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

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The Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

Kyrgyz Republic

Report on key anti-corruption measures and investigation, prosecution and adjudication of corruption cases

Report presented by the Kyrgyz Republic at the 8th Monitoring Meeting on 29-31 March 2010.

1) Key anti-corruption measures

First of all we would like to greet all participants of this meeting on behalf of the Anticorruption Agency of the State Personnel Service of the Kyrgyz Republic and also to express gratitude to the Secretariat of the Istanbul Anti-Corruption Action Plan for the hospitality, excellent organization of this event and for the provided opportunity to deliver a speech to you.

The Kyrgyz Republic has ratified the United Nations Convention against Corruption in August 2005. The United Nations Convention against Corruption is the comprehensive international tool of fight against corruption. By ratifying the United Nations Convention against Corruption the Kyrgyz Republic has undertaken to implement and introduce the provisions of the United Nations Convention against Corruption into its national legislation:

- In 2003 during the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies, held in Istanbul, Kyrgyzstan has signed the Istanbul Anti-Corruption Action Plan for provision of assistance to Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Ukraine;
- In 2004 the Kyrgyz Republic has adopted the Law on Public Procurement, drafted in accordance with the recommendations of the World Bank, World Trade Organization and the European Union. The main agency responsible for implementation of the Law is the State Agency for Public Procurement and Material Reserves of the Kyrgyz Republic Government, which functions include legal regulation, organization and performance of procurement, coordination and regulation of activities of various state authorities in the course of public procurement as well as supervision over implementation of the Law on Public Procurement. The Law on Public Procurement and the mechanism of its implementation conform to the international standards in this field;
- In November 2004 according to the Kyrgyz Republic Presidential Decree there has been established an institute of secretaries of the state, whose powers cover the following issues: ensuring the unified system of training and professional development of the public servants and observance of the professional ethics by the public servants;
- Also in 2004 the Kyrgyz Republic has adopted the Law on Civil Service, drafted in accordance with the recommendations of the international experts in the field of civil service. The Civil Service Agency of the Kyrgyz Republic is the responsible body for implementation of that Law. The Agency together with the World Bank experts have drafted new version of the Law on Civil Service, eliminating problems and deficiencies, including provisions regulating legal relationships in the civil service system. The Kyrgyz Republic has introduced the system of submission of asset declarations by the civil servants and their family members as well as prohibition of conflict of interests;
- The Law on Civil Service provides that appointment to the vacant administrative positions at the civil service is performed on the basis of competitive recruitment process by holding competition in accordance with the Regulations on Holding Competition for Appointment to the Vacant Administrative Position at the Civil Service of the Kyrgyz Republic, approved by the Resolution of the Civil Service Council No. 2 of 28 October 2004. The competitive recruitment process ensures the right of the citizens of the Kyrgyz Republic to have equal access to the civil service in accordance with their capabilities and professional skills;
- In 2005 in accordance with the recommendations of the United Nations Convention against Corruption and the Istanbul Anti-Corruption Action Plan there has been developed and approved the State Anticorruption Strategy and the Plan of its Implementation;
- According to the Kyrgyz Republic Presidential Decree of 21 October 2005 “On Urgent Measures for Fight Against Corruption” there have been established the National Anticorruption Council of the Kyrgyz Republic and the National Agency of the Kyrgyz Republic for Prevention of Corruption, which is responsible for coordination of efforts in this area;
- In November 2006 the Law on Counteraction to Terrorism Financing and Legalization (Laundering) of Criminally Received Proceeds has become effective. The Financial Intelligence Service is responsible for implementation of this Law. The Financial Intelligence Service of the

Kyrgyz Republic deals with collection, analysis and transfer of the information on money laundering and terrorism financing to the competent authorities.

As for the State Anticorruption Strategy, this is a strategic document of anticorruption policy, which defines its main principles and priorities. The developed measures for its implementation shall be aimed at efficient prevention, detection and suppression of corruption and organization of fight against corruption.

Currently the Agency has worked out and the President has approved the new Anticorruption Strategy in the Kyrgyz Republic and the Anticorruption Action Plan for Implementation of the Anticorruption Strategy for 2009-2011. These laws are aimed at liquidation of conditions, which cause, trigger and support corruption in the state administration bodies of the Kyrgyz Republic.

Currently the National Agency of the Kyrgyz Republic for Prevention of Corruption is the body which implements the uniform state policy in the field of prevention of corruption and which is empowered to detect, eliminate and prevent corruption in the Kyrgyz Republic.

According to the Regulation on the National Agency of the Kyrgyz Republic for Prevention of Corruption, the press-service of that National Agency works on public awareness on fight against corruption in the republic. The National Agency together with the legal channel "Adilet" of the National Television and Radio Broadcasting Company have developed a joint television project named "Commissioner Warns". This TV-program highlights the most resonant cases with respect to the state and municipal officials who abuse their official positions (for example, a concealed murder of Sultanov by police officers of the city of Naryn and Naryn Region or installation of poisoned uranium pipes in the course of construction of public water supply in the city of Balykchy). All these resonant cases have been discussed in much detail in the TV-program "Commissioner Warns". As of today, there have been 13 programs. After the first program the number of complaints on illegal actions of the state officials in the republican regions received by the Agency has been increased by several times.

The National Agency of the Kyrgyz Republic for Prevention of Corruption has received a complaint from Balykchy townsmen that the city administration uses metal pipes poisoned with radioactive wastes as such pipes have been excavated at the territory of Ak-Tyuzsky uranium mine and installed for transportation of drinking water. In the course of consideration of that complain the mayor's office of the city of Balykchy has presented documents evidencing safe usability of pipes for transportation of drinking water. While considering the presented documents it has been concluded that in fact such "shelter" documents do not prove safe transportation of drinking water through such used pipes and the act of safety control presented by the mayor's office of the city of Balykchy is of formal nature. In accordance with the minutes of meeting of the interdepartmental commission on preparation of conclusion on usability of pipes for transportation of drinking water, it has been concluded that the used pipes from the territory of Ak-Tyuzsky uranium mine cannot be used for the purposes of construction of public water supply. This fact is the gross abuse of the official position. Actions of the top officials of the mayor's office of the city of Balykchy contain essential elements of offence envisaged by the Criminal Code of the Kyrgyz Republic.

Also the National Agency pays much attention to prevention of corruption in the field of education. According to the data from the Methodology of Corruption Level Research developed by our Agency, the educational system is regularly rated as one of the most corrupted areas. On the basis of the performed research and analysis it has been decided to perform random inspection of the leading higher educational institutions of the republic.

In the course of that inspection there have been revealed gross facts of forgery and falsification of the examination results whereby the answer sheets have been filled in by the examiners instead of the applicants and also the calculation of marks in the answer sheets has been incorrect. All these facts prove the systematic nature of violations.

Following the results of inspection the National Agency has seized 374 personal files of the students with the detected facts of falsification of the test results and sent them to the General Prosecutor's Office of the Kyrgyz Republic for initiation of criminal cases.

At the Agency's proposal the Board of the Ministry of Education and Science of the Kyrgyz Republic has released rectors of two leading higher educational institutions of the republic of their posts due to "negligence and lack of control over the activities of the offices of admissions".

All rectors of the higher educational institutions of the republic have been instructed to work out internal rules regulating the procedures of conducting admission examinations.

All higher educational institutions have established the commissions for prevention of corruption comprising of students, their parents and public members besides professors.

Due to the joint systematic anticorruption work performed by the Agency together with the Ministry of Education in the course of inspection for 2008/2009 academic year there have been dismissed 21,320 students, without taking into account the results of the summer session. 52 percent of the dismissed students are the students of the extension department, 48 percent are full-time attendance students. If it is remembered that the total number of students is currently 250 thousand, then the number of the dismissed students amounts to approximately 10% of their total number.

The National Agency has prepared a draft Law on Amending the Criminal Code of the Kyrgyz Republic, a draft Law on Fight against Corruption, which are aimed at detection and elimination of causes and conditions of corruption by development and introduction of the system of adequate measures preventing corruption-related crimes and other corruption-related offences (including civil, disciplinary and administrative offences). The draft Law sets out basic principles, aims and tasks of prevention and fight against corruption both among public servants and private sector; creates legal prerequisites for elimination and prevention of future contradictions in law setting anticorruption norms.

Currently the draft Law of the Kyrgyz Republic "On Amending the Criminal Code of the Kyrgyz Republic" is being further developed by the Agency's legal department. The amendments affect 13 articles of the draft law and add one article "Illicit Enrichment".

The Law of the Kyrgyz Republic on Fight against Corruption and the Criminal Code of the Kyrgyz Republic define corruption, while the United Nations Convention against Corruption does not contain such definition. The United Nations Convention against Corruption uses descriptive approach listing various types of corruption-related crimes. In accordance with the United Nations Convention against Corruption bribery of civil servants, embezzlement / misappropriation, trading in influence, abuse of functions, illicit enrichment, laundering of proceeds of crime, bribery and embezzlement of property in the private sector, concealment of property resulted from corruption offences, obstruction of justice as well as participation and attempt to perform corruption shall be deemed corruption crimes.

The National Agency is also engaged in propaganda of anticorruption policy, change of Behaviour of citizens with respect to corruption, education of negative corruption perception. The National Agency permanently works in the area of monitoring and tracking of corruption offences covered in the mass media. The mass media are one of the major anticorruption weapons.

The main areas of activities of the National Agency are the following: counteraction to and fight against corruption and carrying out of preventive measures - preventive treatment of corruption through anticorruption education of the state and municipal servants, education and development of anticorruption education and awareness of the civil society, elaboration of forms, mechanisms and practical measures of counteraction to corruption.

One of the measures of counteraction to corruption is engagement of the civil society. For the purposes of implementation of the organizational measures the financial funds are needed for secondment of the National Agency's officials to the republican regions to attract active part of the population into fight against corruption and arrangement of the permanently active chambers of the National Agency.

The following events are planned for 2010 provided there is sufficient financing from the state budget and support of sponsoring international organizations:

- regular meetings, trainings, educational seminars with the civil society, state sector in all regions of the country;
- permanent monitoring and analysis of working processes of the state administration bodies and local self-government bodies;
- establishment of informational and educational centers on prevention of and fight against corruption;
- annual anticorruption events with participation of international experts from other countries etc.

Besides that, as one of the preventive measures, it is planned to issue bulletin, educational materials for pupils and students, leaflets, television trailers of anticorruption nature, development and issue of the Code of Ethics of Anticorruption Behaviour and Culture of the State and Municipal Officials.

Within the framework of the obligations undertaken by the Kyrgyz Republic on anticorruption initiatives the officials of the National Agency participate in international meetings, seminars, exchange of experience and educational programs, as well as in negotiations on signing memoranda on mutual cooperation with certain states participating in anticorruption initiatives.

In October last year the Kyrgyz Republic has reformed the state administration system. The reform has resulted in merger of the Civil Service Agency of the Kyrgyz Republic and the National Agency of the Kyrgyz Republic for Prevention of Corruption. Now the main tasks of the new anticorruption body are: anticorruption expertise of draft legal acts and effective legislation as regard anticorruption compliance and review of authenticity of information of the state and political officials given in the declarations.

For the purposes of detection of factors facilitating corruption in the Kyrgyz Republic legislation, the National Agency of the Kyrgyz Republic for Prevention of Corruption should perform necessary analysis of the legal acts of the republic with participation of representatives of the business community, public associations and civil society. Upon completion of analysis the relevant legal acts of the public agencies will be amended with proposals on elimination of the identified factors, while the repetitive, unclear or redundant functions of the state administration, which impose burden on the social activities, will be invalidated.

Many legal acts determine the competence of the public agency (public official) using the wordings "entitled", "may". This relates to any types of powers. The words "entitled" becomes the most profitable wording for the officials sitting in registration, licensing and controlling agencies. They can perform control, impose sanctions and issue licenses – at the same time they can abstain from doing so due to a variety of "criticules" and "hooks", which are envisaged in a specially "tailored" legal act. Certain provisions of the laws are vague which leaves quite many "loopholes" to evade them.

At the same time, one should acknowledge that certain recommendations of the United Nations Convention against Corruption and the Istanbul Anti-Corruption Action Plan have not been implemented due to various reasons and there is a need for various improvements, including to:

- scrutinize and analyze the existing functions of the law enforcement bodies engaged in the fight against corruption;
- introduce amendments to the Criminal Procedure Code ensuring efficiency and effectiveness of the procedure for identification, detection and seizure of proceeds and instruments of crime in the field of corruption;
- introduce amendments to the legislation ensuring that immunity of certain categories of political and public servants does not jeopardize criminal investigation and prosecution for corruption crimes;
- study special methods of fight against corruption, to consider introduction of necessary legal basis including in the Criminal Procedural Code for allowing such methods and taking into account international standards in the field of human rights protection and to provide financing for witness protection program;
- arrange for regular control over implementation of the Laws on the Civil Service, on Declaration and Publication of Information on Incomes, Liabilities and Assets of Persons Holding

Political and Other Special Public Positions, as well as Their Close Relatives, and the Law on Fight against Corruption;

- improve the system of public disclosure of declarations on assets and incomes of public servants; to study and use experience of other states having successful practice in this field. To consider possibility of broadening the circle of relatives of public servants, who must submit declarations on assets and incomes;

- consider possibility of introducing electronic system of public procurement for the purposes of increasing transparency of procurement procedures. All information on public procurement, except for information comprising state secret, shall be publicly available. To restrict public procurement from the sole source, etc.

All states in the world face with the problem of corruption and have developed a targeted anticorruption policy and certain practice. There are comprehensive systems of fight against corruption. Corruption causes not only economic losses resulting in decrease of quality of life of population but also negatively affects work of the state administration, reducing manageability of the society and state, worsening geopolitical status of the country or destructing the state as the sovereign entity at all. The high level of latency of corruption, its internal aptitude to transformation, "mimicry" towards changing social, economic, political and other conditions of the society and state, significantly complicate fight against this phenomenon, which exists in all aspects of life of modern Kyrgyzstan and its citizens.

2) Investigation, prosecution and adjudication of corruption cases

Moreover, while checking the State Agency for Public Procurement and Material Reserves of the Kyrgyz Republic Government the General Prosecutor's Office of the Kyrgyz Republic has found out that the Director of the Fund of the State Material Reserves under the State Agency for Public Procurement and Material Reserves E.Ismatullaev has violated the Kyrgyz Republic Law on Public Procurement by concluding a tender-free contract with "H.A.N. LTD" LLC on purchase of 30,000 tons of wheat in the amount of USD 11,850,000 with subsequent transfer to the settlement account of that company the amount equal to 14,600,000 Soms. However, "H.A.N. LTD" LLC has not delivered the wheat even after receipt of money.

On the basis of the above, on 3 June 2009 there has been initiated a criminal case against E.Ismatullaev, upon the performed investigation he has been accused under Articles 304 (abuse of official position) and 306 (conclusion of contract, performance of public procurement against the interests of the Kyrgyz Republic) of the Criminal Code of the Kyrgyz Republic.

The criminal case has been sent to Pervomayskiy district court.

On 14 December 2009 the General Prosecutor's Office of the Republic has initiated a criminal case against a former governor of Batkenskaya Region M.Zhumambekov and management of the Batkensky State Water Resources Department – its Head, M.Asatov, his deputy A.Akmatov and Chief Accountant T.Khudaiberiev for the facts of abuse of official position and misappropriation of monetary funds.

In the course of investigation it has been found out that during 2008-2009 M.Zhumambekov abusing its official position and under various pretences has been forcing to collect USD 1,000 from each head of district and region for his own needs; in addition to that he has forced his subordinate – former Akim of Kadamjaisky region to provide housing free of charge to T.Borubaeva, who has been a common law wife of M.Zhumambekov.

Also during March-December 2008 M.Zhumambekov being in cahoots with the above-mentioned top officials of the Batkensky Department of Waterworks Systems has taken fraudulent possession of 350,000 Soms out of 2,000,000 Soms, assigned from the republican budget for the capital repairs of the service house of the governor of the Batkenskaya region and afterwards for the purposes of concealment of such embezzlement they have illegally used for such repairs budget funds of the Batkensky Department of Waterworks Systems designated for the purposes of that Department in the amount of 840,000 Soms.

On 18 February 2009 the criminal case on accusing M.Zhumambekov, the former governor of the Batkenskaya region, M.Asatov, head of the Batkensky Department of Waterworks Systems, M.Akmatov, his deputy, and T.Khudayberdiev, chief accountant, under Articles 166 (fraud), 304 (abuse of official position) and 315 (forgery by an official) of the Criminal Code of the Kyrgyz Republic has been sent to the Batkensky regional court for examination of the case on its merits.