



Central Asian Research
Institute on Corruption
and Money Laundering

UNCA CIVIL
Coalition SOCIETY

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the implementation of
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN KYRGYZSTAN

by Central Asian Research Institute on Corruption and Money
Laundering

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Every effort has been made to verify the accuracy of the information contained in this report. All information is believed to be correct as of 07 July 2022.

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The Central Asian Research Institute on Corruption and Money Laundering (hereinafter- the Institute) was established in December 2018. The Central Asian Research Institute on Corruption and Money Laundering is a non-profit, non-governmental organization whose activities are aimed at promoting anti-corruption initiatives, conducting research and developing measures to combat corruption and laundering of proceeds from crime, helping to eliminate corruption risks and the formation of zero tolerance to corruption and, in general, promotion of democratic reforms that contribute to the creation of a stable, rule-of-law state and a society free from corruption.

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Abbreviations

CC	Criminal Code
CEC	Central Electoral Commission
CI	Conflict of Interest
CSO	Civil Society Organizations
CWG	Coordinating Working Group
DPM	Department on Precious Metals
EAU	Eurasian Economic Union
EBR	European Bank for Reconstruction
EITI	Extractive Industries Transparency Initiative
FEA	Foreign Economic Activity
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
GRECO	Council of Europe Group of States against Corruption
HIE	Institution of Higher Education
IMF	International Monetary Fund
KR	Kyrgyz Republic
LSG	Local Self-Government
MIA	Ministry of the Internal Affairs
MJ	Ministry of Justice
MTL	Mutual Legal Assistance
NGO	Non-governmental organizations
NLA	Normative-Legal Act
OGP	Open Government Partnership
OJSC	Open Joint Stock Company

OSCE	Organization for Security and Cooperation in Europe
PPL	Law of the Kyrgyz Republic "On Public Procurement"
RRCG	Rapid Response Coordination Group
RTI	Right to Information
SAC	State Agency on Communications
SASMS	State Agency for State and Municipal Service under the Cabinet of Ministers of the Kyrgyz Republic
SCNS	State Committee for National Security
SCS	State Customs Service
SE	State Enterprise
SFIS	State Financial Intelligence Service
SRS	State Registration Service
STR	Suspicious Transaction Reporting
STS	State Tax Service
UAIS	Unified Automated Information System
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drug and Crime
VAT	Value Added Tax
WTO	World Customs Organization

List of Persons Consulted

Name	Position	Date of interview
Aidarbekova Chynara	Ex-judge of constitutional Chamber of the Supreme court	03.09.2022
Baizakova Nurida	Former Director of the Department of Public Procurement of the Kyrgyz Republic.	15.06.2022
Mukanova Nuriypa	Chairman of Anti-Corruption Business Council under the President of the Kyrgyz Republic.	05.07.2022
Nikitenko Natalia	Ex-Deputy of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic of the 5th and 6th convocations, Chairman of the Committee on Law and Order, Combating Crime and Combating Corruption.	07.06.2022
Sayakbaiev Tilek	Head of the Department of Strategic Analysis and Risk Assessment of the State Financial Intelligence Service	09.06.2022
Satybekov Bakyt	Public finance expert, Co-Chair of the National Open Government Platform in the Kyrgyz Republic.	10.06.2022
Anonymous	Expert on public finance	15.09.2022
Anonymous	Deputy of the Jogorku Kenesh.	02.09.2022
Anonymous	Corruption Prevention Commissioner	02.09.2022
Anonymous	Representative of the State Agency for State and Municipal Service Affairs	03.06.2022

I. Introduction

The Kyrgyz Republic signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 16 September 2005.

This report reviews Kyrgyz Republic's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. The Kyrgyz Republic was selected by the UNCAC Implementation Review Group in 2017 by a drawing of lots for review in the third year of the second cycle.

1.1 Scope

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), the management of public finances (Article 9), judiciary and prosecution service (Article 11), private sector transparency (Article 12), access to information and the participation of society (Articles 10 and 13.1), and measures to prevent money laundering (Art. 14) under Chapter II. Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

1.2 Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in the Kyrgyz Republic as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

1.2 Methodology

The report was prepared by the Central Asian Research Institute on Corruption and Money Laundering with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the report from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the

detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

For the report, authors relied primarily on open data portals (active transparency), interviews, consultations and public information requests. In preparing this report, the authors also took into account the recent review of the Kyrgyz Republic carried out by the OECD team of experts within the 4th Round of Monitoring.

II. Executive Summary

This civil society parallel report examines the implementation of Chapter II on measures to prevent corruption and Chapter V on asset recovery of the United Nations Convention against Corruption (UNCAC) in law and practice in the Kyrgyz Republic. Since gaining independence, the Kyrgyz Republic has gone through a turbulent journey in countering corruption by adopting legislative and policy measures but still failing to achieve any meaningful outcomes.

The Kyrgyz Republic has a rather poor assessment of its anti-corruption situation according to many international ratings and studies. In 2021, the Kyrgyz Republic went down by 20 positions in the Transparency International CPI and ranked 144th out of 180 with a score of 27 out of 100, while in 2020 it was ranked 124th, which, however, is also a low rating.¹ In the WGI control of corruption index the Kyrgyz Republic went down from 17.31 in 2019 to 12.98 in 2020.² According to the findings published by the OECD Anti-Corruption Network, anti-corruption legislation of the Kyrgyz Republic is weak and needs to be seriously improved.

In 2020, the new Constitution was adopted, which not only increased the executive powers of the President, but also ensured his absolute power in shaping the state's anti-corruption policy. This system already existed under the rule of the previous presidents Akaev and Bakiyev. During their leadership, the country had a very high level of corruption, which primarily consisted of clan-family manifestations of nepotism. Thus, due to the centralization of power, currently the level of corruption according to the ratings has increased, which is also associated with the emergence of new corruption schemes.

The anti-corruption policy is completely determined by the President of the Kyrgyz Republic, with its implementation mainly concentrated in two state bodies: the State Committee for National Security and the Prosecutor General's office. Having formed the Anti-Corruption Business Council (hereinafter referred to as the ACBC) and becoming its chairman himself, the President of the Kyrgyz Republic entrusted the ACBC with the mission of "improving the main directions of the state policy in the field of combating corruption" and ensuring "an effective dialogue between public authorities and civil society on combating corruption, as well as creating favorable conditions for business development, improving the investment climate and mechanisms for protecting and supporting the activities of business entities."³ The ACBC includes representatives of both state bodies and representatives of civil society institutions. It is a consultative and advisory body and is not authorized to coordinate and control the implementation of anti-corruption policy. Thus, de jure, there is no state body in the country that would coordinate the process of developing and implementing the anti-corruption policy, but the ACBC is fulfilling this function de facto.

The Parliament (Jogorku Kenesh) does not use legislative levers to influence the anti-corruption policy and, in general, is not active in countering corruption through the parliamentary control function. Moreover, the majority of the deputies in the Jogorku

¹ Corruption strengthens: Kyrgyzstan lost 20 positions in CPI rating, <https://rus.azattyk.org/a/31672049.html>, (last visited on 28.06.2022).

² WB WGI Control of corruption, Kyrgyzstan, <http://info.worldbank.org/governance/wgi/Home/Reports> (last visited on 28.06.2022).

³ Decree of the President of the Kyrgyz Republic "On the Anti-Corruption Business Council under the President of the Kyrgyz Republic," <http://cbd.minjust.gov.kg/act/view/ru-ru/430637?cl=ru-ru> (last visited 22.08.2022).

Kenesh are pro-government, with only few opposition deputies. Hence the Jogorku Kenesh is controlled by the President.

Both the parliament and other state bodies are under the full control of the president and his administration, which leaves no opportunities for the independence of these bodies. The same can be said about the central electoral commission, the judiciary and the prosecutor's office, which negatively affects the promotion of anti-corruption measures.

Despite the fact that the anti-corruption service of the State Committee for National Security has been liquidated, the State Committee for National Security continues in the fight against corruption. Many corruption revelations ended with a 'deal with the investigation', and since October 2021, in connection with the introduction of new criminal legislation, this provision has been renamed 'admission of guilt'. At the same time, almost all criminal cases initiated at the beginning of corruption offenses end through 'cooperation with the investigation,' with a payment of 280,000 soms (about 3,400 EUR), in accordance with the Code of Criminal Procedure of the Kyrgyz Republic, where sometimes additional amounts are also paid as 'damage', after which the persons detained for corruption are released as soon as possible (within 1-3 months) with the termination of criminal prosecution. There is no methodology by which the damage is determined and calculated, and information on how 'damage' was determined. According to the head of the State Committee for National Security, over a short period of time, the country's budget received more than 7 billion soms (84 million EUR), while there is no transparency in their use.

The Defense Council Working Group, which until 2020 played a key role in combating corruption, is no longer a key actor. The Prosecutor General's Office only supervises the implementation of the anti-corruption legislation of state and municipal bodies, which today is the main measure to prevent corruption. Furthermore, the Institute of Commissioners for the Prevention of Corruption, established in 2015 in 43 state bodies, is gradually becoming incapacitated, remaining only in 18 state bodies after changes in the structure of the Government.

The political situation since October 2020, the crisis of the political elite and leadership during the power vacuum, and the coming into power of the new president S. Zhaparov finally led the country to the elimination of political competition. There are no pronounced political opposition leaders in the country. The persecution and criminal prosecution of all 'dissident' journalists and bloggers is intensifying.

The high level of political corruption is also associated with the use of only restrictive measures, which include identified facts of embezzlement and bribery, while there are no fully-fledged investigative measures related to the arrest and confiscation of property identified through financial investigations for the legalization of criminal assets. Assets and other property that are located abroad or rewritten to loyal persons or close relatives remain out of sight.

The anti-corruption legal framework contains virtually no recommendations from the Financial Action Task Force on Money Laundering (FATF). The FATF recommendations are reflected in separate legislation and practically do not correspond to anti-corruption legislation. There is weak regulation of the measures aimed at the return of assets.

There is a lack of political will to return stolen assets, since no real work is being done in this field. Public officials officially announce innovations in the form of the 'legalization' of

business and the income of millionaires and billionaires under the “economic amnesty”⁴ system, but this has little impact on lowering levels of corruption in the country.

This parallel report is intended to highlight the existing shortcomings and good practices for further study of the challenges the Kyrgyz Republic faces in its anti-corruption efforts, followed by recommendations.

2.1 Description of the Official Review Process

The second cycle of the UNCAC Review was launched in 2018. Japan and Sao Tome and Principe were selected as the countries that would assess Kyrgyzstan in the third year of the review cycle. Civil society was not consulted sufficiently during the self-assessment stage.

This report was developed through desk review, inquiries to state institutions and key informant interviews, including with the General Prosecutor's office, the Agency for Public Service, the Ministry of Justice and the Ministry of Finance, a former judge from the constitutional court, a parliament deputy as well as members of the CSO's Anti-Corruption Coalition of Kyrgyzstan, and independent experts. While preparing this report, the government submitted its self-assessment checklist to the reviewing countries in 2018. Civil society has not been involved in the review so far, and the review and country visit have been suspended for an indefinite period.

The General Prosecutor's office, which is the focal point, answered the inquiry about general information on implementation of the anti-corruption policy and provided information about asset recovery, disclosing the sum of 4 million Euro. Despite this, concrete information on the official review process was not provided by the focal point of the Kyrgyz Republic. Contact was made with the focal point via official letter and phone call, but no answer was provided.

2.2 Availability of Information

The authors of this report made use of public sources of information through the web portals of state bodies and the Legislative Information System of the Ministry of Justice. 12 official requests for access to information were also sent to public institutions. Only 10% of these requests were answered in a timely, useful and complete manner. The rest turned out to be entirely unusable and incomplete, with a timing violation: according to the law on access to information, they had to provide answers within two weeks, but answers were provided later than that period. Regarding requests for interviews, the research team made an effort to obtain direct information from government offices by conducting 10 interviews and/or Zoom/telephone consultations with government officials.

2.3 Implementation in Law and Practice

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in
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⁴ An economic amnesty has been declared in Kyrgyzstan, but is it realizable?
<https://rus.azattyk.org/a/30908399.html> (last visited 20.08.2022).

		practice
Art. 5 – Preventive anti-corruption policies and practices	largely implemented	poor
Art. 6 – Preventive anti-corruption body or bodies	partially implemented	poor
Art. 7.1 – Public sector employment	largely implemented	poor
Art. 7.3 – Political financing	largely implemented	poor
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	fully implemented	poor
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower Protection	partially implemented	poor
Art. 9.1 – Public procurement	partially implemented	poor
Art. 9.2 – Management of public finances	largely implemented	moderate
Art. 10 and 13.1 – Access to information and the participation of society	largely implemented	poor
Art. 11 – Judiciary and prosecution services	fully implemented	poor
Art. 12 – Private sector transparency	largely implemented	moderate
Art. 14 – Measures to prevent money-laundering	fully implemented	poor
Art. 52 and 58 – Anti-money Laundering	fully implemented	poor
Art. 53 and 56 – Measures for direct recovery of property	partially implemented	poor
Art. 54 – Confiscation tools	partially implemented	poor
Art. 51, 54, 55, 56 and 59 – International cooperation for the	largely implemented	poor

purpose of confiscation		
Art. 57 – The return and disposal of confiscated property	partially implemented	poor

Below is a summary of the main findings regarding the application of the UNCAC articles analyzed in this report, both in relation to the adaptation of the legal and regulatory framework, as well as in relation to their compliance in practice.

Art. 5 – Preventive Anti-Corruption Policies and Practices. The Report discusses Kyrgyzstan’s anti-corruption legal framework and focuses on the current and draft anti-corruption strategies. Previous anti-corruption strategies and action plans demonstrated a gradual strengthening of the role of the civil society and other stakeholder participation through the Security Council Working Group and expert groups in state bodies, in the implementation of policies and detection of corruption risks. Currently, the anti-corruption legislative framework is undergoing changes. The draft Law on Countering Corruption was developed without involving stakeholders during the drafting period. A process of public discussion was launched in June 2022 for one month, while it is clear that summer is a period of vacation, which could have been avoided. The development process and quality of the draft Law has raised questions and concerns. The draft Anti-Corruption Strategy was developed with the participation of stakeholders via the Anti-Corruption Business Council, meetings with citizens and civil society organizations, and state and municipal bodies. However, it lacks essential components and an action plan, remaining as declaratory as all the previous strategies.

Art. 6 and 13.2 – Preventive Anti-corruption Body or Bodies. At the time of writing of this, preventive functions are dispersed among several state bodies, such as the Office of the Prosecutor General, the Office of the Government (no longer in existence) and the Security Council Working Group (which exists de jure, but some of its powers have been de facto transferred to the Anti-Corruption Business Council). The Anti-Corruption Business Council has a consultative status, but performs such functions as the development of the draft anti-corruption strategy as if it has the powers of a state body. The draft Law on Countering Corruption includes a separate preventive body, which is a positive tendency, if this body is able to meet quality standards offered by the UNCAC and other such international instruments. The creation of the Anti-Corruption Business Council by Presidential decree without any amendments made to the Law on Countering Corruption created uncertainty as to the status, powers and responsibilities of the Council.

Art. 7.1 – Public Sector Employment. On October 27, 2021, the Law⁵ “On the State Civil Service and Municipal Service” was adopted in the Kyrgyz Republic for the recruitment, retention and promotion of civil servants and other non-elected civil servants. In the implementation of this Law, on February 2, 2022, the Decree⁶ of the President of the Kyrgyz Republic approved the Regulations on the procedure for holding an open competition for inclusion in the reserve of personnel of the state civil service and municipal service of the state body and local government, its formation and functioning.

⁵ Law “On the State Civil Service and Municipal Service” <http://cbd.minjust.gov.kg/act/view/ru-ru/112303> (last visited on 07.07.2022).

⁶ On the formation and functioning of the personnel reserve <http://cbd.minjust.gov.kg/act/view/ru-ru/430847> (last visited on 07.07.2022).

A distinctive feature of modern legislation in the field of state civil service and municipal service is that all appointments are made from the personnel reserve of the state body and local self-government both on an ongoing basis and during the absence of an employee who is on long-term social leave. In addition, appointment to a vacant position is also carried out by rotation, including at the request of a civil servant. Thus, it can be stated that the civil service model has become closed. Formerly, according to the laws on civil service of 2004 and 2016, the civil service in the Kyrgyz Republic was competitive-career (mixed), which met the constitutional principles of equal access of citizens to public service and career advancement. Despite ongoing reforms and even an increase in the salaries of civil servants, the existing system of selection, career advancement, and training hasn't ensured full effectiveness from the civil service.

Art. 7.3 – Political Financing. In the Kyrgyz Republic, there is no mechanism for state financing of candidates or political parties for elected positions, however, the procedure for financing them with the help of private donations and the use of their own sources is prescribed in the Constitutional Law “On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic,”⁷ as well as in the Regulation “On the procedure for the formation, accounting of receipts and expenditures of funds from the electoral fund of a political party during the elections of deputies of the Jogorku Kenesh of the Kyrgyz Republic,”⁸ which indicate the parameters of limits, goals and time periods of campaign spending. In practice, the monitoring of political financing is conducted by the Central Electoral Commission and the system is well-established. Existing legislation provides all the necessary tools for fair and transparent administration on paper, but since the division of political powers in the Commission itself is likely unfair, the representation of the opposition is weak, and there are sometimes problems regarding fairness and a lack of impartiality.

Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations. Kyrgyzstan has adopted codes of conduct for civil servants, judges, prosecutors, and parliamentarians. Ethics commissions have been set up in state bodies. However, the adopted codes and the established ethics commissions do not ensure the proper, conscientious behavior and integrity of officials. The law On Conflict of Interest “does not provide for an effective mechanism for its implementation,” since when it was adopted, “restrictive rules on decision-making were removed where relatives are potentially involved, which can give rise to a conflict of interest.”⁹ The ongoing declaration campaign of civil servants did not become a real anti-corruption mechanism. According to the law adopted in 2017, all civil servants are required to submit a UNT (single tax return), i.e., the declaration of income and expenses is integrated into the unified tax declaration.

Art. 8.4, 13.2 – Reporting Mechanisms and Whistleblower Protection. At present, the universal UN requirements for the protection of persons reporting corruption offenses are not fully taken into account in the legislation of the Kyrgyz Republic. The Law of the Kyrgyz Republic dated January 28, 2019 No. 19 “On the Protection of Persons Who Reported

⁷ Law of the KR on Elections, <http://cbd.minjust.gov.kg/act/view/ru-ru/203244?cl=ru-ru>, (last visited on 20.08.2022)

⁸ Regulation “On the procedure for the formation, accounting of receipts and expenditures of funds from the electoral fund of a political party during the elections of deputies of the Jogorku Kenesh of the Kyrgyz Republic”, <http://cbd.minjust.gov.kg/act/view/ru-ru/600060?cl=ru-ru>, (last visited on 20.08.2022).

⁹ OECD Report “Anti-Corruption Reforms in Kyrgyzstan”, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan (p.30) <https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-ENG.pdf> (last visited on 07.07.2022).

Corruption Offenses”¹⁰ legally regulates this issue, but in practice there has not been a single case of application of this procedure.

Art. 9.1 – Public Procurement. The Report discusses the new Law on Public Procurement,¹¹ which has changed the level of transparency in the public procurement sector. Even though the new Law was developed based on the active participation of all stakeholders, public discussions and support of involved international organizations, it has excluded from its ambit state and municipal enterprises and joint-stock companies, where 50% or more of the share in the authorized capital belongs to the state, including their subsidiaries. This is a significant drawback for countering corruption in public procurement and the new Law undermines previous efforts of the state to implement Open Government Program commitments in the area of public procurement.

Art. 9.2, 9.3 – Management of public finances. With regard to the mechanisms used in the Kyrgyz Republic for recording, storing and ensuring the integrity of accounting books, records, financial statements and other relevant documents, the provisions of the Law of the Kyrgyz Republic “On Accounting” dated April 29, 2002 No. 76, as well as the Regulation on Accounting for financial reporting in the general government sector, are relevant. These mechanisms are available and, according to the analysis of the above norms, seem adequate. Yet in practice, implementation is poor; for instance, the audit of budget execution in the Kyrgyz Republic is carried out by the Accounts Chamber of the Kyrgyz Republic, which systematically identifies problems in managing the national budget. In 2020, the Council of the Accounts Chamber conducted a compliance audit using elements of an audit of the effectiveness of budget execution in the Ministry of Agriculture of the Kyrgyz Republic and its subordinate institutions for 2020. According to the audit materials, financial violations were established for a total of 17.6 million soms (210,000 EUR).¹²

Art. 10, Art. 13.1 - Access to Information and Participation of Society. The Report focuses on the Constitutional guarantees of the right to Access to Information and two major Laws related to this policy area. The Access to Information legal framework fails to provide for the overriding of RTI over the secrecy and legitimate interests of the state, and does not include harm and public interest tests. Courts often support such secrecy by making decisions on the basis of by-laws that provide classification of secret information, without questioning the expediency of such classification or the significance of the public interest. Government bodies and agencies often fail to follow set timetables in providing responses to public requests, the quality of responses is low in many cases, and the sanctions for failure to provide information are not determined. There is no unified approach concerning the fees of requesting information.

There is a major problem in the implementation of OGP commitments due to the change in political power, and the Government’s lack of ownership and commitment to this

¹⁰ Law On the protection of persons who reported corruption offenses, <http://cbd.minjust.gov.kg/act/view/ru-ru/111829?cl=ru-ru> (last visited 07.07.2022).

¹¹ Law on the public procurement, <http://cbd.minjust.gov.kg/act/view/ru-ru/112361>, (last visited 07.07.2022).

¹² Accounts Chamber of the Kyrgyz Republic, “In 2020, the Ministry of Agriculture of the Kyrgyz Republic revealed financial violations in the amount of 17.6 million soms”, https://www.esep.kg/index.php?option=com_content&view=article&id=2129:za-2020-god-v-ministerstve-selskogo-khozyajstva-kr-vyyavleny-finansovye-narusheniya-na-summu-17-6-mln-somov&catid=49&lang=ru&Itemid=170 (last visited 20.06.2022).

initiative. Although some of the commitments under the OGP action plan have been partially implemented, the creation of a new online portal to discuss draft laws has been weakened by the fact that it is not kept up-to-date.¹³ There is also the draft Law on Access to Information that can defy some of the shortcomings of the current legal framework but the implementation of respective laws should be significantly strengthened. The persecution of independent media and bloggers is on the rise, with the intensification of criminal prosecution and liquidation of media outlets.

Art. 11 – Judiciary and Prosecution Services. In practice, the judicial system cannot be seen as independent, since the appointment process of judges is fully controlled by the President. The same is applicable to the prosecutor's office, the Prosecutor General and its deputies, who are nominated by the President. Civil society participation in the Judicial Council is insufficient, and this body is approved by the Jogorku Kenesh (Parliament) and informally controlled by the President. The new constitution strengthened the influence of the President and weakened the power of the Judiciary. Overall, new technologies and an integration of information systems have the potential to increase the transparency of the judicial system in the future. The social benefits package and level of salaries for the judiciary and prosecution services were significantly increased by President Japarov.

Art. 12.1, 12.2(c) and (f), 12.4 – Private Sector Transparency. Private sector transparency is ensured by publicly accessible registries such as the registry of legal entities, which is easily searchable and provides several different details about legal entities or individual persons, and the registry of beneficial owners was recently introduced based on the implementation of the EITI standards on the disclosure of beneficial owners under the subsoil legislation. The Law on Joint Stock Companies requires public companies and companies with 500+ shareholders to publish their annual report in the media. The Public Depository of Financial Statements as well as the disclosure and audit requirements for legal entities with public interest provide legal basis for the transparency of financial statements. Nevertheless, there is a lack of full information in the registry of legal entities, the registry of beneficial owners is not yet accessible to the public, and only the respective state officials have access. There is no legislative prohibition of the tax deductibility of bribes and corrupt expenses.

Art. 14, 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 58 – Measures to Prevent Money-Laundering. In Kyrgyzstan, the basic AML/CFT legislation was updated in August 2018. The State Financial Intelligence Service (SFIS) has wide access to various sources of information, including those containing operational financial data. Kyrgyz authorities can provide the widest possible mutual legal assistance and extradition in a timely manner in connection with investigations, prosecutions and other procedures related to ML/TF and predicate offenses. At the same time, casinos and the gambling business in general, due to the legalization of casinos in the Kyrgyz Republic in June 2022, are currently not included in the list of entities implementing AML/CFT measures. The register of beneficial owners is not available to the public. The use of initiative materials, which are the signals from banks, to the SFIS for the investigation of ML and FT is sporadic and inefficient. Law enforcement agencies are poorly versed in the methods of preventing, detecting and investigating crimes in the field of ML and FT. The number of ML investigations and convictions is low. Parallel financial investigations are sporadic. Individual law enforcement agencies do not always have a clear understanding of the need and procedures for their implementation. There is no comprehensive national strategy to identify and confiscate proceeds of crime, instrumentalities of crime and property of

¹³ Official Public Procurement Portal, <http://www.zakupki.gov.kg/popp/> (last visited 13.11.2022).

equivalent value.

Art. 53 and 56 – Measures for Direct Recovery of Property. The legislation of the Kyrgyz Republic does not designate the special category of victim to a plaintiff state - any person (entity/state) who is victim of a crime has a right to compensation in the order prescribed by law. The jurisdiction of the Kyrgyz Republic facilitates other States Parties' actions by sharing, spontaneously and proactively, information about proceeds of corruption or legal proceedings on the basis of conducted international agreements and mutual legal assistance, according to the principles of reciprocity.

Art. 54.1(b) and (c) [see also Art. 23.1 and 23.2] – Confiscation Tools. In 2012 the Government of the Kyrgyz Republic issued a decree "On measures for the return of assets withdrawn illegally (criminally) outside the Kyrgyz Republic."¹⁴ According to this legislation, the Prosecutor General's office needed to determine the total amount of assets, including in monetary terms, withdrawn from the Kyrgyz Republic starting from August 31, 1991, as well as a list of persons involved in the withdrawal of assets; persons for which there are court decisions that have entered into force, or orders to declare a wanted list for a crime. An electronic database of wanted persons was created, and international requests for mutual legal assistance were prepared with the assistance of the joint initiative of the World Bank and the United Nations Office on Drugs and Crime (UNODC): the Stolen Asset Recovery Database (StAR).

Art. 51, 54.1(a) and (b), 54.2, 55.1, 55.2, 55.6, 59 – International Cooperation for the Purpose of Confiscation. Since 2009, the FIU of Kyrgyzstan has been a member of the international Egmont Group of Financial Intelligence Units and is recognized by the international community as a separate state body of Kyrgyzstan. Membership in the Egmont Group allows for the rapid exchange of information via secure channels with the financial intelligence units of 165 countries. For the SFIS, international cooperation within the Egmont Group remains important, where information on persons involved in financial monitoring is exchanged via a secure channel with foreign financial intelligence units. The Kyrgyz Republic actively cooperates with international organizations (such as UNODC, EU, OSCE, USAID, SCO, etc.) and has cooperation agreements with FIUs in more than 30 countries and individual subjects of the FATF which are key economic and trade partners of Kyrgyzstan. The Kyrgyz Republic is also a member of international organizations such as the Eurasian Group (EAG), among others.¹⁵

Art. 57 – The Return and Disposal of Confiscated Property. Criminal procedural legislation of Kyrgyzstan does not create barriers to the disposal and return of confiscated assets of foreign origin, including for cases of autonomous confiscation. The working group on arrest and confiscation of asset recovery under the General Prosecutor's office is currently working on the development of recommendations to further implement best practices into national legislation, taking into account the experience of other countries and international legislation. Kyrgyzstan's legal framework does not specifically address if and how victims of corruption may be compensated in cases where assets are returned. In the case of Kyrgyzstan, no cases of confiscated assets (of foreign origin) in line with UNCAC Art. 57 were found. All agreements on mutual cooperation and assistance in the field of asset recovery are closed to the public.

¹⁴ Decree of the government on the "On measures for the return of assets withdrawn illegally (criminally) outside the Kyrgyz Republic , " <http://cbd.minjust.gov.kg/act/view/ru-ru/93142> (last visited 18.11.2022).

¹⁵ Official website of the Eurasian group, <https://eurasiangroup.org/ru>, (last visited 20.06.2022).

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g., <i>inadequate resources, lack of independence, strong expertise</i>)
President	moderate	Lack of strong expertise and political will.
Prosecutor General	moderate	Lack of independence, lack of resources, investigative limitations.
Ministry of Internal Affairs	poor	Lack of independence, lack of resources, lack of strong expertise, weak law enforcement.
Security Council	moderate	Lack of independence.
State Committee on National Security	moderate	Functional limitations.
State Service on Financial Intelligence (SFI)	moderate	Lack of personnel, insufficient number of investigations related to money laundering, low level of technical support being provided to SFI.

2.4 Recommendations for Priority Actions

1. Develop the Anti-Corruption Strategy on the basis of serious research conducted with the participation of state bodies, think tanks, academia, CSOs and business associations. The Strategy should include a detailed action plan, monitoring and evaluation mechanisms, and have an annual review mechanism. An updated action plan should be published after careful examination by all stakeholders of the outcomes of the previous year of implementation of the Strategy.
2. Consider previous best practices, positive experiences, systemic approaches, and institutional memories in preparation of anti-corruption policies and initiatives.
3. Strengthen the country's participation in international anti-corruption initiatives by fully implementing commitments under the OGP, EITI and FATF. There should be an objective to join GRECO set by the political leadership.
4. Establish a corruption prevention body. An assessment of the anti-corruption functions and powers of the respective state bodies should be conducted for their compliance with the UNCAC, including assessing the availability of expertise and resources, in accordance with international standards.
5. Strengthen the role of CSOs and citizens in the development and implementation of anti-corruption policies, as well as countering corruption by using existing mechanisms and means of communication.
6. Respect the right of access to information on a state level. All efforts should be made to demonstrate its priority over the protected interests of the state based on the application of harm and public interest tests.
7. Stop persecution and harassment of journalists, other media personnel, bloggers and citizens investigating, writing, and sharing information about corrupt practices.

8. Strengthen the process of hiring personnel for state services in accordance with all provisions of UNCAC.
9. Establish an adequate mechanism for the protection of whistleblowers, especially for the persons reporting corruption.
10. Ensure that the Central Elections Committee has more independence in order to conduct effective administration of the elections process and monitoring of political financing.
11. Ensure budget transparency and regularly provide detailed updates on each state and municipal body.
12. Publish declarations of income, expenses, liabilities and property of state and municipal personnel and their close relatives, as well as statistics on the measures.
13. Ensure appropriate mechanisms for implementing the Law on Conflict of Interest.
14. Strengthen mechanisms for coordinating and monitoring the implementation of legislation on conflicts of interest by the state personnel service and the prosecution authorities.
15. Ensure the judiciary's independence from any political involvement: the control of these bodies by the President should be decreased.
16. Reform the system of prosecution in light of the best international practices and standards as recommended by many international organizations by narrowing down its wide general supervisory functions to more precise functions in the area of criminal prosecution. The appointment of prosecutors should not exclusively be handled by the President.
17. Strengthen legislation in compliance with the UNCAC and its implementation in the area of asset recovery, provide training to personnel in the respective state bodies responsible for the enforcement of the asset recovery provisions. International asset recovery in corruption cases should be a priority for the political leadership of the country.

III. Assessment of Review Process for the Kyrgyz Republic

The preparation of the official UNCAC review report was drafted without the participation and knowledge of civil society. The Attorney General's Office responsible for preparing the official report coordinates responses with government agencies and submits the report, but this process is not open to the public. Subsequently, civil society can familiarize themselves with the report only through the official web pages of UNODC, as it is not publicly available on the official pages of state bodies. This report is being prepared in the Kyrgyz Republic for the first time as part of the second review cycle.

3.1. Report on the Review Process

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	yes	The Prosecutor General Office indicated in their response to a FOI request that they are the coordinating body.
Was the review schedule published somewhere/ publicly known?	no	
Was civil society consulted in the preparation of the self-assessment checklist?	no	
Was the self-assessment checklist published online or provided to civil society?	no	
Did the government agree to a country visit?	unknown	No information available.
Was a country visit undertaken?	unknown	No information available.
Was civil society invited to provide input to the official reviewers?	unknown	No information available.
Was the private sector invited to provide input to the official reviewers?	unknown	No information available.
Has the government committed to publishing the full country report?	unknown	No information available.

3.2. Access to Information

In general, the information available on the websites of state institutions for the implementation of the articles contained in Chapter II of the UNCAC is insufficient, as the authors were not able to access reports on the accountability and work of various state anti-corruption organizations. Also, it was not possible to find information on Chapter V, as such information was practically absent. For example, there are no reports on the return of assets on the website of the Ministry of Finance, and the information found was not up-to-date.¹⁶ Part of the information was obtained from research and analysis of international organizations and from interviews with experts and some government officials.

To collect the necessary information, the authors sent 12 requests for information to state bodies, of which 11 were responded to, but the answers of 8 of them were unusable due to the lack of an answer to the specific questions posed. Some answers directly indicated that it was impossible to provide an answer for various reasons, such as not having enough time to provide the proper answer; needing a deeper analysis of the questions in the request; and not having sufficient competence and authority to provide the answer.

As part of the preparation of this report, data was also taken from the media, in which official representatives of the authorities publicly disclosed information, which was also used in this report.

Thanks to the open access to all legal acts on the official website of the Ministry of Justice, it was possible to analyze current legislative compliance with the UNCAC.

¹⁶ Official website of the Ministry of Finance of the KR <http://minfin.kg/> (last visited 22.06.2022).

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyzes the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Kyrgyzstan through the application of laws, regulations and practices and highlights both good practices and areas for improvement.

4.1 Chapter II

With specific reference to Chapter II of the UNCAC, the following articles were commented on and analyzed:

4.1.1 Art. 5 – Preventive Anti-Corruption Policies and Practices

National Anti-Corruption Legal Framework

The anti-corruption legal framework in Kyrgyzstan consists of the following main legal instruments:

- **The Constitution of the Kyrgyz Republic:**¹⁷ The Constitution states in article 4 that the state's power is based on the prohibition of state and municipal officers to carry out actions or inactions or to omit an action that creates conditions for corruption.
- **The Law on Countering Corruption:**¹⁸ The Law on Countering Corruption is the main legislative act addressing the anti-corruption policy of the state. The Law provides a definition of corruption and states the main principles of countering corruption in the country.¹⁹ It sets down the institutional framework for the fight against corruption, stating that the President determines the state's official anti-corruption policy.²⁰ The Parliament exercises parliamentary control and the General Prosecutor's office coordinates the anti-corruption activities of the law enforcement agencies.²¹ The Government is responsible for the implementation and enforcement of the official anti-corruption policy by state bodies.²²

The law also guides state and municipal bodies in increasing the effectiveness of their anti-corruption activities,²³ guaranteeing state protection for persons assisting the fight against corruption²⁴ providing a list of offenses leading to corruption,²⁵ and

¹⁷ The Constitution of the Kyrgyz Republic, 5 May 2021, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru>, (last visited 20.06.2022).

¹⁸ The Law on Countering Corruption of the Kyrgyz Republic, 8 August 2012, # 153, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/203753>, (last visited 15.05.2022).

¹⁹ Art. 1 gives a definition of corruption and article 3 states that the following principles should guide the work on fighting corruption in Kyrgyzstan: protection of human rights and liberties, lawfulness, openness and transparency of the state and municipal bodies, prohibition of discrimination, protection of honor, dignity and business reputation of individuals.

²⁰ *Ibid*, Art. 6.

²¹ *Ibid*.

²² *Ibid*.

²³ *Ibid*, Art. 8.

²⁴ *Ibid*, Art.10.

²⁵ *Ibid*, Art 11.

emphasizing the will of Kyrgyzstan to cooperate internationally in curbing corruption.²⁶

- **The Law of Conflict of Interests:**²⁷ The law regulates conflicts of interests that might arise in activities of the state, municipal and other kinds of public officers as identified in article 6.²⁸ The law aims to control and prohibit or limit certain actions or inactions omissions to act that can potentially result in conflicts of interests, thereby protecting public interest and aiming to eliminate the personal interest of public officers.²⁹
- **The Law on Public Procurement:**³⁰ The new law on public procurement is one of the most recent controversial laws adopted by the Kyrgyz Parliament in May 2022. The law aims to effectively use public resources by establishing a well-functioning procurement system in Kyrgyzstan.³¹
- **The Law on State Service and Municipal Service:**³² The law provides for certain measures that could prevent and fight against corruption in the state and municipal service. For instance, the rotation of state and municipal officers is regarded by the law as an anti-corruption measure,³³ as well as the introduction of code of ethics and regulations,³⁴ and the prevention of conflicts of interest.³⁵
- **The Law on the Protection of Persons who Reported Corruption Offenses:**³⁶ The law aims to protect the rights of persons, who report corruption cases, to safeguard them from persecution, to establish organizational and legal bases for their protection and increase the level of public trust of the state.³⁷
- **The Law on countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds:**³⁸ The goal of this law is to determine and establish the legal and organizational framework for preventive measures to counter the financing of terrorist and extremist activities, and the legalization (laundering) of criminal proceeds; identification, disclosure and investigation of the financing of terrorist and extremist activities and the legalization (laundering) of criminal proceeds and related predicate crimes, as well as

²⁶ *Ibid*, Art. 16.

²⁷ The Law of Conflict of Interests of the Kyrgyz Republic, 12 December 2017, # 206, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111716>, (last visited 15.05.2022).

²⁸ Art. 6 provides a list of persons who fall under the application of this law.

²⁹ The Law of Conflict of Interests of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/111716>, (last visited 20.05.2022).

³⁰ The Law on Public Procurement of the Kyrgyz Republic, 14 April 2022, #27, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/112361>, (last visited 20.05.2022).

³¹ *Ibid*, Art. 1.

³² The Law on State Service and Municipal Service of the Kyrgyz Republic, 27 October 2021, #125, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/112303> (last visited 20.05.2022).

³³ *Ibid*, Art. 20.

³⁴ *Ibid*, Art. 32.

³⁵ *Ibid*, Art. 33.

³⁶ The Law on the Protection of Persons who Reported Corruption Offenses of the Kyrgyz Republic, 29 January 2019, #19, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111829> (last visited 20.05.2022).

³⁷ *Ibid*, Art. 1.

³⁸ The Law on Countering the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Proceeds of the Kyrgyz Republic, 6 August 2018, #87, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111822>, (last visited 20.05.2022).

elimination of the causes and conditions that contribute to the commission of these acts.

The President of the Kyrgyz Republic issued a Decree on Inventory of the Legislation on 8 February 2021.³⁹ The aim of the decree was to “optimize and improve the entire legislative framework, to carry out a large-scale and qualitative change based on the revision of existing values and principles, new guidelines and aimed at protecting the rights and interests of a citizen and legal entities.”⁴⁰ The Law on Countering Corruption was included to the list of laws to be inventoried as it became clear from a message from the President on the International Day Against Corruption on December 9, 2021.⁴¹ Sadyr Japarov instructed the Prosecutor General to develop a new draft of the law.

The Law on Countering Corruption was criticized by experts, civil society and public officials as being purely declarative in nature and failing to include implementation mechanisms in practice as well as coordinate with other laws related to anti-corruption.⁴² The draft of the new law was developed and presented for public discussion not by the Prosecutor General, but by the Ministry of Economy and Commerce of the Kyrgyz Republic on June 6, 2022.⁴³ As explained by drafters of the new law, the reason it was developed was because the current anti-corruption legislative framework is declarative in nature and does not provide mechanisms for its application in practice.⁴⁴ The draft of the new law introduces several additional provisions to the anti-corruption legal framework:

- The provision includes anti-corruption monitoring as a measure of assessment of the level of corruption in order to review Kyrgyzstan’s anti-corruption efforts.⁴⁵ The monitoring will be conducted by the anti-corruption preventive body and other state bodies within their functions with the possible involvement of civil society.⁴⁶
- State and municipal bodies will be required to analyze corruption risks and identify administrative procedures, functions and powers of state bodies, local governments, including their rule-making powers, which could be subject to corruption.⁴⁷
- The provision devotes separate articles on developing an anti-corruption culture and corruption related research.⁴⁸ It also highlights the role of citizens and civil society by providing them with rights to conduct anti-corruption monitoring, provide anti-corruption expertise on legal acts, participate in developing an anti-

³⁹ The Decree of the President of the Kyrgyz Republic on the Conduct of Inventorization of the Legislation of the Kyrgyz Republic #26, 8 February 2022, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/430382>, (last visited 01.06.2022).

⁴⁰ *Ibid.*

⁴¹ President Sadyr Japarov stated that the Prosecutor General's Office was instructed to develop a new draft of the Law on Countering Corruption as it should not be declarative, but enforceable and meet the requirements and globally accepted priorities.

⁴² Explanatory Note to the draft of the new Law on Countering Corruption, available online: <https://www.gov.kg/ru/npa/s/3878>, (last visited 10.06.2022).

⁴³ The text of the draft of the new Law on Countering Corruption, and the explanatory note are available online on the web page of the Cabinet of Ministers of the Kyrgyz Republic: <https://www.gov.kg/ru/npa/s/3878>, (last visited 10.06.2022).

⁴⁴ *Supra* footnote 26.

⁴⁵ *Ibid.*, article 12. The sources of anti-corruption monitoring are data from legal statistics bodies, appeals of individuals and legal entities on anti-corruption issues, information from non-governmental and international organizations, data from sociological surveys and publications in the media on anti-corruption issues, as well as other sources of information not prohibited by law.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, article 13.

⁴⁸ *Ibid.*, articles 20 and 21.

corruption culture, conduct research on corruption, and inform about corruption related cases.⁴⁹

- Separate chapters of the draft law regulate how anti-corruption expertise of the normative legal acts⁵⁰ have to be conducted and the protection of persons who provide information about corruption.⁵¹
- Finally, the draft law regulates consequences of corruption.⁵²

National Anti-Corruption Strategies

Kyrgyzstan signed the UNCAC on 10 December 2003 and ratified it by the Law on Ratification of the UNCAC on 6 August 2005.⁵³ The President of Kyrgyzstan at that time, Bakiyev, by the Decree on June 21, 2005 approved the State Anti-Corruption Strategy and the Action Plan for the Implementation of the State Anti-Corruption Strategy in the Republic of Kyrgyzstan (KR).⁵⁴ Moreover, to increase the effectiveness and sustainability of the official anti-corruption policy, and develop fundamentally new approaches to the fight against corruption and systemic measures aimed at preventing corruption, President Bakiyev signed a Decree "On urgent measures to combat corruption" on October 21, 2005. This Decree established Kyrgyzstan's first and presently, only preventive anti-corruption body: the National Agency of the Kyrgyz Republic for the Prevention of Corruption. A special supervisory body: the National Council of the KR for the Fight against Corruption, was also established.⁵⁵

The KR Government approved the set of measures to implement the Action Plan and the State Program to Combat Corruption crime in KR for 2006-2007.⁵⁶ These initiatives seemed to demonstrate the political will for an uncompromising fight against corruption in Kyrgyzstan.

In 2009, the second National Strategy on the Fight against Corruption and the Plan for its implementation were approved by Decree of the President.⁵⁷ The KR Government has issued the Set of Measures to implement the action plan under the national strategy.⁵⁸

⁴⁹ *Ibid*, article 23.

⁵⁰ *Ibid*, chapter 4.

⁵¹ *Ibid*, chapter 5.

⁵² *Ibid*, chapter 6.

⁵³ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>; Law of the Kyrgyz Republic on Ratification of the United Nations Convention Against Corruption, 6 August 2005, #128, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/1726>. (last visited 05.07.2022).

⁵⁴ The State Anti-Corruption Strategy in the Kyrgyz Republic the Action Plan for the Implementation of the State Anti-Corruption Strategy in the Kyrgyz Republic approved by the Decree of the Acting President, 21 June 2005 #251, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/4304>. (last visited 05.07.2022).

⁵⁵ See more below, in the section on anti-corruption bodies.

⁵⁶ The Resolution of the Government of the Kyrgyz Republic on Set of Measures of the Government of the Kyrgyz Republic to Implement the Action Plan for the Implementation of the Anti-Corruption Strategy and the State Program to Combat Corruption crime in KR for 2006-2007, No. 132, February 28, 2006. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/57177?cl=ru-ru>. (last visited 05.07.2022).

⁵⁷ The Decree of the President of Kyrgyz Republic on approve of the National Strategy on the Fight against Corruption in the Kyrgyz Republic dated 11 March 2009 #155, <http://cbd.minjust.gov.kg/act/view/ru-ru/4810> (last visited on 28.06.2022).

⁵⁸ The Resolution of the Government of the Kyrgyz Republic on Set of Measures of the Government of the Kyrgyz Republic to Implement the Action Plan for the Implementation of the Anti-Corruption Strategy No. 611, 30 September 2009. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/157129> (last visited on 29.06.2022).

The government confirmed that the previous strategy was not implemented properly in its resolution on the progress of implementation.⁵⁹ The lack of implementation of the second strategy was evidently exhibited in the demonstrations in April 2010, demanding the resignation of President Bakiyev and accusing him of corruption and abuse of power.⁶⁰

After the revolution in 2010 and the turbulent post-revolution time, the new President, Almazbek Atambayev, was elected and sworn into office on 1 December 2011.⁶¹ President Atambayev issued a Decree on the State Anti-Corruption Strategy in 2012.⁶² The strategy cited the President, that “the next step is the uncompromised fight against corruption” and declared that “the problem of corruption in the Kyrgyz Republic began to occupy one of the permanent places in the public life of the state.”⁶³ Before the strategy was enacted, the President created an Anti-Corruption Service under the State Committee of National Security.⁶⁴ In pursuit of the anti-corruption agenda, the President issued another Decree on Measures to Eliminate the Causes of Political and Systemic Corruption in Government in 2013.⁶⁵

The Government adopted the Program on Countering Corruption in 2012-2014 and The Action Plan,⁶⁶ that included a set of short-term and medium-term measures that were developed taking into account the recommendations of the OECD on the implementation by Kyrgyzstan of the Istanbul Anti-Corruption Action Plan, measures provided for by the Law Fight against Corruption and the Action Plan of the Program of the Government of the Kyrgyz Republic called “Stability and Decent Life.”⁶⁷ It also included a requirement for the state and municipal institutions to adopt institutional plans to prevent corruption and a specific methodology developed by the Ministry of Economy to support state institutions.⁶⁸ By March 2015, all state bodies had developed institutional plans.⁶⁹ The OECD-CAN monitoring team welcomed this initiative and after studying several of the plans, stated

⁵⁹ Resolution of the Government of the Kyrgyz Republic on the Progress of Implementation by Ministries, State Committees, Administrative Departments and Other Executive Bodies of Measures, Provided for by the Government's Package of Measures for the Implementation of the Action Plan for the implementation of the State Strategy for Combating Corruption in the Kyrgyz Republic for 2006-2007, 13 February 2008, #44 (last visited 05.07.2022).

⁶⁰ Radio Free Europe, Kyrgyzstan's 2010 Revolution, 7 April 2015, available online: <https://www.rferl.org/a/kyrgyzstan-opposition-riots/26942558.html>, (last visited 05.07.2022).

⁶¹ Atambayev Sworn in as Kyrgyz President, <https://www.ecoi.net/en/document/1045441.html>, (last visited 28.06.2022).

⁶² The Decree of the President of Kyrgyz Republic on approve of the State Strategy on Anti-Corruption Policy of the Kyrgyz Republic dated 2 February 2012 #26. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/61269?cl=ru-ru> (last visited 05.07.2022).

⁶³ *Ibid.*

⁶⁴ The Decree of the President of Kyrgyz Republic on Forming the Anti-Corruption Service under the State Committee of National security of the Kyrgyz Republic dated 14 December 2011 # 27. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/61205?cl=ru-ru>, (last visited 05.07.2022).

⁶⁵ The Decree of the President of Kyrgyz Republic On Measures to Eliminate the Causes of Political and Systemic Corruption in Government dated 12 November 2013 #172. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/61721>, (last visited 05.07.2022).

⁶⁶ The Program and Action Plan of the Government of the Kyrgyz Republic was adopted on 30 August 2012 by the Government's Resolution № 596. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/93686>, (last visited 05.07.2022).

⁶⁷ The Action Plan of the Program of the Government of the Kyrgyz Republic “Stability and Decent Life” dated 25 January 2012 #55. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/93618?cl=ru-ru>, (last visited 05.07.2022).

⁶⁸ *Supra* footnote 58.

⁶⁹ OECD/ACN Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan of the Kyrgyz Republic, 2015, at p. 14. Available online: <https://www.oecd.org/daf/anti-bribery/Kyrgyzstan-Round-3-Monitoring-Report-ENG.pdf>, (last visited 05.07.2022).

that the team “could see that these plans consist of the measures in the Program and Action plan of the Government and measures to address specific risks in these institutions. It is key to enhance practical implementation and ensure monitoring, in particular of their impact over the identified corruption schemes.”⁷⁰

The practice of institutionally specific anti-corruption planning is evidently positive and could lead to concrete results and successes in preventing corruption. All state bodies, between 2015 and 2020, regularly reported on the implementation of anti-corruption policies and generally made such reports publicly available.⁷¹ Annual reports were then submitted to the expert groups in each state body that operated under the Working Group of the Security Council. Based on the reports’ analysis, expert groups provided updated plans of actions to each institution. Expert groups developed a methodology of detecting corruption risks for the Working Group, that could be used by all expert groups, public officials and anti-corruption commissioners. Moreover, the institutional plans were approved by the public council of the respective institution.⁷²

Moreover, in 2015, a Governmental Decree on the formation of the Anti-Corruption Council under the KR Government was issued in order to ensure “an effective dialogue between state bodies and civil society on anti-corruption issues.”⁷³ The Government’s new Action Plan was developed by the Ministry of Economy and adopted in 2015.⁷⁴ Unlike the development of state anti-corruption strategies, during the drafting process of this Action Plan a working group involving civil society representatives was included. The Action Plan also underwent discussions and approval by state bodies, and public hearings with civil society and business participation.⁷⁵

The development of state strategies in 2009, 2012 and 2020 was criticized for the non-involvement of all stakeholders.⁷⁶ The National Anti-Corruption Strategy in force is the Strategy for 2021-2024 adopted in 2020 by the National Security Council and approved by the Presidential Decree.⁷⁷ This Strategy was the most “secretive” one: the text was not disclosed until its approval by the Security Council.⁷⁸

In October 2020, President Sooronbai Jeenbekov stepped down from office following demonstrations which challenged the results of the Parliamentary Elections on October 6, 2020.⁷⁹ Even though this National Strategy is formally in force, current President, Sadyr

⁷⁰ *Ibid*, at p. 14.

⁷¹ Expert interview. See for instance a report of the State Tax Service on the implementation of the 2015-2017 Strategy, available online: <https://www.sti.gov.kg/docs/default-source/otchet/otchetn1702015-2017.pdf?sfvrsn=2>, (last visited 05.07.2022).

⁷² Public councils are consultative and monitoring bodies consisting of civil society representatives. The list of public councils is available on the Cabinet of Ministers’ webpage: <https://www.gov.kg/index.php/ru/gov/s/8>, (last visited 06.07.2022).

⁷³ Decree of the Government of the Kyrgyz Republic dated 15 September 2015 #454-p. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/214761>, (last visited 06.07.2022).

⁷⁴ Action Plan for Public Institutions of the Kyrgyz Republic Implementing the State Strategy of Anti-Corruption Policy in 2015-2017. <http://cbd.minjust.gov.kg/act/view/ru-ru/97423> (last visited 06.07.2022).

⁷⁵ *Supra* footnote 57, p. 17.

⁷⁶ TI Kyrgyzstan Report on Anti-Corruption in Kyrgyzstan, 2020, at p. 26. Available online: <https://www.transparency.kg/files/pdf/NIS%20Kyrgyz%20Report%20rus%20-%20FINAL.pdf>, (last visited 10.06.2022).

⁷⁷ Decree of the President of Kyrgyz Republic dated 25 September 2020 #180. <http://cbd.minjust.gov.kg/act/view/ru-ru/430234> (last visited 24.06.2022).

⁷⁸ *Supra* footnote 71.

⁷⁹ Engvall J., Kyrgyzstan’s Third Revolution, 8 October 2020, available online:

Japarov, stated on various occasions that the new strategy is upcoming. Indeed, the draft of the new Strategy is currently under public discussion.⁸⁰ The Anti-Corruption Business Council under the President of the KR was created in late October 2021⁸¹ and has held a public discussion on the new strategy draft in January 2022.⁸² When the new Strategy will be approved by the President is not clear at the moment: it is in the process of getting approval from state bodies.⁸³ Nevertheless, this report discusses the draft Strategy, as it is expected to be approved in the near future.

In evaluating national strategies, the team of authors relied on international standards such as the Kuala Lumpur Statement on Anti-Corruption Strategies and the UNODC National Anti-Corruption Strategies Practical Guide.⁸⁴ Assessing the draft strategy, the authors came to the conclusion that the development process of the draft strategy did not include the broad engagement of stakeholders as required.⁸⁵ Moreover, an incorporation or integration of the draft strategy with other national programs/strategies is not clear without an action plan; the short-, medium- or long-term goals are not identified as well as an implementation mechanism not being determined. The financial part of the strategy refers to the state and local budgets and the National Fund Against Corruption⁸⁶ to be established by the Anti-Corruption Business Council. The lack of clarity as to the status of the Council itself (see section on anti-corruption bodies) also raises questions as to the fundraising capacity of its National Fund Against Corruption.

It is stated that the ACBC will be responsible for the coordination and technical part of implementation of the draft strategy. Since the ACBC is only a consultative body for the President's office and serves as a discussion platform for its members, it is unclear how such a body can be the main coordinating authority for the implementation of the draft strategy. It lacks the powers needed for the successful implementation and coordination of activities. More importantly, the ACBC lacks organizational and financial independence, hence, the full implementation of the new strategy is doubtful.

The draft strategy does not have monitoring and evaluation part, it is unclear whether it is to be developed together with the upcoming action plan or plans. In any case, the Government should ensure that the new strategy and related action plans are "implemented and periodically evaluated and adapted... one of the pivotal means of fighting corruption is the existence of an effective and continuing means of monitoring,

<https://www.cacianalyst.org/publications/analytical-articles/item/13643-kyrgyzstan%E2%80%99s-third-revolution.html>, (last visited 10.06.2022).

⁸⁰ Web-site of ant-corruption business council.

http://www.president.kg/ru/apparat_prezidenta/sovety_pri_prezidente/antikorrupcionnyy_delovoy_sovet, (last visited 10.06.2022).

⁸¹ Content of the anticorruption business council was established

http://www.president.kg/ru/sobytiya/21006_utverghden_sostav_antikorrupcionnogo_delovogo_soveta_pri_prezidente, (last visited 10.06.2022).

⁸² Web-site of ant-corruption business council,

http://www.president.kg/ru/apparat_prezidenta/sovety_pri_prezidente/antikorrupcionnyy_delovoy_sovet, (last visited 10.06.2022).

⁸³ Information received from the head of the Anti-Corruption Business Council on the interview on 12.05.2022.

⁸⁴ Kuala Lumpur Statement n Anti-corruption strategies

https://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala_Lumpur_Statement_on_Anti-Corruption_Strategies_Final_21-22_October_2013.pdf, (last visited 10.06.2022).

⁸⁵ *Ibid.*

⁸⁶ Draft of the new National Strategy, p. 18. <http://cbd.minjust.gov.kg/act/view/ru-ru/430700> (last visited 10.06.2022)

review, and revision.”⁸⁷

Membership of the relevant international and regional organizations, initiatives and networks that address anti-corruption

Kyrgyzstan participates in the Istanbul Anti-Corruption Action Plan of the Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development since 2003. The Fourth Round Monitoring of the OECD took place between 2016-2018.⁸⁸ The Report on outcomes of the Fourth Round was published in on 4 July 2018.⁸⁹

Good Practices

- Kyrgyzstan has a comprehensive anti-corruption legal framework and legislative developments before 2020 contributed to its improvement.
- Previous anti-corruption strategies and action plans demonstrated a gradual strengthening of the role of the civil society and other stakeholder participation through the Security Council Working Group and expert groups in state bodies in the implementation of policies and detection of corruption risks.
- The draft Anti-Corruption Strategy was developed with the participation of stakeholders via the ACBC, meetings with citizens and civil society organizations, and state and municipal bodies.

Deficiencies

- The current Anti-Corruption Strategy adopted in 2020 and the Action Plan failed to involve stakeholders.
- The draft Anti-Corruption Strategy lacks essential parts and an action plan, remaining as declaratory as all the previous strategies. Moreover, it states that the ACBC is responsible for its drafting and implementation, even though the Security Council Working Group is implementing the Strategy in practice. This situation makes the Government and its bodies reluctant to implement the current Strategy and places the Working Group in grave uncertainty.
- New political leadership is wiping away almost all previous positive experiences and achievements in prevention and countering corruption.
- The draft Law on Countering Corruption was developed without involving stakeholders during the drafting period. A process of public discussion was launched in June for one month, while it is clear that summer is a period of vacation, which could have been avoided. The way the draft Law was introduced and its quality raise questions and concerns.

4.1.2 Art. 6 and 13.2 – Preventive Anti-corruption Body or Bodies

After the ratification of the UNCAC in 2005, an anti-corruption body was created in the same year by the Presidential Decree: The National Agency on Prevention of Corruption and the National Anti-Corruption Council as its supervisory body.⁹⁰ The National Anti-

⁸⁷ UNCAC Technical Guide, p.6, <https://www.unodc.org/unodc/en/treaties/CAC/technical-guide.html> (last visited 10.06.2022)

⁸⁸ Anti-corruption reforms in Kyrgyzstan <https://www.oecd.org/corruption/Anti-corruption-reforms-in-Kyrgyzstan.htm>, (last visited 10.06.2022).

⁸⁹ 4th Round Monitoring Report 2018. <https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-ENG.pdf>, (last visited 10.06.2022).

⁹⁰ On urgent measures to combat corruption, <http://cbd.minjust.gov.kg/act/view/ru-ru/4351>, (last visited 20.06.2022).

Corruption Council of the Kyrgyz Republic aimed to unite the efforts of state and public institutions in the fight against corruption. It was supposed to become a platform for the participation of civil society in decision-making, monitoring and implementation of anti-corruption activities. The Council included representatives of all branches of government and civil society representatives.⁹¹

The National Agency for the Prevention of Corruption was established as a state institution that is not part of the Government and assumes the leading role in performing state policy in the field of corruption prevention. It is authorized to implement activities on the identification, elimination and prevention of the occurrence of conditions leading to corruption.⁹² The National Agency was the first and so far only in the history of Kyrgyzstan corruption prevention bodies. The National Agency had 2 departments, sub-departments and sectors employing a total of 49 public officers.⁹³ Regrettably, the National Agency could not become a truly independent state authority on prevention of corruption.⁹⁴ Soon, "it became clear that anti-corruption activities are not in the interests of [...] authorities, which was reflected in comprehensive restriction of the agency's activities and frequent changes in its leadership."⁹⁵

After several noticeable cases of corruption revealed by the Agency, the first commissioner was sacked and another, more loyal person led the Agency to inefficiency. By Presidential Decree in 2009, the National Agency was transformed into the Agency on Corruption Prevention under the State Personnel Body, and from July 2008 until its liquidation, it was headed by the current President of the country, Sadyr Japarov.⁹⁶ Thus, a formally independent corruption prevention body was reorganized into a fully dependent agency of the State Personnel Service. This demonstrates that the country's leadership did not fully grasp the importance of the preventive state body for the fulfillment of the country's responsibilities under the UNCAC. Eventually, both the transformed Agency and the Council were officially closed after the second revolution in 2010.⁹⁷

After the revolution in April 2010, the President and the Government took active efforts to

⁹¹ The Regulation on National Anti-Corruption Council of the Kyrgyz Republic adopted by the Decree of the President of the Kyrgyz Republic on 17 February 2009 # 109. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ky-kg/61515>, (last visited 05.07.2022).

⁹² The Regulation on The National Agency for the Prevention of Corruption of the Kyrgyz Republic adopted by the Decree of the President of the Kyrgyz Republic on 21 October 2005 # 476. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/4352/10?mode=tekst>, (last visited 05.07.2022).

⁹³ Functional Review of National Institutional Mechanisms on Gender Implementation In Kyrgyz Republic in 2009, UNDP Analytical Report, at p.64. Available: <https://www.undp.org/sites/g/files/zskgke326/files/migration/kg/rus-functional-review.pdf>, (last visited 05.07.2022).

⁹⁴ Sydykova L., at p. 120, available online in Russian: https://www.krsu.edu.kg/images/main-site/obshaya_informacia/anticorruptcia/publications/sydykova_mon_korrupt.pdf, (last visited 25.06.2022).

⁹⁵ *Supra* footnote 72, at p. 26.

⁹⁶ In Kyrgyzstan different institutions were liquidated <https://24.kg/archive/ru/politic/64716-v-kyrgyzstane-ryad-uchrezhdenij-likvidirovan.html/>, (last visited 10.06.2022).

⁹⁷ The Agency on Corruption Prevention under the State Personnel Body was liquidated in 2011: <https://www.osoo.kg/inn/02404200610043/>, (last visited 25.06.2022). The National Anti-Corruption Council ceased to exist after April 2010 revolution but the precise date is not clear as the Regulation on the Council is shown as being in force: <http://cbd.minjust.gov.kg/act/properties/ru-ru/61515/10>, (last visited 06.07.2022) while the Decree of the President that approved this Regulation in 2009 has not been in force since 31 December 2021: <http://cbd.minjust.gov.kg/act/view/ru-ru/60112?cl=ru-ru>, (last visited 06.07.2022).

positively change the anti-corruption landscape as mentioned above. In 2011, a new anti-corruption body was established: the Anti-Corruption Service under the State Committee of National Security.⁹⁸ The Committee of National Security is the most closed state body and subordinating the anti-corruption body to it “fundamentally contradicts the principles of functioning of anti-corruption agencies.”⁹⁹ The Anti-corruption Service wasn’t a preventive body, it solely performed functions of prosecution of corruption crimes.

President Atambayev issued a Decree on the State Anti-Corruption Strategy in 2012.¹⁰⁰ The strategy cited the President, that “the next step is the uncompromised fight against corruption” and declared that “the problem of corruption in the Kyrgyz Republic began to occupy one of the permanent places in the public life of the state.”¹⁰¹ On November 12, 2013, by Decree of the President of the Kyrgyz Republic No. 215 ‘On measures to eliminate the causes of political and systemic corruption in government bodies’, the Security Council was entrusted with the task of identifying corruption risks in 64 state bodies.¹⁰²

It should be noted that this was an important and significant milestone in the implementation of anti-corruption policy, since the established expert groups under the Security Council consistently identified systemic corruption schemes in state bodies and developed “a set of measures to eliminate systemic corruption and related corruption schemes in state bodies and business entities from state participation”, which was essential for reducing corruption in state bodies. Thus, according to the Security Council, for the period from 2014-2016, 53 detailed plans for step-by-step measures to dismantle systemic corruption and 32 plans for 2016-2022 were developed. For example, “7 main corruption zones and 94 corruption schemes in the activities of kindergartens, schools, colleges, universities, as well as in the Ministry of Education and Science itself” were identified within the education system, which made it possible to develop and begin to implement a plan to eliminate them.¹⁰³

As for the Anti-Corruption Service, it was liquidated by ex-president Jeenbekov before he left office in October 2020.¹⁰⁴ However, the acting President at that time, Japarov,

⁹⁸ The Decree of the President of Kyrgyz Republic on Creation of the Anti-Corruption Service under the State Committee of National Security of the Kyrgyz Republic dated 14 December 2011 #27. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/61205/20?mode=tekst>, (last visited 06.07.2022).

⁹⁹ *Supra* footnote 72, at p. 26.

¹⁰⁰ The Decree of the President of Kyrgyz Republic on approve of the State Strategy on Anti-Corruption Policy of the Kyrgyz Republic dated 2 February 2012, #26, <http://cbd.minjust.gov.kg/act/view/ru-ru/61269?cl=ru-ru> (last visited 06.07.2022).

¹⁰¹ The Decree of the President of Kyrgyz Republic on Forming the Anti-Corruption Service under the State Committee of National security of the Kyrgyz Republic dated 14 December 2011 # 27. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/61205?cl=ru-ru>, (last visited 06.07.2022).

¹⁰² Decree of the President of the Kyrgyz Republic of November 12, 2013 UP No. 215 “On measures to eliminate the causes of political and systemic transformation in government” <http://cbd.minjust.gov.kg/act/view/ru-ru/61721> (last visited 05.07.2022).

¹⁰³ Security council declares that corruption in the sphere of education has grown to colossal size. <https://vesti.kg/obshchestvo/item/27104-sovet-oboronyi-kr-konstatiruet-korrupsiya-v-sfere-obrazovaniya-dostigla-kolossalnyih-razmerov.html> (last visited 05.07.2022).

¹⁰⁴ The Decree of the President of Kyrgyz Republic On Some Measures to Implement the State Strategy to Combat Corruption and Eliminate its Causes in the Kyrgyz Republic for 2021-2024 dated 14 October 2020 # 199. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/430247>, (last visited 05.07.2022).

canceled this Decree and reinstated the Anti-Corruption Service just two days later.¹⁰⁵ The reasons for this reinstatement that lasted only for 8 months became evident once the prosecutions of business owners, members of the Parliament and former high profile public officials were actively conducted by the Anti-Corruption Service.¹⁰⁶ Finally, in June 2021, the Anti-Corruption Service was liquidated and the official reason was stated to be complaints from the business community.¹⁰⁷

Thus, there is no single anti-corruption body responsible for the prevention of corruption in Kyrgyzstan, so this function is fulfilled by several state bodies as indicated in the Law on Countering Corruption.¹⁰⁸ According to the Law and as stated in the National Strategy, 3 state institutions are responsible for the coordination of the prevention of corruption: the Security Council Working Group on Monitoring the Implementation of the State Anti-Corruption Strategy and the Security Council Secretariat, the Office of the Government¹⁰⁹ of the KR and the Prosecutor General. The Security Council Working Group coordinates the development and implementation of the Strategy with organizational support from the SC Secretariat.¹¹⁰

The Office of the Cabinet of Ministers was responsible for the coordination of the work of state bodies and allocation of the main functions and tasks among the governmental bodies that carry out anti-corruption activities.¹¹¹ In addition, the Office of the General Prosecutor of the KR is responsible for the coordination of anti-corruption activities of the law enforcement, fiscal and municipal bodies.¹¹² After President Japarov came to power and the process of inventory of laws started in 2021, it is questionable whether the Security Council Working Group is going to continue its work as stated in the National Strategy. However, in the response to our freedom of information request, the Working Group confirmed that they are implementing the Strategy and have planned events on training of municipal officers. The Prosecutor General office continues to fulfill its anti-corruption functions at the moment. The Office of the Government does not exist and it is not clear whether the Cabinet of Ministers stepped in to fulfill the functions of the Office in the anti-corruption agenda.

In 2015, the position of Commissioners for the prevention of corruption in state bodies and local self-government bodies was created to coordinate anti-corruption policies and efforts across state and municipal bodies. The Commissioners are entrusted with a wide range of functions in the field of corruption prevention. The appointment of Commissioners is done through a process that ensures their political stance, impartiality, neutrality, integrity and competence.¹¹³ The initiative itself was a positive step, however, there were obvious

¹⁰⁵ The Decree of the President of Kyrgyz Republic dated 16 October 2020 #3. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/430246?cl=ru-ru>, (last visited 06.07.2022).

¹⁰⁶ A Year of New Power's Fight Against Corruption, Radio Azattyk 20 December 2021, <https://rus.azattyk.org/a/31617392.html>, (last visited 06.07.2022).

¹⁰⁷ The Decree of the President of Kyrgyz Republic On the Abolition of the Anti-Corruption Service of the State Committee for National Security dated 25 June 2021 #271. http://www.president.kg/ru/sobytiya/ukazy/19876_uprazhdena_antikorrupcionnaya_slughba_gknb (last visited 06.07.2022).

¹⁰⁸ *Supra* footnote 2.

¹⁰⁹ This state body does not exist after the 2021 Constitution was adopted.

¹¹⁰ *Supra* footnote 2, article 6. National Anti-Corruption Strategy, point 2.3.2.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ The Resolution of the Government of the Kyrgyz Republic dated 16 September 2015 #642. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/98016?cl=ru-ru>, (last visited 06.07.2022).

shortcomings:

- The commissioner is usually just one or two persons who have many different responsibilities to fulfill.
- The average budgetary allocation for a commissioner is 33.6 million soms (EUR 400,000) per year. This budget covers salaries, but does not include operational costs. Hence, training and educational activities of commissioners on anti-corruption issues or organization of anti-corruption events are not covered by the state budget.¹¹⁴
- The dependence of the commissioner on the leadership of the respective state or municipal body does not give much room for freedom of action.
- Staff turnover became another problem, as the position is not among the top paid or prestigiously regarded within the governmental system. Moreover, newcomers need to be trained from scratch and state resources are very limited, hence, the level of knowledge and skills of commissioners is often questionable.¹¹⁵

The institution of commissioners for the prevention of corruption still exists at the time of writing this report. There is hope that the system will remain in place after the inventory of laws process is over. The commissioners' system has potential for significant improvement and might become an important tool in preventing corruption in state and municipal bodies. It is essential not to erase all previous efforts in prevention, but instead, to build on previous work and experience to create a better anti-corruption system.

The Law on Countering Corruption as well as the National Anti-Corruption Strategy in force are obviously outdated and seem to be living out their last days. This is evidenced by the creation of the Anti-Corruption Business Council on 8 July 2021, that has changed the entire system of coordination and distribution of preventive functions between state bodies.¹¹⁶ The Anti-Corruption Business Council was established with the purpose of "improving the main directions of state policy in the field of combating corruption and ensuring an effective dialogue between public authorities and civil society on combating corruption, as well as creating favorable conditions for business development, improving the investment climate and mechanisms for protecting and supporting the activities of business entities."¹¹⁷

Based on the regulation, the Anti-Corruption Business Council¹¹⁸ is chaired by the President of the KR, and has the following members: the Anti-Corruption Business Council general secretary, heads of the state bodies, members of the Parliament, Business Ombudsman, chairman of the Chambers of Commerce of the KR, representatives of international partners/donors, business, and the civil society. The main objectives of the ACBC are to:

¹¹⁴ Expert interview with the member of the Central Electoral Commission, 05.07.2022.

¹¹⁵ TI Kyrgyzstan Report on Anti-Corruption in Kyrgyzstan, 2020, at p. 28. Available online: <https://www.transparency.kg/files/pdf/NIS%20Kyrgyz%20Report%20rus%20-%20FINAL.pdf>, (last visited 10.06.2022).

¹¹⁶ Decree of the President of the Kyrgyz Republic on the Anti-Corruption Business Council dated 8 July 2021 № 293. <http://cbd.minjust.gov.kg/act/view/ru-ru/430637?cl=ru-ru> (last visited 10.06.2022).

¹¹⁷ *Ibid.*

¹¹⁸ Regulation on the Anti-Corruption Business Council, 8 July 2021, approved by the Decree # 293 <http://cbd.minjust.gov.kg/act/view/ru-ru/430638/10?cl=ru-ru> (last visited 10.06.2022).

- establish effective mechanisms of partnership between the state and municipal bodies and the business community in terms improving the business environment and countering corruption;
- monitor regularly the implementation of measures taken;
- analyze anti-corruption legislation and the legislation on the protection of business;
- anti-corruption expertise of the legislation aimed to regulate and protect business upon requests from the business community and the public;
- development of proposals for state bodies in relation to improving the business and investment climate, reforming the system of state regulation, improving legislation and the anti-corruption policy of the state, and strengthening the judicial and law enforcement systems.¹¹⁹

While the ACBC has a status of a consultative body, at the time of writing this report, it does not have the status of preventive body or state level anti-corruption body. However, the draft Law on Countering Corruption also includes new state bodies such as the anti-corruption preventive body that will be responsible for the implementation of the preventive policy of the state.¹²⁰ Hence, it is possible that the status of the ACBC will be changed to the state preventive body. Unofficially, some state officers indicated that the Anti-Corruption Business Council representatives requested information from the state bodies as if they have powers and status to do so. Whereas the Council does not officially have a separate budget, it uses premises that belong to the state and municipalities in regions. However, it is officially stated that the Council works on a pro bono basis.¹²¹

The draft Law on Countering Corruption also includes the Coordinating Committee of the heads of law enforcement, fiscal and other bodies on state and municipal levels, as the permanent organ under the Prosecutor General's office.¹²² Since there is not enough information about these new state bodies, it is impossible to evaluate whether they meet the standards of a preventive anti-corruption body under the UNCAC. The draft of the new law introduces several additional provisions to the anti-corruption legal framework.

Good Practices

- Kyrgyzstan was able to create a system of expert groups working with the respective state body under the supervision of the Security Council Working Group on detecting corruption risks related to the specific area the state body functioned in, reviewing institutional plans on the implementation of anti-corruption policies of state bodies and preparing updated institutional plans. This positive experience can be used by the country's leadership and anti-corruption bodies to achieve better outcomes.
- The identification of corruption zones and schemes in state bodies, as well as the development and implementation of plans to eliminate them (especially in 2014-2016) has become an important milestone in the implementation of anti-corruption policy.
- Commissioners on the prevention of corruption, introduced in 2015, could become important focal points for the preventive work with the proper political, institutional and financial support.

¹¹⁹ *Ibid*, part II.

¹²⁰ Draft Law, article 6.5 and 9. <https://deputat.kg/draft-laws/proekt-zakona-kyrgyzskoj-respubliki-o-protivodejstvii-korrupsii/> (last visited 10.06.2022).

¹²¹ Expert interview - Mukanova, N, Chairman of Anti-Corruption Business Council under the President of the Kyrgyz Republic, 05.07.2022.

¹²² Draft Law, article 8.

- A return of the preventive body in the draft Law on Countering Corruption is a positive tendency, if this body is able to meet the quality standards offered by the UNCAC and other such international instruments.

Deficiencies

- The absence of an independent preventive body on corruption.
- Preventive functions are dispersed among the several state bodies, but one of them does not exist (the Office of the Government), and the powers of the Security Council Working Group exist de jure, but have been de facto transferred to the ACBC.
- The creation of the ACBC by Presidential decree without any amendments made to the Law on Countering Corruption created uncertainty as to the status, powers and responsibilities of the Council.
- Limited public information campaigns were conducted through the state media.

4.1.3 Art. 7.1 – Public Sector Employment

On October 27, 2021, the Law on the State Civil Service and Municipal Service was adopted in the KR for the recruitment, retention and promotion of civil servants and other non-elected civil servants.¹²³ In the implementation of this Law, on February 2, 2022, the Decree of the President of the KR approved the Regulations on the procedure for holding an open competition for inclusion in the reserve of personnel of the state civil service and municipal service of the state body and local government, its formation and functioning.¹²⁴

According to part 3 of article 37 of the KR Constitution, “citizens of the KR have equal rights, equal opportunities when entering the state civil and municipal service, and promotion in the manner prescribed by law”.¹²⁵ For other types of public service such as diplomatic, military and law enforcement agencies, access is closed to citizens of the KR. The legislation of the Kyrgyz Republic, which regulates the procedure for entering the above types of public service, also determines the procedure for entering through the personnel reserves.¹²⁶

The announcement of an open competition for the personnel reserve of a state body and a local self-government body by groups of positions is posted in the media, and on the websites of the authorized state body for civil service (SASMS)¹²⁷ and local self-government and the state body initiating the competition. According to this provision, the procedure for selecting potential employees begins with the acceptance of documents of candidates and the creation of a competitive commission of a state body. The selection procedure consists of three stages.¹²⁸

¹²³ Law “On the State Civil Service and Municipal Service” <http://cbd.minjust.gov.kg/act/view/ru-ru/112303>, (last visited on 07.07.2022).

¹²⁴ On the formation and functioning of the personnel reserve <http://cbd.minjust.gov.kg/act/view/ru-ru/430847>, (last visited on 07.07.2022).

¹²⁵ Constitution of the Kyrgyz Republic <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru> (last visited on 07.07.2022).

¹²⁶ Law “On the State Civil Service and Municipal Service” <http://cbd.minjust.gov.kg/act/view/ru-ru/112303>, (last visited on 07.07.2022).

¹²⁷ State service vacancy portal, <https://clck.ru/32eMqr>, (last visited on 06.07.2022).

¹²⁸ At the first stage, candidates' documents are reviewed for compliance with the minimum qualification requirements. At the second stage, various types of testing of candidates who have passed the first stage are carried out. The third stage is an interview, the final stage of the competitive selection. As a rule, it covers all necessary aspects of the recruitment procedure.

According to previous legislation, a potential candidate who expressed a desire to enter the civil service saw a specific vacant position, qualification requirements, and functional duties in the media announcement. Now citizens are familiarized with the announcement of a competition for groups of positions, and positions are indicated by field, for example, a position in the field of jurisprudence, economics, finance, etc. In this regard, there is a risk of corruption in that the so-called 'open competition' for the personnel reserve of a state body will be held for a certain person, who, if successfully passes the test, will also successfully pass the interview and be recommended to the personnel reserve of this state body. The minister has the right to appoint to vacant positions *only* from the personnel reserve of the state body.

The rest of the contestants who have successfully passed the competitive tests will continue to wait for a three-year period when they will be appointed to vacant positions. At the same time, a citizen can be a member of the personnel reserve in each ministry and administrative department of a Local Self-Government (LSG) body.

In accordance with the regulation on the procedure for conducting testing, approved by Decree of the Government of the Kyrgyz Republic dated December 29, 2016 No. 706,¹²⁹ different forms of testing are used to test candidates for filling vacant administrative public positions and administrative municipal positions. There is a corruption risk that not all legal acts can be indicated when passing the subject test, that is, deliberately reduce the number of legal acts for one competitor, and for another - increase the list of legal acts.

Another case of corruption was found in the testing system AIS "Synak-testirle"¹³⁰ from the online platform E-kyzmat, which operates only in one function: the identification of the contestant at the entrance to the AIS "Synak-testirle".¹³¹ Identification is not always successful, taking into account that the facial image of the person being tested is not always clearly displayed on the computer monitor in order to identify him with the SRS data, and at the same time identification is carried out by entering the citizen's TIN (Tax Identification Number). In this regard, there is a high corruption risk that a completely different person can be tested for the contestant using the TIN of the real contestant. Recently, a civil servant from Djalal-Abad State Personnel Service who was responsible for test administration was caught by the State intelligence service in a bribe. The civil servant was producing a positive test result for the applicants in exchange for money.¹³² Therefore, there are loopholes throughout the process which can be used in a corrupt way. In this regard, it is proposed to use the biometric identification/testing of a contestant admitted to testing, as in elections, that is, by the phalanges of the hands (fingerprint).

For the purpose of transparent activity of the testing centers of the authorized state body in the field of civil service, it is proposed to install additional video cameras with sound and with online access to the website of this authorized state body, as when conducting online meetings of the Jogorku Kenesh (parliament) of the Kyrgyz Republic. In connection with the above and in order to remove the high risk of corruption, it is necessary to outsource the function of the testing department. In practice, the correct procedures are applied,

¹²⁹ Governmental decree About questions of the organization of the state civil service and municipal service <http://cbd.minjust.gov.kg/act/view/ru-ru/99690?cl=ru-ru>, (last visited on 06.07.2022).

¹³⁰ Decree about the testing department mkk.gov.kg/otdel-centr-test/, (last visited on 06.07.2022).

¹³¹ E-kyzmat online platform, <https://infocom.kg/ru/news/527-k-sistiemie-eliektronnogho-uchieta-kadrov-e-kyzmat-podkliuchieny-1438-ghosorghonov-riespubliki/> (last visited on 20.06.2022).

¹³² When receiving a bribe for a positive test result, a specialist of the State Agency for Civil Service Affairs of Kyrgyzstan was detained:

<https://knews.kg/2022/06/24/pri-poluchenii-vzvatki-za-polozhitelnyj-rezultat-testirovaniya-zaderzhan-spetsialist-gosagentstva-po-delam-gossluzhby-kyrgyzstana/>, (last visited on 06.07.2022).

however, during the third stage, the interview, it is often not possible to select the best candidate. At this stage, there is a high corruption risk.

It is also proposed to conduct an interview online, with a link to the website of the state body initiating the competition. There are no criteria for selecting contestants at the interview stage. That is, if there is a vacant position, appointments will be made from the personnel reserve of this state body or by rotation. On the one hand, theoretically, the career promotion of an existing civil servant (if he fills a position lower than the vacant one), appointment is from the state personnel reserve. On the other hand, the rotation of the civil servants, is usually conducted with the justification "in order to reduce corruption." But not all ministries and administrative departments have developed and approved a list of corrupt positions. Candidates in the personnel reserve of a state body should be posted on the website of the state body or of the State Agency for Civil Service Affairs. Currently, a list of persons is posted on the website of the authorized state body for civil service affairs.¹³³

There are no special requirements in the KR legislation for recruitment and selection procedures of certain categories of positions that are considered particularly vulnerable to corruption, including the possible early identification of potential conflicts of interest. Previously, the 2016 Law provided for polygraph testing for positions where there is a risk of corruption, regardless of whether it is a managerial position or a specialist position.

In accordance with Article 30 of the law,¹³⁴ the rotation of state civil servants and municipal employees is carried out. The procedure for this is also disclosed in the relevant provision approved by the Decree of the President of the Kyrgyz Republic dated February 24, 2022 No. 61,¹³⁵ according to which the rotation is carried out by the head of the state body, local government body with the written consent of the employee, except for cases of rotation in order to prevent conflicts of interest and reduce the risk of corruption. The law establishes several different types of rotation.¹³⁶ Information about vacancies is not always reliable and complete, and the conditions of work and remuneration are not described.

The terms of remuneration for civil servants are established by the regulatory legal acts of the Kyrgyz Republic in accordance with the hierarchy of positions established by the legislation of the Kyrgyz Republic.¹³⁷ On August 1, 2022, the Decree of the President of the Kyrgyz Republic 'On the conditions for remuneration of civil servants and municipal employees; was signed, in accordance with which, in order to provide material incentives and create conditions for improving the performance and quality of work of civil servants and municipal employees of the country, the salary was raised for civil servants by up to 196.7%.¹³⁸ However, the increase in wages is not related to the assessment of the

¹³³ Official web-site of the State Agency on Civil Service affairs - <https://mkk.gov.kg/> (last visited 05.07.2022).

¹³⁴ "The law on State and Municipal service" <http://cbd.minjust.gov.kg/act/view/ru-ru/112303>, (last visited on 05.07.2022).

¹³⁵ Presidential decree "On the procedure for the rotation of state civil servants and municipal employees of the Kyrgyz Republic" <http://cbd.minjust.gov.kg/act/view/ru-ru/430865>, (last visited on 07.07.2022).

¹³⁶ These include: rotation within the state body; rotation within the body of local self-government; rotation between state bodies; rotation between local governments, and rotation between the state body and the local self-government body.

¹³⁷ Government Decree No. 131 dated March 1, 2017, <https://clck.ru/vZcrR>, (last visited 20.05.2022).

¹³⁸ Presidential decree on increasing the salary <http://cbd.minjust.gov.kg/act/view/ru-ru/434797?ysclid=i864b0ywme67904770> (last visited on 07.07.2022).

performance of a civil servant. An approved salary scale is applied, which is fixed.

Currently, according to the Law of 2021, the performance assessment of a civil servant has been replaced by certification, which may lead to corruption risks. Previously, additional salary payments were made in accordance with monthly assessment. The system of remuneration of state bodies is administered adequately, in accordance with the above-mentioned Government Decree of March 1, 2017, No. 131. However, reliable tables with salary scales are not publicly available for political civil servants. Information on adequate criteria and processes for evaluating effectiveness, as well as consequences in cases of non-compliance in relation to public sector employment, could not be found in the public domain.

Good Practices

- Introduction of a personnel reserve system.
- Transparent publication of vacancies on the official website/platform.
- Testing throughout the online platform is being conducted.
- The salaries of civil servants have been raised.

Deficiencies

- There is no open competition for civil service: if there is a vacant position, the appointment will be made from the personnel reserve of the state body or by rotation. Appointments are made from the personnel reserve of the state body and local government, which became the basis for a closed system of civil service. Previously, the civil service in the Kyrgyz Republic was competitive-career (mixed), which met the constitutional principles of equal access of citizens to public service and career advancement.
- A significant increase in the number of political positions due to the transfer of administrative positions to political ones in the presidential administration, the apparatus of the Jogorku Kenesh (Parliament), which allows individuals without competitive selection, in a special manner, to be appointed to senior positions in state bodies
- Absence of a competitive selection procedure for the Offices of the President, Cabinet of Ministers and Parliament;
- The competition is announced not for a specific vacant position, but for groups of positions, which increased the risk of corruption, since an open competition for the personnel reserve of a state body can be held for a specific person;
- The lack of proper procedures for identifying a contestant, which may allow a completely different person to be tested for entry into the civil service, or to re-employ a person dismissed from the civil service due to involvement in corruption;
- Lack of a procedure for online broadcasting of testing by candidates;
- The absence of representatives of the authorized body in the composition of the commissions for the selection of personnel of the state body, i.e., the State Personnel Service, as well as representatives of civil society institutions;
- Lack of responsibility of representatives of the authorized body for the content of the developed questions and technical parameters of the automated system;
- The regulation on the procedure for conducting polygraph testing is not being implemented, and the authorized state body for civil service affairs does not take initiatives to implement it;
- Weak motivation for the career development of civil servants due to the possibility of appointing a person under patronage to a higher position.

4.1.4 Art. 7.3 – Political Financing

In the Kyrgyz Republic, there is no mechanism for state financing of candidates for elected positions and political parties, however, the procedure for financing them with the help of private donations and the use of their own sources is prescribed in the Constitutional Law on Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic, as well as in the Regulation on the procedure for the formation, accounting of receipts and expenditures of funds from the electoral fund of a political party during the elections of deputies of the Jogorku Kenesh of the Kyrgyz Republic, which indicate the parameters of limits, goals and time periods of campaign spending as follows.

According to legislative norms, election funds of political parties can be formed at the expense of the following funds:

- the candidate's own funds, which cannot exceed 1,500,000 soms (EUR 18,000);
- own funds of a political party, which cannot exceed 100,000,000 soms (EUR 1.2 million);
- the maximum amount of funds received and spent by the election fund of the political party that nominated the list of candidates cannot exceed 300,000,000 soms (EUR 3.5 million).

There is no legal definition of what constitutes a donation in the law on elections of the President and deputies of the Jogorku Kenesh, but there are restrictions on donations to political parties as follows:

- voluntary donations of individuals, each of which cannot exceed 200,000 soms (EUR 2300);
- voluntary donations of legal entities, each of which cannot exceed 3,000,000 soms (EUR 35,500).

Voluntary donations to election funds are prohibited from:

- foreign states, foreign state bodies, institutions and enterprises, other foreign legal entities, their branches and representative offices, foreign citizens, international organizations, legal entities registered in the Kyrgyz Republic whose participants are foreign citizens and legal entities;
- public authorities and local governments, state and municipal institutions and enterprises, legal entities that have a state or municipal share in the authorized capital, which enjoy benefits for the payment of taxes, fees and other obligatory payments;
- organizations engaged in charitable activities;
- religious organizations;
- anonymous donations (an anonymous donor is understood to be a citizen who did not indicate one of the following: last name, first name, patronymic, address of residence, passport details, and also if he provided false information about himself).

It is prohibited to contribute to the election fund of a candidate or a political party from among legal entities or individuals engaged in entrepreneurial activities without forming a legal entity, with debts to the state budget or the Social Fund (SF) of the KR. A candidate or a political party shall not be liable in case of transfer of funds by the indicated legal and natural persons to the electoral fund. If the election fund of a candidate or political party receives funds from the above individuals and legal entities, then, by a court decision, a

banking or other institution is obliged to transfer these funds to a special fund of the Central Election Commission (CEC), which, in turn, transfers these funds to the state budget or the Social Fund of the Kyrgyz Republic.

At the CEC, a Control and Revision Group (CRG) is created consisting of at least seven people from various state bodies. The functions of the CRG are to check, request and monitor the financial statements of candidates, political parties, lower election commissions and to conduct expert assessments of the movement of funds. It also authorized to raise questions about liability before the Commission.¹³⁹

In accordance with Article 21(1),¹⁴⁰ the abuse of administrative resources is not allowed, for the use of which liability is provided, and a list of actions falling under this category is given. In Art. 437 of the Code of Offenses, the abuse of administrative resources is punishable by a fine of 20,000 soms (approximately EUR 220).¹⁴¹ In addition, in accordance with Art. 46 of the law, for the abuse of administrative resources, liability is also provided in the form of exclusion of a candidate or a list of candidates of a political party from the electoral process.¹⁴² According to part 6 of the regulations,¹⁴³ cash from election funds have a specific purpose: they can only be used to cover the costs associated with the election campaign. Candidates and political parties are required to keep records of receipts and expenditures from their election funds and submit relevant financial reports to the CEC.

The interviewed head of the working group of the CEC said that such violations had occurred in a minor form, however, all violations are published on the official website of the CEC of the Kyrgyz Republic, as well as on the 'talapker.kg' portal.¹⁴⁴ The working groups hold meetings on each violation and make further decisions, and all meetings of the working groups are broadcast on the official website and then stored in the website archive. All information regarding the organization, conduct, results of elections, as well as identified violations and measures applied for these violations is posted and available on the official website of the CEC of the Kyrgyz Republic.

The CEC publishes on its official website (under the tab 'Financial transparency') an estimate of the costs of the relevant election campaign, as well as a report on the use of funds from the republican budget for organizing and holding elections.¹⁴⁵ In March 2020, the Talapker electronic page was launched on the official website of the CEC to provide open access to the data of candidates and political parties participating in the elections (including general information about candidates, political parties, lists of candidates, the program of a candidate, political party, and related to the electoral fund: bank information,

¹³⁹ Law "On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic", <http://cbd.minjust.gov.kg/act/view/ru-ru/203244?cl=ru-ru>, (last visited 20.06.2022).

¹⁴⁰ *Ibid.*

¹⁴¹ Abuse of state resources in the electoral process, <https://ca-anticorruption.com/wp-content/uploads/2022/03/Abuse-of-State-Resources-in-the-Electoral-Process-of-the-Kyrgyz-Republic-2.pdf> (last visited 20.06.2022).

¹⁴² Law "On Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic", <http://cbd.minjust.gov.kg/act/view/ru-ru/203244?cl=ru-ru> (last visited 20.06.2022).

¹⁴³ *Ibid.*

¹⁴⁴ 'Talapker' portal, <https://talapker.shailoo.gov.kg/ru/parliamentary>, (last visited 18.06.2022).

¹⁴⁵ Financial report of the CEC for 2021, <https://shailoo.gov.kg/media/alai/2022/03/22/28112021-18032022.pdf> (last visited 20.06.2022).

financial statements).¹⁴⁶

There is no direct state funding for political parties. During the campaign period, candidates or political parties are provided with the same/equal conditions on television, free airtime for debates and in print media for placement of campaign materials. In addition, state bodies and local self-government bodies are obliged to assist candidates or political parties in organizing meetings with citizens, public debates and discussions, rallies, demonstrations and gatherings, and to ensure security during public events. CSOs provide campaign finance monitoring reports, as well as recommendations for further improvement of the legal regulations of campaign finance.¹⁴⁷

However, one of the major problems remains the lack of transparency in the financing of political parties and candidates. Even in the Strategy for Improving the Legislation of the KR on Elections for 2018-2020, approved in 2018, as well as in the anti-corruption plans of the Government, the problem of opaque financing (in terms of the sources of funds) of political parties and candidates was raised, which creates prerequisites for excessive influence of financial resource on the electoral process and distortion of the will of voters. The State Strategy for Combating Corruption and Eliminating its Causes in the KR for 2021-2024¹⁴⁸ noted a need for strengthening the requirements for transparency of the financial expenses of political parties, but no effective measures have been taken.

Good Practices

- Restrictions have been introduced on private donations from legal entities and individuals.
- The publication of information and data online, on the CEC official website and Talapker page where citizens can find needed data on the election process.

Deficiencies

- The government is not able to ensure the needed level of transparency in the financing of political parties and candidates.
- There is no state funding for election campaigns for political parties.
- Information on election expenses, although published by the CEC of the KR, is not detailed.
- Political finance monitoring bodies such as the CEC and special working groups are not independent.

4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

Codes of Conduct

The regulation on the fundamentals of ethics of civil servants of the Kyrgyz Republic was adopted in 2001¹⁴⁹, as well as regulated by Art. 10 on Public Service Law.¹⁵⁰ Article 42 of

¹⁴⁶ Official website of Talapker program, <http://talapker.shailoo.gov.kg>, (last visited 20.06.2022).

¹⁴⁷ How Kyrgyzstan loses transparency of elections process, <https://kloop.kg/blog/2022/08/23/kak-kyrgyzstan-teryet-prozrachnost-i-pochemu-grazhdanskoe-obshchestvo-na-eto-ne-reagiruet/>, (last visited on 20.05.2022).

¹⁴⁸ The State Strategy for Combating Corruption and Eliminating its Causes in the KR for 2021-2024 <http://cbd.minjust.gov.kg/act/view/ru-ru/430235?cl=ru-ru> (last visited on 20.05.2022).

¹⁴⁹ Regulations on the fundamentals of ethics of civil servants of the Kyrgyz Republic (Approved by Decree of the President of the Kyrgyz Republic dated January 9, 2001 No. 11), <http://cbd.minjust.gov.kg/act/view/ru-ru/2360> (last visited on 20.05.2022).

¹⁵⁰ Law of the Kyrgyz Republic of August 11, 2004 No. 114 "On Public Service", <http://cbd.minjust.gov.kg/act/view/ru-ru/111245?cl=ru-ru> (last visited on 20.05.2022).

a law on “Public service”¹⁵¹ adopted in 2016 was dedicated to regulating the ethics of civil servants. In 2016, the Code of Ethics for State and Municipal Employees of the Kyrgyz Republic¹⁵² was adopted for the first time. However, it applied only to state and municipal employees holding administrative positions. Various scandals related to the violation of the ethics of persons holding political positions¹⁵³ established the need to adopt a new Code.

In 2022, a new Code of Ethics for Civil Servants was adopted and approved by the Decree of the President of the Kyrgyz Republic dated May 31, 2022 No. 171, which applies to employees of the state civil service and municipal service, as well as to persons temporarily replacing absent employees of a state body and local government. The Code defines ethics as a system of norms that establish and regulate the rules of conduct for an employee. Ethics is the responsibility of every employee in accordance with the Code.

The Code also spells out anti-corruption standards and the professional duties of an employee, according to which an employee must: not allow personal and party interests to prevail over the interests of society and the state; prevent manifestations of personal loyalty in relation to the leadership by the presence of nepotism, patriotism and tribal affiliation, the desire to obtain benefits and advantages through official opportunities; immediately inform the management and the relevant authorities about the facts of violation of the law in the field of conflict of interest that have become known to him; not induce or encourage other persons to commit corruption offenses; refrain from contacting colleagues and managers with unlawful requests that violate the established order of relationships that may influence their impartial official decision; refrain from representing or lobbying the interests of third parties, as well as taking actions on their behalf.

To regulate issues of ethics of civil servants, each state body has ethics commissions formed at a general meeting, designed to consider applications and complaints about the ethical behavior of an employee. The ethics committees are “employees who enjoy authority and respect in the team, taking into account gender representation. The chairman of the commission is elected by the members of the ethics commission. The personal and quantitative composition is approved by the head.”¹⁵⁴

In 2013, by the Decree of the Government of the Kyrgyz Republic of December 30, 2013, No. 714 the creation of a Register of persons released from the state civil service or municipal service on negative grounds was conducted. On the website of the state agency on public service in the public domain, citizens could familiarize themselves with the list of persons included in this register.¹⁵⁵ The reasons for dismissal from the civil service

¹⁵¹ Law of the Kyrgyz Republic No. 75 “ On State Public Service”, <http://cbd.minjust.gov.kg/act/view/ky-kq/111354?cl=ru-ru> (last visited on 16.05.2022).

¹⁵² Code of Ethics for State and Municipal Employees of the Kyrgyz Republic, <http://ud.gov.kg/index.php/ru/otsenka-deyatelnosti-gos-sluzhashchikh/353-kodeks-etiki-gosudarstvennykh-i-munitsipalnykh-sluzhashchikh-kyrgyzskoj-respubliki> (last visited on 18.05.2022)

¹⁵³ Which of the officials does not apply to the code of ethics of civil servants - the answer of the SSC of the Kyrgyz Republic - Sputnik Kyrgyzstan, <https://ru.sputnik.kg/20190607/kyrgyzstan-ehatika-gossluzhashchie-otvetstvennost-1044604309.html> (last visited on 18.05.2022).

¹⁵⁴ Code of Ethics for State and Municipal Employees of the Kyrgyz Republic, <http://ud.gov.kg/index.php/ru/otsenka-deyatelnosti-gos-sluzhashchikh/353-kodeks-etiki-gosudarstvennykh-i-munitsipalnykh-sluzhashchikh-kyrgyzskoj-respubliki> (last visited on 18.05.2022).

¹⁵⁵ Register of State personnel agency for-May 1, 2022, <https://mkk.gov.kg/wp-content/uploads/2022/05/%D0%A0%D0%B5%D0%B5%D1%81%D1%82%D1%80-%D0%BD%D0%B0-1-%D0%BC%D0%B0%D1%8F-2022-%D0%B3%D0%BE%D0%B4.pdf> (last visited on 18.05.2022).

included, among others: submission by civil servants of forged documents or deliberately false information when entering the civil service; failure to submit a declaration on property and income or deliberate concealment of property and income from the declaration, or deliberate submission of information that does not correspond to reality.¹⁵⁶ This Register made it possible to prevent persons dismissed for negative reasons from being admitted to public service. However, by Government Decree No. 252 of May 16, 2022, this Register was deleted due to internal policies within the president's administration.¹⁵⁷

The ethics of parliamentarians is additionally regulated by Art. 8 of the Law of the Kyrgyz Republic "On the status of a deputy of the Jogorku Kenesh of the Kyrgyz Republic,"¹⁵⁸ according to which in his activities a deputy must adhere to generally recognized norms of morality, preserve his own dignity, respect the honor and dignity of other deputies, other officials and citizens, refrain from actions, statements and deeds that compromise the Jogorku Kenesh, voters and the state as a whole. Ethics and Regulations Committee of the Jogorku Kenesh may consider improper behavior of deputies and violation of ethical standards.

There are also a number of other codes of ethics approved by industry bodies, ranging from codes of ethics for members of the diplomatic service, accounts chamber, prosecutor's office, and many more.¹⁵⁹ However, despite the presence of a regulatory legal framework and established commissions, as well as many violations of the ethics of civil servants, according to the interviewed employees of state bodies, ethics commissions in many state bodies work formally, in other words, inefficiently, and the Codes of Ethics are declarative.¹⁶⁰ For example, the media has revealed the prosecution of employees of the prosecutor's office for violations of professional ethics.¹⁶¹

During an interview, the officer of the State Agency for Civil Service and Local Self Government under the Cabinet of Ministers of the Kyrgyz Republic noted that there are reports of violations of codes of conduct by public officials, but the response procedure is

¹⁵⁶ "The procedure for the formation, maintenance, amendment and supplementation of the Register of persons released from state or municipal service on negative grounds" (approved by Decree of the Government of the Kyrgyz Republic on December 30, 2013 No. 714), <http://cbd.minjust.gov.kg/act/view/ru-ru/94940> (last visited on 22.05.2022).

¹⁵⁷ Decree of the Cabinet of ministers 252, <http://cbd.minjust.gov.kg/act/view/ru-ru/159195?cl=ru-ru> (last visited on 22.05.2022).

¹⁵⁸ Law of the Kyrgyz Republic dated December 18, 2008 No. 267 "On the status of a deputy of the Zhogorku Kenesh of the Kyrgyz Republic", <http://cbd.minjust.gov.kg/act/view/ru-ru/202483?cl=ru-ru> (last visited on 22.05.2022).

¹⁵⁹ Such codes include: Code of Ethics for employees of the diplomatic service of the Kyrgyz Republic, approved by Order of the Ministry of Foreign Affairs of the Kyrgyz Republic of April 27, 2006 No. 35-p; Code of Ethics for employees of the Accounts Chamber of the Kyrgyz Republic, approved by a resolution of the Council of the Accounts Chamber of the Kyrgyz Republic No. 01-08/60 dated November 25, 2005; Code of Professional Ethics for an employee of the Prosecutor's Office of the Kyrgyz Republic dated October 21, 2014; Code of Ethics for Customs Officers of the Kyrgyz Republic and Code of Honor for Customs Officers of the Kyrgyz Republic, approved by orders of the State Customs Service under the Government of the Kyrgyz Republic dated October 25, 2012 No. 5-10/427 and March 18, 2015 No. 5-07/127, respectively; The Code of Professional Ethics for an employee of the internal affairs bodies of the Kyrgyz Republic was approved by the Order of the Ministry of Internal Affairs of the Kyrgyz Republic dated February 27, 2009; and the National Bank has a code of work ethics.

¹⁶⁰ "Deputy ethics in foreign policy", <https://rus.azattyk.org/a/28401900.html> (last visited on 22.05.2022).

¹⁶¹ "370 employees of prosecutor's office brought to responsibility for violation of ethics", https://24.kg/vlast/229791_zanbspnarushenie_etiki_knbspotvetstvennosti_privlecheno_370_rabotnikov_prokuraturyi/ (last visited on 20.05.2022).

not effective.¹⁶² An example was given in which the authorities violated the rights of one of the employees of the state body, after which she wrote a complaint to the personnel department. The Ethics Commission began considering the application, but by that time, the employee had resigned of her own free will, in view of the psychological pressure on her, and the boss was fired from work due to the fact that it was revealed that this was not an isolated case. The Commission considered the complaint for too long, meaning that it was not possible to respond in time. The consideration of anonymous messages is not allowed.

In accordance with Art. 8 of the Constitutional Law,¹⁶³ a person who has a criminal record that has not been expunged or canceled in accordance with the procedure established by law cannot be appointed Prime Minister, member of the Government or head of an administrative department. However, according to interviewed experts, officials find different ways to avoid criminal liability and return to civil service.¹⁶⁴ The publication "Kloop" calculated that every fifth official suspected of criminal offenses in the last five years returned to civil service and politics again.¹⁶⁵

Conflict of interests

The management of conflicts of interest was regulated by the Laws on Public service of 2004 (Article 9),¹⁶⁶ 2016 (Article 43),¹⁶⁷ and the Law on Combating Corruption."¹⁶⁸ In 2017, the Law on Conflict of Interest was adopted,¹⁶⁹ that pursued the task of unifying legislation on conflict of interest and introducing mechanisms for the timely identification, prevention and resolution of conflicts of interest, as well as providing practical assistance to state bodies and their employees in maintaining the integrity of official political and administrative decisions in the public administration system as a whole.

The law establishes a number of prohibitions, including restrictions on the exercise of the function of supervision, control and conclusion of contracts, the acceptance of gifts and donations, and the exercise of representative functions, including in private business enterprises. The legislation of the KR does not provide for requirements for candidates for elected public office to demonstrate the absence of a potential conflict of interest with the position held. Members of the selection committees have the right to demand the disclosure of certain information about the relevant interests of a candidate for an elected public office.

Legislation on conflict of interest when entering the service requires disclosure of personal (private) interests that may conflict with the performance of their official duties, by

¹⁶² Interview on 15.05.2022 with an anonymous representative of the State Agency for Civil Service and Local Self Government.

¹⁶³ Constitutional Law of the Kyrgyz Republic dated October 11, 2021 No. 122 "On the Cabinet of Ministers of the Kyrgyz Republic", <http://cbd.minjust.gov.kg/act/view/ru-ru/112301?cl=ru-ru> (last visited on 18.05.2022).

¹⁶⁴ How officials of Kyrgyzstan avoid criminal liability, <https://factcheck.kg/kak-chinovniki-kyrgyzstana-izbegayut-ugolovnoj-otvetstvennosti-rassledovanie-kloop-kg/> (last visited on 20.05.2022).

¹⁶⁵ *Ibid.*

¹⁶⁶ Law of the Kyrgyz Republic of August 11, 2004 No. 114 "On Public Service", <https://clck.ru/vaX7E> (last visited on 20.05.2022).

¹⁶⁷ Law of the Kyrgyz Republic of October 27, 2021 No. 125 "On the State Civil Service and Municipal Service", <http://cbd.minjust.gov.kg/act/view/ru-ru/112303> (last visited on 18.05.2022).

¹⁶⁸ Law of the Kyrgyz Republic of August 8, 2012 No. 153 "On Combating Corruption", <http://cbd.minjust.gov.kg/act/view/ru-ru/203753> (last visited on 18.05.2022).

¹⁶⁹ Law of the Kyrgyz Republic of December 12, 2017 No. 206 (11) "On Conflict of Interest", <http://cbd.minjust.gov.kg/act/view/ru-ru/111716> (last visited on 18.05.2022).

declaring personal (private) interests associated with a conflict of interest.¹⁷⁰ The Law applies to persons holding state and municipal positions, heads of institutions, organizations or enterprises whose activities are financed from the state or local budget or in the authorized capital of which there is a state share, as well as trustees of state property; persons who do not have the status of a state or municipal employee, but at the same time carry out labor activities in state bodies. The law introduces declarations of interests.

According to the legislation, an employee, after the termination of service during the year, cannot:

- 1) in the interests of third parties, apply at the place of his previous work on issues that were within his competence;
- 2) act on behalf of an individual or legal entity in cases that were within his jurisdiction during his tenure in the service, which would give additional advantages to this individual or legal entity;
- 3) act as a mediator.

An employee may not be a member of the management bodies of commercial organizations, except as otherwise provided by law. An employee who has the citizenship of another state cannot hold senior positions in state bodies and local governments.¹⁷¹

Declarations of personal interests are submitted to the Human Resources Department, in accordance with the Law of the KR on Conflict of Interest, in accordance with the established form by the Government of the KR. According to the report of the 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, "The law does not provide for an effective mechanism for its implementation,"¹⁷² since when it was adopted, "restrictive norms on decision-making were removed where relatives are potentially involved, which can give rise to a conflict of interest."¹⁷³

In addition, due to the recent reorganization of state bodies in 2021, there is no authorized state body responsible for the implementation of the Law "On Conflict of Interest." According to State Civil Service employees, they are not currently coordinating work on managing conflicts of interest. HR departments and ethics commissions of public authorities were not trained to identify and manage conflicts of interest. In the course of interviews conducted with civil servants, it was revealed that in many state bodies the requirement to fill out and submit a declaration of conflict of interest is not observed and is not being implemented.

¹⁷⁰ Article 23 of the Law of the Kyrgyz Republic "On Conflict of Interest" dated December 12, 2017 No. 206 (11), <http://cbd.minjust.gov.kg/act/view/ru-ru/111716> (last visited on 20.05.2022).

¹⁷¹ Article 15 of the Law of the Kyrgyz Republic of October 27, 2021 No. 125 "On the State Civil Service and Municipal Service", <http://cbd.minjust.gov.kg/act/view/ru-ru/112303> (last visited on 18.05.2022).

¹⁷² OECD can Kyrgyzstan 4th Round Monitoring Report 2018, <https://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-4th-Round-Monitoring-Report-2018-RUS.pdf>, (last visited on 18.05.2022).

¹⁷³ *Ibid.*

Despite the existence of legislation, conflict of interest is widespread,¹⁷⁴ at different levels¹⁷⁵ within the walls of the Jogorku Kenesh,¹⁷⁶ in other branches of government,¹⁷⁷ and within law enforcement agencies.¹⁷⁸ A striking case was that of the head of the committee, the deputy of the Jogorku Kenesh, G. Moldobekova, who lobbied for the Law on Trade Unions while her husband headed the Federation of Trade Unions.¹⁷⁹ Another such case was related to the consideration by the Parliamentary commission of the corruption case of Rayim Matraimov.¹⁸⁰ His elder brother Iskender Matraimov was included as a member of this Commission, yet this did not cause any outrage in the Jogorku Kenesh. He later resigned from the Commission at the request of his colleagues and after public outcry in the media and on social networks.¹⁸¹

The presence of conflict of interest both in the Jogorku Kenesh and in other state bodies has become the norm: relatives of high-ranking officials appointed to the positions of assistants and advisers to deputies and further they are appointed to political positions in departments of the Presidential Administration, the Cabinet of Ministers and other bodies.¹⁸² The deputies of the Jogorku Kenesh themselves are often involved in various scandals due to a conflict of interests, as a result of which billions of dollars of damage are taken from the country's economy.¹⁸³

Declarations of assets and income

In 2004, for the first time, the Law was adopted,¹⁸⁴ aimed at creating a system of openness, transparency and accountability for the income of senior and other officials of

¹⁷⁴ Loans for the development of the agricultural cluster. Deputies saw a conflict of interest, https://24.kg/vlast/231207_kredityi_narazvitie_agrarnogo_klastera_deputaty_i_uvideli_konflikt_intereso_v/, (last visited on 18.05.2022).

¹⁷⁵ Conflict of interest during elections to the local kenesh, <https://law.kg/question/konflikt-interesov/>, (last visited on 20.05.2022).

¹⁷⁶ Scandal after scandal. Why was the ex-head of trade unions Mirbek detained? Asanakunova <https://rus.azattyk.org/a/31881710.html>, (last visited on 20.05.2022).

¹⁷⁷ About power clans and relatives in Kyrgyzstan, <https://rus.azattyk.org/a/28138695.html>, (last visited on 20.05.2022).

¹⁷⁸ How the prosecutor is connected in the Raiymbek case Matraimov with the Mekenim Kyrgyzstan party?, <https://vesti.kg/politika/item/82162-kak-svyazan-prokuror-po-delu-raiymbeka-matraimova-s-partiej-mekenim-kyrgyzstan.html>, (last visited on 20.05.2022).

¹⁷⁹ Deputy Gulkan Moldobekova wants to place president, https://www.vb.kg/doc/397810_depytat_ik_gulkan_moldobekova_hochet_podstavit_prezidenta.html (last visited on 20.05.2022).

¹⁸⁰ Investigation, how millions are taken out from poor country, <https://www.currenttime.tv/a/kyrgyzstan-money-laundering-investigation/30287040.html> (last visited on 20.05.2022).

¹⁸¹ Parliament demands exclusion of Matraimov from commission investigating Saimaiti 's murder, <https://www.kp.kg/online/news/3680864/> (last visited on 20.05.2022).

¹⁸² NIS Kyrgyz Report, <https://www.transparency.kg/files/pdf/NIS%20Kyrgyz%20Report%20rus%20-%20FINAL.pdf> (last visited on 20.05.2022).

¹⁸³ Deputies saw conflict of interest, https://24.kg/vlast/231207_kredityi_narazvitie_agrarnogo_klastera_deputaty_i_uvideli_konflikt_intereso_v/ (last visited on 20.05.2022).

¹⁸⁴ Law of the Kyrgyz Republic dated August 7, 2004 No. 108 "On declaring and publishing information about income, obligations and property of persons holding political and other special public positions, as well as their close relatives", <http://cbd.minjust.gov.kg/act/view/ru-ru/1507?cl=ru-ru> (last visited on 20.05.2022).

public authorities. In 2017, a new Law was adopted¹⁸⁵ that regulates relations on the declaration of income, expenses, liabilities and property of persons holding state and municipal positions.

Until 2022, declarations on income, expenses and property of civil servants were submitted to the State Personnel Service (SCS KR). In connection with the entry into force of the Tax Code dated January 18, 2022, No. 4, the above laws is no longer in effect and declarations of assets and income are now provided in accordance with Article 107 of the Tax Code of the Kyrgyz Republic. In accordance with this article, the Single Tax Declaration is submitted by the following individuals holding or replacing state and municipal positions:

- 1) a person holding a political, special state position;¹⁸⁶
- 2) a person holding an administrative public position;
- 3) an employee of law enforcement agencies, diplomatic services and a serviceman, with the exception of military personnel undergoing military service, cadets and students of higher military educational institutions;
- 4) a person who replaces or holds political and administrative municipal positions;
- 5) the chairman of the National Bank and his deputy.

According to the register of public positions, judges and prosecutors are persons holding a special public position. Like other categories of civil servants, judges submit declarations after taking office. All civil servants submit declarations upon taking office. The submitted declarations are posted on the website of the Tax Service.¹⁸⁷ Exceptions include representatives of some public sector institutions, such as educational and medical institutions, which do not belong to the category of civil servants.

The declarant is obliged to submit in electronic form to the tax authority a single tax declaration containing information on income, expenses, property and liabilities belonging to him, as well as his close relatives in the Kyrgyz Republic and abroad, for the reporting year, as well as the grounds for receiving income and expenses incurred.¹⁸⁸ According to the tax service, 15,478 state and municipal employees did not submit tax returns for 2019 and 2020.¹⁸⁹ But the submitted declarations are formal and do not reflect the real incomes and expenses of officials since many of them, especially persons holding political positions, do not show their incomes in their declarations,¹⁹⁰ which indicates the absence of real mechanisms for feedback and prosecution for presenting unreliable information.

¹⁸⁵ Law of the Kyrgyz Republic dated August 2, 2017 No. 164 "On declaring income, expenses, obligations and property of persons holding or holding state and municipal positions", <http://cbd.minjust.gov.kg/act/view/ru-ru/111671> (last visited on 20.05.2022).

¹⁸⁶ Candidates for elective public office submit declarations after taking office, provided that their position falls under the above categories of positions, otherwise declarations are submitted on a general basis (as subjects of taxation).

¹⁸⁷ Declaration in Kyrgyzstan, https://www.sti.gov.kg/decl_dolj (last visited on 20.05.2022).

¹⁸⁸ Article 107 of the Tax Code of the Kyrgyz Republic, enacted by the Law of the Kyrgyz Republic, dated January 18, 2022 No. 4, <http://cbd.minjust.gov.kg/act/view/ru-ru/112340?cl=ru-ru> (last visited on 20.05.2022).

¹⁸⁹ More than 15000 civil servants didn't provide the declarations on spendings, <https://rus.azattyk.org/a/bolee-15-tysyach-gosudarstvennyh-i-munitsipalnyh-sluzhaschih-ne-otchitalis-o-dohodah-i-rashodah/31606287.html> (last visited on 20.05.2022).

¹⁹⁰ Homeless ministers - elite horses in Kyrgyzstan, <https://rus.azattyk.org/a/bezdomnye-ministry-elitnye-skakuny-v-kyrgyzstane-gossluzhaschie-otchitalis-o-dohodah-i-imuschestve-za-dva-goda/31602749.html> (last visited on 20.05.2022).

Verification of the completeness and reliability of the information in the declarations is entrusted to the tax service. The submission of declarations is carried out via electronic communication channels, where upon entry, automatic control of the verification of declarations is carried out to ensure their compliance, as well as the completeness and correctness of filing. Sanctions for the violation of deadlines for submitting tax reports is provided for by the Tax Code and the legislation of the Kyrgyz Republic on offenses.¹⁹¹

In relation to illegal enrichment, over the past two years (2021-2022), criminal cases have been initiated against high-ranking former and current officials, as well as representatives of large businesses. Law enforcement authorities initiate criminal cases on undeclared property. For example, the former vice-premier of KR, D. Zilaliev was arrested in 2018 on the basis of an undeclared amount of \$889,000 (EUR 790,000) and jewelry.¹⁹² The people began to call this measure "custurization",¹⁹³ the question also remained open, based on what criteria the amount of damage was determined.

"People are forced to admit guilt and pay damages, the amount of which is calculated in an unknown way without any connection with the charge. There are cases of voluntary transfer of millions of soms to the state budget by persons who have not been charged. In fact, such actions are regarded by many as ordinary extortion and blackmail carried out by officials using their official position, which was the result of a lack of openness and transparency in the activities of law enforcement and judicial bodies," notes Cholpon Dzhakupova, head of the Adilet legal clinic.¹⁹⁴

There is a steady distrust by society¹⁹⁵ in the effectiveness of the verification of declarations, which is aggravated by the fact that there are kinship-clan relations in the country, where the property of officials is recorded via relatives or third parties,¹⁹⁶ while high-ranking officials do not bear any responsibility for providing false information, do not submit declarations at all¹⁹⁷ or do not provide information on expenses,¹⁹⁸ which is a violation of the law. For example, in his 2019 declaration, the former President of the

¹⁹¹ Article 107 of the Tax Code of the Kyrgyz Republic, enacted by the Law of the Kyrgyz Republic, dated January 18, 2022 No. 4., <http://cbd.minjust.gov.kg/act/view/ru-ru/112340?cl=ru-ru> (last visited on 20.05.2022).

¹⁹² How officials of Kyrgyzstan avoid criminal liability, <https://factcheck.kg/kak-chinovniki-kyrgyzstana-izbegayut-ugolovnoj-otvetstvennosti-rassledovanie-kloop-kq/> (last visited on 20.05.2022).

¹⁹³ "Custurization" is what the authorities call their way of fighting corruption, which began in Kyrgyzstan with the coming to power of Sadyr Zhaparov. The officials accused in the court session calculate a certain amount of damage, which is estimated by the State Committee for National Security, and offered for release.

¹⁹⁴ Degradation, customization and justice for money. Human rights activist Dzhakupova complained to Zhaparov about the courts and law enforcement officers, <https://kloop.kg/blog/2021/10/06/degradatsiya-kusturizatsiya-i-spravedlivost-za-dengi-pravozashchitnitsa-dzhakupova-pozhalovalas-zhaparovu-na-sudy-i-pravoohranitelej/> (last visited 20.05.2022).

¹⁹⁵ According to the papers - "no stake, no yard", but in reality? Declarations of officials continue to amaze, <https://rus.azattyk.org/a/31600751.html> (last visited 20.05.2022).

¹⁹⁶ How officials of Kyrgyzstan avoid criminal liability - Kloop.kg investigation – Factcheck, <https://factcheck.kg/kak-chinovniki-kyrgyzstana-izbegayut-ugolovnoj-otvetstvennosti-rassledovanie-kloop-kq/> (last visited 20.05.2022).

¹⁹⁷ Elite horses and secret business: what journalists found in the declarations of civil servants of Kyrgyzstan and who did not report income (currenttime.tv), <https://www.currenttime.tv/a/cht-zhurnalisty-obnaruzhili-v-deklaratsiyakh-gossluzhashchikh-kyrgyzstana/31601953.html> (last visited 20.05.2022).

¹⁹⁸ List of political figures_2019 (sti.gov.kg), https://www.sti.gov.kg/docs/default-source/other/politics_2019.pdf?sfvrsn=2 (last visited 20.05.2022).

country, S. Zheenbekov; the Speaker of the Parliament, D. Zhumabekov, and a number of deputies did not provide information on expenses, yet no one was held accountable. There is no information on the measures taken in cases where the expenses exceed the income in the declaration.¹⁹⁹

Access to declarations of civil servants is one of the important mechanisms of civil control. However, information has now appeared in the media about the intention of authorities to restrict access to the declarations of civil servants²⁰⁰ and the existing relevant draft law. There is another initiative, which, according to experts, is the legalization of corruption. According to the media, the Cabinet of Ministers initiated a draft law on voluntary legalization and amnesty of assets, which was approved by the parliamentary committee on budget, economic and fiscal policy.²⁰¹

Good Practices

- Adoption of the Conflict of Interest Law.
- Obligatory delivery of declarations on income, expenses and property of civil servants.

Deficiencies

- Leveling the role and importance of codes of ethics in the civil service system, as well as identifying a situation of conflict of interest.
- Lack of proper mechanisms for implementing the Law on Conflict of Interest.
- Lack of verification and validation of the submitted declarations on income, expenses and property of civil servants.
- Failure to take measures to hold accountable civil servants in political positions, in case of failure to submit, incomplete submission of declarations on income, expenses and property of civil servants.
- Selective approach in holding civil servants liable for non-submission, incomplete submission of declarations on income, expenses and property of civil servants.

4.1.6 Art. 8.4, 13.2 – Reporting Mechanisms and Whistleblower Protection (also Art. 32 and 33.11)

By ratifying the UNCAC, the Kyrgyz Republic has committed to accept this Convention as a legal basis for ensuring the protection of whistleblowers (Article 33 of the Convention). At the same time, the Convention is not only about protection from persecution and physical violence, intimidation and revenge, but a fair treatment of such persons. This suggests a great potential for the development of the national legislation of the States Parties to the global anti-corruption Convention, in the issue of preventing violations of labor.

However, at present, universal UN requirements for the detection of persons reporting corruption offenses are not fully taken into account in the legislation of the Kyrgyz Republic. The Law of the Kyrgyz Republic dated January 28, 2019 No. 19 on the

¹⁹⁹ List of political figures_2020.(sti.gov.kg), https://www.sti.gov.kg/docs/default-source/other/politics_2020.pdf?sfvrsn=2 (last visited 20.05.2022).

²⁰⁰ Kyrgyzstan wants to close access to declarations of officials, <https://kloop.kg/blog/2022/03/10/v-kyrgyzstane-hotyat-zakryt-dostup-k-deklaratsiyam-chinovnikov/> (last visited 20.05.2022).

²⁰¹ "This is actually the legalization of corruption." Kyrgyzstan wants to adopt a law on amnesty of assets (currenttime.tv), <https://www.currenttime.tv/a/v-kyrgyzstane-hotyat-prinyat-zakon-ob-amnistii-aktivov/31910300.html> (last visited 20.05.2022).

Protection of Persons Who Reported Corruption Offenses²⁰² legally regulates this issue, but in practice there has not been a single application of this procedure.

It should also be noted that according to this law,²⁰³ a person reporting a corruption offense can count on 10% of the amount of funds being reimbursed and received by the state, but not at an amount greater than 1 million soms (EUR 11,800). This law purposefully covers only corruption offenses. As for socially dangerous crimes and offenses affecting public interests, this kind of norm is enshrined in the Criminal Procedure Code of the Kyrgyz Republic.

In accordance with the law on state and civil service²⁰⁴ Article 14, a civil servant must inform the management, relevant state bodies and local self-government bodies of instances of violation of the law that have become known to him. In case of violations of codes of conduct by public officials, there is a mechanism for reporting these violations. In corporate law, this mechanism is presented in the form of an appeal to higher management or to the personnel department. It is also possible to appeal to the prosecutor's office. Unfortunately, there is no data on the application of this mechanism in practice.

The Criminal Code establishes criminal liability for harboring the criminals in accordance with Article 367,²⁰⁵ the disposition of which states that in the case of "not previously promised harboring a serious crime", a person may be held criminally liable. Corruption offenses related to civil servants and officials are included in the category of serious crimes, therefore it is mandatory to report these crimes.

In 2014, in the Kyrgyz Republic and the Ministry of Internal Affairs established a specialized operational unit to ensure the security of persons subject to state protection: the Office for the Protection of Witnesses.²⁰⁶ As part of the protection of witnesses, security measures are provided in the form of an official warning, restriction of access to information about the protected person, ensuring personal security, the application of preventive measures against the suspect, the accused, excluding the possibility of using violence or other criminal acts against participants in criminal proceedings, as well as a ban on approaching. State protection involves the use of several special security measures, including personal protection; the issuance of special personal protective equipment, communications and danger alerts, and relocation to another place of residence.²⁰⁷

Article 80 of the Code of Criminal Procedure²⁰⁸ provides for a security measure in the form of an official warning to a person who poses a threat of violence or other acts prohibited by criminal law, about the possible bringing of his criminal liability. The mechanism of work

²⁰² Law On the protection of persons who reported corruption offenses, <http://cbd.minjust.gov.kg/act/view/ru-ru/111829?cl=ru-ru>, (last visited 07.07.2022).

²⁰³ *Ibid.* art.11.

²⁰⁴ Law on state and civil service, <http://cbd.minjust.gov.kg/act/view/ru-ru/111354>, (last visited 04.07.2022).

²⁰⁵ Criminal Code of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/112309>, (last visited 06.06.2022).

²⁰⁶ Witness protection department appeared in Kyrgyzstan, <https://knews.kg/2014/12/10/v-kyrgyzstane-poyavilos-upravlenie-po-zaschite-svideteley/>, (last visited 22.06.2022).

²⁰⁷ Ministry of Internal Affairs proposes to approve the Order of Measures for the Protection of Witnesses, <https://www.for.kg/news-769057-en.html>, (last visited 26.06.2022).

²⁰⁸ Criminal procedural code, <http://cbd.minjust.gov.kg/act/view/ru-ru/112308>, (last visited 24.06.2022).

of the witness protection unit is determined by the court, the prosecutor and the investigator (by order of the investigator).

Despite the adopted law on the protection of witnesses, the state is not ready to provide a real mechanism for the protection of persons who have reported the facts of corruption, which ultimately causes reluctance among citizens to report them. It is known that when persons reported facts of corruption, they were either dismissed or fired from their job,²⁰⁹ or forced to flee the country.²¹⁰ In some cases, they were even killed.²¹¹

There were two landmark cases when whistleblowers who reported on corruption in their institutions were oppressed and they made a public video appeal where they shared all the existing corruption schemes. One whistleblower was the lieutenant colonel of the frontiers protection department, and the other was the deputy chief of the customs checkpoint. A customs service officer was imprisoned, and reported that he had been beaten up, even providing a video of the incident. Afterwards, he escaped from the country to Russia, but was captured there and extradited back. He was placed in a detention facility and one month later, stated that what he said was not true and that the 'Azattyk' mass media organization (an organization which is well known and respected among activists) offered him political asylum in Europe.²¹² The other individual from the frontiers protection service died from a heart attack six months after giving a press conference. He was a father of six children.²¹³

In practice, witness protection mechanisms are applied, but the question of their effectiveness is controversial and rather difficult to assess, since there is no open information on this issue. Our freedom of information request sent to the Ministry of Internal Affairs and the Prosecutor General's Office did not receive a response. It is known from open sources that in 2019, 22 people were covered by the witness protection program.²¹⁴

An analysis of information in the media shows that the law on the protection of witnesses is not properly implemented. Officials provided information on the amount of 464,000 soms (EUR 5,500) allocated for each witness, which, according to parliamentarians, is not sufficient to ensure full and effective protection of witnesses.²¹⁵ Human rights activists note the weakness of law enforcement and the low efficiency of the system for protecting the rights of witnesses. Nurbek Toktakunov, head of the Precedent partner group (a popular law firm), believes that a witness protection program is necessary, but doubts its implementation. He ponders: "The whole question is how it is implemented, because there

²⁰⁹ "War with corruption, only women going to fight", <https://centre1.com/kyrgyzstan/under-corruption/> (last visited 24.06.2022).

²¹⁰ Brother of ex worker of custom service made statement to a president because of Raiymbek Matraimov, https://kaktus.media/doc/406116_brat_eks_sotrydnika_tamojennoy_slyjby_obratilsia_k_prezidenty_iz_za_rayymbeka_matraimova.html (last visited 24.06.2022).

²¹¹ "In Kyrgyzstan ex-officer of border control died", <https://rus.azattyk.org/a/30742611.html> (last visited 24.06.2022).

²¹² Kimsanov refused from his previous words on corruption, https://www.vb.kg/doc/397384_kimsanov_otkazalsia_ot_svoih_slov_o_korruptsiionnyh_delah_matraimova_video.html (last visited on 20.06.2022) (last visited on 20.06.2022).

²¹³ Officer Talgat Alanov died, <https://kloop.kg/blog/2020/07/22/umer-ofitser-talgat-alanov-on-rasskazyval-o-korrupsii-v-pogransluzhbe/> (last visited on 20.06.2022).

²¹⁴ Big money needed for the protection of witnesses? https://24.kg/vlast/136076_dlya_zaschityi_svideteley_nujnyi_bolshie_dengi_deputaty_raskritikovali_mvd/ (last visited on 20.06.2022).

²¹⁵ *Ibid.*

are many good laws. So what's the point of accepting new ones if the old ones don't work?"²¹⁶

Good practices

- The recent adoption of the law with a primary focus on protection of persons who provided information on corruption.
- The award mechanism for persons who provided the information on corruption is established in law.

Deficiencies

- Lack of real mechanisms for the protection of persons who reported the facts of corruption.
- Lack of understanding among civil servants of the need for the institution of witness protection.
- Low level of financing of the whistleblower protection program results in insufficient protection.
- There are broad functional discrepancies in the law on protection of persons who provided information on corruption.

4.1.7 Art. 9.1 – Public Procurement

The main state body controlling the public procurement system is the Public Procurement Department under the Ministry of Finance of the Kyrgyz Republic. The regulatory framework in public procurement has changed with the introduction of the new Public Procurement Law of the Kyrgyz Republic adopted on 14 April 2022 (PPL). The new Law on Public Procurement is largely based on the previous law, aiming to contribute to better transparency and introduce “changes aimed at improving the public procurement system and reducing corruption risks by eliminating conflicts, omissions and gaps in the provisions of the Law on Public Procurement.”²¹⁷

The Law sets procedures for public procurement in Kyrgyzstan, defines main rights and responsibilities of both purchasing organizations and the suppliers of goods or services. All tenders should be published on the online web portal,²¹⁸ and all participants should follow the principles of ethics and absence of the conflict of interest within the public procurement process.²¹⁹ The entire process, from the moment an advertisement is placed online till the moment the contract is awarded, are open, including the text of the tendering contract and all provisional steps.²²⁰ The appeal procedure is also determined by the Law: all appeals and the decisions of the appeal commission are published on the web portal.²²¹

The web portal was introduced with the Law on Public Procurement in 2015, and was one of the major steps in bringing national law in compliance with international standards on public procurement.²²² The web portal is seen as an important tool to keep the tendering

²¹⁶ Kyrgyzstan plans to implement the program of whistle blower protection, <https://kloop.kg/blog/2012/06/15/ky-rgy-zstan-sobiraetsya-vvesti-programmu-zashhity-svidetelej/> (last visited on 20.06.2022).

²¹⁷ *Supra* note 14.

²¹⁸ *Ibid*, Article 7.

²¹⁹ *Ibid*, Article 6.

²²⁰ *Supra* footnote 14, article 48 states that the content of the contract and its attachments should be open with the exception of confidential information and personal data.

²²¹ *Ibid*, articles 27, 43-46.

²²² World Bank, Kyrgyz Republic: On the Way to the Transparent and Effective System of Public Procurement, 17 June 2015. Available online in Russian:

process transparent, effective and to create equal access and opportunities for all participating entrepreneurs.²²³

However, the Transparent Public Procurement Rating (TPPR) conducted an evaluation of the public procurement system in 2018 and found multiple shortcomings.²²⁴ The Kyrgyz Government at that time took serious efforts to overcome these shortcomings by introducing changes to the legislation and the web portal.²²⁵ Overall, country took important steps on the international level by entering the Open Government Partnership (OGP) and committing to the OGP Action Plan 2018-2020.²²⁶ These efforts were highly assessed by the TPPR as it stated that “the most recent amendments increased the transparency level of publishing post-tender procurement data, strengthened the capacities of the public procurement portal, made it more user-friendly and took important steps towards meeting the Open Contracting Data Standards.”²²⁷ On the critical side, the TPPR indicated that some modules still work incorrectly, the downloadable materials are in a specific format and require certain technical skills to be analyzed, among several other malfunctions.²²⁸

Another study conducted by Transparency International Kyrgyzstan in 2020 discovered deficiencies in the system which made it prone to corruption.²²⁹ Among those deficiencies are:

- Risk of conflict of interest: the statements of suppliers about an absence of any conflict of interest are not checked and it is nearly impossible to check them for an outside researcher (if external monitoring is carried out) due to insufficiency of information on the web portal. Moreover, information about suppliers registered as individual entrepreneurs is not available at all.²³⁰

<https://www.vsemirnyjbank.org/ru/results/2015/06/17/on-the-path-to-transparent-and-efficient-public-procurement-in-the-kyrgyz-republic>, (last visited 10.06.2022).

²²³ *Supra* footnote 72, p.6.

²²⁴ TPPR evaluation: <https://www.tpp-rating.org/page/eng/publications/41>, (last visited 10.06.2022).

²²⁵ In December 2020 amendments were introduced to the Public Procurement Law of the Kyrgyz Republic. According to the changes, it is now mandatory to publish new categories of information on the procurement portal of Kyrgyzstan. At the post-tendering stage, procuring entities are now obliged to publish the information on the subject, price (including price per unit), date and other terms of the contract in conjunction with the information about the tender participant awarded the contract. Moreover, procuring entities have the obligation to publish information on the contract execution and as well as its amendments (if any). This information includes the date of the amendment to the agreement, the basis for the amendment, date of signing the acceptance certificate, amount of penalties imposed, date and amount of payment etc. According to the legislation, the texts of contracts are publicly available on the public procurement portal of Kyrgyzstan. Exception to this rule is information containing confidential or personal data, in accordance with the legislation of the Kyrgyz Republic. The new amendments also foresee the personal responsibility of the head and relevant employees of a procuring entity in case financial damage is incurred during or after conducting a tender.

²²⁶ Open government partnership website, <https://www.opengovpartnership.org/members/kyrgyz-republic/>, (last visited 20.06.2022).

²²⁷ How Open Government Partnership and Transparent Public Procurement Rating Contributed to Public Procurement Reforms in Kyrgyzstan, 13 Feb 2021. Available online: <https://www.tpp-rating.org/page/eng/publications/41>, (last visited 10.06.2022).

²²⁸ *Ibid.*

²²⁹ TI, Corruption Risks on Public Procurement Stages (2020), <https://www.transparency.kg/files/pdf/Public%20Procurement%20Report%20-%20TI%20Kyrgyzstan.pdf>, (last visited 10.06.2022).

²³⁰ *Ibid.*

- Lack of information about suppliers' past tenders on the web portal and impossibility to verify the documentation submitted by suppliers.²³¹
- Shortcomings at the post-tendering stage: the contract signed with the chosen supplier is not published. There is no information on the terms of the contract, payment, so this may lead to a risk of corrupt collusion between supplier and the buyer.²³²

Another study on the system of public procurement by the Central Asia Barometer in 2021 also determined that the web portal cannot effectively prevent usage of the tendering documentation in corrupt practices.²³³ For instance, the purchasing organization may indicate limited terms for the enforcement of the contract, or the requirements for suppliers are set in a way that makes only particular companies eligible.²³⁴ Another potential risk of corruption is connected to the complexity of the web portal and the low level of awareness and knowledge of supplying companies on how to use it. This may result in corruption, as the purchasing organization can contact the potential supplier outside of the portal and ask for more details or clarification on their tender, even if it is required by the law to have all communications solely through the web portal. In practice, communication takes place via phone calls and even in-person meetings.²³⁵ The portal does not have a system of support for suppliers to turn to for clarifications, and training for suppliers is not organized by the Department.

The new Law on Public Procurement was supposed to contribute to the development of a more transparent and efficient system of public procurement in Kyrgyzstan, however, the changes made to the draft during the Parliamentary discussions undermined the progressive and positive nature of the new Law. The changes concerned the scope of the new Law, which does not regulate procurement:

- related to the protection of state secrets;
- carried out by the National Bank of the Kyrgyz Republic;
- at the expense of international funds established to promote economic cooperation between the Kyrgyz Republic and other states;
- carried out by state and municipal enterprises; joint-stock companies, where 50 percent or more of the share in the authorized capital belongs to the state, including their subsidiaries.

An amendment to exclude state and municipal enterprises and companies with the state share in their capital from the scope of the new Law was introduced at the very last moment at the initiative of some members of the Parliament, and supported by the Ministry of Finance representative.²³⁶ The Law was adopted by Parliament in the second and third hearings, simultaneously within one day. This amendment did not go through the public

²³¹ *Ibid.*

²³² *Ibid.*

²³³ Central Asia Barometer policy paper, Corruption within the Kyrgyz Republic Procurement System (2021), p. 9. Available online in Russian: <https://ca-barometer.org/assets/files/froala/29edfc8d8a30440f8d262127ca88a996a002a6b4.pdf>, (last visited 10.06.2022).

²³⁴ *Ibid.* p.10

²³⁵ *Ibid.* p.19

²³⁶ The law which will allow to conduct the public procurement without contest was accepted, <https://www.currenttime.tv/a/vy-zhe-ponimaete-cto-po-kakoy-tsene-i-u-kogo-oni-pokupayut-v-kyrgyzstane-goskompaniyam-razreshili-provodit-zakupki-bez-tendera/31797177.html>, (last visited 15.06.2022).

consultations and created an outrage among civil society organizations and investigative journalists who turned to the President with the demand to veto the new Law, as it opens the door to corruption, but the President ignored it.²³⁷ To the contrary, the President stated that the new Law on Public Procurement will exclude corruption as the previous system of tenders failed and “millions of Kyrgyz soms were stolen.”²³⁸

The head of the Coalition for Budgetary Advocacy, Ms. Batma Estebesova, stated: “It seems that all the positive changes were made only to push through this norm, the law was very quickly adopted immediately in the second and third readings. Many did not have time to realize it, and the deputies unanimously supported it.”²³⁹ Indeed, an exclusion of state and municipal enterprises and Joint Stock Companies (JSCs) from the public procurement system and the online web portal potentially creates severe corruption risks as neither the state regulator, nor civil society will have access and control over the transactions concluded by these enterprises and companies.

This opinion is supported by the data analysis conducted by the Kloop analysts who stated that roughly one third of public procurement will occur outside the watch of the public eye.²⁴⁰ 232 companies fall under the exception of the new Law on Public Procurement, including big companies such as the OJSC Airport Manas, OJSC National Energoholding, CJSC Alfa Telecom and others.²⁴¹ According to the Open Contracting Partnership Business Intelligence module, the state and municipal enterprises and state-owned JSCs have concluded 15 thousand contracts since 2019 for the total amount of 25 billion KG soms (EUR 300 million).²⁴² With the entering of the new Law into force, all this information will no longer be available. It is important to note that journalists were able to uncover corruption in several cases of public procurement with the participation of state and municipal enterprises (such as the cases of State Service for Auto Registration (UNAA) and the Kyrgyz Temir Jolu enterprises)²⁴³ thanks to open data on the public procurement web portal.

The Ministry of Finance responded to the critique by assuring that the new regulation for the enterprises and companies excluded from the application of the new Law on Public Procurement is under development. This upcoming regulation is supposed to provide openness and transparency of the excluded tenders, but the question remains: what was the true reason for such drastic amendments to be incorporated into the new Law so hastily? The argument of competitiveness used by the Ministry of Finance does not seem valid, as the majority of the excluded state and municipal enterprises as well as the JSCs

²³⁷ New law on Public Procurement opens doors for corruption, <https://www.akchabar.kg/ru/article/business/obshestvennost-bet-trevoгу-novyj-zakon-o-goszakupkah-otkryva/>, (last visited 15.06.2022).

²³⁸ Sadyr Japarov – new law will eliminate corruption, <https://kloop.kg/blog/2022/04/16/sadyr-zhaporov-novyj-zakon-o-goszakupkah-isklyuchit-korruptsiyu/>, (last visited 15.06.2022).

²³⁹ New law on Public procurement opens the doors for corruption, <https://www.akchabar.kg/ru/article/business/obshestvennost-bet-trevoгу-novyj-zakon-o-goszakupkah-otkryva/>, (last visited 15.06.2022).

²⁴⁰ Third public procurements might go to the shadow, <https://kloop.kg/blog/2022/05/26/tret-goszakupok-mozhet-ujti-v-ten-kak-novyj-zakon-povliyaet-na-prozrachnost-pokazyvaem-na-dannyh/>, (last visited 15.06.2022).

²⁴¹ Registry of Joint stock companies, https://finance.page.kg/index.php?act=reestr_ao, (last visited 15.06.2022).

²⁴² Open contracting site, <https://bi.open-contracting.org/kyrgyzstan/> (last visited 15.06.2022).

²⁴³ Was winning tenders from himself, <https://kloop.kg/blog/2021/02/19/vyigryval-tendery-u-sebya-samogo-rabotal-s-plemyannikom-matraimova-factcheck-kv-vypustil-rassledovanie-o-glave-kyrgyz-temir-zholu/> ; <https://kloop.kg/blog/2021/09/12/tender-na-polmilliarda-temirov-live-proveli-rassledovanie-o-svate-prezidenta-turusbeke-tumonbaeve/> (last visited 15.06.2022).

with 50% state participation, do not have competitors.

Regarding the documented cases where (financial) records were destroyed, falsified or not maintained during the public procurement process, the Ministry of Finance stated in its official response to FOI request that it did not have this information.

Good Practices

- Implementation of the OGP commitments in the area of public procurement: improvements have been made to the web portal for public tenders.
- Introduction of the OCDI-based Business Intelligence tool for Kyrgyzstan is a significant step for public access to the data on public procurement, in a quick and convenient way, for further analysis.
- Enactment of the new Law on Public Procurement, the development of which was based on the active participation of all stakeholders, public discussions and support of involved International Organizations.

Deficiencies

- The web portal still has big room for development: it often works incorrectly, the navigation on the portal is problematic even for experienced computer users, and the information is not provided in a machine-readable format.
- The unavailability of the contracts' text and the post-tender documentation.
- The major shortcoming of the new Law on Public Procurement is the exclusion from its ambit of state and municipal enterprises and joint-stock companies, where 50% or more of the share in the authorized capital belongs to the state, including their subsidiaries.
- Representatives of civil society institutions are concerned, since the annual volume of purchases made by these companies reaches about 38.5% of the total volume of public procurement in the country. 28 public organizations made an appeal to Sadyr Japarov, where they asked not to support and return the draft law "On Public Procurement" with objections, but it still was accepted.²⁴⁴

4.1.8 Art. 9.2, 9.3 – Management of public finances

The Kyrgyz Republic has a budget code that governs the budget process. It outlines the procedures for the budget process, from preparation to adoption and reporting. The following laws, regulations and rules govern accounting, internal and external audit standards for the national budget and public financial management: Law "On Auditing", Regulation on Minimum Requirements for External Audit of Banks and Other Financial and Credit Institutions licensed by the National Bank of the Kyrgyz Republic; the Law of the Kyrgyz Republic "On Accounting"; the Strategy for the Development of Public Financial Management in the Kyrgyz Republic for 2017-2025,²⁴⁵ as well as other resolutions and regulations on these issues.

With regard to the mechanisms used in the Kyrgyz Republic for recording, storing and ensuring the integrity of accounting books, records, financial statements and other relevant documents, the provisions of the Law of the Kyrgyz Republic "On Accounting" dated April 29, 2002 No. 76, as well as the Regulation on Accounting for financial reporting

²⁴⁴ "Corruption risks",

https://kaktus.media/doc/457932_korruptsionnye_riski_k_sadyry_japarovy_obratilis_iz_za_novshestv_v_sfere_goszakypok.html (last visited 20.08.2022).

²⁴⁵ Strategy for the Development of Public Financial Management in the Kyrgyz Republic for 2017-2025, <http://cbd.minjust.gov.kg/act/view/ky-kq/98725?cl=ru-ru#p1> (last visited 20.08.2022).

in the general government sector, these are available and, according to the above norms, seem adequate.

In the Budget Code of the Kyrgyz Republic, a separate chapter (24) is devoted to publicity and transparency of the budget and the budget process. According to the annual study “Open Budget Survey 2021: budget transparency scores” (Open Budget Index), the Kyrgyz Republic scored 62 points out of 100 in terms of general indicators, which is a fairly average level and is in the green zone.²⁴⁶ The indicator suggests that the public has sufficient (above average) capacity to monitor the budget process.

Local Self Government bodies must hold public budget hearings annually. Holding public budget hearings and forming a civil budget is a requirement of the budget legislation of the Kyrgyz Republic, and participation in hearings, expressing one's opinion and making proposals is a constitutional right of every citizen.²⁴⁷ According to the annual study “Open Budget Survey 2021: public participation scores,” the Kyrgyz Republic received 26 points out of 100, and falls under the red zone.²⁴⁸ This indicator suggests that citizens do not have the proper level (below average) possibility to participate in the process of budget formation. The Budget Code²⁴⁹ establishes the responsibility of state bodies and local governments for violation of financial discipline, including dismissal in accordance with Article 130.

The authorized state body, the Social Fund, carries out monthly monitoring and analysis of the execution of the relevant budget and submits quarterly reports on budget execution to the Cabinet of Ministers, as well as sending information to the relevant committee of the Jogorku Kenesh.

The following reports are systematically published on the official website of the Ministry of Finance of the Kyrgyz Republic:²⁵⁰

- Monthly and annual reports on the execution of the state budget;
- Semi-annual review of the state budget execution;
- Reports on the execution of local budgets;
- Results of the audit of the Accounts Chamber of the Kyrgyz Republic;
- Financial reports;
- Report on the achievement of performance indicators of budget programs

In the State Budget of the Kyrgyz Republic, each state body has its own chapter, which makes it possible to track the budget allocated and spent by each state body separately. Information on the adopted budget, its implementation, revenue collected, main sources of revenue and independent audit is available to the public through the website of the Ministry of Finance of the Kyrgyz Republic.²⁵¹ The citizen's budget is also presented. However, the published information on the budget is not detailed: it is broadly itemized,

²⁴⁶ Open budget survey 2021, <https://internationalbudget.org/wp-content/uploads/Open-budget-survey-2021-1.pdf>, (last visited 20.06.2022).

²⁴⁷ Budget hearings during the pandemic, <http://www.municipalitet.kg/ru/article/full/2479.html>, (last visited 20.06.2022).

²⁴⁸ Open budget survey 2021, <https://internationalbudget.org/wp-content/uploads/Open-budget-survey-2021-1.pdf>, (last visited 20.06.2022).

²⁴⁹ Budget code, <http://cbd.minjust.gov.kg/act/view/ru-ru/111338>, (last visited 20.06.2022).

²⁵⁰ Official website of the Ministry of Finance of the Kyrgyz Republic, <http://www.minfin.kg/ru/novosti/otchety-po-ispolneniyu-byudzheta>, (last visited 20.06.2022).

²⁵¹ *Ibid.*

without indications of income and expenses, which complicates the procedure for collecting and analyzing information.

In order to inform the population, public availability of budget documents contains various kinds of information on the official web-site of Ministry of Finance, such as the Country Pre-Budget Statement, the Enacted Budget and a series of reports (In-Year, Year End and Audit reports), among others.²⁵²

The Kyrgyz Republic has classified data on the budget of specialized institutions, such as the State Committee for National Security, the Ministry of Internal Affairs, and the Ministry of Defense.²⁵³ The budget of these departments was recognized as classified and not subject to disclosure. Such a judicial precedent occurred back in 2012, when lawyer Nurbek Toktakunov wanted to know the budget of the State Committee for National Security, but the Bishkek City Court recognized this information as classified.²⁵⁴

During the COVID-19 pandemic, information on the spending of funds received from donors turned out to be unavailable, however, according to Articles 9 and 10 of the Law of the Kyrgyz Republic “On Guarantees and Freedom of Access to Information,” an exhaustive list of information which might be closed. Among this list, there is no reason for not providing information in the event of the introduction of state of emergency and emergency regimes. According to the third paragraph of Article 3 of the above-mentioned law, restrictions on access and dissemination of information are established only by law. At the same time, the Law of the Kyrgyz Republic “On Guarantees and Freedom of Access to Information”, the Constitutional Law of the Kyrgyz Republic “On the State of Emergency” and the Law of the Kyrgyz Republic “On Civil Protection” do not restrict the right of citizens to access information in the conditions of the introduction of state of emergency and emergency situations. However, acting Deputy Prime Minister Erkin Asrandiev, stated that the government could not publish a detailed report on what foreign aid was spent on.²⁵⁵

The audit of budget execution in the Kyrgyz Republic is carried out by the Accounts Chamber, which systematically identifies problems in managing the national budget. For instance, in 2020, the Council of the Accounts Chamber conducted an audit within the Ministry of Agriculture and its subordinate institutions. According to the audit, financial violations were found up to a total sum of 17.5 million soms (EUR 208,000).²⁵⁶

Good practices

²⁵² Open budget survey 2021, <https://internationalbudget.org/wp-content/uploads/Open-budget-survey-2021-1.pdf>, (last visited 20.06.2022).

²⁵³ Hundreds of police officers in Bishkek hand over cards of the Ministry of Internal Affairs as collateral due to meager salaries, https://kaktus.media/doc/393156_v_bishkeke_iz_za_mizernoy_zarplaty_sotni_milicionerov_sdaut_kar_tochki_mvd_v_zalog_video.html, (last visited 20.06.2022).

²⁵⁴ Bishkek city court prohibited to open information, <https://kloop.kg/blog/2012/03/14/bishkekiskij-gorsud-zapretil-razglashat-byudzheth-gknb/>, (last visited 20.06.2022).

²⁵⁵ Deputies and citizens are demanding the report on budget execution during the Pandemic, <https://kloop.kg/blog/2020/04/30/deputaty-i-grazhdanskoe-obshchestvo-trebuyut-otcheta-o-tratv-neshnej-pomoshhi-pravitelstvo-govorit-cto-sistema-ne-pozvolyaet/>, (last visited 20.06.2022).

²⁵⁶ In the Ministry of Agriculture, financial violations were found, https://www.esep.kg/index.php?option=com_content&view=article&id=2129:za-2020-god-v-ministerstve-selskogo-khozyajstva-kr-vyyavleny-finansovye-narusheniya-na-summu-17-6-mln-somov&catid=49&lang=ru&Itemid=170, (last visited 20.06.2022).

- Publication of all major reports directly on the website of the Ministry of Finance, enabling all individuals to get general information on the budget.
- Publication of the “Citizens budget” which is a simplified form of the budget, and reader-friendly.
- In the State Budget of the Kyrgyz Republic, each state body has its own chapter, which makes it possible to separately track the budget allocated and spent by each state body.

Deficiencies

- The non-publication of the budget execution and in open data format, mainly in the context of the COVID-19 health emergency.
- Lack of detailed budget information and budget execution, which is not available to the general public, because it is not reader friendly and sometimes published in PDF format (non-machine readable).
- The quantity of classified information that is not available to the public has increased.
- Decisions being made are unpredictable and take place behind closed doors, which does not allow one to analyze the validity of certain projects and at what expense they are being implemented.
- An article on “special funds” appeared in the budgets of state bodies, which is a corruption-inducing norm since the government doesn't have to publish information on it and can use it to its own benefit without reporting on it.
- There is no real budget policy strategy.
- The process of general hearings has become formal, decisions are made at the top and activists' recommendations are unheard.

4.1.9 Art. 10 & Art. 13.1 - Access to Information and Participation of Society

Citizen participation is always emphasized by Government officials in relation to the anti-corruption agenda. The National Anti-Corruption Strategy states that “support and participation of civil society and the business community in the efforts undertaken by the state to combat corruption is one of the key and most important elements in combating corruption.”²⁵⁷

The right to access to information (RTI) in the KR is guaranteed by article 33 of the Constitution, stating that:

- “Everyone has the right to receive information about the activities of state bodies, local self-government bodies and their officials, legal entities with the participation of state bodies and local self-government bodies, as well as organizations financed from the republican and local budgets”²⁵⁸ and,
- “Everyone is guaranteed access to information held by state bodies, local self-government bodies and their officials.”²⁵⁹

Supported by the Constitutional guarantee, the legal framework of access to information includes two main laws: the Law on Guarantees and Freedom of Access to Information²⁶⁰

²⁵⁷ *Supra* footnote 73, preamble.

²⁵⁸ The Constitution of the Kyrgyz Republic, article 33.3.

²⁵⁹ The Constitution of the Kyrgyz Republic, article 33.4.

²⁶⁰ Law of the Kyrgyz Republic on Guarantees and Freedom of Access to Information, 5 December 1997 #89, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/589/45?mode=tekst>, (last visited 20.06.2022).

and the Law of the Kyrgyz Republic on Access to Information Held by State Bodies and Local State Government bodies.²⁶¹

The first law regulates relations arising in the process of exercising the right of everyone to freely seek, receive, research, produce, transmit and disseminate information.²⁶² The Law provides a right for everyone to request information (usually in written form) or to receive access to documents, decisions and other materials affecting his rights and legitimate interests.²⁶³ State bodies, local governments, public associations, enterprises, institutions, organizations and officials provide access to information in the following ways:

- publication and distribution of relevant materials;
- carrying out information and explanatory work in the media on adopted socially significant decisions, including regulatory legal acts that impose new obligations on citizens, legal entities, establish or increase responsibility of citizens;
- providing information on the basis of a request;
- disclosing information about their activities;
- providing direct access to documents and materials;
- ensuring direct access to public meetings of the state body and local governments.²⁶⁴

The Law of the Kyrgyz Republic on Access to Information Held by State Bodies and Local State Government bodies aims to ensure the implementation and protection of the right to access information held by state bodies and local governments, and achieve maximum informational openness, publicity and transparency in their activities.²⁶⁵ The Law provides more details on how the right to access information is implemented and what limitations to RTI exist.

The Law covers all state bodies and local self-government bodies which includes any institution, its territorial subdivisions or structural units, financed in whole or in part from the republican or local budget and performing functions not related to the exercise of state power or the functions of local self-government (including institutions related to health care, education, information, statistics, consulting and lending).²⁶⁶ However, the Law does not cover state enterprises.

Procedures for access to information

The request for information can be made in person, over the phone, via post, courier services, email or personal delivery to the respective state or municipal body.²⁶⁷ The procedures are overall easy, however, in the Right to Information (RTI) rating, Kyrgyzstan scores 18 out of 30 in the category on requesting procedures.²⁶⁸ The reason is that applicants are required to provide too many personal details (names, date of birth and

²⁶¹ Law of the Kyrgyz Republic on Access to Information Held by State Bodies and Local State Government bodies, 28 December 2006 #213, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/202010/70?mode=tekst>, (last visited 20.06.2022).

²⁶² *Supra* footnote 150, article 1.

²⁶³ *Ibid*, articles 5 and 6.

²⁶⁴ *Ibid*, article 6.

²⁶⁵ *Supra* footnote 151, article 1.

²⁶⁶ *Supra* footnote 151, article 2.

²⁶⁷ *Ibid*, articles 7,8,9.

²⁶⁸ Mendel T., Analysis of the Kyrgyz Legal Framework for the Right to Information, April 2020, at p. 12, available online: https://mediadialogue.kg/wp-content/uploads/2020/12/wfd_kg-ati-framework-analysis_eng-v9.pdf, (last visited 20.06.2022).

place of residence) rather than just an address of information delivery, as the international standard recommends.²⁶⁹ Also, the Law does not require public officials to provide assistance to applicants who might be disabled or illiterate.²⁷⁰ Moreover, the Law requires governmental bodies to have templates to make the procedures easier and faster, however, these templates do not exist in practice.²⁷¹

Limitations to RTI: exceptions, harm and public interest tests

The Constitution states that limitations on rights and freedoms of a person are only permitted in order to protect national security, public order, health and morals of the people, and the rights and freedoms of others.²⁷² The restrictions imposed must be proportionate to the stated objectives. Limitation of access to information is related to the following kinds of information under Article 5 of the Law on Access to Information Held by State Bodies:

- on state secrets defined by the Law on the protection of state secrets;
- of a personal nature as defined by the Law on information of a personal nature;
- on operational-search activities, on criminal proceedings in cases established by law;
- containing secrets protected by the law (commercial, banking, notarial, medical, legal, etc.).²⁷³

Access may be refused if the requested information is contained in parts of documents that are classified as information with restricted access.²⁷⁴ The RTI Rating gave Kyrgyzstan 12 out of 30 points in this section, as the regime of restriction was described to be “overly broad” and “undermines the whole thrust of the RTI law.”²⁷⁵ The international standard is to override the laws regulating RTI over laws that include various kinds of secrecy provisions: this would allow for a balance in the protection of legitimate interests and the openness of information.²⁷⁶

Some of the provisions of laws granting secrecy to certain kinds of information are found to not be in compliance with international standards.²⁷⁷ For instance, the Law on State Secrets includes a definition of state secret as “information stored and moved by any type of media, affecting the defense capability, security, economic, scientific, technical and political interests of the Kyrgyz Republic.”²⁷⁸ This is a very broad provision but it does not “include a harm test; instead applying to all information “affecting” defense and security.”²⁷⁹ The Article 19 Principles propose a three-part test in these cases: 1) “the information must relate to a legitimate aim listed in the law,” 2) disclosure must threaten to cause substantial harm to that aim;” and 3) “the harm to the aim must be greater than

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Supra* footnote 1, article 23.

²⁷³ *Supra* footnote 151, article 5.

²⁷⁴ *Supra* footnote 151, article 15.

²⁷⁵ *Supra* footnote 157, p. 16.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ Law of the Kyrgyz Republic “About protection of the state secrets of the Kyrgyz Republic”, December 15, 2017, No. 210(15). Available in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111719>, (last visited on 29.05.2022).

²⁷⁹ *Supra* footnote 157, p. 16.

the public interest in having the information.”²⁸⁰

Hence, refusal to provide any information related to legitimate interests, whether included in the law on state secrets or any other relevant laws, does not meet international standards.²⁸¹ In practice however, the secrecy of many categories of information is clearly unsound, and the courts often support such secrecy by making decisions on the basis of by-laws that provide classification of secret information, without questioning the expediency of such classification or the significance of the “public interest.”²⁸² The RTI Laws should include a “requirement of harm and a public interest override, and then override secrecy provisions in other laws to the extent of any conflict,”²⁸³ along with the full lists of the interests protected by secrecy, in order to strengthen enforcement of the RTI and avoid an excessively broad regime of exceptions.

Timetable and Format of Provision of Information

Article 10 of the Law on Access to Information Held by State Bodies sets the time limit for the response to requests as two weeks.²⁸⁴ It can be extended for another two weeks, but the applicant should be informed about the reasons for the delay.²⁸⁵ The international standard is to require information to be provided as soon as possible, with the two week time limit being the latest deadline.²⁸⁶ In practice, the set time limits are not often met as the applicants might receive no response at all, or the deadlines are significantly extended.²⁸⁷ Importantly, there are no specific sanctions imposed on public officials who do not respect or obstruct the RTI as well as the “direct responsibility on public authorities for general (systemic) failures to respect or implement” access to information laws.²⁸⁸

The response is made in the same form as the request: there is no option of choosing the mode of an answer after the request is lodged.²⁸⁹ According to Article 13.1 of the Law on Access to Information Held by State Bodies, the submission of a request as well as a response are free of charge.²⁹⁰ If a request includes photocopying, the first 5 pages are free, while the remaining costs may need to be paid by the applicant. The authorities have the right to waive fees for vulnerable groups of people.²⁹¹ In practice, some state bodies have various fees, while some provide information free of charge. There is no unified approach concerning the fees in this regard.

Appeals Mechanism

Article 35 of the Law on Access to Information Held by State Bodies stipulates that a

²⁸⁰ International standards: right to information, <https://www.article19.org/resources/international-standards-right-information/>, (last visited 29.05.2022).

²⁸¹ International standards: Right to information, Article 19, <https://www.article19.org/resources/international-standards-right-information/>, (last visited 29.05.2022).

²⁸² Usenova B., Access to Information in Kyrgyzstan in the Materials of the 20th Central Asian Conference of Mass Media “Access to Information and New Technologies”, Dushanbe 2010, available online: <https://www.osce.org/files/f/documents/5/0/88300.pdf>, (last visited 25.06.2022).

²⁸³ *Supra* footnote 157, p. 19.

²⁸⁴ *Supra* footnote 151, article 10.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Supra* footnote 157, p. 16.

²⁸⁸ *Ibid.*, at p. 25.

²⁸⁹ *Ibid.*, article 7.2.

²⁹⁰ *Supra* footnote 151, article 13.1.

²⁹¹ *Ibid.*, article 13.2 and 13.3.

refusal to provide information, as well as other actions (inaction) and decisions of state bodies and local self-government bodies may be appealed in the manner prescribed by the Law On the Basics of Administrative Activities and Administrative Procedures.²⁹² The Law on Administrative Procedures regulates internal appeal procedures of state bodies, so the first step of an appeal is an internal consideration by the respective state or municipal body. If an applicant is not convinced by the outcome of the administrative appeal, there is still the right to turn to the court. However, an existence of an administrative body that could guarantee the protection of RTI would significantly contribute to the promotion and strengthening of this right. Such a body could become the second step in the appeal proceedings, before applicants turn to the court.

As stated by the interviewed expert, Satybekov Bakyt, “almost all of the RTI regimes which are more effective in practice benefit from strong and independent oversight bodies.”²⁹³ For instance, all OECD states have a body that reviews RTI,²⁹⁴ with the form of these institutions varying across jurisdictions. Such an oversight body can be a single-person body, like the Ombudsman, Mediator, or Information Commissioner;²⁹⁵ it can take the shape of a special commission dealing with RTI; or be another administrative body that combines several functions.²⁹⁶ Since the institution of the Ombudsman already exists in Kyrgyzstan, it could fulfill the functions of an independent administrative body and consider the appeals after they go through internal procedures. This could become a fast option, and as an oversight authority, the Ombudsman could provide a supervisory review or an assisted internal review to the respective state or municipal body.²⁹⁷

The research team for this report personally engaged with Access to Information procedures by lodging requests to various public bodies (see list of requests in Annex). Some of the requests received were unanswered, such as our request to the Central Electoral Committee of the Kyrgyz Republic. The timetables were not followed by all state bodies we turned to, and some of them have not responded at all.

The responses that were received did not contain information sufficient for our purposes: either the questions in requests were ignored, or the answers were not relevant and contained information that was not requested. The quality of responses was very low, and this problem is often raised by experts, civil society organizations and journalists. There is an impression that state or municipal bodies provide an answer just to tick a box. Therefore, the provisions of article 11.3 that “the response to a written request for information must be exhaustive, excluding the need for a second request by the interested person on the same subject of the request,” are not enforced in practice in the Kyrgyz

²⁹² *Ibid* article 35. The Law of the Kyrgyz Republic On the Basics of Administrative Activities and Administrative Procedures, dated 31 July 2015 # 210, available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111254?cl=ru-ru>, (last visited 26.06.2022).

²⁹³ *Supra* footnote 157, p. 16.

²⁹⁴ OECD (2020), *Review of the Kazakhstan Commission on Access to Information*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/3a8d6a0e-en>, (last visited 22.06.2022).

²⁹⁵ *Ibid*. Such single person bodies exist in Sweden, Norway, UK, Germany.

²⁹⁶ *Ibid*. For instance, France, Italy, Chili have specific bodies for the protection of RTI, while Turkey made two of its state bodies responsible for the monitoring the RTI. RTI Review Council and the Ombudsman, (last visited 22.06.2022).

²⁹⁷ Parsons A., Improving oversight of Access to Information: Learning from different approaches across Europe, April 2022. Available online: <https://research.mysociety.org/html/improving-oversight/#top>, (last visited 15.06.2022).

Republic.²⁹⁸

As demonstrated in other parts of this report, some information related to the prevention of corruption as well as combatting corruption is available on the webpages and electronic databases. For instance, the electronic portal for public tenders is run by the State Department on Public Procurement, or the database of legal entities is run by the Ministry of Justice.²⁹⁹ The information published on webpages is not always up-to-date, and webpages are not presented in a user-friendly format, so it is difficult to find the necessary information. Kaktus Media has published a series of reports on access to information on the webpages of various state bodies.³⁰⁰

Kyrgyzstan joined the Open Government Partnership (OGP) in 2017 and is currently in the process of implementation of 17 commitments.³⁰¹ The OGP National Forum was established by the Decree of the Government in 2018, and includes 38 representatives of civil society and the state in equal proportions.³⁰² The action plan 2018-2020 covers a wide range of topics among them: access to information and open data, citizen engagement and public integrity measures.³⁰³ The implementation process of the OGP action plan was significantly hindered by the political changes of 2020 and the Covid-19 pandemic.³⁰⁴ Civil society representatives stated that the implementation was further weakened by the lack of commitment on the side of the Government.³⁰⁵

Among those commitments that were partially implemented is the commitment on citizen inclusion in drafting legislation, that included the “creation of a unified portal to enable online public discussion of draft laws.” The portal was created³⁰⁶ with the financial assistance of the EU and USAID.³⁰⁷ The platform publishes all draft laws and the public can leave comments on the portal.

The commitment of creating an open data portal has also been partially implemented. Data.gov.kg currently operates and provides access to 646 datasets of various state bodies and agencies.³⁰⁸ The major drawback of the portal is that the datasets are not updated regularly, and the portal itself has not been updated since September 2019.

²⁹⁸ Supra footnote 151, article 13.3.

²⁹⁹ Public tender e-portal <http://www.zakupki.gov.kg/popp/>, the database of legal entities: <https://register.minjust.gov.kg/register/SearchAction.seam>, (last visited 22.06.2022).

³⁰⁰ Access to information https://kaktus.media/doc/431560_dostyp_k_informacii_chno_my_ishem_na_sayte_pravitelstva_i_kakih_dannyh_tam_net.html, (last visited 22.06.2022).

³⁰¹ OGP webpage: <https://www.opengovpartnership.org/members/kyrgyz-republic/>, (last visited 30.06.2022).

³⁰² Decree of the Government of the Kyrgyz Republic dated 27 June 2018 #226-p. Available in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/216401?cl=ru-ru>, (last visited 30.06.2022).

³⁰³ OGP Action Plan 2018-2020, available: https://www.opengovpartnership.org/wp-content/uploads/2018/12/Kyrgyz-Republic_Action-Plan_2018-2020_REV.pdf, (last visited 30.06.2022).

³⁰⁴ Kyrgyz Republic Transitional Results Report, 21 January 2022. Available: <https://www.opengovpartnership.org/documents/kyrgyz-republic-transitional-results-report-2018-2020/>, (last visited 30.06.2022).

³⁰⁵ *Ibid.*

³⁰⁶ Online platform for public discussion of the new laws: <http://koomtalkuu.gov.kg/ru>, (last visited 21.05.2022).

³⁰⁷ Supra footnote 196.

³⁰⁸ Open data portal, <https://data.gov.kg/dataset>, (last visited 18.05.2022).

Another possibility for citizen participation is the work of public councils.³⁰⁹ Public councils are regulated by the Law and are consultative bodies aiming to cooperate with the state and municipal bodies and monitor their work.³¹⁰ Public councils aim for greater transparency and citizen participation, however, shortcomings exist in their work as determined by research conducted by the EU in 2017.³¹¹ Among the shortcomings indicated were: lack of citizen awareness about the work of public councils and interest in getting involved, lack of strategic planning on co-operation with the respective state bodies, and lack of competence in monitoring and assessment of the state bodies' work by citizens, among others.³¹²

Limitations on Reporting Corruption for Media and Citizens

Legislatively, there are no restrictions for the media and citizens to acquire, publish and disseminate information related to cases of corruption. In practice, attacks on journalists, bloggers and media workers in Kyrgyzstan are numerous, and they are on the rise.³¹³ Attacks may include legal or economic measures, interrogations, illegal accusations of extremism and inciting various types of hatred, a ban on leaving the country, or the closure of the media outlet.³¹⁴

The Institute on Media Policy confirms that the situation in Kyrgyzstan has worsened between October 2020 and March 2022: "the situation with freedom of speech is worsening due to increased signs of authoritarianism in the political model of Kyrgyzstan, more frequent use of repressive measures by the state, attempts to tighten control over the media environment and reduce the space for the work of independent media."³¹⁵ Human Rights Watch stated that Kyrgyz authorities "have stepped up the harassment of journalists and independent media with a slew of criminal investigations into their work in recent months."³¹⁶

Increasing pressure on the media and bloggers can be demonstrated by alleged criminal, drug-related charges against an independent journalist that were seen as persecution for his own investigative work on corruption cases alongside factcheck.kg journalists.³¹⁷ The

³⁰⁹ Page of Public councils, https://www.gov.kg/ru/p/public_council (last visited 10.06.2022).

³¹⁰ Law of the Kyrgyz Republic on Public Councils of State Bodies dates 24 May 2014 #74, article 1. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/205299>, (last visited 08.07.2022).

³¹¹ EU Project on Strengthening Citizen Involvement to the Public Councils in Kyrgyzstan, February-May 2017, available: [http://gsi-projects.eu/public-councils/articles-and-publications/Report%20on%20survey_Survey%20of%20the%20activity%20of%20public%20councils%20of%20state%20bodies%20of%20the%20KR%20\(RUS\).pdf](http://gsi-projects.eu/public-councils/articles-and-publications/Report%20on%20survey_Survey%20of%20the%20activity%20of%20public%20councils%20of%20state%20bodies%20of%20the%20KR%20(RUS).pdf) (last visited 10.09.2022).

³¹² *Ibid.*

³¹³ Foundation for International Investigations of Crime against Media, Attacks on Journalists, Bloggers and Media Workers in Central Asia and Azerbaijan, 2017-2019: <https://ifi.fund/wp-content/uploads/2020/05/Joint-CA-report-ENG-2.pdf> (last visited 31.08.2022).

³¹⁴ *Ibid.* Interestingly, from 2017 to 2019, the number of attacks and threats of a non-physical nature and/or cyberspace had grown fivefold.

³¹⁵ Institute of Media Policy, Online attacks on journalists, criminal cases, legislative restrictions: freedom of speech after October 2020. Available: https://internews.kg/wp-content/uploads/2022/04/onlajn_ataki_na_zhurnalistov_ugolovnye_dela_zakonodatelnye_ogranicheniya.pdf (last visited 08.08.2022).

³¹⁶ HRW, The Spate of Criminal Cases against Journalists, published on 01.04.2022, <https://www.hrw.org/news/2022/04/01/kyrgyzstan-spate-criminal-cases-against-journalists> (last visited 15.08.2022).

³¹⁷ Pressure on Temirov Live's journalists continues in Kyrgyzstan, published on 06.06.2022, <https://acca.media/en/15149/pressure-on-temirov-lives-journalists-continues-in-kyrgyzstan/> (last visited 08.08.2022). See also: Inside Kyrgyzstan's Campaign to Silence Journalist Bolot Temirov,

journalist was acquitted on September 28, 2022, cleared of all charges by the district court in Bishkek.³¹⁸ In February 2022, several pro-government activists demanded to enact a law on foreign agents during a press conference in Bishkek. They suggested to use it against independent media such as Kloop.kg and Azzattyk.³¹⁹

Cases have also been brought against bloggers, for instance, a 19 year-old is facing alleged criminal charges for Facebook posts that republished archived videos on the Jetim Too mining field.³²⁰ The video contained a statement from a former high-ranking public official about the mining field and alleged corruption by state authorities.³²¹ An opposition blogger was interrogated by investigators of the State Committee on National Security in June 2022 for Facebook posts criticizing political and economic policies.³²² An opposition 'TV April' journalist received an official warning from the State Committee on National Security for posts on Facebook criticizing the public authorities.³²³

Good Practices

- The right to Access to Information is guaranteed by the Constitution of the Kyrgyz Republic and two major Laws, and continuous efforts are being made to strengthen the legal framework. The draft Law on Access to Information in progress, and will hopefully remedy some of the shortcomings of the current legal framework.
- Kyrgyzstan's participation in the OGP has great potential for more citizen participation in the work of the Government and anti-corruption policy drafting and implementation.

Deficiencies

- The Law requires governmental bodies to have templates to make the procedures for requesting information easier and faster, however, these templates do not exist in practice.
- The Access to Information legal framework fails to provide for the override of RTI over the secrecy and legitimate interests of the state, and does not include harm and public interest tests. Courts often support such secrecy by making decisions on the basis of by-laws that provide classification of secret information, without questioning the expediency of such classification or the significance of the public interest.
- Government bodies and agencies often fail to follow set timetables in providing responses to public requests, the quality of responses is low in many cases, and

published on 31.01.2022, available: <https://www.rferl.org/a/kyrgyzstan-temirov-journalist-special-investigation/31677591.html> (last visited 08.08.2022).

³¹⁸ RFE/RL Kyrgyz Service, Kyrgyz Investigative Journalist Bolot Temirov Acquitted, 28.09.2022. Available: <https://www.rferl.org/a/kyrgyz-court-acquits-journalist-bolot-temirov/32057546.html> (last visited 12.11.2022).

³¹⁹ Miranda Patrucic, Press Freedom in Kyrgyzstan Is Headed in the Wrong Direction, The Diplomat, published on 18 March 2022: <https://thediplomat.com/2022/03/press-freedom-in-kyrgyzstan-is-headed-in-the-wrong-direction/> (last visited 25.08.2022).

³²⁰ The Economist, 19-year-old blogger Yrys Zhekshenaliev was detained - he published a video against the development of the Zhetim-Too field, published 15.08.2022: <https://economist.kg/novosti/2022/08/15/19-letnego-blogera-yrysa-zhekshenalieva-zaderzhali-on-opublikoval-video-protiv-razrabotki-mestorozhdeniya-zhetim-too/> (last visited 25.08.2022).

³²¹ *Ibid.*

³²² "Wrote criticism - was summoned for interrogation." Social media users continue to be tracked in Kyrgyzstan. Published on June 22, 2022: <https://rus.azattyk.org/a/31916455.html> (last visited 25.08.2022).

³²³ *Ibid.*

the sanctions for failure to provide information are not determined. There is no unified approach concerning the fees of requesting information.

- There is a major problem in the implementation of the OGP commitments due to change of political power, and the Government's lack of ownership and commitment to this initiative. Although some of the commitments under the OGP action plan have been partially implemented, the creation of a new online portal to discuss draft laws has been weakened by the fact that it is not kept up-to-date.
- There is an increasing tendency of silencing independent media, bloggers and citizens who unveil cases of corruption by the state authorities. This is a direct violation of Kyrgyzstan's commitments under UNCAC article 13.1.

4.1.10 Art. 11 – Judiciary and Prosecution Services

Independence and integrity of the judiciary and the prosecutor's office

Article 95 of the 2021 Constitution³²⁴ and the Constitutional Law on the Status of Judges of the Kyrgyz Republic³²⁵ declare that judges are guaranteed independence and the right of inviolability. Any interference in the administration of justice is prohibited.³²⁶ The guarantees of independence of judges provided for by the Constitution and the constitutional Law cannot be canceled or reduced under any circumstances.³²⁷ Nonetheless, according to the interview of the former judge of the Constitutional Chamber of the KR, Chinara Aidarbekova, “there are methods of imposing pressure on judges” even if the legal framework seems to safeguard their independence. And, with the 2021 Constitution “an already subservient judicial institution [became] even more dependent...diminishing any hope for institutional checks and balances.”³²⁸

During the referendum on the new Constitution in 2021, OSCE observers stated that the Constitution includes provisions that endanger the independence of the judiciary in Kyrgyzstan.³²⁹ The Venice Commission and OSCE emphasized that article 70 empowers the President to appoint judges of all levels.³³⁰ Moreover, one of the most significant concerns is the overly prominent role and prerogatives of the President over the executive and the other branches of powers, with a weakened role of the Parliament and potential encroachments on judicial independence. This creates a real risk of undermining the separation of powers and the rule of law in the Kyrgyz Republic.³³¹

Since corruption in the judicial system was already widespread by the time the new Constitution was adopted, there were serious concerns that the situation would only

³²⁴ The Constitution of the Kyrgyz Republic, enacted by the Law of the Kyrgyz Republic dated May 5, 2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru> (last visited 08.07.2022)

³²⁵ Constitutional Law of the Kyrgyz Republic “On the Status of Judges of the Kyrgyz Republic” dated November 15, 2021 No. 138, <http://cbd.minjust.gov.kg/act/view/ru-ru/202352?cl=ru-ru> (last visited 08.07.2022)

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ Freedom House, Nations in Transit 2021, Executive summary by Medet Tulegenov: <https://freedomhouse.org/country/kyrgyzstan/nations-transit/2021> (last visited 01.09.2022).

³²⁹ The Venice Commission, “Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021),” March 19, 2021: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)007-e) (last visited 01.09.2022).

³³⁰ *Ibid.*, at p.5.

³³¹ *Ibid.*, at p. 6.

worsen.³³² Indeed, developments afterwards demonstrated that all concerns about the lack of independence of the judiciary have a solid ground. Since 2020, there were several cases that demonstrated political bias of the judiciary and lack of independence.

In October of 2020 under the alleged pressure of supporters of Japarov and Tashiev, the Supreme Court urgently found both of them not guilty charges of attempted violent seizure of power.³³³ As stated by political expert Aida Alymbaeva, "Our courts have never been independent and have always ruled decisions to please those in power."³³⁴ Another case concerns ex-deputy chairman of the State Customs Service who faced corruption charges in 2020.³³⁵ The trial took place on 20 October 2020 in the Pervomaisky district court of Bishkek and the judge Borombaev did not order to take the accused into custody as expected by the public, issuing instead an order putting him under the house arrest.³³⁶ The next day, acting president Japarov stated that this decision was taken by him personally, demonstrating his carelessness to such a fundamental principle as judicial independence.³³⁷

There were also complaints from judges about pressure they face from enforcement agencies and political officials. In 2020, the Judicial Council issued an open letter to the acting President Mamytov, expressing grave concerns about the unprecedented attacks on the judiciary by law enforcement agencies.³³⁸ It was stated that external pressure on judges from various political institutions and enforcement bodies always existed.³³⁹ There were unofficial discussions among judges of "phone calls" from the administration of the President, and this practice is still ongoing.³⁴⁰

According to Article 5 of the Constitutional Law on the Prosecutor's Office of the Kyrgyz Republic,³⁴¹ in terms of guaranteeing the independence of the prosecutor's office,

³³² The high level of corruption and improper interference in the administration of justice in Kyrgyzstan is confirmed by the results of sociological studies. For example, according to the outcomes of March 2016 survey of the population of Kyrgyzstan conducted by SIAR Research and Consulting, commissioned by the International Republican Institute, the courts were the second most corrupt institution (after the State Traffic Inspectorate). Moreover, under the Independence of the Courts indicator in the Global Competitiveness Ranking 2017/2018 of the World Economic Forum, Kyrgyzstan ranked 102 in the list of 137 countries. See The Global Competitiveness report, <https://bit.ly/2jZK8Rg> (last visited 10.06.2022).

³³³ How Kyrgyz Courts Hastily Acquitted Four Politicians, RadioFreeEurope/RadioLiberty, October 21, 2020, <https://rus.azattyk.org/a/30904483.html> (last visited 10.06.2022).

³³⁴ *Ibid.*

³³⁵ OCCPR, The Matraimov Kingdom: <https://www.occrp.org/en/the-matraimov-kingdom/> (last visited 10.06.2022).

³³⁶ Koom.kg, Failing to Fight for their Independence, Judges violate the law, published on 04.02.2021: <http://www.koom.kg/index.php?act=material&id=5496> (last visited 22.08.2022).

³³⁷ 24kg, Sadyr Japarov Explained Why Matraimov Should Not Be Imprisoned, published on 21.10.2020: https://24.kg/vlast/170187_sadyir_japarov_obyvasnil_pochemu_rayymbeka_matraimova_nelzya_saj_at_vtyurmu/ (last visited 10.06.2022).

³³⁸ Judicial Council of the Kyrgyz republic, An Open Letter on the Presumption of Innocence and the Statements of the State National Security Committee, 25.12.2020: <http://sot.kg/post/otkrytoe-pismo-o-prezumpcii-nevinovnosti-i-zayavlenii-glavy-gknb> (last visited 10.06.2022).

³³⁹ Interview with Chinara Aidarbekova, former judge of the Constitutional Chamber of KR, on 19.08.2022.

³⁴⁰ *Ibid.*

³⁴¹ Constitutional Law of the Kyrgyz Republic "On the Prosecutor's Office of the Kyrgyz Republic", dated September 10, 2021 No. 114, <http://cbd.minjust.gov.kg/act/view/ru-ru/112293> (last visited 10.06.2022).

interference in the activities of the prosecutor's office is prohibited. Influence in any form on the prosecutor or investigator of the prosecutor's office in order to prevent them from exercising their powers or making an illegal decision by them entails liability established by the Criminal Code of the Kyrgyz Republic. However, it is common knowledge in Kyrgyzstan that the Prosecutor's Office is fully dependent on the political leadership and serves as its watchdog. Every time the new leadership comes into power, it keeps the wide supervisory powers of the prosecution and appoints its close ally as the Prosecutor General.³⁴²

The Venice Commission and OSCE/ODIHR experts stressed that the “supervisory prosecution model was in fact reminiscent of the old Soviet prokuratura model [...] retaining a system where vast powers are vested in only one institution...may pose a serious threat to the separation of powers and to the rights and freedoms of individuals.”³⁴³ The new Constitution of 2021 includes wide powers of the prosecution and puts it under the direct control of the President.³⁴⁴ Given these powers, the prosecution is actively fulfilling punitive functions instead of standing for the protection of the rule of law.³⁴⁵

Codes of conduct for the judiciary and prosecutors and their application

Codes of conduct and disciplinary mechanisms for members of the judiciary are regulated by the Code of Honor of a Judge of the Kyrgyz Republic,³⁴⁶ which establishes ethical standards for the conduct of a judge in professional and non-official (out-of-court) activities. According to the expert interview conducted, the judges (especially newly appointed ones) are often not fully aware of how the Code of Honor should be interpreted and implemented. The provisions of the Code are vague and do not provide references in the text. For instance, the only provision on conflicts of interest in the Code of Honor has very vague wording and includes neither the definition of conflicts of interest nor reference to the respective law.³⁴⁷

The Application of the Code of Honor is entrusted to the Disciplinary Commission of the Council of Judges of the Kyrgyz Republic,³⁴⁸ which is authorized to consider issues of

³⁴² President Japarov nominated his close friend and supporter Kurmankul Zulushev as the Prosecutor General. Journalists suggested this was a way to thank Zulushev for the acquittal back in 2013 trial over Sadyr Japarov, Kamchybek Tashiev and Talant Mamytov while he was the chairperson of the Bishkek City court. See article in Sputnik news outlet: <https://ru.sputnik.kg/20201113/kyrgyzstan-sadyr-zhaparov-naznachency-1050422104.html> (last visited 10.08.2022).

³⁴³ Venice Commission (2016), Joint opinion on the draft law "on Introduction of amendments and changes to the Constitution", CDL-AD(2016)025-e, paragraph 98, [www.venice.coe.int/webforms/documents/?pdf=CDLAD\(2016\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDLAD(2016)025-e) (last visited 10.08.2022).

³⁴⁴ Article 70, *supra* note 313.

³⁴⁵ Kloop.kg, Elena Korotkova, The Prosecution with No Limitations and new Codes by September, published 30.03.2021: <https://kloop.kg/blog/2021/06/30/prokuratura-ne-imeyushhaya-ogranichenij-i-novye-kodeksy-k-sentyabryu-genprokuror-zulushev-vynes-na-pervoe-chtenie-ryad-zakonoproektov/> (last visited 10.09.2022). Vesti.kg, The Monster GKNB is Being Replaced by the Monster Prosecution, published on 07.06.2021: <https://vesti.kg/politika/item/87216-na-smenu-monstru-gknb-prikhodit-monstr-prokuratura.html> (last visited 10.09.2022).

³⁴⁶ Code of honor of a judge of the Kyrgyz Republic, adopted at the XI Congress of Judges of the Kyrgyz Republic on March 11, 2019, <http://kenesh.sot.kg/post/kodeks-chesti-sudi-kyrgyzskoj-respubliki> (last visited 10.06.2022).

³⁴⁷ Article 20 of the Code, *supra* footnote 298.

³⁴⁸ Articles 21 and 23 of the Law of the Kyrgyz Republic “On Bodies of Judicial Self-Government Powers of Members of the Disciplinary Commission”, dated November 15, 2021 No. 139.

disciplinary liability of judges; impose a disciplinary sanction on a judge for committing a disciplinary offense; bring judges to criminal and other liability imposed in court; make proposals for the temporary removal of a judge from office in the event of criminal liability (bringing him as an accused). Information on bringing judges to disciplinary liability is posted on the official website of the Disciplinary Commission of the Council of Judges of the Kyrgyz Republic.³⁴⁹

Judicial self-government bodies as the Judicial Council are responsible for providing judges with guidance on ethical behavior and corruption risks in the form of trainings, workshops on the basis of the highest school of justice.³⁵⁰ Guide and manuals are being prepared by experts from the school.

According to Transparency International Kyrgyzstan, the new law “On the Disciplinary Commission under the Council of Judges” will create conditions for the dependence of judges and limit the freedom of judges, and they will become dependent on other branches of government. Since the Disciplinary Commission will be formed from representatives of three parties, it will have the authority to submit proposals for the rotation of judges to the President.³⁵¹ The previous practice of bringing judges to disciplinary responsibility confirms the reality of the risk of political bias and the use of disciplinary sanctions to get rid of objectionable judges.³⁵²

According to the code of conduct of the prosecutor's office,³⁵³ ethical standards of behavior are regulated both in official activities and outside of official activities. The Code was developed in accordance with the provisions of the Constitution, the International Code of Conduct for Public Officials,³⁵⁴ Professional Responsibility Standards and a Statement of the Basic Rights and Duties of Prosecutors.³⁵⁵ The Code also follows the legislation of the Kyrgyz Republic, regulating issues of combating corruption, performing state and municipal service, identifying and resolving conflicts of interest, and is also based on generally recognized moral principles and norms of society and the state. Materials from internal audits and investigations are submitted to the ethics commission for consideration. The commission, based on the results of consideration, makes a proposal to the head for a decision.

The following departments of the prosecutors' office are responsible for the implementation of the Code of Conduct: internal investigations and the ethics

http://www.president.kg/ru/apparat_prezidenta/zakonoproekty/ob_organah_sudeyskogo_samoupravle_niya (last visited 10.06.2022).

³⁴⁹ See: <http://tartip.sot.kg/post/regulation-distiplinarnoj-komissii>, (last visited 10.06.2022).

³⁵⁰ Law of the Kyrgyz Republic “On Bodies of Judicial Self-Government Powers of Members of the Disciplinary Commission”, dated November 15, 2021 No. 139, http://www.president.kg/ru/apparat_prezidenta/zakonoproekty/ob_organah_sudeyskogo_samoupravle_niya (last visited 10.06.2022).

³⁵¹ Evaluation of anti-corruption system of Kyrgyzstan, TI, <https://clck.ru/xKNpA> (last visited 10.06.2022).

³⁵² Council of judges gave permission for bringing to responsibility the judge, <http://www.koom.kg/index.php?act=material&id=6221> (last visited 10.06.2022).

³⁵³ Code of Professional Ethics for an employee of the Prosecutor's Office of the Kyrgyz Republic dated October 21, 2014, <http://cbd.minjust.gov.kg/act/view/ru-ru/3375> (last visited 10.06.2022).

³⁵⁴ Resolution 51/59 of the UN General Assembly of December 12, 1996, https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1990-1999/1996/General_Assembly/A-RES-51-59.pdf (last visited 10.06.2022)

³⁵⁵ Adopted by the International Association of Prosecutors on April 21, 1999, <https://www.iap-association.org/> (last visited 10.06.2022).

commission.³⁵⁶ The Commission on Ethics is being established within the central office of the General Prosecutor's Office of the Kyrgyz Republic, the Military Prosecutor's Office, the prosecutor's offices of regions and the cities of Bishkek and Osh. It monitors the observance of professional ethical standards by employees of the relevant prosecutor's offices. The main activities of the Commission are the formation of ethical values and the prevention of offenses and monitoring compliance with ethical standards.

Selection, recruitment, training, performance management and dismissal of judicial and prosecutorial staff

The procedure for selecting candidates for the position of a judge and their appointment is competitive and is based on the criteria specified in the Laws of the Kyrgyz Republic on the Status of Judges and on the Council for the Selection of Judges of the Kyrgyz Republic.³⁵⁷

According to Article 21(1) of the Law, competitive selection is carried out by the Council for the Selection of Judges.³⁵⁸ The Council identifies persons that meet the requirements and nominates them for the positions of judges of the Supreme Court, the Constitutional Court and local courts. Competitive selection procedure consists of testing and an interview with a candidate for the position of a judge. Upon admission to an interview, the Council for the Selection of Judges examines:

- 1) documents of candidates and their compliance with the requirements of the law;
- 2) declarations of income and expenses of the candidate submitting information in accordance with the legislation on declaration, his spouse (wife), close relatives;
- 3) other information (reviews on the candidate, recommendations).

In accordance with Article 5(4) of the Law of the Kyrgyz Republic On the Status of Judges of the Kyrgyz Republic, the training of applicants for the positions of judges is carried out by the Higher School of Justice. Persons applying for the position of a judge must undergo training for a period of up to 1 year, during which they are granted unpaid leave at the place of work. At the end of the course, a qualifying exam is held. The procedure and terms for the training of applicants for the positions of judges are determined by the Chairman of the Supreme Court and the Council of Judges.

According to Article 24-2 of the Law of the Kyrgyz Republic On the Supreme Court of the Kyrgyz Republic and local courts, training takes place in accordance with the Curriculum of the Higher School of Justice under the Supreme Court of the Kyrgyz Republic. Quality control of the educational process at the Higher School of Justice is carried out by the Council of Judges.

In the Prosecutor's Office, professional qualities include: preparedness for the professional activities of a lawyer in accordance with the state educational standard of higher professional education in the specialty "jurisprudence"; the presence of general and special knowledge necessary for the successful performance of the duties of the

³⁵⁶ Supra footnote 302.

³⁵⁷ The Constitutional Law on the Status of Judges in the Kyrgyz Republic, dated 15 November 2021 #138. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/112311?cl=ru-ru>, (last visited 01.06.2022).

³⁵⁸ *Ibid.*

position and the ability to apply them in practice; initiative, efficiency, and the ability to start and complete a task.

A candidate who has successfully passed all stages of the competitive selection, is recommended by the Commission and approved by the Prosecutor General is credited to the personnel reserve by order of the Prosecutor General and is an applicant for employment in the prosecutor's office, in strict accordance with the established rating, according to the points scored.

The activities of the prosecutor's office in the selection of candidates are carried out publicly and openly, and are published at the end of each stage on the website of the General Prosecutor's Office of the Kyrgyz Republic.³⁵⁹

The training of personnel for prosecution authorities is carried out by trainers newly hired for service in the prosecution authorities under professional training programs in order to acquire the basic professional knowledge, skills and competencies necessary for them to perform their official duties.

By order of the Prosecutor General, the training program "Introduction to the specialty" (consisting of 9 sections) for candidates enrolled in the personnel reserve for employment in the prosecution authorities of the Kyrgyz Republic was approved, on the basis of which the personnel department of the Office and its center for qualifications of employees, training of candidates is carried out.

Measures to ensure the transparency of the judicial process

Many courts have audio and video recordings of court sessions. In total, there are 72 local courts in the republic with 159 courtrooms, in which this system is already operating in more than half.³⁶⁰ The widespread use of advanced IT technologies and the integration of information systems increases the transparency of justice and can reduce corruption risks within court proceedings.³⁶¹

At the same time, the judicial system of Kyrgyzstan remains subject to high levels of corruption with improper interference in the activities of the courts. This is confirmed by surveys of participants in trials and citizens of Kyrgyzstan, as well as official documents of state policy and international ratings.³⁶²

Measures governing the assignment and allocation of cases

There are legislative requirements which govern the assignment and allocation of cases to protect against undue interference within the judiciary.³⁶³ The chairmen of the Courts

³⁵⁹ Official web-site of the prosecutor's office, www.prokuror.kg (last visited on 20.05.2022).

³⁶⁰ Audio-video recording is being introduced in courts, https://24.kg/obschestvo/109325_vnbspkirgyizstane_vnedryayut_sistemu_audio-inbspvideofiksatsii_sudebnyih_zasedaniy/ (last visited 22.06.2022).

³⁶¹ The state program "Development of the judicial system," <http://cbd.minjust.gov.kg/act/view/ru-ru/88104> (last visited 22.06.2022).

³⁶² 3rd Round of Istanbul Plan Monitoring action against corruption, <https://www.oecd.org/daf/anti-bribery/Kyrgyzstan-Round-3-Monitoring-Report-RUS.pdf> (last visited 20.06.2022).

³⁶³ Constitutional Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and local courts" dated November 15, 2021 No. 134, <http://cbd.minjust.gov.kg/act/view/ru-ru/112315> (last visited 20.06.2022).

of first instance, second instance, as well as of the Supreme Court ensure the functioning of an automated system for the distribution of cases and court materials among judges. In the event of a technical malfunction of the system, they independently form judicial compositions, distribute cases and court materials.

Within the prosecution authorities, for objective reasons, the distribution of cases is carried out by direct management, taking into account competencies, conflicts of interest, workload, professional experience, and so forth.

Publication of the declaration of judges and prosecutors on property and interests

According to the Constitutional Law On the Status of Judges of the Kyrgyz Republic, a judge is required to declare his property and income.³⁶⁴ The Tax Code of the Kyrgyz Republic regulates relations related to the declaration of income, expenses, liabilities and property of persons holding state and municipal positions, which also applies to persons holding special public positions (such as chairman, deputy chairman, judge of the Supreme Court, of the Constitutional Chamber of the Supreme Court and of the local court).

In accordance with article 28 of the Constitutional Law On the status of judges of the Kyrgyz Republic, failure to provide or an untimely declaration of one's property, income and expenses, while reflecting knowingly false information is a disciplinary offense, for which one of such types of penalty applies: a warning, remark, reprimand or early release. At the same time, there is no mechanism for monitoring the submission of an objective declaration by judges.

The State Tax Service publishes summaries on declarations in the official bulletin (and on the departmental website), with the exception of persons holding administrative public positions, whose activities are related to ensuring national security.³⁶⁵

Sharing data with law enforcement

The body of the tax service interacts with the body in which the declarant carries out professional activities by obtaining information, within the time limits and in the manner approved by the Government. In this regard, there is a need to conclude interdepartmental agreements with state bodies on the exchange of information and the provision of databases of these bodies for analysis of the reliability and completeness of the information specified in the declaration of income, expenses, obligations and property of a state and municipal employee. The Declaration of personal interests is provided to the Human Resources Department, in accordance with the established form by the Cabinet of Ministers of the Kyrgyz Republic.³⁶⁶

In accordance with the criminal law, information about the declarant is transferred to law enforcement agencies on the basis of their written request only in relation to the declarant and/or his close relative, against whom a criminal case has been initiated on the fact of tax evasion by failing to submit the relevant declaration or including deliberately distorted declarations. If a declaration is submitted after the deadline established by this Law, or if

³⁶⁴ Article 107 of the Tax Code of the Kyrgyz Republic, enacted by the Law of the Kyrgyz Republic, dated January 18, 2022 No. 4.

³⁶⁵ Tax service departmental website, sti.gov.kg (last visited 22.06.2022).

³⁶⁶ Law "On Conflict of Interest", <http://cbd.minjust.gov.kg/act/view/ru-ru/111716> (last visited on 20.06.2022).

it contains incomplete and/or inaccurate information, the tax authority publishes information about these persons in the media and sends relevant materials to the prosecution authorities.³⁶⁷

Despite the legislation, the current situation in the judiciary is still suffering from several weaknesses, as has been noted by many international organizations. The level of the independence of the judges is currently low, yet the level of corruption within the judiciary is growing. A new system of rotation of judges was created as a tool to improve the situation, but in fact there are still high corruption risks. According to Klara Sooronkulova, a former member of the Constitutional Court, rotation can increase the dependence of the judiciary on the President:

“The rotation must have its own way and order. Because for judges this is a very dangerous phenomenon. The courts were afraid of rotation before. There were cases when two judges of the Pervomaisky District Court of Bishkek did not follow the order of the White House and they were transferred to the Chon-Alai district and the other to Batken which are far away from the capital city. Then they were sent on a business trip for six months or a year. Therefore, it is very risky for the independence of the courts. Hardly that happens, they are intimidated by rotation.”³⁶⁸

However, the country's judicial system continues to face both old and new problems that require radical solutions for the system in itself - significant change aimed at improving the quality of administration of justice, the authority of the courts and public confidence in judges. There is a decrease in the level of professionalism in the performance of the tasks set to ensure public order, security, protection of life, health of citizens and their property, including those which have arisen as a product of the non-compliance of law enforcement officers with ethical standards of behavior.

It has repeatedly been noted that the fundamental problem for business development is the incapacity of the judiciary, the main function it serves being the legislative resolution of conflicts. KR needs to initiate public dialogue on carrying out extensive reform within the judiciary, ensuring real independence, transparency before society and responsibility before the law. Specifically concerning conflicts of interest (CI):

- general provisions on the need to prevent conflicts of interest in the work of a judge are included in the Judge's Honor Code. Judges are also subject to the new 2017 Law on Conflict of Interest. However, the latter does not contain special provisions that would regulate the procedure for preventing and eliminating conflicts of interest among judges. Many of the provisions of the Conflict of Interest Act cannot be enforced by judges because they are not involved in direct management, or have an ethics committee within the court;
- the Code of Professional Ethics of the Prosecutor's Office of the Kyrgyz Republic includes general provisions on the prevention of CI. Such provisions are clearly not enough for the effective management of CI in the work of prosecutors. At the same time, the Law of the Kyrgyz Republic on Conflict of Interest applies only to the Prosecutor General and his deputies, and other prosecutors are not covered by this regulation.

³⁶⁷ “Broke on paper”, <https://rus.azattyk.org/a/31600751.html> (last visited on 20.06.2022).

³⁶⁸ Rotation of more than 300 judges in Kyrgyzstan. A new way to fight corruption? <https://rus.azattyk.org/a/31833827.html>, (last visited 18.05.2022).

- A mechanism for providing judges and prosecutors with (confidential) advice and guidance on conflicts of interest, restrictions on service, declaration of assets, rules of conduct, etc. is not publicly available.

Good Practices

- The widespread use of advanced IT technologies and the integration of information systems seriously increases the transparency of justice and simultaneously reduces the potential for corruption in legal proceedings.
- There is a good social package and a high level of salaries among personnel within the judiciary and prosecution services.

Deficiencies

- The judiciary is not independent, since their appointment process is currently fully led by the President.
- The same can be said about the prosecutor's office, where the appointment of the Prosecutor General and his deputies is exclusively carried out by the President of the country.
- Civil society participation in the Judicial Council is insufficient.
- The judicial council is not independent because it is approved by the Parliament.
- The new constitution strengthened the influence of the President and weakens the power of the judiciary.

4.1.11 Art. 12.1, 12.2(c) and (f), 12.4 – Private Sector Transparency

In Kyrgyzstan, measures promoting transparency in the private sector include:

- The existence of a public registry for all legal entities and a registry of beneficial owners;
- Legal requirements related to accounting and financial reporting;
- Disclosure requirements of the Law on Securities Markets, respective by-laws, and regulations of the Kyrgyz Stock Exchange;
- Banking laws and regulations of the National Bank;
- Soft law mechanisms: corporate ethics codes and corporate governance codes and regulations.

Registry of Legal Entities

The public registry of legal entities is run by the Ministry of Justice and includes all legal entities: commercial, non-commercial, state enterprises and institutions, their branches and representative offices.³⁶⁹ According to the Law on Registration of Legal Entities, one of the objectives of keeping the registry is to provide open information about legal entities to all interested persons.³⁷⁰ The registry is easily searchable and many other databases rely on the registry's information, for example, the electronic portal for public tenders uses the data from the legal entities registry, as well as such commercial databases as 'osoo.kg' and others.³⁷¹

³⁶⁹ The registry is regularly updated: <https://register.minjust.gov.kg/register/home.seam>, (last visited 20.06.2022).

³⁷⁰ The Law of the Kyrgyz Republic on Registration of Legal Entities dated 20 February 2009 # 57, article 5.2. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/202621/40?cl=ru-ru>, (last visited 20.06.2022).

³⁷¹ Osoo.kg webpage includes information about limited liability companies registered in the KR: <https://www.osoo.kg/>, (last visited 01.09.2022).

The information about registered legal entities is basic, it includes the date of establishment or re-registration, the legal address, personal identification number of an entity, the name of the director or head of the executive body, main type of activity, and the number of participants. In case participants are individuals, the registry provides their names. But in cases when participants are legal entities, there might be no data provided or a reference to a shareholder register is made.

Registry of Beneficial Owners

The registry of beneficial owners is run by the State Financial Intelligence according to the Regulation on the Electronic Database of Beneficial Owners of Legal Entities.³⁷² The database is compiled of information provided by legal entities. The latter should collect information about its beneficial owners and take reasonable and accessible measures to identify the ultimate beneficial owner within 10 days after receiving such a request from the Financial Intelligence.³⁷³ The requirement to collect information is also applicable to the shareholder registers, financial institutions, notaries, self-employed lawyers and law firms, real estate agents, individuals and legal entities carrying out operations (transactions) with precious metals and stones, jewelry as well as scrap of such products, individuals and legal entities assisting in registration and management of legal entities.³⁷⁴ The registry of beneficial owners is not publicly accessible.

On September 27, 2007, Kyrgyzstan joined the Extractive Industries Transparency Initiative.³⁷⁵ One of the standards under the EITI is the disclosure of beneficial ownership requirements for all companies operating in the industry or applying for a license.³⁷⁶ The EITI states that “publishing details of company ownership can help close channels for corruption, enable effective taxation, build fairer markets, encourage responsible investment and manage business risk.”³⁷⁷ The EITI standard was included in the Law on Subsoil adopted in 2018.³⁷⁸ The latter provides a definition of beneficial ownership and covers “the three key categories of control: shares, votes and power to appoint Board members,” but fails to include informal methods or control through proxies.³⁷⁹

According to the Law on Accounting, all legal entities must follow the rules on accounting and financial reporting.³⁸⁰ Chief executive officers of legal entities are responsible for the

³⁷² The Regulation on the Electronic Database of Beneficial Owners of Legal Entities approved by the Resolution of the Government of the Kyrgyz Republic dated 25 December 2018 # 606. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/12930>, (last visited 25.06.2020).

³⁷³ *Ibid*, points 3 and 11.

³⁷⁴ *Ibid*, point 7, 12, 13. The Law on Countering the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Proceeds, dated 6 August 2018 #87, article 5. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111822?cl=ru-ru>, (last visited 25.06.2022).

³⁷⁵ EITI webpage: <https://eiti.org/countries/kyrgyz-republic>.

³⁷⁶ EITI standard requires all states to disclose beneficial ownership information starting from 1 January 2020: <https://eiti.org/beneficial-ownership#:~:text=The%20EITI%20Standard%20requires%20implementing,covered%20by%20EITI%20Requirement%202.5>, (last visited 25.06.2022).

³⁷⁷ *Ibid*.

³⁷⁸ The Law of the Kyrgyz Republic on Subsoil, dated 19 May 2018 # 49, articles 6, 20, 26, 41. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/111782>, (last visited 25.06.2022).

³⁷⁹ *Ibid*, article 4. Russell-Prywata L. & Lord J., Implementing beneficial ownership transparency in the Kyrgyz Republic extractives sector: findings and recommendations, February 2019, at p. 15. Available online: <https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-report-kyrgyz-republic-report-2019-03.pdf>, (last visited 27.06.2022).

³⁸⁰ The Law of the Kyrgyz Republic on Accounting dated 29 April 2002 #76, article 5.

system of internal accounting and control, as well for compiling financial and tax reports.³⁸¹ The Law distinguishes the category of legal entities with public interest. It includes companies publicly trading on stock exchanges, banks and other financial institutions, investment and pension funds, and insurance companies.³⁸² Legal entities with public interest and large companies should: 1) create audit committees (large companies *can* create); 2) audit their financial reports on an annual basis; 3) provide financial reports, consolidated financial reports and audit report to the participants; 4) publish their financial and audit reports on the Public depository of financial statements.³⁸³ The Law on Joint Stock Companies requires public companies and companies with 500+ shareholders to publish their annual report in the media.³⁸⁴

The Law on Securities Markets requires public companies trading on stock markets to disclose information on a quarterly and annual basis.³⁸⁵ Both reports should include financial reporting and be presented to the public depository of financial statements.³⁸⁶ The annual report should also include detailed information about large shareholders, company officers and directors, and information on practices of corporate governance applied by the company.³⁸⁷ In addition, any information about significant issues related to financial and economic activity of public companies should also be disclosed to the regulator of financial markets.³⁸⁸

The Law on Accounting requires all legal entities to keep primary accounting documents, accounting registers, working chart of accounts, financial statements and other accounting policy documents both on paper and on a computerized accounting system.³⁸⁹

Legal Entities can be held liable for failing to follow the rules on accounting and financial reporting. The Code on Offenses imposes liability for failure to comply with accounting and reporting requirements on keeping the documentation, and the sanction is a fine of 28000 soms (roughly 330 EUR).³⁹⁰ Failure by public companies to publish their annual reports in media or failure to submit to the Public Depository of financial statements are also sanctioned by a fine of 13000 soms (150 EUR), and the failure to comply with the requirement of mandatory audit is punished by a fine of 28000 soms (320 EUR).³⁹¹

Creating off-the-books accounts, making off-the-books or inadequately identified transactions, recording non-existent expenditures, using false documents or intentionally destroying bookkeeping documents might be qualified as a tax evasion and lead to criminal liability (if these actions were recorded by the Tax Authority and resulted in the

³⁸¹ *Ibid*, article 7.

³⁸² *Ibid*, article 1.2.

³⁸³ *Ibid*, articles 1, 12.

³⁸⁴ The Law of the Kyrgyz Republic on Joint Stock Companies dated 27 March 2003 #64, article 81.2. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/1188>, (last visited 27.06.2022).

³⁸⁵ Law of the Kyrgyz Republic on Securities Markets dated 24 July 2009 #251, article 30. Available online in Russian: <http://cbd.minjust.gov.kg/act/view/ru-ru/202677>, (last visited 27.06.2022).

³⁸⁶ *Ibid*.

³⁸⁷ *Ibid*.

³⁸⁸ *Ibid*, article 31.

³⁸⁹ *Supra* footnote 204, article 15.

³⁹⁰ The Code of the Kyrgyz Republic on Offenses dated 28 October 2021 #128, article 351 (last visited 27.06.2022).

³⁹¹ *Ibid*, articles 350 and 353.

non-payment of taxes.)³⁹² Falsification of payment documents is also penalized and sanctions vary from a fine to imprisonment.³⁹³

There is no prohibition of the tax deductibility of bribes or expenses of corrupt behavior in the legislation of Kyrgyzstan. Given that expenses of corruption are disguised in accounting documents, the practice of deducting taxes is most probably taking place.

Good Practices

- Existence of publicly accessible registry of legal entities, which is easily searchable and provides several different details about legal entities or individual persons.
- Introduction of the registry of beneficial owners.
- Implementation of the EITI standard on the disclosure of beneficial owners under the subsoil legislation.
- The Law on Joint Stock Companies requires public companies and companies with 500+ shareholders to publish their annual report in the media.
- Introduction of the Public Depository of Financial Statements.
- Disclosure and audit requirements for legal entities with public interest.
- Sanctions in the form of monetary fines apply for failure to comply with accounting and reporting requirements on keeping documentation, on the submission of financial statements as well as mandatory audit requirements.
- Falsification of payment documents is also penalized, and sanctions vary from a fine to imprisonment.

Deficiencies

- Lack of full information in the registry of legal entities.
- Inaccessibility for the public to the registry of beneficial owners.
- Disclosure of beneficial owners by companies in the extractive industries is not published on the webpage of the state body as required by the law.
- Absence of legislation banning the tax deductibility of bribes and corrupt expenses.

³⁹² The Criminal Code of the Kyrgyz Republic dated 28 October 2021 #127, article 243,(last visited 27.06.2022).

³⁹³ Ibid, article 234.

4.2 Chapter V

With specific reference to Chapter V of the UNCAC, the following articles were commented on and analyzed:

4.2.1 Art. 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 58 and Art 14.1 and 14.4 – Anti-Money Laundering

Prevention and detection of transfers of proceeds of crime

On August 6, 2018 a new version of the Law of the Kyrgyz Republic “On countering the financing of terrorist activities and legalization (laundering) of criminal proceeds” was adopted and 14 by-laws approved by the Decree of the Government of the KR on December 25, 2018 No. 606 “On measures to implement the Law of the Kyrgyz Republic “On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds”.

In accordance with the main Law of the Kyrgyz Republic on anti-money laundering/combating terrorist financing (AML/CFT)³⁹⁴, the main entities are: financial institutions and certain non-financial enterprises and professions; inspection bodies; financial intelligence body; law enforcement agencies and the prosecutor's office of the Kyrgyz Republic. The Government of the Kyrgyz Republic also established a coordinating and advisory body on AML/CFT issues, as well as on countering the financing of extremist activities and financing the proliferation of weapons of mass destruction.³⁹⁵

Due diligence requirements

The list of persons providing information fully complies with FATF standards,³⁹⁶ including service providers of virtual assets. Each financial institution collects and maintains beneficial ownership information as part of its responsibilities. However, there is no obligation for realtors to carry out Customer Due Diligence (CDD) in accordance with the requirements of FATF Recommendation 10 in relation to both sellers and buyers of real estate. Notaries and independent lawyers who prepare transactions for the purchase and sale of real estate are not classified under the AML/CFT Law as reporting entities, and therefore they are not required to comply with CDD requirements.³⁹⁷

Requirements for Identification and Verification of Beneficial Ownership

³⁹⁴ Article 4 of the Law of the Kyrgyz Republic “On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds” dated August 6, 2018 No. 87 (last visited 27.06.2022).

³⁹⁵ Regulations on the Commission on combating the financing of terrorist activities and the legalization (laundering) of criminal proceeds, approved by the Decree of the Government of the Kyrgyz Republic, dated December 25, 2018 No. 606 (last visited 27.06.2022).

³⁹⁶ Articles 4 and 5 of the Law of the Kyrgyz Republic “On combating the financing of terrorist activities and the legalization (laundering) of criminal proceeds” dated August 6, 2018 No. 87 (last visited 27.06.2022).

³⁹⁷ https://eurasiangroup.org/files/uploads/files/MER_Kyrgyz%20Republic_2018_1.pdf, (last visited 25.06.2022).

Measures to ensure transparency of beneficial owners of legal entities are carried out by legal entities established and registered in the Kyrgyz Republic,³⁹⁸ which are required to generate reliable and updated information about an individual who ultimately (through the chain of ownership and control), directly or indirectly (through third parties) has ownership rights over this legal entity or controls this legal entity (hereinafter referred to as the beneficial owner of the legal entity), on the basis of available and accessible information.

Holders of the register of shareholders are obliged to form and update the register of shareholders of a legal entity, keep the register for at least five years from the date of its formation and provide information from the register based on the request of the financial intelligence body, including in electronic format, via secure communication channels.

An electronic database of beneficial owners of legal entities established and registered in the territory of the Kyrgyz Republic is maintained by the FIU. The procedure for the formation, updating and storage of an electronic database on the beneficial owners of legal entities established and registered in the territory of the Kyrgyz Republic is also regulated by a special by-law.³⁹⁹

Compliance of the national anti-money laundering (AML) regime

The Mutual Evaluation Report (MER) of the Kyrgyz Republic was approved on May 25, 2018 and published on the EAG website in September 2018 after receiving approval from the FATF, as complying with the international standards of quality and compliance of FATF reports. In accordance with the results of the MER, the following technical compliance ratings were assigned according to the FATF Recommendations.

Compliance of the national AML/CFT system

The FATF assessment team positively noted the efforts of the authorities of the Kyrgyz Republic to conduct a risk assessment at the national level, however, as noted, the understanding of the risks associated with ML/TF in the Kyrgyz Republic is limited and the risks of ML/TF inherent in the country as a whole are not defined.⁴⁰⁰ At the time of writing of this report, preparations for an action plan were in progress, but not yet approved at the national level. The plan contains measures aimed at reducing the risks of ML/TF following the results of 2018-2021.

Customer due diligence (CDD) rules beyond establishing a business relationship

Financial institutions properly comply with CDD and record keeping requirements. Banks have the most complete understanding and fulfillment of the obligation to identify the beneficial owner and have information about beneficial owners. Despite the absence of such a requirement in the legislation, some financial institutions have provided for certain

³⁹⁸ Article 15 of the Law of the Kyrgyz Republic “On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds” dated August 6, 2018 No. 87 (last visited 27.06.2022).

³⁹⁹ “Regulations on the electronic database of beneficial owners of legal entities (as amended by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic dated August 18, 2021 No. 143) (last visited 27.06.2022).

⁴⁰⁰ Eurasian group files

https://eurasiangroup.org/files/uploads/files/MER_Kyrgyz%20Republic_2018_1.pdf, (last visited 25.06.2022).

measures aimed at reducing risks - they apply more stringent CDD measures against national public officials (PEPs) in the form of enhanced monitoring of their operations.⁴⁰¹

CDD measures cover many aspects other than the establishment of business relationships, which are defined by the KR Law on AML/CFT, for example, financial institutions and DNFBPs are required to carry out additional CDD measures in relation to all their customers, and also to carry them out taking into account the results of risk assessment.

Financial institutions and DNFBPs apply the following additional measures to public officials:

- 1) use a risk management system to determine whether the client, beneficial owner or beneficiary is a PEP;
- 2) obtain written permission from the head of the financial institution or the head of the non-financial category of persons (if any) to establish or continue (for existing clients) a business relationship with a PEP;
- 3) establish the source of origin of funds or other property of the PEP;
- 4) carry out constant and in-depth monitoring of business relations, including operations (transactions) carried out by PEPs, in the manner established for high-risk clients.

Financial institutions and DNFBPs apply the above additional CDD measures also to family members and close persons (close relatives, business partners and official representatives) of PEPs, as well as to other high-risk clients.⁴⁰² However, there are difficulties in verifying the accuracy of information about beneficial owners. Small financial institutions and DNFBPs do not consistently comply with the requirement to screen individuals for targeted financial sanctions.

Due diligence on foreign and local politically exposed persons (PEPs)

The client base of other financial institutions is represented mainly by local PEPs, with only a few banks doing business with foreign PEPs. Representatives of the SFIS reported that foreign PEPs rarely use the financial system (such clients are represented mainly by high-ranking employees of foreign embassies, heads of foreign companies operating in the territory of the Kyrgyz Republic, and other persons, one way or another, having ties with Kyrgyzstan). The application form requires an indication of whether the client is a foreign PEP or a PEP's family member or close associate. The Internet, commercial databases and local resources are also used to identify PEPs. Although Kyrgyz legislation requires foreign PEPs to provide the sources of sums of money exceeding 10,000 Euro, some banks apply stricter CDD measures to national PEPs as well, in the form of increased monitoring of their transactions.

With regard to PEPs, family members and close persons (close relatives, business partners and official representatives) of PEPs, as well as other high-risk clients, financial

⁴⁰¹ Eurasian group files https://eurasiangroup.org/files/uploads/files/MER_Kyrgyz_Republic_2018_1.pdf, (last visited 22.06.2022).

⁴⁰² "Regulations on the procedure for conducting due diligence of the client", approved by the Decree of the Government of the Kyrgyz Republic dated December 25, 2018 No. 606, (last visited 27.06.2022).

institutions and DNFBPs are subject to additional CDD measures.⁴⁰³ The list of national PEPs, family members and relatives of the national PEPs in the form of an electronic database, which is unavailable and secret to the public, is held by the financial intelligence body.⁴⁰⁴

In Kyrgyzstan, there is an institution of “trust management,”⁴⁰⁵ which should be distinguished from trusts created in countries with the Anglo-Saxon system of law, since it is only a kind of obligation relationship. The PEP is obliged to transfer, upon his appointment to a public position, his business, as well as the management of any capital and assets (management of the property of mutual funds, securities of privatized enterprises (joint stock companies and other commercial organizations), funds of a commercial bank (trust operations) and other assets private circulation) to trust management. However, this provision does not exclude a conflict of interest, as evidenced by many cases involving persons holding political positions.⁴⁰⁶

Kyrgyzstan does not recognize foreign trusts and is not a party to the Hague Convention on the Law Applicable to Trusts and on Their Recognition.

Requirements to report suspicious transactions/activities or situations

Article 3(1) of the AML/CFT Law contains a requirement according to which banks and other FIUs must refuse to open a bank account (deposit) or conduct an operation on the account if the necessary documents for identifying the client are not submitted. In these cases, banks and other financial institutions that have the right to open and maintain bank accounts have the right to terminate the agreements concluded with clients (account holders) and depositors.

Measures aimed at preventing criminals from gaining control over exchange bureaus, payment system operators and payment organizations, credit unions, as well as microcredit companies and microcredit agencies are applied at the licensing/registration stage in the form of a refusal to issue a license/registration certificate in the presence of negative information in relation to founders/participants/shareholders/heads of institutions such as microcredit companies and microcredit agencies, exchange bureaus, payment system operators and payment organizations, and credit unions.

⁴⁰³ Part 3 of Article 21 of the Law of the Kyrgyz Republic "On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds" dated August 6, 2018 No. 87. (last visited 27.06.2022).

⁴⁰⁴ "Regulations on the procedure for conducting due diligence of the client", approved by the Decree of the Government of the Kyrgyz Republic dated December 25, 2018 No. 606, (paragraphs 40-42), (last visited 27.06.2022).

⁴⁰⁵ Trust management of property is provided for by Article 850 of the Civil Code of the Kyrgyz Republic - "Agreement of Trust Management", where, in addition to securing the right to trust management of property, its regulatory framework is also determined. According to the first paragraph of this article, "under the contract of trust management of property, one party (the founder of the management) transfers the property to the other party (the trustee) for a certain period of time in trust management, and the other undertakes to manage this property in the interests of the founder of the management or the person specified by him (beneficiary)". In other words, the transfer of property to trust management is a form of realization by the owner of his right to dispose.

⁴⁰⁶ "Parliament found violation of law by the Prime minister", http://vladimay.bget.ru/index.php?option=com_content&view=article&id=35524:parliament-condemn-the-vice-president-breaking-the-law&catid=24:politika&Itemid=132&lang=ru, (last visited 20.08.2022).

Banks take risk mitigation measures through CDD procedures in the form of deeper customer identification and/or monitoring of their transactions. Banks practically do not use such a measure as refusal to accept certain types of clients for servicing (client acceptance policy), however, there are mechanisms to “force” a client to refuse bank services, which are used by the compliance services of banks.

Financial institutions and DNFBPs are obliged to immediately suspend operations (transactions) carried out by an individual or legal entity, group, organization included in the list of persons, groups, organizations in respect of which there is information about their participation in the legalization (laundering) of criminal proceeds, and report on this to the financial intelligence body within three hours from the moment of suspension of the operation (transaction). The procedures for the formation of this list of persons, groups and organizations, exclusion from it, as well as its publication are established by the Government of the Kyrgyz Republic.⁴⁰⁷

Collecting and processing suspicious transaction reports (STRs)

By Decree No. 352 of the President of the Kyrgyz Republic on the authorized body for combating the financing of terrorism and laundering of proceeds from crime, dated September 8, 2005, the FIU of the Kyrgyz Republic (SFIS) was established, which is a coordinating body of an administrative type that receives from financial institutions, other structures and reporting persons suspicious transactions. It analyzes the information received, and transfers the material prepared on the basis of these reports to law enforcement agencies and foreign FIUs for taking appropriate measures in order to combat money laundering and terrorist financing.

As a result of carrying out internal monitoring procedures, authorized persons of financial institutions identify suspicious transactions in client’s activities. Such messages are sent via established communications to the SFIS. SFIS checks the information received (fig.1), including receiving from the persons submitting information the necessary clarifications on the information provided.

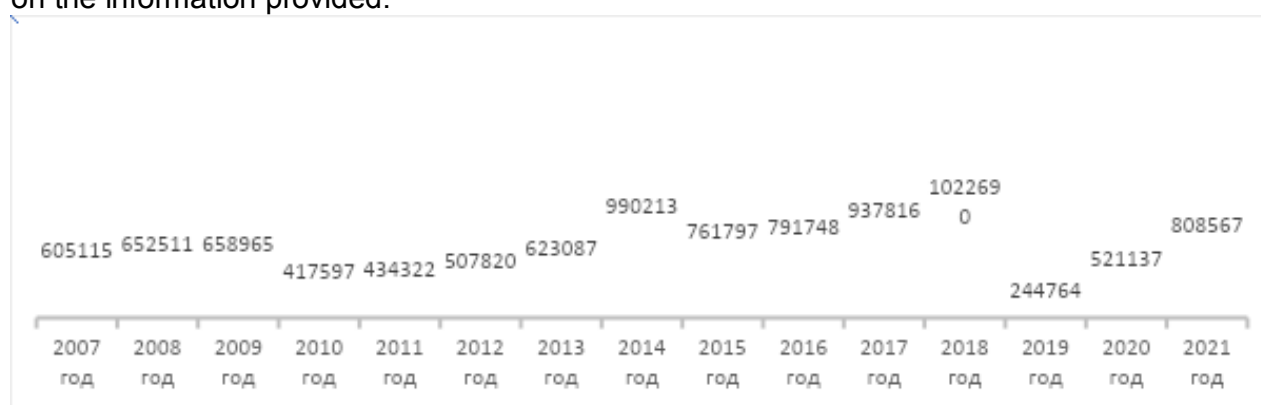


Figure 1: Information on number of reports received from financial institutions and non-financial categories of persons per year.

According to 2021 the results, there is a growing trend in messages provided to the SFIS, compared to the same period last year when the increase was 35.5%. The total number

⁴⁰⁷ Article 14 of the Law of the Kyrgyz Republic “On combating the financing of terrorist activities and the legalization (laundering) of criminal proceeds” dated August 6, 2018 No. 87.

of messages received at the end of 2021 was 808,567, consisting of:

- 684,691 suspicious transaction reports
- 684,054 reports on the legalization (laundering) of criminal proceeds
- 637 reports on the financing of terrorist activities, and
- 230,147 messages about transactions with individuals or legal entities from high-risk countries.

Sanctions for non-compliance with AML obligations

Financial institutions which are guilty of violating or improperly complying with the requirements of KR legislation in the area of AML/CFT bear criminal liability. Individuals and legal entities are liable for the commission of ML/TF in accordance with the criminal legislation of the Kyrgyz Republic.

The management and employees of the FIU, law enforcement agencies, the national security agency, the prosecutor's office, inspection agencies and state bodies, as well as persons who have concluded employment contracts with the FIU, are liable for the illegal disclosure and use of information or documents constituting official, commercial, banking, tax and communication secrets (in terms of information on postal money transfers), as well as for abuse of official position in accordance with the criminal legislation of the Kyrgyz Republic. Inspection authorities are responsible for improper (negligent) performance of their functions to control the implementation of the legislation of the Kyrgyz Republic in the field of AML/CFT in accordance with the country's criminal legislation.⁴⁰⁸

In 2021, the Consolidated Sanctions List of the Kyrgyz Republic (the list of individuals and legal entities, groups and organizations in respect of which there is information about their participation in terrorist or extremist activities and the proliferation of weapons of mass destruction) included 163 individuals. Based on the results of consideration of appeals, 65 individuals were excluded from the Consolidated Sanctions List of the Kyrgyz Republic.

In 2021, updated lists of persons on the interstate wanted list for involvement in terrorist and extremist activities, as well as those registered as mercenaries, formed by the Council of Heads of Financial Intelligence Units of the Member States of the Commonwealth of Independent States (further on FIU CIS), were sent on a quarterly basis to commercial banks and law enforcement agencies. There are 9,967 wanted persons under monitoring, of which 4,185 persons are on the list of the FIU CIS and 5,782 persons are mercenaries.⁴⁰⁹

Ban on shell banks

In accordance with Article 10 of the Basic Law of the Kyrgyz Republic, prohibited actions in the Kyrgyz Republic include the creation of a shell bank or the continuation of the activities of a shell bank, or the establishment or continuation of correspondent relations with shell banks or respondent banks that allow shell banks to use their accounts, as well as providing the possibility of using bank and similar accounts by shell banks.

⁴⁰⁸ Article 32 of the Law of the Kyrgyz Republic "On combating the financing of terrorist activities and the legalization (laundering) of criminal proceeds" dated August 6, 2018 No. 87.

⁴⁰⁹ Data collected from the interview with the FIU representative on 12.05.2022.

Obligation of public officials to report financial account in a foreign country

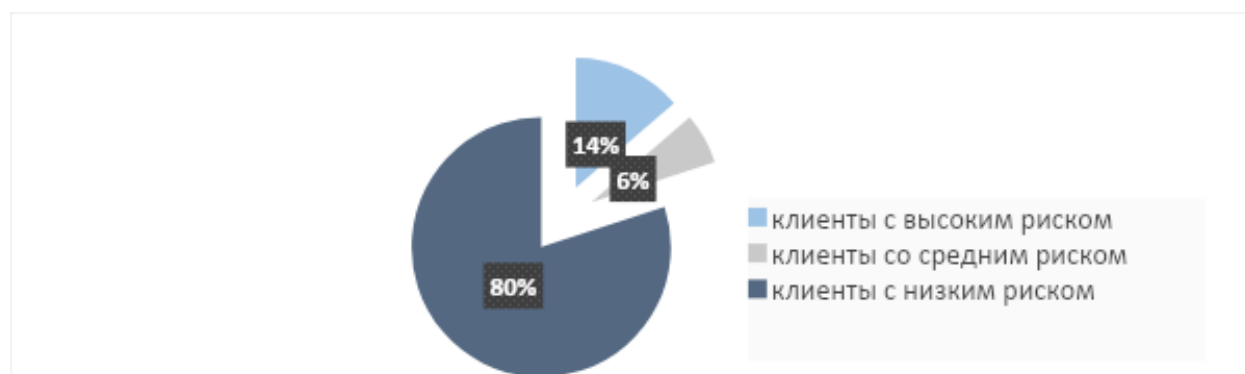
Government officials must report control of a financial account in a foreign country to the appropriate authorities. However, filling out declarations is of a declarative nature, which creates temptations to hide existing financial accounts in a foreign state, which can be revealed as part of initiated criminal cases, international inquiries within FIU, financial investigations (on STRs received from persons providing information to the FIU), and journalistic investigations.

Money laundering risk assessment to identify AML risks/vulnerabilities

The Government of the Kyrgyz Republic determines the procedure for assessment of the risks of Terrorist Financing/Money Laundering (hereinafter referred to as TF/ML), which exist in the country, the list of persons participating in TF/ML, as well as the procedure for compiling, approving and publishing a report on the results of TF/ML. Based on the TF/ML report, the Government develops and approves an action plan (strategy) to mitigate the identified TF/ML risks, and entities implementing AML/CFT measures apply a risk-based approach.⁴¹⁰

A country risk assessment is carried out once every three years by a special regulation.⁴¹¹ Based on the results of the analysis of the assessment of ML threats and vulnerabilities in the Kyrgyz Republic, the risks of legalization (laundering) of criminal proceeds were identified and a final report on TF/ML in the field of ML was prepared, describing the threats, vulnerabilities, risks and outlining the conclusions formed as a result of the analysis of threats and vulnerabilities of the national AML/CFT system. The report was reviewed by Working Groups to assign risk levels for the identified threats and vulnerabilities of the AML system, as well as to identify measures aimed at reducing high ML risks.

An analysis of the client base of commercial banks (from 2018 to 2021) showed that the total share of high-risk clients was 14% and more than 80% of clients had a low level of risk. 6% had an average level of risk (see below).



⁴¹⁰ Regulations on the procedure for assessing the risks of financing terrorist activities and legalization (laundering) of criminal proceeds, approved by the Decree of the Government of the Kyrgyz Republic dated December 25, 2018 No. 606. <http://cbd.minjust.gov.kg/act/view/ru-ru/12923> (last visited 20.05.2022).

⁴¹¹ *Ibid.*

Figure 2: Classification of clients according to risk criteria. Dark blue (80%) represents clients with a low risk, light blue (14%) represents clients with a high risk and gray (6%) represents average level of risk.

Availability of appropriate authorities/regulators

Kyrgyzstan has a comprehensive licensing regime for all financial institutions, as well as licensing/registration of other financial institutions. The exceptions are leasing companies that are not banks or microfinance organizations, as well as commodity exchanges, whose activities in Kyrgyzstan are not licensed.

The main licensing authorities in the field of AML/CFT are: the National Bank of the Kyrgyz Republic, the State Service for Regulation and Supervision of the Financial Market under the Ministry of Economy and Commerce of the Kyrgyz Republic, the Department of Precious Metals under the Ministry of Finance of the Kyrgyz Republic, the State Communications Agency under the Ministry of Digital Development of the Kyrgyz Republic, the Ministry of Justice of the Kyrgyz Republic.

Kyrgyzstan has a proper licensing regime for all financial institutions, with the exception of leasing companies and commodity exchanges. The activities of unlicensed money and value transfer entities (MVTs) in the territory of Kyrgyzstan have not been identified. The National Bank of the Kyrgyz Republic demonstrated active measures to reveal the unlicensed activities of exchange bureaus.⁴¹²

Dissuasive sanctions for non-compliance with AML obligations and their application

During the pandemic period, restrictions were introduced on inspections (2020-2021).

Table 5: The number of inspections and enforcement measures applied to commercial banks in the field of AML/CFT

Year	Field checks	Warnings	Prescriptions	Fines ⁴¹³	
				Physical entities	Legal entities
2017	25		37	3	2
2018	21	9	12	3	1
2019	17	8	22		1

Table 6: Number of inspections and sanctions imposed on exchange offices

Period	Field checks	Desk checks	Warnings	Prescriptions	Fines
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⁴¹² See: https://eurasiangroup.org/files/uploads/files/MER_Kyrgyz%20Republic_2018_1.pdf, (last visited 10.06.2022).

⁴¹³ The number of financial and credit institutions and exchange bureaus to which orders were sent.

					Individuals	Legal entities
2017	120	-	-	61	1	4
2018	116	-	-	60	-	-
2019	66	2	4	19	-	-

Measures of influence on commercial banks

In 2020, in relation to enforcement measures within the framework of external supervision, the National Bank collected fines from individual banks due to shortcomings in the internal control system and violations of the requirements of the banking legislation of the Kyrgyz Republic, including on AML/CFT. The representative of FIU said that in 2020, the Supervision Committee of the National Bank held 45 meetings, at which 91 issues on the activities of commercial banks were considered.⁴¹⁴ The Supervisory Committee applied supervisory response measures and measures to restrict the activities of individual commercial banks, as well as providing the regulation to the officials of commercial banks.

From the interview with FIU representative, it was revealed that violations of the requirements of the legislation of the Kyrgyz Republic and regulatory legal acts of the National Bank amounted to 50 orders sent to microfinance organizations, 102 orders to credit unions, and 237 orders to exchange bureaus. In the reporting year, the licenses of exchange bureaus were temporarily suspended 21 times, fines were imposed on two exchange bureaus in accordance with the Code of the Kyrgyz Republic on violations, and the license of one credit union was suspended.

Good practices

- Update of the basic legislation in the field of AML/CFT in August 2018.
- The FIU has an electronic database of beneficial owners of legal entities established and registered on the territory of the Kyrgyz Republic.
- SFIS has wide access to various sources of information, including those containing operational financial data.
- Law enforcement agencies, in accordance with their competence, investigate criminal cases related to terrorism, and have the legal basis to prosecute all types of terrorist financing under criminal law.
- The financial sector has a good understanding of the risks in the field of money laundering/terrorist financing (involvement in illegal activities).

Deficiencies

- Due to the legalization of casinos in the Kyrgyz Republic in June 2022, the list of entities implementing AML/CFT measures does not currently include casinos and gambling in general.
- Realtors, notaries and independent lawyers are not required to comply with customer due diligence requirements.
- Inaccessibility to the register of beneficial owners by the public.

⁴¹⁴ Interview on 17.07.2022 with the head of one of the departments of the State Financial Intelligence Unit, preferred to remain anonymous.

- It was not possible to assess to what extent the information provided to the FIU based on law enforcement requests was used in the investigation of predicate offenses.
- The use of initiative materials of the SFIS for the investigation of ML and FT is sporadic and inefficient.
- The staff and software of SFIS are not proportionate to the scope and nature of the activity, which affects the efficiency of processing incoming information.
- Law enforcement agencies are poorly versed in the methods of preventing, detecting and investigating crimes in the field of ML and TF.
- The number of ML investigations and convictions is low.

4.2.2 Articles 53 and 56 – Measures for Direct Recovery of Property

Foreign appeal is allowed to participate in judicial proceedings and may be invited to the judicial proceeding in Kyrgyzstan as a witness, defendant or expert-representative according to the criminal procedural code but with their own consent. In the framework of international cooperation, through the General prosecutor's office, states might be notified within the framework of international agreements. The foreign state, as a plaintiff, will be considered on the common basis of a regular plaintiff. The legislation of the Kyrgyz Republic does not designate the special category of victim to a plaintiff state – any person (entity/state) who is victim of a crime has a right to compensation in the order prescribed by law.

Jurisdiction of the Kyrgyz Republic facilitates other States Parties' actions by sharing, spontaneously and proactively, information about proceeds of corruption or legal proceedings (on the basis of international agreements) and mutual legal assistance (according to the principles of reciprocity). There were no asset recovery cases at the time of research, but legislation does not limit such opportunities. All cases on asset recovery are published on open sources.

Good practices

- The state does not have any limits for foreign application in terms of the return of stolen assets.
- State bodies have mutual agreements on mutual cooperation for cases.

Deficiencies

- Cooperation between states on asset recovery is based upon the principle of reciprocity, which limits opportunities and can become a barrier for successful asset recovery.
- The different and sometimes controversial legislation of different states does not facilitate processes.

4.2.3 Arts. 51, 54.1(a) and (b), 54.2, 55.1, 55.2, 55.6, 56, 59 - International cooperation for the purpose of confiscation

Cooperation and assistance in asset recovery

The legislation of the Kyrgyz Republic provides for the possibility of providing GDP and cooperation with the participating states on the return of assets. Nevertheless, despite the withdrawal from the capitals of two fugitive presidents, members of their families and other corrupt officials, there is only one case of the return of stolen assets. \$4.6 million was returned to Kyrgyzstan, stolen during the time of Kurmanbek Bakiyev by his son Maxim

Bakiev. This circumstance speaks of weak internal regulation and the potential of authorized state bodies in international cooperation on asset recovery.

Coordinating asset recovery cases internationally

An interdepartmental working group has been set up under the leadership of the Prosecutor General's Office to search for and return stolen assets. Kyrgyzstan is also a member of the Interagency Network for Asset Recovery in Western and Central Asia (ARIN WCA). On a regular basis, trainings and interregional meetings are held on the issues of tracing, freezing and confiscation of assets. SFIS takes an active part in these events. According to the interview with SFIS expert⁴¹⁵, General Prosecution asked for assistance in asset recovery for the assets which were taken out of the Kyrgyzstan by the Bakiev family (ex-president), seven years after US officials got in touch with the General Prosecutor's office and informed them that 6 million USD were to be recovered. In fact, 4.6 million USD were recovered in Kyrgyzstan.⁴¹⁶ The main bodies which were responsible for the process were the General Prosecution Office, the Ministry of Finance and SFIS. The money was allocated to the budget of the Kyrgyz Republic, but information was kept private and is still not available in terms of which expenditures were spent.

The information transmitted by the SFIS to law enforcement agencies on its own initiative or on the basis of a request is used both in initiating new criminal cases and in investigating previously initiated ones. However, it is difficult to conclude to what extent the information provided by the SFIS on the basis of requests was used in the investigation of crimes. The use of initiative materials of the SFIS for the investigation of ML and FT is sporadic and inefficient. Human resources and the technical (analytical) capabilities of SFIS are not proportionate to the volume and nature of activities, including taking into account the volume of interaction with law enforcement agencies, which affects the promptness of the execution of requests. The program office of the United Nations Office on Drugs and Crime (UNODC) in Kyrgyzstan is launching a new project called "Support to the Kyrgyz Republic in the field of detection, confiscation and return of illegally acquired assets obtained as a result of corrupt activities."⁴¹⁷

Instances of money laundering are investigated as an additional crime within the framework of the investigation of the main (predicate) crime in certain categories of criminal cases. The number of ML investigations and convictions is low. Parallel financial investigations are sporadic. Individual law enforcement agencies do not always have a clear understanding of the needs and procedures for their implementation. There is no comprehensive national strategy aimed at identifying and confiscating proceeds of crime, means of crime and property of equivalent value.

Bilateral and multilateral agreements and arrangements

Since 2009, the FIU of Kyrgyzstan has been a member of the international Egmont Group of Financial Intelligence Units and is recognized by the international community as a separate state body of Kyrgyzstan. Membership in the Egmont Group allows for the rapid

⁴¹⁵ Interview with the head of one of the departments of the State Financial Intelligence Unit on 17.07.2022.

⁴¹⁶ Report on repatriation of stolen assets, <https://kg.usembassy.gov/u-s-department-of-state-senior-bureau-official-announces-repatriation-of-stolen-assets-to-the-kyrgyz-republic/>, (last visited on 22.08.2022).

⁴¹⁷ Project on asset recovery. <https://economist.kg/novosti/2022/04/26/proekt-po-vozvratu-nezakonno-vyvedennyh-aktivov-iz-kyrgyzstana-zapustit-podrazdelenie-on/>, (last visited on 22.08.2022).

exchange of information via secure channels with the financial intelligence units of 165 countries.⁴¹⁸ For SFIS, international cooperation within the Egmont Group remains important, where information on persons involved in financial monitoring is exchanged via a secure channel with foreign financial intelligence units.

Within the framework of international cooperation, the Kyrgyz Republic actively cooperates with international organizations (such as UNODC, EU, OSCE, USAID, SCO, etc.); has cooperation agreements with FIUs in more than 30 countries and individual subjects of the FATF which are key economic and trade partners of Kyrgyzstan: Belarus, Ukraine, Russia, Afghanistan, Estonia, Moldova, Poland, Tajikistan, Kazakhstan, Great Britain, Armenia, Turkmenistan, Turkey, Bangladesh, Sri Lanka, Nigeria, Cyprus, Belgium, Republic of Korea, Iran, Panama, Israel, Monaco, India, Indonesia, Macau (PRC), British Virgin Islands, China, Mongolia, San Marino, and Uzbekistan.

At the international level, the Kyrgyz Republic is a member of the following international organizations:

- The Eurasian Group (EAG) as an associate member, with a regional body similar to the FATF. Kyrgyzstan joined in 2004.⁴¹⁹
- The Council of Heads of Financial Intelligence Units of the Commonwealth of Independent States.⁴²⁰ Kyrgyzstan has been a member since 2012, within the framework of the agreement on cooperation between the member states of the Commonwealth of Independent States in the fight against terrorism of June 4, 1999, Minsk. The agreement was ratified by the Law of the Kyrgyz Republic of January 18, 2001 N 11.

Good practices

- Cooperation with international organizations to promote of the direct return of stolen assets.
- Active cooperation with international initiatives on asset recovery such as StAR, the International Centre for Asset Recovery (ICAR), and the Camden Asset Recovery Inter-agency Network (CARIN).
- There are many features and characteristics in the Kyrgyz Republic that point to the existence of effective mechanisms for international cooperation. Kyrgyz authorities can provide the widest possible mutual legal assistance and extradition in a timely manner in connection with investigations, prosecutions and other procedures related to ML/TF and related predicate offenses.

Deficiencies

- Parallel financial investigations are sporadic. Individual law enforcement agencies do not always have a clear understanding of the needs and procedures for their implementation.
- There is no comprehensive national strategy to identify and confiscate proceeds of crime, instrumentalities of crime and property of equivalent value.
- Weak internal and international mechanisms on asset recovery.
- Weak development of the law enforcement for the direct return of stolen assets.
- In the Kyrgyz Republic, there no mechanisms for non-judiciary confiscation.

⁴¹⁸ Official website of the Eurasian group, <https://eurasiangroup.org/ru>, (last visited 20.06.2022).

⁴¹⁹ The EAG is a regional intergovernmental organization whose main goal is to ensure effective interaction of cooperation at the regional level and integration of the EAG member states into the international FATF/LPD system in accordance with the FATF Recommendations and PFTD/LPD standards of other international organizations.

⁴²⁰ See <https://fiu-cis.org/>, (last visited on 22.08.2022).

4.2.4 Articles 57.3, 57.4, 57.5 - The Return and Disposal of Confiscated Property

The criminal procedural legislation of Kyrgyzstan does not create barriers to the disposal and return of confiscated assets of foreign origin, including for cases of autonomous confiscation, besides some norms needing to be elaborated on. The working group on arrest and confiscation for asset recovery under the General Prosecutor's office is currently working on the development of recommendations to further implement into national legislation conventional norms in that sphere, with account of the experience of other countries and international legislation. Kyrgyzstan's legal framework does not specifically address if and how victims of corruption may be compensated in cases where assets are returned. In practice, in Kyrgyzstan there were no cases of confiscated assets (of foreign origin) in line with UNCAC Art. 57. All agreements on mutual cooperation and assistance in the field of asset recovery are closed to the public.

Good practices

- Cooperation with international organizations to promote the direct return of stolen assets.

Deficiencies

- Implementation of confiscation tools is exclusively done by courts, and there is no direct application of the law on confiscation, meaning that it is only dependent on the decision of a judge.

4.2.5 Articles 54.1(b) and (c) [see also Art. 23.1 and 23.2] - Confiscation Tools

In 2012, the Government of the Kyrgyz Republic issued a decree "On measures for the return of assets withdrawn illegally (criminally) outside the Kyrgyz Republic."⁴²¹ According to this legislation, the Prosecutor General's office needed to determine the total amount of assets, including in monetary terms, withdrawn from the Kyrgyz Republic starting from August 31, 1991, as well as a list of persons involved in the withdrawal of assets; persons for which there are court decisions that have entered into force, or orders to declare a wanted list for a crime. An electronic database of wanted persons was created, and international requests for mutual legal assistance were prepared with the assistance of the joint initiative of the World Bank and the United Nations Office on Drugs and Crime (UNODC): the Stolen Asset Recovery Database (StAR).

Later, in 2018, a new governmental decree was issued on measures to implement the Law of the Kyrgyz Republic "On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds."⁴²² According to the decree, the commission on countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds was created. This consisted of heads of departments and other governmental experts. The commission is not currently functional, but still exists, while the special working group on asset recovery within the Prosecutor General's office functions.

⁴²¹ Decree of the government on the "On measures for the return of assets withdrawn illegally (criminally) outside the Kyrgyz Republic," <http://cbd.minjust.gov.kg/act/view/ru-ru/93142> (last visited 18.11.2022).

⁴²² Decree of the Government "On measures to implement the Law of the Kyrgyz Republic "On countering the financing of terrorist activities and the legalization (laundering) of criminal proceeds" <http://cbd.minjust.gov.kg/act/view/ru-ru/12923?cl=ru-ru> (last visited 18.11.2022).

Good practices

- The special commission and working group on confiscation were established.

Deficiencies

- Parallel financial investigations are sporadic. Individual law enforcement agencies do not always have a clear understanding of the needs and procedures for their implementation.
- There is no comprehensive national strategy to identify and confiscate proceeds of crime, instrumentalities of crime and property of equivalent value.

4.3 Statistics on Money Laundering and Asset Recovery

The request for the information on asset recovery was sent to governmental authorities, in particular to State Finance Intelligence Service and General Prosecutor's Office. Unfortunately, the data was not provided due to a lack of information and lack of asset recovery cases, as provided by the SFIS. There have been no asset recovery cases over the last three years.

V. Recent Developments

In May 2022, drafts of the Law “On Voluntary Legalization and Amnesty of Assets of Individuals” and the Law “On Amendments to Certain Legislative Acts of the Kyrgyz Republic” caused serious concern. The drafts propose the legalization, by voluntary declaration, of all income and property obtained illegally or not declared in the prescribed manner, with the exception of assets restricted in circulation or withdrawn from circulation. In connection with this initiative, the Central Asian Research Institute on Corruption and Money Laundering (the authors of this report), took part in the discussion of this project at a meeting of the Committee on Fiscal Policy.

Persons who declared assets obtained illegally or criminally, as well as nominal owners of assets, are exempt from all types of liability, including criminal, except for cases of financing terrorist activities; In addition, special favorable treatment is introduced for declarants. Thus, the fact of declaring assets, as well as the information contained in a special declaration, cannot be used as evidence in a criminal case, a case of an offense involving the declarant and/or the nominal owner of the assets.

The information contained in the declaration is recognized as the secret of the declarant and is not subject to disclosure in any way. State bodies, courts are not entitled to demand and get access to a special declaration and the information contained in it. Disclosure of information contained in the declaration is possible only at the voluntary will of the declarant. This change points to a desire to hide from the public all information about the incomes of both senior and middle-level state and municipal employees.

The transition of power to the new political leadership at the end of 2020 took place against the background of serious pressure on democratic institutions, which persists. Freedom of association, freedom of peaceful assembly and freedom of expression are subject to particular infringements. In June 2021, amendments to the Law “On Non-Commercial Organizations” were unexpectedly adopted in an extraordinary manner, imposing additional discriminatory reporting requirements for non-profit organizations.

In general, state policy towards the democratic space is being tightened, especially in the area of freedom of association and freedom of expression. Various manifestations of dissent increasingly lead to criminal prosecution and other forms of pressure on journalists, human rights activists, bloggers, and activists who are subjected to severe pressure from state bodies. At the end of October 2022, the authorities carried out mass detentions of politicians and activists who created the so-called ‘Committee for the Protection of Kempir-Abad’, an informal association of active citizens who opposed the agreement initiated by the authorities with the neighboring Republic of Uzbekistan regarding the status and activities of the Kempir-Abad reservoir. More than 20 political and public figures, human rights activists, bloggers and activists were detained and subsequently taken into custody in pre-trial detention centers on charges of preparing for mass riots.⁴²³ Deputies of the Zhogorku Kenesh, representatives of civil society institutions, experts and lawyers, as well as representatives of international organizations expressed their concern about the detentions, questioning the validity of the charges, as well as the need to detain some of the accused, including well-known human rights activists.

⁴²³ “Kyrgyzstan Arrests Activists en Masse”, Syinat Sultanalieva, October 25, 2022, Human Rights Watch, <https://www.hrw.org/news/2022/10/25/kyrgyzstan-arrests-activists-en-masse>, (last visited 18.11.2022).

On October 26, 2022, the Ministry of Culture, Information, Sports and Youth Policy of Kyrgyzstan announced a two-month blocking of the website of Azattyk, the local service of the broadcaster Radio Free Europe/Radio Liberty, in accordance with the Law on Protection against Inaccurate (False) Information” after the publication refused to remove a video report about the recent border conflict between Kyrgyzstan and Tajikistan.⁴²⁴ A few days later, Azattyk 's bank accounts were blocked, reportedly by order of the State Committee for National Security on the basis of the Law on Combating the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Proceeds.

Another initiative currently being promoted by authorities is the new draft Law “On non-profit non-governmental organizations”, which was published on the official website of the Cabinet of Ministers of the Kyrgyz Republic on November 2, 2022. The proposed draft law provides for the introduction of new principles and rules for the legal regulation of a large part of the various types of non-profit organizations (NPOs). Procedures for state registration of NPOs are being significantly tightened, and the grounds for refusal of registration are not clearly formulated, which creates conditions for arbitrary restriction of freedom of association.

Institutions of state power are provided with virtually unlimited opportunities to interfere in the activities of NGOs through the introduction of extensive accountability and monitoring mechanisms, as well as the forced liquidation of associations. Taking into account that fundamental changes are being made to the rules of state registration of NPOs, and also given the limited organizational and human resources of the Ministry of Justice, there are serious concerns about the possible liquidation of thousands of NPOs that will not have time to go through the re-registration procedure in such a short time. The draft law contains a high degree of risk of absolute liquidation of the human rights sector in Kyrgyzstan in the short term. It is extremely likely that such important democratic foundations as freedom of expression, freedom of association and freedom of peaceful assembly, participation in government and public monitoring will eventually become inaccessible on the territory of Kyrgyzstan.

Among other legal and policy developments in the country are:

- A new draft Law “**On Combating Corruption**” has been developed and submitted for discussion in June 2022.
- On October 27, 2021, the Law⁴²⁵ “On the **State Civil Service** and Municipal Service” was adopted in the Kyrgyz Republic for the recruitment, retention and promotion of civil servants and other non-elected civil servants. In the implementation of this Law, on February 2, 2022, the Decree⁴²⁶ of the President of the Kyrgyz Republic approved Regulations for the procedure of holding an open competition for inclusion in the reserve of personnel of the state civil service and municipal service of the state body and local government, its formation and functioning.
- In 2022, a new **Code of Ethics for Civil Servants** was adopted and approved by Decree of the President of the Kyrgyz Republic dated May 31, 2022 No. 171, which

⁴²⁴ “Kyrgyzstan authorities renew attack on media”, October 28 2022, <https://www.hrw.org/news/2022/10/28/kyrgyzstan-authorities-renew-attack-media>, (last visited 18.11.2022).

⁴²⁵ Law “On the State Civil Service and Municipal Service”, <http://cbd.minjust.gov.kg/act/view/ru-ru/112303>, (last visited on 07.07.2022).

⁴²⁶ On the formation and functioning of the personnel reserve, <http://cbd.minjust.gov.kg/act/view/ru-ru/430847>, (last visited on 07.07.2022).

applies to employees of the state civil service and municipal service, as well as to persons temporarily replacing absent employees of a state body and local government. The Code defines ethics as a system of norms that establish and regulate the rules of conduct for an employee. Ethics is the responsibility of every employee in accordance with the Code.

- A **Tax Code**, dated January 18, 2022, No. 4 was newly adopted and established the obligation to provide declarations of assets and income to the Tax service of the Kyrgyz Republic on an annual basis. The submitted declarations are posted on the website of the Tax Service.
- Between 2021 and 2022, **criminal cases** have been initiated against high-ranking former and current officials, as well as representatives of large businesses in order to collect big sums of money from them for the budget. Yet, according to civil activist Nurbek Toktakunov, this money is not directed to the budget, but just attributed to the budget of the state intelligence service which collects that money.⁴²⁷
- A new Law on **Public Procurement** was accepted on 14 April 2022, and is considered by civil society to have high corruption risks because it excludes from its scope state and municipal enterprises and companies with state share in their capital. This creates severe corruption risks as neither the state regulator, nor civil society will have access or oversight over the transactions concluded by these enterprises and companies.⁴²⁸
 - **Amendments to the Law on Public Procurement** were published on the President's webpage in October 2022. This draft Law proposes to remove two methods of procurement (unlimited and limited). This means that public procurement will be carried out only by the "request for quotations" and "from one source" methods, these are direct purchases, without tenders. Such purchases were possible during COVID19 lockdown in 2020, when Kyrgyzstan was in a state of emergency. Only invited suppliers can participate, which is contrary to article 9 of the UNCAC and the principle of transparency of the public procurement. In addition, the new version proposes to remove the public procurement commissions, that evaluate proposals, identify the winner, or recognize the purchase as failed if violations are detected. Due to collegial nature of commissions, they contributed to more transparency in the procurement system. Thus, the draft law deepens corruption risks already present in the Law on Public Procurement and will have a detrimental effect on the entire system of public procurement as tenders as such will be removed according to experts.⁴²⁹

⁴²⁷ Nurbek Toktakunov: from "kusturization" not even a som was placed in the budget, <https://vesti.kg/politika/item/91100-nurbek-toktakunov-ot-kusturizatsii-v-gosbyudzheth-ne-postupalo-ni-soma-vse-dengi-razvorovyvayutsya.html>, (last visited on 07.07.2022).

⁴²⁸ New law on public procurement opens the doors for the corruption, <https://www.akchabar.kg/ru/article/business/obshchestvennost-bet-trevogu-novyi-zakon-o-goszakupkah-otkryva/>, (last visited on 07.08.2022).

⁴²⁹ Kloop.kg, Kyrgyzstan may lose its tender system. The authorities again want to change the law On Public Procurement. Available in Russian: <https://kloop.kg/blog/2022/10/17/kyrgyzstan-mozhet-lishitsya-tendernoj-sistemy-vlasti-snova-hotyat-izmenit-zakon-o-goszakupkah/> (last visited on 17.11.2022).

VI. Recommendations

The following list of recommendations is addressed to the President, Cabinet of ministers of the Kyrgyz Republic, Prosecutor General's office and parliament of the Kyrgyz Republic, and grouped by UNCAC article:

Art. 5 – Preventive Anti-Corruption Policies and Practices

- 1) The draft Law on Countering Corruption should be reconsidered and the process of open public discussion with all stakeholders organized.
- 2) Renew the process of becoming a member of GRECO - there should be political will and necessary funds to pay the membership fees.
- 3) Develop and implement a unified methodology for conducting corruption 'proofing' of the legislation in order to identify potential corruption risks, and eliminate them at the drafting stage of new legislation. This should be part of anti-corruption policies on both national and local levels.
- 4) Systematic research on corruption should be encouraged through financial support from the state and conducted by public and private research institutions, academic institutions, CSOs and individual researchers.

Art. 6 and 13.2 – Preventive Anti-corruption Body or Bodies

- 5) It should be clearly defined which state body is empowered to serve as the main coordinating and implementing body for the national anti-corruption strategy. This body should be established by the Law, and not by Presidential decree. Independence of the prevention body should be guaranteed institutionally and financially. The budgetary allocation should be significant enough to fully support the functioning of the prevention body.
- 6) The status and powers of the Anti-Corruption Business Council should be clarified and an assessment made, as to its compatibility with the provisions of the law regulating other state bodies with anti-corruption powers.

Art. 7.1 – Public Sector Employment

- 7) Ensure the competitive selection of civil servants to the Presidential Administration, the Office of the Jogorku Kenesh.
- 8) Ensure regularity in the activities of civil servants and the system of promotion within the public service.
- 9) Strengthen monitoring and accountability mechanisms for the provision of declarations which have to be provided by the public servants.
- 10) Provide a methodological base, conduct training activities and strengthen monitoring by the State personnel service in the field of compliance with ethical standards by civil servants, including compliance with conflict-of-interest standards.
- 11) Reconsider approaches to the formation of political and administrative positions, which may lead to further politicization of the civil service. To this end, it is proposed to exclude representatives of local self-government bodies - aйл kenesh and aйл okmotu - from the list of political positions.

Art. 7.3 – Political Financing

- 12) Ensure transparency in the movement of political party finances.
- 13) Introduce state funding for election campaigns.
- 14) Publish information on election expenses by the CEC of the Kyrgyz Republic in a more detailed way.
- 15) Make political finance monitoring bodies more independent.

Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

- 16) The prosecutor's office of the Kyrgyz Republic should include in the mandatory list of supervised acts legislation on conflict of interest and compliance with ethical standards.
- 17) Provide an effective mechanism for monitoring compliance with conflict-of-interest provisions by verifying the requirement to declare personal interests and strengthening the role of management in such monitoring.
- 18) Conduct periodic monitoring and evaluation of the implementation of the law on conflict of interest and its impact in the public administration system.
- 19) Introduce effective sanctions for failure to file a declaration on property and income, as well as for knowingly providing false or incomplete information, with more modern approaches to verify the information contained in declarations.
- 20) Establish a single body that would collect, publish and verify declarations of income and property, with the necessary guarantees of independence, powers and resources.
- 21) Ensure that all information from income and asset declarations and declarations of interest is published on the Internet, except for certain clearly defined statements that are not published to protect the personal safety of declarants.
- 22) Ensure the publication of registers of ownership of movable and immovable property, registration of legal entities, including information on the beneficial owners of legal entities, and other publicly significant registers, including in an open data format.
- 23) Sanctions for public officials should be introduced for failing to provide information held by state and municipal bodies.
- 24) Ensure the mandatory participation of representatives of the state personnel service in the composition and work of commissions to review violations of the ethics of civil servants and conflicts of interest.

Art. 8.4, 13.2 – Reporting Mechanisms and Whistleblower Protection (8.4, 13.2, 32 and 33.11)

- 25) Ensure the proper implementation of mechanisms for the protection of persons who report on corruption.
- 26) Increase the level of financing for the whistleblower protection program.
- 27) Amend the law on protection of persons who provided information on corruption by indicating detailed procedures for whistleblower protection.

Art. 9.1 – Public Procurement

- 28) Cancel direct contracts for all procurement procedures, except for small and routine ones (serving the day-to-day activities of a government agency, for example, office supplies).
- 29) The public procurement web portal should be strengthened based on consultations with strong IT experts to provide stability and safety of data, and the portal's navigation should be improved in terms of user-friendliness. Information should be provided in a machine-readable format.
- 30) Public procurement contract text and post-tender documentation must be published on the web portal. The legislation on procurement by state and municipal enterprises, joint-stock companies (where 50% or more of the share of the authorized capital belongs to the state) and their subsidiaries should be provided to secure their transparency and avoid corruption risks.

Art. 9.2, 9.3 – Public financial management

- 31) Ensure control (verification and validation) of the expenditure part of declarations of civil servants.

Art. 10 & Art. 13.1 – Access to Information and Participation of Society

- 32) Stop prosecuting citizens who report and expose corruption.
- 33) Encourage citizens to form NGOs independent of the government to work on anti-corruption and open government initiatives.
- 34) Publish all information about companies and NGOs available to public authorities. Upgrade the unified register of legal entities to include current and historical data, with additional requirements for public filing of annual accounts, changes in shareholders, directors and secretaries, registration of fees and other financial documents.
- 35) Develop a centralized register of beneficial owners, requiring that adequate and structured data on the ultimate owners of all legal entities be collected and published in a free, searchable, online open database.
- 36) The legal framework on Access to Information should provide for the override of the right to information over the secrecy and legitimate interests of the state, and include harm and public interest tests.
- 37) Government bodies and agencies should follow set timetables in providing responses to public requests. The quality of responses should be monitored and sanctions for the failure to provide information determined.
- 38) Publish the full country UNCAC review report and self-assessment checklist after the completion of the review process and make it publicly available on the Internet.

Art. 11 – Judiciary and Prosecution Services

- 39) Ensure the full implementation in all courts of the system of automatic distribution of court cases, the openness of information about such distribution and the publication of court decisions.
- 40) Reconsider the issues of appointment and promotion of judges, which may negatively affect judicial independence.

- 41) Ensure in practice the publication of all court decisions that are subject to publication.
- 42) Provide for the formation of a body of prosecutorial self-government (Council of Prosecutors), the majority of whose members will be elected by a regularly held conference of prosecutors. Such a body should be independent of the Prosecutor General and play a key role in the competitive selection of candidates for the position of the Prosecutor General, his deputies and other prosecutors, consider issues of their early dismissal from office, disciplinary liability and evaluation of their activities.
- 43) Establishment of the Prosecutorial Council for the nomination of the Prosecutor General and his deputies.
- 44) Legislatively limit the term of office for the Prosecutor General.

Art. 12.1, 12.2(c) and (f), 12.4 – Private Sector Transparency

- 45) Provide access to full information in the registry of legal entities.
- 46) Provide a public access to the registry of beneficial owners, publish on the webpage of the state body a list of disclosed beneficial owners by companies in the extractive industries as required by the law.
- 47) Introduce legislative banning the tax deductibility of bribes and corrupt expenses.

Art. 14, 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 58 – Measures to Prevent Money-Laundering

- 48) Provide for detailed regulation of the process for the return of stolen assets, including precise rules for handling requests for mutual legal assistance and which authority should be held accountable. Provide for specific procedures for the recovery process, ensuring complete transparency of the process.
- 49) Include casinos and gambling in general in the list of entities implementing AML/CFT measures in connection with the legalization of casinos in the Kyrgyz Republic in June 2022.
- 50) As soon as possible, consider and approve the Risk Assessment Report in the NPO Sector and the NRA Report at the AML/CFT Commission operating under the Cabinet of Ministers of the Kyrgyz Republic, as well as approve Action Plans containing measures aimed at reducing ML/TF risks in the Kyrgyz Republic from 2018-2021.
- 51) The study of training programs that are published on the website of the SFIS UMC do not contain disciplines aimed at conducting enhanced verification or in-depth monitoring of transactions and transactions, and therefore it is necessary to adjust the training programs in the field of AML/CFT.
- 52) Improve interdepartmental cooperation between law enforcement bodies and services in the sphere of analysis of information, analytical and investigative opportunities of financial investigations and judicial process, and also international cooperation with foreign partners.

Art. 53 and 56 – Measures for Direct Recovery of Property

- 53) Strengthen intergovernmental cooperation and mechanisms on the procedures for direct recovery of property.

54) Ensure transparency and accountability of returned assets.

Art. 54.1(b) and (c) [see also Art. 23.1 and 23] – Confiscation Tools

55) The procedure of the arrest and confiscation of assets must be detailed, especially for such types of assets as: movable and immovable property, objects of art and other artifacts.

Art. 51, 54.1(a) and (b), 54.2, 55.1, 55.2, 55.6, 56, 59 – International Cooperation for the Purpose of Confiscation

56) Harmonize the legislation and introduce a single instrument for the arrest and confiscation of assets in foreign countries.

57) Improve law enforcement in the confiscation of the digital assets like cryptocurrency.

Art. 57.3, 57.4, 57.5 The Return and Disposal of Confiscated Property

58) Promote best practices of foreign countries on asset recovery at the international level.

VII. Annex

7.1 Table of access to information requests and responses

#	Institution	Date request was submitted	Topic	Answer
1	Prosecutor General's Office	05/22/2022	A list of questions on the UNCAC review status.	Answer was provided, the response given was incomplete.
2	Ministry of the Interior	05/24/2022	A list of questions on whistleblower protection implementation.	Answer was provided, the response given was incomplete.
3	Supreme Court	05/23/2022	A list of questions on the interpretation of laws and implementation of norms in relation to the UNCAC.	Answer is provided, the response given was incomplete.
4	Ministry of Justice	05/24/2022	Promotion of freedom of information and means of legal support.	Answer was provided in full.
5	State Agency for State and Municipal Service Affairs	05/25/2022	A list of questions on the system of employment for the state service and ethics within the state service.	Answer was provided, the response given was incomplete.
6	Ministry of Finance	05/24/2022	A list of questions on state financial data transparency and mechanisms for administering state finances.	Answer was provided, the response given was incomplete.
7	Ministry of Culture	05/22/2022	A list of questions.	Answer was provided, the response given was incomplete.
8	Central Electoral Commission	05/26/2022	A list of questions on political financing and	Answer was not provided.

			transparency of electoral spending.	
9	Security Council	05/21/2022	A list of questions on anti-corruption policy and the state bodies responsible for anti-corruption.	Answer was provided, the response given was incomplete.
10	State Tax Service	05/26/2022	A list of questions on transparency of state officials' finances and declarations.	Answer was provided, the response given was incomplete.
11	GTRK (State Television and Radio Company)	05/24/2022	A list of questions.	Answer was provided, the response given was incomplete.
12	State Financial Intelligence Service	05/24/2022	A list of questions about statistics on STRs.	Answer was provided, the response given was incomplete.

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