17. Public control on waste use

Public control on waste use is carried out by public associations according to their charters and citizens domiciliary in order established in normative legal documents of the Republic of Tajikistan and includes control of implementation of the requirements of the present Law by all physical and legal persons.

5.10.2. Persons who have committed infringements when handling wastes and as a result of which harm has been caused to environment, to people's health, property of physical and legal persons, fully recover the damage in accordance with the Civil Code of the Republic of Tajikistan, the Law of the Republic of Tajikistan "On nature protection", this Law and other normative-legal acts of the Republic of Tajikistan. Payment of the penalty does not release the persons who have committed offences during use of wastes, from duty compensation of damage.

CHAPTER 6. NGOs Participating in Environmental Decision-making

6.0. Introduction

May, 23, 1998, the Law "On public associations" was adopted in the Republic of Tajikistan, according to which public associations are created in order to facilitate exercising and protection of civil, political, economic, social and cultural rights and freedom of citizens, participation in the creation of a sovereign, democratic, legal, secular and unitary state of Tajikistan. Proceeding from this, NGOs, being legally independent, have the right to influence processes of participation in drafting by-laws and monitor laws enforcement.

6.1. Definition of Respective Non-governmental Structures

There are many groups in Tajikistan, representing various interests and engaged in problems of environment or problems of influencing the environment.

Totally, there are more than 2 thousand organizations in Tajikistan:

- Groups on nature protection;
- Groups on protection of consumers rights;
- Groups on public health security;
- Mass-media;
- Associations of industrialists and private sector;
- Trade-union associations;
- Scientific research institutes and educational institutions;
- Individual citizens, such as writers and commentators;
- Women NGO;
- Children's NGO;
- International NGO;

Information on the field of activities of NGOs:

Table 6.1: Brief table of main NGOs

Type of organization	Name	Description of activities
Nature protection	«Team on nature protection»	Formation of public opinion on environmental problems through mass-media, ecological public awareness raising, legal ecological education, carrying out actions on nature protection
	«Youth ecological center»	Association of creative potential of scientists, teachers, students and schoolchildren for the improvement of environment quality, dissemination of independent information, support of civil society
	«For the Earth»	Increase of public role and participation tackling environmental problems
Public health security	«Avesto»	Medical, social and psychological rehabilitation of vulnerable population (childhood, war and labor invalids), assistance to reforms in the system of public health security, development of family medicine
	«Health»	Protection of health of vulnerable layers of the population; protection of rights to health
	«Odamiyat» Association	Providing medical-social help to vulnerable layers of the population in Tajikistan
	«Tajik association of reproductive health»	Improvement of populations health state, including reproductive health through awareness-raising; preventive measures of narcotics and diseases, transmitted in the sexual way
Mass-media	«NANSMIT»	Contributing to strengthening of democratic institutes in country by development of mass-media
	«Union of Journalists of Tajikistan»	Assistance to advocacy of freedom of speech, establishing and development of independent mass-media, protection of journalists professional rights
	«Fourth Power»	Development of independent mass-media in Tajikistan, freedom of speech and

		information
Civil society	Centre «Development»	Educational center on development of the third sector; holding trainings on communities development
	«Shark» Information and Analytical Centre	Support of changes and reforms directed on strengthening of democracy and economic development in Tajikistan
	«Fund of support of civil initiatives»	Support of civil society development, informational help to NGO
Industrial / private sector	National association of small and medium business	Support of small and medium business, legal and social protection of businessmen
	Republican centre of privatization of farms	Water-users associations development support
	Union of farmers and businessmen	Support of farming development in Tajikistan
Trade-union and female	Federation of trade unions	Federation of trade unions includes 19 branch trade unions
	«Women of science of Tajikistan»	Coordination of scientific researches of women- scientists in the field of humanitarian and natural sciences, psychological rehabilitation of women, threat to violence
	«Kadbonu», Women Association	Economic education of women and women involvement in business; assistance to them in starting their own business
	«Modar»	Association of women and girls for active participation in maintaining peace and consent in the society; protection of constitutional rights and freedom of women

6.2. Legitimization and Support of Non-governmental Organizations

In addition to basic freedoms (for example, freedom of self-expression and assemblies), recognizing them by their state is an important additional precondition for formation of non-governmental organizations, and in case, if an organization expresses public interests - for access to funding.

All public associations have the subjective right in accordance with the legislation of the Republic of Tajikistan in effect, i.e. all public organizations are registered by

the Ministry of Justice, in tax bodies, open accounts in banks of the Republic of Tajikistan. They have rights and duties. There are corresponding requirements to the preparation of a package of constituent documents and payment of the state duty upon registration. All public organizations are distinguished by the purposes and tasks.

Within the law - public association is a voluntary, self-steered and noncommercial formation, which is created on the initiative of citizens and legal persons, (Article 5 of the Law “On public associations”). Public associations are created with a view of realization and protection of the civil, political, economic, social and cultural rights and freedoms of citizens, participation in the creation of the sovereign, democratic, legal, secular and unitary state of Tajikistan, (Article 6 of the Law).

The state provides observance of the rights and legitimate interests of public associations and according to the Constitution of the Republic of Tajikistan guarantees conditions for them to carry out statutory objectives. The government welcomes humanitarian initiatives, through immunity from taxation (except for payment of the tax from wages).

Intervention of the governmental bodies and officials in the activity of public associations, as well as intervention of public associations in activity of the state bodies and officials is not allowed, except for cases when it is stipulated by the law.

The state provides material and financial support for youth, children's and humanitarian organizations and organizations of handicapped people. It carries out a preferential tax policy towards them, gives the children's organizations the right to use premises of schools, out-of-school establishments, clubs, palaces and houses of culture, sports and other constructions *free or on preferential terms*, (Article 8 of the Law).

Prosecutor General and subordinated public prosecutors carry out supervision of exact and uniform observance of laws by public associations on the territory of the Republic of Tajikistan. Financial and tax bodies accordingly carry out control over sources of incomes of public associations, the size of means received by them and payment of taxes according to the legislation of the Republic of Tajikistan (Article 26 of the Law).

Law of the Republic of Tajikistan “On humanitarian activity” of April 22, 2003 is adopted with a perspective of developing charity in the country and establishes legal framework for regulating humanitarian activity, determines its forms, main purposes and possible ways of its support by national and local authorities, as well as supports creation and activity of humanitarian organizations by economic and moral encouragement of the subjects, participating in humanitarian activities.

In the law it is precisely determined, that humanitarian organization – is a non-governmental, noncommercial organization, founded in the order, established by

the legislation of the Republic of Tajikistan, created for the implementation of humanitarian objectives, carrying out humanitarian activities as the basic one for the benefit of the society or specific categories of persons, (Article 2).

In Article 50 of the Civil Code of the Republic of Tajikistan point 2.3 legal persons, being non-commercial organizations, can be created in the form of consumer cooperative societies, public or religious organizations (associations) funded by the owner of establishments, charitable and other funds, as well as in other forms stipulated by the law. Noncommercial organizations can be engaged in entrepreneurial activity only to the extent necessary for their statutory objectives.

According to the Tax Code of the Republic of Tajikistan the charity is an activity, carried out by the organization and consisting of direct rendering material or other help (support) including in the form of gratuitous transfers to physical persons in need of such help, or to the organizations directly rendering such help, including the humanitarian organizations, or scientific and educational activity (Article 11 of the Tax Code of the Republic of Tajikistan).

According to Article 129 of the Tax Code of the Republic of Tajikistan immunity from taxation is granted to: the religious, charitable, budgetary, interstate, intergovernmental organizations, except for the profit received by them from entrepreneurial activity. Irrespective of allocations to charitable organizations and on performance of charities is authorized in the size of actually applied payments no more than 2 percent of the taxable profit (Article 133 Tax code of the Republic of Tajikistan).

The sources of formation of property of humanitarian organizations can be: contributions of founders of humanitarian organization, charitable donations, including those of a specific character (humanitarian grants) provided by physical and legal persons in the monetary and natural form (Article 17 of the Law of the Republic of Tajikistan about charity). Humanitarian organizations have the right to reception of charitable donations, from foreign persons, persons without citizenship, also from foreign and international organizations (Article 23 of the Law of the Republic of Tajikistan “On charity”).

6.3. Formation of Non-Governmental Structures

Within the laws of the Republic of Tajikistan “On public organizations”, “On humanitarian activity”, public organizations are created with a view of exercise and protection of the civil, political, economic and cultural rights and freedom of citizens, participation in the creation of the sovereign democratic, legal, secular, unitary state of Tajikistan.

Public organizations are created on the initiative of their founders, not less than three persons, to which alongside to physical persons can also join legal persons, public associations. The decision on the creation of public organization, on the approval of its structure and on forming of supervising and control-auditing bodies is adopted at the congress or general meeting. Legal capacity of the public organization as a legal person starts from the moment of state registration of the given association (an article 10 Law “On public organizations”). The right of citizens to be united includes the right to create, participate in the creation on a voluntary basis (an article 3 of the Law of the Republic of Tajikistan about public associations). Intervention of the state in the activity of public associations is prohibited.

Public associations are closely connected with public; special attention is paid to vulnerable sections of the population, especial to women and children.

- International and national, local public associations are created and operate in the Republic of Tajikistan (Article 9, the Law “On public associations).
- Public associations are engaged in any questions, their activity is limited only to the Statute. There are groups, which on miscellaneous look at the same problem from different views.

Financial and material support from the state, organizations and other international organizations is provided for to charitable organizations (Article 8 Law of the Republic of Tajikistan “Humanitarian activity”).

Table 6-2: Brief overview of participation of non-governmental structures and deterrents of such participation

Areas / questions, demanding attention	Significant deterrents in sensitive areas	Possible capacity building activity
Lack of an official document directed on developing cooperation between the environmental authority and ecological non-governmental organizations	They stem from the fact that the environmental authority does not recognize non-governmental organizations as its natural allies and partners on environmental activity	Jointly to develop and sign such a document
Lack of legal settlement of the possibility to rendering financial support on the part of the state structures to ecological non-governmental	Prevalence of funding from international donor organizations	Development of the normative-legal act regulating obligatory assignment of funds for public participation (for example, conduction of public

organizations for the implementation of their activity		expertise or monitoring)
Lack of programs on obligatory public participation approved by the State Committee on Environment Protection and Forestry or other interested ministries and departments	There are programs and documents, where such interactions and participation are declared	Development of mechanisms of inclusion and encouragement of non-governmental organizations in joint activity
Low legal awareness of officials	Lack of opportunities on the improvement of professional skills	Awareness raising work, trainings for officials in charge of environmental issues
Low legal awareness of non- governmental organizations and the population	Lack of opportunities on the improvement of professional skills	Awareness raising work, trainings
Separate state structures and officials do not observe ecological laws	Observing these laws is economically unprofitable	Examples of public hearings of cases on public suits against officials
The issue of training lawyers and in particular lawyers specialized in protection of environmental interests of citizens and organizations is poorly addressed	Lack of opportunities on qualification upgrading; lack of interest (basically cases are handed over to the arbitration court), poor profit from ecological cases examination	Seminars and trainings for lawyers, public lawyers, provision of economic incentives for lawyers
Practically, experience of implementing activities on handling legal environmental issues is lacking	It is economically unprofitable, self-funding on the part of the non-governmental organizations	Economic support
Lack of the information on environment protection practices in developed countries	Does not always correspond to the national legislation	Harmonization of the legislation

CHAPTER VII. Assessment of Capacities Available and the Aarhus Convention Implementation Constraints

7.0. Introduction

It should be mentioned, that the legislative base in the Republic of Tajikistan is rather strong in the field of the ecological procedure rights. As it has been mentioned above, there are a number of essential laws really allowing enforcement of Aarhus Convention. However, in practice actual implementation of laws is complicated. First of all, it derives from the fact that no control is in place over implementation of laws, both on the part of the Government, and of the Parliament. Thus, passing laws, the Parliament does not develop mechanisms of realization of laws. Secondly, implementation of the law is impossible given weak economic base. Absence of means and material - technical base hamper implementation of laws in practice. Besides, no work is implemented in the country in the direction of legal awareness-raising on the protection of ecological rights, and explanation of the current legislation practically is not conducted. Although there are opportunities of public participation in handling environmental problems, public organizations working in this direction are not enough.

7.1. Final Assessment of Existing Public Participation Capacities

The analysis of the environmental legislation in effect has shown that from all provisions of the Aarhus Convention the least of all are implemented those relating to public participation. The problem is that the rights secured in laws have declarative character since they are not complemented with procedures (i.e. there are no mechanisms of implementation, namely subordinate legal acts (by-laws)).

Implementation of the Aarhus Convention provisions regarding public participation directly depends on strengthening the role of public organizations. Hence, it is necessary to set up a dialogue between representatives of public organizations and state structures, through public capacity building for more active participation in decision-making process on environmental issues.

It is the extremely important to legally secure rights of the public to participate in implementation of not only Aarhus Convention, but other Conventions of the United Nations, which the Republic of Tajikistan is party to. First of all, for ensuring transparency and efficiency of the process of implementation by Tajikistan of commitments assumed.

Public participation in the development and following implementation of various programs in the field of environment will allow making fuller account local residents interests, more efficiently resolve not only economic, but also social and environmental emerging problems, through enhancing cooperation with international organizations and financial institutions on attraction of means for the implementation of such programs.

Moreover, the public can and should take part in the tackling environmental problems at the most various levels, including participate in the development and adoption of laws and by-laws. Although there is no uniform normative act establishing procedure or a mechanism involving public in decision-making, such a procedure is in place in practice. These are public consultations or hearings on concrete bills (parliamentary hearings on the Draft Law of the Republic of Tajikistan “On ecological expertise”). However this is not enough. It is necessary to organize various Advisory bodies from representatives of the public (ecological advice, commissions and so forth); their decisions should be taken into account while decision-making instead of having a recommendatory character.

Public participation is possible also economic decision making. Forms of this participation can vary from public hearings to local, province or national referenda.

CONCLUSION: Given the fact that procedures are not clearly determined and there is no mechanism of public involvement, it is necessary to develop and introduce mechanism and procedures of interaction of the public with state structures for the implementation of provisions of the Aarhus Convention for ensuring public participation in making important ecological decisions.

CHAPTER VIII. Actions Undertaking Capacities and Purposeful Capacity Building

The Republic of Tajikistan has no legislative base on separate directions. Likewise, in particular, there are no laws on genetically modified organisms, on power generating resources. The government poorly follows its decisions, and sometimes they practically enforced by the respective bodies of the government on places. Introduction of training of the ecological right norms in schools curriculum could be effective. All actions should be taken with the involvement of mass media and the public; unfortunately media outlets insufficiently cover environmental problems. Publication of environmental brochures, booklets is necessary.

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