



**PROSECUTORIAL  
REFORM INDEX**

FOR

**KYRGYZSTAN**

*March 2007*

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## Introduction

The Prosecutorial Reform Index (PRI) is a tool developed by the American Bar Association's Rule of Law Initiative. Its purpose is to assess a cross-section of factors important to prosecutorial reform in transitioning states. In an era when legal and judicial reform efforts are receiving more attention than in the past, the PRI is an appropriate and important assessment mechanism. The PRI will enable the ABA, its funders, and the local governments themselves, to better target prosecutorial reform programs and monitor progress towards establishing accountable, effective, and independent prosecutorial offices.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in prosecutorial reform. There are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after working in the field on this issue for 15 years in different regions of the world, the ABA has concluded that each of the 28 factors examined herein may have a significant impact on the prosecutorial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the PRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the prosecutorial system in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's prosecutorial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The PRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's prosecutorial system.

## Methodology

The ABA was able to borrow heavily from the Judicial Reform Index (JRI) and Legal Profession Reform Index (LPRI) in terms of structure and process. However, the limited research on legal reform that exists 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 and LPRI, the ABA concluded that many factors related to the assessment of the prosecutorial system are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/Central European and Eurasian Law Initiative, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental norms, such as those set out in the *United Nations Guidelines on the Role of Prosecutors*; the *International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*; *Council of Europe Recommendation R(2000)19 On the Role of Public Prosecution in the Criminal Justice System*; and the *American Bar Association Standards for Criminal Justice: Prosecution Function*.

In creating the PRI, the ABA was able to build on its experience in creating the JRI, the LPRI, and the more recent CEDAW Assessment Tool and Human Trafficking Assessment Tool in a number



of ways.<sup>1</sup> For example, the PRI borrowed the JRI's factor "scoring" mechanism and thus, as with the LPRI, was able to avoid the difficult internal debate that occurred with the creation of the JRI. In short, the JRI, the LPRI, and now the PRI employ factor-specific qualitative evaluations. Each PRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's regulations and practices pertaining to its prosecutorial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" 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 will be given a "neutral." Like the JRI and LPRI, the PRI foregoes any attempt to provide an overall scoring of a country's reform progress since attempts at aggregate scoring based on this approach could be counterproductive.<sup>2</sup>

The results of the 28 separate evaluations are collected in a standardized format in each PRI country assessment. As with the JRI and LPRI, the PRI utilizes an 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 performance of different countries in specific areas and—as PRIs are updated—within a given country over time. There are two main reasons for borrowing the JRI's and LPRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI and LPRI enabled the speedier development of the PRI. The second is uniformity. Creating uniform formats will enable the ABA eventually to cross-reference information generated by the PRI into the existing body of JRI and LPRI information. This will eventually give the ABA the ability to a much more complete picture of legal reform in target countries.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of prosecutors, judges, and defense counsel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, and outside observers with detailed knowledge of the legal system. Overall, the PRI is intended to be rapidly implemented by one or more assessors 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 PRI fulfills several functions. First, local government leaders and policymakers utilize the findings to prioritize and focus reform efforts. Second, the ABA and other rule of law assistance providers use the PRI results to design more effective programs related to improving the quality of the prosecutorial system. Third, the PRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the prosecutorial system in countries where the PRI is implemented. Fourth, combined with the JRI and LPRI, the PRI contributes to a comprehensive understanding of how the rule of law functions in practice. Fifth, PRI results serve as a springboard for such local advocacy initiatives as public education campaigns about the role of prosecutors in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the prosecutorial function.

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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. The Human Trafficking Assessment Tool is based on the UN Trafficking Protocol and was developed in 2004-2005.

<sup>2</sup> For more in-depth discussion on this matter, see Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 Am. J. Comp. L. 605, 611 (1996).

## **Acknowledgements**

The ABA would like to thank the team that developed the concept and design of the PRI, including the project coordinators Simon Conté, Director of the ABA Rule of Law Initiative's Research and Program Development Office, and Mary Greer, the ABA Rule of Law Initiative's Senior Criminal Law Advisor, as well as a splendid team of research assistants - Jasna Dobricik, Malika Levarlet, Lada Mirzalieva, Jaspreet Saini, and Gideon Wiginton. In addition, the ABA gratefully acknowledges the contributions made to this project by a number of valued past and present colleagues, including Wendy Patten, Carson Clements, Olga Ruda, Andreea Vesa, and Monika Jaworska.

During the year-long development process, input and critical comments were solicited from a variety of experts on prosecutorial reform matters. In particular, the ABA would like to thank the members of its PRI Expert Working Group, who helped to revise the initial PRI structure and factors: Mark Dietrich, Barry Hancock, Christopher Lehman, Martin Schöteich, Irwin Schwartz, and Raya Boncheva, as well as those submitting written comments: Wassim Harb, Woo Jung Shim, Antonia Balkanska, and Feridan Yenisy

## **Assessment Team**

The Kyrgyzstan PRI 2007 assessment team was led by Carl Anderson, with strong support from the ABA's staff in Bishkek, Osh, Almaty, and Washington, including: Senior Criminal Law Advisor Mary Greer, Director of Research and Program Development Simon Conté, Research Analyst Brenner Allen, Regional Director Karen Kendrick, Country Director Christopher Krafchak, Senior Staff Attorney Azamat Kerimbaev, and Staff Attorney Anvar Mukanbaev. Barry Hancock, General Counsel for the International Association of Prosecutors, served as the international prosecutorial advisor to the assessor team and provided valuable guidance and feedback on the report. The conclusions and analysis are based on interviews that were conducted in Kyrgyzstan in February and March 2007 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file with the ABA. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.



## Executive Summary

### Brief Overview of the Results

The 2007 Prosecutorial Reform Index (PRI) for Kyrgyzstan is occurring at a time of unprecedented change for the prosecution function and the criminal justice system in general. Recent constitutional amendments and code changes have introduced for the first time the jury trial system and the transfer of the arrest warrant function from the prosecution service to the judicial branch. As it prepares for these substantial changes, the Procuracy faces significant challenges. Perceptions are widespread that the Procuracy stifles appropriate prosecutorial discretion, is vulnerable to improper influence and corruption, lacks transparency and accountability, and that it does not adequately protect the rights of parties involved in specific criminal incidents. The lack of sufficient resources for salaries, automation, supplies, and facilities also hampers efficient administrative operations.

As illustrated in the Table of Factor Correlations, Kyrgyzstan scored positively on three of the twenty-eight PRI factors, indicating that the country's practices and legal framework substantially comply with international norms. Fourteen factors received a negative correlation, including at least one negative factor in each of the six PRI sections, and in all factors in Section III, Prosecutorial Functions. The remaining eleven factors all received a neutral correlation. The predominantly negative trend in the factor correlations is an issue of concern and signals the need for significant reform.

Complicating factor correlation determinations were research challenges encountered by the PRI assessor team. On several occasions the team requested the Office of the Prosecutor General to provide official information regarding the following: detailed office and special unit budgets; salary scales; organizational charts and strategic plans; case disposition, conviction and sentencing information; and, complete disciplinary statistics. Unfortunately, the ABA assessor team received only a portion of the information it requested. Without this information it could not provide a more empirically developed assessment.

As described in the *Background* section of this report, the Office of the Prosecutor General is not only responsible for the prosecution of criminal cases, but is also constitutionally mandated to supervise the accurate and uniform implementation of legislative acts by the government. Substantial resources are dedicated to this mandate, which is not per se a criminal prosecution function. Because the PRI assessment tool focuses exclusively on the criminal prosecution function, there is minimal discussion of the Procuracy's success or failure in supervising the implementation of legislative acts by the executive branch.

### Positive Aspects Identified in the 2007 Kyrgyzstan PRI

- The ***laws governing functional immunity for prosecutors are thought to be well balanced*** between shielding prosecutors for their official acts while establishing liability for personal, non-official, criminal behavior. The perception of corruption in the Office raises questions about whether prosecutors are truly held accountable for criminal violations of the law.
- The prosecutorial ***Ethics Code and the mechanism for its enforcement are fairly comprehensive and procedurally detailed***. The code encompasses statements of general ethical behavior, conflicts of interest, and conduct in official activities. Unfortunately, ethics training for prosecutors is very limited. Additionally, the code should also be amended to explicitly prohibit *ex parte* communications

- Regarding **international cooperation, the Office of the Prosecutor General honors most mutual legal assistance and extradition requests in a timely fashion. The Office is a party to formal regional and Asian prosecutor alliances.** Donor financed training in international human rights law and transnational crimes continues to expand.
- Prosecutors report that they are generally **secure from physical threats, criminal harassment, and intimidation in the performance of their duties.** Laws protecting the security of prosecutors are sufficient.

## Major Concerns Identified in the 2007 Kyrgyzstan PRI

- The Office of the Prosecutor General is publicly perceived as being impaired in its professional functions due to **improper influence from prosecutorial and non-prosecutorial authorities,** despite legal provisions that attempt to address these issues. Improper influence is alleged to derive from Office supervisors, government authorities, and elected officials. Prosecutors are also sometimes influenced by business interests as well.
- The Prosecution Service is generally believed to be **inadequate in its efforts to prosecute corruption, police misconduct, and cases involving the violations of human rights.** There is a troubling perception that prosecutors are complicit in, or at least tolerate, corruption and overlook human rights violations by state actors. Convictions for corruption offenses are low compared to the scope of the problem. Staff resources assigned to corruption and human rights cases are said to be too meager to impact the problem.
- **Relationships with actors in the criminal justice system including police, judges, victims, witnesses, and the accused** are of significant concern. Prosecutors are accused of being insensitive to the needs and concerns of victims and witnesses and are faulted for a lack of training in this area. They are also criticized for not sufficiently overseeing police investigations and, especially, for not ensuring the proper elicitation of statements.
- The Office of the Prosecutor General is generally perceived as being **exceedingly bureaucratic, overly hierarchical, and that the appropriate case discretion afforded line prosecutors in law is completely subordinated to supervisors.** According to justice system actors and civil society leaders alike, the culture is monolithic. The Office of the Prosecutor General is neither transparent nor accountable to the public or cooperative with the press.
- Budget requests over the past few years have been substantially reduced by the government and Parliament. **Funding appears to be insufficient to support the prosecution function in the areas of staff salaries, building maintenance, office supplies, and automation.** Meanwhile, inefficiencies created in the assignment of staff to non-prosecution functions seem to harm the Office's ability to adequately prosecute crimes and monitor pre-trial investigations.

## Kyrgyzstan Background

### Legal Context

The Kyrgyz Republic (Kyrgyzstan) is located in Central Asia and is a former republic of the Soviet Union. Landlocked and mountainous, it borders Kazakhstan to the north, Uzbekistan to the west, Tajikistan to the southwest, and the People's Republic of China to the southeast. The country covers a land area of 198,000 square kilometers and has a multiethnic population of 5,213,898 people (2006 estimate), mostly consisting of ethnic Kyrgyz, but with a significant representation of ethnic Uzbeks and Russians. Kyrgyzstan is made up of seven regions (*oblasts*) and 43 districts (*raions*) and towns, plus the capital city of Bishkek.

Kyrgyzstan's constitution declares that it is a sovereign, unitary, democratic, rule-of-law, social state based on the principle of separation of state power into legislative, executive, and judicial branches. The head of the state is a President who is elected for a term of five years. A unicameral Parliament (*Jogorku Kenesh*), a year-round higher representative body, exercises legislative power and also a number of administrative functions. The executive power is exercised by the Government of Kyrgyzstan, which consists of ministries and government agencies. The judiciary operates in two largely separate systems: the Constitutional Court and the Courts of General Jurisdiction.

Kyrgyzstan obtained its independence from the former Soviet Union on August 31, 1991. The first President to be elected following independence was Askar Akaev, a former physicist and head of the Kyrgyz Academy of Sciences. The first post-Soviet constitution was adopted on May 5, 1993 and subsequently amended in 1996, 1998, 2001, and 2003. Although Kyrgyzstan came to enjoy a reputation as an "island of democracy" in the region, after the 2003 constitutional amendments the power of the Parliament and the government were restricted in favor of the president, leading to further concentration of power in the presidency and a weakening of the role of civil society. President Akaev remained in office until he was ousted from power, as part of the so-called *Tulip Revolution*, on March 24, 2005.

Following the fall of Akaev's government and the election of new President Kurmanbek Bakiev on July 10, 2005, the new government leadership, along with civil society groups, set upon a course of broad-ranging constitutional, political, and economic reforms. The new Constitution adopted on December 30, 2006 was the second constitution adopted by the Kyrgyz parliament in two months. Its adoption was the culmination of a year-and-a-half long constitutional reform process that was marred by a lack of direction and transparency. The speed and frequency with which the Constitution was changed in late 2006 significantly undermined the status of the Constitution and the generally positive changes made theretofore.

At the time of the assessment team's visit in February and March 2007, opposition groups were calling for President Bakiev to leave office, complaining that he had not lived up to the ideals that sparked the events of March 2005. Large-scale, nonstop demonstrations were planned for early April 2007 demanding pre-term presidential elections, creation of a coalition government, immediate constitutional reform, and the elimination of corruption. Although President Bakiev expressed his willingness to continue with constitutional reforms and to reduce executive powers in favor of the legislature, the future of Kyrgyzstan's latest constitution was very much in flux.

Because of the fluid nature of the Constitution during the preparation of this report, and pending passage of new criminal procedure and other provisions that would comply with the latest constitution, the assessment team decided to generally incorporate into this report all laws and amendments officially adopted on or before March 31, 2007, and to refer, where relevant, to prospective changes under consideration at that date.

As Kyrgyzstan struggles to achieve a less corrupt society, its criminal justice system still fails to function in a manner that is fair, predictable, and capable of effectively investigating and resolving the cases presented to it. Kyrgyzstan lacks for a criminal justice system that operates free of corruption from within the ranks of the actors in that system, whether they be members of the judiciary, the Procuracy, the law enforcement agencies, or the defense bar.

Notwithstanding the fact that significant changes have been made to abolish Soviet approaches to criminal law and procedure in the last decade, a range of new legislative provisions are more in line with a “repressive justice model”. Many of these provisions do not directly contradict international standards, yet in their own way they represent “residual elements”, which a modern democratic state should avoid in its criminal justice system.

## History of the Prosecution Service

The Procuracy of Kyrgyzstan,<sup>3</sup> similar to the Soviet Procuracy upon which it was modeled, was created to be the organ of an absolutist government and executive branch control. It was not intended to be a defender of human rights and freedoms, though it was often represented as such by official propaganda. In the Soviet Union, the Bolshevik Government abolished the procuracy in 1917, only to reestablish it in 1922. At that time, the Bolsheviks “invested [the Soviet Procuracy] with the power to supervise the legality of actions of administrative officials, agencies, and citizens” as well as to prosecute criminal cases. Gordon Smith, *Reforming the Russian Legal System*, 105 (1996). Moreover, “[u]nder Joseph Stalin and his procurator-general Andrei Vyshinsky, the Procuracy focused its energies almost exclusively on state-sponsored coercion” and “... on weeding out all opponents of Stalin.” Smith at 106. Under the Soviet legislation, the Procuracy was regarded as a system independent from executive, legislative and judicial powers, and undoubtedly it was the most authoritative body within the system of justice administration. It “grew in power and prestige during the post-Stalin period.” Smith at 108. The prosecutor not only performed a supervisory function over criminal investigations and conducted investigations in the most serious cases, but it also prosecuted criminal cases in court. At the preliminary investigation stage, the prosecutor executed pseudo-judicial power by issuing warrants for arrest, detention, search, seizure, and wiretaps.

The Procuracy in Kyrgyzstan continues to play an extremely dominant role in the administration of justice. It exercises supervisory powers and exerts a disproportionate influence over both the pre-trial and trial stages of judicial proceedings. Indeed, “[t]he competencies of the procuracy do not merely entail the prosecution of defendants on behalf of the state, but [also the] priority to supervise within the bounds of its competency, the accurate and uniform implementation of legislative acts... This special feature can be observed throughout the Central Asian region and other CIS countries and reflects the Soviet system of the Prokuratura.” REPORT SUBMITTED BY THE SPECIAL RAPPOREUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, LEANDRO DESPOUY, ON HIS MISSION TO KYRGYZSTAN (18 to 22 September, 1 October 2005).

The legal grounds for the status, role, scope of activity, and structure of the Procuracy in the Kyrgyz Republic are established in Article 77 of the most recent version of the Constitution of the Kyrgyz Republic of December 30, 2006 [hereinafter 2006 CONSTITUTION], the Law on the Procuracy of the Kyrgyz Republic of December 18, 1993 [hereinafter LAW ON THE PROCURACY], the Regulation on the Military Procuracy of the Kyrgyz Republic of May 4, 1994 [hereinafter *Regulation on the Military Procuracy*] and other legislative acts. Relevant procedural aspects of prosecutorial activity are addressed in the Criminal Procedure Code of June 30, 1999 [hereinafter

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<sup>3</sup> In order to maintain the consistency in translation of the Russian term “Prokuratura” and to get an accurate uniform understanding of its legal concept, it was decided to interpret this word throughout the entire text of this document as “Procuracy”, although English versions of various reference materials determine it as “Procurator’s Office”, “Prosecutor’s Office”, “Public Prosecutor’s Office” or “Prokuratura”.

CRIMINAL PROCEDURE CODE]. Under Kyrgyz legislation, the Procuracy is responsible for enforcing accurate and uniform implementation of laws and other normative legal acts, including those enacted by bodies of executive power. Bodies within the Procuracy also conduct criminal prosecutions

The structure of the Kyrgyz prosecutorial system includes: the Prosecutor General's Office; regional (*oblast*) prosecutors' offices, a separate prosecutor's office of the city of Bishkek; the military prosecutor's office; as well as inter-district (*inter-raion*), city, district (*raion*), and equal-status specialized prosecutors' offices. As a part of a centralized state power,<sup>4</sup> the Procuracy is a unified and national entity with a strict hierarchy. Each prosecutor is subordinate to his/her respective superior prosecutor, who is in turn subordinate to the Prosecutor General. The superior prosecutor assures adherence to the law, exercises control, and administrative leadership. He/she may rescind the decisions of his/her subordinate prosecutors. Approximately 720 prosecutors<sup>5</sup> work within the prosecutorial system in 67 offices throughout the country.

Despite the fact that the Law on the Procuracy has generally retained the old system of supervisory powers, a degree of progress has been achieved lately in the development of judicial control during investigation. The 2006 Constitution transfers the power to issue arrest, detention, search, and seizure warrants from the Procuracy to the Judiciary.

## Conditions of Service

### Qualifications

Prosecutors and investigators must: (i) be citizens of the Kyrgyz Republic; (ii) hold a law degree; and, (iii) and possess professional capacity, personal suitability and physical fitness to work in Procuracy bodies.

A person may not be recruited to Procuracy bodies or serve in the said bodies if he/she:

- is a citizen of a foreign State;
- has been found by a court of law to be under special disability;
- has been barred by a court of law from holding government offices for a certain period of time;
- has or had a record of conviction that was not duly expunged or otherwise lawfully quashed;
- suffers from a disease that, according to a medical examination report, makes it impossible for him/her to exercise his/her official functions;
- is a close relative (parent, spouse, brother, sister or a child) of a Procuracy officer where one is subordinate to or controlled by the other;
- refuses to undergo a procedure of security clearance processing to get access to information comprising a State secret if the exercise of his/her official functions involves the use of such secrets.

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<sup>4</sup> Under the pre-2006 Constitution, the Procuracy was among the bodies of executive power.

<sup>5</sup> For the purpose of this research and according to Article 45 of the Law on the Procuracy, the term "prosecutor" is defined to include the Prosecutor General, his/her deputies, all lower prosecutors and their deputies, department and division heads, assistants and senior assistants, department and division prosecutors, and senior prosecutors acting within the limits of their powers.

No person under 40 years of age or over 65 years of age or who has worked in the legal profession for less than 15 years may qualify for the position of the Prosecutor General. To qualify as a deputy Prosecutor General, regional prosecutor, prosecutor of the city of Bishkek, or military prosecutor, a person must be over 35 years of age and under 60 years of age, and have worked in the legal profession for at least 10 years. Persons attempting to qualify for the positions of city, district, and other equal-status prosecutors must be over 30 years of age and have worked in the legal profession for at least 5 years. Law school graduates who do not have practical work experience in the legal profession must participate in a one-year traineeship in Procuracy bodies while enjoying in their entirety the rights and responsibilities of a Procuracy officer.

### **Appointment and Tenure**

Under the current legislation, the Prosecutor General is appointed and dismissed by the President with the consent of the Parliament. Deputies of the Prosecutor General and Military prosecutor are appointed and dismissed by the President on the proposal of the Prosecutor General. The Prosecutor General appoints and dismisses the following staff members of the Procuracy:

- in the Prosecutor General's Office: the director of the Professional Development Center; department and division heads and their deputies; the deputy director of the Professional Development Center; assistants and senior assistants to the Prosecutor General; prosecutors and senior prosecutors of departments, divisions, and the Professional Development Center; senior investigators and investigators for particularly important cases, expert consultants, and the chief accountant;
- regional prosecutors; the prosecutor of the city of Bishkek; specialized prosecutors and their deputies; deputy military prosecutors; division heads and senior assistants in regional, city of Bishkek and military prosecutor's offices on the proposals of relevant prosecutors;
- city, district, and other equal-status prosecutors on the proposals of higher prosecutors.

The term limit of the Prosecutor General is seven years while that of regional, city, district, and other equal-status prosecutors is five years. Regional, city, and district prosecutors may not serve more than two consecutive terms in the same administrative-territorial district. Prosecutors may be relieved of their position before the end of their term for a variety of reasons, including their incapacitation, failure to pass performance appraisal, or when convicted of a crime (and the resulting sentence takes legal effect). LAW ON THE PROCURACY OF THE KYRGYZ REPUBLIC of December 18, 1993, No. 1341-XII (*As per the Resolution of the Constitutional Court of the Kyrgyz Republic of May 15, 1996 and Laws of the Kyrgyz Republic of November 21, 1997, No. 82 and of November 13, 2000, No. 85*), Articles 8-11 [hereinafter LAW ON THE PROCURACY].

### **Training**

A system of continuing legal education for prosecutors [hereinafter CLE] includes education in individual and group settings based on special curricula at the Professional Development Center [hereinafter PDC] and education in permanent territorial, regional, and zonal training and methodological seminars as well as on-the-job training in higher bodies of the Procuracy. The PDC was established on September 12, 2005 as a training unit of the Prosecutor General's Office. In accordance with its Charter,<sup>6</sup> the PDC is a self-contained legal entity founded by the Prosecutor General's Office. The PDC has a well equipped training facility in Bishkek.

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<sup>6</sup> Registered by the Ministry of Justice on September 22, 2005, Certificate № 53850-3301-Y-e.

## Kyrgyzstan PRI 2007 Analysis

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

### Table of Factor Correlations

<b>I. Qualifications, Selection, and Training</b>		
Factor 1	Legal Education	Negative
Factor 2	Continuing Legal Education	Neutral
Factor 3	Selection: Recruitment, Promotion, and Transfer	Neutral
Factor 4	Selection Without Discrimination	Neutral
<b>II. Professional Freedoms and Guarantees</b>		
Factor 5	Freedom of Expression	Neutral
Factor 6	Freedom of Professional Association	Neutral
Factor 7	Freedom from Improper Influence	Negative
Factor 8	Protection from Harassment and Intimidation	Positive
Factor 9	Professional Immunity	Positive
<b>III. Prosecutorial Functions</b>		
Factor 10	Discretionary Functions	Negative
Factor 11	Rights of the Accused	Negative
Factor 12	Victim Rights and Protection	Negative
Factor 13	Witness Rights and Protection	Negative
Factor 14	Public Integrity	Negative
<b>IV. Accountability and Transparency</b>		
Factor 15	Public Accountability	Negative
Factor 16	Internal Accountability	Neutral
Factor 17	Conflicts of Interest	Neutral
Factor 18	Codes of Ethics	Neutral
Factor 19	Disciplinary Proceedings	Neutral
<b>V. Interaction with Criminal Justice Actors</b>		
Factor 20	Interaction with Judges	Negative
Factor 21	Interaction with Police and Other Investigatory Agencies	Negative
Factor 22	Interaction with Representatives of the Accused	Negative
Factor 23	Interaction with the Public/Media	Negative
Factor 24	International Cooperation	Positive
<b>VI. Finances and Resources</b>		
Factor 25	Budgetary Input	Neutral
Factor 26	Resources and Infrastructure	Negative
Factor 27	Efficiency	Neutral
Factor 28	Compensation and Benefits	Negative

# I. Qualifications, Selection, and Training

## Factor 1: Legal Education

***Prosecutors have the appropriate legal education and training necessary to discharge the functions of their office, and should be made aware of the ideals and ethical duties of their office, of the protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by international law..***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although prosecutors must possess a law degree, the quality of legal education is uneven because of the proliferation of inadequately regulated law faculties. In response to this situation, the Ministry of Education has ordered the consolidation or closing of many law faculties. Advocacy skills programs tend to be donor-based and are not plentiful. The absence of legal texts written in the Kyrgyz language and rampant corruption in the issuance of grades also present significant challenges to the legal education system.</p>	

### Analysis/Background:

Article 34 of the Law on the Procuracy provides that among the qualifications for the position of prosecutor, “one must be a citizen of the Kyrgyz Republic and hold a law degree.”

The majority of law schools offer four or five year undergraduate programs of study. In those institutions offering a fifth year, the student typically completes a specialized thesis project. Criminal law, criminal procedure, and constitutional law are state-mandated courses. In the first two courses, students receive 378 and 240 hours of instruction, respectively, in each subject, over the course of four semesters. In the latter, 240 hours (two semesters) are required. Other related mandatory courses include criminology, criminal investigations, and forensics. *Ministry of Education and Culture State Education Standard of Higher Vocational Education, 2003.*

Class time is split between lectures and seminars. In most institutions ethics and human rights law are optional electives in a general discipline of 24 subject areas. In the four year program, a total of six weeks of internships are required. *Id.* In the five year program, internships of three weeks (introductory), one month (practical), and two months (pre-diploma) are required, in the second and third years, and before the issuance a law diploma. *Ministry of Education and Culture Temporary State Education Standard of Higher Vocational Education, 2004.* These internships may be conducted at the Office of the Prosecutor General, although the three week internship requires a rotation through the judiciary, prosecution, and investigation offices.

Since the collapse of the Soviet Union there has been a largely unregulated proliferation of law schools. It is widely believed that the quality of legal education has declined as a result. As reported in the *2004 ABA/CEELI Legal Profession Reform Index* [hereinafter LPRI], most faculties were consolidated pursuant to *Presidential Decree No. 264 on Establishment of the Kyrgyz State Law Academy* (August 12, 2003). However, as of July 2006, there remain approximately 18 schools in the country offering instruction in jurisprudence. All are subject to the control of Ministry of Education Science and Youth Policy [hereinafter Ministry of Education].

In July 2006, the Ministry of Education ordered the closure of some law schools and the consolidation of others to further reduce what many consider to be a glut of law schools and an oversupply of lawyers. Among those faculties recommended for closure were the Kyrgyz Kazakh Academy of Law and Public Service, the Osh branch of the Moscow Enterprises and Law

Institute, and the Institute of Law, Business and Computer Technology in Jalalabat. *Order of the Ministry of Education, 7/11/2006 #451/1*. Currently, several law schools slated for closure or integration into other institutions have appealed this order and remain open.

There are several additional issues affecting the quality of legal education. Although the Ministry of Education recommends that 30% of a law school's faculty should possess an advanced degree in law, to date the number of Ph.D. Professors nationwide is obviously inadequate with a very minimal number of those having a Doctoral degree. Nevertheless, students generally report that professors are competent, accessible, and regularly engage in discussions on current law and proposed and recent statutory changes.

Legal materials are generally available to students, but computer and Internet access is only available in some private law faculties. Nearly all materials are printed in Russian. Students and faculty alike report that the absence of written materials available in Kyrgyz impacts the study of law. As fewer and fewer students entering law schools have facility in the Russian language, the lack of Kyrgyz texts does present a serious challenge to the study of law in the future.

Practical legal skills classes are offered in most schools. These include moot court, mock trial, and criminal defense legal clinics. Most of these are donor-based programs. Opportunities to participate in these programs are not plentiful and are highly competitive. Most graduates entering the prosecutor's office attended the Kyrgyz State University, where practical skills courses are not abundantly available and are not offered at all in some disciplines. The required internships are generally viewed as helpful, but opinions are mixed regarding those conducted at the Office of the Prosecutor General. There is also a perception that, while some internships are informative and educational, some are far too administrative.

The most critical issue impacting legal education is corruption. Students, faculty, attorneys, prosecutors, and judges alike affirmed that corruption in the issuance of grades is a serious problem. Although hard to quantify empirically, those interviewed about legal education estimated that one-fifth to one-half of faculty and students were engaged in the practice of buying grades. The most common scheme reported involves students at exam time handing professors their exam booklets with cash tucked inside the cover. Giving rise to this problem is the combination of low faculty salaries along with students' poor preparation and low attendance. In many law faculties, fighting corruption is among the highest priorities.

With some exceptions, judges, defense attorneys, and prosecutors believe that law graduates are not prepared to discharge the functions of the prosecution office. Many fear that they will be unable to perform competently in the adversarial system envisioned by recent constitutional changes.

## Factor 2: Continuing Legal Education

***In order to maintain and improve the highest standards of professionalism and legal expertise, prosecutors undergo continuing legal education (CLE) training. States sponsor sufficient and appropriate CLE training, which is professionally prepared on specific issues and is relevant to the prosecutors' responsibilities, taking into account new developments in the law and society.***

<b>Conclusion</b>	<b>Correlation: <u>Neutral</u></b>
<p>CLE for prosecutors is not required but is considered critical to the professional development of prosecutors. Kyrgyzstan has recently created a Professional Development Center (PDC) that offers training on office and case management, serious crimes, and international criminal law topics. Although the PDC's current capacity to train prosecutors is very limited, foreign donor support is significant and committed to its expansion. The first year prosecutor mentorship program was praised as helpful in bridging the gap between law school education and the practice of law in the prosecution service.</p>	

### Analysis/Background:

Section IV, Article 14 of the Regulations on Service in the Procuracy Offices and Agencies of the Kyrgyz Republic (*Approved by the Decree of the President of the Kyrgyz Republic of February 5, 2001, УП No. 48 - As per the Decree of the President of the Kyrgyz Republic of April 19, 2003, УП No. 132*), [hereinafter *Regulations on Service*] establishes that training and professional development is an essential duty of all prosecutors. The government also authorized the establishment of the Professional Development Center to provide training and professional development. See THE CONCEPT OF THE DEVELOPMENT OF THE PROCURACY AGENCIES OF THE KYRGYZ REPUBLIC (*Approved by the Decree of the President of the Kyrgyz Republic of March 21, 2003, УП No. 101*), and THE CHARTER OF THE PROFESSIONAL DEVELOPMENT CENTER OF THE PROCURATOR GENERAL'S OFFICE OF THE KYRGYZ REPUBLIC [*Approved by the Order of the Procurator General of the Kyrgyz Republic of September 12, 2005, No. 22/14*].

The Law on the Procuracy provides that law school graduates entering the Prosecutor General's Office "shall take a one-year traineeship in prosecution agencies while enjoying the entirety of rights and responsibilities of a prosecutor." LAW ON THE PROCURACY, art. 34. New prosecutors are generally assigned to a district (*raion*) office where the chief prosecutor assigns them a special mentoring attorney. A personal training plan is developed that includes a rotation through specialized investigation and prosecution units. Only the Prosecutor General may reduce the period of the traineeship or exempt a prosecutor from the period of traineeship. *Id.*

Apart from the traineeship, the continuing legal education of prosecutors is largely the responsibility of the Professional Development Center [hereinafter PDC]. According to *Order 18 of the Prosecutor General's Office of the Kyrgyz Republic of June 1, 2006, On Measures Aimed at Improving the Training, Professional Development, and Traineeship System for Procuracy and Investigation Officers* [hereinafter *Order 18*], every prosecutor should undergo training at least once every five years. Order 18 also sets forth the following goals for the PDC:

- while developing educational programs and curricula, consideration should be given to recommendations of the Prosecutor General's Office of the Kyrgyz Republic, needs and proposals of the Military and Specialized Prosecutor's Offices, province prosecutors, Bishkek and Osh city prosecutors, as well as to suggestions of students being trained in the above-mentioned centers;

- include human rights issues in every program as required by international standards;
- make active use of advanced teaching methods and information technologies contributing to a better understanding of new material;
- invite well-trained prosecutors and investigators, university professors and lecturers, court and advocacy staff, forensic experts, psychologists and legal scholars to deliver lectures, conduct practical sessions and management games;
- organize practical work in prosecuting agencies for summer students by entering into relevant agreements with schools of law;
- establish and maintain cooperation with research, training and, professional institutions in the Kyrgyz Republic and abroad by entering into relevant agreements;
- offer retraining courses to prosecutors and investigation officers who have failed to pass certification tests based to lists provided by heads of prosecutors' offices and according to individual special plans;
- provide methodological assistance and consultation services to help regional training centers organize their operation;
- organize a research and methodological base of the Center well adapted to the specific needs of the Kyrgyz Republic, publishing and distribution of relevant literature and textbooks to all regional structures, contribute to their efforts towards setting in motion effective professional development programs for prosecutors;
- take measures to forming a category of practical prosecutors capable of organizing and conducting workshops (instructors), both in the Center and in local procurator's offices;
- include, on a binding basis, the study of the state, official languages, English and other languages (depending on regional or personnel needs) in training programs and curricula;
- provide assistance for all prosecutor subdivisions in improving traditional and modern branches of prosecutor supervision and investigation, in the organization and holding of research in areas that are of particularly importance for prosecutorial agencies, as well as in conducting various conferences, seminars and trainings;
- assist in developing proposals on amending legal acts, in organizing studies on prosecutorial supervision issues.... *Id.* at para. 7.

Order 18 has not yet been fully implemented. The PDC was opened in December 2005 in Bishkek, and regional centers are also envisioned. The PDC's opening is the latest in a series of efforts to establish systematic training for prosecutors. With the exception of a brief period in 2003, prosecutors have not had a state sponsored training center since 2001.

In its first full year of operation in 2006, the PDC served 255 prosecutors. Seminars ranged in length from two days to two weeks. Topics have included the following: combating terrorism and corruption, rights of refugees, commercial crimes, and investigating and prosecuting serious crimes. Several courses were offered on case administration and the role of the prosecutor. Supervisory prosecutors were offered specialized management courses. A small number of joint seminars with the police were held. Law professors, senior prosecutors, and foreign prosecutors and experts conducted the trainings. In sponsoring these seminars the PDC received substantial international donor support from the ABA, USAID, OPDAT, UNDP, OSCE, etc. The international donor community has also sponsored several study tours to Kazakhstan and Russia, among other countries.

The PDC has suffered from a lack of capacity in trying to achieve the mandate of Order 18. Its 2006 state budget allocation barely pays for utilities, maintenance, and salaries for its staff of eight. There are insufficient resources for printing and copying. Although the moot court room is functional, the forensics/ballistics instruction room is not equipped. A cadre of senior trainers is not yet in place. There is a computer facility, but none of the computers are connected to either an internal network or the Internet. The PDC's maximum capacity for a single training is only about 25 persons.

Most respondents agreed that current continuing legal education is insufficient. There is no legally prescribed annual obligation for CLE, nor does Order 18 establish the number of CLE hours a prosecutor should have in each five year period. Lacking are uniform rules and policies governing the choice of topics, participants' selection, evaluation criteria, and Office training needs assessments and surveys. There is a consensus among most prosecutors that more study tours to Kazakhstan and Russia are needed, concerning the subjects of taxes, customs, money laundering, and economic crimes matters. Most respondents also urged more joint trainings for police, prosecutors, and judges. Development of a more detailed curriculum and specialized course offerings was also encouraged. As discussed in subsequent Factors herein, the lack of a developed continuing legal education curriculum and training system has negatively impacted prosecutors' case preparation and competence in litigating cases. Nevertheless, the first year traineeship is generally heralded as a successful model for building basic skills.

**Factor 3: Selection: Recruitment, Promotion, and Transfer of Prosecutors**

***Prosecutors are recruited, promoted, and transferred through a fair and impartial procedure based on objective and transparent criteria, such as their professional qualification, abilities, performance, experience, and integrity.***

***While political elements may be involved, the overall system should foster the selection of qualified individuals with integrity and high professional qualifications.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Nearly all prosecutors are appointed and promoted via an attestation committee. Although well regarded by prosecutors, most other observers feel that the decisions of the committee are corrupt and not based on the abilities and reputations of applicants.</p>	

**Analysis/Background:**

As described in the *Conditions of Service* section of this index, and in Factor 1, the Law on the Procuracy and Regulations on Service both enumerate the recruitment requirements for new candidates and the appointment process for other prosecutors. The Kyrgyz Law on Civil Service of August 11, 2004, [hereinafter, LAW ON CIVIL SERVICE], details the attestation process for selection, transfer and promotion. The Law on Civil Service applies to all civil servants<sup>7</sup> and to all public bodies of the Kyrgyz Republic. *Id.* art. 1.

Article 18 of the Law on Civil Service requires each government agency to “form a national personnel reserve” to fill available entry level positions. To meet this requirement, the agency is required to conduct competitions or “attestations” among candidates from higher educational institutions. *Id.* Attestations to form a reserve of civil service candidates for promotion must also

<sup>7</sup> The law defines a civil servant as a Kyrgyz citizen holding a public position in a public institution.

be established. Attestations must be conducted on a regular basis, and they must be equitable, impartial, uniform, and procedurally transparent. *Id.* art. 20.

Articles 8-10 of the Law on the Procuracy confirm power in the Prosecutor General, with approval of the President, and in the chiefs of each of the subordinate levels, namely, District (*Oblast*), City, and Regional (*Raion*) levels, to appoint and terminate heads of departments, deputies, senior assistants, and senior investigators with approval from the next highest level chief prosecutor.

Articles 11, 13, 14, and 15 of the Regulations on Service provide additional instruction concerning promotions. Collectively, these articles describe the following:

- civil service classification scale and projected tenure at each rank (art.11);
- establishment of promotion reserves, promotion reserve boards, and certification committees (art.13);
- participation in continuing legal education classes as a factor in promotions (art. 14); and,
- the incentive system for recognition of exemplary performance at evaluation for promotion (art. 15).

Despite the appearance of a well regulated system, the selection, transfer, and promotion of prosecutors was widely criticized by respondents who did not work for the Prosecutor General. There is a perception that the attestation process for selection and promotion masks a system in which positions are bought, or reserved, for associates of the Prosecutor General or President. Bribery during attestations is alleged to be commonplace. On the other hand, prosecutors maintained that the hiring attestation process works well, ensuring that only the most qualified new candidates are hired as vacancies become open. The reserve system also functions with the highest integrity when there are vacancies for transfer and promotion. Most prosecutors seeking transfer and promotion are satisfied within a 3-5 year period. Prosecutors vigorously deny that the eleven-member Attestation Commission is susceptible to bribery. Still, some prosecutors conceded that recommendations from a supervisor and commendations for exemplary service are critical to being promoted or transferred and are often the result of a personal relationship instead of pure merit.

#### Factor 4: Selection Without Discrimination

***The recruitment, promotion, and transfer of prosecutors at every level of hierarchy shall not be unfairly influenced or denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, national, social or ethnic origin, physical disabilities, or economic status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a citizen of the country concerned.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The ethnic and gender composition of the Office of the Prosecutor General is not representative of the make up of the country. However, there are some minorities and women who hold senior and supervisory positions. There are constitutional guarantees against discrimination in employment.</p>	

#### Analysis/Background:

Article 13(3) of the Constitution of the Kyrgyz Republic provides that, “all people are equal before the law and the court. Nobody shall be the subject to any discrimination, infringement of freedoms and rights motivated by origin, sex, race, nationality, language, creed, political, and religious beliefs or by any other circumstances of personal or public nature. In the Kyrgyz Republic men and women have equal freedoms and rights, and also equal opportunity to realize them.”

Kyrgyzstan is a multi-ethnic nation. Approximately 67.4% of the population is Kyrgyz. Minority populations include: Uzbek, 14.2%; Russian, 10.3%; and 8.5% is comprised of other ethnic groups, mainly the Dungan Chinese, Uighur, Tatars, and Germans. *U.S. Department of State Country Reports on Human Rights Practices – Kyrgyz Republic 2006*, section 5, March 6, 2007.

Although more than 30% of the national population is of a non-Kyrgyz ethnicity, informal statistics provided to the assessor team by the Office of the Prosecutor General for the period 2005-2006 demonstrate that roughly 8.8% of the prosecution service is comprised of such minorities. In explaining the disparity, prosecutors suggested that some ethnic groups are traditionally engaged in non-government oriented professions and tend not to be attracted to the study of law. Other respondents countered that minorities have understood for generations that they will not be accepted in the legal profession and in the prosecution service. The Office of the Prosecutor General has not taken any special actions to either recruit ethnic minorities or make the Office more representative of the communities it serves. Prosecutors also argued that implementing affirmative action programs could violate constitutional provisions guaranteeing equality for all citizens. Despite the lower number of minorities in the Office of the Prosecutor General, some minorities hold senior and supervisory positions as prosecutors.

Concerning gender equality, these same statistics demonstrate that approximately 12% of all prosecutors are women. Despite their low numbers, women do hold some senior and supervisory positions. Still, most prosecutors concede that the very top positions are occupied only by men. Many respondents argued that, traditionally, women have not been attracted to the prosecution service. None of the respondents recounted a single case of ethnic or gender discrimination in the hiring, transfer, promotion, or service of a prosecutor.

## II. Professional Freedoms and Guarantees

### Factor 5: Freedom of Expression

***Prosecutors, like other citizens, are entitled to freedom of expression, belief, association, and assembly. In exercising these rights, prosecutors should always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>Prosecutors are strictly forbidden from making public statements on cases and from engaging in political activity. Although at least one regional office publishes a community newsletter, in reality most prosecutors have little contact with the media and the public and do not engage in political activity.</p>	

#### Analysis/Background:

Article 11(6) of the Law on Civil Service prohibits civil servants (including prosecutors) from participating in political parties and public and religious associations during working hours, or while acting in their official capacity. In addition, the Regulations on Service enumerate other speech limitations for prosecutors. According to article 3, a prosecutor may not, "...take part in strikes, demonstrations or other actions designed to disturb the functions of government authorities or prevent public officers from exercising their official duties; [and] take part in the activities of political parties and religious organizations..." *Id.* Further, article 35 of the Law on the Procuracy mandates that active prosecutors cannot hold elected office or positions in other agencies. Political parties cannot conduct any activities in the Office. *Id.*

As described in other Factors herein, there is a strong hierarchical organizational culture in the Prosecutor General's Office that discourages public discussions of cases and the business of the Office generally. As a result, prosecutors rarely engage in discussions with the media or the public. None are members of political parties. According to the Code of Professional Ethics of Public Prosecutors of the Kyrgyz Republic, 4/4/2001, [hereinafter, ETHICS CODE] article 2.6, "Prosecutor(s) shall not divulge state, official or any other secret protected by law with regard to information he/she has obtained in the course of performing his/her official duties. A prosecutor may not come up with public statements or media publications related to cases entrusted to him/her unless authorized by the public prosecutor office's top management." See *also*, Section 3.3 on prohibitions of political conduct and participation for prosecutors. These limitations are not unlike those found in many prosecutorial systems.

Still, there are a few exceptions to the general rule against discussing the business of the Prosecutor General's Office. The Prosecutor General regularly comments on draft laws from the Parliament, and prosecutors have occasionally commented on legal issues in government publications. A few regional offices have even published newsletters that discuss the work and accomplishments of the Office. The *Myizam Joly* is a newsletter published by the Issy-Kul regional (*oblast* level) Prosecutors Office, which is targeted towards the local public as its audience. Since February 1999, articles on the law, features on prosecutors, and contact information have appeared in each edition.

However, there seems to be little tolerance for those few prosecutors who engage in public political speech. A senior female prosecutor was recently removed from office after she publicly encouraged a group of anti-government protestors who had assembled peacefully near the President's office. The Office of the Prosecutor General found her speech to directly violate the

provisions of the Law on the Procuracy, in that it was political and made without the prior approval of the Office. Several human rights groups objected to her dismissal, noting that the demonstration was peaceful and that her public remarks were apolitical and not inflammatory.

## Factor 6: Freedom of Professional Association

***Public prosecutors have an effective right to freedom of professional association and assembly.***

***They are free to join or form local, national, or international organizations to represent their interests, to promote their professional training and to protect their status, without suffering professional disadvantage by reason of their participation or membership in an organization.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
There are no national, regional, or local prosecutor associations in Kyrgyzstan. However, there are no legal prohibitions against the formation of a prosecutors association.	

### Analysis/Background:

In Articles 8(3) and 21(3) of the Constitution, Kyrgyz citizens are guaranteed the right of freedom of association. These articles also provide the right of citizens to form public associations, which the state is obliged to respect and secure. Neither the Law on Civil Service nor the Regulations on Service prohibit the formation of a public prosecutors association. The Law on the Procuracy only prohibits prosecutors from engaging in entrepreneurial activities and businesses. See *id.* art. 35.

Despite the freedoms granted in these laws, there are no national, regional, or local prosecutor associations in Kyrgyzstan. There is also no trade union of prosecutors. Moreover, some prosecutors interviewed for this report stated that there was no need to form an association to represent their interests. According to these respondents, the Office of the Prosecutor General sufficiently addressed all of their interests and needs. The only “association” identified was the Commonwealth of Independent States (CIS) Coordinating Council of Prosecutors General established on January 25, 2000. The Council’s basic function is to harmonize efforts of member countries, coordinate activities, expand cooperation, strengthen human rights enforcement, and improve crime fighting efforts. Meetings of the CIS Prosecutors Generals are conducted only occasionally. See *generally* Factor 24, International Cooperation.

## Factor 7: Freedom from Improper Influence

*Prosecutors are able to perform their professional functions without improper interference from prosecutorial and non-prosecutorial authorities.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
The Procuracy is publicly perceived as being subject to substantial, improper interference from prosecutorial and non-prosecutorial authorities alike, despite legal prohibitions against such interference.	

### Analysis/Background:

Numerous legal provisions protect the independence of prosecutors to conduct their work without improper interference from prosecutorial and non-prosecutorial actors. From a functional perspective, article 77 of the Constitution exclusively reserves to the Office of the Prosecutor General the power to prosecute criminal cases and to bring the accused to trial. The Law on the Procuracy specifically prohibits improper influence noting that, “[a]ny acts whatever the form in which these may be undertaken by government authorities, non-governmental associations, mass media organizations or their representatives as well as by officials with the aim of affecting a prosecutor’s decision or preventing him/her from performing his/her functions shall be liable to punishment specified by the law.” *Id.* art. 4.

The Ethics Code has aspirational articles declaring that a prosecutor should be free of the impact of public criticism when making decisions, that supervisory prosecutors should not pressure their subordinates to take illegal measures, and that prosecutors who experience improper influence should immediately report it to a higher prosecutor, regardless of the source of the influence. ETHICS CODE, arts. 1 and 2. Kyrgyz law also provides for the criminal sanction of any person, especially those in official positions, who seek to interfere with the investigation of a crime.

Interference in any form in the activity of a procurator, [or] investigator.... for the purpose of obstructing the comprehensive, full, and objective investigation of a case, shall be punishable by a fine in the amount of one hundred to two hundred minimum monthly wages or by arrest for a term of three to six months. (2) A deed envisaged in the first part ....committed by a person using his official position, shall be punishable by a fine in the amount of five hundred to one thousand minimum monthly wages or by deprivation of liberty for a term of up to five years with disqualification to hold specified offices or to engage in specified activity for a term of up to three years. Article 318, THE KYRGYZ REPUBLIC CRIMINAL CODE OF OCTOBER 1, 1997 NO. 68. [hereinafter CRIMINAL CODE].

Nevertheless, other government institutions influence the Office under color of law. For example, as indicated in this report’s introductory section on Conditions on Service, the President appoints the Prosecutor General with approval from the Parliament. The President also appoints the Office’s chief deputies, with the consent of the Prosecutor General. While in many countries this relationship is usual, there are nuances in Kyrgyzstan that may tip the balance towards improper influence. The Prosecutor General must submit office progress reports and proposals for staff hiring, promotion, and firing to the Department for Defense and Security of the Office of the President for its review. Complaints about prosecutors are also funneled through this office for review before being passed on the Office of the Prosecutor General. Beyond these enumerated powers, neither the Office of the President nor any other government institution has the legal right to instruct the prosecution of any case.

Despite the protections in law, according to most interviewees employed outside the Office of the Prosecutor General, improper influence occurs regularly. It originates from varied sources both inside and outside the prosecution services. The culture inside the Office is described as monolithic and excessively hierarchical. Subordinate prosecutors rely entirely on the instructions and commands of their superiors. Pressure from supervisors is extreme and fear of reprisal for independent actions chills the use of professional discretion.

These same sources also argued that the Office of the President influences the practices and priorities of the Office of the Prosecutor General. Many interviewees were concerned that this situation tends to consolidate more authority in the hands of the President, and diminishes the independence of the prosecution service. Parliamentarians are also viewed as having a direct role in the decisions of the Office and have tremendous influence over supervisory prosecutors' decisions on cases. Calls by representatives of these branches to prosecutors' offices regarding case investigations and expected outcomes are commonplace. Low salaries were also cited as a reason why many prosecutors can be influenced by bribes and pay-offs to affect cases, and investigations in particular. See *generally*, Section VI and Factor 21.

Prosecutors have a different view of the situation. Although they generally conceded that the Office was hierarchical in its orientation, they argued that its structure virtually guarantees that improper influence can not occur. Essentially, they argue there are no avenues to influence the system to impact cases, because everyone adheres to the hierarchical integrity of the institution. They agreed that Members of Parliament and other local officials try to influence the Office, but are rebuffed without exception. On the other hand, most prosecutors admitted that low salaries put at risk for corruption many lower and some supervisory prosecutors. No one cited a single instance of corruption or improper influence of any kind in the Office of the Prosecutor General.

## Factor 8: Protection from Harassment and Intimidation

***Prosecutors are able to perform their professional functions in a secure environment and are entitled, together with their families, to be protected by the State.***

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>Prosecutors are generally satisfied with security at their offices and with the protections provided them by law. Incidents of harassment and intimidation are rare. However, additional resources should be committed to secure court facilities to minimize the risk of attacks in courthouses.</p>	

### Analysis/Background:

The state is responsible for ensuring the protection of prosecutors under Section IV, article 40 of the Law on the Procuracy and Section VI, article 29 of the Regulations on Service. Both of these articles provide for compensation to families of prosecutors who die in the line of duty. Both articles also provide for compensation to prosecutors who are injured in the line of duty. Article 29 also allows prosecutors to be compensated for any property damage sustained as a result of the exercise of their function. Similar protections exist for Military prosecutors. See *Regulation On the Military Procurator's Office of the Kyrgyz Republic*, section IV, (As per the Resolutions of the Government of the Kyrgyz Republic of October 9, 1995, No. 418 and of October 19, 2001, No. 662). Articles 318-320 of the Criminal Code prohibit threats against prosecutors in their line of duty and sanctions any conduct that interferes with the operation of an investigation. The Criminal Code also allows for the death penalty in cases where a prosecutor is killed while acting in his official capacity.

However, protecting prosecutors before crimes occur against them should be a top priority. To that end, article 29 of the Regulations on Service allows prosecutors to carry firearms, to keep them at home, and to possess other, “special security devices.” See *also*, LAW ON THE PROCURACY, Article 37. Prosecutors’ offices are protected by armed police who control access. In nearly every Prosecutor’s Office visited by the assessor team uniformed police checked identification, bags, and briefcases, and verified appointments. However, none of these offices had metal detectors. Most courthouses are located in separate buildings and generally have similar security measures in place. However, inside of courthouses, there is no security in hallways or courtrooms, except for those police officers who are responsible for securing the defendants, who are placed in cages in the courtroom. See Factor 11.

Prosecutors generally report that they feel safe and protected in executing their responsibilities. Excepting occasional verbal taunts from disgruntled defendants, prosecutors do not suffer harassment or intimidation. The only notable exception was during the period when the Akayev administration fell, and riots and popular discontent were directed at state institutions. The presence of armed police at prosecutors’ offices since then has reduced the sense of vulnerability experienced around the time that President Akayev abdicated in 2005.

## Factor 9: Professional Immunity

***Prosecutors have immunity for actions taken in good faith in their official capacity.***

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>Prosecutors have functional immunity for official acts, but may be prosecuted for criminal offenses. The existing legislation regarding immunity seems well-balanced, but public perceptions of widespread prosecutorial corruption raise questions as to whether prosecutors are held accountable for criminal violations of the law.</p>	

### Analysis/Background:

The Regulations on Service and the Law on the Procuracy govern official immunity and describe its limitations. In Article 37 of the Law on the Procuracy and Article 21 of the Regulations on Service, all prosecutors enjoy a degree of immunity for official actions.

According to Article 21, “No prosecutor or investigator may be brought to financial responsibility or [be] required to compensate for moral damage resulting from views he/she expressed or decision he/she took while exercising his/her functions unless his/her guilt of committing official malfeasance was established by a court judgment that has taken legal effect.” Similarly, the Law on the Procuracy reads, “no criminal or administrative proceeding may be initiated against a prosecutor or investigator except with the consent of a higher prosecutor or when initiated by [the] court.” *Id.* art. 37. As such, prosecutors are generally protected from civil liability and criminal prosecution for official actions and statements.

However, official immunity is limited in cases of intentional violations of criminal law. Article 20 of the Regulations on Service allows the Office of the Prosecutor General to initiate an investigation and criminal case against a prosecutor in such an instance. The prosecutor is suspended from duty during the period of the investigation. There are no provisions exempting prosecutors from any crimes in the Criminal Code. On the other hand, prosecutors are provided a small measure of procedural relief, in that no prosecutor is subject to detention, or to searches of their person, property, or vehicle unless they are caught at the scene of the crime, or unless such a search is in the interest of security. LAW ON THE PROCURACY, art. 37 and *Regulations on Service*, art. 20(3).

In practice, immunity for official acts is rarely waived. No respondents could identify a single case where immunity was waived. As such, prosecutors enjoy the confidence that their professional actions are not subject to sanction. On the other hand, equally rare are criminal cases involving prosecutors as defendants. In view of the perception that corruption is endemic in state institutions and in the Prosecutor General’s Office, the fact that there are few prosecutions of criminal misconduct reflects poorly on whether the laws governing immunity are effective or not. Regarding the perception of corruption, see, e.g., Factor 7.

### III. Prosecutorial Functions

#### Factor 10: Discretionary Functions

*Prosecutorial discretion, when permitted in a particular jurisdiction, is exercised ethically, independently, and free from political interference, and the criteria for such decisions are made available to the public. The prosecutor’s power to waive or to discontinue proceedings for discretionary reasons is founded in law, and, if applied, sufficiently justified in writing and placed in the prosecutor’s file.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although prosecutors are granted complete discretionary powers in the law, in reality their discretion is limited by their supervisors’ instructions. These instructions have often created an atmosphere in which subordinate prosecutors fail to exercise appropriate discretion and to properly oversee police investigations.</p>	

#### Analysis/Background:

Kyrgyz prosecutors enjoy a myriad of discretionary functions. They also enjoy protection in the law to be free of influence in using their discretion. However, they are also subject to an extraordinarily strict office hierarchy that is codified in law and observed in practice.

Beginning with the discretionary functions vested in prosecutors, articles 34 and 238 of the Kyrgyz Republic Criminal Procedure Code lay out the numerous obligations for prosecutors and discusses areas in which prosecutors have discretion. Among those matters left to the discretion of the prosecutor are the following:

- Whether, to institute a prosecution and put an investigator in charge;
- To make resolutions for adjournment, dismissal of proceedings for the case;
- To remove the investigator or lower rank prosecutor from the case for violations of law;
- To return cases to the investigator for additional investigation on the gaps in the case;
- To dismiss the criminal case against the defendant and change the charge;
- To give written orders to investigatory agencies concerning search warrant and other investigatory tactics;
- To issue protection orders for victims and witnesses

- To release illegally arrested persons from custody; and,
- To extend the period of investigation and arrest period. *Id.*

Kyrgyz law provides prosecutors protection against interference into their discretionary functions. See *e.g.* Factor 7 on Freedom from Improper Influence. The Law on the Procuracy, the Ethics Code, and Criminal Code all prohibit improper influence on prosecutors by any official or person. Article 33 of the Criminal Procedure Code also provides that a prosecutor should be independent in making his/her decisions.

On the other hand, some of these very same codes demand a strict compliance with hierarchical order. The Law on the Procuracy provides that, “The prosecution agency of the Kyrgyz Republic constitutes a unified system where lower prosecutors shall only be accountable to higher prosecutors and to the Procurator General of the Kyrgyz Republic.” See *id.* art. 4. The Criminal Procedure Code instructs that lower level prosecutors must fulfill written orders of higher prosecutors and that the latter may review complaints against subordinates. CRIMINAL PROCEDURE CODE, arts. 33 and 34. The supervisor may overrule the subordinate’s acts and may remove him/her from an investigation. *Id.*

Persons affected by a prosecutor’s decision to close an investigation or failure to initiate a prosecution (e.g. victims or witnesses) may appeal orally or in writing to a higher prosecutor or to the court, via procedures spelled out in Criminal Procedure Code, Section 15, art. 126 et seq., and arts. 32 and 156(1).

In practice, prosecutorial discretion is not exercised either independently or without interference. As discussed in several Factors throughout the Index, most respondents opined that prosecutors tend to lack independence in decision making. Compliance with the instructions of supervisors is total. Subordinate prosecutors are pressured by their superiors to bring investigations to trial regardless of the merits of the case. They fear reprisals from their supervisors if they take actions deviating from the instructions they have been given. Among the judges interviewed, some indicated that prosecutors were dissuaded from reducing charges or dismissing cases, even though such action may be warranted. See *generally*, Factor 20 on Interaction with Judges. They stated that the office culture encourages prosecutors to press for sentences of incarceration in all cases wherever possible, avoiding the opportunity to use conditional release/probation programs. See, CRIMINAL PROCEDURE CODE, art. 366.

As will be discussed generally in Section IV of this Index, prosecutors agree that subordinates very rarely appeal their supervisors’ orders. Similarly, there are few occasions of supervisors disciplining their employees for discretion-related infractions. Although this Index did not produce conclusive evidence, it is thought that there are even fewer instances of citizens challenging prosecutors’ decisions not to prosecute, (with a few notable exceptions in extreme cases of human rights abuses). See *generally*, Factor 14 on Public Integrity. Even though there have been five Prosecutor Generals between 2005 and 2007, the leadership style exhibited by all five administrations has remained the same. The Office has a highly vertical organization and is characterized by an ingrained culture of not challenging supervisors’ instructions.

It is usual for prosecution offices in many systems to be hierarchical so as to promote a particular criminal law enforcement policy and standardization in the prosecution of crimes. Unfortunately, the Kyrgyz prosecutor’s office seems to exceed the appropriate limits of organizational hierarchy, thereby diminishing the exercise of appropriate discretion in individual cases.

## Factor 11: Rights of the Accused

***Prosecutors shall be impartial in the performance of their functions and must promote equality before the law and respect for the rights of the accused.***

***Prosecutors shall refuse to use evidence obtained in violation of the accused's human rights.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Prosecutors have been widely accused of failing to respect the rights of the accused. They are also alleged to have failed to regularly exercise sufficient control over criminal investigations, including allowing the collection of illegal evidence and the use of coerced confessions ultimately introduced in criminal proceedings.</p>	

### Analysis/Background:

The rights of the accused are enshrined in the Constitution and in the Criminal Procedure Code. The former guarantees the accused the presumption of innocence, protection against self-incrimination, and the right to counsel. Defendants also enjoy the right to have illegally obtained evidence removed from proceedings against him/her. CONSTITUTION, art. 15. In the latter, the accused is afforded these same rights and is assured of equality of arms at trial, the inviolability of his person, the right to know the evidence and charges against him, the right to confront witnesses and present evidence, the right to not be convicted solely on the basis of his confession, and the opportunity to waive counsel in certain situations. CRIMINAL PROCEDURE CODE, Chapters 2 & 6.

Article 25 of the Law on the Procuracy grants prosecutors the exclusive authority for arrest warrant approval. The responsibility to ensure the legality of the investigation comes with that authority, as well as the responsibility to verify that suspects, accused persons, and defendants are granted the rights guaranteed under the Constitution and the Criminal Procedure Code. Articles 6, 8, 9, 11, and 12 of the Criminal Procedure Code require that prosecutors and all other state actors must ensure the rights of the accused are observed both during the investigation and at trial. Prosecutors have a particular obligation to release anyone who is illegally detained in custody. *Id.* art. 34.<sup>8</sup>

Prosecutors' obligations also extend to the supervision of the collection and use of evidence at trial. According to article 6 of the Criminal Procedure Code, "one shall not use evidences that have been acquired with violation of the procedural criminal law." *Id.* The Prosecutor General's Office *Order 3 May 2006 Bishkek No. 11 On the Organization of Procuracy Supervision over Crime Detection and Investigation*, Article 1.9 [hereinafter, *Order 11*] specifies that prosecutors specifically must, "Take steps against using evidence obtained in violation of legal procedures. Evidence obtained in violation of the criminal procedural legislation may not be used as proof." Article 19 requires the investigator to "take all measures ...in order to thoroughly, completely and objectively detect circumstances and facts of the case, to find out evidence both establishing the guilt of the suspect and accused and justifying him as well as both aggravating and mitigating circumstances." As such, the scope of the investigation must always include collecting and

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<sup>8</sup> According to the Law on Amendments to the Criminal Code, the Code of Criminal Procedure, the Law on the Procuracy, and certain other legislative acts of June 25, 2007, No. 91, the exclusive arrest warrant approval authority has now been transferred to the Court. Articles 2(5,14) and 6(2).

examining exculpatory evidence. Given that prosecutors are charged with ensuring the legality of an investigation, the ultimate responsibility for the proper collection and use of evidence is theirs.

Unfortunately, prosecutors do not always ensure that the rights of the accused are respected. Nearly without exception, judges, defense attorneys, and civil society groups condemned the Office of the Prosecutor General for failing to adequately safeguard the rights of the accused. Defense attorneys opine that prosecutors exercise poor oversight over investigations. Suspects are often not informed of the nature of the investigations conducted against them. Investigations are regularly presented for trial without sufficient evidence, and when at trial, prosecutors usually press for convictions. As will be discussed in Factor 14 on Public Integrity, and Factor 21 on Interactions with Police and Other Investigative Agencies, both defense attorneys and human rights advocates have complained that suspects are regularly beaten while in police custody, before they are presented before a judge, and before the official criminal investigation is launched.

Confessions are usually extracted as a result of these beatings, which are later used by prosecutors. Complaints about police brutality and coerced confessions are brought to the attention of the Office, usually without reply. Defense attorneys also point to a significant cadre of “pocket or black attorneys” who are aligned with investigators and serve as appointed counsel to the accused. These attorneys conspire with investigators to coerce the accused to pay a bribe to either confess and plead guilty to a lesser charge or to have charges dropped. Part of the money obtained goes back to the “pocket attorney.” See *generally*, Factor 22 on Interactions with Representatives of the Accused. In such cases, accused persons usually agree to pay the bribe to avoid prosecution, or will confess to a lesser charge to avoid severe punishment.

Civil society and human rights groups contend that the police and prosecutors conspire in a number of unlawful actions against the accused. Police beatings, unlawful confessions, and the threat of charging other unsolved cases against an accused to secure a bribe, or in exchange for a dismissal or reduced charge are all routine activities. Activists submitted that some prosecutors receive part of the bribe money given to police officers and knowingly participate in violating the accused rights.

By and large, judges confirmed the above-listed complaints leveled by the defense attorneys and civil society groups. Judges often hear confessions that they find to be patently illegal or coerced, and which they promptly find to be inadmissible. Judges regularly grant defense motions to dismiss evidence obtained illegally. Most judges perceive that prosecutors are aware that their cases are tainted by illegally obtained evidence, and that, regardless of this fact, prosecutors press for a conviction in lieu of dismissing the case. When the judge dismisses such a case, it provides the prosecutor a level of “cover,” so that he/she will not need to exercise his/her own discretion in addressing the merits of a case before filing. To remedy this situation in part, the 2006 Constitution strips the Office of the Prosecutor General of its arrest warrant authority, granting the judiciary that power instead. *Id.* art. 15. At the time of this writing, the Parliament is engaged in developing corresponding procedural law to describe the new arrest warrant process. Removing the warrant function from the prosecution represents a substantial diminution of prosecutorial power.

Prosecutors reject the above-listed charges by the defense bar, human rights groups, and judges. They maintain that they respect the rights of the accused and are faithful to their duties to ensure the legality of the investigation. They argue that the generally accepted conviction rate of 98% is based on the quality of their oversight of investigations and their trial advocacy skills. Nevertheless, some prosecutors acknowledge that the “pocket/black lawyers” problem does exist. However, they maintain that it is nearly impossible to discern improper confessions from proper ones, when case files contain confessions complete with proper signatures from the investigator, defense attorney, and the accused. Regarding the recent constitutional changes affecting the arrest warrant function, many prosecutors express the concern that judges are ill-equipped and

too inexperienced to handle the additional task of sifting through warrant applications. They fear that delays will occur and that improperly denied warrants could lead to a lack of confidence in the system by police and community members alike.

Although the Office of the Prosecutor General is not responsible for courtroom logistics per se, the fact that criminal defendants are locked in cages inside the courtroom contributes to a perception of their guilt. The effect on the equality of arms at trial is difficult to measure, but it surely contributes to the perception that defendants have committed some kind of infraction. However, other western European justice systems routinely place defendants in separate and secured holding areas during trial proceedings, apparently without significant prejudicial effect.

## Factor 12: Victim Rights and Protection

*In the performance of their duties, prosecutors consider the views and concerns of victims, with due regard for the dignity, privacy, and security of the victims and their families.*

*Prosecutors must ensure that victims are given information regarding the legal proceedings and their rights, and are informed of major developments in the proceedings.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Prosecutors do not regularly interact with victims and do not receive specialized training on victims' rights and sensitivities. Under law, nearly all criminal justice system actors including prosecutors are responsible for notifying victims' of their rights and of the status of pre-trial and court proceedings. However, victims are usually not notified of their rights or of proceedings. No special interview facilities are available to victims. Victim/witness protection programs created in law are under funded and generally unavailable to victims.</p>	

### Analysis/Background:

The Criminal Procedure Code spells out the rights and obligations of victims. It also enumerates the prosecution's duties to respect the rights of the victim and to protect him/her. The victim can be a litigant in the proceeding as a private prosecutor and civil complainant, as is the case in most continental justice systems. Article 21 explains the fundamental rights of a victim in the criminal process, "The rights of victims of crimes, abuse of power, as well as the rights of illegally abused disqualified persons shall be guaranteed during the criminal procedure. The victim of a crime shall have the right to demand to institute prosecution, participate in criminal procedure as a complainant, private prosecutor, and claim compensation for the caused damage." *Id.* art. 21. Victims can bring their own criminal actions in less serious criminal cases. In any criminal proceeding, victims may also be civil plaintiffs, to claim compensation for their losses. *Id.* art. 26.<sup>9</sup> They may also proceed against a perpetrator in the event the prosecutor refuses to charge. *Id.* art. 27.

Victims are guaranteed a number of rights, including the following:

- [To] know about kind of the charge brought against the accused and to testify;
- Introduce evidence;

<sup>9</sup> See *generally*, CRIMINAL PROCEDURE CODE arts. 51-53 for a definitional description of personal prosecutor and civil plaintiff.

- Make motions and challenges;
- Testify in the native language or the language he speaks;
- Use services of an interpreter;
- Have a legal representative;
- Participate in investigational proceedings requested by him or his legal representative;
- Study records of the investigational proceedings he was involved in and comment on such records;
- Study the dossier of the case after the investigation and write out the necessary information;
- Get copies of resolutions on initiation of criminal proceedings on the case, on his recognizance as the victim or on denial to recognize him a victim, on dismissal of criminal proceedings, a copy of the resolution on the charge, and copies of decisions of the court;
- Participate in court;
- Speak in court, support the prosecution;
- Study the transcript of court proceedings and comment on it;
- Make petitions against actions of preliminary investigator, actions and decisions of the investigator, prosecutor, and the court;
- Appeal from decisions of the court;
- Know about appeals and petitions filed on the case and object them;
- Participate in court proceedings on consideration of appeals and petitions;
- Reconcile with the defendant in cases provided herein;
- Be compensated by the state for damages caused by the crime;
- Receive back the property withdrawn as exhibits or due to other reasons, originals of documents that belong to him, receive back his property confiscated from the offender;
- Request from the convicted compensation of moral damage, caused by the crime. *Id*, art. 50. See also art. 54, which confers the rights of representatives of victims and civil plaintiffs.

These rights must be observed by police investigators, prosecutors, and judges alike. Article 172 requires police investigators to "...explain to the suspect, accused[,] as well as to a victim, civil plaintiff and defendant and their representatives as well as to other persons participating in investigatory proceedings their rights and provide for realization of their rights in the course of investigation of the case. At the same time [these rights] shall be explained including the consequences of the failure to fulfill them." Article 172 mandates signatory certification by victims that their rights and responsibilities have been explained to them. To the extent that prosecutors are required to ensure the legality of the investigation, they are charged with overseeing the conduct of investigators.

Prosecutors have direct responsibilities to victims as well. First, they are obliged to contact victims at critical points in the pre-trial process. If a prosecutor declines to approve a referral to trial he must inform the victim. See *generally*, Factor 10 on Discretionary Functions. When a case

is referred to court by the prosecutor, “the copy of the resolution on bringing an individual as a defendant shall be served on the victim, provided that he filed a motion on that. The receipts verifying the accused and victim received a copy of the resolution shall be attached to the case file. The prosecutor shall send the case to court with the appropriate jurisdiction, and notif[y] the defendant, defense counsel, the victim and his/her representative, the civil plaintiff, civil defendant, or their representatives on that.” CRIMINAL PROCEDURE CODE art. 239. Prosecutors are required to summon victims and witnesses to trial, while the presiding judge is obligated to explain to the victim and his/her representative all of the rights afforded them during trial. *Id.* arts. 251 and 281. Generally speaking, judges and investigators are primarily responsible for informing victims of their rights. *Id.* art. 58.

Prosecutors and police investigators are also responsible for victim protection. Prosecutors have the discretion to issue orders protecting victims and witnesses. CRIMINAL PROCEDURE CODE art. 34 (2)(14). Although less than a year old, the Kyrgyz Republic Law on Protection for the Rights of Witnesses, Victims, and other participants in Criminal Proceedings, signed August 16, 2006 [hereinafter LAW ON PROTECTION OF WITNESSES AND VICTIMS], provides police investigators, prosecutors, and judges with the ability to assign special protection to victims and witnesses in cases where there is a threat or grave risk to their safety. The Ministry of the Interior, the National Security Service, and the Customs and national drug enforcement bodies are authorized to accept victims and witnesses for protection. Protection can include relocation, assignment of bodyguards, new identities, change of appearance, etc. *Id.* chpt. 2. The Office of the Prosecutor General supervises the protection service provided to the victim or witness. *Id.* art. 4(2).

Even though victims have many rights under Kyrgyz law, these are not often observed. Consider the subject of trial notification: notwithstanding their own obligations under law, prosecutors indicate that police investigators or judges are responsible for notifying victims of initial appearances and subsequent trial dates. In practice, police, not prosecutors, notify victims of the proceedings. However, judges interviewed for this report uniformly agreed that police are not sufficiently equipped with the resources to provide this service. As a result, cases scheduled for trial are delayed because victims fail to appear due to a lack of adequate notice. Most judges cited the failure of victims to appear as one of the leading causes of trial delays and for cases to be returned for further investigation. Inadequate victim notification was cited as the principal reason for victims’ failure to appear.

According to non-prosecutors interviewed for this report, the Procuracy does not adequately support victims’ rights. There are no special interview rooms for victims, though cases involving sexual assault or juveniles are heard in closed courtrooms. Prosecutors rarely interview victims or have any interaction with them before trial. Many charge that prosecutors are insensitive to the needs of victims. Prosecutors receive no victims’ rights and sensitivity training during their law school career, nor any in continuing legal education training, except for courses and lectures on human rights law. On occasion, victims are represented by counsel, but more often they are not. They also tend not to appeal prosecutors’ decisions. The Office of the Prosecutor General does not have a victim-witness advocacy unit at any level. The new Law on Protection of Witnesses and Victims was criticized for lacking sufficient resources for its execution. It is unclear how many persons take advantage of the government’s witness or victim protection services, because official statistics regarding the number of persons under protection are not available to the public. Finally, there is no national victim-witness compensation statute except for those Criminal Procedure Code provisions concerning the rights of civil plaintiffs, where a criminal charge has already been brought. This means the state does not compensate a victim of an unknown perpetrator. Lastly, there is no procedure to notify victims of the parole or release of convicted prisoners.

## Factor 13: Witness Rights and Protection

***Prosecutors perform their functions with due regard for the dignity, privacy, and security of the witnesses and their families.***

***Prosecutors ensure that witnesses are informed of their rights and conduct every encounter with witnesses fairly and objectively.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Prosecutors do not regularly interact with witnesses and do not receive specialized training on witnesses' rights and concerns. Often, witnesses are not notified of their rights or of upcoming proceedings. No special interview facilities are available to witnesses. State witness protection programs established in law are under funded and generally unavailable to witnesses.	

### Analysis/Background:

As is the case in terms of victims' rights, the Criminal Procedure Code spells out the rights and obligations of witnesses. It also enumerates the prosecution's duties to protect witnesses and respect their rights. In fact, many of the same laws regulating the relationship between prosecutors and victims apply equally to the relationship between prosecutors and witnesses. See *generally*, Factor 12 on Victim Rights and Protection. Among these responsibilities are notification of proceedings and protection. The Criminal Procedure Code enumerates these specific rights and duties of witnesses, which include the right to:

- Testify in his native language or in any other language he speaks, use services of an interpreter;
- Challenge the interpreter participating in his interrogation;
- Personally write down the testimony;
- Study the transcript of the interrogation, make necessary additions and changes to it;
- Use written notes and documents when giving his testimony;
- Lodge complaints against actions of the preliminary investigator, investigator, prosecutor, and the court;
- Be reimbursed for his expenses incurred during the proceedings on the criminal case, and for damages caused unlawfully by actions of the agency conducting the criminal proceedings;
- Receive back the property seized by the agency conducting the criminal proceedings as exhibits for the trial or on the other grounds and the originals of the official documents belonging to him;
- Have a defense attorney when interrogated. *Id.* art. 61.

The Criminal Procedure Code also exempts the following persons from the obligation to testify as witnesses:

- A judge, who knows about circumstances of the case as he participated in criminal proceedings for the case;

- The defense attorney and representative of the victim, civil plaintiff, civil defendant who learnt about circumstances of the case in the course of their work on the criminal case;
- An advocate, assistant of an advocate who learnt about circumstances of the case while rendering legal services to any participant of the case, or when any of the participants turned to him for such services;
- A person who may not properly realize the situation which is necessary for the case and who may not testify due to a mental disease or physical disability;
- A priest who learnt about circumstances of the case in the course of confession;
- Close relatives of the suspect, the accused, the defendant [unless they specifically agree to testify]. *Id.* art. 60.

Additionally, child witnesses and victims under the age of 16 may be allowed to testify outside the presence of the defendant on motion of one of the parties or by the court. *Id.*, article 293.

Interviewees made the same complaints regarding treatment of witnesses as leveled against prosecutors' treatment of victims. Prosecutors receive little to no training regarding handling witnesses or witness sensitivity. In practice, prosecutors usually do not have much interaction with witnesses, and on instances of interaction, they tend not to be sensitive to witnesses' concerns. Judges also complained of the failure of prosecutors to notify witnesses of proceedings. Judges are often left with no option but to postpone cases or send cases back for additional investigation because witnesses fail to appear. At least one senior judge speculated that out of the total number of case continuances granted in criminal court, about half are due to the lack of witness/victim notification. Unfortunately, the assessor team was unable to obtain official information to verify this assertion. Prosecutors often do not take action to protect witnesses, although this can in part be blamed on a lack of resources. According to the Office of the Prosecutor General, the national budget has no dedicated funds for witness protection, making effective witness protection nearly impossible.

## Factor 14: Public Integrity

***Prosecutors uphold public integrity by giving due attention to the prosecution of crimes committed by public officials, particularly those involving corruption, abuse of power, grave violations of human rights, and other crimes recognized by international law.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>There are significant levels of corruption and human rights violations by state actors in Kyrgyzstan. The Office of the Prosecutor General's response to these issues has been publicly criticized as insufficient and lacking in genuine commitment.</p>	

### Analysis/Background:

Public corruption and human rights violations by public institutions are among the most important and challenging problems presently facing Kyrgyzstan. International human rights and anti-corruption organizations report that Kyrgyzstan is one of the most corrupt nations and human rights violations by the government are many. Unfortunately, the Office of the Prosecutor General has not combated either of these issues sufficiently.

**Public Corruption.** Transparency International, an international anti-corruption reporting organization, ranks Kyrgyzstan among the most highly corrupt nations. In 2005, Kyrgyzstan ranked 130 of 158 countries based on polled perceptions of corruption. TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2005, at 6. In 2006, Kyrgyzstan slipped to 142 of 163 nations polled. TRANSPARENCY INTERNATIONAL ANNUAL REPORT 2006, at 21. In 2006, the international human rights and corruption monitoring organization Freedom House gave Kyrgyzstan its worst rating possible for assessing corruption. Kyrgyzstan has maintained this low ranking since 1999. FREEDOM HOUSE, NATIONS IN TRANSIT – KYRGYZSTAN (2006). Citing statistics from the Office of the Prosecutor General, the Kyrgyz MSN newspaper reported that 814 investigations into public corruption related offenses were opened in 2006. Between January and July 2006, 381 corruption related cases (i.e., abuse of power, exceeding authority, illegal use of official position and budget, and bribery) were brought to trial. *Rust Raised to the Third Power*, MSN NEWSPAPER, Feb. 24, 2007. In its 2006 annual report, the U.S. Department of State cited national police investigation statistics on corruption related offenses, revealing that “198 cases of bribe taking, 83 cases of negligence of official duties and fraud, 478 cases of embezzlement, and 1,520 cases of malfeasance took place between January and November [and] criminal charges were filed against 352 government officials as a result...[N]o convictions [for corruption charges] were reported.” U.S. DEPARTMENT OF STATE, *2006 Country Report on Human Rights Practices – Kyrgyzstan*, section 5, March 6, 2007 [hereinafter *2006 Department of State Report*]. According to all respondents to this Factor, corruption is endemic in government and across most sectors in the country. Most believe that law enforcement’s response is wholly inadequate compared to the scope of the problem.

Under the Criminal Code, prosecutors have several tools to combat private sector financial crimes and public corruption. Criminal Code Section 8, chapters 21-23, details prohibitions against fraud, misappropriation, illegal enterprise, and other economic crimes. Public corruption is addressed in Criminal Code, Section 10, chapter 30, articles 303-315. Chapter 30 prohibits abuse of official power, corruption, illegal use of official funds, graft, bribery, extortion, forgery, etc. According to ABA/CEELI’s 2006 report *Analysis of Anti-corruption Legislation in the Kyrgyz Republic*, the scope of the Criminal Code falls short in relation to international instruments. When compared to the United Nations Convention Against Corruption,<sup>10</sup> the Criminal Code lacks prohibitions against, “trading in influence, illicit enrichment, embezzlement in the private sector, concealment of property obtained as a result of corruption, as well as participation in and attempt to commit corruption offenses.” *Id.* at 150. The code also does not contain a criminal prohibition against corruption in the private sector. *Id.*

Notwithstanding the limitations of the criminal law, particularly regarding the aspect of criminal attempt, President Bakiyev and the Parliament have initiated strategies to combat public corruption. A tangible result was the formation of the National Council on Combating Corruption, ordained by *Presidential decree No. 476 of October 21, 2005* [hereinafter *Council*]. The 11 member Council receives and monitors corruption complaints through the executive agency that is subordinate to it, the National Agency for Corruption Prevention [hereinafter *Agency*]. The Agency was created by the same Presidential decree in October 2005, and began operations in May 2006. Its 2006 state budget was 7 million soms, (US\$ 185,308). Currently, there are 41 persons employed at the Agency. Although many are monitoring corruption and processing complaints for referral to the Office of the Prosecutor General from the Agency’s public referral hotline, many more are drafting the agency’s internal regulations, including proposals granting the Agency powers to investigate criminal corruption complaints.

The Prosecutor General is not a member of the Council nor is there significant interaction between the Office and the Agency, with the exception of referrals between his Office and the Agency. This may partially be a reflection of a problem highlighted in a 2006 nationwide survey commissioned by the Agency: law enforcement bodies, including the Office of the Prosecutor

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<sup>10</sup> Which was ratified by the Kyrgyz Republic in 2006.

General and the judiciary, are considered to be among the most corrupt of government institutions. *2006 Department of State Report* at Section 3. The Parliament has also responded to corruption concerns, and in early 2006, a group of parliamentarians formed the Kyrgyz Parliamentarians Against Corruption [hereinafter KPAC] to develop a national legislative agenda to fight corruption and to network with global parliamentary groups.

Still, the Office of the Prosecutor General has at least in principle recognized the importance of fighting corruption. In the Office's *Concept Of the Development of the Procuracy Agencies of the Kyrgyz Republic, 2005*, Section I, it aspires to "raise the prosecutor's efficiency in fighting corruption, elaborate and carry out a system of measures targeting specific types of corruption, identify the causes and effects of corruption as well as the damage it is inflicting." Additionally, the *Order of Procurator General's Office of the Kyrgyz Republic No. 3 On Measures Designed to Improve Organization of Work in the Procurator's Offices of the Kyrgyz Republic, March 17, 2006*, paragraph 7, states "All procurators should proceed from the concept that coordination of law-enforcement activities in fighting and preventing crime is a key function of the prosecution. Special attention should be given to the development of measures, duly agreed upon among the parties involved, designed to combat organized crime and corruption, mercenary and violent crimes as well as insure personal and economic security of citizens." Finally, in the spring of 2006, then Prosecutor General Kongantiev established a special anti-corruption unit comprised of three sections, to monitor the implementation of anti-corruption legislation, provide for analysis and monitoring of corruption acts, and to oversee the criminal investigation of anti-corruption crimes. Approximately a dozen prosecutors and about three auditors were assigned to this new unit.

However, the Office has fallen short in the implementation of the above-listed ideas. To date, not a single case has been prosecuted to a conviction pursuant to Criminal Code article 303. Judges indicated that other public corruption code provisions are not prosecuted in proportion to their occurrence. According to the *2006 Department of State Report*, "...the National Agency for Corruption Prevention received more than 800 complaints about corruption in government offices, conducted preliminary probes into each one, and forwarded cases to the Prosecutor's Office for prosecution. However, no significant action was taken." *Id.* Section 3. Chart 1 denotes the number of cases that the Office of the Prosecutor General brought to trial on corruption-related offenses based on investigations submitted for prosecution. In 2005-2006 a total of only three article 303 corruption cases were sent to trial, and all but one were dismissed. No final disposition data was provided for the one remaining non-dismissed case, or for the other cases cited in the charts below, which were sent for trial and not dismissed.

**Chart 1. Office of the Prosecutor General, Number of Cases brought for Trial and Dismissed cases, by Investigatory Agency, Relating to Bribery (Criminal Code Articles 310-311)**

<i>Investigatory Agency</i>	2005		2006	
	<i>Sent for trial</i>	<i>Dismissed</i>	<i>Sent for trial</i>	<i>Dismissed</i>
Prosecutor Office	13	2	17	6
Ministry of Internal Affairs	98	34	81	34
National Security Services	7	5	3	3
Finance Police	1	-	2	1
<b>Total:</b>	<b>119</b>	<b>41</b>	<b>103</b>	<b>44</b>

**Chart 2. Office of the Prosecutor General, Number of Cases brought for Trial and Dismissed cases, by Investigatory Agency, Relating to Exceeding Commissions (Criminal Code Article 305)**

<i>Investigatory Agency</i>	2005		2006	
	<i>Sent for trial</i>	<i>Dismissed</i>	<i>Sent for trial</i>	<i>Dismissed</i>
Prosecutor Office	60	11	69	11
Ministry of Internal Affairs	4	11	6	12
National Security Services	2	2	-	-
Finance Police	1	-	1	1
<b>Total:</b>	<b>67</b>	<b>24</b>	<b>76</b>	<b>24</b>

Other respondents pointed out that the special anti-corruption unit has only two prosecutors assigned to criminal investigations, a number insufficient to combat the problem.<sup>11</sup> Neither of these prosecutors is vetted, and the unit in general is under-funded and under-staffed. Training in anti-corruption prosecution is very limited and, across the Office, there is little competency to handle complex cases. Given that most interviewees believe that the prosecution service is corrupt, and given that prosecutors are susceptible to bribes due to low salaries (especially regarding white collar crime cases), it is understandable that the Kyrgyz public believes that corruption is endemic.

**Violations of Human Rights.** Over the past few years several international human rights groups, such as Freedom House and the International Crisis Group, as well as several foreign governments, have reported on human rights violations in Kyrgyzstan. Political instability and the difficulties in transitioning from a socialist state have sparked protests and civil unrest. These groups have condemned the Kyrgyz government’s response to popular dissent and the treatment of women and minorities. The police and prosecution have left unresolved a number of political assassinations, violent incidents against ethnic groups, instances of human trafficking, and bride kidnappings. Police treatment of detained suspects and prison officials’ conduct toward prisoners has been especially criticized. Allegations of torture in police custody and during incarceration have been widely reported. Although the Office of the Prosecutor General has brought a few cases against police and prison officials, the response has not been proportional to the magnitude of the problem. Kyrgyz human rights groups reported that the Office rarely takes action in response to their complaints about minorities’ human rights violations and prison and police brutality. Some of these complaints have also been referred to the United Nations Human Rights Council. See *generally*, Factor 20 on Interaction with Judges and Factor 21 on Interaction with Police.

<sup>11</sup> The assessor team was not provided the line budget or caseload for the special anti-corruption unit.

## IV. Accountability and Transparency

### Factor 15: Public Accountability

*In performing their professional duties and responsibilities, prosecutors periodically and publicly account for their activities as a whole.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although accountability to the public is provided for in law and in internal Office regulations, the prosecution service is not viewed as being transparent. In practice, it has not been made regularly accountable to the legislative branch.</p>	

#### Analysis/Background:

The Office of the Prosecutor General is accountable to the public in law and through a special partnership with civil society groups. By law, it is subject to several reporting obligations, but none of which require it to respond to the public's concerns. For example, Article 58(1)(31) of the 2006 Constitution grants the Parliament the power to, "hear annual reports of the Prime Minister on the work of the government [and] General Prosecutor..." Similarly, in Article 8 of the Law on the Procuracy, the Office is required to "submit reports to the President of the Kyrgyz Republic and regularly inform the Government of the Kyrgyz Republic..." regarding law-enforcement entities' record in protecting public order, national security, and the rights and liberties of citizens. In furtherance of this obligation, systematic accounting practices and criminal statistical reporting by all levels of the Office is required under Article 42 of the Law on the Procuracy and was mandated by erstwhile Prosecutor General Kongantiyev under *Executive Order No. 4 On Improving Routine Accounting and Statistical Reporting Operations in the Procuracy Agencies of the Kyrgyz Republic*, March 27, 2006. Additionally, in May 2006, the former Prosecutor General issued Executive Orders 11-14, designed to improve accountability in the Office's annual, quarterly, and monthly statistical reporting, its response to citizens' complaints against government agencies' actions, and to ensure criminal investigations are properly conducted in respect of citizens' human rights. See Factor 27 on Efficiency.

The question of public accountability largely rests with how the Parliament and Government share the information provided by the Office of the Prosecutor General. In practice, the Prosecutor General prepares an annual report that is reviewed by the President and presented to Parliament. However, given the recent political instability of the President and the removal of Prime Minister Felix Kulov in January 2007, as well as the Parliament's on-going political infighting, the 2006 annual report has not yet been reviewed by Parliament nor has the Prosecutor General been summoned to testify. Although parliamentarians told the assessor team that the Prosecutor General could be summoned to Parliament to discuss the work of his Office at anytime, it appears that it rarely occurs. Concerning the public availability of the annual report or budget; despite repeated requests, the assessor team was not provided copies. The Office's public access Internet site is no longer functional, although it is unclear that it would host statistical and accounting information in any event. There is no publicly accessible office policy handbook, although Prosecutor General Orders are available on the *Toktom* and *Adviser* legal databases.

On March 14, 2006 the Office of the Prosecutor General signed a Memorandum of Partnership with nearly 40 civil society, political, and mass media organizations. The aim of the Partnership is to promote collaborations on criminal justice and human rights protections, in the review of the legality of government acts, and in the harmonization of national human rights laws. Through quarterly meetings, both parties will endeavor to seek greater openness and trust. Along with the

Prosecutor General, regional (*oblast*) offices signed companion memoranda with their local NGO counterparts. Both parties believed that the partnership would ensure greater Office accountability to public concerns. *Memorandum on Partnership of Prosecutor's offices and Civil Society for Legality*, March 14, 2006.

Thus far, this Memorandum has produced mixed results. Prosecutors contend that cooperation with civil society groups has greatly improved. They now specially prioritize complaints from civil society partners. In 2006, the Prosecutor General received nearly 22,000 complaints on the execution of legislative acts in government agencies, all of which should receive a response within a month from receipt. According to the prosecutors interviewed, over a third of those complainants were satisfied with the service their Office provided. In part, civil society groups were the beneficiaries of this effort.

On the other hand, most civil society groups are displeased with the partnership. They argue that at the national and regional level, meetings are infrequently convened, agendas are lacking in substance, and tangible results illusory. Many groups no longer actively participate in the partnership. Some human rights groups declined to sign the memorandum in the first place, arguing that the Office of the Prosecutor General lacked sincerity in its approach to human rights groups and was institutionally averse to public accountability.

## Factor 16: Internal Accountability

***Prosecutors' offices have a mechanism to receive and investigate allegations of wrong doing or improprieties based on written procedures and guidelines. Internal procedures and mechanisms exist to assess or monitor compliance with departmental guidelines.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although the laws and orders governing procedures in the Office of the Prosecutor General provide generally for internal accountability and grievance mechanisms, their use is negligible. Prosecutors are not adequately trained on internal accountability standards or grievance procedures.</p>	

### Analysis/Background:

As discussed in Factors 7 and 10, the strictly hierarchical culture of the Office of the Prosecutor General produces its own strong, internal accountability. See *generally*, Factor 7 on Freedom from Improper Influence, and Factor 10 on Discretionary Functions. The Law on the Procuracy confers in the Prosecutor General the power over a unified system where every prosecutor is accountable to his/her superior and, ultimately, to the Prosecutor General. *Id.* art. 4. A culture of conformity to the will of supervisors still exists, perhaps as a legacy of the Soviet system that preceded it. This culture has chilled the exercise of appropriate prosecutorial discretion in subordinate prosecutors. Excessive supervisory control means that chief prosecutors can be less accountable because subordinates will not challenge their decisions.

Nonetheless, the Office can point generally to policies and procedures of internal accountability. Even though the Executive Orders of the Prosecutor General do not discuss internal grievance procedures per se, they do lay out standards for statistical reporting, job performance accountability, and the means for improving the quality of work product and personnel. The problem is that although all prosecutors receive a copy of the orders from their supervisor with an accompanying brief oral explanation, there are no formal trainings or office-wide briefings on how

the Executive Orders will be implemented. As such, obtaining the intended results may be difficult and may not be sustainable in the long term.

There are some legal protections for those prosecutors who wish to challenge the actions of a colleague or superior. The Law on Civil Service prohibits persecution by a superior, allows a subordinate to request in writing an instruction of which he doubts the lawfulness, and permits appeal against wrongful acts of any official (supervisor) committed against him/her. *Id.* art. 8, Sections 11, 15 and, 17. The Ethics Code confers a duty to report in the event that, "...[a] prosecutor experience(s) any pressure on the part of his/her immediate superior or any other public officials with the aim of making him/her take an unlawful decision, he/she shall report the fact to the superior prosecutor without delay." *Id.* art. 1.3. Despite these protections and ethical obligations, prosecutors responding to this factor stated that they were aware of only a very few cases in which internal grievance procedures were used. Indeed, they were not even able to recall the circumstances of such cases.

### Factor 17: Conflicts of Interest

***Prosecutors are unaffected by individual interests, and avoid conflicts of interest or the appearance thereof.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Codes and laws for regulating conflicts of interest are adequate but receive little attention, as evidenced by the lack of enforcement in the face of widespread allegations of official corruption.	

#### Analysis/Background:

The Ethics Code, Criminal Procedure Code, Regulations on Service, and the Law on Civil Service all contain specific conflict of interest guidelines. Beginning with the Ethics Code, prosecutors are generally required to refrain from any acts or relationships with any person that would bring into question their impartiality or that would damage their personal and professional reputation. *Id.* arts. 1.4, 2, and 3. Under the Law on Civil Service, if the prosecutor [public servant] becomes aware of his/her interest conflicting with the broader interest of the state he or she must immediately report it to a supervisor, who, in turn, should remove the subordinate from the matter or exercise increased scrutiny over the employee. *Id.* art. 9.

Specific prohibitions on financial conflicts of interest are found in several sources of law. Article 3 of the Regulations on Service, article 2.8 of the Ethics Code, and article 11 of the Law on Civil Service all prohibit remuneration from any person or entity in the form of gifts, services, or money for professional consideration. Annual income and asset declaration is required by article 33 of the Law on Civil Service and article 2.9 of the Ethics Code. For senior supervisory prosecutors in particular, declaration is required by the Law On Declaration and Publication of Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, *As amended by the Law of the KR of December 28, 2006 No. 223.*

Personal involvement and prior employment conflicts are specifically governed by all the aforementioned laws except the Ethics Code. A prosecutor may not directly supervise a family member or take part in any matter involving a family member. See LAW ON CIVIL SERVICE art. 11, (7,9) and *Regulations on Service* art. 3. A prosecutor shall recuse himself, and may be subject to a challenge for recusal, in proceedings where he/she, "...is a victim, civil plaintiff, civil defendant, or if he participated in the case as a witness, expert, specialist, translator, investigator,

prosecutor, defense attorney, clerk of the court, legal representative of the accused, defendant, representative of a victim, civil plaintiff, or civil defendant; investigator; [or] in event there are other circumstances that may arouse doubt of the [prosecutor's] impartiality.” CRIMINAL PROCEDURE CODE, arts. 70, 74.

The assessor team received few comments from interviewees regarding conflicts of interest. In fact, prosecutors indicated that conflicts of interest were not a significant issue. Thus, there are few examples of code violations. See Factor 19 on Disciplinary Proceedings. At no time did the assessor team receive information on trainings or briefings held by the office to explain the concept of conflicts of interest and how to avoid them. On the other hand, representatives from civil society groups repeated their belief that there are numerous instances of nepotism and cronyism in hiring and promotion. As discussed in other Factors herein, they also maintained that prosecutors participated with impunity in corruption schemes involving the exchange of money for leniency in prosecution.

### Factor 18: Codes of Ethics

***Prosecutors are bound by ethical standards of the profession, clearly aimed at delimiting what is and is not acceptable in their professional behavior.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The Ethics Code and the mechanisms for its enforcement are fairly comprehensive and procedurally detailed. However, ethics training for prosecutors is limited. The Code does not explicitly prohibit <i>ex parte</i> communications.</p>	

#### Analysis/Background:

The Ethics Code is relatively comprehensive and includes general statements regarding ethical conduct in furtherance of their official activities, as well as rules governing conduct outside the office. Most of these rules tend to be aspirational in nature, but there are also specific provisions on prosecutorial discretion, conflicts of interest, income/asset declaration, and confidentiality, as well as prohibitions against graft and conversion. *Id.* art. 2. Procedures for investigating code violations and penalties are set forth in Ethics Code Articles 4 and 5. Ethics Code Article 6 describes the composition of each regional prosecutorial office ethics commission, and its reporting and procedural obligations when reviewing ethics cases. These commissions are responsible for investigating ethics violations and recommend action. However, absent from the Ethics Code are provisions against *ex parte* communications with the judiciary, the duties of a prosecutor to the accused, (including the duty to consider exculpatory evidence), as well as provisions mandating public access to commission proceedings.

Article 10 of the Law on Civil Service, on the ethics of civil servants, contains many of the same aspirational statements. However, it also warns against succumbing to improper influence, and it discusses the duty of agency chiefs to prevent and suppress ethics violations. The Office of the Prosecutor General appears to be failing to live up to this duty. For example, law graduates entering the Prosecution Service have received no training on the Ethics Code. Neither are there formal trainings on the Code in the Office of the Prosecutor General nor at the PDC. As discussed generally in Factor 16 on Internal Accountability, prosecutors receive a copy of the Ethics Code from their supervisor with a brief, cursory commentary and are provided no follow-up training. Although cases of Ethics Code violations are relatively few, they do occur and penalties are imposed, as described in Factor 19 on Disciplinary Proceedings.



## Factor 19: Disciplinary Proceedings

***Prosecutors are subject to disciplinary action for violations of law, regulations, or ethical standards. Disciplinary proceedings are processed expeditiously and fairly, and the decision is subject to independent and impartial review.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Disciplinary rules are well-developed and contain adequate appellate procedures. Although prosecutors stated that disciplinary processes were rarely used, there is evidence that nearly one in four prosecutors was subject to disciplinary action in 2006.	

### Analysis/Background:

The Regulations on Service allow a range of disciplinary penalties for “non-execution or improper execution” of official duties. Among these are included: reprimand, reproof, warning, demotion, or dismissal. *Id.* art. 17; see *also* LAW ON CIVIL SERVICE, art. 38. Although the Prosecutor General is entitled to impose the “entirety of disciplinary penalties on prosecutors,” except for the dismissal of prosecutors appointed by the President, each of the regional, city, military, and district chief prosecutors may impose disciplinary measures against those assistants they appointed as long as they do so within the scope of disciplinary power given them by the Prosecutor General. *Id.* art. 18.

The overall disciplinary procedures are set forth in Article 19 of the Ethics Code. Among the provisions listed, the chief prosecutor of the regional, city, military, and district office must conduct an investigation and render a decision within a month after the infraction became known. The immediate chief prosecutor can suspend the accused prosecutor during the period of investigation. The accused prosecutor will retain his salary during the period of the investigation. Any disciplinary decision is also made known to the staff of the office at that level. Higher level prosecutors may rescind or modify the final disciplinary decision of the immediate supervising chief following a review of the case. *Id.* art. 19. In the case of Ethics Code violations, the regional commissions conduct the investigation and forward a report and recommendation to the chief prosecutor for the region who is empowered to take action. ETHICS CODE, art. 6; see *also*, *Regulations on Service*, art. 20 regarding referrals for criminal violations. There is no gradation of offenses and corresponding penalties, although prosecutors generally agreed that prosecutors are terminated in fewer than two percent of disciplinary cases.

Appellate rights are described in both article 23 of the Regulations on Service and article 39 of the Law on Civil Service. A disciplined prosecutor has the right to appeal a decision against him/her to the next highest prosecutor. If he/she receives no satisfactory relief he/she may petition a court within one month of the final decision by the Office of the Prosecutor General. However, the assessor team received information regarding only one case being petitioned to court. See Factor 5 on Freedom of Expression.

According to information provided by the Office of the Prosecutor General, 23 ethics investigations were conducted by the regional Ethics Commissions in the first nine months of 2005 and 2006 combined. From these 23 investigations, 25 prosecutors received a disciplinary sanction. The nature of the sanction and the number of appeals taken was not provided. However, one senior prosecutor interviewed by the assessor team estimated that approximately 160 prosecutors (or, 22%) were disciplined for a variety of infractions in 2006. If this figure is correct, it reveals a worrying relationship between the management of the prosecution service and its prosecutors. Nevertheless, most prosecutors contended that discipline was not a serious problem facing the Office.

## V. Interaction with Criminal Justice Actors

### Factor 20: Interaction with Judges

***Public prosecutors safeguard the independence of the judicial and prosecutorial functions. Prosecutors treat judges with candor and respect for their office, and cooperate with them in the fair and timely administration of justice.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Instances of <i>ex parte</i> communications were reported. Complaints of inadequate case preparation and failure to properly supervise the pre-trial investigation to prevent human rights abuses and violations of constitution guarantees were cited by judges. There are few joint continuing legal education opportunities for prosecutors and judges.</p>	

#### Analysis/Background:

According to Chapter 7, article 83 of the 2006 Constitution, judges are independent and subordinate only to the Constitution. The President or Parliament is involved in their appointment, with the responsible branch of government varying depending on the court to which the appointment is taken. Judicial independence under the Constitution is also recognized in article 17 of the Criminal Procedure Code. In contrast, under Chapter 6 of the Constitution, the Procuracy is established as a central state body of the Kyrgyz Republic. The procuracy and the judiciary are legally separate. There is no specific prohibition against prosecutors becoming judges or vice versa, and there is no unique procedure for hiring a sitting or former judge, but a person may not serve as both at the same time. Many judges interviewed by the assessor team estimated that about 20% of the country's 413 judges were former prosecutors.

Appropriate interactions between judges and prosecutors are addressed in several provisions of the Criminal Procedure Code. A prosecutor sends his case to the judge for review and prosecutes it at trial. A judge may send a case back for further investigation, dismiss it at trial, or render a verdict. The prosecutor can take an appeal of the judge's decision. As discussed in Factor 11 on Rights of the Accused, judges now replace prosecutors in having responsibility for arrest warrant approval. In the case of supervision of the implementation of legislative acts by the government, the prosecutor may motion the court to enforce his/her order to a government agency. LAW ON THE PROCURACY, art. 22. Finally, as discussed in Factor 18 on the Code of Ethics, there is no Ethics Code prohibition against *ex parte* communications, nor is there specific instruction on prosecutors' pre-trial comportment.

Prosecutors and judges each had troubling views on the others' conduct. Judges at every level of the system felt that the Office of the Prosecutor General enjoyed excessive powers. The dual functions of reviewing the implementation of legislative acts in addition to criminal prosecution duties concentrates too much authority in one state institution. Many judges simply defer to the authority of the prosecutor. At trial, there is rarely equality of arms, especially when a younger judge is sitting. These newer judges can be intimidated by prosecutors, and may rule against defendants for fear of releasing someone that the state has seen fit to prosecute. On the other hand, judges' fear that prosecutors will file complaint letters (*chasnoye predstavlenie*) against them for their conduct at trial, as reported in the *ABA/CEELI Judicial Reform Index for Kyrgyzstan*, June 2003, at 25, has substantially diminished. Instead, prosecutors now will simply appeal their decisions.

The dual functions of the Office of the Prosecutor General may also spread the prosecution service too thin. Jurists found that prosecutors were often ill-prepared for trial and that unsupervised investigations occurred, wherein the accused’s rights were violated. Judges contended that usually only corporate interest based cases are presented for trial. Many argued that the prosecution should focus solely on the investigation and prosecution of criminal acts.

Prosecutors, defense attorneys and human rights defenders alike were critical of judges. All groups maintained that judges are still influenced by corruption. There were reports of “telephone justice”, whereby judges receive instructions on how to rule in a given case by supervisory judges, government, or legislative officials. Respondents opined that the judiciary was still a weak institution, and prosecutors in particular felt it would be unable to assume the warrant approval function. Judges disputed this point, arguing they now often rule on warrant appeals. Opportunities for joint bench-prosecutor trainings were described as few. Many saw this as a missed opportunity for better dialogue on law and procedure.

**Factor 21: Interaction with Police and Other Investigatory Agencies**

*In order to ensure the fairness and effectiveness of prosecutions, prosecutors cooperate with the police and other investigatory agencies in conducting the criminal investigation and preparing cases for trial, and monitor the observance of human rights by investigators.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Prosecutors fail to exercise their power under the Criminal Procedure Code to oversee police investigations. As a result, they have not always been able to ensure the rights of the parties in the criminal justice system or to avoid duplication of efforts by police investigatory agencies. The response of the Prosecutor General to complaints of police brutality has been criticized as inadequate by civil society and human rights groups.</p>	

Analysis/Background:

Articles 35-38 of the Criminal Procedure Code lay out the powers and organizational relationships between the police investigation services and the prosecutor. The police investigator is usually responsible for initiating investigations and for carrying out all investigatory acts. *Id.* art. 35. Article 36 details all of the investigators’ authorities, principal among which include the power to:

- Interrogate the suspect, accused, victim, witness, expert and specialist, ask for expertise, perform searches, examinations, seizures, and other investigational proceedings;
- Take necessary measures to recover damages caused to the victim;
- Ask for documents, materials that may contain information about the offense and persons involved in its commission;
- Demand for inspection, auditing, inventory, departmental expertise, and other measures of checking;
- Ask for interpreters, specialists, experts;
- Detain persons suspected in the commission of a crime;
- Charge the suspect with a crime, make a resolution on institution of criminal proceedings against the accused;

- Recognize certain persons as victims, civil plaintiffs, civil defendants and admit their representatives to participation in criminal case proceedings;
- Make resolutions on suspension of criminal proceedings on the case;
- Execute written orders of the prosecutor;
- Perform other functions provided herein; and,
- The resolution of an investigator concerning the criminal case is binding for all persons, heads of companies and organizations. Failure to fulfill a resolution of an investigator shall result in liability in accordance with the law of the Kyrgyz Republic.

The head of the investigation agency to which the investigator belongs directly supervises the investigators' work. The chief of the investigating agency may issue written orders binding his/her subordinates *Id.* art. 37. As noted earlier, to a large degree the prosecutor also supervises the investigator's work. Pursuant to Article 34, prosecutors are required to ensure the legality of the police investigation, and may issue binding orders to investigators, and may appoint and remove officers from a particular investigation. The may also return cases for additional investigatory work, and can extend the length of the investigation period. Police may object to a prosecutor's order by addressing his objections in writing to a higher-rank prosecutor, who either annuls the decision of the subordinate prosecutor or transfers the case to another investigator. *Id.* art. 35.

There are several enforcement agencies responsible for the inquiry and investigation of criminal acts in Kyrgyzstan, as found in the Criminal Procedure Code. The investigatory agencies include: the Procuracy agencies, the Ministry of Internal Affairs (police), National Security agencies, the agency of Kyrgyz Republic on Drug Control, agencies of the correctional system of the Ministry of Justice of the Kyrgyz Republic, the Financial Police and the Customs agencies. *Id.* art. 161. Article 38 of the Criminal Procedure Code lists as inquiry agencies all of these agencies as well as heads of correctional facilities, border troop commanders, military commanders, etc. The jurisdiction of each investigatory agency over a particular crime or a group of crimes is described in Article 163 of the Criminal Procedure Code. In many cases, multiple agencies have the jurisdiction to investigate a particular type of crime. To eliminate duplication of efforts, the agency first bringing the case is the lead investigating agency. If multiple crimes result from the same transaction, the agency that has jurisdiction over the most severe offense is the lead investigating body. Police abuse cases are investigated directly by the Office of the Prosecutor General. *Id.*

Criminal investigations can be initiated by any of the agencies listed in Criminal Procedure Code Article 161. A charging notice document, known as a "resolution on institution of prosecution" must be filed with the Office of the Prosecutor General within 24 hours of the start of the investigation. This resolution must contain the facts of the incident, the violation of law, the author of the resolution, and a plan for further action. After that, the case can remain with the investigator, or a prosecutor can refer the case to another investigator. The investigation is permitted to last only one month for misdemeanors or two months for any other serious crimes, unless the prosecutor files an extension. *Id.*, arts. 158, 160, 165, 167.

The assessor team received several observations from criminal justice system experts regarding the relationship between police investigators and prosecutors. Most of the comments concerned the role of the prosecutor during the pre-trial investigation phase. With a few notable exceptions, nearly all respondents stated that prosecutors are not very involved in the oversight of the investigation. Few prosecutors exercise their right to issue orders, to remove illegally obtained evidence or coerced confessions, or to remove an investigator from a case. Only in specialized units do prosecutors take an active role approving search warrants and electronic surveillance.

Complicating matters is the fact that approximately 8-10 law enforcement investigatory agencies refer cases to the Office of the Prosecutor General for trial. Prosecutors find it difficult to stay

current with investigations taking place in multiple agencies. Although the Criminal Procedure Code provides clear standards to avoid duplicative investigations, there are numerous instances of the same criminal act being investigated by different agencies. This is typically seen in financial and economic crime cases. As mentioned in several other factors in the Index, the impact of prosecutors' lack of involvement in the pre-trial phase is that investigations are not well coordinated and managed, and illegal evidence is obtained and submitted for trial. As a result, cases are generally poorly prepared, and the rights of the accused, witnesses, and victims suffer.

To help improve coordination between the Office of the Prosecutor General and law enforcement investigatory agencies, President Bakiev issued the Regulation On the Coordination of Activities of Law-Enforcement Authorities of the Kyrgyz Republic (*As per the Decree of the President of the Kyrgyz Republic of March 17, 2006, No.129*). According to the regulation, region (*oblast*) chief prosecutors are tasked to lead meetings of all of the law enforcement heads in their area. The meetings can include discussions on crime analysis and trends, crime prevention techniques, tactical coordination, and joint publications. These meetings are usually convened quarterly. Unfortunately, the coordination meetings have been criticized on the one hand as being too broadly policy-oriented, and on the other as inconsequential, relating too often to employee hires, transfers, and terminations. It is reported that little practical discussion on investigation management and inter-agency coordination occurs. Prosecutors counter these claims by arguing that meeting notes reveal detailed discussions on crime fighting initiatives and specific mention of murder case investigations.

The leadership of Office of the Prosecutor General's is most criticized regarding its handling of police corruption and misconduct. Corruption, misconduct, and abuse were cited as overarching issues confronting the credibility of police and prosecutors.

According to a 2007 OSCE survey of community residents in Karakol, Bishkek and Osh, nearly 7 out of 10 residents believed that police did not treat everyone equally, and that the police treated well only their own friends or persons offering bribes. About 6 of 10 residents agreed that police serve the government more than they serve the people, and that police have no choice but to accept money in exchange for service because their salaries are too low. According to the survey, only slightly more than half of victims report crimes to the police. RESULTS OF SURVEY ON PILOT COMMUNITY POLICING PROGRAMME, KARAKOL, OSH, JANUARY 22, 2007, PERVOMAIKI AND SVERDLOVSKI DISTRICTS OF BISHKEK, OCTOBER 16, 2006.

Senior police officers interviewed by the assessor team candidly admitted that police corruption was a significant challenge amongst their ranks. They also praised the efforts of the OSCE campaign in Kyrgyzstan to help transition the police force to a more community-focused and resident-centered service.

Many respondents argued that one of the greatest challenges to the criminal justice system is police brutality and misconduct. As mentioned previously, police beatings of suspects are considered routine. According to a 2006 International Crisis Group report, "Beatings by police in pre-trial detention are common as investigators seek to extract confessions. Suspects awaiting trial and convicted persons awaiting transfer to prison spend months in squalid and inhumane conditions." *Kyrgyzstan's Prison System Nightmare*, CRISIS GROUP ASIA REPORT NO 118, August 16, 2006. The report continues:

Inmates and human rights activists are all but unanimous that the worst human rights abuses from law-enforcement officials take place... in temporary detention facilities which are still under MIA (Ministry of Internal Affairs) jurisdiction. Allegations of police beatings there and unlawful detention are common. 'People are sometimes held there for three weeks and then are told what they did' a human rights activist said. Police investigators, themselves under pressure to increase the percentage of closed cases, sometimes charge detainees with a

host of unsolved crimes and reportedly use beatings – or the threat of beatings to extract confessions. *Id.* at 14

The assessor team received several accounts of police beatings of detainees. In most instances the prosecution failed to bring those responsible to trial. Despite the fact that there is a special police misconduct prosecution unit,<sup>12</sup> many argue that few cases of police abuse are prosecuted. According to information provided by the Office of the Prosecutor General, no cases under Criminal Code Section 305-1 on torture, were brought to trial in 2005 and 2006. However, the ABA was informed by the Office that 71 police officers were criminally prosecuted in 2006 and 22 more were prosecuted in the first six months of 2007. Final trial disposition data for these prosecutions was not provided.

Respondents offered several suggestions to improve police-prosecutor accountability and coordination. There was a consensus regarding the need to do the following: reduce the number of investigatory agencies; increase the supervisory capacity of prosecutors in the pre-trial investigation; and increase the number of police-prosecutor joint trainings.

## Factor 22: Interaction with Representatives of the Accused

***Public prosecutors respect the independence of the defense function. In order to ensure the fairness and effectiveness of prosecutions, prosecutors satisfy their legal and ethical obligations towards the representative of the defendant.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although the Criminal Procedure Code affords a plethora of rights to defense attorneys, the widespread and notorious use of unqualified and corrupt “pocket defense attorneys” in the pre-trial investigation stage threatens the integrity of the criminal justice system. Although case file information is available to defense counsel without interference, equality of arms at trial is not always observed.</p>	

### Analysis/Background:

The Criminal Procedure Code articulates the inviolable rights of all parties in criminal proceedings, explicitly including defense attorneys. Article 12 provides that a prosecutor (and judges and investigators), “shall protect rights and freedoms of persons involved in criminal proceedings, [and] they shall create conditions favorable for such protection...” *Id.* art. 12. Article 5 specifically lists defense attorneys as one of the parties in criminal proceedings who are entitled to rights and protections from the state agencies. *Id.* art. 5. Articles 16 and 18 ensure the equality of the parties in law and before the court, and that the proceedings are both adversarial and equal. *Id.* arts. 16 and 18. The Criminal Code sanctions the obstruction of the defense counsel’s professional activity by anyone acting in his official capacity. The maximum penalty for such an act is five years imprisonment and possible disqualification from holding public office. CRIMINAL CODE, art. 318-1. The assessor team was not provided any Office directives or guidelines regulating the relationship between the prosecution and the defense counsel.

The rights and obligations of defense attorneys, which the prosecution must observe and uphold, begin at the moment of the first police interrogation of the suspect and include all of the following:

<sup>12</sup> Military prosecutors’ jurisdiction generally only extends to military and security ministries.

- [The right to] participate in court proceedings as a defense attorney or other representative on the basis of adversarial trial and equality of the parties.
  - [The right to] use all legal means of defense to find out evidence justifying the suspect, accused, defendant or evidence mitigating the charge or sentence, as well as to render necessary legal assistance.
  - Starting from the moment of participation in the case, the defense attorney is entitled to:
    - a. personally or with assistance of private detective collect materials being to credit of suspect, accused, defendant, witness;
    - b. get written statements and explanations of witnesses, make personal records of site studying;
    - c. introduce evidence to the investigation and court;
    - d. be present when the charge is announced;
    - e. participate in the interrogation of the suspect, accused, defendant, witness as well as in other investigational proceedings in which they are involved or which were requested by the defense itself or the suspect, accused, defendant;
    - f. meet with the suspect, accused, defendant in private, confidentially and without any limitations of time and number of such meetings;
    - g. study records of the detention, resolutions on the sanction, records of investigational proceedings in which the suspect, accused, defendant or the defense attorney himself were involved, documents which were given and which should have been given to the suspect, accused, and, after the completion of the investigation, study the whole dossier of the case;
    - h. make copies of dossier files, write out any information from the dossier;
    - i. make motions;
    - j. participate in court proceedings;
    - k. make challenges;
    - l. appeal from actions of preliminary investigator, actions and decisions of the prosecutor, investigator, and the court and participate in consideration of such appeals;
    - m. use any other legal means for defense.
4. The defense attorney when present during any investigational proceeding, may ask the interrogated persons any questions if allowed by the investigator. The investigator may decline any question of the defense attorney, such questions and the decision to decline them shall be recorded. The defense attorney may make comments in writing in the records concerning the authenticity and completeness of the records.” CRIMINAL PROCEDURE CODE, art. 48.

Defense attorneys and other justice system respondents reported that the prosecution does not always observe the rights of the defense counsel. They also believed that equality of arms is not observed at law or in court. In general respondents argued that prosecutors’ power was excessive. They complained that convictions and the imposition of punishment drive investigations. Little concern is afforded the investigation of all evidence, exculpatory as well as inculpatory. Still, they also noted that there are no restrictions on visiting clients, although detention facilities may not always provide adequate privacy.

The most critical concern justice system experts and attorneys alike expressed is the on-going use of “pocket lawyers” or “black lawyers,” as previously discussed, wherein investigators summon unqualified and corrupt counsel with whom they have a personal relationship to represent detainees during interrogations. See *also*, ABA/CEELI 2004 LPRI. Investigators gain the consent of detainees who are often entirely unaware of their rights, and bring in the pocket attorney to discuss the case. In special circumstances, the prosecutor and the investigator may even suggest a defense attorney to the detainee. CRIMINAL PROCEDURE CODE art. 44. Through cajoling, threats, and beatings, the investigator and pocket attorney convince the detainee to confess to one or more crimes, to pay a bribe to avoid being charged, or to pay a bribe for a reduced charge. Most respondents said that prosecutors were very aware of this practice and some prosecutors also profited from it. Several respondents estimated that 30% or more of arrests for more serious criminal violations are resolved by the “pocket lawyer process.”

For those cases argued at trial, defense attorneys suggested that equality of arms is not respected by most judges or prosecutors. Many find that prosecutors and judges are part of monolithic state entities sharing a common interest in obtaining convictions. Defense attorneys argue that defense motions in major criminal cases are routinely rejected in favor of the prosecution. Ex parte communications between judges and prosecutors are common. In one circumstance, a prosecutor was observed regularly participating in chambers discussions with judges, drafting verdicts and sentences following the conclusion of trial proceedings. The fact that defendants are kept in locked cages in the court room is also seen as an impediment to the equality of arms. However, defense attorneys readily admitted that files and evidence were made available to them following the close of the investigation and official presentation of the case.

Prosecutors (and some defense attorneys) denied the charges described above. They countered by stating that the lack of well-trained and experienced defense attorneys is the main barrier to trials based on equality of arms. Most respondents were encouraged by the 2006 Constitution’s new provision allowing trials with the participation of jurors. *Id.* art. 15(6). Jury trials represent another significant change and challenge for the justice system. Many respondents agreed that juries will better ensure equality of arms at trial. OPDAT and the ABA are currently implementing jury training programs for prosecutors and defense attorneys alike.

**Factor 23: Interaction with the Public/Media**

***In their contacts with the media [and other elements of civil society], prosecutors provide appropriate and accurate information wherever possible, within their discretion.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although Kyrgyz law permits some interaction with the public and the media regarding criminal cases and criminal justice topics generally, the relationship with the public and media is difficult and not considered open. Accordingly, the media does not have the power to exercise substantial influence over prosecutorial action in a given case or provide the public with such information.</p>	

**Analysis/Background:**

Several acts regulate the public disclosure of information by the Office of the Prosecutor General or any Kyrgyz state institution. As mentioned in Factor 5 on Freedom of Expression, the Ethics Code prohibits prosecutors from divulging any state secret obtained in the course of performing official duties. *Id.* art. 2.6. The same concept applies to all state institutions, including the prosecution service, as codified in Articles 9 and 10 of the Kyrgyz Republic Law on Guarantees and Free Access to Information, *as amended by the Laws of the KR dated October 18, 2002 No.*

147, December 28, 2006 No. 214. [hereinafter LAW ON INFORMATION]. Disclosure of state secrets is also a criminal offense under Articles 300 and 333 of the Criminal Code. According to interviewees, these laws imply that no information on active cases is to be provided to the media or public. As such, the assessment team did not receive any indications that prosecutors were publicly releasing inappropriate trial or investigation material.

On the other hand, most of these acts, along with other internal office regulations, allow for some interaction with the media and public. Article 2.11 of the Ethics Code provides, that the “Prosecutor shall render necessary assistance to mass media in providing coverage of the activities of public prosecutor’s offices to an extent prescribed by the legislation of the Kyrgyz Republic and this Code.” *Id.* Similarly, the Law on Information allows for public access to state documents unless otherwise prohibited by law. *Id.* art. 6. The Criminal Procedure Code requires mass media to cooperate with the prosecution when it publishes a story about a crime. *Id.* at 154. The law enforcement coordinating committees discussed elsewhere in this report are encouraged to develop working relations with the media. See Factor 21 on Interaction with the Police and Other Investigatory Agencies; see also Section IV, 7-9, *Regulation On the Coordination of Activities of Law-Enforcement Authorities of the Kyrgyz Republic (As per the Decree of the President of the Kyrgyz Republic of March 17, 2006, YPI No.129)*. Lastly, Executive Order No. 12 demands that, “Individuals, nongovernmental organizations, and mass media outlets should be provided with an opportunity to be informed on prosecution activities, law compliance and enforcement of order within the limits specified by law.” *Procuracy Supervision over Compliance with Law, Legitimacy of Normative Legal Acts and Observance of the Rights and Freedoms of Man and Citizen*, May, 2006; para. 16, Executive Order No. 12. However, there is no executive order, act, or law that specifically enumerates what information prosecutors may provide the media or the public or what the parameters of the relationship should be.

According to journalists, the relationship between the press and the Office of the Prosecutor General is difficult. Journalists rarely receive information on the activities of the Office. The few press conferences that do occur lack meaningful substance. Prosecutors tend to be open with the media, but ultimately prove unhelpful, especially in high profile cases. Very few engage in public discussions or debates about crime or the criminal justice system.

The media does not have an effect on the outcome of cases. Conversely, members of the press generally understand that if they criticize the Prosecutor General too harshly, less information will be made available to them. They are not sought out to help solve crimes or publicize Office events. In fact, in the summer of 2006, former Prosecutor General Kongantiyev ordered prosecutors not to respond to media inquiries. Only regional (*oblast*) level spokespersons and the Prosecutor General’s spokesperson were permitted to have contact with the media. See *generally*, Factors 5 on Freedom of Expression and Factor 15 on Public Accountability for more details regarding the Office of the Prosecutor General’s relationship with the public and civil society groups.

## Factor 24: International Cooperation

*In accordance with the law and in a spirit of cooperation, prosecutors provide international assistance to the prosecutorial services of other jurisdictions.*

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>With some notable exceptions, mutual legal assistance and extradition requests are generally observed in a timely fashion. The Office is party to formal regional and Asian prosecutor alliances, and the Prosecutor General is a member of the International Association of Prosecutors. Donor-provided training on international human rights law and transnational crimes continues to expand.</p>	

### Analysis/Background:

Under Kyrgyz law, international mutual legal assistance and extradition is generally governed by Chapter 48 of the Criminal Procedure Code. The Prosecutor General's Office makes requests to foreign states for the extradition of accused or convicted Kyrgyz citizens. Requests by foreign states to extradite their nationals from Kyrgyzstan are referred to the Prosecutor General and his Chief Deputy. Evidence requests follow the same track as extradition requests. Article 6 of the Law on the Procuracy provides the following general guidance, "In accordance with international treaties (agreements), the Procurator General's Office of the Kyrgyz Republic shall resolve issues related to rendering legal assistance on criminal cases as well as deal with other issues, within its jurisdiction, as set forth by treaties (agreements)." Most extradition and mutual legal assistance requests are processed pursuant to bilateral treaties.

Representatives from the international legal community found that Kyrgyzstan more or less honors requests for legal assistance and extradition. Western government representatives implied that the assistance occurs on a case-by-case basis and lacks continuity. Regarding U.S. - Kyrgyz cooperation: firearms discharges and alleged kidnapping incidents involving U.S. service personnel and Kyrgyz nationals at Manas airbase have aggravated tensions, impacting responses to U.S. assistance requests. On the other hand, Kyrgyz prosecutors boast that strong bilateral agreements with members of the Commonwealth of Independent States have resulted in expedited mutual legal assistance and extradition requests to and from neighboring states and Russia.

Former Prosecutors General Myktybek Abdyldayev and Kambaraly Kongantiev, as well as the incumbent Department Head of the Prosecutor General's Office are the only Kyrgyz members of the International Association of Prosecutors. As noted in Factor 6 on Freedom of Professional Association, the Prosecutor General is a member of the CIS Coordinating Council of Prosecutors General's Office. This group meets regularly to discuss cooperation, international cases, and crime trends. He is also a member of the Prosecutors General of the Shanghai Cooperation Organization, which addresses terrorism, extremism, illegal drug and arms trafficking, illegal migration, and other transnational crimes.

Even line prosecutors are increasingly exposed to training opportunities regarding international crimes and international cooperation. As mentioned in Factor 21 on Interaction with Police and Other Investigatory Agencies, the OSCE has launched a major police training effort that emphasizes community policing techniques as well as international human rights standards and international human trafficking norms. Approximately two dozen prosecutors participated in these trainings in 2006.

Section III of the Charter of the Professional Development Center [PDC] for the Prosecutor General's Office of the Kyrgyz Republic also addresses international cooperation, urging the Office to “maintain cooperation with other training institutions and research centers, including with those abroad; send prosecutors to republican, departmental, inter-departmental and international conferences, symposia, congresses and meetings; promote direct links with international and nongovernmental organizations, foreign partners, enter into cooperation agreements with them.” Although the PDC suffers from capacity limitations, foreign donors including OPDAT and the ABA have provided training opportunities regarding anti-corruption, organized crime, money laundering, and other transnational crimes. International legal experts and senior prosecutors have lectured on these and other related topics. Prosecutors have also participated in study tours to Russia and Kazakhstan in recent years. Still, opportunities for additional trainings on international crimes must be expanded to increase the office-wide competency in this area. See *generally*, Factor 2 on Continuing Legal Education.

## VI. Finances and Resources

### Factor 25: Budgetary Input

***States provide an adequate budget for the prosecutor's office, which is established with input from representatives of the prosecutor's office.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Regional and local prosecution offices are given input in their budgets before the Prosecutor General submits an annual budget to the government. The Parliament can summon the Prosecutor General to testify on the budget submitted by the government. At least in the past two years, the approved annual Office budget has been significantly smaller than the amount requested by the Prosecutor General.</p>	

#### Analysis/Background:

Article 73 (2) of the 2006 Constitution provides that the state budget must be presented for approval to the Parliament (*Jogorku Kenesh*) by the Government. Since it is a government entity, the Office of the Prosecutor General submits its annual budget to the Government. According to prosecutors interviewed by the assessor team, the budget preparation process is as follows. First, the Prosecutor General sends an instructional circular to regional (*oblast*) and district (*raion*) offices on the parameters for their budgets. District office budgets are prepared and sent to the Regional office. Each chief Regional prosecutor then submits his/her proposal to the Office of the Prosecutor General. The Chief Prosecutor reviews the proposals and sends a final budget to the Office of the President and Prime Minister. The Prime Minister reviews the Prosecutor General's proposal, consults with the Office of the Prosecutor General, prepares the entire executive national budget, and sends it to parliament. The Office of the President then defends the executive budget proposal before the parliament. According to parliamentarians interviewed for this report, theoretically the Prosecutor General could appear before parliament to respond to members' questions.

However, at the end of the parliamentary process the Office's approved budget is generally about 20% less than the figure originally requested by the Prosecutor General. According to information provided by the Office of the Prosecutor General, in 2006 the Office proposed an annual budget of 135 million som (\$US 3,476,693). In 2007, the Office proposed 138 million som (\$US 3,559,353). Chart 3 represents the National Budget allowances for 2006 and the proposed

allowances for 2007 in the justice and security sectors. The approved and forecasted budgets are significantly less than the Office proposed. There is no opportunity to appeal the budget approved by parliament.

As discussed in the subsequent factors of Section 6 of this report, the funding allocated to the Office of the Prosecutor General is insufficient. Prosecutors report that office supplies and building maintenance costs are under funded. Many prosecutors provide their own paper and writing materials. Most of the district level offices are in disrepair. The budget that is approved is sufficient only to cover utilities, salaries, and benefits. Salaries are insufficient to prevent corruption.

Nevertheless, in late 2006 the Office of the Prosecutor General received a supplemental funding allocation earmarked for the purchase of 700 personal computers. Unfortunately, not all of the computers are functional yet and none are networked to an integrated system. Supplemental budget allocations such as this are quite rare.

**Chart 3. Kyrgyz Republic National Budget, Justice and Security Sectors, 2006 and 2007**

Agency of Department	2006 (approved) in thousands of som	2007 (prognosis) in thousands of som
<b>Justice</b>	<b>607 703,6</b>	<b>608 224,1</b>
Constitutional Court	9 874,1	9 935,6
Supreme Court	36 872,5	32 102,2
<b>General Prosecutors' Office</b>	<b>111 615,1 (\$2.94 million)</b>	<b>112 310,3 (\$2.96 million)</b>
Ministry of Justice	39 970,5	40 219,4
Judicial Department	119 729,9	120 483,9
Department of convoy and guard of prisoners of the Ministry of Justice	59 756,0	60 128,2
Court Martial	7 194,1	7 238,9
Central Punishment Board (ГУИН) of the Ministry of Justice	222 691,4	225 805,7
<b>National Security and the Law and Order</b>	<b>1 942 836,5</b>	<b>1 960 541,1</b>
Military Prosecutors' Office	10 472,0	10 537,2
Ministry of Defense	477 413,9	483 316,6
National Security Services	198 706,0	200 586,8
Ministry of Internal Affairs	699 731,6	705 818,9
Frontier Services	406 287,5	409 120,4
National Agency of the Kyrgyz Republic on Corruption Prevention	6 980,6	7 024,1
Agency of the Kyrgyz Republic on Drug Control	26 265,6	26 429,2
Financial Intelligence Services	25 000,0	25 155,7
State Security Services	42 816,5	43 083,2
National Guards	49 162,8	49 469,0

## Factor 26: Resources and Infrastructure

***States provide adequate funding, conditions, and resources to guarantee the proper functioning of the prosecutor's office.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Funding levels do not sufficiently support the prosecution function in the areas of information technology, office automation, facility maintenance, and supplies. Staffing levels may be sufficient for the prosecution of criminal offenses, but not in the oversight of the implementation of legislative acts by the executive.	

### Analysis/Background:

The effective administration of the criminal justice prosecution service depends in large part on the sufficiency of resources allotted for its operations. This includes sufficient personnel, office space, equipment, supplies, and information technology resources.

By order of the 2006 Constitution, the Law on the Procuracy, and the Regulations on Service the Prosecutor General is responsible for managing his Office. However, nearly all respondents stated that the budget of the Prosecutor General is insufficient to effectively administer operations. For the past two years, the budget has been stretched thin to afford all necessary resources.

Regarding office facilities, supplies, and technical resources, several prosecutors commented that the situation is becoming increasingly difficult to endure. Because most of the district office buildings were constructed eighty or more years ago and have been poorly maintained, they are in substantial disrepair and lack adequate heating. As noted, most prosecutors provide their own paper and writing supplies. See Factor 25 on Budgetary Input. Official uniforms, once provided by the state without charge, are increasingly being paid for by staff. The addition of the 700 computers has been helpful because the legal database software program *Tokton* is usually installed. *Id.* However, district prosecutors are still using Russian language legal texts and at no level of the Office are computers connected to the Internet. There are no electronic case file or prison databases.

The issue of staffing levels is more complicated. On one hand, prosecutors argue that their staffing levels are insufficient compared to the number of personnel provided to other criminal justice system agencies. District prosecutors stated that their numbers are 1/10 of those for police at a similar level. In two of Kyrgyzstan's largest districts, prosecutors observed that their numbers are one-half the number of criminal judges, although the official number of judicial positions nationwide is generally agreed to be about 413. According to prosecutors interviewed for this report, Kyrgyzstan has roughly half the number of prosecutors as its neighbor Tajikistan, a country with a similar population and criminal justice system.

On the other hand, the fact that prosecutors are also responsible for the supervision of the execution of legal acts under Article 77 of the 2006 Constitution diminishes the time they actually spend on criminal investigations and prosecutions. Of 721 total prosecutors, only 132, or 21%, participate in prosecutions. *Functional Analysis of the Kyrgyz Criminal Legal System*, DOJ/OPDAT, July 2006, at 14, 17. In no jurisdiction do more than 24% of the prosecutors participate in prosecutions. *Id.* A small polling of prosecutors by OPDAT on June 25, 2006, found that 80% did not feel they were overworked in their jobs. *Id.* Indeed, many of the judges interviewed for this assessment did not believe that prosecutors were overworked, rather that

they lacked sufficient commitment to their jobs. These inconsistent findings may reveal that resources may not be efficiently allocated to criminal investigations and prosecutions.

## Factor 27: Efficiency

***Prosecutors perform their functions expeditiously, in order to achieve the best possible use of available resources.***

***Prosecutors' offices have a written organizational plan to facilitate such efficiency. The prosecutor's office has written guidelines, principles, and criteria for the implementation of criminal justice.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>Although the Prosecutor's Office has recently issued several executive orders to improve efficiency, it confronts numerous challenges including deteriorating facilities, limited office automation, and insufficient staff to support its legally mandated responsibility to oversee the executive branch's implementation of legislative acts.</p>	

### Analysis/Background:

Judging by the plethora of executive orders issued in 2006 by then Prosecutor General Kongantiyev concerning the efficiency and management of the prosecution service, it would appear that improving the functioning of the Office is one of the Government's top priorities. The basis for these executive orders on efficiency and oversight was a 2005 study on the performance of prosecutors' offices throughout the Kyrgyz Republic. According to the text of Order No. 3/6 On Measures Designed to Improve Organization of Work in the Procurator's Offices of the Kyrgyz Republic March 17, 2006, the study revealed that prosecutors failed their mission on several levels. Among the problems cited were the following:

1. Poor analytical work done by supervisory prosecutors;
2. Poor quality of legal documents;
3. Poor management of investigations; and,
4. Poorly drafted assignments and incoherent instructions. *Id.* at 1.

Order No. 3/6 instructed supervisory prosecutors to re-distribute staff workloads, improve quality control for documents, re-arrange staff schedules to reduce the number of meetings, and to develop procedures for more efficient processing of cases and complaints. *Id.*

In subsequent Executive Order No. 12 (*Procuracy Supervision over Compliance with Law, Legitimacy of Normative Legal Acts and Observance of the Rights and Freedoms of Man and Citizen* May, 2006); Executive Order No. 13 (*On the Organization of Review of Complaints and Petitions of Citizens and Appointments to Citizens in Procuracy Agencies of the Kyrgyz Republic*, May 2006), and Executive Order No. 14 (*On Improving Procedures for Procurators' Participation in Criminal and Civil Proceedings*, May 2006), prosecutors are required to better respect the rights of citizens; to be open to interaction with the public; to adopt measures to reduce formalism and red tape in responding to citizens complaints; to address with additional scrutiny repeat complaints about government actions; to evaluate complaint response practices every six months; and in the case of criminal investigations, ensure that they are conducted properly, and that unlawful acts occurring during the investigation are punished.

Despite recognizing that efficiency is an important issue, the prosecution service is hampered by resource and structural barriers. As discussed in Factor 26 on Resources and Infrastructure, resources are limited. Although there is an electronic legal database, *Tokton*, it is not available in all offices. There is no electronic case tracking system, or offender custody electronic tracking system. Instead, prosecutors rely on a manual system based on offenses charged. Prosecutors responding to this factor said that the manual system works fairly well thanks to the dedication of clerk staff who must often work weekends to keep up with case filings. No prosecutor reported that criminal proceedings were delayed because of the manual system. However, it was unclear how a prosecutor in one jurisdiction could ever know if the accused defendant had a prior conviction in another jurisdiction due to the limitations of the local manual system. Regarding trial notes, the court clerk only produces a summary of the proceedings based on his/her own handwritten notes.

Structural barriers also impact efficiency. Prosecutors argue that they are simply overwhelmed by tens of thousands of complaints received every year regarding the implementation of legislative acts by the executive. This constitutional responsibility absorbs tremendous human resources. As discussed in other factors herein, citizens' groups complain that petitions filed with the prosecution service, usually for alleged human rights violations by police, are often ignored or the response delayed. In criminal investigations, inefficiency and duplication of efforts prevail. Since there are approximately eight investigatory bodies, some with competing competencies, including the Office of the Prosecutor General, multiple agencies frequently investigate the same crime without coordination or adequate supervision by a prosecutor. See *generally*, Factor 21 on Interaction with Police and Other Investigatory Agencies.

According to statistics compiled by the Office of the Prosecutor General, the following tables represent the total work product of criminal cases and investigations in 2006. Chart 4 describes the total number of prosecutor approved investigations in 2006. Tables 5 and 6 demonstrate that 15,698 new cases were brought to trial in 2006, of which only 646, 4.1%, were returned for further investigation by the Court. Applying the figure provided by USDOJ/OPDAT of 132 prosecutors engaged in criminal trial litigation, the average trial prosecutor had a new case load of only about 119 files in 2006.<sup>13</sup> See Factor 26 on Resources and Infrastructure.

**Chart 4. Total number of Office of the Prosecutor General approved Investigations, by Investigating Agency, 2006**

<i>Investigating Agency</i>	<i>Initiated criminal Investigations</i>	<i>Total completed Investigations (Sent for Trial +Dismissed)</i>
Prosecutor Office	2754	1602
Ministry of Internal Affairs	25564	24281
Central Administration of punishment performance	1133	634
National Security Service	228	230
Finance Police	555	536
Transportation Service	5	48
Drug Control Agency	153	149
<b>Total:</b>	<b>30 392</b>	<b>27 480</b>

<sup>13</sup> The ABA was not provided conviction or sentencing information.

**Chart 5. Total number of Cases brought to Trial by the Office of the Prosecutor General, by Investigating Agency, 2006**

<i>Investigating Agency</i>	<i>Cases brought to trial by Prosecution - per Investigating Agency</i>
Prosecutor Office	1444
Ministry of Internal Affairs	12925
Central Administration of punishment performance	604
National Security Service	139
Finance Police	403
Transportation Service	38
Drug Control Agency	145
<b>Total:</b>	<b>15 698</b>

**Chart 6. Total number of Cases returned by the Court for further Investigation, by Investigating Agency and by percentage of total Cases presented to Court, 2006**

<i>Investigating Agency</i>	<i>Returned by the Court to correct Prosecution errors</i>	<i>Percentage of returned cases</i>
Prosecutor Office	44	3,0
Ministry of Internal Affairs	522	4,0
Central Administration of punishment performance	n/a	n/a
National Security Service	17	12,2
Finance Police	50	12,4
Transportation Service	7	18,4
Drug Control Agency	6	4,1
<b>Total:</b>	<b>646</b>	<b>4,1</b>

## Factor 28: Compensation and Benefits

*Prosecutors have reasonable compensation and benefits established by law, such as remuneration and pension, proportionate with their role in the administration of justice.*

### **Conclusion**

**Correlation: Negative**

Although fringe benefits appear to be adequate, there have been recent cuts to services and goods once provided. Salaries are too low to retain qualified prosecutors over the long term and make prosecutors susceptible to corruption. The retention of experienced prosecutors is an evolving concern among most senior prosecutors.

### Analysis/Background:

Pursuant to Article 25 of the Regulations on Service, “the official salaries of prosecutors will be established by the President of the Kyrgyz Republic according to the responsibility and complexity degree of their positions and position categories as identified by the Law of the Kyrgyz Republic On Civil Service.” Article 22 of the Law on Civil Service lays out eight general class categories, or ranks, from Junior Inspector through State Counselor. Article 11 of the Regulations on Service lists the following 10 qualification service rankings: “junior jurist; jurist, 3<sup>rd</sup> class; jurist, 2<sup>nd</sup> class; jurist, 1<sup>st</sup> class; justice counselor, 3<sup>rd</sup> class; justice counselor, 2<sup>nd</sup> class; justice counselor, 1<sup>st</sup> class; state justice counselor, 3<sup>rd</sup> class; state justice counselor, 2<sup>nd</sup> class; state justice counselor, 1<sup>st</sup> class.”

The jurist classes represent assistant and senior assistant prosecutors. Generally speaking, the justice counselor classes represent supervisory district, regional, city, and military prosecutors. The final two classes denote the First Deputy and the Prosecutor General. *Id.* Chart 7 represents the estimated monthly salary ranges of all prosecutor levels except the Prosecutor General. It is based on unofficial information provided by the Office of the Prosecutor General in early 2007.

**Chart 7. Monthly Salaries of Prosecutors by rank, 2007 (unofficial estimates)**

<b>Position</b>	<b>Monthly Salary range - som</b>	<b>Monthly Salary range – US\$</b>
Prosecutor General Deputies	10,000 - 12,000	258 – 308
Heads of Departments – Office of PG	7000 – 9000	180 – 231
Regional (oblast) Chief	7000 – 8000	180 – 205
Asst Regional (oblast) pros.	3000 – 4000	77 – 103
District (raion) Chief	5000	128
Asst. District (raion) pros.	2000	51
PG Office jr. pros.	3000 – 5000	77 – 128

In addition to their monthly salaries, prosecutors receive the following benefits under law:

1. 30 - 45 days of annual leave depending on longevity, with allowances for additional leave;
2. Housing allowance and temporary housing when needed;
3. Public transportation certificates;
4. Full pension at retirement;
5. Disability insurance;
6. Complimentary uniforms;

7. Daycare, summer camp, and boarding school for minor dependents; and
8. Home telephone service.

Additional incentives can include an honorary salary raise of 10% for exemplary service or an early class promotion. See *generally*, PROCURACY LAW, Section IV, and *Regulations on Service*, arts. 15, 16, and 25-29.

By all accounts, prosecutor salaries are too low. Nearly all respondents agreed that low salaries have significantly contributed to corruption of all kinds, particularly in the reduction of charges filed, or in the premature closing of investigations. All respondents to this factor stated that for corruption to diminish, prosecutor salaries must be increased. Prosecutors in rural areas complain that housing is no longer provided as it once was. As indicated in Factor 26 on Resources and Infrastructure, uniforms are usually no longer provided by the Office. The low salaries negatively impact the will and motivation of most prosecutors. Accordingly, the aforementioned OPDAT analysis reported that the average level of experience in the office is only about six years. Although many prosecutors do leave the office to pursue more lucrative private careers, supervisory prosecutors believe that the high turnover rates do not yet represent a crisis for the procuracy. They trust that prosecutors are still drawn to the authority and stature of the Office and the opportunity for public service that it provides.



## List of Acronyms

<b>CLE:</b>	<b>Continuing Legal Education</b>
<b>CIS:</b>	<b>Commonwealth of Independent States</b>
<b>CPC:</b>	<b>Criminal Procedure Code</b>
<b>JRI:</b>	<b>Judicial Reform Index</b>
<b>LPRI:</b>	<b>Legal Profession Reform Index</b>
<b>MOI/MIA:</b>	<b>Ministry of Internal Affairs</b>
<b>OSCE:</b>	<b>Organization for Security and Cooperation in Europe</b>
<b>PDC:</b>	<b>Professional Development Center</b>
<b>PRI:</b>	<b>Prosecutorial Reform Index</b>
<b>UNDP:</b>	<b>United Nations Development Program</b>
<b>USAID:</b>	<b>United States Agency for International Development</b>
<b>USDOJ/OPDAT:</b>	<b>Office of Overseas Prosecutorial Development, Assistance and Training (US Department of Justice)</b>