



# **The Legal Profession Reform Index**

**For**

# **Kyrgyzstan**

**October 2004**

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ISBN: 1-59031-440-9

Printed in the United States of America

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# Table of Contents

<b>INTRODUCTION</b> .....	<b>I</b>
<b>KYRGYZSTAN BACKGROUND</b> .....	<b>1</b>
<b>TABLE OF FACTOR CORRELATIONS</b> .....	<b>4</b>
<b>I. PROFESSIONAL FREEDOMS AND GUARANTEES</b> .....	<b>5</b>
Factor 1: Ability to Practice Law Freely .....	5
Factor 2: Professional Immunity .....	6
Factor 3: Access to Clients.....	8
Factor 4: Lawyer-Client Confidentiality .....	10
Factor 5: Equality of Arms .....	11
Factor 6: Right of Audience.....	12
<b>II. EDUCATION, TRAINING, AND ADMISSION TO THE PROFESSION</b> .....	<b>14</b>
Factor 7: Academic Requirements .....	14
Factor 8: Preparation to Practice Law .....	16
Factor 9: Qualification Process .....	18
Factor 10: Licensing Body.....	20
Factor 11: Non-discriminatory Admission .....	22
<b>III. CONDITIONS AND STANDARDS OF PRACTICE</b> .....	<b>23</b>
Factor 12: Formation of Independent Law Practice .....	23
Factor 13: Resources and Remuneration .....	25
Factor 14: Continuing Legal Education .....	27
Factor 15: Minority and Gender Representation .....	29
Factor 16: Professional Ethics and Conduct.....	30
Factor 17: Disciplinary Proceedings and Sanctions.....	32
<b>IV. LEGAL SERVICES</b> .....	<b>34</b>
Factor 18: Availability of Legal Services .....	34
Factor 19: Legal Services for the Disadvantaged .....	36
Factor 20: Alternative Dispute Resolution .....	38
<b>V. PROFESSIONAL ASSOCIATIONS</b> .....	<b>39</b>
Factor 21: Organizational Governance and Independence .....	39
Factor 22: Member Services .....	41
Factor 23: Public Interest and Awareness Programs.....	43
Factor 24: Role in Law Reform.....	45



## INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) developed the Legal Profession Reform Index (LPRI) to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the legal profession identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index (JRI), will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

### Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index could be considered somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state or other citizens. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, CEELI may also consider developing an assessment tool for prosecutors as well.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of lawyers: *avocats*,

*avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the exclusive right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings, but does not argue before the court. He has no rights of any sort in any other court. The *avocats aux Conseils* represent clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of a small, but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of legal profession reform. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

### **ABA/CEELI's Methodology**

The second main challenge faced in assessing the profession of lawyers is related to substance and methods. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe's Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI's more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on overemphasizing common law concepts related to the structure and function of the legal

profession. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool<sup>1</sup> in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.<sup>2</sup> Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways, but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRIs are updated – within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal

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<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

<sup>2</sup> For more in-depth discussion on this matter, see C.M. Larkin, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 *American Journal of Comparative Law*. 605, 611 (1996).

specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors. The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with the JRI, the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

## **Acknowledgements**

ABA/CEELI would like to thank the team that developed the concept and design of the LPRI, including the project coordinators Claude Zullo, Associate Country Director of ABA/CEELI's Caucasus Programs, and Andrew Solomon, Co-Director of ABA/CEELI's Rule of Law Research Office, Michael Maya, Deputy Director and NIS Regional Director, Cristina Turturica, ABA/CEELI Fellow, and Gavin Weise, ABA/CEELI Program Associate.

During the yearlong development process, input and comments were solicited from a variety of experts on legal profession matters. ABA/CEELI would also like to thank its executive leadership David Tolbert, former Executive Director; Mary Greer, Director of ABA/CEELI's Criminal Law Program and Coordinator of Legal Profession Reform Focal Area; and Scott Carlson, former Central and Eastern Europe Regional Director and Coordinator of Judicial Reform Focal Area for reviewing the initial versions of the LPRI's factors and structure. Additionally, ABA/CEELI would like to thank the members of its LPRI Working Group of Experts, who helped to revise the initial LPRI structure and factors, including Kathleen Clark, Kathryn Hendley, Stéphane Leyenberger, William Meyer, Avrom Sherr, Christina Storm, Roy Stuckey, Rupert Wolff, and, in particular, Mark Dietrich, who later implemented the pilot LPRI phase. Finally, ABA/CEELI would also like to thank its resident staff attorneys who participated in the development process, including Marin Chicu (Moldova), Tatiana Chernobil (Kazakhstan), Gulara Guliyeva (Azerbaijan), Jetish Jeshari (Kosovo), Azamat Kerimbaev (Kyrgyzstan), and Eduard Mkrtychyan (Armenia).

The LPRI assessment was conducted in May 2004 by Andrew Solomon, former Co-Director of the ABA/CEELI Rule of Law Research Office, and by Azamat Kerimbaev, Senior Staff Attorney in CEELI's Bishkek office. The assessment team received invaluable support and guidance from other members of the CEELI staff in Bishkek and Osh, including Kyrgyzstan Country Director Chris Krafchak, liaisons Corrine Smith and Michael McCarthy, staff attorneys Anvar Mukanbaev and Murat Azimbaev, Legal Assistant Janeel Bayastanova, and program assistants Burulai Aitikulova and Alexander Pugachev. During the course of the assessment, the team met with more than 45 judges, advocates, prosecutors, government officials, and NGO leaders and examined numerous laws and other documents collected by CEELI or provided by participants in the LPRI assessment process. CEELI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

## KYRGYZSTAN BACKGROUND

### Historical Context

Kyrgyzstan is one of five independent states of the former Soviet Union that together make up the region known as Central Asia. The country covers an area of 198,000 square kilometers and has a multiethnic population of close to five million people, mostly consisting of ethnic Kyrgyz, but with a significant population of ethnic Russians and Uzbeks as well. It is divided into seven administrative regions (*oblasts*) and 43 districts (*raions*) and towns, plus the capital city of Bishkek. Kyrgyzstan shares borders with China to the east, Kazakhstan to the north, and Uzbekistan and Tajikistan to the west and to the south.

Kyrgyzstan obtained its independence and sovereignty after more than a century of Russian Imperial and then Soviet rule when the Soviet Union disintegrated in 1991. Unlike many other newly independent states, Kyrgyzstan did not turn to former Soviet officials to run the new country. Instead, it elected Askar Akaev, a former physicist and head of the Kyrgyz Academy of Sciences, as its first President. Outside observers had high hopes that Kyrgyzstan would quickly develop into a market-oriented democracy. Although the country came to enjoy a reputation as an “island of democracy” in the region, initial hopes for democracy have only been partially met. Most elections since 1991 have fallen short of international standards for free and fair elections, according to the Organization for Security and Cooperation in Europe (OSCE). In addition, President Akaev has been accused of centralizing political power and using the courts to suppress free speech and to harass opposition candidates. Moreover, Kyrgyz authorities have moved somewhat aggressively against suspected Islamic militants in the Ferghana Valley, which encompasses parts of Tajikistan, Uzbekistan, and Kyrgyzstan, in the wake of terrorist attacks perpetrated by the radical Islamic Movement of Uzbekistan in 1999, 2000, and 2004.

Kyrgyzstan also faces considerable economic challenges. During the Soviet period, Moscow had provided Kyrgyzstan with considerable economic assistance. The end of this support combined with other factors related to the transition to a market oriented economy has resulted in significant economic dislocation. For instance, gross domestic product declined by 0.5% in 2002, and the average annual income was \$230, while the subsistence level income was estimated at \$366 per year. According to the United States Department of State, 60% of the population lives below the poverty level. Declining economic standards in some regions has given rise to social tensions and regional rivalries, as well as fostered political opposition to those in power in Bishkek. Although Kyrgyzstan does have some important natural resources, including access to more fresh water than any of its neighbors, it does not have the oil and gas reserves that are helping to drive the economies of Kazakhstan and some of the other countries in the region. However, Kyrgyzstan has pursued fairly progressive policies in areas of regulatory reform, enterprise restructuring, land reform, and in attracting foreign investment. Like many other transitioning states, Kyrgyzstan continues to wrestle with combating corruption and organized crime, both of which have repercussions on economic growth and development.

### Legal Context

Kyrgyzstan adopted its first post-Soviet Constitution in 1993, which it has subsequently amended several times over the past decade. In addition to setting forth the structure and competencies of the state and the powers of the various branches of government, the Constitution guarantees the fundamental rights and freedoms of citizens of Kyrgyzstan such as the right to a fair trial, prohibits discrimination on the basis of gender, nationality and other grounds, and provides the framework for a robust civil society. It is also notable that in criminal cases individuals have a constitutional right to legal representation.

Constitutional amendments, including those adopted following the February 2003 nationwide referendum, have made some important changes to the powers and authority of the president, government, legislature, and judiciary. Although the Constitution defines the form of government

as a democratic republic, in practice President Akaev and the executive branch dominate the political scene and exert considerable control over most levers of governance. Freedom House, in its annual Nations in Transit surveys, has consistently given Kyrgyzstan low marks in its democratization and rule of law ratings.

In 1994, Kyrgyzstan adopted a new Criminal Procedure Code, but it was largely based on the Soviet-era code that preceded it. Several years later, yet another Criminal Procedure Code was drafted with the participation of international legal experts. It entered into force in 1999 and has been amended on several subsequent occasions. The first part of a new Kyrgyz Civil Code entered into force in 1996, followed in 1998 by its second part. This code, which replaces the 1964 Civil Code of the Kirghiz Soviet Socialist Republic, regulates a variety of civil matters and relationships including property and proprietary interests, intellectual property, insurance, and inheritance. Some aspects of advocate activity and legal representation such as access to clients and the right to audience are addressed in these procedural codes.

The current Law on Advocate Activity, which was adopted and entered into force in 1999, regulates the profession by *inter alia* defining advocate activity and its principles, setting forth the professional freedoms of responsibilities of advocates, and establishing examination and licensing procedures. It also identifies the organizational forms of advocate activity and provides the legal basis for the establishment of solo practice and law firms. A draft version of a new Law on Advocate Activity has been developed on the basis of formal and informal dialogue involving the Ministry of Justice (MOJ), members of parliaments, the advocatura, and representatives of the international community. A government appointed working group is drafting a Concept on the Bar that will inform discussions on the final version of the new law. If adopted, this new law will likely advance the development of an independent and self-regulating legal profession in Kyrgyzstan.

A comprehensive code of legal ethics that regulates the conduct of all advocates in Kyrgyzstan has not yet been agreed upon and adopted, but some issues of professional responsibility are addressed in the Law on Advocate Activity, the procedural codes, and in charters of many public associations of lawyers. Notably, the Ministry of Justice has promulgated an Instruction on professional rules of legal ethics, but these rules remain largely un-enforced.

## **Overview of the Legal Profession**

The term “legal professional,” or “jurist” as it is known in Kyrgyzstan, may be broadly defined to include anyone who has graduated from a law faculty. Upon receipt of their law diploma, most jurists pursue a career in the legal profession as one of the following:

- Advocates, who may represent clients in criminal and civil materials, but are the only lawyers authorized to represent defendants in criminal cases;
- Judges, who work either in first-instance or appellate courts of general jurisdiction, the Supreme Court, or the Constitutional Court;
- Prosecutors, who oversee investigations and prosecute defendants on behalf of the state;
- Investigators, who investigate crimes and are a part of the law enforcement apparatus;
- Non-advocate lawyers, who may work either within commercial enterprises, government agencies, NGOs, law firms, or on their own and who may represent their companies, agencies or clients in non-criminal matters; and
- Notaries, who are responsible for filing certain types of contracts and real estate ownership records, as well as for verifying documents, certifying powers of attorneys, etc.

It is also worth noting that one need not be a licensed advocate or jurist to represent another person or entity in a civil case. A party to a dispute can give a power of attorney to anyone, whether he or she has legal training or not, and that person can act as a representative of a party in any non-criminal case. For reasons outlined in the LPRI Introduction, the scope of this report is primarily limited to advocates and to non-advocate lawyers, although some factors, such as those pertaining to legal education can be applied to this broader universe of legal professionals.

## **Organizations of Legal Professionals**

There is no requirement that advocates must join or otherwise affiliate with an organization in order to practice law. However, voluntary membership in a public association of lawyers is one of the fundamental principles of advocate activity in Kyrgyzstan. Advocates are not only guaranteed the right to join, but have the right to establish these types of organizations as well. Kyrgyzstan has a relatively robust civil society and many advocates have been particularly active in this sphere.

There are a significant number of independent and self-governing public associations comprised of advocates and other legal professionals that provide legal services to individuals throughout the country, including some that offer legal aid to the indigent. Public associations of lawyers also promote the interests of the profession and its members by participating in initiatives to reform the advocatura and make it more self-regulating and independent from the state. Others seek to raise awareness and understanding among the general public of individual rights by disseminating bulletins and other materials about the law.

The Association of Attorneys of Kyrgyzstan (AAK) is one of the most prominent public associations of lawyers and has played an important role in promoting the independence of the profession. A variety of other public associations have also emerged in recent years and are helping to strengthen the profession. These include the Union of Advocates, Lawyers of Osh Oblast (POLO), and Lawyers of Batken Oblast (LOBO). Groups such as Ferghana Valley Lawyers Without Borders (FVLWB), Legal Assistance to Rural Citizens (LARC), Adilet, and the network of lawyers in the Civil Society Support Centers (CSSC) also play an important role in developing the legal profession and its public interest work.

While most legal professionals belong to one of these public associations, a number of so-called “independent” advocates still practice law without any affiliation. Legal professionals that do elect to affiliate with a public association receive access to legal information and materials that pertain to the practice of law, as well as training and educational opportunities.

Law students have formed public associations as well, including the Young Lawyers of Kyrgyzstan. Similarly, a growing number of law students are taking an active role in legal clinics that have been established in Bishkek, Osh, and elsewhere in the country.

The private practice of law in Kyrgyzstan may take several forms. Advocates can provide legal consultations and other services either individually, i.e. in solo practice or in association with other advocates in a law firm. Most law firms are relatively small in size, but there are a growing number that provide legal services throughout the country.

## TABLE OF FACTOR CORRELATIONS

The Kyrgyzstan LPRI 2004 analysis reveals a developing legal profession in transition. While these correlations may serve to give a sense of the relative status of certain issues ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

<b>I. Professional Freedoms and Guarantees</b>		
<b>Factor 1</b>	<b>Ability to Practice Law Freely</b>	<b>Neutral</b>
<b>Factor 2</b>	<b>Professional Immunity</b>	<b>Negative</b>
<b>Factor 3</b>	<b>Access to Clients</b>	<b>Neutral</b>
<b>Factor 4</b>	<b>Lawyer-Client Confidentiality</b>	<b>Neutral</b>
<b>Factor 5</b>	<b>Equality of Arms</b>	<b>Neutral</b>
<b>Factor 6</b>	<b>Right of Audience</b>	<b>Neutral</b>
<b>II. Education, Training, and Admission to the Profession</b>		
<b>Factor 7</b>	<b>Academic Requirements</b>	<b>Neutral</b>
<b>Factor 8</b>	<b>Preparation to Practice Law</b>	<b>Negative</b>
<b>Factor 9</b>	<b>Qualification Process</b>	<b>Negative</b>
<b>Factor 10</b>	<b>Licensing Body</b>	<b>Negative</b>
<b>Factor 11</b>	<b>Non-discriminatory Admission</b>	<b>Positive</b>
<b>III. Conditions and Standards of Practice</b>		
<b>Factor 12</b>	<b>Formation of Independent Law Practice</b>	<b>Positive</b>
<b>Factor 13</b>	<b>Resources and Remuneration</b>	<b>Negative</b>
<b>Factor 14</b>	<b>Continuing Legal Education</b>	<b>Negative</b>
<b>Factor 15</b>	<b>Minority and Gender Representation</b>	<b>Neutral</b>
<b>Factor 16</b>	<b>Professional Ethics and Conduct</b>	<b>Negative</b>
<b>Factor 17</b>	<b>Disciplinary Proceedings and Sanctions</b>	<b>Negative</b>
<b>IV. Legal Services</b>		
<b>Factor 18</b>	<b>Availability of Legal Services</b>	<b>Negative</b>
<b>Factor 19</b>	<b>Legal Services for the Disadvantaged</b>	<b>Negative</b>
<b>Factor 20</b>	<b>Alternative Dispute Resolution</b>	<b>Neutral</b>
<b>V. Professional Associations</b>		
<b>Factor 21</b>	<b>Organizational Governance and Independence</b>	<b>Neutral</b>
<b>Factor 22</b>	<b>Member Services</b>	<b>Neutral</b>
<b>Factor 23</b>	<b>Public Interest and Awareness Programs</b>	<b>Neutral</b>
<b>Factor 24</b>	<b>Role in Law Reform</b>	<b>Neutral</b>

## I. Professional Freedoms and Guarantees

### Factor 1: Ability to Practice Law Freely

***Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.***

<b>CONCLUSION</b>	<b>CORRELATION: Neutral</b>
<p>Advocates enjoy a considerable number of professional freedoms and guarantees, including the freedom to practice without improper interference. Some advocates experience pressure and intimidation, but these incidents are usually isolated and increasingly uncommon. The dependency of some advocates on investigators for clients may erode their ability and desire to provide effective legal representation.</p>	

#### Analysis/Background:

Independence and freedom to practice law are two of the main principles of advocate activity recognized by Kyrgyz law. LAW ON ADVOCATE ACTIVITY, art 3, 15. Interference in the work of advocates in defense of their clients by the state, its representatives, and others is prohibited *Id.* art. 15, 17. Threats, insult, slander, and violence against advocates and their property are prohibited as well and are subject to prosecution. *Id.*, art. 17. Moreover, advocates enjoy numerous rights and freedoms intended to allow them to render legal assistance effectively, such as the right to collect and submit evidence, to make motions, and to be present at hearings and interrogations. *Id.*, art. 12. CRIMINAL PROCEDURE CODE, art. 48. Advocates also enjoy protections from unauthorized search and seizure and are guaranteed limited immunity from investigation and prosecution. LAW ON ADVOCATE ACTIVITY, art. 16. Many of these same rights and freedoms are set forth in the draft Law on Advocate Activity along with the obligation of “appropriate bodies” to provide security to advocates in the event their safety is threatened. DRAFT LAW ON ADVOCATE ACTIVITY, art. 4.<sup>3</sup>

Most advocates agree that the 1999 Law on Advocate Activity and recent changes to the procedural codes are an improvement over the legal framework that regulated the profession during the Soviet and immediate post-Soviet periods. Recent amendments to the Criminal Procedure Code are cited as giving advocates more procedural advantages in defending their clients than they enjoyed in the past. This is particularly so for the amendment to Article 46 of the Criminal Procedure Code which requires an advocate’s presence at the time warrants are issued by the prosecutor. (See Factor 3 on Access to Clients.)

The draft Law on Advocate Activity is also viewed as a positive development, one that builds upon the hard-fought and won gains of the advocatura in its attempts to become more independent and self-regulating over the past decade. In contrast, the promulgation of Ministry of Justice Instruction No. 73 on Professional Ethics Rules for Advocates in May 2003 has raised concern among many advocates and is characterized by some as an attempt on the part of government authorities to erode the advocatura’s independence. (See Factor 16 on Professional Ethics and Conduct and Factor 17 on Disciplinary Proceedings and Sanctions.)

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<sup>3</sup> A draft version of the proposed Law on Advocate Activity was provided to the assessment team by a leading participant in what are ongoing efforts to revise the 1999 Law. Because the draft Law may be revised during the legislative drafting process, citations in this report may not correspond to the final version of the new Law on Advocate Activity.

Pressure on advocates is said to exist, but it is relatively isolated. To the extent advocates report interference in their work by others, it largely comes in the form of intimidation as opposed to physical violence. Sometimes local authorities try to “persuade” advocates to drop a case, which sometimes happens. Common techniques of doing so include visits by the tax police, phone calls to relatives, or some form of publicity sometimes referred to as *kompromat*. This type of pressure can also dramatically affect the manner in which advocates defend their clients.

In some rural communities, particularly in areas of southern Kyrgyzstan, it is not uncommon for advocates to be pressured by family members of the opposing party to the case. No acts of violence, however, have been reported.

Except for one high profile case, there are no reports of advocates being threatened with official sanctions. That exception involves the case of Gulguna Kaisarova, who was sued in criminal and civil proceedings in November 2001 for allegedly having insulted a public official during a cross-examination in a Bishkek Military Court proceeding several months earlier. More than a year and a half later, the Ministry of Justice (MOJ) informed Kaisarova, a well-known advocate and rights activist from Bishkek, of disciplinary hearings to revoke her license to practice law. (See Factor 2 on Professional Immunity.)

It should also be noted that prominent human rights defenders, several of whom are advocates or legal professionals (individuals who have graduated from a law faculty), have been subject to intimidation and sometimes even physical assault. Acts of intimidation and assault against several of these individuals have been well documented by international and domestic monitors. See U.S DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—KYRGYZSTAN 2003, February 25, 2004, section 4; HUMAN RIGHTS WATCH LETTER TO PRESIDENT AKAEV REGARDING KYRGYZ NGOS, October 1, 2003.

Another particularly concerning phenomena, one suggesting the existence of indirect factors that can influence advocates in their work, is the still powerful role of prosecutorial and investigative authorities and the advent of the so-called pocket or black advocates, something virtually all advocates interviewed acknowledged as an ongoing problem. Many advocates depend in large part on the investigator for finding them clients. As a result, investigators are often able to influence the advocate to work toward obtaining a confession or conviction. Advocates who participate in these schemes not only compromise the rights of their clients, but also undermine the status of the profession.

**Factor 2: Professional Immunity**

***Lawyers are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.***

<b>CONCLUSION</b>	<b>CORRELATION: Negative</b>
<p>Advocates are generally not identified with their clients or their client's causes. With the possible exception of one high-profile case involving the prosecution and disciplinary sanction of a prominent advocate, advocates enjoy immunity for statements they make defending their clients.</p>	

Analysis/Background:

Advocates enjoy a variety of professional freedoms and protections, including limited immunity from investigation and prosecution when representing clients. For instance, advocates are protected from physical searches and examinations while fulfilling their professional responsibilities. Similarly, an advocate’s property may not be searched or seized without proper authorization. These protections extend to the advocate’s mail and other types of official

communication. LAW ON ADVOCATE ACTIVITY, art. 16. In addition, advocates may not be detained or arrested without a court order or a decision of a prosecutor. *Id.*

The prerogative of the Prosecutor General to open an investigation into the activities of an advocate raises some concern among members of the legal profession. Advocates and others claim it could be abused, particularly in those instances in which the advocate is participating in a politically sensitive case, or one that involves the commercial interests of state authorities. However, if a criminal investigation is opened against an advocate or if an advocate is detained or arrested, notice must be given to the “supreme body of the professional public association of advocates of the Kyrgyz Republic.”<sup>4</sup> *Id.*

The draft Law on Advocate Activity includes a provision that would explicitly protect advocates from being identified with their “clients and their interests”. DRAFT LAW ON ADVOCATE ACTIVITY, art. 5. If adopted, this provision would strengthen existing protections enjoyed by advocates even further.<sup>5</sup> Until that time, advocates do not enjoy any specific protections when representing controversial clients, whether they are political opposition figures, businesses that have run afoul of the state, or those that may be viewed as linked to radical Islamist movements.

Advocates are supposed to enjoy protection for the statements they make in court and in the course of representing clients. The law explicitly shields advocates from liability for “statements of opinion made during the fulfillment of professional functions.” LAW ON ADVOCATE ACTIVITY, art. 16. The protection is apparently quite broad. For instance, these statements need not be made in good faith. Nor must they relate to the case or the parties involved, as is the case in some legal traditions, in order to be considered privileged statements.

Whether or not advocates really enjoy these privileges in practice is a timely question following the initiation of criminal and civil proceedings against Kaisarova for statements she made while cross-examining an influential public official in a case before the Bishkek Military Court in 2001. Shortly thereafter, Kaisarova was prosecuted for slander and insult under Articles 127 and 128 of the Criminal Code of Kyrgyzstan.

More than 30 separate hearings have been held since proceedings against Kaisarova were initiated on 23 September 2001. In addition, the Ministry of Justice commenced disciplinary proceedings in May 2003 even though this type of proceeding is required to take place no later than six months after the alleged offense. MINISTRY OF JUSTICE INSTRUCTION NO. 73.<sup>6</sup> Both the criminal and disciplinary proceedings are presently inactive. Kaisarova is reportedly residing and working in a neighboring country while awaiting final resolution of this matter.

The Kaisarova case has focused considerable domestic and international attention on the status of advocates in Kyrgyzstan. At least two international organizations, the Geneva-based International Commission of Jurists and the International Bar Association in London, have sent letters of concern to President Askar Akaev. In addition, the Organization for Security and cooperation in Europe (OSCE) and local human rights defenders have followed the case and attempted to monitor court proceedings. Representatives of international and domestic organizations were barred from the courtroom on several occasions.

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<sup>4</sup> The Law does not indicate which public association of advocates must be notified. Nor does it appear to take into consideration the fact that many advocates in Kyrgyzstan remain unaffiliated with any public association of advocates.

<sup>5</sup> The draft Law on Advocate Activity also includes many of the same provisions relating to advocate immunity as found in the current Law on Advocate Activity. See, for example, arts.16 and 17.

<sup>6</sup> For a thorough discussion of Instruction No. 73, see Factor 16 on Professional Ethics and Conduct and Factor 17 on Disciplinary Proceedings and Sanctions.

Many advocates and members of the human rights community view the Kaisarova case as an example of the state relying on the law to intimidate one of the legal profession’s more independent-minded and outspoken leaders.

In another case, reported by a prominent advocate, the tax authorities threatened to open a criminal case against an advocate who represented the editor of the newspaper *Vechernii Bishkek* at a time when it was critical of the government.

The ability of law enforcement bodies to investigate advocates without a court order was cited by some advocates as a way in which they may be harassed for the clients they represent, if those clients are thought to be unpopular. As a result, some interviewees noted that advocates do sometimes refrain from taking cases that could bring them into conflict with the state. Although, this is reportedly more likely to occur among younger and less experienced advocates, more experienced advocates are also sometimes prone to be selective in the clients they accept.

Although one advocate who participated in the defense of former Vice President and political opposition leader Feliks Kulov indicated that the state took no action to sanction or otherwise harass advocates involved in this politically-charged case, another advocate for Kulov reportedly experienced significant pressure from state authorities while she was defending her client.

**Factor 3: Access to Clients**

***Lawyers have access to clients; especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although less experienced advocates may have some difficulty meeting with their clients, access to individuals in custody is eventually granted. Facilities for meeting with clients are often crowded and not conducive to communications. Suspects are sometimes interrogated outside the presence of an advocate.</p>	

Analysis/Background:

The Constitution recognizes the right of everyone subject to detention or arrest, as well as individuals charged with a crime, to legal assistance from an advocate. CONSTITUTION, art. 85.12 Advocates are guaranteed the right to participate in a case and have access to suspects and the accused from the moment of actual detention and the first interrogation. CRIMINAL PROCEDURE CODE, art. 40, 44. (See also art. 218 on the obligatory participation of advocates of the accused in interrogations.) In addition, advocates have the right to meet with their clients in private, freely, and without interference from state authorities for purposes of providing legal assistance.<sup>7</sup> LAW ON ADVOCATE ACTIVITY, art. 12. The duration and number of these meetings may not be limited by the state. *Id.*; CRIMINAL PROCEDURE CODE, arts. 42.9, 48.6. However, when meeting with clients, advocates are prohibited from either delivering or accepting for delivery to others materials such as letters and foodstuffs. MINISTRY OF JUSTICE INSTRUCTION No. 73 ON PROFESSIONAL ETHICS RULES OF ADVOCATES, May 21, 2003, section 8.

Preventative detention of someone suspected of a criminal offense is allowed for up to 72 hours, at which time the detainee must be released or charged with a crime. At this stage, individuals are kept in temporary detention centers (IVS) at militia stations. Investigators must notify a family member about the time and place of detention within 12 hours. CRIMINAL PROCEDURE CODE, arts.

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<sup>7</sup> Article 14 of the draft Law on Advocate Activity, which identifies many rights enjoyed by advocates, does not enumerate this right. Nor is it expressly provided for elsewhere in the text.

39.3, 99. Similarly, the investigator is supposed to inform the suspect at the time of detention of his right to legal counsel. *Id.*, arts. 95.1, 40.1.4. As noted above, advocates may participate in the case from the moment an individual is detained or interrogated at the place of detention, but it is relatively uncommon for individuals to already have an advocate. If the advocate chosen by the suspect fails to appear within 24 hours, the investigator or the prosecutor has the discretion to suggest another advocate or simply appoint one. *Id.* art. 44.3-4.

Once the case is transferred to the court (which signifies the conclusion of the investigative phase), detainees are moved from militia stations to detention facilities (SIZO) under the jurisdiction of the Ministry of Justice (MOJ). There are four of these detention facilities in Kyrgyzstan under MOJ jurisdiction. They are located in Bishkek, Karakol, Naryn, and Osh. A separate facility for juvenile offenders and women is located in Voznesenovka. The National Security Service (*Sluzhba Natsionalnoy Bezopasnosti* or SNB) operates detention centers for suspects in matters involving national security. According to statistics provided by the MOJ, the number of persons in its detention facilities, as of 01 May 2004, breaks down as follows:

Facility/Location	# of Detainees
SIZO-1 Bishkek	1,870
SIZO-3 Karakol	258
SIZO-4 Naryn	46
SIZO-5 Osh	501
SIZO-VK-14 Voznesenovka	116
<b>Total:</b>	<b>2,791</b>

In order to gain access to an individual in custody, advocates must present the investigator with proper identification and a document (*order-porucheniye*) from the head of the public association or other organization to which the advocate belongs. This document states that the advocate is authorized to represent the individual in detention. Once the investigator receives this documentation, the detainee will be informed that the advocate has arrived and then taken to a facility to meet with the advocate.

Obtaining access to clients often depends on the advocates' knowledge of the law, as well as their determination to overcome obstacles that law enforcement bodies are prone to put in their way.

It is reportedly common for investigators and the militia to either withhold information from a detainee about their right to an advocate. In other instances, individuals are sometimes pressured to waive this right.

Most advocates report that facilities are sometimes nothing more than a modest room with several desks and chairs. It is not uncommon for the room to be crowded with other detainees and their advocates. In some instances, guards are present and must be asked to leave the room. Sometimes advocates have no other recourse, but to meet with their clients in a hallway in order to consult in relative privacy. (See Factor 4 on Lawyer-Client Confidentiality.) The continued use of cages in the courtrooms to hold criminal defendants during trial is a physical barrier to effective communication.

On a positive note, advocates must now be present at the time arrest warrants are issued by the prosecutor, pursuant to a March 2004 amendment of Article 46 of the Criminal Procedure Code. This change provides the advocate with an opportunity to contest the merits of the investigator's request before the warrant is issued. However, like other rights enjoyed by members of the profession, most interviewees believe that advocates largely remain unfamiliar with it. Others simply lack the skill or the determination to successfully take advantage of it on behalf of their clients. At this point, it is still too soon to determine this provision's impact on advocate activity or how often requests for warrants will be defeated, but it is generally viewed as a positive development by most advocates and legal professionals, including many prosecutors.

**Factor 4: Lawyer-Client Confidentiality**

***The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The confidentiality of communications and consultations between advocates and their clients is guaranteed by law, and this confidentiality is generally respected by the state in practice.</p>	

Analysis/Background:

State authorities, as well as advocates, are obligated to respect the confidential nature of advocate-client communications. Most of the emphasis, however, is on the duty of advocates as opposed to the state’s role in ensuring this confidentiality. For instance, Article 13 of the Law on Advocate Activity requires that advocates “observe confidentiality with respect to persons who have applied for legal assistance.” The reason the client is seeking legal representation, the content of consultations between advocate and client, and “other data” gathered by the advocate in the course of representing the client is considered privileged and, therefore, protected by the rules on confidentiality. LAW ON ADVOCATE ACTIVITY, art. 13. Exceptions may only be made in the event the client consents to disclosure or if the advocate has reason to believe that the client’s actions may result in the death or severe injury of another. *Id.* Information and documents related to the representation of a client may be revealed in those circumstances involving prosecution of an advocate in criminal, civil, disciplinary, or administrative matters, but only upon the consent of that client. *Id.*, art. 17. Advocates may not be questioned or compelled to give testimony as a witness on matters protected by advocate-client confidentiality. *Id.* The advocate shall not take any actions against the interests of the defendant to disclose secrets revealed in connection with the defense and other assistance he is rendering. CRIMINAL PROCEDURE CODE, art. 48.6.

The confidential nature of information exchanged between clients and advocates and the duty of advocates to respect this principle is also emphasized by Ministry of Justice Instruction No. 73 on Approval of Professional Ethics Rules for Advocates. (See Factor 16 on Professional Ethics and Conduct).

If adopted, the draft Law on Advocate Activity would affirm many of existing rules and protections on advocate-client communications. It would strengthen these protections by consolidating some of the otherwise scattered rules on confidentiality in a single article. See DRAFT LAW ON ADVOCATE ACTIVITY, art. 18. Like the existing Law on Advocate Activity, however, the emphasis would remain on the duty of advocates to keep communications confidential.

Advocate-client confidentiality can be protected from possible infringement by state authorities in several ways, mostly through privacy protections. Interference with the “right to confidentiality of correspondence, and of telephone, telegraph, postal, and other communications” is prohibited by the Constitution. CONSTITUTION, art. 16.6. In addition, mail and electronic communications related to advocate activity is protected from examination, inspection, and seizure without an official warrant. LAW ON ADVOCATE ACTIVITY, art. 16. The Criminal Procedure Code also recognizes the right of advocates to meet with clients “in privacy, confidentiality, and without an limitations...” CRIMINAL PROCEDURE CODE, art. 48.3.7. These provisions may preclude unauthorized surveillance or eavesdropping, but prosecutors still enjoy considerable discretion when issuing warrants for search and seizure. *Id.*, art. 184.3.

The extent to which the confidentiality of communications is respected in practice is often a function of the knowledge, training, and experience of advocates. More experienced and confident advocates are less likely to allow authorities to infringe on this guarantee, which some

are considered prone to do. For instance, several interviewees alleged that information related to their cases was seized without a court or prosecutorial order. Another interviewee stated that police stopped an advocate involved in a case related to the March 2002 Aksy shootings and confiscated documents related to the case. Also, it is not uncommon for investigators and militia to remain present when advocates meet with their clients in detention centers. However, most advocates agree that these persons will leave the room when asked to do so. In some detention facilities, there are no separate rooms for advocates to meet with their clients. As a result, advocates often have no other choice, but to meet with their clients either in the investigator's office or in public spaces and in earshot of militia.

**Factor 5: Equality of Arms**

***Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Advocates have the right to obtain information relevant to the representation of their clients during an investigation, but may not have access to all the information in the case file until the matter is transferred to the court. Delays in obtaining information are not uncommon.</p>	

Analysis/Background:

The Constitution provides that “[j]udicial proceedings shall be based on the principles of the adversarial process and equality of the parties [equality of arms].” CONSTITUTION, art. 85.3. Equality of arms is also guaranteed by the criminal and civil procedure codes and other legal instruments. CRIMINAL PROCEDURE CODE, art. 18.1; CIVIL PROCEDURE CODE, art. 10.1. Parties to a criminal proceeding enjoy equal procedural rights and guarantees. Moreover, the judge is obligated to ensure “impartiality and objectiveness” in the proceeding and to provide “favorable conditions” so that parties may realize these rights in practice. CRIMINAL PROCEDURE CODE, art. 18.6. Similar guarantees are afforded to participants in civil proceedings. CIVIL PROCEDURE CODE, art. 10.2.

The Law on Advocate Activity does not explicitly affirm the principle of equality of arms, but it does recognize the right of advocates to gather information that may then be introduced into evidence in civil, criminal, and commercial proceedings. LAW ON ADVOCATE ACTIVITY, art. 12. This information includes witness statements, expert reports and opinions, as well as other documents and data that are relevant to the case. *Id.* Similar guarantees are set forth in the draft Law on Advocate Activity, which requires the “competent body” to provide access to information requested in a timely fashion so that the advocate has the opportunity to render effective legal representation to his or her client. DRAFT LAW ON ADVOCATE ACTIVITY, arts. 13, 14. It does not, however, indicate a specific deadline by which time access to information must be provided.

The Law on Guarantees and Free Access to Information provides an additional mechanism by which information from state bodies may be obtained free of charge by “legal representatives” for purposes of representing the interests of their clients. LAW ON GUARANTEES AND FREE ACCESS TO INFORMATION, as amended on 18 October 2002, art. 5. However, the law is silent with regards to timelines for making information available. Moreover, the only way to enforce this law would be to sue the competent state authorities in a separate proceeding. Recourse to this mechanism is, therefore, not likely to aid advocates in any meaningful way to obtain information they need to defend their clients.

Pursuant to the Criminal Procedure Code, advocates may collect materials in defense of the suspect, accused, defendant; introduce evidence into the investigation and trial; obtain written statements of witnesses; be present when the charge is announced; inspect transcripts, records,

and other materials related to the detention and interrogation of a client. CRIMINAL PROCEDURE CODE, art. 48.3. Following amendments to the Criminal Procedure Code in 2003, advocates enjoy the right to participate in the case from the moment his or her client is detained. This includes the right to be present at the first interrogation. *Id.* art. 44.3.

According to most interviewees, equality of arms is generally respected in civil proceedings. In contrast, advocates continue to lack full equality of arms in criminal proceedings despite improvements since the Soviet era. A number of obstacles stand in the way. Access to all the information in the dossier is possible only at the conclusion of the investigation and the transfer of the matter to the court. CRIMINAL PROCEDURE CODE, art. 48.3.7. Moreover, access to the dossier is not always made available in a timely fashion. Delays can be attributed to investigators who respond to requests for information by claiming they need to first consult with their supervisors. Thus, requests can go unfulfilled for several weeks. In some cases, information is not turned over until right before trial. Once access is granted, however, there are generally no restrictions on reviewing the contents and taking notes.

Less experienced advocates have the greatest difficulty obtaining relevant information from prosecutorial and investigative bodies. These advocates are often less knowledgeable about their rights than their more experienced colleagues and less likely to have forged professional and personal relationships with investigators. Obtaining information held by the National Security Service (*Sluzhba Natsionalnoy Bezopasnosti* or SNB) is considered particularly challenging, even for experienced advocates.

True equality of arms is also compromised by the close relationship of prosecutors with members of the judiciary. Many prosecutors continue to have unlimited access to judges and regularly meet one-on-one with them to discuss ongoing cases. With no prohibitions on *ex parte* communications, meetings of this nature are reportedly a standard feature of the Kyrgyz justice system. See JUDICIAL REFORM INDEX (JRI) FOR KYRGYZSTAN, Factor 21 on Codes of Ethics, p 28.

**Factor 6: Right of Audience**

***Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The right of advocates to appear before a court of law in civil and criminal matters is guaranteed and respected in practice. It is also common for law graduates without an advocate license, as well as individuals who have no formal legal education, to represent others in civil proceedings on the basis of a power of attorney.</p>	

Analysis/Background:

The Law on Advocate Activity does not expressly recognize the right of audience, nor does it specify which types of courts, i.e. first instance, appellate, constitutional, and administrative, before which advocates are permitted to appear. Instead, it provides that advocates have the right to defend the interests of their clients “with all agencies, enterprises, institutions, and organizations.” LAW ON ADVOCATE ACTIVITY, art. 12. However, the right of audience is indirectly affirmed through a variety of guarantees that are generally associated with advocate activity, such as the right to “present evidence in court and during investigations” and the right “to be present during the hearing of petitions and complaints at sessions of collegial bodies.” *Id.* The draft Law on Advocate Activity takes a similar approach by electing not to expressly guarantee the rights of advocates to appear before certain courts of law or enforcement agencies.

Both the criminal and civil code implies the existence of a right of audience through specific provisions on the role and activities of legal representatives. The Criminal Procedure Code, for instance, provides that advocates “participate in court proceedings” and are entitled to be present when the charges are read, to make motions, and to introduce evidence. CRIMINAL PROCEDURE CODE, art. 48. Also, legal representation in criminal matters is limited to licensed advocates. *Id.* art. 44.2. On a related note, criminal defendants may waive legal counsel and defend themselves *pro se*, unless they are minors, physically or mentally impaired, or unable to communicate in the language of the proceedings. *Id.* art. 46, 47. In these and a few other circumstances, the participation of an advocate becomes mandatory.

In contrast to criminal proceedings, for which an advocate is almost always required, individuals other than advocates may serve as legal representatives in civil proceedings. According to Article 52 of the Civil Procedure Code, citizens have the right to “conduct their cases in person or via representatives.” These representatives may be licensed advocates. They may also be any other individual, even those that have no formal legal education and training. CIVIL PROCEDURE CODE, art. 54. The only requirement for non-advocate legal representatives to appear in court is possession of a duly executed and notarized power of attorney from a party to the proceeding that specifies the representative’s powers to act on behalf of that party. *Id.*, art. 57. The non-advocate legal representative enjoys the “right to commit all procedural actions” set forth in the power of attorney, such as entering into an amicable agreement and appealing the verdict. *Id.* art. 58. Power of attorney forms, based on a model form adopted by the Ministry of Justice, are available at most notary offices and are considered simple for the layperson to complete. Use of this form is not required. The power of attorney may be drafted on any sheet of paper.

All advocates are required to present their license at the outset of the proceeding, while non-advocate legal representatives must show a valid power of attorney.

Many people, especially those without adequate funds to pay for an advocate, as well as those living in remote areas with few advocates (See Factor 18 on Availability of Legal Services), are thought to avail themselves of non-advocates by appointing a relative or close friend to serve as their legal representative in civil proceedings. Law students and law graduates also sometimes appear in court and represent individuals in civil disputes on the basis of a power of attorney. Importantly, there is no guarantee that the representation any of these non-advocate representatives provide will be adequate to defend the interests of those seeking assistance. Members of the judiciary have expressed concern regarding the competence of these representatives to provide legal counsel in more complicated proceedings. Moreover, it should be noted that non-advocate legal representatives neither enjoy the panoply of rights afforded to advocates in the Law on Advocate Activity, nor are they bound by any ethical rules and professional responsibilities. Surprisingly, this type of unregulated legal representation does not appear to be a major concern of the Ministry of Justice or the leadership of advocatura.

According to most interviewees, the right of audience is generally well respected in both civil and criminal proceedings. There is a prevailing sentiment, however, that advocates are sometimes marginalized during the pre-trial investigative phase. There are also instances in which the right of the advocate to be present at trial is challenged by the prosecutor or the opposing party. Some advocates have reported being denied the opportunity to defend their client in the courtroom. Others claim to have been removed from the courtroom when they had a legal right to be present.

Advocates enjoy guarantees of equality of arms with opposing counsel according to the law (See Factor 5 on Equality of Arms), but many suggest that judges are more likely to support the plaintiff or prosecutor. In addition, it is reported that some judges may mock or ridicule advocates. Similarly, advocates are not always given the same opportunities to address the court as prosecutors typically enjoy. In other instances, advocates are simply ignored, leaving some wondering if others are unduly influencing judicial decisions.

Part of this phenomenon is considered a function of lingering Soviet attitudes and biases in favor of the prosecutor. At the same time, advocates are not always adequately prepared for trial or knowledgeable about courtroom procedures. Unfortunately, many of the so-called pocket or black advocates are simply prone by definition not to assert themselves in any significant fashion during courtroom proceedings. (See Factor 1 on Ability to Practice Freely.) Less experienced, poorly trained, and unethical advocates tend to be marginalized or simply passive in the courtroom. Judges, prosecutors, and advocates alike all tend to agree that some advocates do not take advantage of the opportunities that do exist to present a competent argument on behalf of their client. Most interviewees also agree that prosecutors tend to be afforded deferential treatment in part because they are still viewed as representing the interests of the state.

## II. Education, Training, and Admission to the Profession

### Factor 7: Academic Requirements

***Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although advocates must have a law degree in order to practice, the quality of legal education has declined over the past decade in large part because of the proliferation of law faculties and the lack of a national curriculum that prescribes basic standards for training law students and awarding degrees. The new Kyrgyz State Law Academy (KSLA) has consolidated most law faculties and will supervise implementation of new legal education standards and curriculum reform in coming years.</p>	

#### Analysis/Background:

All aspiring advocates must complete a law degree from an institution of higher education, a notarized copy of which must be submitted to the Ministry of Justice prior to sitting for the qualification examination. LAW ON ADVOCATE ACTIVITY, art. 7. REGULATION NO. 52 ON THE QUALIFICATION COMMISSION OF THE MINISTRY OF JUSTICE, March 15, 2001, para. 4.2. In contrast, law degrees and legal training are not required in order to represent someone in civil proceedings provided the legal representative is authorized to do so by valid power of attorney. (See Factor 6 on Right of Audience.) Most law graduates do not go on to become advocates.

A law degree is one of the more popular degrees in Kyrgyzstan, partially because it is perceived as a symbol of status and a means to achieving a lucrative future either as an advocate or other type of legal professional. It has also become much easier to obtain a law degree than in the past, given the proliferation of state-run and private law faculties following the collapse of the Soviet Union in 1991.

By most estimates, there were roughly fifty law faculties with an enrollment of approximately 26,000 students at the end of 2003.<sup>8</sup> In contrast, there was only one law faculty in all of Kyrgyzstan during the Soviet era, and it graduated only from 50 to 100 law students every year. Of this number, roughly 15 spaces were reserved for people with ties to the government and the Communist Party. The remaining spaces were awarded through a fully competitive process based on a standardized national examination. Today, all applicants compete for admission on

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<sup>8</sup> There are a total of 187 law schools with a total enrollment of roughly 145,000 students in the United States, a country with a population of 290 million.

the basis of a similar examination, although there are reports of corruption and graft in the admissions process.

Law is taught as an academic discipline at the undergraduate level in Kyrgyzstan. Students matriculate following the completion of a secondary education. Degrees are awarded by law faculties following four or five years of study, depending on the institution and the type of degree. Most state-run law faculties award degrees at the conclusion of a five-year curriculum, based on full-time study. Part time study is also available, and many students take advantage of this option, reportedly because they are only required to report for the examinations. At Kyrgyz-Russian (Slavonic) University, for example, there are 1,300 part-time law students as opposed to 700 full-time law students.

Holders of either a five-year degree or a four-year bachelor's degree may sit for the qualification examination and become a licensed advocate. Those with a four-year degree may take additional courses or enroll in a one-year or two-year master's program, half of which is spent drafting a substantial research paper. Several interviewees suggested that the four-year degree programs, many of which are offered by private law faculties, are popular, because they are more affordable. However, they are generally viewed as less rigorous than most five-year programs.

In 2004, most law faculties, private, as well as state-run, were consolidated under the KSLA, pursuant to a presidential decree promulgated in August 2003. This measure was taken in order to improve the legal education and the expertise of legal professionals through greater regulation and supervision. PRESIDENTIAL DECREE NO. 264 ON ESTABLISHMENT OF THE KYRGYZ STATE LAW ACADEMY, August 12, 2003. A handful of state-run institutions, namely Kyrgyz State National University, Kyrgyz-Russian (Slavonic) University, Kyrgyz-Uzbek University, and the E.M. Aliev Academy of the Ministry of Internal Affairs were exempted from this move and continue to function independently. Opposition to this move by some educational institutions, possibly because they were hesitant to give up their tuition-paying law students, combined with other administrative obstacles, has delayed the complete consolidation of law faculties under the KSLA. Rather than forcing all students to study at the KSLA in Bishkek, as was envisioned by some, many law faculties in the regions have been converted into KSLA branches. The Osh-based KSLA Southern Regional Institute is considered an autonomous part of the KSLA structure and has a branch Jalal-Abad. Another KSLA branch operated in Batken for a short period before closing its doors.

The establishment of the KSLA is also considered part and parcel of ongoing efforts to develop national standards for legal education that reflect modern practices elsewhere. The Ministry of Education first issued legal education standards in 1991, but these were largely identical to those from the Soviet era. Revisions in 1996 eliminated some of more ideological influences and granted law faculties more autonomy with regard to curriculum design. However, by falling short of introducing interactive teaching methodologies, clinical legal education, or specialized learning tracks and electives, these changes are perceived as having done little to improve either the instruction or the study of law. In 2002, a working group began reviewing these standards and elaborating interim standards that will reportedly take affect on a temporary basis for the 2004-2005 academic year. More comprehensive and permanent standards, referred to as "third generation" standards will be developed and approved over the next two to three years as the KSLA establishes itself. These third generation standards will likely reduce the number of required educational hours, introduce new degrees (e.g. general diploma, bachelor's degree, and master's or specialist degrees), and address the status of legal ethics and clinical legal education.

Efforts to reform the legal education system must also inevitably address issues of corruption and absenteeism, both of which are unfortunately considered commonplace in most law faculties. Many students are known to purchase grades from law professors, who reportedly receive a monthly salary equivalent to \$100. Some professors view the receipt of bribes as a perk that helps offset what is otherwise a small salary. While some students prefer to pay bribes rather

than earn a passing grade on their own, others have no other choice, but to pay a bribe to ensure receipt of a good grade, even though they may have attended lectures and performed well.

Legal education is conducted primarily in Russian, but instruction in Kyrgyz is possible. At the KSLA's Southern Regional Institute in Osh, for instance, students may choose to study in either Russian or Kyrgyz. One of the greatest challenges to those who wish to study and practice in Kyrgyz is the lack of legal materials and the development of legal terminology. Implementation of a new law on use of the Kyrgyz language may increase the availability of these materials over time, but it is still too early to assess how this will impact on legal education.

**Factor 8: Preparation to Practice Law**

***Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Most young advocates are not adequately prepared to provide competent and effective legal assistance on account of weakened educational standards and a lack of practical training prior to their admission into the profession. Efforts to provide law students with advocacy skills through clinical legal education, moot court competitions, and mock trials are beneficial, but are largely dependent on international donors and may prove unsustainable without their continued support.</p>	

Analysis/Background:

A real need exists for a mechanism to ensure that law school graduates are knowledgeable about the law and trained in the practical, analytical, and ethical skills required of advocates when providing legal assistance. According to one interviewee, “there are many advocates and other legal professionals, but not enough good ones.” With about 26,000 law students, a similar number of graduates, and dozens of law faculties throughout the country, it does not appear that access to the legal education system is much of a problem. Rather, one of the principal challenges facing the legal education system is how to ensure that law students throughout the country are adequately educated and trained to one day provide legal assistance in accordance with standards of the profession. Members of the legal profession, including judges, prosecutors, and advocates, generally agree much more needs to be done in this regard.

It is also a widely held belief that the quality of legal education has declined dramatically since the collapse of the Soviet Union, and with it, the quality of many advocates that have recently been admitted into the profession. Notably, commercial lawyers are considered to be among the most competent of all legal professionals.

The rapid proliferation of law faculties since 1991 has undermined standards of legal education and diluted the cadre of experts that train aspiring advocates. The study of law at the doctoral and post-doctoral level has fallen precipitously over the past decade. There are currently estimated to be only 5 professors with doctoral degrees in law. The number of other professors qualified to provide instruction in law is also considered quite low. Law faculties are compensating by relying on adjunct faculty, which has some advantages. Many of these professors are licensed advocates, judges, or prosecutors with considerable experience, but others, particularly those in the newer private law faculties, are inexperienced and unqualified to teach. Many instructors have themselves only recently graduated from law school. One interviewee indicated she had no teaching experience prior to being hired at a private law faculty and admitted to giving lectures on topics she had no real expertise in. Concern over the quality of law professors is one of reasons why the government established the Kyrgyz State Law Academy (KSLA). (See Factor 7 on Academic Requirements.)

Law is taught as an academic discipline, with instruction mostly conducted through lecture-based formats that are heavily centered on legal theory. Courses are designed to give students a general background in the basic substantive areas of law, as well as an overview of the structure and operation of government. There is little interaction between professors and students in the classroom. Memorization is emphasized and practiced much more than critical thinking, problem solving, legal research and analytical writing, or other advocacy skills. Law students are usually exposed to these practical skills only through participation in highly competitive clinical legal education programs supported by international donors as discussed below. Third year students complete a one-month internship by rotating between a court, prosecutor's office, and the militia, but these internships are perfunctory and considered to have little practical value.

Some instruction in ethics is required in most law faculties, but this subject has traditionally been taught as only one part of a more comprehensive course on the advocatura or as part of another required course. Electives in ethics and a block of other courses such as international law, human rights, constitutional law, and commercial law will be offered beginning in September 2004, when temporary standards for legal education take effect. These temporary standards were approved by the Ministry of Education as an attempt to move away from a fully compulsory curriculum and to provide law students with more choice in classes they take and possibilities for specialization.

Legal clinics, including those established in affiliation with Osh State University and Kyrgyz-Russian (Slavonic) University, have become an effective means by which students gain advocacy skills and experience providing legal assistance to the indigent through consultation and litigation. The Kyrgyz-Russian (Slavonic) University legal clinic focuses on civil matters, but criminal law and constitutional law programs are reportedly being planned as well. The Student Criminal Law Clinic in Osh was established in 2001 by the Human Rights and Democracy Center ([www.legal.kg](http://www.legal.kg)), followed shortly thereafter by a Student Civil Law Clinic in 2002 and then a Street Law program in 2004.

At the present time, there are no uniform standards for clinical legal education in Kyrgyzstan, although discussion of this topic and the creation of a proposed Association of Clinics has been ongoing for some time. Moreover, clinical legal education is not part of the law school curriculum because the clinics are considered separate institutions. Participants do not receive any academic credit for their work. As a result, many interested students may be inhibited from seeking entry into one of these programs. This could be mitigated somewhat by the fact that students at both institutions can now satisfy their internship requirement through successful completion of a clinic program.

Participation is based on a competitive examination process and interest is strong. More than 150 students have participated in the legal clinic programs in Osh, which are offered in both Kyrgyz and Russian language tracks. Seventy-four students participated in 2003 and 2004 alone. They break down as follows: 49 males and 25 females; and 60 Kyrgyz, 9 Uzbeks, 2 Tatars, 2 Tajiks, and 1 Russian. Somewhere between five to ten students are thought to compete for each available slot. The legal clinic at Kyrgyz-Russian (Slavonic) University accepts roughly 35 students each year.

Members of the legal community assist in the work of legal clinics by supervising law students, but the existence and availability of clinical legal education in Kyrgyzstan is due largely to the efforts and support of international donors such as the Organization for Security and Cooperation in Europe (OSCE), which has provided financial support to the Osh Student Criminal Law Clinic. Soros Foundation funded the establishment of the legal clinic at Kyrgyz-Russian (Slavonic) University and funds the Osh Student Civil Law Clinic, as well as the clinic at Kyrgyz National University. Host institutions provide little support other than space for these clinics to function.

Law students can also obtain practical experience through the Adilet legal clinic, a non-governmental organization formed in 2001 to assist refugees and the indigent. Adilet is not part of any university structure, but it has entered into agreements with two law faculties. Each year

Adilet selects 15 students from these faculties through a competitive process. Those selected receive training in international and domestic law before participating in supervised legal consultations.

In addition to participating in law clinics, interested students may develop and enhance their advocacy skills by participating in moot court competitions, such as the Jessup International Law Moot Court and the Ferghana Valley Moot Court, as well as mock trials. Participants supplement legal theory that is stressed in the classroom with practical skills such as writing legal briefs, presenting oral arguments, and conducting cross-examination in a courtroom setting. Moot court competitions are also means by which students can obtain basic instruction in international and comparative law. Each year several hundred students vie for coveted slots on moot court teams that go on to compete at the national, regional, and international levels. At the March 2004 Jessup competition, the Kyrgyzstan team placed 17<sup>th</sup> overall out of 95 participants, the best performance among all Central Asian teams. Like clinical legal education, these opportunities are made available largely through the financial and material assistance of ABA/CEELI and other international donors.

**Factor 9: Qualification Process**

***Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>A qualification examination is required for all aspiring advocates, except for those who have been employed by certain state bodies for five years or more. Members of the Qualification Commission, which administers the examination, do not have objective criteria upon which to grade the responses to questions.</p>	

Analysis/Background:

A mandatory qualification examination is not required for all individuals to obtain licenses as advocates. Notably, the examination requirement is waived for law graduates with five years professional legal experience in either the procuracy, ministries of interior or national security, offices of the presidential administration or the prime minister, the parliament, or the judiciary. LAW ON ADVOCATE ACTIVITY, ART. 9. For the time being, all other individuals must sit for and pass a qualification examination administered by the Qualification Commission of the Ministry of Justice. The draft Law on Advocate Activity would require all individuals seeking admission into the profession, without exception, to first sit for and pass a qualification examination.

The Article 9 waiver has allowed a significant number of public servants, many with ties to law enforcement bodies, to enter into the profession and provide legal consultations without first demonstrating any mastery of the laws of Kyrgyzstan or familiarity with basic advocacy skills. According to statistics provided by the Ministry of Justice, between 2000 and May 2004, 695 so-called Article 9 advocates (out of a total of 1,192 advocates) were admitted to practice without first sitting for the qualification examination. In 2004 alone, there were 78 applications for licenses under Article 9. All but three of these individuals were approved and subsequently admitted into the profession. Many interviewees assert that the advent of the pocket or black advocate (See Factor 1 on Ability to Practice Freely) can be traced back to the Article 9 loophole that allows former investigators and militia who have a law degree to move into the advocatura without much effort. Article 9 is also viewed by some as a means by which government officials and parliamentarians may gain easy admission to the profession and thereby add another professional credential or accomplishment to their *curriculum vitae*.

As noted above, individuals who do not qualify for the Article 9 waiver are required to pass a qualification examination. The Qualification Commission of the Ministry of Justice, a 9-member body chaired by the First Deputy Ministry of Justice, administers the examination on a periodic basis. *Id.*, art. 8. See also, REGULATION ON THE QUALIFICATION COMMISSION OF THE MINISTRY OF JUSTICE, No. 52, March 15, 2001, paras. 1.3 and 3.1. Qualification Commission members, all of whom are appointed by the MOJ, currently include the chair of the Union of Advocates and a legal scholar, as well as functionaries of Ministry of Justice Department of Notaries and Advocatura. The commission had previously included representatives of the procuracy, the ministry of internal affairs, and the judiciary, but these individuals were removed in response to concerns of the advocatura that the presence of these officials could compromise the independence and impartiality of the body.

The Qualification Commission approves the substantive areas of law tested by the examination. Individual questions are drafted by Commission members, in consultation with legal scholars and practitioners, and usually cover civil law and procedure, criminal law and procedure, and constitutional law. Considerable attention is given to testing knowledge of procedural law, but there are no questions that are used to examine an aspiring advocate's ability to draft motions or other practical lawyering skills. Similarly, there are no questions on ethics. Applicants may prepare by reviewing the examination questions, all of which are made available in advance.

Qualification examinations are administered every three months. The date, time, and location must be announced no later than one week in advance of the exam. *Id.*, para. 4.1. Only those individuals with a law degree and at least one year of law-related employment may apply to take the examination. LAW ON ADVOCATE ACTIVITY, art. 8. Applicants must submit the following materials to the Qualification Commission: an application form; a certified copy of a law diploma; a certified employment card showing previous places of employment; and a copy of the individual's passport. REGULATION OF THE QUALIFICATION COMMISSION, No. 52, para. 4.2

Each examination consists of 510 questions. These questions are presented to the applicants on tickets consisting of five questions each. The applicant picks one ticket and has 40 minutes to prepare by writing out his or her answers for all five questions before providing an oral response to Commission members. Up to 10 applicants sit for the examination at the same time. The Qualification Commission does not score each individual response. Rather, applicants are graded on their performance on all five questions collectively.

Commission members sometimes ask additional questions apart from those included on the examination tickets.

There are no established guidelines or objective criteria for assessing and grading examination performance. Each individual Qualification Commission member simply assigns an applicant either a passing or failing grade. Then, all members vote on whether to pass or fail the applicant. Final decisions of the Commission are determined on the basis of a simple majority of votes. All applicants are informed at the conclusion of the examination and the announcement of the results that they may appeal the decision to a court of law within one month or make a statement for the record. REGULATION OF THE QUALIFICATION COMMISSION, No. 52, paras. 3.10 and 3.11.

Because the examination is conducted orally, there are no formal written answers to review. However, an assistant to the Commission compiles a record of the examination proceeding. This record reflects the Commission's questions and summarizes the applicants' answers. In addition, notes taken by students in preparation for their oral responses are collected at the conclusion of the examination and attached to the examination record. It is not clear whether these materials are adequate or made available for purposes of appealing a decision of the Commission.

Few applicants have chosen to contest the results in either fashion. Without greater clarity in the basis upon which examination performance is assessed and graded, it is unclear to what extent these appeals can provide a meaningful opportunity to overturn the decision of the Commission.

Similarly, because answers are provided orally, it is difficult to go back and reassess an applicant's answers. Nevertheless, it appears that most applicants sitting for the examination do receive a passing score. Pass/fail scores for examinations administered in 2003 breakdown, according to information provided by the MOJ, as follows:

Number of Exam Applicants	Number of Passing Scores	Number of Failing Scores	Number of Applicants Failing to Appear
198	120	7	71

Fundamental changes in the qualification examination are currently being contemplated. In addition to closing the Article 9 loophole as mentioned above, proposed changes would shift authority for devising and conducting the examination to the advocatura, as well as alter the method by which applicants are tested. The draft Law on Advocate Activity, for instance, would vest qualification boards (comprised primarily of advocates, but with some non-advocate representation) of associations of advocates of the oblasts and Bishkek city with primary responsibility for examining individuals prior to their admission into the profession. DRAFT LAW ON ADVOCATE ACTIVITY, arts. 8, 9, 27, 31. The MOJ would not play any direct role in assessing the qualifications of applicants under this new system. However, MOJ representatives and others could sit on the qualification commissions as a means of increasing transparency in the examination process and guarding against professional cronyism. DRAFT CONCEPT ON THE BAR, para. 3.5.<sup>9</sup>

Recognizing some of the pitfalls associated with assessing applicants solely on the basis of their oral responses, both the draft Law on Advocate Activity and the draft Concept on the Bar would institute a two stage process that involves a written examination followed by applicant interviews. Neither document, however, indicates whether a revised qualification process would examine the applicant's knowledge of ethical and professional rules of conduct or practical lawyering skills such as drafting pleadings or other trial advocacy skills.

Less than half of all licensed advocates have taken the qualification examination. MOJ statistics show that 497 advocates were admitted to practice on the basis of passing the qualification examination between 2000 and May 2004. This is significantly less than the 695 individuals noted above who received Article 9 waivers prior to being provided with a license to practice law.<sup>10</sup>

**Factor 10: Licensing Body**

***Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Advocates are licensed by the Ministry of Justice (MOJ) on the basis of a resolution of the Qualification Commission, a body appointed by the MOJ to administer the qualification examination. Representatives of the advocatura participate in the decision-making of this body, but otherwise the advocatura plays no role in the admissions process. Decisions on admission to the profession may be appealed to a court of law, but seldom are in practice.	

<sup>9</sup> The draft Concept on the Bar cited in this instance and later in the text is the product of a working group of experts appointed pursuant to a February 2004 decree of the government. See DECREE OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC, No. 54-r, February 04, 2004.

<sup>10</sup> Based on statistics provided by the Ministry of Justice.

### Analysis/Background:

All advocates are admitted to the profession through a licensing system that falls within the competencies of the MOJ. LAW ON ADVOCATE ACTIVITY, art. 7. The licensing system itself is coordinated by the Ministry of Justice's Department of Notaries and Advocatura, which, in addition to licensing, oversees many other aspects of advocate activity. An individual seeking an advocate's license is required to submit a petition to this body with the following: a basic application form including biographical data, resolution of the Ministry of Justice Qualification Commission confirming a passing grade on the entry examination if the applicant is not exempted from the examination requirement (See Factor 9 on Qualification Process), and a receipt for payment of the licensing fee. *Id.*, art. 9.

In addition to reviewing the information contained in the petition, the competent authorities presumably confirm that other criteria for advocate activity established by separate provisions of the Law on Advocate Activity have also been met. These include, for example, that the applicant is a citizen of Kyrgyzstan; is not a public servant; is not mentally incompetent; has not been dismissed from public service due to compromising circumstances; has not been convicted of a deliberate crime; and possesses a higher legal education and at least one year employment in a law-related position. *Id.*, arts. 4,5,8. (See Factor 11 on Non-Discriminatory Admission.)

Decisions on the application must be issued in writing within one month from the date of receipt. These decisions come in the form of an order of the First Deputy Minister of Justice. Once this document is issued, the Department of Notaries and Advocatura grants the license in the name of the advocate. Each license is also assigned a number. This number along with the name of the advocate, his or her address, and information on his or her place of employment is then recorded in the State Register of Advocates. *Id.*, art. 11. If a license is denied, reasons for this decision must be provided to the applicant. The applicant, in turn, may appeal the decision to a court of law. *Id.*, art. 9. Applicants seldom appeal decisions of this sort.

Public associations of lawyers, such as the Association of Attorneys of Kyrgyzstan, play no formal role in the licensing process. Individual advocates and legal scholars may sit on the Qualification Commission, which oversees the entry examination, but this does not leave the advocatura with much direct influence in deciding who may or may not be admitted into the profession. As a result, many members of the advocatura are concerned that the MOJ may encroach upon the independence of the profession by manipulating its composition. However, at the present time, the divided nature of the advocatura, evidenced by the many sometimes competing professional associations of lawyers, may be undermining the profession's ability to play more of a role in regulating itself and its membership by taking on licensing responsibilities. In other words, like other aspects of strengthening the independence of the advocatura, the question of licensing is linked to its organizational structure and leadership.

The debate over who should license advocates remains somewhat controversial. Some representatives of the MOJ and other authorities do support shifting authority and responsibility for licensing advocates to the advocatura itself. Likewise, some advocates recognize that the Ministry of Justice can play a constructive role in providing for the overall functioning of the advocatura. These and similar views are reflected in the draft Law on Advocate Activity, which would minimize the role of the state in advocate activity by vesting licensing authority in the qualification boards of associations of advocates established at the oblast and Bishkek city levels. DRAFT LAW ON ADVOCATE ACTIVITY, arts. 7 and 31. These boards would be comprised primarily of advocates and other legal professionals, but have some representation from the state. *Id.*, art. 31. The September 2004 draft Concept on the Bar also envisions a licensing and registration system at the regional level that is conducted by independent and self-governing advocate associations. DRAFT CONCEPT ON THE BAR, para. 3.12.

Individuals providing legal representation in civil proceedings on the basis of a power of attorney (See Factor 6 on Right of Audience) are not subject to licensing requirements.

**Factor 11: Non-discriminatory Admission**

***Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.***

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>Although unequivocal guarantees for non-discriminatory admission into the profession do not exist, there is no apparent discrimination in the admissions process against individuals based on any of the enumerated grounds.</p>	

Analysis/Background:

The 1993 Constitution prohibits discrimination against all persons in Kyrgyzstan on the basis of “origin, gender, race, nationality, language, creed, political and religious convictions, or on account of any other personal or public characteristic.” CONSTITUTION, ARTICLE 15.3. However, the Law on Advocate Activity and other normative acts regulating the legal profession do not contain any provisions that explicitly guarantee non-discriminatory admission to the advocatura, or prohibit discriminatory practices in the granting of advocate licenses. The Law on Advocate Activity does require that licensed advocates be citizens of Kyrgyzstan. LAW ON ADVOCATE ACTIVITY, art. 4.

Grounds for denying admission into the profession are set forth by law, but they appear to remain independent of the applicant’s personal characteristics and beliefs. Restrictions on entry into the profession include conviction of a deliberate crime and dismissal from law enforcement and public agencies. *Id.*, art. 5. Mentally incompetent individuals are also barred from practicing law as an advocate. *Id.* There is no clear evidence indicating that these provisions are used to deny admission to individuals of a particular ethnic group or other types of minorities.

Several authoritative reports suggest that gender and ethnic minorities, such as Russians and Uzbeks, are underrepresented in certain professions and public institutions and are subject to employment-related discrimination. US DEPARTMENT OF STATE 2003 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, February 25, 2004; Eric McGlinchey, KYRGYZSTAN, in COUNTRIES AT THE CROSSROADS, 2004 (Freedom House, April 2004) p, 4, 5. Decisions on admission to the advocatura, however, do not appear to be determined by individual ethnic, religious, socio-economic or other characteristics and views of the applicant. While the overwhelming majority of licensed advocates are ethnic Kyrgyz, fourteen other nationalities, including Russians, Koreans, Uzbeks, Tatars, Azerbaijanis, Armenians and others are represented within the advocatura. (See Factor 15 on Minority and Gender Representation.) No interviewees reported experiencing any discrimination when applying for admission into the profession. To the extent individuals are denied admission to the profession, most interviewees suggest that these decisions are probably based on the individual’s failure to meet objective criteria established by law. (See Factor 9 on Qualification Process.)

### III. Conditions and Standards of Practice

#### Factor 12: Formation of Independent Law Practice

*Lawyers are able to practice law independently or in association with other lawyers.*

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>Advocates are able to provide legal assistance and offer their services as solo practitioners and in association with others. A number of law firms have been established over the past decade and provide a variety of legal services to domestic and international clients.</p>	

#### Analysis/Background:

The private practice of law in Kyrgyzstan takes several forms. Advocates may practice law either individually or through a law institution.<sup>11</sup> A law institution is broadly defined as an organization whose main type of activity entails providing legal assistance. LAW ON ADVOCATE ACTIVITY, art. 20. Organizations that provide legal assistance include law firms and public associations of lawyers, such as legal consultation bureaus, both of which are considered legal entities that must be properly registered with the Ministry of Justice (MOJ).

Other than establishing general forms of law practice, the current law does not provide any real guidance on their formation. In contrast, the draft Law on Advocate Activity discusses in considerable detail the organizational forms of private law practice including advocate rooms, advocate offices, and legal consultation bureaus. DRAFT LAW ON ADVOCATE ACTIVITY, Chapter 4, arts. 19-22. The Working Group on the Bar proposes these forms of law practice as well, and discusses issues of their formation and operation in its draft Concept on the Bar.

Whether or not the practice of law is an entrepreneurial or non-commercial activity is question that has generated some debate in Kyrgyzstan, as well as other countries undergoing significant transformations of their legal systems. It is one that ultimately involves determining the status and treatment of the legal profession as a whole and that of individual advocates in employment and taxation matters. In Kyrgyzstan, the practice of law by advocates is viewed as an entrepreneurial activity. This results from the fact that, according to the law, the majority of advocates carry out their activity through commercial entities, e.g. private law firms and companies with limited liability, or as an individual entrepreneurial activity. LAW ON ADVOCATE ACTIVITY, art. 19. An advocate may, therefore, enter into a labor agreement with a law firm, thus establishing an employee-employer relationship between the advocate and the firm. *Id.*, art. 25. In addition, income generated by advocates is subject to taxation. Both issues, i.e. employment of advocates and taxation, remain somewhat controversial among advocates, particularly the issue of taxation, which many interviewees suggest may erode the professions independence from the state by exposing advocate activity to the state tax authorities.

As noted above, advocates either practice law individually, as solo practitioners, or in affiliation with either law firms or public association of lawyers. Prior to 1991, advocates worked through the Collegium of Advocates. There were no law firms in the contemporary sense until after the Soviet era when Kyrgyzstan began allowing private commercial activities. Subsequently, a total of 63

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<sup>11</sup> This assessment relies on an unofficial English-language translation of the 1999 Law on Advocate Activity that uses the term “law institution.”

law firms have been established and registered by the MOJ in the period from 1997 to 2004.<sup>12</sup> Many of these firms provide legal services to international and domestic clients in matters involving acquisitions, joint ventures, taxation, and business transactions and investment in key sectors of the economy. Criminal cases are mostly dealt with by either advocates in solo practice or by those affiliated with legal consultation bureaus and public associations, but some law firms do provide legal services in criminal matters.

Most law firms are relatively small in size, staffed by roughly 5 to 10 legal professionals in addition to several administrative and clerical staff. Advocates working in firms are typically employed on a contract basis. Depending on the specifics of the contract, some of these employees receive fixed salaries while others may receive a percentage of the firm's income. The number of licensed advocates working in law firms in relation to the number of non-licensed commercial lawyers that are employed in firms is reportedly on the rise. Although anyone may set up a law firm, the firm's "manager" must be a licensed advocate. LAW ON ADVOCATE ACTIVITY, art. 20.

As more and more advocates seek to practice law outside the legal consultation bureaus of the collegiums and broaden their practice to include non-criminal matters, the number of advocates working in law firms, as well as the number of law firms, is likely to increase. Similarly, the expansion of the business and commercial sector of the Kyrgyz economy may also increase the future number of law firms. This is an evolutionary process that will undoubtedly augment the importance of law practice management skills among advocates, something that interviewees consider to be lacking at the moment. Other challenges and barriers to the formation of private law practices include start-up and overhead costs, taxation, as well as developing and maintaining a client base. According to one prominent advocate, state authorities do not place obstacles in the way of law firms unless their activity is perceived as being politically motivated.

A number of international law firms established representation in Bishkek during the 1990s. Most of these firms, however, no longer maintain local offices. Instead, some have sought affiliations with local Kyrgyz law firms such as DIGNITAS (Chadbourne & Park, LLP) or PARTNER (Patterson, Belknap, Webb & Tyler, LLP). Of the larger international law firms, only LeBoeuf, Lamb, Greene & MacRae, LLP, which opened in 1998, continues to maintain its office in Kyrgyzstan at this time.

The vast majority of Kyrgyz law firms operate in Bishkek and Chui oblast, although several firms reportedly have some form of operation or activity outside of the capital city. (See Factor 18 on Availability of Legal Services.) Most advocates practicing in the regions and rural areas either do so as solo practitioners or through the dozens of public associations that proliferate throughout most of Kyrgyzstan. (See Factor 21 on Organizational Structure and Governance.)

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<sup>12</sup> These statistics were provided to the assessment team by the Ministry of Justice. The perception among many legal professionals is that this number is significantly higher, especially in Bishkek.

### Factor 13: Resources and Remuneration

***Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Access to legal information continues to increase, largely on account of improved information technologies and the availability of internet access, but many advocates are either unable or uninterested in staying abreast of significant legal developments. The practice of law is a lucrative profession for some, mainly those specializing in commercial law and business transactions. Others can have difficulty receiving payment, especially from low income and elderly clients who are in need of legal assistance.</p>	

#### Analysis/Background:

Most advocates have adequate access to basic legal information and many of the primary legal texts, such as the criminal and civil procedure codes. However, staying up to date with significant legal and judicial developments, promulgation of new laws and regulations, and the amendment of existing laws remains an ongoing challenge for advocates. This challenge is perhaps the greatest for advocates who are unaffiliated with a public association of lawyers or a law firm and those working in rural or otherwise remote areas. Although improving, the availability of judicial decisions and international legal materials is somewhat limited.<sup>13</sup>

Laws and legal information are made available in several newspapers, including *Erkin Too* (*Svobodnie Gory*) and *Slovo Kyrgyzstana*. Official texts of laws and normative acts are also published in *Vedomosti Jorgorku Kenesha*, the Bulletin of the Parliament of Kyrgyzstan. Although these resources and copies of laws themselves may be available in libraries, there is limited state capacity for disseminating legal information on a timely basis throughout all of Kyrgyzstan. However, many normative documents are now made available on the government's website ([www.law.gov.kg](http://www.law.gov.kg)) and similar websites free of charge. Obtaining laws and other legal information in Kyrgyz is reportedly much more difficult than obtaining laws in Russian.

Several commercial databases, Adviser and Toktom, are available to legal professionals. They offer access to a variety of laws and normative acts of Kyrgyzstan, as well as comparative legal materials and legal news from other countries, particularly neighboring countries and the Russian Federation. Subscribers may access this information online ([www.adviser.kg](http://www.adviser.kg)) ([www.toktom.kg](http://www.toktom.kg)) or choose to receive updates via CD-ROM, which can be uploaded into their computers. In addition to that, Toktom also provides a printed materials service. Poor internet access, as well as high costs, limit accessibility to these resources and give advocates working in law firms or in successful practices an advantage. Depending on the type of subscription, access to Adviser and Toktom can cost anywhere from \$100 to \$200 per year, which is too expensive for many advocates to afford on their own.

It is also important to note that although Toktom and Adviser serve as valuable resources in terms of primary materials, until recently they have not offered any significant commentary on the law. The lack of commentaries or other interpretive material on new laws and codes means that advocates, in addition to other legal professionals, have little guidance in working with these laws.

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<sup>13</sup> For a discussion of the publication and availability of judicial decisions, see Factor 24 in ABA/CEELI's Judicial Reform Index (JRI) for Kyrgyzstan, p. 30.

The international donor community has supported the development of a variety of publications for advocates and other legal professionals in order to raise awareness about changes in the law and to improve the familiarity of legal professionals with these changes. With USAID funding, ARD/Checchi has produced commentaries on the civil and tax codes, and informational resources on judicial decisions, commercial law, human rights, and land reform. It also has developed an *Electronic Litigation Guide*,<sup>14</sup> a CD-ROM which provides advocates with commentary, forms, and selected acts necessary for representing clients in criminal, civil, commercial and administrative law proceedings. And, in cooperation with the AAK, ARD/Checchi and USAID publish *Law and Business (Pravo i Predprinimatel'stvo)*, a commercial law journal in both English and Russian.

Increasing the number and quality of informational resources and improving accessibility to basic legal materials through internet access and computers is only one aspect of ensuring that advocates can effectively represent their clients. The other is promoting awareness and interest in staying abreast of significant legal developments among advocates. Many do not regularly research changes in the law. Nor do they contribute to, or read, law journals on issues related to their law practice. Part of this phenomenon most likely stems from the lack of training in basic legal research at the law school level and once the advocate is licensed and admitted into the profession. More could be done by both law faculties and public associations of lawyers to emphasize the importance of staying informed of changes in the law throughout one's career.

The material conditions under which advocates practice can vary considerably. Advocates working in law firms typically have reliable internet access, computers and other information technologies, and legal resources. These advocates also work in well-maintained premises that promote efficiency and are conducive to consulting with clients. Many independent advocates, however, have limited access to computers and current legal information. Advocates working in the legal consultation bureaus complain of sub-standard conditions with a lack of desks and space to meet with clients. A number advocates work from home where they have their own computers and materials. Although the international donor community, including ABA/CEELI, provided computers to public associations of lawyers, some of which are then made available to their members, many advocates are unable to avail themselves of this rather limited service.

The practice of law can be a lucrative profession, especially for those advocates working in commercial law and business transactions. However, many advocates that do not specialize in these areas can struggle to make a living. Consultation fees in some legal consultation bureaus can range from 50-100 som (\$1.2-2.4). It is not uncommon for some advocates, particularly those working in rural regions, to receive payment for their services in the form of foodstuffs or agricultural products. Others report that they sometimes do not even bother to charge elderly individuals for quick legal consultations. In contrast, it is reported that an experienced advocate with a good reputation could command a fee anywhere from \$2,000 to \$5,000 for representing wealthy clients in criminal proceedings, but these amounts remain unconfirmed.

Fee arrangements for legal assistance between advocates and their clients may take several forms. These forms include contingency fee arrangements and fixed fee arrangements and must be stipulated to in a "legal assistance agreement." LAW ON ADVOCATE ACTIVITY, arts. 21, 22, and 23. If representation is terminated prior to completion of the matter, the client is expected to pay a fee for the work performed. Clients may also seek to have their payment returned to them in the event the advocate does not properly fulfill the terms of the agreement. *Id.*, art. 24. The draft Law on Advocate Activity establishes an identical fee structure. DRAFT LAW ON ADVOCATE ACTIVITY, art. 34.

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<sup>14</sup> Criminal law related materials from resource are also made available in hardcopy under the title: THE ADVOCATE'S HANDBOOK: PROTECTING CITIZEN RIGHT IN CRIMINAL PROCEEDINGS.

Prior to June 2004, individual advocates were subject to a simplified system of taxation by which they were permitted to pay a fixed amount of income tax on a monthly basis. Now, advocate activity is subject to a more complicated system of taxation, one many advocates believe creates another instrument for state tax authorities to influence advocates' independence through "excessive administration." This change was introduced pursuant to Resolution #34 of the Government of May 04, 2004, which advocates claim not to have known about prior to promulgation.

It is believed that many advocates do not declare income from client fees at all.

**Factor 14: Continuing Legal Education**

***Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Opportunities exist for advocates to receive continuing legal education, but these trainings are mostly conducted in urban areas and with the support and participation of international donors. Members of public associations have greater access to continuing legal education than so-called independent advocates. There is considerable interest, particularly among younger advocates, in trainings on substantive and procedural areas of domestic and international law.</p>	

Analysis/Background:

Staying abreast of significant changes and developments in the law and improving practical skills and competence are several of the greatest challenges facing advocates in Kyrgyzstan. The need for continuing legal education arises in response to a fluid legal system and the frequent passage of legislation and other normative acts. In addition, many advocates lack basic lawyering skills, such as trial advocacy skills, at the time they are admitted into the profession. (See Factor 8 on Preparation to Practice.)

Continuing legal education (CLE) for advocates is generally regarded as a good and necessary thing by most legal professionals. Many advocates in major population centers like Bishkek and Osh do participate in ad hoc trainings. Nevertheless, no effective mechanism presently exists for providing continuing legal education to advocates throughout Kyrgyzstan on a consistent basis.

Prior to the breakup of the Soviet Union, there were mandatory courses in Kyrgyzstan aimed at raising the professional skills of advocates after they had been admitted to the profession. The Ministry of Justice (MOJ) offered these courses two times a year until 1987, at which time this responsibility was transferred to the advocatura itself. Lack of adequate material resources and funds soon led to the cancellation of these courses. A decade later, in 1997, the newly established Judicial Training Center (JTC) began offering periodic trainings for advocates, but this initiative proved short-lived due to insufficient funding.<sup>15</sup> In addition to the JTC, which provides somewhat regular training to judges and court personnel, prosecutors and investigators until recently had their own training center as well. There is no corresponding training center for advocates at the moment.

The Law on Advocate Activity is silent on the topic of CLE. However, reference to raising the qualifications of practicing advocates can be found elsewhere. The Charter of the AAK, for instance, lists "assist[ing] in the improvement of professional skills of attorneys" among the

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<sup>15</sup> For more information about the Judicial Training Center and judicial education in Kyrgyzstan, see the ABA/CEELI 2003 Judicial Reform Index for Kyrgyzstan.

organization's many objectives. CHARTER OF THE ASSOCIATION OF ATTORNEYS OF KYRGYZSTAN, December 18, 2003, para. 3.1. Other professional associations, like Lawyers of Osh Oblast (POLO) and Lawyers of Batken Oblast (LOBO), also support advocate trainings as part of their stated missions to strengthen the professional development of legal professionals. Notably, the draft Law on Advocate Activity envisions the establishment of a national union of advocates (Chamber of Advocates) that will take the lead in supervising the professional training of advocates. DRAFT LAW ON ADVOCATE ACTIVITY, art. 23. The draft Concept on the Bar also supports the idea of vesting a Chamber of Advocates with responsibility for providing "continuing legal education and training of advocates." DRAFT CONCEPT OF THE BAR, para., 3.2.

The most explicit normative statement on continuing legal education for advocates comes from Ministry of Justice Instruction No. 73. It requires advocates "possess the knowledge and skills essential for the conduct of advocate activity and work constantly for their improvement, read scientific and legal literature, judicial practice, amendments and additions to the legislation of the Kyrgyz Republic." INSTRUCTION NO. 73 ON PROFESSIONAL ETHICS RULES FOR ADVOCATES, May 21, 2003, section 1. While this Instruction seemingly obligates advocates to follow this principle, it neither identifies the means by which advocates should do so, nor should addresses which body if any take the lead in conducting advocate trainings. Instruction No. 73 also remains a source of controversy between the MOJ and leading members of the advocatura, which claim it is an example of MOJ overreaching in an attempt to regulate the profession. (See Factor 16 on Professional Ethics and Conduct.)

As noted above, most advocates recognize the importance of CLE. Support for voluntary, as opposed to compulsory, CLE is especially strong among younger advocates. However, advocates of all ages take part in periodic trainings and roundtables on substantive legal issues, many of which are organized by public associations like the Association of Attorney's of Kyrgyzstan (AAK) with the financial support of the international donor community. Members of AAK, POLO, LOBO, as well as those affiliated with Adilet, have better access to continuing legal education and more opportunities to receive training than so-called independent or unaffiliated advocates. For the most part, trainings rely on interactive techniques and involve hypothetical exercises. Trainings on procedural aspects of law, as well as international law and human rights law, are popular.

Representatives of the MOJ and other government authorities pay considerable lip service to the importance of raising the professional qualifications of advocates, but claim the state lacks the financial and material capacity to support continuing legal education. The newly established Kyrgyz State Law Academy (KSLA) (See Factor 7 on Academic Requirements) may provide an opportunity to expand training opportunities for advocates, but it is too early to determine this likelihood. Similarly, the JTC could add an advocate-oriented curricula if sufficient funds and materials were available. For their part, efforts by several public associations to establish standardized training curricula and a training center for advocates have not yet yielded any tangible results, in part due to funding constraints. Several interviewees asserted that the leadership of the advocatura emphasizes the virtues of continuing legal education, but does not do enough to make CLE more readily accessible and worthwhile.

## Factor 15: Minority and Gender Representation

*Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.*

### **Conclusion**

**Correlation: Neutral**

Most advocates are ethnic Kyrgyz, but other ethnic groups are adequately represented within the advocatura. The possible exception is the number of ethnic Uzbeks, which may be underrepresented, given their proportion of the overall population. There are more male than female advocates, but no indication of discrimination.

### Analysis/Background:

Kyrgyzstan is a multiethnic state comprised of more than 75 distinct nationalities. Its roughly 5 million inhabitants break down along the following ethnic lines: 66.9% Kyrgyz, 14.1% Uzbek, 10.7% Russian, 1.1% Dungan (described as ethnic Chinese Muslims), and 1% Uighurs. Tatars, Germans, Koreans, and other ethnic groups comprise the remaining 6.2% of the population. U.S. DEPARTMENT OF STATE COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—KYRGYZSTAN 2003, February 25, 2004, section 5.

Interestingly, the issue of minority representation in the legal profession did not figure prominently among the concerns of most advocates, although interviewees did note the large concentration of advocates of Kyrgyz nationality. This perception largely comports with the fact that almost three-quarters of the advocatura is made up of ethnic Kyrgyz.<sup>16</sup> According to statistics compiled by the Ministry of Justice (MOJ), the advocatura breaks down along the following ethnic lines:

Nationality	# of Licensed Advocates	% of Total Advocates
Kyrgyz	863	72.4%
Russian	241	20.2%
Tatar	24	2.01%
Korean	23	1.92%
Uzbek	18	1.51%
Azerbaijani	5	0.41%
Armenian	4	0.33%
Bashkir	3	0.25%
Kazakh	3	0.25%
Tajik	2	0.16%
Uighur	2	0.16%
Dungan	1	0.08%
Ingush	1	0.08%
Karachai	1	0.08%
Lezghin	1	0.08%
	1,192	100%

Although a total of fifteen different ethnic groups are represented within the ranks of the advocatura, it is significant that only 18 (1.51%) of advocates are identified as Uzbek when one

<sup>16</sup> Ethnic Kyrgyz also disproportionately dominate the judiciary and comprise 92% of the total number of judges. See also Factor 4 on Minority and Gender Representation, Judicial Reform Index (JRI) for Kyrgyzstan, June 2003, ABA/CEELI.

considers that the Uzbek community in Kyrgyzstan accounts for roughly 14% of the overall population and is the largest ethnic group in some areas in southern Kyrgyzstan, including Osh. Several interviewees suggested that advocates are often selected by clients on the basis of their nationality and language skills, especially in some of the rural regions. In other words, native Kyrgyz speakers are thought to prefer hiring lawyers that speak Kyrgyz, while ethnic Uzbeks often seek Uzbek lawyers.

The gender balance in the advocatura appears to favor men over women, even though women outnumber men in Kyrgyzstan.<sup>17</sup> Of the 1,192 licensed advocates on the state register, there are 444 women as opposed to 748 men. Most interviewees felt that women were well represented within the profession and among the leadership of many professional associations. The chair of the Union of Advocates, for instance, is a woman. Women have also served in leadership positions in the Association of Attorneys of Kyrgyzstan (AAK). Several interviewees suggested that women advocates are among the more independently minded professionals and pointed to Kaisarova, who is respected by many legal professionals both inside and out Kyrgyzstan. (See Factor 2 on Professional Immunity.)

**Factor 16: Professional Ethics and Conduct**

***Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Basic standards of professional ethics and conduct are established by law, but a comprehensive code of ethics has not yet been adopted. Public associations of advocates have limited rules, but it is unclear to what extent they are emphasized or influence advocate activity. An initiative by the Ministry of Justice (MOJ) to issue obligatory ethics rules has not been well received, partly because many advocates are concerned these rules could be used in a punitive fashion.</p>	

Analysis/Background:

A comprehensive ethics code that is compulsory and binding on all advocates has not yet been agreed upon. However, basic standards of professional ethics and conduct for advocates do exist in a variety of separate documents, most notably the Law on Advocate Activity. The Criminal Procedure Code also contains several provisions on advocate conduct similar to those found in the Law on Advocate Activity. In addition, internal documents of many public associations of lawyers touch on the importance of ethics and professional conduct by advocates. In addition, the MOJ promulgated a rather detailed instruction on ethics in May 2003. This document remains a source of controversy between the advocatura and the MOJ and is reportedly not being applied, nor enforced, on all advocates.

Ethical issues such as the confidentiality of client information and the avoidance of conflicts of interest are cast as responsibilities an advocate must uphold in the course of rendering legal assistance. For instance, advocates are prohibited from appearing in court on behalf of both parties to a dispute and representing two or more clients whose interests conflict with one another during investigation or trial. LAW ON ADVOCATE ACTIVITY, art. 13. Advocates are also obligated to respect the confidential nature of information obtained in the course of client consultations and must avoid using this information for their own interests or the interests of any third parties. *Id.* The avoidance of conflicts of interest is also among the many responsibilities of advocates set

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<sup>17</sup> Women comprise roughly 51% of the total population according to a July 2003 estimate relied on by the World Factbook 2003.

forth in Article 48 of the Criminal Procedure Code. Finally, the Law authorizes participation in teaching, scientific, and “other creative activities,” but does not identify any occupations or professional activities other than “public service” as being incompatible with advocate activity unlike in some other countries. *Id.*, art. 4.

The draft Law on Advocate Activity includes virtually the same ethics-related provisions found in the current law. However, it also imposes several additional duties on advocates. For instance, advocates are prohibited from refusing to provide a defendant or accused with representation; following a knowingly unlawful order; and making public statements regarding the guilt of clients claiming their innocence. DRAFT LAW ON ADVOCATE ACTIVITY, art. 14. In addition, advocates are prohibited from providing legal assistance if the advocate has a contractual interest with the prospective client; has participated in the individual’s case as a judge, prosecutor, investigator, etc; or is a relative of an official involved in the investigation or consideration of the case. *Id.* Similar prohibitions are currently found in Article 80.1 of the Criminal Procedure Code as well. If adopted, the draft Law would also expressly add compliance with professional ethics and respect for the “advocate secret” to the list of principles that guide advocate activities. DRAFT LAW ON ADVOCATE ACTIVITY, art. 3. (See also Factor 4 on Lawyer-Client Confidentiality.)

Most members of the legal profession, including advocates, speak of the importance of ethical standards and norms. Nevertheless, in contrast to judges and prosecutors, advocates lack their own comprehensive ethics code or other framework that sets out agreed upon and enforceable rules of professional conduct.<sup>18</sup> Many advocates suggest that ethics and professional responsibility are still foreign concepts in theory, as well as in practice, for much of the profession. Efforts by public associations such as the Association of Attorneys of Kyrgyzstan (AAK) and various collegia of advocates to fashion basic standards and to raise the awareness of these standards among their members have yielded some results. The AAK, for example, drafted a document in 1998 that contains ethical standards for all legal professionals, not just advocates. Upon completion, it was submitted to the MOJ, which did not comment, and to AAK members. The standards of conduct set forth therein, however, are not compulsory.

The greatest issue of concern for most advocates, as well as judges, prosecutors, and MOJ officials, is that a significant number of advocates are not affiliated with any public association and, therefore, are not subject to any formal ethical framework. These so-called independent advocates are viewed by many in the profession as lacking in basic skills, as well as ethical awareness. Independent advocates are allegedly the source of a considerable number of complaints leveled at the advocatura. According to some, the need to strengthen the professional rules of conduct and develop a comprehensive framework for ethical conduct is made even greater by socio-economic conditions in the country, which could give rise to corruption among members of the legal profession including advocates.

The MOJ moved to fill what it perceived to be an ethics gap with the May 21, 2003 promulgation of Instruction No. 73 on Adoption of Rules of Advocates Professional Ethics. Instruction No. 73 sets forth duties which licensed advocates are obliged to follow. These compulsory duties regulate relations advocates have with clients, investigation and detention authorities, court officials, and participants in judicial proceedings. Instruction No. 73 creates duties for advocates in avoiding conflict of interest, establishing reasonable fees, rendering legal services, communicating with clients in detention, and maintaining professional conduct during court proceedings. The MOJ asserts it sought to regulate ethical conduct of advocates in these

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<sup>18</sup> A Judicial Conduct Code was adopted by the Kyrgyz Judges Association in December 1996. For more information about judicial ethics in Kyrgyzstan, see Factor 21 in ABA/CEELI’s Judicial Reform Index (JRI) for Kyrgyzstan, p. 26.

areas only as a response to the growing number of complaints that had been leveled at advocates, as well as to the absence of a comprehensive code of ethics for advocates.

Advocates have reacted to the promulgation of Instruction No. 73 with considerable concern and contested its constitutionality, as well as the MOJ's competency to impose disciplinary standards on advocates. On this latter issue, it is argued that Article 272 of the Labor Code only authorizes employers to impose disciplinary standards on their employees. Penalties for violating these standards are contained in Article 146 of the code. Most advocates similarly believe that advocates themselves should take the lead in defining and regulating the status of ethics. Others look favorably on the MOJ's efforts to raise the ethical standards of the profession, but they do so with concern that the state may be seeking to use the ethics issue as a pretext for interfering with advocate activity. Some advocates were reportedly consulted by the MOJ before it finalized Instruction No. 73, but only on a limited and individual basis. These issues were discussed during several large roundtables organized by the AAK in June and July 2003. (See Factor 24 on Role in Law Reform.) At the July 2003 roundtable, the MOJ denied any malicious intent on the part of the ministry when drafting its rules and called on advocates to propose any amendments they wish.

The AAK responded to this invitation in January 2004 by drafting ethical rules intended only for licensed advocates. Although this document was published in local media outlets and disseminated around the country for feedback, no significant comments have been received. They were also submitted to the MOJ, but leadership and personnel changes within the Ministry have delayed an official reaction. The MOJ does acknowledge the document as a significant development. Some interviewees suggest that these draft rules constitute a compromise between the advocatura and the MOJ on the ethics issue as part of the process of eventually repealing Instruction No. 73.

Repeated calls for suspension of Instruction No. 73 have been rejected by the MOJ. However, pursuant to an oral agreement between the MOJ and the advocatura's leadership, it will only be enforced against those advocates who are not affiliated with a public association that has its own internal rules on professional conduct. Final resolution of this issue will likely be tied to efforts to bring about the unification of the advocatura and the establishment of a national association of advocates.

**Factor 17: Disciplinary Proceedings and Sanctions**

***Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Advocates who violate standards of the profession may be subject to the disciplinary proceedings of the public association to which they belong. Relatively few actions have been taken to sanction advocates for unethical conduct and a public association can not revoke an advocate's license. Only those advocates who are not members of a public association may be disciplined by the Ministry of Justice (MOJ), based on the findings of the Qualification Commission.</p>	

Analysis/Background:

As noted in Factor 16 on Professional Ethics and Conduct, a comprehensive code of ethics for all advocates has not been fully agreed upon. Establishing rules of professional conduct and ethical standards, as well as mechanisms for their enforcement, is partly the domain of public associations of lawyers. Advocates who are not members of one of these associations are subject to the ethical rules set forth in Ministry of Justice Instruction No. 73 and the procedures for their enforcement, pursuant to the reported oral agreement between the leadership of the advocatura and the MOJ. (See Factor 16 on Professional Ethics and Conduct). In addition, all advocates are bound by rules of professional conduct and the ethics-related provisions set forth

in the Law on Advocate Activity and the Criminal Procedure Code, provisions that are enforced by competent state authorities.

Presently, most public associations of lawyers have something akin to internal rules or standards on conduct and ethics. These rules obligate members to perform the activities of an advocate in a responsible fashion and in such a way as not to undermine the status of the profession or the interests of the association. For example, the members of the Association of Attorneys of Kyrgyzstan (AAK) have a duty not to commit “an offense incompatible with the name of the attorney.” CHARTER OF THE ASSOCIATION OF ATTORNEYS OF KYRGYZSTAN, para. 4.6(3). Failure to abide by this duty and other provisions, including the responsibility to pay membership fees on an annual basis, are grounds for revoking AAK membership.

Decisions to revoke AAK membership are taken by the Board and may be appealed to the General Assembly.<sup>19</sup> *Id.* No formal disciplinary procedure, or committee on ethics, has been established. Although the AAK has revoked the membership of a number of advocates, this action was taken in response to their failure to pay annual membership fees.

Advocates who have their membership in a public association revoked, or suspended, may still practice law. Nevertheless, because some advocates rely on their public association for clients, the possibility of this type of sanction may have some deterrent effect.

Another deterrent to unethical conduct is the possibility of having one’s license to practice law suspended or revoked, something that can only happen through the MOJ. The MOJ may suspend an advocate’s license in the event the advocate is either elected to parliament or similar office, or if the advocate enters into public service. LAW ON ADVOCATE ACTIVITY, art. 10. In addition, the MOJ is authorized to revoke an advocate’s license in the following circumstances: upon the request of the advocate; loss of citizenship; gross violation of the Law on Advocate Activity and other laws; previous conviction of a deliberate crime; and previous dismissal from law enforcement or other public agencies due to compromising circumstances. *Id.*, art. 10; see also art. 5.

Instruction No. 73 adds to the list of offenses identified in the Law on Advocate Activity that can trigger disciplinary proceedings. In addition to failing to abide by the specific rules on ethics set forth in both the Law and the Instruction, an advocate may be subject to sanctions for acts that undermine the reputation of public associations of lawyers. INSTRUCTION No. 73, section 10. Like the Law on Advocate Activity, Instruction No. 73 designates a competent authority within the MOJ for conducting disciplinary proceedings.

Representatives of the MOJ stated that disciplinary proceedings are usually initiated in response to complaints about the ethical conduct of advocates and allegations of criminal offenses. These complaints can be forwarded to the MOJ by individuals, judges, public associations of lawyers, and the Ministry of Internal Affairs. Within the MOJ, complaints are reviewed by the Qualification Commission, which is also the competent authority for administering the examination used to admit advocates into the profession. (See Factor 9 on Qualification Process.) Upon receipt of the complaint, the Qualification Commission will notify the subject of the complaint and request an interview so that the advocate has a chance to respond to the allegations. In reviewing complaints brought to its attention, the Qualification Commission will take into consideration information provided to it by the petitioner and other sources, such as the courts or law enforcement bodies, as well as information received from the advocate.

Although the Qualification Commission is competent to render a finding on whether a violation has occurred, the final decision and the sanction is formally issued on the basis of an order of the MOJ. The order is then recorded in the State Register of Advocates and a copy is made available

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<sup>19</sup> Other associations of lawyers, including the collegia, have similar provisions and mechanisms.

to the advocate. The petitioner is notified of the result by mail. Decisions on the suspension or revocation of a license may be appealed by the advocate to a court of law within one month.<sup>20</sup> *Id.*, art. 10. See also INSTRUCTION #73, section 10.

The MOJ has imposed the following disciplinary sanctions on advocates since 1999: 7 disciplinary punishments (e.g. warnings); 22 suspensions of an advocate’s license; and 6 revocations of advocate’s license.<sup>21</sup> Of the 22 cases involving suspension of an advocate’s license, 10 suspensions have come following the advocate’s entry into public service, which, as noted above, is viewed as an activity incompatible with the practice of law. In addition, disciplinary proceedings against advocates have recently been initiated pursuant to Instruction No. 73, but only in several cases involving so-called independent advocates who remain unaffiliated with any public association.

Finally, although many advocates claim that nearly everyone in the profession knows who the pocket or black advocates are in each community, no action appears to have been taken to end this phenomenon. There have been no notable investigations and sanctions of advocates who compromise the existing rules and standards of the profession by colluding with law enforcement officials to the detriment of their clients. Even though these actions could reasonably be viewed as a violation of the Law on Advocate Activity, Instruction No. 73, and the ethical standards of public associations of lawyers, the MOJ and the leadership of the advocatura have both failed to take sufficient efforts to curb the activities of pocket advocates.

Under the present framework, it is the state not the advocatura that exercises the real disciplinary authority over advocates. However, if adopted, the draft Law on Advocate Activity would lessen the role of the state by vesting a disciplinary commission, elected from the membership of a so-called chamber of advocates, with the responsibility to consider and decide complaints on the conduct of advocates. This body would also be able to impose disciplinary sanctions short of disbarment on advocates. Decisions to revoke an advocate’s license would be taken by the chamber’s Qualification Board. DRAFT LAW ON ADVOCATE ACTIVITY, art. 31 and 32. The Working Group on the Bar takes a similar approach in stating that the bodies of the advocatura should take the leading role in the development and enforcement of ethical conduct for advocates. DRAFT CONCEPT ON THE BAR, paras. 3.2 and 3.3.

## IV. Legal Services

### Factor 18: Availability of Legal Services

***A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The availability of legal services is compromised by an insufficient number of advocates, roughly half of whom are concentrated in Bishkek and other urban areas.	

<sup>20</sup> No statistical data was collected on the number of appeals that have been made, if any.

<sup>21</sup> As reported to the assessment team by the Ministry of Justice.

Analysis/Background:

State authorities are obligated to guarantee equal access to legal assistance to those in need of such assistance in criminal matters. LAW ON ADVOCATE ACTIVITY, art. 6. However, with only 1,192 licensed advocates for a population of 4.8 million people, Kyrgyzstan suffers from a shortage of individuals qualified to provide legal services and represent persons seeking legal counsel. By contrast, there are roughly 3,747 practicing lawyers in Norway, a country with a population of 4.5 million. This apparent shortage of advocates in Kyrgyzstan may be offset somewhat by a sizable, yet indeterminate number of law school graduates who may be capable of providing representing individuals in civil proceedings on the basis of a power of attorney. (See Factor 6 on Right of Audience.) Nevertheless, the implications for society and for the status of the profession are still considerable.

Without a larger population of advocates, the right to “qualified legal assistance” may be jeopardized. CONSTITUTION, art. 40.1, 85.12. Moreover, without a greater number of advocates the likelihood of a fair trial may remain elusive, particularly for the indigent, individuals subject to detention, and other vulnerable segments of the population. If the advocatura is to play an important role in promoting effective access to justice and the realization of human rights, more licensed advocates will be necessary. Similarly, it is difficult to imagine how the advocatura will improve the status of the profession and how society views it if many individuals have no other choice, but to rely on law graduates with little practical training or expertise.

The problems posed by insufficient numbers of advocates are compounded by the concentration of advocates in just a few population centers. Statistics compiled by the Ministry of Justice (MOJ) on the geographic distribution of advocates reveal that most work in Bishkek city, Osh oblast, and Chui oblast. Even in these areas, advocates form a very small percentage of the total population and reportedly have difficulties providing services on a timely basis. It is reasonable to conclude that the availability of legal services outside of the capital and other major population centers remains even a greater challenge. The number of licensed advocates in each of the regions of Kyrgyzstan is as follows:

<b>Administrative Unit</b>	<b>Population (1000s)</b>	<b># of Advocates</b>	<b>% of Population</b>
Bishkek city	762.3	611	0.080%
Batken oblast	382.4	15	0.004%
Jalal-Abad oblast	869.3	112	0.012%
Issyk-Kul oblast	413.1	53	0.012%
Naryn oblast	249.1	26	0.010%
Osh oblast	1,175.9	226	0.019%
Talas oblast	199.9	27	0.013%
Chui oblast	770.8	112	0.014%
Total	4,822.8	1,192	0.024%

Interviewees based in Bishkek did not express any significant concern over the total number of licensed advocates for a country the size of Kyrgyzstan. In contrast, advocates and other legal professionals working in several of the more remote regions, particularly in the south, cite not only an insufficient number of advocates, but also poor training. In other words, the problem is one of both quantity and quality. Because so few advocates work in some rural areas, it is not unheard of for advocates to represent both parties to a dispute at the same time. One interviewee reported that an advocate in one small town consulted the plaintiff in a case in the morning and then advised the defendant in the same case later that afternoon. Another interviewee reported that inhabitants of a remote region of Batken oblast crossed the border into neighboring Tajikistan in search of an advocate because none was available in their own community. Other interviewees opined that having so few advocates in some regions increases the risk that they will either be

subject to pressure and intimidation by the state or willingly collude with law enforcement authorities to the detriment of their clients' interests.

**Factor 19: Legal Services for the Disadvantaged**

***Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>The Constitution recognizes everyone's right to free legal aid in criminal matters, but there is no reliable state supported mechanism for providing individuals with representation or for ensuring that advocates who do provide legal aid to the indigent are adequately remunerated. A number of public associations, as well as individual advocates, provide free legal consultations on an <i>ad hoc</i> basis.</p>	

Analysis/Background:

Citizens who cannot otherwise afford the cost of an advocate enjoy the right to free legal aid provided and paid for by the state. CONSTITUTION, arts. 40, 88. According to the Law on Advocate Activity, the state guarantees assistance to those in need “without any limitation”. LAW ON ADVOCATE ACTIVITY, art. 6.<sup>22</sup> Despite these guarantees, there is no reliable state-funded mechanism for low income and vulnerable segments of the population to avail themselves of at the present time. The draft Law on Advocate Activity refers to free legal assistance, but stipulates that the system will be set forth in other normative acts. DRAFT LAW ON ADVOCATE ACTIVITY, art. 6. There is no law on legal aid or the equivalent. One will reportedly be drafted in the future in connection with a working group on free legal assistance described below. The Government has also appointed a working group to study this issue.

Before its dissolution in 1999, the Collegium of Advocates was the principal means by which individuals had access to legal aid. The legal consultation bureaus that once were part of the larger collegium structure have reconstituted themselves as public associations and continue to provide legal consultations to the indigent, but only on an *ad hoc* basis. They are no longer formally part of a legal aid mechanism.

Presently, legal aid is delivered through one of two means, both of which are considered somewhat unreliable. First, a judge or investigator will offer to contact an advocate for the accused or the suspect at the time of detention. Typically, this involves a phone call to the nearby legal consultation bureau or a public association which then dispatches an advocate. Many interviewees opined that some judges and investigators prefer to contact an advocate they have worked with in the past, one with whom they can “cooperate” at the expense of the suspect or the accused. These so-called pocket or black advocates are known to encourage confessions or attest to the legality of interrogations even though they may not have been present. (See Factor 1 on Ability to Practice Law Freely.) The pocket advocate reportedly shares his or her fees with the investigators. Alternatively, an individual may seek the representation of an advocate of his or her own choosing based on a legal assistance agreement, i.e. contract.

In order to receive free legal assistance, the individual must first obtain a certificate (*spravka*) from the Ministry of Social Protection and Labor in Bishkek, city or district administrations, or the

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<sup>22</sup> Article 6 of the Law on Advocate Activity guarantees legal assistance to “everyone” while at the same time referring to the availability of this assistance only to “citizens in case they lack funds.”

*ayil okmotu* in rural areas that confirms their eligibility for free legal aid.<sup>23</sup> Once the *spravka* is issued, something that several interviewees suggested could be a time consuming process, the individual presents it to the advocate. Based on this information and a decision of the investigator and judge, which specifies the number of days spent by the advocate defending the client, the advocate can submit a request for payment to the Ministry of Justice (MOJ). The MOJ has 10 days to issue payment from the national budget.

Many advocates are simply hesitant to participate in legal aid cases under the current payment scheme, which provides advocates 125 som for each day spent defending their clients in court. RESOLUTION OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC, NO. 306 ON PAYMENT OF THE ADVOCATE FROM THE NATIONAL BUDGET, May 24, 2003. No payment is rendered for time spent preparing the client's defense outside of court. As a result, even when an advocate does accept a case, there is the risk that he or she will not provide the best and most effective representation. Moreover, the arbitrary distribution of legal aid cases and the involvement of the investigator and the pocket or black advocate in this process compromise the rights of the suspect or accused and seriously threaten the integrity of the mechanism. Whether or not free legal assistance should be limited to criminal matters, or expanded to include civil and possibly even administrative matters, is an important issue that will require consideration as well.

Poor management and a lack of financial resources have undermined the delivery of legal aid. It wasn't until 2003 that a special line item for legal aid was included in the national budget. Previously, advocates received payment for rendering legal aid from the already cash-strapped budgets of the municipalities. Beginning in 2003, 5 million som (\$116,000) has been allocated in national budget, but according to several sources this figure cannot adequately fund a legal aid system for Kyrgyzstan. One senior official stated that even 15 million som would not be enough. Reports of how much from this amount has already been disbursed vary from 200,000 to 400,000 som in 2003 and close to 1 million som in 2004. These reports, however, are unconfirmed.

Efforts to reform legal aid in Kyrgyzstan increased following a February 2004 Decree, signed by the Prime Minister, creating several governmental working groups. One of these working groups is dedicated to drafting a concept paper and a draft law on free legal aid; another group is tasked with resolving the debt owed to advocates who rendered legal aid between January 2000 and May 2003. DECREE OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC, No. 54-r, February 04, 2004. This decree was preceded by a November 2003 roundtable on reforming legal aid that was organized by the Soros Foundation and Open Society Justice Initiative (OSJI). The working group on legal aid reform held its first meeting in March 2004, and several representatives of the international donor community attended. Many working group members participated in a study tour to South Africa, also sponsored by the Soros Foundation and OSJI, where they observed how legal aid is delivered there. The concept paper, including recommendations, is expected by the end of 2004.

Members of the legal profession have taken steps, with support from the international donor community, to improve the availability of legal assistance to those in need and develop a mechanism for delivering this assistance. Legal Aid, a public foundation established in 2000 with the support of the Association of Attorneys of Kyrgyzstan (AAK), employs advocates who provide legal aid to criminal defendants and works with law firms to facilitate their assistance on a pro bono basis. The Osh-based Ferghana Valley Lawyers Without Borders (FVLWB), together with Mercy Corps, has also played an important role by organizing mobile advocacy groups to provide legal information and assistance to individuals from trans-border communities who would not otherwise have access to an advocate. With funding from Eurasia Foundation and the Canadian

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<sup>23</sup> The Ministry reportedly maintains a database of information from which eligibility can be determined, however, the existence of this database is unconfirmed. Similarly, it not clear what, if any, objective criteria are used to determine eligibility.

Embassy, FVLWB has established a network of six legal consultation centers at border crossings between Kyrgyzstan, Uzbekistan, and Tajikistan.

Legal Assistance to Rural Citizens (LARC), a public association funded by Swiss and United States development assistance, has also created a network to provide legal information, consultation, and representation in matters involving property rights and land usage. One interviewee stated that LARC refers criminal cases to a local legal consultation bureau, which in turn will refer matters involving land usage to LARC.

In addition, several hundred individuals in both the north and south have received legal assistance from advocates networked together through Civil Society Support Centers (CSSC) funded by ABA/CEELI and the International Center for Not-for-Profit Law (ICNL).

Law clinics, such as the Organization for Security and Cooperation in Europe (OSCE) and Soros funded civil and criminal law clinics in Osh and the clinic at Kyrgyz-Russian (Slavonic) University, are another means to make free legal aid more readily available, but it is doubtful that these clinics have the capacity to respond to the sizable need for this assistance over time. With roughly 26,000 law students to tap into, law clinics could play an important part in rendering legal consultations and representation to people in need.

**Factor 20: Alternative Dispute Resolution**

***Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Alternatives to litigation exist through the International Court of Arbitration and the Court of Elders, both of which fall outside the Kyrgyz judicial system. The involvement of advocates in these bodies is neither guaranteed nor apparently very extensive at the present moment, but may increase over time.</p>	

Analysis/Background:

Following the adoption of the Law on the Arbitration Court in July 2002 and the 2003 constitutional amendments, parties to civil disputes may refer the matter to the International Court of Arbitration (ICA) for resolution. The ICA is an independent legal entity and public foundation established in affiliation with the Kyrgyz Republic Chamber of Commerce and Industry. This court is not part of the Kyrgyz judiciary and should not be confused with the *arbitrazh* courts that, prior to being merged into the regular court system in 2003, served as a means by which commercial disputes between enterprises were litigated.

The ICA was founded in September 2002 with the support of ARD/Checchi and is staffed by a Chair, Deputy Chair, and an Executive Secretary. A supervisory board functions as the supreme decision-making body, and is responsible for adopting the rules, calculating arbitration fees, and issuing regulations that govern ICA activities, including the approval of arbitrators. As of April 2004, the board has approved 114 arbitrators from 15 countries who are affiliated with the ICA. Of the 61 arbitrators from Kyrgyzstan, more than half are legal professionals. They include advocates, legal advisors, law professors, and heads of law firms. Most of the remaining arbitrators come from the business community. The participation of advocates as arbitrators presumably falls within the scope of “teaching, scientific, and other creative activities” which advocates may pursue. LAW ON ADVOCATE ACTIVITY, art. 4. Arbitrators are provided training by the ICA.

Types of disputes that may be referred to the ICA include those involving civil relationships, such as investment disputes and disputes over the purchase, sale, and transportation of goods;

service and labor contracts; and joint business activities. LAW ON ARBITRATION COURT, art. 1; REGULATION ON THE INTERNATIONAL COURT OF ARBITRATION, para. 6. Among the disputes, which may not be submitted to arbitration are those involving bankruptcy; protection of dignity and business reputation; compensation for damage to life or health of individuals; and family matters such as divorce, adoption, and guardianship. LAW ON ARBITRATION COURT, art.45; REGULATION ON THE INTERNATIONAL COURT OF ARBITRATION, para. 9. Matters may be referred to the ICA only pursuant to a pre-existing arbitration agreement between the parties.

The ICA maintains a website at [www.arbitr.kg](http://www.arbitr.kg) where it makes available news and information about arbitration, relevant legislation, arbitration rules and procedures, and a list of qualified arbitrators that parties may use. Copies of model arbitration agreements, which may be incorporated into commercial contracts, are also available electronically. In addition, the ICA has conducted an outreach campaign to raise awareness about arbitration among legal professionals and members of the business community. This campaign relied on television commercials, placement of advertisements in newspapers such as *Public Rating (Obshetvennyi Reiting)*, and roundtable discussions. Several articles on arbitration have also been published in *Law and Business (Pravo i Predprinimatel'stvo)*.<sup>24</sup> Despite these efforts, however, most interviewees were unfamiliar with the work of the ICA and how arbitration functions in practice.

To date, only a handful of cases have been referred to the ICA for arbitration. Several interviewees reported that additional cases are forthcoming in the near future, but for the moment, the ICA remains underutilized as a means for dispute resolution. President Akaev has suggested that the National Bank should develop more effective procedures for dispute resolution as a means of facilitating greater foreign direct investment, but it is unclear whether high-profile statements like these on the importance of arbitration improve the awareness and use of arbitration. It is more likely the use of arbitration will increase as advocates and other legal professionals receive training in alternative dispute resolution.

## V. Professional Associations

### Factor 21: Organizational Governance and Independence

***Professional associations of lawyers are self-governing, democratic, and independent from state authorities.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>A significant number of independent and self-governing associations of advocates and legal professionals have been established and proliferate throughout the country. Considerable discussion on unifying the advocatura through a single national bar association is underway.</p>	

#### Analysis/Background:

Voluntary membership in public associations is one of the fundamental principles of advocate activity in Kyrgyzstan. LAW ON ADVOCATE ACTIVITY, Article 3. This principle is also affirmed in Ministry of Justice Instruction No. 73 on advocate ethics (See Factor 16 on Professional Ethics and Conduct.) Both documents affirm the principles of democracy and the “collective nature” of relations between advocates. LAW ON ADVOCATE ACTIVITY, Article 3; MINISTRY OF JUSTICE

<sup>24</sup> See, “Arbitration in Action. Arbitration: The Verdict is Final,” LAW AND BUSINESS, October 5, 2002 and “Arbitration: What is Good for Business is Good for Everyone. The Essence and Advantage of Arbitration,” LAW AND BUSINESS, December 6, 2002.

INSTRUCTION NO. 73, Section 1. In addition, the freedom of advocates to establish and join these types of associations may be viewed as part of the constitutional right to freedom of association. CONSTITUTION, arts., 8.1, 16.13, and 21.1.

All public associations of lawyers are regulated by the MOJ in accordance with the Law on Public (Non-Commercial) Organizations. It stipulates that public associations are self-governing and operate on the basis of openness and lawfulness. LAW ON PUBLIC (NON-COMMERCIAL) ORGANIZATIONS, art. 4. State authorities are explicitly prohibited from interfering in the activities of public associations. *Id.*, Article 5. It should be noted that this provision also prohibits associations from interfering in the activities of state bodies and, therefore, could be used to limit participation in reform-oriented initiatives that involve public institutions and policies.

Kyrgyzstan has a relatively active civil society and advocates have founded a number of public associations in recent years. According to MOJ statistics, between 1997 and 2004, the MOJ registered a total of 1605 public associations. Of this number, 125 have been public associations of lawyers. Two of the most prominent are the Association of Attorneys of Kyrgyzstan (AAK) and the Young Lawyers of Kyrgyzstan (YLK). Other important associations include the Union of Advocates, Lawyers of Osh Oblast (POLO) and Lawyers of Batken Oblast (LOBO).

At present, there is no legal requirement that advocates must join or otherwise affiliate with a public association in order to practice law. Membership remains voluntary. Many advocates belong to and participate in the activities of more than one. Similarly, there are a significant number of so-called “independent advocates”, who are not members of any professional association at the national, regional, or local levels.

The AAK, a voluntary organization comprised of all types of legal professionals, was founded in 1995. According to its charter, the association seeks to “unify attorneys of different professions” in order to “protect the interests of Association members as representatives of the legal profession and to strengthen the legal status of legal professionals in Kyrgyzstan.” CHARTER OF THE ASSOCIATION OF ATTORNEYS OF KYRGYZSTAN, para. 3.1, December 18, 2003 (hereinafter, AAK CHARTER). Advocates, prosecutors, judges, as well as other individuals with a diploma in law, are eligible for membership. Law students may also become members, but, unlike law faculty graduates, they are limited to associate member status.

At the moment, AAK membership is at about 160, down significantly from 450 registered members in 2003. Most current members are reportedly advocates. Efforts to include prosecutors and judges have not proven very successful. One interviewee asserted that judges were encouraged not to participate in AAK activities by a senior member of the judiciary. Another reported that internal antagonisms do sometimes arise between the different types of legal professionals that comprise the AAK membership. However, this phenomenon does not seem more pronounced than would be normal in any organization with a varied membership.

All AAK members enjoy the right to participate in the management of the association. *Id.*, para. 4.3. Management bodies include a general assembly that is open to members in good standing, a 9-member board headed by a chairperson, and an executive director supported by a small administrative staff. *Id.*, section 5. The general assembly meets on an annual basis, at which time AAK members may approve amendments to the charter, set institutional priorities, elect and recall board members including the chairperson, and decide agenda items proposed by the board. The board is also empowered to propose amendments to the charter and approve internal documents and work plans. In addition, the board makes decisions on admitting and removing AAK members and hiring and dismissing the executive director. Meetings of the board are convened by the chairperson as necessary, but must be held at least once per month. Board members, including the chairperson, serve for one year. *Id.*

Most interviewees agreed that the AAK generally functions as an independent, self-governing, and democratic association. No one, including the many current and past members of the AAK

leadership interviewed, suggested that government authorities interfere with the activities or governance of the association. Notably, several officials indicated that public associations of lawyers, including the AAK, can only be effective in improving the status of the profession if they are truly independent from the state and free to act in accordance with their charters. With the exception of one interviewee, who suggested that the AAK should be more cooperative with government bodies, most believed that the relationship between the AAK and the government is constructive.

The AAK is generally considered to function in a democratic fashion, with frequent meetings of the Board and a consistent rotation of leadership, including that of the Chairperson. However, one perceived shortcoming involves the role of the association’s founders, some of whom reportedly seek to control the association’s activities and attempt to use the AAK for their own purposes. One interviewee noted that the Board is viewed as being handpicked by the founders and, therefore, beholden to their interests.

Although the AAK claims to have members located throughout the country, its membership and activities are mostly concentrated in Bishkek. As a result, several other associations have been established in recent years by advocates in the regions in order to address local needs. Chief among these regional-based associations are POLO and LOBO. Founded in 2002, reportedly as a more accessible regional alternative to the Bishkek-based AAK, POLO seeks to promote the professional development and training of advocates in southern Kyrgyzstan. POLO has a membership of 54 advocates, out of a total of 226 licensed advocates in Osh oblast. Also in 2002, advocates in Batken oblast formed LOBO in order to defend the interests of advocates and raise the standards of law practice at the regional level. All 15 advocates in the oblast are reportedly members of LOBO. Most interviewees from the south had very little familiarity with or interest in the activities of AAK.

Efforts of advocates affiliated with the remaining collegia and legal consultation bureaus to create a national association came to fruition following a July 2002 congress of lawyers. Participants at this event approved the establishment of the Union of Advocates, which has also been registered by the Ministry of Justice (MOJ). Although one estimate places membership at several hundred advocates, several interviewees suggested that many advocates, especially younger ones, are not interested in joining the Union of Advocates at this time.

Finally, at the law school level, roughly 100 law students and recent graduates belong to the YLK, a public association founded in 1997 through Kyrgyz-Russian (Slavonic) University. The YLK is headquartered in Bishkek and has branch offices in Osh, Jalal-Abad, and Naryn oblasts. Membership levels and the status of branch offices remain unclear in the wake of the promulgation of the decree on the Kyrgyz State Law Academy that has consolidated many law faculties within one structure. (See Factor 7 on Academic Requirements.) The YLK operates on the basis of a charter that sets forth the mission, structures, and procedures for managing the organization in a democratic and transparent fashion.

**Factor 22: Member Services**

***Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Public associations of advocates actively promote the interests of the profession, but largely do so in reaction to initiatives by the Ministry of Justice (MOJ). Members in public associations have greater access to information and training opportunities than so-called independent advocate.	

### Analysis/Background:

According to the 1993 Constitution, “citizens of Kyrgyzstan and their associations” enjoy the right to engage in “any actions or activities” that are not otherwise prohibited by law. CONSTITUTION, Article 21. Similarly, the Law on Public (Non-Commercial) Organizations states that public associations may conduct any type of activity provided it does not contradict the goals and objectives set forth in the organization’s charter or other internal documents and is not otherwise prohibited by law. LAW ON PUBLIC (NON-COMMERCIAL) ORGANIZATIONS, Article 12.

The Law on Advocate Activity does not identify any specific types of law reform activities and member services that public associations of lawyers should, or should not, pursue. In contrast, the draft Law on Advocate Activity would vest an association of advocates and its bodies with responsibility for setting and enforcing ethical standards, promoting continuing legal education, and similar initiatives in order to maintain the professionalism of advocates. DRAFT LAW ON ADVOCATE ACTIVITY, arts. 23-27.

Public associations, such as the Association of Attorneys of Kyrgyzstan (AAK), emphasize the need to strengthen the independence of the advocatura and spend considerable effort organizing initiatives aimed at improving its status. The AAK Charter identifies a list of objectives associated with developing the profession and the standards for the practice of law. It also states that the AAK will provide educational and training opportunities and other services to its members. AAK CHARTER, section 3. Similar objectives are set forth in the charters of other associations.

The AAK has taken an active role in promoting the interests of the profession, since it was established in 1995. It has been involved in protecting the rights and freedoms afforded to advocates by the 1999 Law on Advocate Activity. AAK leaders have also supported efforts to adopt the draft Law on Advocate Activity, which would alter the structure of the advocatura and the extent to which it would be regulated by the state. In addition, the AAK has worked to reform the law school accreditation process, protect the freedom of expression of advocates, and resolve how advocates are taxed by the state. Through numerous roundtables, the AAK has facilitated a dialogue on these and similar issues among advocates themselves, as well as between advocates and other legal professionals and government officials.

The proliferation of associations of lawyers in addition to the AAK provides many advocates, especially those in the south, with an institutional voice. However, coordination between associations on initiatives that benefit the profession as a whole does not seem to be a priority. Competition and rivalry between advocates sometimes get in the way of efforts to pursue common interests. A unified advocatura with the ability to effectively represent the interests of all its members remains elusive at the present even though there are instances of cooperation and an increasing emphasis on the benefits of creating a national association of advocates.

Many interviewees agreed that public associations of lawyers were formed with good intentions and can play a valuable role in promoting the interests of advocates, but admitted they have not worked well in practice. Some expressed the impression that associations like the AAK fail to deliver on the goals they set for themselves and the commitments they make. Several suggested that advocate associations should be consolidated, either at the national or regional levels.

If efforts to unify the advocatura proceed, they will likely have to do so in coordination with the AAK, and the Union of Advocates to a lesser extent. The AAK is presently the closest approximation to an association of advocates that can serve the needs and interests of the profession at the national level. Despite certain limitations noted above, many interviewees believe that it is still the most effective of all the public associations in its ability to dialogue with government officials and lobby on behalf of advocates. Ultimately, its success in this regard will be dependent in large part on increasing its membership and establishing branches outside of Bishkek. However, previous attempts to diversify membership, including an initiative to increase regional representation on the Board, have not resulted in much success.

AAK members must pay a one time entry fee of 300 soms and annual fees of 400 soms. Other public associations such as the Union of Advocates, Legal Assistance to Rural Citizens (LARC), Ferghana Valley Lawyers Without Borders (FVLWB), and Lawyers of Osh Oblast (POLO) have similar fee requirements, although amounts may be somewhat less. In return for their membership fees, AAK members receive access to legal information and updates on issues that pertain to the practice of law and the status of advocates. Materials are distributed periodically through the year and to members at the AAK annual meeting. In addition, members enjoy free access to legal libraries and resource centers, such as the Library Center for Legal Information, where they can obtain information about domestic and international law.

Although some public associations of lawyers in Kyrgyzstan may have domestic sources of income, other than membership dues, all are dependent on international donor support and technical assistance, largely from USAID, Organization for Security and Cooperation in Europe (OSCE), Soros Foundation, and similar sources. Their ability to launch initiatives to promote the interests of the profession or provide useful services to their members is linked to the willingness and the ability of these donors to provide financial and material resources.

**Factor 23: Public Interest and Awareness Programs**

***Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Advocates and their public associations have worked to raise the awareness of domestic and international law through public service announcements, roundtables, and advocacy campaigns, but these initiatives are dependent on international donor support.</p>	

Analysis/Background:

Public associations of lawyers concentrate most of their efforts on providing legal services and promoting the interests and independence of the profession. However, advocates also work to advance the public interest through education and other activities. Many advocates recognize the importance of improving the legal literacy of the population. The charters of the Association of Attorneys of Kyrgyzstan (AAK) and the Young Lawyers of Kyrgyzstan (YLK), for instance, both address public education and dissemination of information about the law. Improvement of the legal culture, publication of bulletins and other promotional materials, and participation in charity activity are among the stated objectives of the AAK. CHARTER OF THE ASSOCIATION OF ATTORNEYS OF KYRGYZSTAN, para. 3.1. Similarly, one of the principal purposes of the YLK is the advancement of the public good. CHARTER OF THE YOUNG LAWYERS OF KYRGYZSTAN, para., 3.1.

Neither the Law on Advocate Activity, nor the draft Law on Advocate Activity, explicitly addresses the role of advocates or professional associations in supporting public interest and awareness programs.

The AAK, YLK, and other groups such as Adilet and Legal Assistance to Rural Citizens (LARC) have undertaken small-scale projects to improve the awareness and use of both domestic and international law by members of the legal community and the public at large. The AAK, for example, developed a series of public service announcements in 2000 and 2001 on legal issues that aired on national television. YLK also produced a public service announcement on the rights of young people that was televised in May 2004.

YLK members organized public events to discuss the 2003 constitutional amendments, staffed legal “hotlines” in Bishkek and Osh, and provided legal assistance to refugees. Adilet provides

considerable assistance to refugee populations and asylum seekers as well, and has conducted consultations and roundtables in rural areas on citizenship, registration of non-governmental organizations, and other issues. LARC also organizes roundtables and meetings to improve public awareness of the issues surrounding land use. These and similar activities, however, remain largely dependent upon the financial support of international donors.

In November 2003, ABA/CEELI and the International Center for Not-for-Profit Law (ICNL), supported the establishment of a network of lawyers working at eleven Civil Society Support Centers (CSSCs) to provide legal assistance and information in rural areas. CSSC advocates work to raise the legal literacy of the population through public seminars on issues of importance at the local level. Topics of discussion have included taxation of non-governmental organizations, land use, property rights, loans and lending practices, and rights and obligations of village councils. Events of this kind have been organized in Nookat, Kerben, Kant, and settlements that might not otherwise have had access to information about important legal issues, because of their remote location.

Advocates and rights activists have also joined forces in the preparation of an alternative, or shadow, report on Kyrgyzstan's compliance with CEDAW. The members of a coalition of seven non-governmental organizations monitored and evaluated such compliance and submitted a report to the UN CEDAW Committee, the treaty oversight body. The CEDAW Committee cited extensively from this report when presenting the government of Kyrgyzstan with recommendations on how to improve its compliance with CEDAW. Follow-on activity included the formation of a roundtable to familiarize government officials and others with the report's findings and to discuss implementation of the CEDAW Committee's recommendations. A similar initiative on the Convention on the Rights of the Child (CRC) was also undertaken in Spring 2004 with the participation of Adilet, Osh Student Criminal Law Clinic, YLK, Young Lawyers of the South, and others.

In addition to public awareness campaigns and alternative reporting, fifteen advocates and human rights defenders from throughout the country have worked closely to monitor courtroom proceedings and assess compliance with international fair trial standards. This group's observations and conclusions will be used to develop a public advocacy campaign to raise awareness about access to justice and the fairness of the Kyrgyz judicial system.

Law students are also active in raising legal literacy through Street Law programs in Osh and Jalal-Abad that are designed to increase the understanding of secondary-school students of their legal rights and responsibilities. Growing interest and involvement in this work by teachers and public officials suggest that these programs are addressing an otherwise unmet need.

Despite these activities, many interviewees, including advocates, believe that public associations and members of the legal profession do not do enough to educate and inform the public about their legal rights. A significant number of interviewees could not identify any particular public awareness or civic education campaign that advocates take part in or promote.

Advocates who know of public awareness activities and those who participate in them believe that they cannot be sustained by the advocatura itself without the continued financial and material support of international donors. Lack of sufficient funds was repeatedly mentioned as a limitation on the ability of the AAK to engage in outreach and public awareness campaigns.

**Factor 24: Role in Law Reform**

***Professional associations of lawyers are actively involved in the country's law reform process.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although advocates may not be the vanguard of reform, they have either contributed to, or been actively involved in, the advancement of the rule of law and have supported legal reform in several key areas through the efforts of their public associations.</p>	

Analysis/Background:

As noted in Factor 22 on Member Services, both citizens and public associations enjoy the right to engage in any type of activity that is not otherwise in contravention of the law. CONSTITUTION, art. 21. LAW ON PUBLIC (NON-COMMERCIAL) ORGANIZATIONS, art. 12. At the same time, public associations are prohibited from interfering in the affairs of government bodies and officials. LAW ON PUBLIC (NON-COMMERCIAL) ORGANIZATIONS, art. 5.

The divided structure of the advocatura and the proliferation of many relatively small public associations can limit the potential role that advocates can play in the law reform process. Nevertheless, advocates have involved themselves in this process during much of the past decade. Their activity has primarily centered on legal developments that affect the independence of the profession and its status vis-à-vis the state. Many leading advocates also participate from time to time in legislative initiatives and advocacy campaigns that contribute to broader aspects of legal and judicial reform, such as the recent amendments to the Constitution and Criminal Procedure Code. In some instances, this participation has been solicited by government bodies and comes in response to a formal invitation to provide comments on draft legislation or sit on a working group or similar consultative body. The advocatura is sometimes proactive and assertive, but its initiatives are more likely to be in response to something the government has proposed, or done.

The Association of Attorneys of Kyrgyzstan (AAK) is perceived by many as the most active public association in the area of law reform. In October 2002, the AAK published a concept paper on judicial reform in *Law and Business (Pravo i Predprinimatel'stvo)*, and presented its views on this topic at a conference on constitutional reforms a month later. The AAK also drafted an analysis of the proposed constitutional amendments in January 2003. This analysis was disseminated among members of the legal community, as well as to the general public, during the run-up to a nationwide referendum in February 2003.

The AAK has devoted considerable effort to giving advocates a voice in the development of a code of ethics since the promulgation of Ministry of Justice Instruction No. 73 on professional ethics rules for advocates. (See Factor 16 on Professional Ethics and Conduct.) In June 2003, shortly after this document was issued, more than 50 advocates participated in an AAK sponsored roundtable that issued a resolution protesting against what is viewed as overreaching by the Ministry of Justice (MOJ) in issuing Instruction No. 73. The contents of the resolution were published in *Public Rating (Obshetvennyi Reiting)* and prompted a meeting of the Minister of Justice with a group of 30 leading advocates in July 2003 to clarify the Instruction's status and its compliance with the laws and Constitution of Kyrgyzstan.

A follow-on meeting in October 2003 brought together government representatives, prosecutors, judges, academics, independent advocates, and members of the AAK, Union of Advocates, and Lawyers of Osh Oblast (POLO) to discuss the effect of Instruction No. 73 on advocate independence. Participants adopted a resolution calling for a working group to develop draft rules of ethics, which were finalized in large part due to AAK efforts and then presented to the MOJ in January 2004.

At a November 2003 conference sponsored by AAK and others, more than 30 participants, including leading advocates and other legal professionals from Kyrgyzstan and abroad, government officials, representatives of non-governmental and international organizations, and the media exchanged views on critical issues facing advocates. Discussions focused on independence of advocates, their freedom of speech, and the regulation of the profession through rules on ethics. In addition, participants affirmed the importance of developing a draft concept on the advocatura that addresses the role of an independent, unified, and self-regulating profession.

Progress on this and related concepts was given greater impetus following a February 2004 government decree signed by the Prime Minister, which created three working groups, and a Council to coordinate their efforts, to further develop the advocatura as an institution and to improve the system for rendering free legal aid. Many prominent advocates and members of the AAK and the Union of Advocates take part in these bodies along with representatives of the MOJ and the judiciary.<sup>25</sup> Participation in each group provides the AAK and other advocates with a significant opportunity to contribute to and shape the legislative initiative to adopt a draft Law on Advocate Activity to replace of the Law on Advocate Activity of 1999. Initial indicators suggest that advocates have taken advantage of this opportunity.

Members of the working groups have met periodically since they were established in February 2004. Two of them are drafting concept papers (one on the structure, activity, and regulation of the advocatura; the second on the system of state-guaranteed legal aid) while the third is tasked with identifying a mechanism for dispensing payment to advocates who render legal aid to the indigent. The Concept Paper on the Bar being developed is a potentially important document in terms of reforming the profession. The ten members of the working group charged with this task have endorsed the idea of a unified structure through creation of a national association of advocates, in cooperation with the AAK and the Union of Advocates. Among other activities the association would take the lead in regulating admission into the profession and the development and enforcement of an ethics code for advocates.

The AAK also conducted a roundtable in July 2004 that brought together advocates and notaries in response to a decision by the government to impose a greater tax liability on these two types of legal professionals. In a public appeal, participants urged the Prime Minister to reconsider the move, which they contend will subject advocates and notaries to excessive regulation.

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<sup>25</sup> For composition of the Council and the three working groups, see the DECREE OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC, No. 54-r, February 04, 2004.