



**Anti-Corruption Network for Eastern Europe and Central Asia**

**Istanbul Anti-Corruption Action Plan**

**KYRGYZ REPUBLIC**

**Progress Report**

This report is presented by Kyrgyz Republic at the 12<sup>th</sup> Monitoring Meeting on 23 – 25 September 2013.

*Submitted on 16 September 2013*

Dear colleagues,

The Kyrgyz Republic is a participant in the Istanbul Anti-Corruption Action Plan implemented by the OECD's Anti-Corruption Network for Eastern Europe and Central Asia (ACN).

On August 6, 2005, the Kyrgyz Republic ratified the UN Convention against Corruption signed on December 10, 2003 in Merida (Mexico), which determined measures on prevention of corruption, forms of international cooperation, and prescribed measures on asset recovery.

Today, the UN Convention against Corruption is a core international legal document that regulates issues of countering corruption. The UN Convention establishes a whole range of standards and measures aiming at development of domestic legislative and legal fundamentals with regard to countering corruption and adoption of relevant legislative and preventive measures.

In compliance with Art. 3 of the KR Law "On ratification of the UN Convention against Corruption", the Prosecutor General's Office of the Kyrgyz Republic was appointed as a central national agency responsible for implementation of the said Convention.

One of the objectives of the UN Convention against Corruption is assistance in adoption and strengthening of measures aiming at a more efficient and effective countering corruption and combat against it.

In the frame of implementation of its international commitments and pursuant to Decree of the KR President "On the state strategy of the anti-corruption policy of the Kyrgyz Republic" # 26 of February 2, 2012, Resolution of the KR Government "On approval of the Program and Action Plan of the KR Government on countering corruption for 2012-2014" of August 30, 2012 # 596 and the Decision by the KR Defense Council "On measures to counter corruption offences in the society" of 30 January 2012, the government agencies of the Kyrgyz Republic to date have carried out a certain work.

The principal objective of the aforementioned State Strategy is to minimize the level of corruption in the Kyrgyz Republic by weeding out its causes and conditions that generate it, developing adequate law-enforcement measures, as well as establishing in the society a zero-tolerance attitude towards corruption.

Basing on implementation of the Strategy, with its Resolution of August 2012 the KR Government approved the Program and the Action Plan of the KR Government on countering corruption for 2012-2014, which were developed with account of OECD's list of 22 recommendations on implementation of the Istanbul anti-Corruption Action Plan and whose implementation is currently in progress.

The said recommendations were put forward by an OECD international expert team basing on findings of the second round of monitoring of KR's progress in implementation of provisions of the Istanbul anti-Corruption Action Plan of January 2012.

The KR Parliament in turn introduced substantive amendments to the Criminal Code of KR wherein numerous provisions of the UN Convention have presently been taken into account.

Specifically, the Criminal Code of KR was amended with a new article, namely, 194-1 - "Insider transactions on the securities market". Meanwhile, Art. 310 - "Bribe-award", 311 - "Tampering" and 312 - "Passive bribery for provision a public office" of the Criminal Code of KR were recognized to have lost effect, while Art. 313 - "Bribe solicitation", 313-1 - "Passive bribery", 313-2 "Mediation in bribery" and 314 - "Active bribery" have established criminal responsibility with regard to foreign public officials and those of international organizations.

In addition, with account of the said recommendations, the Kyrgyz Republic has legislatively lifted a restriction related to the Prosecutor General's exclusive authority to institute a criminal case against a judge.

As well, on August 10, 2012, the Constitutional Law “On introducing amendments to the Constitutional Law of the Kyrgyz Republic “On the status of judges of the Kyrgyz Republic” was enacted. In compliance with the Law, the decision to open a criminal investigation against a judge is made by the Republic’s Prosecutor General and **prosecutors authorized by him/her with a status no lower than the one of head prosecutors of provinces, the city of Bishkek and the city of Osh.**

In order to retain the possibility to institute criminal proceedings against a person immune from prosecution in the event of suspension of investigation of a case, on April 29, 2013, Art. 67 of the Criminal Code of KR was amended with par. 4-1 which holds that where criminal proceedings have been instituted against a person immune from legal process and those proceedings was suspended due to his/her immunity, in that case the term of limitation is likewise suspended.

To improve the legal base, a number of laws were passed, including: “On countering corruption” of August 8, 2012, “On introducing amendments to some legislative acts of the Kyrgyz Republic” of August 10, 2012 (to the Criminal Code, the Criminal Procedural Code, The Code of Administrative Offences, the KR Law “On filing and publication of data on income, liabilities and assets of persons holding political office and other kinds of special public office, as well as their close relatives”, the KR Law “On civil service”, and a number of other acts of anti-corruption nature.

The authorized agencies’ pro-active approach yielded positive results in the course of implementation of the domestic anti-corruption agenda, bolstered the combat against corruption in the country, added a greater consistency and focus to the public agencies’ activities in respect to prevention of corruption in the society and combat against it.

As a result of implementation of the antic-corruption policy, according to the 2012 Transparency International’s Corruption Perception Index, the Republic climbed 10 points up compared to the prior year and became 154<sup>th</sup> in the global ranking (in 2011, Kyrgyzstan was 164<sup>th</sup> out of 174 nations).

Underpinning activities on rooting out corruption in the country has been the demand by Mr. A. Atambaev, the KR President and Chairman of the Defense Council, to establish an unconditional responsibility for such offences, irrespectively of one’s official position, past merits, or public status.

To get the anti-corruption strategy implemented government agencies undertook gradual measures with regard to bolstering efficiency of the interaction between all the agencies concerned, solidification of the legislative base of countering this criminal phenomenon, and entrenchment of the judiciary.

At the initiative of the Commission for development of coordinated proposals on promotion of the judiciary reform established by Decree of the KR President of January 17, 2012 #6, representatives of public and judicial bodies, as well as the civil society ones, held an international conference “The Dialogue on the judicial reform” on 19-20 March 2012. The gathering addressed the issue of shaping a concept of the judicial reform; on March 21-26, a dedicated task force summed up the conference findings and designed a draft Concept of judicial reform.

The document was subsequently discussed on 27 March and 4 April 2012 by representatives of the public and judicial bodies, civil society and international experts. Upon its revision, with an account of international experts’ recommendations, and after consideration by the Commission, the final recommendations were submitted to the KR President for consideration.

Decree of the KR President “On measures on improvement of the administration of justice in the Kyrgyz Republic” of August 8, 2012, # 147, approved in principle the Commission’s

recommendations and identified main conceptual objectives, tasks and avenues of such a reform. With that the Commission discontinued its operation.

To ensure government agencies' coordinated activities with regard to the judicial reform, with the aforementioned Decree the President established the Council for judicial reform under the KR President and became his head.

The Council approved a judicial reform action plan and determined practical steps in the frame of implementation of judicial reform priorities.

In 2011, the KR government agencies undertook measures to promote combat against organized crime. However, the then effective law-enforcement system proved incapable of countering the spread of corruption and abuse of office in the highest echelons of power.

Kyrgyz Republic repeatedly witnessed adoption of multiple anti-corruption programs, which, however, as a rule, proved formal and declarative by their nature. The inefficiency of the legal base has resulted in some public officials routinely using public interest to disguise the pursuit of their private or group interests and taking advantage of their official position to enrich themselves. Coupled with other negative phenomena in the government, corruption became one of major causes for the people's revolutions of March 2005 and April 2010.

Because of the corrupt bureaucracy, the public administration lost its efficacy, which resulted in the citizenry, domestic and foreign investors' low level of trust in government to the detriment of Kyrgyzstan international standing.

As the magnitude and the nature of corruption offences hit a level dangerous for both the societal stability and the country's national security, with his Decree of December 14, 2011, # UP27, the KR President established the Anti-Corruption Service (ACS) under the State Committee of National Security of the Kyrgyz Republic.

In order to set a new, modern, efficient and professional government agency capable to meet existing challenges and threats in the area of combat against economic crime, with its Resolution of June 8, 2012, # 383 the KR Government established the State Service for Combat against Economic Crime under the KR Government. (SSCEC). The newly established agency is a dedicated law-enforcement body which reports directly to the KR Government, with its mission being detection, prevention, restraint, and investigation of economic crimes, as well as malfeasance in office related to economy and finance, per the KR law.

The KR Prosecutor General's Office issued Executive Order # 8-r of February 9, 2012, which identified executive officers of the Office responsible for promotion of interaction with ACS, while on March 12, 2012, the Procedure of interaction between the KR Prosecutor General's Office and ACS was approved. As well, the Supreme Court of the Kyrgyz Republic issued an Executive Order on measures on implementation of the KR Defense Council's Decision and identified senior staff in the judiciary responsible for operational coordination with ACS with regard to ensuring agility and confidentiality in the course of courts of law choosing a preventive measure in respect to criminal cases opened by ACS, as well as authorizing operational-investigative means and investigatory actions with regard to such criminal cases.

As to the question of countering financing of terrorism and legalization (laundering) of criminal proceeds, a respective Law "On combating financing of terrorism and legalization (laundering) of criminal proceeds" was passed in 2006.

In 2007, the Eurasian Group on Combating the Legalization (Laundering) of Criminal Proceeds and Financing of Terrorism (EAG) completed mutual evaluation of the Kyrgyzstan's national system.

In 2010, the KR Government passed Resolution "On measures on implementation of the Law of the Kyrgyz Republic "On combating legalization (laundering) of criminal proceeds and financing of terrorism"

In 2012, the nation ratified the Agreement on the Eurasian Group on Combating the Legalization (Laundering) of Criminal Proceeds and Financing of Terrorism.

In 2012, the Government established the Commission on matters of combating the legalization (laundering) of criminal proceeds and financing of terrorism, with Prime Minister being the Head of it; the Commission's Statute was adopted and an anti-corruption legislation package was passed.

That said, an efficient asset recovery is still hampered by string of impediments, including the following ones:

1. Complexity of investigation of criminal cases related to banking schemes;
2. An insufficient degree of training of law-enforcement agencies' personnel and the judiciary staff in the asset recovery area;
3. The absence of a proper practice of asset recovery
4. Imperfect criminal and criminal-procedural law that regulates the procedure of, and grounds for, asset recovery
5. The absence of access to data which constitute bank secrecy and to data reported in tax returns, public servants' data and those retained by the customs and tax agencies.

It was the State Financial Intelligence Service and the Prosecutor General's Office to become responsible for exercising asset recovery measures.

In order to ensure a coordinated approach by the nation's government agencies concerned to issues of combating legalization (laundering) of criminal proceeds and financing of terrorism, with its resolution of May 28, 2012, # 324 the KR Government established the Commission on matters of combating legalization (laundering) of criminal proceeds and financing of terrorism.

At its inaugural meeting, the Commission ruled to undertake asset recovery measures with the help of a joint IBRD and UNODC initiative StAR ("Stolen Asset Recovery").

To this effect the Prosecutor General's Office and the Financial Intelligence jointly crafted draft letters to request technical assistance under the aegis of the StAR from IBRD, UNODC and the International Center for Asset Recovery (ICAR).

In order to improve the oversight of enforcement of the legislation related to combating and legalization (laundering) of criminal proceeds and financing of terrorism, the prosecution agencies have become engaged in certain actions.

They examine, on the permanent basis, compliance by government agencies that exercise control over monetary transactions or transactions involving other assets and their officials with requirements of the legislation related to combating and legalization (laundering) of criminal proceeds and financing of terrorism.

In order to promote the legislative consolidation and practical implementation of forms of interaction between government agencies and civil society institutions of the Kyrgyz Republic, as well as to ensure transparency of decision-making procedures and their implementation with account of the civil society's interests, in compliance with Decree of the KR President of June 3, 2013 #UP 128 "On improving the interaction between government agencies and the civil society", public supervisory councils were established under government agencies.

In addition, an important factor of pro-active anti-corruption activities became strengthening of the governmental oversight, as far as implementation of the anti-corruption law is concerned.

In the first half 2013, the prosecution and law-enforcement authorities of the Kyrgyz Republic opened 710 criminal cases on corruption charges, of which 647 cases, or 91.1% of the above total, were opened by prosecution agencies in the course of supervisory activities,

while national security agencies opened 22 cases, or 3.1%, the State Service on Combat Against Economic Crime – 26 cases, or 3.66%, and the Ministry of Interior – 15 cases, or 2.11%.

By preliminary estimates, the amount of damage inflicted by respective offences accounts for Som 369, 762.800 (Euro 364,800, USD 572,452, Rub. 88,921.849), of which Som 20,644.016 was recovered.

Prosecutor investigations held in the 1<sup>st</sup> half 2013 exposed 1,151 corruption offences (without regard to opened criminal cases) by which prosecutor petitions were filed to repress them and to bring the offenders to responsibility. The prosecutor petitions resulted in a Som 8,984.825-worth redress of the damage done to the state.

Pursuant to the presidential Decree “On the state strategy of the anti-corruption policy of the Kyrgyz Republic”, the decision by the KR Defense Council “On measures on countering corruption in the society”, the KR Prosecutor General’s Office developed an anti-corruption action plan.

To ensure transparency, the KR Prosecutor General’s Office focuses on extending cooperation with human rights organizations, particularly by means of concluding memorandums of cooperation between prosecution agencies of all tiers and NGOs and human rights organizations.

In accordance with such memorandums, the parties thereto hold joint meetings on a quarterly basis to discuss cooperation outcomes and to put forward proposals on its improvement.

Such measures enable prosecution agencies to bolster their operational efficiency and transparency, and to boost their capacity to timely detect and suppress crimes, which was facilitated by conclusion of the Memorandums.

More specifically, since the signing of a Memorandum of cooperation with public associations and movements in 2011, the KR Prosecutor General’s Office has held 5 meetings with their representatives to discuss coordination of joint efforts and measures of the government and community control over exercise of anti-corruption measures.

The organization and improvement of the public agencies’ anti-corruption activities is further bolstered by their interaction with a plethora of international organizations in examination of international expertise, obtaining educated assessment, pooling forces to implement pilot projects with NGOs to ensure a closer cooperation, and obtaining legal support and other kinds of assistance.

For example, in December 2012, the KR Prosecutor General’s Office in tandem with the Ministry of Economy held a conference “Implementation of anti-corruption plans”. Co-sponsored by a USAID-UNDP project, the conference became a platform for a public dialogue with the civil society’s participation on countering corruption in education, health care, and in the judicial system. Participants in the event were MPs, heads of government agencies, circa 100 civil society activists and NGO representatives, as well as UN, OSCE, USAID and the Westminster Foundation for Democracy’s staff. The Conference passed a resolution which was submitted to the KR Defense Council for consideration and organization of appropriate arrangements.

With account of public associations’ view, the government has engaged in improvement of the public administration system, bolstering the public agencies’ operational efficiency, with the civil society, expert and business communities having their say in the exercise.

In order to shape effective conditions that mitigate the risk of the rise of corruption in the civil service and increase civil servants’ competencies, a procedure of promotion of the cadres was determined, which provides for promotion standards with account of a civil servant’s education, qualifications and a degree of performance excellence - all basing on

results of his/her assessment. Meanwhile, provisions were introduced to exclude a non-competitive filling of a vacant administrative office (adviser, aid, and consultant) by individuals holding political office.

While a certain progress has been noted in this regard, the measures in question proved insufficient, as citizens have kept facing corruption in public agencies. The situation may change once citizens discontinue perceiving bribe giving as normality. The combat against corruption is possible only provided a vigorous interaction between the government and the society is in place.

To promptly respond to offences, including, in particular, corruption ones, the KR Prosecutor General's Office launched a dedicated web-site, and having faced corruption, anyone can report such a fact thereat. Similar web resources are operated by the ACS and the KR Ministry of Interior.

That said, the pillars of such an interaction should primarily be openness and feedback. As the civil society's petitions and statements on corruption channeled to the law-enforcement agencies mirror, chiefly, the public demand for civil servants and public officials' transparency and openness, public agencies are bound to provide answers thereto.

There undoubtedly were instances of successful interaction between the community and executive agencies in this particular area. Thus, beginning 2012, the KR Ministry of Health Care has held, on a regular basis, anonymous surveys on consumers of territorial health care institutions' services, which underpin appropriate measures the Ministry undertakes to address corruption in its realm.

The KR Ministry of Education introduced a string of measures to eliminate corruptogenic factors in the national educational system. For example, heads of educational institutions were commissioned to regularly hold public hearings and report to the community on how they spend extra budgetary funds. At universities, special boxes for petitions, proposals and comments, as well as hot lines, were installed. Presently, universities no longer can hold examinations and pass-fail exams in any other form but in writing.

It should be noted that in order to promote confidence in the public anti-corruption policy and to create conditions for the community's engagement in the combat against corruption in the society, community liaison offices were established under ACS.

Meanwhile, the analysis of the present situation revealed that corruption in the country has become a part of everyone's *modus vivendi*. It often happens that public agencies force residents into corruption, but residents likewise are keen to resort to corruption means to address their problems. The cause behind this is that the corruption-driven option either proves faster and simpler a way than a non-corruption one, or it becomes the only possible means to solve the problem, due to barriers built by public officials themselves.

There is no dearth of law-enforcement agencies in the Republic to combat corruption. With the KR Law "On combat against corruption" it was the prosecution agencies which were tasked to coordinate activities of law-enforcement, fiscal and other public agencies of the Kyrgyz Republic, public administration and local self-governance bodies on matters of combat against corruption. Within the limits of their competence and authority they perform collection and evaluation of information about the state of corruption in the public administration and local self-governance systems, assess efficacy of measures taken, degree of threats to the national security arising from corruption, and, where necessary, submit appropriate proposals for consideration to the Secretariat of the Defense Council of the Kyrgyz Republic, as well as exercise other powers in the area of combat against corruption established by the KR law.

In connection with that, in order to improve interaction and to bolster agility, the Prosecutor General's Office and territorial prosecution agencies hold Coordination Meetings. At such meetings, they developed strategic avenues for joint activities with regard to combat against corruption in the society, put together joint action plans, and fine-tuned an interdepartmental cooperation.

In April 2013, the Prosecutor General's Office, together with UNDP and the OSCE Center in Bishkek, co-sponsored a Coordination Meeting of heads of all the nation's law-enforcement agencies to discuss the aforementioned challenges. The meeting was attended by representatives of NGOs.

The Coordination Meeting established an Expert Council tasked to prepare materials and draft documents related to the items of the Meeting agenda, and to collect relevant information and to forward it to various government agencies. The Council is formed by representatives of government agencies, law-enforcement authorities, local self-governance bodies, and representatives of NGOs.

The Expert Council is tasked to develop materials and draft documents on specific issues subject to consideration by the Coordination Meeting, to collect and forward appropriate information to various government agencies, to interact with mass media, and to generalize, systematize and evaluate inputs on matters pertaining to combat against corruption.

Besides, as the nation has recently seen the rise of corruption offences with the use of IT, the prosecution agencies together with their law-enforcement counterparts are engaged in a certain operation on employing the Financial Intelligence Service's information resources to monitor and detect corruption schemes of a huge magnitude.

More specifically, this year, the Prosecutor General's Office opened criminal cases on charges of corruption schemes in government agencies. For instance, in the first half-year, while examining borrowings of freed strategic food reserves by the Fund for the State Material Reserves under the KR Government, prosecutors unearthed facts of giving away those products to legal entities and private individuals against security formed by knowingly illiquid assets of a write-up value. Subsequently, naturally, thus given away food stuffs were not returned, while borrowers have dodged their debts.

Presently, main avenues in combat against corruption should become:

- Changing civil servants, businessmen and residents' conscience and shaping a negative attitude towards corruption;
- Precluding corruption actions and punishing for their commitment with the use of law-enforcement, administrative and public procedures, and exposing them through mass media;
- Shaping conditions which preclude corruption actions and facilitate operation of civil servants, businessmen and residents without their engaging in corruption relations, and cultivating zero tolerance on corruption.

The interaction between the state and the civil society to diminish the room for corruption should focus on revolution in the residents, public and municipal servants, and other actors' mind on the one hand, and on combat against corruptogenic manifestations in legal acts and public authorities' operation.

It is establishment of conciliatory relations and promotion of a genuine partnership between the Government, non-for-profit and public structures in the anti-corruption sphere which forms a critical condition of efficacy of anti-corruption activities.

The interaction between the state and the civil society in this regard should be exercised by virtue of attraction of civil society institutions to implementation of anti-corruption

educational programs, organization of expert discussions, facilitation of access to air time on information and telecommunications networks, etc.

The Kyrgyz Republic remains committed to implementation of the OECD recommendations to bring its legislation in consistency with the international standards.

Thank you for your attention!