



Anti-Corruption Network for Transition Economies
OECD Directorate for Financial and Enterprise Affairs
2, rue André Pascal
F-75775 Paris Cedex 16 (France)
phone: (+33-1) 45249106, fax: (+33-1) 44306307
e-mail: Anti-Corruption.Network@oecd.org
URL: <http://www.anticorruptionnet.org>

**Istanbul Anti-Corruption Action Plan
for
Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian
Federation, Tajikistan and Ukraine**

**Review of Legal and Institutional Framework for Fighting Corruption
KYRGYZ REPUBLIC**

Summary of Assessment and Recommendations

Endorsed on 14 December 2004

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General assessment and recommendations

When the Kyrgyz Republic launched substantive reforms of its economic and political system in 1990's, it encountered serious corruption problems in the business sector, government authorities and financial circles. Transparency International's Corruption Perception Index placed the Kyrgyz Republic at the 118th place in 2003 and at the 122nd place in 2004.

According to the draft Status Report, the Kyrgyz Republic is aware that corruption has a corrosive impact on socio-economic development, building of market economy and promotion of investment, and is detrimental to political and public institutions in a democratic state. The Government of the Kyrgyz Republic seemed to recognize that corruption is one of the major threats for the further development of the country. For example, at the March 2003 session of the Kyrgyz Security Council on Measures to Intensify the Fight against Corruption in the Kyrgyz Republic, which was devoted exclusively to corruption and anti-corruption issues, it was recognized that corruption was widely spread in the customs and tax authorities, in the Ministry of Interior and Prosecutor Offices, judiciary, banks and financial credit system of the Kyrgyz Republic, that corruption also took place in health sector, education and social protection. 1522 public officials, including officers of tax and customs authorities, law enforcement agencies, social protection and licensing bodies, officials of the central and local government were brought to justice in 2001-2003. It was admitted by the leadership of the Kyrgyz Republic that the country had not made a considerable progress in overcoming corruption.

Such awareness and public acknowledgement of the seriousness of the problem as well as political will at the highest levels of administration are highly commendable. And it has to be stated, that recently the country made significant efforts in building and strengthening its anti-corruption institutions and the legal framework to prevent and fight corruption.

The President of the Kyrgyz Republic has adopted a set of measures aimed at fighting corruption within the system of public administration. A three-year state programme for intensifying the fight against corruption was approved as early as 1997, and was extended for another three years in 2001. In addition, the plan on implementation of the National Strategy entitled "The Kyrgyz Republic – Country of Good Governance" was adopted in 2003. In December 2003, the Kyrgyz Republic signed the UN Convention against Corruption.

Decision of the Security Council of the Kyrgyz Republic No.2 of 31 March 2003, which has approved the Implementation Plan of the National Strategy "The Kyrgyz Republic – Country of Good Governance", envisaged among other activities forming the strategy for fighting corruption, anticorruption preventive measures in public service and improvement of the anticorruption regulatory and legal framework. According to the Status Report, one of the first practical steps towards the implementation of the Plan was the establishment of the National Council for Good Governance (NCGG) under the chairmanship of the Prime Minister of the Kyrgyz Republic, the main objective of which consists in the elaboration and implementation of concrete measure for the formation and development of an adequate and efficient system of public administration. The National Council for Good Governance was abolished in October 2004 with the intention to carry on improving of the state anti-corruption policy and streamlining the activity of the Consultative Council for Good Governance (CCGG). The new body - the Consultative Council for Good Governance has been established by the Decree of the President of the Kyrgyz Republic in February 2004. The working body of the National Council for Good Governance - Secretariat to the National Council for Good Governance was converted into the Secretariat to the Consultative Council for Good Governance.

It has to be welcomed that legislative authorities of the Kyrgyz Republic have adopted a number of relevant laws, the enforcement of which is monitored by the Committee for Law and Order, the Fight against Crime and Corruption of the Legislative Assembly of Zhogorku Kenesh (Parliament) of the Kyrgyz Republic. Law on the

Fight against Corruption, Law on Civil Service and Law on State Procurement have all been adopted during 2003-2004. Draft Laws on Declaration and Publication of Information on Income and Assets, Liabilities and Property of Political and other Special State Appointees and their Immediate Family Members and Law on Combating Terrorism Financing and Laundering of Profits Acquired by Illegal Means are pending their adoption in Parliament. A draft Law on Access to Information, which will replace the current law, is in a process of negotiation by relevant parties (all branches of power, representatives of NGOs and business).

Investigation of corruption-related crimes is not regulated by any special acts. Criminal proceedings established by the Code of Criminal Procedure are binding on the court, the public prosecution bodies, investigators, and prosecutors, during the investigation of all types of crimes, including corruption-related offences. Investigation of criminal cases is conducted by investigators from the public prosecution offices, bodies of the interior, the National Security Service, financial police, the customs service department, and the Drugs Control Agency and criminal-execution system of the Ministry of Justice. The Code of Criminal Procedure establishes the jurisdiction of cases, i.e. determines which investigation authorities shall investigate the crimes envisaged by different articles of the Criminal Code. The law does not envisage any special methods of detecting and investigating crimes in the sphere of corruption.

Nevertheless, in pursuance of the Concept of Development of the Public Prosecution Bodies of the Kyrgyz Republic until the year 2005, approved by Presidential Edict of the Kyrgyz Republic No.101 of 21 March 2003, the Prosecutor General of the Kyrgyz Republic issued Order No.10 of 12 June 2003, setting up an investigation supervision office for monitoring the investigation of corruptive crimes and encroachments on the national security at the department for investigation control. It is not clear from the Status Report whether this office has become operational, but on the basis of the same source it can be concluded that measures taken by the public prosecution authorities to ensure effective control over the investigation of corruptive offences already contribute to the strengthening of the capacities of law-enforcement bodies against corruption. In the exercise of supervisory powers in 2004 with the view to ensure lawfulness of investigation of official crimes, the public prosecutors have cancelled 466 illegal decisions on initiation or refusal to initiate criminal proceedings, termination of criminal cases or suspension of investigation, detected and registered 74 previously unregistered and concealed crimes. According to the report, Prosecutor General's inspections have uncovered the facts of gross violations during the application of the legal provision on early discharge. According to preliminary data gathered during the inspection of judicial decisions in the Chuya region, more than 30 people sentenced for committing grave and especially grave crimes, including murder, plunder, robbery, drugs-related offences, were released on parole last year after having served an insignificant part of their sentence. This suggests corruption of the chiefs of corrective facilities, judges, and public prosecutors. The Prosecutor General's Office and the Supreme Court of the Kyrgyz Republic are engaged in examination of this problem in order to determine the measure of responsibility of judges, colony chiefs, and public prosecutors involved in corruptive offences in this sphere.

The Kyrgyz authorities are describing the status of criminal cases related to bribery as particularly alarming. Despite the fact that bribery is a highly latent crime, during 2003 only 88 criminal cases against 97 persons were fully investigated and referred to court (23 cases against 26 persons by the public prosecution authorities). In this context, evident discrepancy between the actual level of corruption in the country and the prosecution and conviction rates for bribery and corruption-related offences remains a matter of serious concern.

The description from the Status Report indicates a very complex and fragmented system of detection, investigation and prosecution of corruption and corruption-related offences. One of solutions could be the simplification of Kyrgyz investigative proceedings – however, with due regards to international human rights standards of fair trial. As a priority, the country should undertake measures for consolidating efforts on the repressive side of in the fight against corruption.

Specific recommendations

1. *Update National Anti-Corruption Strategy of the Kyrgyz Republic, on the basis of the evaluation of the implementation of the current anti-corruption programmes, with the aim to unify multiple documents into a single comprehensive strategy.*
2. *Ensure strengthening institutional support for the public policy elaboration and monitoring in the field of fighting corruption; in the short term, this can be done through the Consultative Council for Good Governance and its Secretariat; in a longer term consider further consolidation and strengthening, taking into account experience of other countries with specialised independent anti-corruption agencies.*
3. *Carry out the inventory and analyse existing functions of the law-enforcement bodies involved in the fight against corruption with the view to further consolidate and specialise them. The coordination function currently implemented by the Prosecutor General Office should be strengthened. Furthermore, provide adequate resources for the enforcement of anti-corruption legislation.*
4. *Conduct further surveys and relevant research, based on transparent internationally comparable methodology, to obtain more precise information about the scale of corruption in the country and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.*
5. *Conduct awareness raising campaigns and organize training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.*
6. *Ratify the UN Convention against Corruption.*
7. *Upgrade monitoring and reporting of corruption and corruption-related offences on the basis of a harmonised methodology. Ensure the provision of regular information to the Consultative Council for Good Governance, covering all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions.*
8. *Continue with efforts in the area of corruption-specific trainings for police, prosecutors, judges and other law enforcement officials; consider providing joint training for these bodies on the fight against corruption.*

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

General assessment and recommendations

The Criminal Code of the Kyrgyz Republic has a number of provisions criminalizing active and passive bribery and other corruption and corruption-related offences. However, the scope of the criminalized acts does not fully meet the requirements of international anti-corruption standards (as enshrined in the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

For example, the Kyrgyz Republic has criminalized active and passive bribery in the public sector in its Criminal Code as follows: Articles 310-314 establish as criminal offences i) "receiving a bribe as remuneration" (without a preliminary agreement), ii) "receiving a bribe as subornation" (with a preliminary agreement), iii) "receiving a bribe for giving a position in the public (state) sector", iv) "solicitation of a bribe", and v) "giving a bribe".

Under those articles a subject of a bribe is limited to material benefits, and does not cover non-material advantages as a type of undue advantages stipulated by the UN Convention against Corruption. The only exception is a bribe received with preliminary agreement (article 311), the subject of which extends to one non-material benefit which is “a general support to career or tolerance to undue service”.

It seems that the only receiving/giving a bribe by/to the official or his relatives and “close persons” (as it is interpreted by the Guidance of Supreme Court of 27.9.2003) is covered by the Criminal Code, while undue advantages for “another person or entity”, as it is required by the UN Convention against Corruption, are not criminalized.

The promise and offering a bribe is not criminalized either, although this type of a conduct under some circumstances can be qualified as an attempt to give a bribe.

Article 303 establishes also “corruption” as a criminal offence, which extends a subject of corruption to all undue advantages. However, due to a very vague and unclear definition of corruption, this article has never been applied in practice.

The notion of “public official” (as defined in article 304) includes a wide range of persons holding legislative, administrative and judicial office. However, it is limited to the public officials of the Kyrgyz Republic and foreign and international public officials are not covered.

Trading in influence is criminalized only partially by article 310 of the Criminal Code, second part of which provides for a liability for receiving by a public official of a bribe for committing an illegal action, and article 304, which provides for a criminal liability for commission by a public official of actions going beyond the limits of powers granted to him/her by law, “which has caused significant violation of rights and legitimate interests of citizens or organizations or the interests of the society and the state protected by law”.

It also needs to be highlighted that the Criminal Code includes a number of incriminations related to abuse of official bodies; however, those are often overlapping and such adjacent crimes as “abusing official powers” and “excess of official powers” – lack of precision in legal definitions that can result in interpretative confusion and problems of enforcement.

Illicit enrichment, i.e. significant increase in the assets of a public official that he/she can not reasonably explain in relation to his/her lawful income, is not criminalized in the Kyrgyz Republic.

Active and passive bribery in the private sector is criminalized by article 224 and 225 of the Criminal Code, although the subject of bribery is limited only to material benefits, and the promise and offering of a bribe is not criminalized.

Furthermore, it has to be noted that the Law on the Fight against Corruption defines corruption as a criminal offence differently than the Criminal Code and gives a different definition of a public official. The Criminal Code enumerates more than 35 offences that can be associated with bribery or corruption related offences (e.g. Articles 178, 181, 185, 187, 188, 193, 194, 205, 207, 210, 214, 217, 218, 219, 220, etc.). On the other hand, the Law on the Fight against Corruption excessively narrows a circle of crimes falling under the standard concept of corruption to only a handful of offences. Consequently, the concept of corruption and the list of the corruption offences from that law not only reduce efficiency of law enforcement, but also skew the statistics of corruption. Additionally, inconsistencies can be observed between the Law on the Fight against Corruption and the legislative framework regulating declaration of assets and conflicts of interest and limits a number of transgressions to disciplinary, rather than criminal sanctions. Further, some provisions of the law, such as “illegal enrichments” are not backed by sanctions, as there are no corresponding provisions in the Criminal Code. It can be concluded, that the Law on the Fight against Corruption appears to be quite declarative and not applicable in practice. To be applicable in practice the provisions of the said law, as well as any domestic law, which provides for criminal or administrative liability, must be included in the Criminal Code or Code on

Administrative Liability in accordance of articles 1 paragraph 2, article 5 paragraph 1 of the Criminal Code and article 6 of the Code on Administrative Liability.

The criminal legislation does not envisage criminal responsibility for legal entities for participation in the offences, including corruption offences. It seems that administrative liability, monetary sanctions and/or civil liability for legal persons for the corruption offences committed by representatives and/or employees of legal persons are not stipulated by laws either. The lack of liability of legal persons creates a risk that the bribing side cannot be held responsible, when no individual briber can be clearly identified. Besides, it can lead to unbalanced decisions when an individual is the only responsible for actions that are carried out in the interest of the employer; punishing only an individual will not encourage companies to fight corruption within their ranks.

Gaps can also be identified in the legal framework of the Kyrgyz Republic governing the confiscation of proceeds from crime, including proceeds from corruption. The law should enable to confiscate proceeds of crime in monetary form, or, if not possible, in other form with equal value; any additional yields from proceeds should be confiscated as well. Proceeds should be confiscated from third person, i.e. when the bribe taker has hidden them to relatives or other trustworthy persons. The report does not elaborate on the interim measures available at the stage of investigation for the purpose of confiscation at a later stage. In addition, the Kyrgyz Republic could explore possibilities to check unexplained wealth/illicit enrichments, under proper checks and balances in accordance with international practices, and to seize or confiscate such wealth if it is determined to have been acquired as a result of illicit income.

The Criminal Procedure Code (article 88, paragraphs 1 and 4) provides for obligatory confiscation of proceeds derived from any offences and of instruments of crime which belong to an offender; while the Criminal Code (article 52, paragraphs 1 and 2) stipulates that confiscation of instruments and proceeds of crime (property of a convicted which “used in, or destined for use in, or derived from an offence”) can be imposed only for grave and particularly grave offences. It appears that in accordance with the law (article 142 of the Criminal Procedural Code) law enforcement authorities are obliged to identify, trace and seize proceeds and instrumentalities of crime only under the above conditions and, also, when an offence caused damage. It has to be noted that Criminal Code and Criminal Procedural Code use different language defining proceeds and instrumentalities of crime.

Neither the said Codes, nor the draft Law on Fighting Financing of Terrorism and Laundering of Proceeds of Crime provide for confiscation of i) property into which proceeds of crime have been transformed or converted; ii) property with which proceed of crime have been intermingled; iii) income derived from i) and ii), as well as from proceeds of crime. The Kyrgyz legislation does not provide either for a reversal of onus of proof regarding the lawful origin of alleged proceeds of crime or other property liable to confiscation.

The Criminal Procedure Code (article 88 paragraph 5) provides for obligatory confiscation of a subject of bribery. The Supreme Court of the Kyrgyz Republic in its Guidance # 15 of 27 September 2003 ruled that a subject of bribery must be confiscated even when a bribe-giver is exempted from criminal liability in bribe-extortion cases or in cases when he/she voluntarily informed law enforcement authorities about giving a bribe. According to law enforcement authorities, the above provisions lead to the present situation, when persons who give bribes or who forced to give bribes, refrain from reporting bribery cases to law enforcement authorities and do not cooperate with them. Both, prosecutors and law enforcement officers stated that there was an urgent need to amend the above provisions and exempt from confiscation subjects of a bribery given under the mentioned circumstances.

The Kyrgyz laws (On Commercial Secrecy, On Bank Secrecy, On Banks and Banking Activity) limit investigative bodies from accessing bank records before a criminal proceeding is officially initiated. The present situation is described by law enforcement authorities as a “vicious circle”, which prevents the obtaining of evidence in any alleged financial crimes, including bribery and corruption. According to article 150 of the

Criminal Procedure Code, there must be a cause and a ground for official commencement of a criminal proceeding. However, quite often these cause and ground can be found only through accessing bank records.

Moreover, it has to be noted that the Law on Banks and Banking Activity does not correspond to the Law on Bank Secrecy with regard to the authority, which gives a sanction for accessing bank records, as the Law on Banks and Banking Activity (article 55) allows laws enforcement authorities to access bank accounts of physical and legal persons under a sanction of a prosecutor, while the Law on Bank Secrecy (article 10) allows it only under an act of a court.

The President, ex-Presidents, members of Zhogorku Kenesh (Parliament) and judges enjoy immunity. The draft status report does not clarify the process of lifting these immunities, except for judges, where consent of the Parliament is necessary. However, immunities, which given to the President, Deputies (Members) to Parliament and judges, seem to be balanced, although this issue has to be assessed further. Members of Parliament and judges can not be detained or arrested, exposed to search except the cases when “they are caught red-handed”. Institution of criminal or administrative proceedings against a Member of Parliament or a judge is allowed only with the consent of Parliament.

A decision to initiate a criminal case or refuse from its initiation has to be taken within a three-day term, only in exceptional cases this period shall not exceed 10 days. This decision is taken by an investigator or a public prosecutor. This very short period raises concern if it allows for sufficient time to consider all aspects for taking this decision. A public prosecutor can override the decision of an investigator on terminating a criminal procedure.

The Criminal Procedure Code does not envisage special investigative methods and techniques. Certain investigative capacities are important to strengthen the possibilities of detecting corruption, e.g. interceptions of communications and protection of witnesses. The Kyrgyz Republic should consider providing the legal basis and financial resources for those capacities considered necessary in corruption cases.

The Kyrgyz Republic has not yet adopted a comprehensive legislation to protect witnesses, experts, victims, and reporting persons in regard to any offences, including corruption offences. A few provisions contained in the Criminal Procedural Code, Laws on Operative and Detection Activity and on Fighting Corruption do not provide for effective mechanism of such a protection. Draft Law on protection of witnesses, experts and victims presented to the Parliament last year was sent back for revision, and currently the working group headed by the Service of National Security has been working on the draft.

Specific recommendations

9. *Amend the provisions related to corruption offences to meet the requirements of international standards as enshrined in the Council of Europe’s Criminal Law Convention on Corruption, the United Nation’s Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Consequently, amend the Criminal Code to ensure that:*
 - *corruption-related conduct, including bribery, of foreign and international public officials is criminalized, either through expanding the definition of a public official or by introducing separate criminal offences;*
 - *promise and offering of a bribe, both in public and private sector, is criminalized;*
 - *subject of a bribery, both in public and private sector, covers undue advantages, which include material as well as non-material benefits;*
 - *bribery through intermediaries is fully covered;*
 - *clarify the definitions of corruption-related offences in the sphere of abuse of official duties and powers and ensure precise legal definitions which would not invoke interpretative difficulties;*
 - *“Concealment”, “abuse of functions”, illicit enrichment”, as they are defined by the UN Convention against Corruption, are criminalized.*

10. Consider significantly revising the Law on the Fight against Corruption along the following lines:
 - harmonise and clarify the concept of corruption from the Criminal Code and the Law on the Fight against Corruption;
 - remove contradictions between this law and other laws and codes, in particular in the field of declaration of assets, confiscation of property and illicit income;
 - introduce provisions that would enable actual enforcement of the law.
11. Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, the Kyrgyz Republic should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption-related criminal offences.
12. Consider amending the Criminal Procedure Code, the Criminal Code and the draft Law on Fighting Financing of Terrorism and Laundering of Proceeds of Crime to ensure that the definition of proceeds of crime, which are subject to confiscation, includes i) property into which proceeds of crime have been transformed or converted; ii) property with which proceed of crime have been intermingled; iii) income derived from i) and ii), as well as from proceeds of crime.
13. Amend the provisions of the Criminal Code and Criminal Procedure Code concerning the definition of proceeds and instrumentalities of crime to bring the provisions of both Codes in compliance with each other and the UN Convention against Corruption.
14. Consider introducing in the legislation the provision requiring an offender to prove the lawful origin of alleged proceeds of crime or other property liable to confiscation.
15. Review the provisions of the Criminal Procedure Code to ensure that the procedure to identify, trace and seize proceeds and instrumentalities of corruption offences are efficient and operational.
16. Bring in compliance with each other the Law on Banks and Banking Activity and the Law on Bank Secrecy with regard to the authority, which gives a sanction for accessing bank records. Consider giving the right to access bank records before criminal proceedings are officially instituted, subject to either a court or a prosecutor order.
17. Introduce effective law on protection of witnesses, experts, victims, and reporting persons.
18. Consider introducing amendment to the Code of Criminal Procedure to ensure that extradition and mutual legal assistance are given on reciprocity basis and contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.
19. Ensure that the immunity granted to certain categories of public officials does not prevent the investigation and prosecution of acts of corruption.
20. Study special investigation techniques for fighting corruption, consider introducing the legal basis for these techniques and methods in the Criminal Procedure Code - with due regards to international human rights standards - and secure funding for implementation of witness protection programmes.

III) TRANSPARENCY OF THE CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

General assessment and recommendations

The Kyrgyz Republic has introduced basic laws and regulations necessary for the development of a merit-based public service. Thus the joining of public service is carried out in the form of participation in a competition, which is of key importance for merit-based recruitment.

The position of state secretaries plays a key role in the functioning of the civil service of the Kyrgyz Republic. Like all prospective administrative civil servants, candidates to the post of state secretaries face competition and assessment of their suitability for the positions in question. However, the appointment of state secretaries has a political aspect to it. Although candidates to the positions of state secretaries are considered “given their professional and personal qualities, existing work experience and managing skill”, they are actually appointed and dismissed by the Prime Minister and consent of the head of a corresponding public body is required.

Also the system of the civil service personnel reserve may in practice present an unnecessary obstacle to potential qualified candidates to join the public service. Since conditions for entrance in the reserve may prove somewhat arbitrary (e.g. civil servants claiming promotion may enter the reserve upon recommendation of the head of a public body and with consideration of opinion of the state secretary of a public body but the law does not state criteria for when and whether a civil servant is entitled to receive such recommendation), the reserve contains a risk that qualified individuals are kept outside the reserve for reasons, which are unrelated to their professional capacities. Meantime it should be stressed positively that the procedure for the dismissal of administrative public servants is in principle made independent of changes in political public service positions.

Another element, which may in practice question the comprehensive functioning of a merit-based public service, is the possibility to fill administrative public service positions with advisors, assistants and consultants to political public servants and political public servants with terminated authority without participation in the process of competitive selection.

The Kyrgyz Republic deserves praise for the introduction of both declaration of assets of public servants and closest members of their families as well as a prohibition on the conflict of interests. However, the system of declarations still appear to be overly complicated (there is one declaration for administrative public servants and another for political public servants), the definition of the circle of closest relatives differs for political and administrative officials, and the declarations appear not to provide all the information, which is necessary for the control of conflict of interests (apparently not all officials have to declare positions in private organizations and companies, ownership in companies, objects such as vehicles or real estate in use rather than in property). Also it remains unclear whether it will be possible to control the declared information with sufficient rigour. The Agency for Civil Service accepts and reviews declarations. However, this agency does not appear to have sufficient powers to control the correctness of information provided in the declarations, e.g. authority to request information on bank accounts.

Kyrgyz legislation contains the definition of the conflict of interests and a prohibition thereof. The duty to report conflict of interest rests with the official in question. However, since the Agency for Public Service has a broad range of functions including a general function to monitor compliance with the legislation in the civil service, there is a risk that the Agency is unable to focus sufficiently on the control of conflict of interest.

Kyrgyz legislation includes a highly relevant duty for all public servants to engage in the fight against corruption. Moreover it must be noted positively that persons reporting a fact of corruption or rendering another form of support in the fight against corruption are guaranteed protection by the state – information about such persons constitutes state secret. Meantime the statutory responsibility for persons who intentionally report false information on manifestations of corruption contains a risk of abuse because, due to difficulties to prove the facts of corruption, reports thereof may be misleadingly portrayed as intentionally false.

A new Law on Public Procurement (state purchases) that was carried out in the framework of recommendations of World Bank, World Trade organization and European Council was adopted in the Kyrgyz Republic in 2004. The main institution, responsible for the implementation of the law is a special State Commission on State Purchases which is responsible for the normative legal regulating organization and realization of purchases, the coordination and regulation of activities of different state bodies in the process of public procurement as well as control over the realization of the Law on Public Procurement. The Commission publishes weekly bulletins of state purchases, including information on future purchases and tender prices of products, jobs and services, etc.

It seems that the Law on Public Procurement and implementing regulations adopted within its framework correspond to the international standards in this field. The Kyrgyz Republic also possesses independent institutional structural departments under State Commission on State Purchases and its territorial agencies, which are considered to be the important condition to coordinate and control the activity of state bodies in this sphere.

However, some gaps can be identified. Article 17 of the mentioned Law makes no provisions for electronic purchases. It is also urgent to establish thoroughly the cases of realizing the public procurement from the single source as this kind of purchase form limits the capabilities of the organizations to participate in the purchase and may cause state bodies to prefer certain organizations that offer their service. Additionally, it may be a problem that extra-court appeal procedure is possible only before the tendering commission makes a final decision. There might be a stage (some days) between decision and signing of a contract when complaints could be submitted. This would be particularly important in cases where the final decision itself is subject to appeal.

In the Kyrgyz Republic the responsibilities for the financial control and state audit are vested with the Chamber of Accounts which is considered to be the highest body of the state audit, and the department of internal audit of the ministry of treasury, basic function of which is organization and realization of internal control of treasury of territorial bodies. From the normative perspective the Law on Chamber of Accounts of the Kyrgyz Republic secures the independence of the auditors and is in line with the international standards.

As far as the financial control in the system of executive authority and internal audit is concerned, the information provided in the Status Report does not allow for an objective assessment.

The separate problems of tax and customs bureaucracy are governed by the Revenue Committee Legislation under the Ministry of Finance in the Kyrgyz Republic. The main functions of the committee in the spheres of fighting against corruption are the consideration of applications, suggestions, and appeals of citizens and legal entities, the struggle against contraband, the disciplinary prosecution for the legislation infringement committed by the officials of the committee, the accomplishment of control with regard to officials' activity and etc. The administration on staff and ethics has been established for corrupt activity's facts investigation and which is authorized to organize and to arrange measures for the removal of causes assisting the official infringement of the law, for the officials' abuse prevention, and also the revelation and the prevention of possible facts of corruption. The prevention of inner corruption in the system of tax and customs is also accomplished at the expense of employee's periodic rotary process.

The existence of a special sub-unit in the Revenue Committee structure has a very important meaning in such vulnerable spheres for corruption as tax and customs. At the same time it is not clear enough from the report whether that sub-unit is authorized to accomplish the investigations of tax and customs crimes or there is another separate department in the system.

It is not clear from the report if there is an electronic procedure of tax accounts' presentation and customs transactions' accomplishment. In order to prevent any corruption phenomena in the sphere of tax and customs bureaucracy, it is necessary to inculcate electronic systems of tax payments and customs registrations. It will

give an opportunity to minimize the possibilities of direct contact between the taxpayers, goods carriers and public bodies and it reduces the corruption risk and possible cases of power abuse.

The Kyrgyz Republic has a Law on Guarantees and Freedom of Information Access, which contains essential provisions for access to information. In principle the state has a duty to provide information on request (except information not subject to public disclosure). However, as far as can be seen from the Status Report, the law does not delineate concretely what information is not subject to disclosure. The filing of an application or complaint for purposes of slander entails responsibility according to the law. This appears to be an overly deterring and potentially abusive norm as it may deter people from making real complaints particularly when it is difficult to prove the relevant fact to a sufficient degree.

The Kyrgyz Republic has introduced highly commendable amendments to the Law on Regulatory Legal Acts of the Kyrgyz Republic, which are aimed at ensuring free public access to draft regulatory legal acts under development. This allows civil society actors and any other interested parties to contribute to the development of legal acts.

The Kyrgyz Republic has legal provisions for political party/candidate financing, which are aimed at limiting the influence of narrow money-based interests. The law requires political parties to submit annual reports and provides for special election funds for candidates. There are statutory limits for money, which may be contributed to the election funds by particular groups of persons/sources (i.e. limits on contributions), and limits on the overall expenses of a candidate. However, the political party financing system seems to be insufficiently transparent, as the annual reports of political parties are not disclosed to the public. There are also no provisions against incumbent candidates using the administrative resources, which are available to them as public officials, for campaign purposes.

The Kyrgyz Republic has a very limited legal framework against money laundering. Money laundering is not criminalized and the preventive legislation has not been introduced yet. The Kyrgyz Republic has no financial intelligence unit either. The concealment or continued retention of property, when committed intentionally after the commission of offences stipulated by the UN Convention against Corruption without having participated in such offences, when the person involved knows that such property is the result of these offences, are not criminalized. Article 35 of the Criminal Code provides for a criminal liability for concealment of, *inter alia*, objects obtained by illegal means only in the cases specifically stipulated by the Criminal Code. In particular, the Criminal Code criminalize in article 177 only intentional acquiring or selling of criminal assets, including assets obtained as a result of committing corruption offences.

Legalization of money, assets or other property knowingly derived from an illegal conduct (i.e. all kinds of unlawful activities) is criminalized as a separate offence under article 183 of the Criminal Code. This article does not cover all elements of the “money laundering offence” stipulated by the Convention and other international instruments. Moreover, this article had never been applied in practice.

A Financial Intelligence Unit (FIU) has not been established yet; banks and other financial institutions have no obligation to report suspicious transactions to the authorities.

However, the draft Law on Fighting Financing of Terrorism and Laundering of Proceeds of Crime and relevant amendments to the Criminal Code and Code on Administrative Offences are currently pending its adoption in Parliament. The drafts bring the definition of the “laundering of proceeds of crime” offence in line with the international instruments and provide for the creation of a FIU. All criminal offences stipulated by the Criminal Code are predicative offences to money laundering in accordance with the drafts.

Specific recommendations

21. *Strengthen recruitment and promotion process to the civil service by enhancing the significance of objectively verifiable and merit-related criteria and limiting to the extent possible opportunities for discretionary decisions. Reconsider the necessity of internal and national reserves, which may provide advantages for insiders as opposed to outside candidates.*
22. *Provide mechanisms of permanent control over the implementation of the Laws on Public Service, on Disclosure and Publication of Income and Property of High Officials and Members of their Families, and on the Fight against Corruption.*
23. *Streamline the system for the public disclosure and control of the income and assets declarations of all public officials; study and employ the experience of other countries that have been successful in this area. Explore possibilities to expand the circle of relatives of public officials who are required to submit income and assets declarations.*
24. *Explore possibilities for an electronic system of public procurement purchase realization in order to enhance the transparency of state purchases. Information on state purchases, except for narrowly defined information subject to state secrets, should be available for the public.*
25. *Limit the possibilities of state purchases from the single source.*
26. *Introduce internal auditing in the system of executive authorities in order to reveal corruption as well as to stipulate free and permanent collaboration of bodies that provide financial control and audit.*
27. *Government held information, which is not subject to disclosure, should be delineated as concretely as possible in the law (rather than in any internal documents, instructions and the like), the discretion of public officials as to what constitutes such information should be limited to the maximum extent feasible.*
28. *Ensure that the information provided in non-public complaints cannot be used for unjustified prosecutions for slander. Introduce additional measures to increase the protection of the citizens making complaints and proposals to the public bodies on issues of corruption.*
29. *Expand the application of permanent forms of cooperation (institutionalized councils and the like) between NGOs and the broader public on the one hand and public agencies on the other hand. Institutionalized councils where public officials are present but only NGOs/associations have voting powers are one potentially effective option for ensuring the free expression of public concerns. The decisions of such councils bear advisory character for public agencies. Develop a procedure for the permanent involvement of civil society (not only those represented by particularly active interested NGOs) in policy making.*
30. *Make sure that financial reporting of parties and candidates reflect actual situation adequately. Make sure that agencies in charge of party/candidate/campaign financing control operate with maximum public accountability (including vis-à-vis the civil society) to ensure that no opportunities exist to discriminate against some parties/candidates, make sure that funds used for campaigns are acquired and spent in a transparent manner. Define the notion of “administrative resource”, which is used by incumbent candidates in their campaigns, and prohibit the use of this “administrative resource”. Annual financial reports of political parties shall be not only submitted but also published. Financial reports must be introduced and published also for election funds.*
31. *Introduce legislation that fully covers the international standard as to combating money laundering, namely, as to criminalize the laundering of proceeds of crimes, including corruption. Adopt preventive legislation that, among other measures, establishes a financial intelligence unit.*