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

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews
of Legal and Institutional Frameworks for the Fight against Corruption**

THE KYRGYZ REPUBLIC

MONITORING REPORT

Adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan
on 27 September 2007 at the OECD Headquarters in Paris

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GLOSSARY

ACN	- Anti-Corruption Network for Eastern Europe and Central Asia (also known as Anti-Corruption Network for Transition Economies)
CPI	- Corruption Perceptions Index (by Transparency International)
FIU	- Financial Intelligence Unit
GDP	- Gross Domestic Product
KGS	- Kyrgyz Som (1 USD = 38 Som)
NAPC	- National Agency for Prevention of Corruption
NGO	- Non Governmental Organisation
OECD	- Organisation for Economic Co-operation and Development
OSCE	- Organization for Security and Cooperation in Europe
PEP	- Politically Exposed Persons

BACKGROUND

This **monitoring report** presents the assessment of the measures taken by the Kyrgyz Republic to implement the recommendations for reforming its anti-corruption legislation and institutions received in December 2004 under the OECD Istanbul Anti-Corruption Action Plan. The report is structured along the recommendations: for each recommendation it analyses taken measures and assesses the implementation as fully, largely, partially or not compliant. The report is structured in three parts:

- National Anti-Corruption Policy, Institutions and Enforcement,
- Legislation and criminalisation of corruption and the related money-laundering offence,
- Transparency of the Civil Service.

The report was prepared by the team of examiners and edited by the OECD Secretariat. The **team of examiners** was led by Daniel Thelesklaf (Financial Integrity Network, Switzerland), and comprised Mari-Liis Liiv (Ministry of Justice, Estonia), Jaroslavs Strelchenoks (of Corruption Prevention and Combating Bureau (KNAB), Latvia); and Bostjan Penko (Supreme Prosecutor's Office of Slovenia). The OECD Secretariat was represented by Olga Savran, Anti-Corruption Division.

The report was prepared on the basis of the answers to the Questionnaire provided by the Kyrgyz authorities on 26 February 2007, the information gathered during and immediately after the **on-site visit to Bishkek** on 16-21 April 2007. During the on-site visit the team of examiners held meetings with several government and public institutions involved in the fight against corruption, which were organised by the Kyrgyz authorities. Examiners also met with non-governmental organisations and business representatives. Finally, examiners participated in a panel with foreign missions and representatives of international organisations and international financial institutions. The two last meetings were organised with the assistance of the OSCE (a list of meetings is set out in Annex I).

The draft of the monitoring report was presented for discussion at **the meeting of the Istanbul Anti-Corruption Action Plan**, which took place on 26-28 September 2007 at the OECD Headquarters in Paris. The discussion took place in a form of bilateral consultations between the team of experts and the official delegation of the Kyrgyz Republic, and at the plenary session, which brought together all the countries and organisations participating in the Istanbul Action Plan, including the non-governmental organisations. The final version of the report was adopted on 27 September 2007.

Box 1: The Istanbul Anti-Corruption Action Plan

The Anti-Corruption Action Plan for Azerbaijan, Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed in the framework of the Anti-Corruption Network (ACN) in September 2003, in Istanbul. The ACN Secretariat, based at the OECD Anti-Corruption Division, provides support for the implementation of the Action Plan. An Advisory Group provides guidance on the implementation of the Action Plan.

The implementation of the Istanbul Action Plan includes several phases: review of legal and institutional framework for fighting corruption; implementation of the recommendations endorsed during the reviews; and monitoring progress in implementing the recommendations.

In September 2003 the Advisory Group endorsed the Terms of Reference for the reviews of legal and institutional frameworks for fighting corruption in the Action Plan countries based on self-assessments reports prepared by their governments. The reviews of Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Tajikistan and Ukraine have been completed in 2004-2005. The review of the Russian Federation has not been completed yet. The recommendations are made public.

In May 2005 the Advisory Group endorsed the Terms of Reference for the monitoring of implementation of recommendations. The objective of the monitoring is to assess progress achieved by each country in implementing its recommendations. It does not aim to amend endorsed recommendations or to formulate additional ones, but to assess how the measures taken by the country comply with the recommendations. The monitoring consists of: (i) regular *progress updates* by countries; and (ii) *country examinations* by peers. In the framework of *progress updates*, countries are invited to submit their written updates about the national actions to implement the recommendations, which were taken since the previous meeting of the Istanbul Action Plan, approximately twice a year.

In the framework of *country examinations*, which are organised at least once for each country, the governments are invited to provide answers to a detailed questionnaire. A team of monitoring experts from other ACN countries visits the examined country and holds meetings with the public authorities involved in the fight against corruption, civil society and business representatives, foreign and international missions based in the countries, in order to form an objective opinion about progress made. The team of experts prepares its draft monitoring report, including ratings for each recommendation. The draft report is provided to the monitored country for comments. Next draft, which takes account of these comments, is presented to the meeting of the Istanbul Action Plan for discussion and adoption. Upon the adoptions monitoring reports are made public.

First round of *country examinations* is under way. It has examined Tajikistan, Georgia and Azerbaijan at the meeting of the Istanbul Action Plan in June 2006, and Ukraine and Armenia in December 2006, and Kyrgyzstan and Kazakhstan in September 2007.

For more information, please consult the following websites: www.oecd.org/corruption/acn.

MAIN FINDINGS

The Kyrgyz Republic is currently living through a period of political instability, which involves constitutional changes and re-election of the Parliament. Corruption was one of the main reasons, which caused public discontent and led to the current situation. While it is difficult to implement substantial reforms in such conditions, it is vital for the government to strengthen the rule of law and to step up the fight against corruption. Systemic anti-corruption reforms must be pursued and further strengthened, and declared anti-corruption policies and measures must be supported by substantive actions.

National Anti-Corruption Policy, Institutions and Enforcement

Within recent years the Kyrgyz Republic has put efforts in anti-corruption activities. In 2006 the President adopted the State Anti-Corruption Strategy for 2006-2010. To support the implementation of the Strategy, an Action Plan for 2006-2007 was developed. Recently a new Action Plan was drafted for the years 2008-2010. However, it appears that the implementation of the Anti-Corruption Strategy has been modest: the assessment of the implementation of the Action Plan for 2006-2007 has not been completed, and the adoption of the new Action Plan is pending. It is important to intensify the implementation of the Anti-Corruption Strategy and to adopt the new Action Plan. There should be a clear mechanism to evaluate the implementation of the Strategy and its Action Plans, which should involve civil society.

In the area of institutional reform, the Kyrgyz Republic has established the National Agency for the Prevention of Corruption in 2005. The establishment of this Agency was a major step forward to strengthen the institutional support for anti-corruption activities in the country. But the Agency remains very weak: it lacks political support and has little influence among state authorities; it suffers from low budget and poor cooperation with other public institutions and law enforcement agencies. It is very important for the Government to strengthen the Agency's capacity and for the Agency to focus on the implementation on its primary goal – development and implementation of corruption prevention measures.

In the sphere of law enforcement, unclear division of responsibilities, duplication of tasks and lack of coordination between various law-enforcement bodies responsible for the fight against corruption remain the main obstacles for prosecution of corruption. Professional corruption-specific training for law enforcement officers has been limited and uncoordinated. Therefore it is vital for the Kyrgyz Republic to clarify the responsibilities of different agencies responsible for combating corruption, improve their coordination and provide regular and practical corruption specific training to them.

While the Kyrgyz authorities appear open for cooperation with civil society in the area of anti-corruption policy, this work needs to become systematic and substantial. The anti-corruption awareness raising campaigns have been incidental, lacking sustainability, clear target group and vision for the future. Anti-corruption training for the officials and for the civil society and business representatives were sporadic and inconsistent. No comprehensive sociological study on extent of corruption in the society, which takes into account the opinions of ordinary people, has been carried out so far. There have been some efforts to systematise corruption statistics, however, methodology for collection and analysis of data about corruption related cases needs further improvements.

The Kyrgyz Republic ratified the United Nations Convention against Corruption in 2005 – an action which received a very positive assessment in this report. However the Convention is not implemented in

full, because the Kyrgyz authorities did not take any measures to bring the Kyrgyz laws in compliance with the requirements of the Convention. Without delay, the Kyrgyz Republic must bring its legislation into compliance with the UN Convention against Corruption.

Legislation and criminalisation of corruption

The Kyrgyz authorities have not yet fulfilled recommendations to amend significant number of substantive criminal provisions related to corruption offences in order to meet the requirements of international standards as enshrined in the Council of Europe's Criminal Law Convention on Corruption, the United Nations Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

A draft Law on Amendments and Additions to the Criminal Code testifies of considerations in the right direction; however it cannot contribute to upgrading the level of implementation of those recommendations aimed at de jure changing and amending legislation. By the same token provisions of the Criminal Code and Criminal Procedure Code concerning the definition of proceeds and instrumentalities of crime have not yet been amended and brought in compliance neither with each other nor with the relevant provisions of the UN Convention against Corruption. In addition contradictions between the Law on the Fight against Corruption and legislation dealing with declaration of assets, confiscation of property and illicit income have not yet been removed.

With respect to the issues dealing with liability of legal persons for corruption-related criminal offences, introduction of special investigative methods and techniques in the Criminal Procedure Code, revision of the provisions dealing with identifying, tracing and seizing proceeds and instrumentalities of corruption-related criminal offences and to a certain extent also the introduction of a provision dealing with illicit enrichment, there has been no indication whatsoever that these important issues have been carefully and thoroughly studied or considered, as recommended. There is in fact neither a working paper nor a draft law existed to evidence arguable and substantive expert discussions among the Kyrgyz governmental bodies and within its legal community, with the aim to introduce proper legal basis for these institutes in the criminal legislation of the Kyrgyz Republic.

Possible abuses of the institute of immunity in order to prevent investigation and prosecution of corruption-related offences remain issues of concern.

With respect to effective system of witness protection, a new law was adopted in 2006, and this is a first step in the right direction. However, it is too early to assess the effectiveness of the new system, and strong efforts are required to implement the new legal provisions in practice.

It should be noted that legal reforms have been very difficult in the situation marked by political instability, and have been effectively put on hold recently due to the referendum on the Constitution and the planned election of the Parliament. It is important to focus on preparations of high quality legal proposals and drafts in order to speed up the reform of anti-corruption legislation when the new Parliament is in place.

Transparency of the Civil Service and Financial Control Issues

Ensuring openness and transparency in the work of all bodies of state authority is one of the most efficient methods of preventing and fighting corruption. While assessing the implementation of the relevant recommendations by the Kyrgyz Republic, it is necessary to note that the state has been making efforts to create favourable conditions for efficient work and prevention of corruption.

The Kyrgyz authorities have introduced a number of measures which aim at improvement of the system of recruitment and promotion of civil servants but it remains important to ensure its universal and consistent application. Further systematic training on ethical norms and practical ways to prevent corruption for public officials should be promoted.

Public officials in the Kyrgyz Republic regularly submit their asset and income declarations. However, there is still no effective mechanism to verify the accurateness of the submitted information. Civil society and media do not have access to this information. Progress is expected in the system of public disclosure and checking of public servants' asset and income declarations. In particular, amendments to current regulations are being prepared; it is also expected that an inter-departmental instruction will be issued during 2007, which will improve the control and reporting about the system of asset and income declarations for public servants.

Kyrgyz authorities responsible for public procurement are well aware of the need to prevent corruption in this sphere, and have introduced a number of useful measures. They have improved provisions to ensure access to information about upcoming procurement, and have strengthened mechanisms to detect and prosecute violations in this area. They recognise however that some issues remain problematic, like purchases from single source following ad-hoc decisions of the government.

Certain measure were introduced to further develop the system of internal audit in various public institutions, as well as to strengthen the Chamber of Audit responsible for the external control over the public spending. Cooperation between the bodies of financial control needs substantive improvement.

In the area of access to information, it appears that the existing legal framework provides sufficient basis for unrestricted access. However, in practice state authorities and bodies of local self-government often take discretionary decisions as to what constitutes confidential information. This area requires further attention.

The Kyrgyz authorities do not pay sufficient attention to the issue of control over political party financing, the use of "administrative resources" by public officials, and to the protection of persons filing complaints and proposals to the state authorities on corruption-related matters.

In the area of fighting money laundering, the Kyrgyz Republic was the first country in Central Asia to establish a Financial Intelligence Unit (FIU), and has the most comprehensive anti-money laundering legislation in the region. However efforts must continue to strengthen the capacity of the FIU to deal with growing number of reports about suspicious transactions, the legislation needs further amendments to bring it in full compliance with international standards.

INTRODUCTION



Economic and social situation¹

The Kyrgyz Republic covers an area of 200,000 square kilometres (90% mountainous) and has a population of 5.1 million. The official languages are Kyrgyz and Russian.

The Kyrgyz Republic's economy was severely affected by the collapse of the Soviet Union and the resulting loss of its vast market. In 1990, some 98% of Kyrgyz exports went to other parts of the Soviet Union. Thus, the nation's economic performance in the early 1990s was worse than any other former Soviet republic except war-torn Armenia, Azerbaijan, and Tajikistan. While economic performance has improved in the last few years, difficulties remain in securing adequate fiscal revenues and providing a sufficient social safety net.

The GDP per capita for 2006 is estimated between USD 536 (US State Department) and 1,944 (EBRD). In 2006, the economy grew by 2.7%, after a contraction by 0.6% in 2005, due to the political events in March/April of that year. Export products are cotton, wool, meat, tobacco, gold (Kumtor mine), mercury, uranium, hydropower, machinery, shoes. Switzerland is the main economic partner with a share of just over 25%.

Political structure¹

The Kyrgyz Republic gained independence from the Soviet Union in August 1991. The 1993 constitution defines the form of government as a democratic republic. The executive branch includes a

¹ Sources: EBRD Country Factsheet 2007, Transparency International Corruption Perceptions Index 2006, US Department of State Background Notes 4/2007

president and prime minister. The judicial branch comprises a Supreme Court, a Constitutional Court, local courts, and a Procurator-General.

The President made constitutional reform a key element of his campaign in 2005, and the November 2006 protests stemmed in part from members of parliament's demands for action on that reform. It is unclear if all political players consider the December 30, 2006 constitution the final step in that process.

Kyrgyzstan is a member of the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the World Trade Organisation, the Shanghai Cooperation Organization (SCO), the European Bank for Reconstruction and Development, the International Monetary Fund, and the World Bank.

Trends in corruption

With a score of 2.2, Kyrgyzstan ranks on position 142 of 163 countries in the 2006 Transparency International Corruption perception index. This is 0.1 points less than 2005 and the same score as in 2004. Surveys show that corruption is widely seen as the most serious problem in Kyrgyzstan.

IMPLEMENTATION OF RECOMMENDATIONS

NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

Recommendation 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.

The State Anti-Corruption Strategy 2006-2010 was approved by the President on the 21 June, 2005. Until then there were several scattered documents, none of them specifically focusing on corruption, e.g. the Strategy of Reform of the Public Administration. The National Anti-Corruption Strategy was prepared by the Working Group led by the Consultative Council on Good Governance (CCGG) with the involvement of the civil society.

The State Anti-Corruption Strategy actions have been planned in four directions: (I) prevention of corruption; (II) public support; (III) investigation of corruption crimes; (IV) international cooperation.

The National Agency for the Prevention of Corruption (NAPC) has drafted a new Action Plan for 2008-2010 within the framework of the State Anti-Corruption Strategy; it is expected that the plan will be adopted before the end of 2007. This will be done after the assessment of the existing Action Plan for 2006-2007 and after measuring its performance.

The monitoring of the existing Action Plan has been co-ordinated by the NAPC: twice a year respective institutions need to report to the NAPC about the steps taken in order to implement the Strategy. Due to the unstable political situation and low interest in anti-corruption activities, initially only few ministries (the Ministry of Defence, the Ministry of Health) reported about the implementation of the strategy, but recently all the respective agencies reported. The Strategy foresees that NGOs will be involved in monitoring and evaluation of the Action Plan in order to ensure objectivity and impartiality. During the on-site visit the examiners were concerned that the public participation in the assessment of the action plan has been low. But according to information provided later, the NGOs have been involved in the assessment of the existing action plan, and in the drafting of the new plan.

Additionally, the Kyrgyz Government approved the National Comprehensive Development Strategy for 2006-2010, which reflects the mid-term perspective of the Kyrgyz Republic determining the main lines of the country's development and activity in 2006-2010. It focuses on three main areas: (I) economics, (II) corruption, (III) social development.

In conclusion, the Kyrgyz Government has updated State Anti-Corruption Strategy and adopted an action plan for 2006-2007, the assessment of which has been prepared, but not yet approved by the Government. The adoption of the new Action Plan for 2008-2010 also awaits the adoption of the Government. Kyrgyzstan is encouraged to adopt the new Action Plan as soon as possible. Furthermore, involvement of different stakeholders in the implementation and assessment of the State Anti-Corruption Strategy should be promoted. Further, there are still different documents dealing with anticorruption policy

(the National Comprehensive Development Strategy, the State Anti-Corruption Strategy with various action plans), so a unified approach is still missing.

Kyrgyzstan is largely compliant with this recommendation.

Recommendation 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.

The National Agency for Prevention of Corruption (NAPC) was established by the Decree of the President on 21 October 2005, and launched its actual activities in September 2006. The NAPC was preceded by the Consultative Council for Good Governance. Before the establishment of the NAPC, the models of anti-corruption bodies of Latvia, Lithuania, Singapore, Macedonia, and Hong Kong were studied.

The NAPC regularly reports about its activities to the National Council for the Fight against Corruption which is composed of eleven representatives from governmental and non-governmental organisations, academic institutions, the Parliament and others. The Council is currently chaired by the Member of Parliament, who was elected on the post for 2-year term. The Council sets the priorities of the Agency and monitors its activities.

Among other tasks the NAPC develops anti-corruption draft laws and other regulations; prepares anti-corruption programmes and monitors their implementation; evaluates the efficiency of the anti-corruption measures and develops new methods for fighting corruption. A Memorandum on Cooperation in corruption prevention has been signed with mass media, NGOs, and public organisations. A Cooperation Memorandum in corruption prevention, detection, elimination, and prevention of causes and conditions conducive to corruption has also been signed with law-enforcement bodies of the Kyrgyz Republic.

One of the priority lines of the NAPC's activity consists in preventive measures against corruption in the sphere of education. Educational programmes for corruption prevention within the system of secondary education have been prepared jointly with the Ministry of Education and Science of the Kyrgyz Republic. To strengthen its work to prevent corruption, recently, the NAPC identified tax, customs, traffic police, and other agencies with high risk of corruption as specific target groups for their preventive work.

Since its establishment, the NAPC has conducted a functional analysis of law enforcement bodies responsible for the fight against corruption; prepared and held news conferences to inform the public of corruption in the country; provided free legal consultations to physical and legal persons. The NAPC received a total of 270 complaints and appeals from the moment of its formation until the present day, 100 of which have been referred to the prosecution bodies, 48 to the Interior Ministry, 19 to courts, and 5 to the legal department of the Justice Ministry.

For the ordinary citizens the NAPC seems to be the last resort to find help against unjust treatment and for those who have encountered corruption. However, the NAPC sees its role as limited. It lacks credibility among the politicians and investigative authorities and does not effectively cooperate with law enforcement agencies, neither with the Accounts Chamber or similar institutions. According to the information of the Prosecutor General's Office so far no investigation has been started based on the information provided by the NAPC. There is also a plan to establish a unit targeted at fighting corruption in public administration.

The NACP has 49 employees: 42 of them work for the central office and 7 in the *oblasts*, there are still 2 vacant posts in the districts.

The NACP suffers from low budget: instead of 28 million SOM requested for 2007 it obtained 7 million SOM. The average salary in the NACP is around 1500-2000 SOM (around 30-40 EUR). There seem to be inefficient distribution of resources within the NACP, and as a result some members of the staff are leaving the Agency, which further weakens its limited resources.

At the time of the on-site visit, there was a lack of understanding among various agencies about the role of the NACP in preventing corruption in the Kyrgyz Republic: it lacks actual authority to set anti-corruption policy priorities for other agencies. For example, it does not have sufficient authority over law enforcement agencies to set priorities in investigating and fighting corruption, thus Kyrgyzstan lacks “living” anti-corruption agenda for law enforcement.

To sum up, the establishment of the NACP was a major step to strengthen the institutional support for anti-corruption work in the country. However, there is too little emphasis in strengthening the preventive role of the Agency - there is a shortage of comprehensive co-ordination and communication of different preventive anti-corruption activities in the Kyrgyz Republic. The role of the NACP has thus far been mainly the initiating of incidental anti-corruption campaigns and adopting an anti-corruption strategy, which should be welcomed, but which falls short of a clear anti-corruption policy for the whole country. It lacks political support, and due to its little influence among state authorities, it therefore tries to receive some investigative powers in order to conduct anti-corruption investigations of legal entities exercising public functions and public officials for purposes of detecting facts of corruption. However, before considering these functions, it is more important to implement its current tasks with existing personnel rather than to put efforts in gaining new responsibilities, such as investigative powers. It is equally important to support co-ordination of anti-corruption activities between law enforcement agencies and the NACP.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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's Office should be strengthened. Furthermore, provide adequate resources for the enforcement of anti-corruption legislation.

There are altogether four law enforcement bodies involved in the fight against corruption: the Prosecutor General's Office including all prosecution bodies, the Interior Ministry (the Police), the State Customs Committee, and the Financial Police.

The Ministry of Interior is the main law enforcement agency responsible for fighting administrative corruption. The authority is vested in the Main Department for the Fight against Official Crimes (former: the Main Department for the Fight against Economic Crime and Corruption). Its task is to combat corruption in public administration, including local governments, and economic crimes in private sector. There are seven units in the Main Department, with 42 officials, besides there are 250 officials in *oblasts*. In 2006 the Ministry of Interior (Police) registered 89% (216) of all bribery and 55% (337) of office abuse cases. Altogether Police registered 56% (1,754) of all official and economic crimes, including bribery and office abuse cases. Among the overall number of offences detected by police departments 648 were directly referred to the category of official crimes (bribery, office abuse, official forgery and negligence),

and their share was 37% of the total amount of official and economic crimes registered by the interior bodies.

The second largest investigators of corruption cases are prosecution bodies: in 2006, the prosecution bodies registered 5% (12) of bribery and 30% (182) of office abuse cases, altogether 22% (673) of official and economic crimes. The other law enforcement agencies have smaller role in investigating corruption cases. For example, the State Committee for National Security registered 3% (8) of bribery cases and 4% (26) of office abuse cases, and Financial Police 2% (4) of bribery cases and 7% (44) of office abuse cases. The role of the State Customs Committee in investigating corruption cases is ambiguous while in 2006 it did not register any bribery or office abuse cases.

In addition to the four law-enforcement authorities, the State Committee for National Security a special service engaged in intelligence and counterintelligence activity to ensure national security, constitutional order, sovereignty and territorial integrity of the Kyrgyz Republic. In addition, another objective of the State Committee for National Security is to protect economic security of the state and to fight against the most dangerous forms of organised crime, corruption, and contraband, ensuring, within the frames of their competence, the security of important industrial, power engineering, communication facilities, financial and credit institutions, etc.

There is still lack of clarity between the functions of law enforcement agencies. The Kyrgyz authorities reported that in order to avoid duplication among law enforcement authorities, the file of a criminal case is opened and sent to the Prosecutor General's Office, who is supposed to have an overview of all corruption cases. There are altogether 12 people employed in a specialised Department of the Prosecutor General's Office, including specialists in certain fields such as economists whose role is to help prosecutors in their investigations.

However, there seems to be ambiguity about the responsibilities of law enforcement agencies investigating corruption cases. Besides, the lack of communication between law enforcement agencies seems to hamper sound corruption investigations.

The first stage of the police reform has been completed within the frames of the Draft Reform Concept of the Kyrgyz legal system and law enforcement bodies: duplication of services and the number of administrative staff have been reduced, services specialising in the fight against organised crime, the drugs business, religious extremism, official crimes have been reinforced with qualified personnel, and grass-root units have been strengthened. In 2006, a working group was formed to elaborate a draft Reform Concept of the Kyrgyz legal system and law enforcement bodies (Decree of the President No. 179 of 20 April 2006). The Concept was prepared on the basis of a functional analysis of the activity of law enforcement bodies; however the Prosecutor General's Office rejected the concept. According to the Kyrgyz authorities, the concept is currently undergoing discussion by all related ministries, agencies, civil society representatives, and the academia. The previous draft concept of Reform of the Interior Bodies had been under discussion already in 2004.

According to the information received by the National Council for the Fight against Corruption there are no changes in respect of functions of the law enforcement agencies investigating corruption planned. There is also a plan that the National Security Service would be less involved in investigating domestic corruption cases. Currently there are less than 20 people involved in investigating office and economic crime cases in the Unit of Economic Counterintelligence, including regional officials.

In August 2007, the Kyrgyz Republic joined the Millennium Challenge Account, which means that the United States will finance its implementation in the amount of USD 16 million in such areas as the judiciary and police reform and the fight against corruption.

The authorities of Kyrgyzstan have begun reforms of police; however the process is not complete yet. Regretfully there has not been any consolidation and specialisation of functions of law enforcement authorities. The status of the reform concept is unclear – the structure of the law enforcement agencies does not seem to support active corruption investigations and fight against corruption. The coordination function of the Prosecutor General’s Office has not been strengthened, which may lead to duplication of functions and gaps in some fields. There is no one coordinating body which would direct and supervise all anti-corruption investigations. There is no information on provision of adequate resources for the enforcement of anti-corruption legislation. This all hampers effective anti-corruption investigation in Kyrgyzstan.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

According to the Transparency International’s Corruption Perceptions Index, in 2005 Kyrgyzstan rated 130th among over 160 countries (CPI = 2.3), and in 2006 it rated 142nd among 163 states (CPI = 2.2). Thus there has been a slight negative change (the larger value of index means less perceived corruption) in perceiving corruption in Kyrgyzstan.

The local Chapter of Transparency International has carried out a survey on corruption in procurement and conducted an index on the quality of services provided by public institutions. It came out that Kyrgyzstan lacks standards of quality and the quality of services is low.

The Institute for Strategic Analysis and Forecast at the Kyrgyz-Russian Slavic University conducted a sociological poll in December 2006, but only people living in the capital Bishkek were surveyed. They were asked opinions on the problem of corruption: 52% considered corruption to be the most serious problem in Kyrgyzstan whereas poverty was named only by 5% of people.

The NAPC developed and approved the Corruption Survey and Evaluation Methodology. Last September this Methodology was presented to bodies of state administration for conducting a survey and evaluation of corruption within their systems. First studies have been carried out using this methodology.

The project entitled ‘Corruption Impact on Business Activity’ has been implemented with technical support of the German Technical Cooperation Society. The project included a sociological survey involving state and municipal officials, and representatives of business entities. The survey was conducted in the period from May to November 2006. The presentation of the survey results was held in December 2006 with the participation of chairman of the Bishkek municipal council, first vice-mayor of the city of Bishkek, heads of state and municipal bodies, representatives of business entities, and international organisations. The Congress of Business Associations has initiated a roundtable for entrepreneurs to discuss the results of the of the survey carried out in the framework of the project ‘Corruption Impact on Business Activity’ in order to elaborate real corruption reduction mechanisms.

To sum up, the authorities of the Kyrgyz Republic have carried out a study on corruption in business activity and have designed a methodology for assessing the corruption in different public agencies. Kyrgyzstan still lacks a comprehensive sociological study on extent of corruption in the society, which takes into account the opinions of ordinary people. The authorities have not provided for any resources to

the academic institutions or NGO's in order to carry out these studies. This is one of the areas where the NAPC should focus their efforts.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

With support of the regional office of the UN Office on Drugs and Crime, calendars, posters and booklets entitled "No to Corruption," aimed at forming public intolerance of corruption, were distributed among the population by the NAPC. This was done for the celebration of the International Anti-Corruption Day on 9 December 2006. The NAPC has prepared and circulated among the population an information memorandum on methods of resisting administrative corruption of public officials, indicating the hotlines of a number of ministries and agencies.

Besides the Interior Ministry organised 79 television features, 89 radio programmes, and the publication in the press of 68 materials on results of police work aimed at the fight against corruption, official and economic crimes. During 6 months of 2007, the Interior Ministry organised 17 mass media publications, 7 televised appearances for purposes of informing the population on the results of work conducted to prevent corruptive offences. In addition, four announcement panels were installed in the central streets of Bishkek with the slogan: "You can stop corruption".

According to different views the campaigns were incidental in character, poorly conducted, lacking clear target groups and objectives. The outcome was not analysed; there does not seem to be any follow-up plans or strategies to further elaborate the issue. As for positive side the awareness of people on anti-corruption issues is rising in correlation with the rise of corruption in the country.

The Presidential Administration management department has opened a portal of public services, where every citizen can find information on approved procedures and the cost of the services provided by bodies of state administration.

Educational seminars 'Development of the Corruption Prevention and Anti-Corruption Education System in the Kyrgyz Republic' were held in May 2007 with support of the OSCE Centre in Bishkek with the participation of the heads of local self-governing bodies (ayil okmotu) of the Chuya Region.

The NAPC holds regular presentations of its activity for public associations, who cooperate with the Agency. For example, in May-June 2007, roundtables were held for representatives of civil society institutions including business entities, mass media, NGOs, and the academia.

The NAPC has compiled a set of educational manuals and programmes for anti-corruption education and information of schoolchildren for their subsequent incorporation in the educational process.

Training seminars on the subject "Protection of Public Interests: Role of Citizens in Corruption Prevention" was held in the city of Naryn jointly with the Peremena public foundation. The training was held with the participation of representatives of public organisations of the city, students and young activists of the city, and representatives of bodies of local self-government.

Lectures and seminars are regularly organised and held at the Kyrgyz ministries and agencies on matters of implementing the State Anti-Corruption Strategy, as well as on issues of office abuse, creation of artificial barriers, ethics of anti-corruption behaviour of public officials, etc.

So far, there has been limited training targeted specifically at public associations and private sector by the Kyrgyz authorities. There was a meeting held between the NAPC and non-governmental organisations and business sector, however the outcome of which is not resilient. State officials have received limited training on corruption.

The Academy of Management under the President developed curricula for the master's level students which includes a course on administrative ethics. The course contains 30 lectures on public ethics. The first textbook on public ethics was published for master students and short-term training courses provided by the Academy of Management.

In conclusion, as regards anti-corruption campaigns, there does not seem to be follow-up strategy for further anti-corruption campaign, the previous campaign lacked sustainability. There have been several training seminars on corruption issues. This indicates that there are only incidental attempts to draw people's attention to corruption, and not comprehensive and sustainable campaigns. The trainings lack systematic approach and are organised only episodically. So, further consolidated approach to anti-corruption campaigns, trainings to state officials, public associations and private sector should be promoted.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 6

Ratify the UN Convention against Corruption.

The Kyrgyz Republic ratified the UN Convention against Corruption in 2005; however the Convention is not implemented in full, because majority of laws are not in compliance with the Convention. So as for the next steps, the Kyrgyz Republic has to implement the provisions of the Convention provisions in the national law.

It is important to note that the ratification of the Convention is not the end, but the beginning of the way; and that Kyrgyzstan may want to consider a full UNCAC compliance exercise to determine what changes in the legislation and/or the administrative practices are needed to achieve full practical compliance with the UNCAC provisions.

Kyrgyzstan is fully compliant with this recommendation.

Recommendation 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.

The NAPC has developed a Single Form for the presentation of regular information on facts of corruption, economic offences, and related crimes. This form has been approved with law enforcement bodies engaged in the fight against corruption and endorsed by the NAPC Commissioner's order. At

present, the law enforcement agencies submit regular information on facts of corruption to the NAPC using the Single Form.

Information on criminal cases is collected also by the Ministry of Interior. The National Committee for Statistics has worked out a special annual reporting form for reporting of committed offences, including official crimes. There is a special Order on Enforcement of the Instruction on a Crime Accounting System (Order of Heads of the Law Enforcement Bodies of the Kyrgyz Republic, No. 23/76/62/261/22/413 of 13.06.2000). The reports are prepared by the information and analytical department of the Interior Ministry; the reports contain confidential information and are not to be disclosed before the final court decision.

General statistics on crimes is collected by the Prosecutor General's Office. However, the agencies lack a special and harmonised methodology for collecting statistics on corruption offences.

The statistics is available on official and economic offences, also specifically on bribery and office abuse cases. There is also statistical information available by the law enforcement agency which had initiated or registered the investigation (see rec. 3). Also the Kyrgyz authorities could provide information on the registered official offences according to the place of employment of the suspect. There were 18 bribery cases detected concerning the State Tax Inspection, 6 bribery cases concerning the State Customs Inspection system; 14 bribery offences within the system of the Ministry of Education, Culture and Science; 4 bribery cases in the Ministry of Transport and Communications. Besides, the Interior Ministry detected cases of corruption within other law enforcement bodies, e.g. 5 offences were detected with respect to officers of the financial police, including 4 facts of bribery.

Police sent 1,327 criminal offences to court, of which there were 221 office abuse cases and 151 bribery cases. Some of them were closed by the court, returned for additional investigation, and re-qualified.

There is some statistics on material damage caused by office and economic crimes, but it is not presented in an orderly manner.

To sum up, there have been some efforts to systematise corruption statistics. Fragmented information on the number of open cases on corruption related offences is available. However, there is no information on further development of those cases, such as status of pre-court investigation, different investigation procedures and final court decisions, Information about spread of such cases across different regions of the country, or about the rank of officials involved in these cases and other socio-economic indicators of perpetrators are still missing. So, current information on corruption cases is not sufficient to make policy decisions on preventing and investigating corruption and the NAPC should continue its work on further development of the methodology for collection and analysis of statistical data on corruption related offences

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

Corruption-specific training of the State Committee for National Security officers is based on special programmes, according to inter-departmental agreements with special services of countries of the “near” and “far” abroad.

Police and tax officials have received limited training in the area of corruption. In 2006, police officers received training on fighting official crimes, including corruption. In addition, six officers of the Department for the Fight against Official Crimes received training in Moscow on issues related to the fight against offences in the sphere of high technologies and applying special equipment for registration of bribery.

In October 2006 Financial Police officers received training courses organised by Kazakhstan Agency for the Fight against Economic and Corruptive Crime on international legal cooperation in Central Asia. Besides trainings on corruption, economic crimes, and ethic-related issues were included in the training programs of customs officials.

Various corruption-specific seminars have been organised for law enforcement officials with the participation of specialists from foreign anti-corruption bodies and international organisations. Internships have been organised for operative and investigative officers at relevant bodies of foreign countries. Over the period of 2006, two officers specialising in the fight against corruption and economic crimes were delegated for internship abroad - an officer from the Security Service had an internship in the United States, and another official from the personnel department of the State Customs Committee had an internship in the UK. In 2006 representatives of NGOs and heads of law enforcement agencies held a conference.

In addition, advanced training was conducted in the first half of 2007 in fighting official crimes and corruption in the city of Bishkek, with the participation of officers of the Economic Security Department of the Interior Ministry of the Russian Federation, and in the Republic of Kazakhstan, on issues of fighting crimes connected with the legalisation of crime proceeds and property appropriation via illegal transactions with securities.

During meetings with representatives of the Technical Assistance Department of the US Treasury, the Prosecution Supervision, Support, and Training Office of the US Justice Department, the International Office on Drugs and Law Enforcement Agencies of the US Department of State, the Prosecutor General’s Office has reached agreement on their assistance in the training of staff for the fight against the legalisation of crime proceeds.

Regretfully not all law enforcement bodies and judges have received anti-corruption training yet. For example, the legal department of the Ministry of Justice should be responsible for training of judges, but so far there has not been any coordinated training for different level of judges. Moreover, joint trainings between different law enforcement authorities accompanied by a clear training plan for all law enforcement agencies have not been taken place, although positive developments as regards donors financed training should be appreciated. Joint training seminars would benefit all law enforcement agencies and are necessary in order to develop better skills, understanding, and cooperation between them. Training should also be provided for the specialised anti-corruption bodies, such as the NAPC. Thus far there has not been any improvement in providing joint trainings on anti-corruption matters.

Kyrgyzstan is partially compliant with this recommendation.

LEGISLATION AND CRIMINALISATION OF CORRUPTION

Recommendation 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.*

None of the provisions mentioned in this recommendation has yet been amended in line with the content of the recommendation and in order to meet the requirements of the international standards in this area. It is fair to say that recently serious efforts have been made in this direction, but current political situation temporarily prevented further legislative activities. The NAPC has developed a draft Law on Changes and Amendments to the Kyrgyz Criminal Code that is addressing many issues mentioned in this recommendation. It includes inter alia: the definition and criminalization of active (*the promise, offer or granting, personally or through intermediaries, of some unlawful advantage in the form of money, securities, other property or pecuniary or non-pecuniary benefit to any person managing the work of a commercial or another organisation or working in such an organisation in any capacity, so that this person would commit a certain action or omission in violation of his/her duties, in the interests of the bribing person*) and passive (*the acceptance, personally or through intermediaries, of some unlawful advantage in the form of money, securities, other property or pecuniary or non-pecuniary benefit by any person managing the work of a commercial or another organisation or working in such an organisation in any capacity, so that this person would commit a certain action or omission in violation of his/her duties, in the interests of the bribing person*) bribery in the private sector, a comprehensive definition of a public official (*any appointed or elected person occupying some position in bodies of state authority, judicial bodies, and bodies of local self-government, in organisations, enterprises, institutions, associations of any form of ownership, in other non-profit and commercial organisations, as well as the Armed Forces of the Kyrgyz Republic, other troops and military formations on a regular or temporary basis or on special authorisation, for payment of compensation-free, irrespective of these persons' position rank, and authorised by force of their positions to exercise the rights and duties aimed at ensuring (observing) lawful state or public interests*) expanding also to foreign public officials (*any appointed or elected person*

occupying some position in a legislative, executive, administrative or legal authority of a foreign state, and any persons fulfilling any function for a foreign state, including for an agency or company as well as the officials of international organisations – employees of international organisations or any persons authorised by such organisations to act on their behalf).

The draft also envisages for positive changes in further criminalization of public sector corruption, introducing some new elements to these offences and including full coverage of bribery through intermediaries and material as well as non-material benefits. The overall approach of this draft is positive and in the right direction to implement this recommendation. Although the draft Law is currently tabled in parliamentary commissions it is not clear when it will be discussed and adopted.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.***

A draft of the new law dealing with the fight against corruption that would replace the current law existed at the time of the on-site monitoring. Majority of new provisions are dealing with prevention of corruption. The stress on corruption prevention is welcomed as a positive approach. However, its content did not sufficiently meet the requirement of significant revision of the existing legislation, which is needed to substantively contribute to harmonization with Criminal Code, particularly concerning different concepts and definitions of corruption. Contradictions between the Law on the Fight against Corruption and legislation dealing with declaration of assets, confiscation of property and illicit income remain issues of concern; there are some provisions in the draft dealing with the institutional and organizational issues concerning the envisaged National Agency for Prevention and Fight against Corruption – to be built on the basis of the existing NAPC - that could contribute to actual enforcement of the law.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

At the time of the visit representatives of different authorities expressed the view that according to fundamental principles of Kyrgyz criminal legislation only a natural person may be held responsible for a criminal offence. Some authorities stated that there have been substantive considerations on how to introduce the concept of liability of legal persons for corruption-related criminal offences into the legal system of the Kyrgyz Republic. However, representatives of other institutions did not share these views. Since the authorities did not submit a draft law, it is impossible to assess the implementation of this recommendation. With respect to the issue of responsibility of legal persons, Article 303 of the current

Criminal Code has been mentioned as well – but it is a clear fact that the content of this article is not dealing with the concept of responsibility of legal persons for corruption-related criminal offences, at least not in line with any international standard.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

Because of gaps and inconsistencies identified with respect to the definition of proceeds of crime three pieces of current legislation were recommended for screening and revision: Criminal Procedure Code, Criminal Code and AML/CFT Law. According to answers received from the Kyrgyz authorities no activities have been carried out to adequately amend the Criminal Procedure Code. A new law dealing with fighting financing of terrorism and laundering of proceeds of crime entered into force in November 2006; but it not harmonized with the Criminal Code and the Criminal Procedure Code. More concretely, amendments to Article 52 of the Criminal Code are not harmonised with the definition of proceeds of crime from Article 2 of the Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT) Law. In addition, Articles 88 and 142 of the existing Criminal Procedure Code bring another definition, which is not consistent and could hardly be applicable in connection with amended Article 52 of the Criminal Code. Proposed changes of Article 52 of the Criminal Code are introducing the requested substantive elements from the recommendation – however this action is limited only to changes of one and not all three relevant laws.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

Since the endorsement of this recommendation up to date the provisions of the Criminal Code and Criminal Procedure Code concerning the definition of proceeds and instrumentalities of crime have not been amended and brought in compliance neither with each other nor with the relevant provisions of the UN Convention against Corruption. As stated under the assessment of Recommendation 9, legislative activities have been postponed due to the current political situation.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

A draft law on the Amendments to the Criminal Code prepared by the NAPC includes the addition of two new paragraphs to Article 308, dealing with the issue of illicit enrichment. However two facts can be obvious. First, according to the representatives of Kyrgyz authorities there have been very limited substantive considerations and expert level discussions in the Kyrgyz legal community on how to introduce this topic in the legislation – the draft is quite obviously product of only one agency, the NAPC. The considerations of such an important and at the same time in the international community still controversial provision should have much broader aspects and range – all relevant state bodies as well as legal scholars should be involved; international comparisons should be provided as well. The second finding is the consequence of the first: new first paragraph of Article 308 of the Criminal Code is a vague, interpretative, maybe even unjust and unbalanced rule that does not even relate the unexplained wealth of an official to any alleged criminal activity – not even a suspicion of it. Such approach on the one hand simplifies the ratio of the institute in question and on the other hand extends its scope over any justifiable boundaries – which all leads to the conclusion that considerations of this issue have been poor.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

In spite of the written answer submitted in response to the monitoring questionnaire that indicated that draft amendments to the Criminal Procedure Code have been elaborated concerning this issue, the authorities did not confirm this fact during the on-site visit of the monitoring team. There was no additional information submitted to confirm that relevant procedures of the Criminal Procedure Code have actually been reviewed in order to ensure the efficiency and effectiveness of the procedure to identify, trace and seize proceeds and instrumentalities of corruption-related offences. No statistics has been provided of seizure and confiscation of proceeds of corruption for the last three years (2004-2006) to demonstrate the efficiency of the existing legal provisions related identification, tracing and seizure of proceeds and instrumentalities of corruption offences.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 16

Bring in compliance with each other the Law on Banks and Banking 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.

Investigators and prosecutors can only access bank records after criminal proceedings are officially instituted. No changes have been made to bring in compliance the Law on Banks and Banking and the Law on Bank Secrecy with the Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT) Law. With the introduction of this Law in November 2007, more contradictions have been set up. The Kyrgyz authorities have prepared a draft law, which should remove the discrepancy with regard to the authority that has the power to sanction the lifting of the banking secrecy. This draft has been submitted to the parliament, but has not yet been adopted. The current banking secrecy provisions are very strong and pose a significant obstacle to corruption investigations.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 17

Introduce effective law on protection of witnesses, experts, victims, and reporting persons.

Concerning protection of witnesses, experts, victims and reporting persons a new law dealing with these issues was adopted on 16 August 2006. Although some authorities claimed that there have already been few cases where this law has already been applied, other partners said the opposite. There was no official statistics available to support the fact of the existence of any example of actual application of this law. Without any evidence of actual cases of witnesses or victims protection and without follow-up institutional and practical measures with this respect the actual effectiveness of the law cannot be fully assessed yet.

Kyrgyzstan is largely with this recommendation.

Recommendation 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.

The foundation of this recommendation lies in the priority-identified need to consider amending the Code of Criminal Procedure in order to ensure effective mutual legal assistance in the area of processing corruption-related criminal offences. In the answers to the Monitoring Questionnaire some future legislative activities have been indicated – however considerations of relevant amendments to the Code of Criminal Procedure are not mentioned. It is welcomed that in 2004 the Kyrgyz Republic has signed and ratified the Chisinau Convention on Mutual Legal Assistance on criminal, civil and family matters. According to the Kyrgyz legal order, ratified international agreements are directly applicable.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 19

Ensure that the immunity granted to certain categories of public officials does not prevent the investigation and prosecution of acts of corruption.

This recommendation is based on the assessment of current legal and actual situation concerning the issue of immunity of the President, ex- Presidents, Members of Parliament and judges. All these categories of officials may not be subjected to investigation and prosecution for criminal offences, including those corruption-related, without the consent of the Parliament (Zhogorku Kenesh). Concerns were raised whether the institute of immunity and in particular its application (through granting/lifting procedures) prevents effective law enforcement actions against mentioned categories of officials.

Although they were asked to do so, the Kyrgyz authorities have not provided any statistics, indicating the number of cases where immunity had been lifted for corruption-related criminal offences. In addition serious difficulties were reported with respect to bring a judge before court – it was an unanimous view of law enforcement bodies that immunities actually and almost completely shield judges (and *mutandis mutatis* other categories of officials mentioned above) from criminal proceedings instituted for corruption-related crimes (as well as for other crimes). Although corruption in judiciary is perceived as a serious problem, representative of one institution stated that in the last 14 years only one judge has been convicted for a corruption-related criminal offence.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

The Criminal Procedure Code provides a legal basis for interception of telephone calls (Article 188 of the Criminal Procedure Code), but still does not envisage all relevant type of special investigative techniques and methods for detecting and investigating corruption, such as undercover operations, employment of agents provocateur, simulated bribery, access to electronic data, e.g. e-mail communication. Without these modern techniques it is often impossible to detect cases of serious corruption and to gather reliable evidence in order to prove it before court. There is no evidence that these important issues have been studied as recommended here and at the time of the on site visit of the Monitoring Team neither a working paper nor a draft law existed to show considerations with respect to introducing the full scope of these techniques in the Kyrgyz criminal legislation. The Kyrgyz authorities also report that sufficient funds are available for the implementation of the witness protection programmes.

Kyrgyzstan is partially compliant with this recommendation.

TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

Recommendation 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.

The Law on Public Service of 11 August 2004, as well as other regulations determines the system of recruitment and promotion of civil servants. Information on competitions for a public service vacancy is periodically published in the official printed edition *State Service and Career*, and placed on the official website of the Agency for Public Service Affairs. However, according to non-governmental and international organisations, information on competitions for public service positions is not always published. Information on competitions for low-ranking public service vacancies is published and made available to the public. Information on competitions for senior public positions generally is not published.

The system of public servants' recruitment and promotion envisages certain qualification requirements to candidates for public service positions. However these requirements do not contain clear criteria for the selection of candidates for the public service positions.

Regulations envisage a creation mechanism and composition of the attestation and competition commission. The attestation and competition commission is formed by the head of the public authority. The commission structure and composition are determined by the Provision on the holding of competitions for administrative public vacancies. Regulations provide for a possibility of including in the composition of the attestation and competition commission independent experts and representatives of professional public associations. According to the information provided by the Agency for Public Service Affairs, many public

authorities use this right granted by the regulations and invite representatives of nongovernmental organisations, mass media, as well as chairmen of professional unions to work within the attestation and competition commissions during competitions for public service vacancies. However, according to representatives of nongovernmental organisations, they do not know of any cases of practical use of the right of inviting independent experts and representatives of professional public associations to work in attestation and competition commissions, stipulated by regulations.

In the event of disagreement with the decision of the attestation and competition commission, with results of a competition, attestation or qualification exam, detection of violations during the holding of a competition for a public vacancy, attestation or a qualification exam, the regulations envisage a possibility for a candidate or a public servant to appeal against the decision of the attestation and competition commission at the Agency for Public Service Affairs or in court.

It should be mentioned, however, that the Law on Public Service provides for a possibility of occupying administrative public service positions by certain categories of persons without competition (e.g. advisers, assistance and consultants to political public servants; political public servants who have terminated their term, etc.).

According to regulations, if a public servant has successfully passed attestation for compliance with the occupied position, the attestation and competition commission may pass a decision “recommended for promotion.” However, the effective regulations do not envisage clear criteria for the selection or explicit promotion mechanisms. According to the existing regulations, a public servant may be promoted without competition only within one category of positions. In all other cases promotion is possible only on results of competition.

It should be mentioned that the effective regulations envisage the right of a public authority to exercise in-house and inter-departmental rotation of public servants. The labour conditions at the new place of service as a result of rotation are not prescribed by regulations. The public servant’s refusal from continuing service in new labour conditions may serve as the grounds for terminating service at the public authority. The decision of a public authority on a public servant’s rotation cannot be appealed in court, but only at the Agency for Public Service Affairs.

The Law on Public Service envisages the formation of national and internal public service reserves, which may provide advantages for insiders as opposed to outside candidates. According to the information provided by the Agency for Public Service Affairs, the issue of changing the system of internal and national reserves has not been considered, and draft amendments to regulations have not been proposed.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

According to the Action Plan for the implementation of the State Anti-Corruption Strategy of 21 June 2005, the Agency for Public Service Affairs exercises permanent control over the implementation of the Laws on Public Service and on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives. There is no special authority exercising control over the implementation of the Law on the Fight against Corruption. According to this Law, all public authorities, ministries, committees, agencies, bodies of local self-government and legal entities, as

well as private individuals have to fight against corruption within the limits of their competence. However, there is no regular control over the implementation of the Law on the Fight against Corruption. The draft new law on the Fight against Corruption provides for the existence of a responsible public authority the competence of which will include permanent control over the implementation of this Law.

According to the information provided by the Agency for Public Service Affairs, the monitoring and analysis of compliance with regulations is regularly exercised at all public authorities of the Kyrgyz Republic. Memos on detected violations and recommendations for their elimination are referred to the public authority and, for reference, to the Presidential Administration and the Prime Minister's Staff. The monitoring and analysis of personnel processes underway in the public authorities is exercised. An analysis of appointments and dismissals of administrative public servants is prepared annually, of performance of public service – every half-year, the number and qualitative composition of administrative public servants – annually. Analytical memos are placed on the official website of the Agency, and presented for publication in the herald *Public Service and Career*.

The Agency for Public Service Affairs has worked out an automated register of declarations filed by public servants. The Agency exercises control of the facts of non-submission and untimely submission of declarations.

The Complex of the Government Measures for fulfilling the Action Plan for the implementation of the State Anti-Corruption Strategy, aimed at fighting corruption and exercising permanent control over the implementation of the Laws on Public Service and on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives; it was foreseen that an inter-departmental instruction strictly regulating the mechanism of reporting and control over implementation of the Laws on Public Service and on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives would be released in the 3rd quarter of 2007. It is also foreseen that reports about the implementation of this Law and information about incomes and assets of political and other public leaders and their relatives will be regularly published in press.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

The current system for the public disclosure and control of the income and assets declarations of public officials is regulated by the Law on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives.

Access of representatives of nongovernmental organisations, mass media, as well as individual citizens to information contained in the public officials' declarations is impossible. Access of law enforcement bodies to the information contained in the public officials' declarations is very complicated and practically impossible. Access to information contained in the public officials' declarations is possible only on condition of a proper request from the law enforcement bodies, a court permit, and criminal proceedings underway on the case.

Aggregate data on the incomes, property and financial liabilities of public officials occupying political and other special state positions are published annually on the website of the Agency for Public Service Affairs and in other mass media, as well as the official herald *Public Service and Career*.

Control of reliability of the public servants' income, property and financial liabilities declarations is not exercised.

The competence of the Agency for Public Service Affairs to control the implementation of the Law on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives boils down to mass media publication of the aggregate information on persons who have violated the deadlines for filing the declarations and providing this information to the President, the Parliament (Zhogorku Kenesh), the Prime Minister and heads of the public authorities in the Agency's annual report for taking relevant measures.

Partial control over the completeness and reliability of the information contained in the public officials' declarations is exercised by the Agency for Public Service Affairs jointly with the public official who files the declaration. If necessary, the Agency is entitled to file a request to a relevant public authority for verifying the completeness and reliability of the information presented in the declarations. It also reviews the information provided by the civil sector and commercial organisations.

In the process of control of the information on a public official's income, the Agency for Public Service Affairs has no right to request information from credit institutions (banks). According to the Agency, amendments and additions have been prepared to the effective legislation regulating the declaration of public officials' income and property, which would enable the Agency to obtain information from credit institutions and compare it with the data presented in public officials' declarations.

No criminal or administrative responsibility is envisaged for the violation of the Law on Disclosure and Publication of Incomes, Liabilities and Property of Political and other Special Public Officials and their Close Relatives. According to the information of the Agency for Public Service Affairs, relevant amendments and additions have been prepared to the effective legislation, which would impose a more strict responsibility of public officials for non-presentation of an income and property declaration or intentional concealment of income and property from declaration, or deliberate presentation of false information.

According to the Agency for Public Service Affairs, the mechanisms of checking the reliability of the declarations and the adequacy of the incomes and services received and currently only at the stage of development.

The Agency for Public Service Affairs informed that it constantly studies the experience of other countries with similar income and property declaration procedures for public officials. The procedures employed by such countries as France, Lithuania, Ukraine and Kazakhstan have been studied. The Agency establishes close ties with the public authorities of these countries. In the opinion of the Agency, the experience of other countries was successfully employed during the development of a new declaration form.

The present regulations envisage obligatory declaration filing for the relatives (close family members) of a public official (spouse, parents, children, brothers and sisters supported by the public official). According to the information of the Agency for Public Service Affairs, many public officials seeking to conceal their incomes deliberately register their illegal proceeds in the names of their family members, and even those close relatives who are not supported by the public officials. The Agency proposes excluding

from the new draft Law on Public Service such definition as “supported by the public official” and thus expand the circle of relatives whose incomes and property must be declared by the public officials.

Kyrgyzstan is not compliant with this recommendation.

Recommendation 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.

According to the information provided by the State Agency for Public Procurement and Material Reserves under the Government, the experience of a number of countries which have introduced or are in the process of introducing electronic systems of public procurement has been explored. To study this experience more closely, specialists from the Agency familiarised themselves with the experience of the Republic of Kazakhstan and Canada in creating a system of electronic public procurement, participated in forums on the introduction of electronic public procurement systems.

The Agency has elaborated and submitted to the Parliament (Zhogorku Kenesh) a Draft Law of on Electronic Public Procurement.

As provided by the Complex of the Government Measures for fulfilling the Action Plan for the implementation of the State Anti-Corruption Strategy, in the period from 2006 to 2007 the State Agency for Public Procurement and Material Reserves should have put into practice an electronic public procurement system for enhancing the transparency of state purchases.

However, the practical introduction of electronic public procurements requires additional financial and logistic support, which is currently lacking. The Ministry of Economy and Finance included in the 2007 budget the financing of creation of an electronic public procurement system, as prescribed by the National Strategy of Information and Communication Technologies for Development of the Kyrgyz Republic. In the estimates of the State Agency for Public Procurement and Material Reserves, the financing allocated for these purposes is insufficient for the introduction of an electronic system of public procurement, therefore the quest of international co-financing is underway.

At present, the information on upcoming or conducted public procurements is obligatorily placed in an electronic form on the website of the State Agency for Public Procurement and Material Reserves and published in the herald *Public Procurement Bulletin*, which is issued twice a week.

However, according to nongovernmental and international organisations, information on the holding of a public procurement tender is not always published in due time, sometimes publications contain unreliable information on the upcoming tender: the time of its holding, the necessary documents to be submitted, contact information, etc.

A new edition of the Law on Public Procurement has been adopted on 24 May 2004 for raising the openness and transparency of state purchases.

According to the Law on Public Procurement, the reports about the opening of tender applications are to be immediately presented to the State Agency for Public Procurement and Material Reserves, and procurement organisations must present reports about the procurement procedure within 3 days after their compiling. No information can be requested in the course of a tender. The procurement organisation must

provide information on the contract value and publish information on the choice made. If necessary, the Agency for Public Procurement and Material Reserves may request the tender participants' bids.

The effective regulations require obligatory publication of information on forthcoming public procurements, with the exception of cases of public procurement from a single source.

The regulations governing the public procurement procedures, as well as the forms which have to be submitted for participation in public procurement are available for familiarisation on the website of the State Agency for Public Procurement and Material Reserves. This information is also published in the specialised monthly magazine *Public Procurement Bulletin* and in other mass media. The published information also includes procurement plans, announcements, public procurement results, and inspection reports. According to the information provided by the Agency, representatives of mass media and nongovernmental organisations may participate in the public procurement process as observers.

The Agency both independently and in cooperation with the prosecution bodies has detected numerous violations of the Law on Public Procurement on the basis of complaints or during scheduled inspections. The effective regulations envisage both administrative and criminal responsibility for violation of the Law on Public Procurement.

According to the information presented by the Agency, enhanced measures are being taken to improve the existing public procurement system by adoption of the lacking regulations conducive to elimination of corruption and corruption-related risks. Cooperation is established with law enforcement bodies for fighting corruption in the sphere of public procurement.

The Agency periodically organises training seminars and courses on the holding of public procurement tenders. International cooperation is being developed for information exchange for purposes of improving the existing system of public procurement procedures.

Kyrgyzstan is fully compliant with this recommendation.

Recommendation 25

<i>Limit the possibilities of state purchases from the single source.</i>
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The Law on Public Procurement of 24 May 2004 envisages the possibility of state purchases from a single source. To apply the method of state purchases from a single source, this Law identifies exclusive circumstances, where the purchasing organisation is granted the right to use this procurement method.

According to the information provided by the State Agency for Public Procurement and Material Reserves, vigorous measures are being applied in practice to restrict state purchases from a single source and to exercise control over them.

However, in the opinion of the Agency, justified state purchases from the single source include those organised by the Ministry for Emergency Situations in the event of urgent necessity to make state purchases in connection with circumstances requiring urgent reaction.

It should be mentioned that the provision of the Law on Public Procurement envisaging public procurement from a single source has not been amended in any way from the moment of the review of the Kyrgyz Republic under the Istanbul Anti-Corruption Action Plan on 14 December 2004. Therefore the possibility of state purchases from a single source has not been restricted.

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

According to the information provided by the Chamber of Audit, the present system of internal audit within the structure of executive authorities aimed at revealing corruptive phenomena is based on internal audit services of individual ministries and agencies. In the Finance Ministry, these functions are exercised by the public finance audit department (38 staff), in the Ministry of Labour and Social Development – by the internal control and audit department (19 staff), in the Social Fund – by the internal audit department (15 staff), in the Ministry of Public Health – by the internal audit sector (3 staff), in the Defence Ministry – by the internal audit service department (11 staff), in the Ministry of Agriculture, Waterworks, and the Processing Industry – by the internal audit department (5 staff), in the Ministry for Emergency Situations – by the internal audit service (4 staff), in the Ministry of Internal Affairs – by the methodology and control department (5 staff), the state enterprise Kyrgyzpochtasy (Kyrgyz Post Service) (5 staff).

In keeping with the Law on the Chamber of Audit, in the process of conducting audit the Chamber of Audit may analyse the performance and reporting of internal audit services of the audited objects wherever such services exist. The Chamber of Audit may at its own discretion rely on reports prepared by the internal audit service and may use its own audit planning and risk evaluation, taking into consideration the results of internal audit evaluations.

At present, there is no regulatory framework for the internal audit system, but it should be mentioned that prerequisites for its creation exist.

The Complex of the Government Measures adopted on 28 February 2006 for fulfilling the Action Plan for the implementation of the Kyrgyz Republic State Anti-Corruption Strategy envisages the creation of a network of internal audit departments within the system of executive authorities for revealing facts of corruption and creating the possibilities for permanent collaboration of bodies that provide financial control and audit.

The Presidential Decree No. 337 of 29 June 2006 has approved the Action Plan for Reforming the Kyrgyz Republic State Finance Management System, one of the items of which envisages the creation of a regulatory framework for internal audit.

According to the information presented by the Chamber of Audit, an interdepartmental group was set up with support of foreign experts to elaborate the Draft Law on Internal Audit.

It should also be mentioned that the Chamber of Audit has prepared an alternative Draft Law on Internal Audit, which is currently being reviewed by experts from the World Bank.

Now that the regulatory framework for the internal audit system has not yet been created and the reporting of the internal audit service does not exist, there is no possibility for uninterrupted and free collaboration of bodies that provide financial control and audit, which makes cooperation extremely difficult.

However, according to the information presented by the Chamber of Audit, it should be mentioned that despite a lack of a regulatory framework for the internal audit system, the Chamber of Audit is

involved in permanent and free cooperation with law enforcement bodies, which is evident from the interdepartmental agreement with the prosecution office on the fight against corruption.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

The Law on Access to Information in the Jurisdiction of the State Authorities and Bodies of Local Self-Government of 28 December 2006 and the Law on Guarantees and Free Access to Information of 5 December 1997 stipulate that according to the principles of publicity, objectivity, timeliness, openness and reliability of information, every citizen is guaranteed the right of access to information, and the government must protect this right.

These legal acts also stipulate that restriction to access to and dissemination of information may only be imposed by the law on confidential information, as well as information containing state, commercial or official secret.

The Laws on Protection of State Secrets, on Commercial Secret, on Bank Secret, on Banks and Banking stipulate which information is confidential and which contains state, commercial or official secret.

To limit the discretion of public officials as to what constitutes such information, the laws on Access to Information in the Jurisdiction of the State Authorities and Bodies of Local Self-Government and on Guarantees and Free Access to Information guarantee every citizen the right to appeal against the actions or omissions of state authorities, bodies of local self-government, public associations, enterprises, institutions, organisations and officials, infringing citizens' right to information, to a superior official, Ombudsman (Akyikatchy) of the Kyrgyz Republic or in court.

However, a number of international and national public organisations note that the information within the jurisdiction of state bodies and bodies of local self-government subject to public disclosure is in practice either totally inaccessible or hard to obtain. State authorities and bodies of local self-government often take discretionary decisions as to what constitutes this sort of information, although the laws on Access to Information in the Jurisdiction of the State Authorities and Bodies of Local Self-Government and on Guarantees and Free Access to Information restrict the discretion of public officials to pass decisions concerning non-presentation of information.

Kyrgyzstan is partially compliant with this recommendation.

Recommendation 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.

Article 9 of the Law on the Fight against Corruption of 6 March 2003 # 51 provides guarantees of state protection of persons rendering support in the fight against corruption. The information on a person rendering support in the fight against corruption constitutes state secret and may be granted only on written

request of a public body authorised to fight corruption or the court in the manner prescribed by the Kyrgyz legislation.

Part 3 of this article also stipulates that a person deliberately reporting false information on corruptive phenomena is liable in the manner prescribed by the Kyrgyz legislation.

It should also be mentioned that in accordance with the Complex of the Government Measures for fulfilling the Action Plan for the implementation of the State Anti-Corruption Strategy of 28 February 2006, a Law on Protection of Rights of Witnesses, Victims and other Parties to Criminal Proceedings has been prepared and submitted to the Parliament for adoption.

In the opinion of representatives of public organisations, there is evidence that the information provided in non-public complaints is used by law enforcement bodies for unjustified prosecutions for slander.

For example, Article 127 of the Criminal Code presently envisages criminal responsibility for slander. According to the information presented by law enforcement bodies and confirmed by a number of public organisations, this article of the Criminal Code is valid and successfully applied in practice. According to official information, 157 criminal cases of slander were initiated in 2004, 241 in 2005, and 264 in 2006.

In this relation, the Kyrgyz Republic on 4 May 2007 # 67 adopted a Law on the order of examination of complaints of citizens. Article 11 of the Law states that:

- it is forbidden to prosecute a citizen or his/her relatives in relation to his/her appeal to a public body, locally elected body or to a public servant which criticizes the activities of these bodies or of this official, or claiming to restore or protect his/her fights, freedoms and legal interests or rights, freedoms and legal interests of other persons;

- it is stated that the prosecution of a citizen or his/her relatives in relation of his/her appeal to the public body, locally elected body or to a public official will trigger responsibility of public officials according to the law of the Kyrgyz Republic;

- it is not allowed to disclose information, which is contained in appeals of the citizens, or information about his/her private life during their examination without the agreement of the citizen.

Kyrgyzstan is largely compliant with this recommendation.

Recommendation 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.

According to the Complex of the Government Measures for fulfilling the Action Plan for the implementation of the State Anti-Corruption Strategy, in the process of policy development the anti-corruption policy of the Kyrgyz Republic should be formed on the basis of consultations with civil society organisations, using the example of work of consultative councils and working groups, regular information

of the population of the results of the anti-corruption measures taken by ministries and agencies via mass media.

To implement these measures envisaged by the Complex of the Government Measures, amendments have been introduced to the Statute of the State Anti-Corruption Council by the Presidential Order of 23 January 2006, envisaging considerable changes in the composition of the Council, namely, the increase of the number of the Council members to eleven people, introducing to it six additional representatives of the civil society (representatives of mass media, the association of entrepreneurs, professional unions, the academia, public associations, and creative unions).

The Statute of the Council stipulates that its decisions are to be adopted by a majority vote of the Council members present at the session. Therefore, six representatives of the civil society versus five representatives of the public authorities (representatives of the President, the Government, the Parliament (Zhogorku Kenesh), the Supreme Court, and the commissioner of the National Agency for Prevention of Corruption) have an opportunity to exercise public control over the implementation of anti-corruption measures and identify priority lines of activity of the National Anti-Corruption Council, in accordance with the single state anti-corruption policy.

In order to create legal framework for cooperation with the civil society organisation and with the mass media, the NAPC concluded over 20 “Memorandums about cooperation and interaction between the Agency and civil society institutions in order to prevent and fight corruption”. The memorandums envisages closer and more regular cooperation between the NAPC and civil society institutions in conducting anti-corruption reviews of the legal acts and elaborating draft laws and regulations, as well as holding anti-corruption conferences involving the participation of the republican leaders, representatives of ministries, agencies, and international organisations.

The NAPC has also elaborated the draft Procedures for Permanent Participation of the Civil Society, Public Associations in Development and Implementation of the Anti-Corruption Policy, envisaging regular cooperation between the state authorities and civil society institutions. The draft envisages cooperation with civil society institutions in the information and consultative activity and partnership in the holding of working meetings, forums and conferences.

It should also be mentioned that the Presidential Decree on Measures for Expansion, Legalisation and Practical Implementation of Forms of Cooperation of State Bodies, Bodies of Local Self-Government and the Civil Society of 11 May 2006 has approved the Working Programme of Measures for Expansion, Legalisation and Practical Implementation of Forms of Cooperation of State Bodies, Bodies of Local Self-Government and the Civil Society (public policy formats and procedures) for purposes of legalisation and enforcement of the forms of interaction between state bodies, bodies of local self-government and civil society institutions and developing the system of preparation and adoption of decisions on state governance issues, taking into consideration the interests of all population strata. A coordinating group has been set up for the implementation of this programme, which includes representatives of nongovernmental public organisations and mass media.

According to the information provided by state bodies and representatives of nongovernmental organisations, cooperation between state bodies and nongovernmental organisations in reality is not regular, and NGOs are not being intensively involved in cooperation.

Kyrgyzstan is largely compliant with this recommendation.

Recommendation 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.

According to provisions of the State Anti-Corruption Strategy, in order to prevent political corruption, the need has been identified to ensure maximally open accountability (including *vis-a-vis* the civil society) of the Central Commission for Elections to prevent the emergence of possibilities for discrimination with respect of individual parties and candidates, guarantee transparency of processes of formation and disbursement of election funds, as well as the publication of annual accounts of political parties, including reports on the sources of formation and disbursement of election funds.

In this connection, the Action Plan for the implementation of the State Anti-Corruption Strategy envisaged the adoption in December 2005 of a legal act identifying the accounting mechanism for parties, including issues of mass media publication, openness and transparency of formation and utilisation of the party and election funds.

According to the Law on Political Parties of 12 June 1999, financial reporting of political parties is to be exercised in accordance with the Kyrgyz legislation. However, the effective regulations do not provide for a mechanism of financial accountability of parties and candidates. There is no competent public body within the system of state authorities, responsible for control over the financing of parties, candidates, and their election campaigns.

Annual reporting of political parties, including on the use of election funds, is neither published nor presented to the state bodies of the Kyrgyz Republic.

Besides, the existing regulations do not contain a clear definition of the notion of “administrative resource” used by incumbent candidates in their campaigns. There is no provision categorically prohibiting the use of this “administrative resource.”

Kyrgyzstan is non compliant with this recommendation.

Recommendation 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.

In June 2006, the Kyrgyz Republic passed the Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT) Law setting out preventative measures for the financial and, to a much lesser extent, non financial sectors. The law entered in November 2006 and contains provisions for the identification of customers, record keeping and suspicious transaction reporting, as well as automatic reporting of transactions above given thresholds.

A Financial Intelligence Unit (FIU) in charge for AML/CFT matters was established by Presidential decree in December 2005, as an autonomous body under the President's administration. Currently the staff of the FIU consists of 28 officers. New premises have been made available to host the FIU, but considerable work is still needed to make the agency fully operational. From November 2006 to April 2007, the FIU has received over 125,000 transaction reports, mainly from banks and securities dealers. There is little hardware and no fully functional database has been yet established. The current situation raises concerns about the FIU's capacity to process and manage the volume of data that the reporting requirements set in the law generate.

The United Nations Office on Drug and Crime and the International Monetary Fund have recently launched projects to strengthen the capacities of the FIS.

The passage of the new AML/CFT Law is a substantial step forward. The Kyrgyz Republic is the only country in the region that has passed a comprehensive piece of legislation in this area and set up an FIU. However, the Law contains a significant number of shortcomings that should be addressed soon. Among these loopholes are:

- The definition of money laundering in the Criminal Code is too narrow. Art 183 of the Criminal Code only criminalizes the acquisition of proceeds of crime, not the possession, concealment or disguise, as required by the international standard;
- The AML/CFT Law does not cover non-financial businesses and professions, such as lawyers, notaries and accountants. It is unclear if the AML/CFT Law covers bureaux de change. There is no clarity to what degree real estate dealers are covered;
- There are no requirements for enhanced due diligence when financial institutions deal with politically exposed persons;
- There are no requirements to identify the beneficial owner;
- There is a lack of emphasis on the reporting of suspicious activity. Most of the 125,000 reports sent to the FIS are transactions exceeding 1.000.000 Som, whether suspicious or not. Such transaction reports are of limited value. Only recently, the banks have started to submit suspicious transaction reports.

Kyrgyzstan is partially compliant with this recommendation.

CONCLUSIONS

Recommendation	Compliant (fulfilled)	Largely compliant (minor shortcomings, large majority fulfilled)	Partially compliant (some substantive action)	Non- compliant (major shortcomings)
National Anti-Corruption Policy and Institutions X				
1. Update of National Strategy		X		
2. Institutional support for the public policy elaboration and monitoring			X	
3. Consolidation of law-enforcement efforts				X
4. Surveys and research on the scale of corruption			X	
5. Awareness raising campaigns and training			X	
6. Ratification of UN Convention against Corruption	X			
7. Monitoring and reporting of corruption offences			X	
8. Specific training for Law Enforcement			X	
Legislation and criminalisation of corruption				
9. International standards on corruption-related criminal offences;				X
10. Harmonisation of Anti Corruption Law and Criminal Code			X	
11. Responsibility of legal persons for corruption offences				X
12. Confiscation of proceeds of corruption			X	
13. Definition of proceeds and instrumentalities of crime				X
14. Criminal liability for illicit enrichment			X	
15. Tracing and seizing proceeds of corruption				X
16. Access to financial (bank) information				X
17. Witness protection		X		
18. Extradition and mutual legal assistance			X	
19. Immunity				X
20. Special Investigation Techniques			X	
Transparency of Civil Service				
21. Recruitment and promotion in civil service			X	
22. Implementation of Laws			X	
23. Declaration of assets and income				X
24. Electronic public procurement system	X			
25. Single source purchases				X
26. Financial control and internal audit			X	
27. Access to information			X	
28. Abuse of slander provisions		X		
29. Cooperation with NGOs		X		
30. Political party financing				X
31. Money Laundering and FIU			X	

ANNEX I: LIST OF PARTICIPANTS TO THE ON-SITE VISIT
16-21 April 2006

Leader of the team of examiners:

Mr. Daniel Thelesklaf, Financial Integrity Network (Switzerland)

Team of examiners:

- Ms. Mari-Liis Liiv, Head of Criminal Analysis and Statistics Division, Criminal Policies Department, Ministry of Justice (Estonia)
- Mr. Boštjan Penko, Senior Prosecutor, Supreme Prosecutor's Office (Slovenia)
- Mr. Jaroslavs Strelchenoks, Deputy Head of Division of Control of Activities of Public Officials, Corruption Prevention and Combating Bureau (Latvia)

Secretariat:

Ms. Olga Savran, OECD

Government bodies, other public bodies:

- National Agency for Prevention of Corruption
- National Council for the Fight against Corruption
- Parliament (Zhogorky Kenesh)
- Ministry of Justice
- Prosecutor General's Office, Department for the Fight against Corruption
- Ministry of Interior, Main Department for the Fight against Office Crime
- National Security Service
- Civil Service Agency
- Financial Intelligence Service
- State Agency for Public Procurement and Material Reserves
- State Committee for Tax and Revenues
- Audit Chamber
- Academy of Management under the Kyrgyz President
- Supreme Courte

Non-governmental organisations:

- Citizens against corruption
- Egalite
- Civil Defence
- Kyrgyz Parliament Members against Corruption
- Future without Corruption – Transparency International Kyrgyzstan
- Association for Unification, town of Talas
- Public Fund Ray of Home

International and foreign organisations:

- OSCE
- UNDP
- Eurasia Foundation
- Soros Foundation
- Swiss Cooperation Office
- Germany

ANNEX II: EXCERPTS FROM RELEVANT LEGISLATION

List of Annexes

available on request