

Report No. 61906-KG

**Kyrgyz Republic Judicial System Diagnostic:  
Measuring Progress and Identifying Needs**



Schweizerische Eidgenossenschaft  
Confédération suisse  
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Confederaziun svizra

**Swiss Cooperation Office in the Kyrgyz Republic**  
**Швейцарское бюро по сотрудничеству в Кыргызской Республике**

**Poverty Reduction and Economic Management Unit**  
**Europe and Central Asia Region**



## CURRENCY EQUIVALENTS

(Exchange Rate Effective May 17, 2011)

Currency Unit	=	SOM
1.00	=	US\$
US\$ 1.00	=	SOM 46.2960

## FISCAL YEAR

January 1 to December 31

## ABBREVIATIONS AND ACRONYMS

ABA	American Bar Association	IT	Information Technology
ABA-CEELI	American Bar Association, Europe and Eurasia Program	JR	Judicial Reform
ABA-ROLI	American Bar Association, Rule of Law Initiative	JTC	Judicial Training Center
ADB	Asian Development Bank	KR	Kyrgyz Republic
ADR	Alternative Dispute Resolution	LARC	Legal Assistance to Rural Citizens
BEEPS	Business Environment and Enterprise Perception Survey	LJR	Legal and Judicial Reform
CHP	Combined Heat and Power Plant	MCC	Millennium Challenge Corporation
CIS	Commonwealth of Independent States	NGO	Non-Governmental Organization
CLE	Continuing Legal Education	OPDAT	US Department of Justice Office of Overseas Prosecutorial Development Assistance and Training
CSAC	Consolidated Structural Adjustment Credit	OSCE	Organization for Security and Cooperation in Europe\
CV	Curriculum Vitae	PDC	Professional Development Center
EBRD	European Bank for Reconstruction and Development	SCIP	Strategic Capital Investment Plan
EU	European Union	UNCITRAL	United Nations Commission on International Trade Law
EU TACIS	European Union Technical Assistance for CIS	UNDP	United Nations Development Programme
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit	USAID	United States Agency for International Development
GRP	Gross Regional Product		
ICA	International Court of Arbitration		

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## **ACKNOWLEDGEMENTS**

This report is a justice sector assessment prepared by the Public Sector and Institutional Reform Cluster of the Poverty Reduction and Economic Management Unit in the Europe and Central Asia Region. The Diagnostic Report was jointly funded by the World Bank and the Swiss Cooperation Office in the Kyrgyz Republic. The ECSPE core team consisted of David Bernstein and Klaus Decker, Task Team Leaders, Davit Melikyan (Public Sector Management Specialist), and Claire Greer (Extended Term Consultant). The Swiss team was led by Andrea Studer, Deputy Country Director, and Elvira Muratalieva. The Team gratefully acknowledges the contributions of Mr. Gerald Thacker (Courthouse Facilities Consultant), Mr. Joel Martin (Judicial Training Consultant) and Mr. Robert Nelson (Dispute Resolution Expert) who provided background and analytical inputs to the Report. The Team also likes to acknowledge the Kyrgyz lawyers that conducted the Commercial Case Diagnostic on behalf of the Legal Assistance to Rural Citizens (LARC) NGO and the SIAR Research and Consulting Agency in Bishkek, Kyrgyzstan for conducting the Court User Survey. The Team thanks Ms. Armanda Çarçani (Program Assistant, ECSPE) for her editorial assistance.

The Team has special thanks for Mr. Roger Robinson and Mr. Alexander Kremer, World Bank Country Managers, Kyrgyzstan and Turkmenistan, for their guidance and support. The Team gratefully acknowledges the support of its colleagues in the World Bank's Bishkek Country Office, Ms. Natalia Pisareva (Senior Economist, ECSPE) for assistance with research and analysis, and Ms. Asel Almanbetova (Team Assistant, ECCKG) for assistance with missions, organizing meetings, tracking down information sources and responding to a variety of other requests. The Team is particularly grateful to the time taken by peer reviewers Mr. Michel Nussbaumer and Mr. Alan Colman, EBRD, and Mr. Charles Undeland (Senior Governance Specialist, SASGP) for their helpful comments and suggestions. The Team would like to thank representatives from other donors, particularly Mr. Dan Deja, Chief of Party, USAID Judicial Reform Assistance Project, for their assistance in providing updated information on their justice sector activities and their willingness to share information and reports. Finally, the Team greatly appreciates the support and assistance provided by various Kyrgyz Government and Judicial officials and other institutional representatives.

## **Foreword**

Most of the work on this report was carried out before the April 2010 events. Indeed, a draft report had been finalized in spring that year. Following the events, the team working on the report decided to utilize the data generated and the analysis that has been carried out to the extent to which it remained meaningful. At the same time, the report was updated in the light of recent developments and newly available information.

### ***Changes in Constitutional and Legislative Framework Relevant for the Justice Sector Prior to 2010***

The constitutional and legislative framework for the functioning of the justice system has undergone a variety of changes in recent years. The 2007 Constitution formalized the independent formulation of the judicial budget as a principle. Subsequently, the Law “About amendments to the Law of the Kyrgyz Republic About Basics of Budget Law” regulating the principles on the formulation of the budget of the judicial system was adopted. The Constitution provided rules for the appointment of judges to the local courts, the Constitutional Court and the Supreme Court until they get age limit and established new judicial institutions such as the Judicial Council and the National Council on Justice Affairs. The law specifying the organization and functioning of these institutions was passed in 2008. Other reforms were carried out as well.

They include a reorganization of the Judicial Department under the Ministry of Justice transferred from the executive branch to the judicial branch by decree of the President. At the same time, the responsibility for the Judicial Training Center was handed over to the Supreme Court. Similarly, the supervision of the enforcement of judicial acts was transferred to the judicial system.

These initiatives have not solved all the challenges facing the justice sector in the Kyrgyz Republic. While some issues were addressed, many remained, and other dysfunctions were simply exacerbated. The legislative acts regulating the legal status of the Judicial Council and the National Council on Justice Affairs (NJCA) lacked clear separation of functions of these two bodies. This led to overlapping functions and inconsistencies. The selection of NCJA members lacked clarity and transparent procedures leading to a perceived politicization of the appointment process and arguably affecting the legitimacy of those who were appointed.

### ***Recent and Current Developments***

On 7 April 2010, the Provisional Government came to power on a wave of mass protests. It took up functions of the President, Government and Parliament and by its decree dismissed the Parliament (Jogorku Kenesh) and the Constitutional Court. The Provisional Government promised that within three months it would implement constitutional reforms, would carry out a referendum on the adoption of a new Constitution, and would hold presidential and parliamentary elections within half a year. This was implemented as promised, because both civil

society and leaders of different social groups had a compelling interest in having legal certainty and to formally legitimize the leadership of the country.

During the political disorders that led to the population's protest actions, break-down of public order, and inter-ethnic violence part of the work of the judicial system came to a stand-still. Indeed, many of the protests targeted the judiciary. The state of emergency, lack of food, transportation, and presence of armed groups did not allow normal functioning and working of both regular citizens and public authorities including justice sector institutions. Judges and court staff did not come to work from 10 to 20 July because of security concerns.

### **Changes to the Constitutional Framework**

On 26 April 2010 the Provisional Government presented a draft of the new Constitution establishing a parliamentary system of Government. The Constitutional Council was established which contained representatives from civil society, businesses, political parties, judges, lawyers etc. After adoption of the new Constitution on 27 June 2010 by popular referendum it became necessary to bring the entire legislation of the country in accordance with the new Constitution. The new Constitution set new rules with respect to the organization and functioning of the judiciary. As a consequence, Kyrgyz legislation regulating the activities of judicial authorities had to be adapted. For instance, the Constitutional Court was dismantled and new institutions such as the Constitutional Chamber of the Supreme Court were created, the National Council on Justice Affairs was renamed into the Council on Selection of Judges and the rules about its set-up and functioning were changed. Some of its functions were transferred to the Judicial Council. Changes were also made in the procedure on the election of the Chair of the Supreme Court and her or his deputies. While the Chair and her or his deputies were previously elected by the Parliament, judges would now elect the Chair and the deputies for a three year term themselves. At the same time, the law does not allow to elect the same judge for these positions for two terms in succession. The situation is similar for chairpersons of local courts.

The Provisional Government justified the elimination of the Constitutional Court by saying that this body had discredited itself during 15 years of existence. In September 2010 the Prosecutor General Office initiated criminal cases based on presumed abuses of power by judges of the Constitutional Court and manifestly illegal decisions with serious consequences. According to the opinion of Prosecutor General's Office the Constitutional Court established in 1993 for protection of the Constitution did not live up to its mandate and facilitated concentration of power in the hands of both President A. Akaev and President K. Bakiev.

The Provisional Government established a working group in order to reduce the time required for Parliament to adopt key laws. The Ministry of Justice coordinated working group activities on the development of draft laws based on an Order of O. Tekebaev, deputy Chair of the Provisional Government, dated 12 July 2010. The European Union and UNDP Projects supporting parliamentary and constitutional reforms, the OSCE, the Soros Foundation, and the British Embassy provided technical assistance to the working group.

The election of the new Parliament took place on 10 October 2010. On 31 March 2011 draft laws regulating the functioning of the judicial system along with other draft laws were submitted to

relevant committees of the Parliament for subsequent adoption by the Parliament. Five draft laws relating to the status of judges, the Supreme Court and local courts, the Council on Selection of Judges, judicial self-governance bodies, and the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic were matter of full consideration by members of the Parliament. At the time of this report, the Parliament considered all abovementioned draft laws in the first reading and provided its comments and proposals on the draft laws.

### **Actions Directly Affecting the Judicial System and Law Enforcement Agencies**

On 28 June, 2010, the President of the Kyrgyz Republic signed a Decree to dismiss the Deputy Chair and six other judges. Also, the Prosecutor General indicated that a commission within the prosecution bodies was preparing materials for the Government to initiate disciplinary sanctions against some judges.

The Judicial Council considered that the dismissals were not in compliance with constitutional provisions. In an official address, the Judicial Council as judicial self-governance body expressed its confidence in strict observance of provisions of the Constitution in resolution of all issues, including personnel issues, in regard with the judiciary of the country. Some international organizations called for the dismissal and appointment process of judges to be adjourned until completion of the constitutional reform and establishment of appointment mechanisms for judges.<sup>1</sup> In the meantime, during the period of May to October 2010, the President of the Kyrgyz Republic dismissed or relieved from the office more than 46 judges of the Supreme Court and local courts.

Also, activities of the National Council on Justice Affairs were cancelled by decision of the President of the Kyrgyz Republic and appointments to vacant judicial positions were made under a Transitional Provision.<sup>2</sup>

With respect to the Public Prosecutor's Office, in accordance with the new Constitution the powers of the Public Prosecutor's Office were revised and specified. The text of article 77 of the old Constitution provided the Prosecutor's Office with a possibility to exercise supervision over exact and uniform observance of laws by all subjects of legal relations. Article 104 of the new Constitution gives it the mandate of supervising the accurate and uniform observance of laws by bodies of executive power, local self-governance bodies and their officials and also criminal prosecution against office-holders in state bodies. The Prosecution Office no longer has the right to exercise supervision and conduct criminal prosecution with regard to private entities, which is considered to be beneficial for the business environment.

### **Overview of Draft Laws Regulating the Functioning of the Judicial System**

This analysis was made on the basis and in accordance with provisions of draft laws regulating the functioning of the judicial system passed by the Parliament in the first hearing. All draft laws

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<sup>1</sup> Letter by the Deputy Director of the Europe and Central Asia Division of Human Rights Watch to Roza Otunbaeva, Head of the Provisional Government of the Kyrgyz Republic.

<sup>2</sup> Decree #107 of the Provisional Government of the Kyrgyz Republic "About approval of the Transitional Provision about filling vacant positions of judges, court chairpersons and their deputies" dated 19 July 2010.



were developed for the purpose of implementation of propositions of the Constitution of the Kyrgyz Republic adopted by referendum on 27 June 2010.

*Draft Law “About the Council on Selection of Judges of the Kyrgyz Republic”*

On 31 March 2011 the Parliament of Kyrgyzstan at its session approved draft law “About the Council on Selection of Judges of the Kyrgyz Republic” in the first hearing. According to the draft law this Council is an independent collegial body established in accordance with the Constitution. The main task of the Council are selection of candidates for vacant positions of judges at the Supreme Court, the Constitutional Chamber of the Supreme Court, local courts, nomination for appointment and transfer (rotation) of local court judges.

The Council conducts a competitive selection for vacant positions and proposes to the President of the Kyrgyz Republic a candidate for nomination in Parliament for the position of a judge of the Supreme Court, judge of the Constitutional Chamber of the Supreme Court, and for appointment to vacant judicial positions at local courts.

In accordance with the draft law the Council consists of judges and representatives of civil society. It has 24 members: eight each from the Judicial Council, the parliamentary majority and the parliamentary opposition. A novelty is that members of Parliament cannot be members of the Council. They can only nominate their representatives from civil society.

Full membership of the Council is approved by the Parliament through roll-call voting with use of registered bulletins. Among the progressive provisions of the draft law are those of article 13, which make the selection process more transparent and open to the public. They also make the use of audio and video recording of the relevant sessions of the Council mandatory.

Article 18 of the draft law determines that the Council’s decisions are taken by open ballot and that they require the majority of votes of the total number of the Council’s members as well as the use of registered bulletins. According to the proposed article 22 Council members should be elected within two months after effectiveness of the Law “About the Council on Selection of Judges”.

*Draft Law of the Kyrgyz Republic “About the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”*

The draft constitutional law defines the composition, competencies and functioning of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic.

In accordance with provisions of the Constitution the Constitutional Chamber is exempted from political duties such as giving opinions about constitutional compliance of elections of the President of the Kyrgyz Republic and giving opinion about impeachment.

New provisions have been introduced empowering the Chamber to give legal opinions about constitutional compliance of international agreements that have not become effective and where Kyrgyzstan is a party. The draft law is innovative with provisions regulating the order of election

of the Chair and deputy Chair, secretary-judge of the Constitutional Chamber and the mechanisms for their dismissal. Age requirements have changed. The minimum age is now 40 (compared to 35 previously). Maximum age is 70 years. Requirements with respect to length of service as a legal professional have been increased from 10 to 15 years. The membership is nine judges.

Previously, the Chair of the Constitutional Court and the deputy were appointed by the President of the Kyrgyz Republic with consent of the Parliament, the judge-secretary was elected by open ballot of the Judges Assembly. In accordance with parts 4 and 5 of Article 97 of the Constitution of the Kyrgyz Republic in the draft law the members of the Court have the right to elect the Chair and deputy Chair through secret ballot. Their terms of service have been reduced to three years without the possibility of holding this position during two successive terms.

The range of subjects with the right to appeal to the Constitutional Chamber has been enlarged. Physical and legal persons are granted access if they deem that laws or any other normative legal acts violate their rights and freedoms recognized by the Constitution.

According to the draft law full membership of the Constitutional Chamber will have to be formed not later than sixty days after the Constitutional Law “About the Constitutional Chamber” becomes effective.

*Draft Law of the Kyrgyz Republic “About Amendments to the Law of the Kyrgyz Republic About the Supreme Court and Local Courts”*

The constitutional changes generated the need for amendments in the law “About the Supreme Court and Local Courts” covering the election of the chairs and deputy chairs of the Supreme Court of the Kyrgyz Republic, courts of the first and the second instances, their competencies, the voting and election procedure, and also grounds for termination. The purpose is to avoid conflict situations and to preserve the interest of all judges. It introduces a new order of voting and establishes a secret rating vote for identification of candidates and elections of the Chair, deputy chairs of the Supreme Court.

A novelty in this draft Law is a provision about the introduction and use of an automated system of case assignment in courts of all instances. The use of this system excludes selective assignment of cases and court materials between judges thereby preventing them from pursuing financial and other interests.

The draft law gives the Chair of the Supreme Court the responsibility to appoint and dismiss, with consent of the Judicial Council, the head of the authorized state body under the Supreme Court that maintains the operations of local courts, i.e. the Judicial Department. In addition the Chair of the Supreme Court appoints and dismisses the head of the Judicial Training Center under the Supreme Court with consent of the Judicial Council. The head of the Judicial Council can be dismissed from post upon request of the Judicial Council based on the results of a review of the annual report. It should be noted that before both head of the Court Department and director of Judicial Training center were appointed by decree of the President of the Kyrgyz Republic.

*Draft Law of the Kyrgyz Republic “About Amendments in the Law of the Kyrgyz Republic “About Judicial Self-Governance Bodies”*

According to article 102 of the Constitution of the Kyrgyz Republic, judicial self-governance is the principle applying to the resolution of any issues relating to the internal functioning of the courts. The Congress of Judges and the Judicial Council were bodies of judicial self-governance in the Kyrgyz Republic before adoption of the new Constitution on 27 June 2010. The Meeting of Judges includes all judges of a specific court and is the primary body of judicial self-governance according to Article 102, part 2 of the Constitution. The amendment also defines its responsibilities. According to the proposed provisions the Meeting of Judges will elect the chair and deputy chair of the Supreme Court, the Constitutional Chamber of the Supreme Court and local courts. They have the power to dismiss them.

The draft law strengthens the position of the Judicial Council. The Council makes proposals about the assignment of qualification ranks to judges of the Kyrgyz Republic, and initiates proposals for early dismissal of judges from the Supreme Court as well as the Constitutional Chamber of the Supreme Court to be passed to Jogorku Kenesh (the Parliament) by the President of the Kyrgyz Republic. The Council also makes proposals to the President of the Kyrgyz Republic about dismissal and relieve of local court judges.

*Draft Law of the Kyrgyz Republic “About Amendments in the Constitutional Law of the Kyrgyz Republic ‘About Status of Judges’”*

The amendments to the current constitutional law comprise the abolition of the Constitutional Court of the Kyrgyz Republic and the creation of the Constitutional Chamber of the Supreme Court; the transformation of the National Council on Justice Affairs into the Council on Selection of judges in accordance with new Constitution; additional rules about duties and rights of judges of the Kyrgyz Republic; changes in the procedure of election of judges, court chairpersons and their deputies; as well as the broadening of grounds for suspension of judicial powers and dismissal of judge. New in this draft law are the provisions about the resignation of judges, their status and the order of temporary engagement of a retired judge in discharge of judicial duty.

The adoption of this law became necessary, because the transition arrangements provide for judges of the Supreme Court and local courts to retain their power until election and appointment of new judges in accordance with new Constitution.

## EXECUTIVE SUMMARY

ES1. The Joint Country Support Strategy for the Kyrgyz Republic (2007-2010) (JCSS), extended in 2008 to cover the period 2009-2011, identified the weak and inefficient Kyrgyz legal and judicial system as contributing to a poor business environment and weak governance.<sup>3</sup> As a result, JCSS partners identified “comprehensive judicial reform” as a program focus and a goal of the JCSS (Goal 2.5: Legal Reform) which was enlarged to include independence for the judicial budget.<sup>4</sup> As part of the JCSS, the World Bank program included the preparation of a “judicial reform study”. In order to implement this program, the World Bank and the Swiss Agency for Development and Cooperation (SDC) agreed to fund this Judicial System Diagnostic conducted by a World Bank Diagnostic Team complemented by international experts in specific sectors. The Diagnostic’s objective is to provide an analysis of the institutional and operational issues and obstacles that constrain the functioning of Kyrgyzstan’s legal and judicial system. The Diagnostic provides recommendations for overcoming key constraints both at the policy and the implementation levels.

ES2. The Kyrgyz Government’s Country Development Strategy 2007-2010 (CDS), updated in 2008 for the period 2009-2011, describes the judicial system as “one of the weakest constituents of public administration” and aims to reform the system in order to improve its effectiveness and independence.<sup>5</sup> The CDS also attaches a prominent role to improving the judicial system in order to combat corruption and the operation of the shadow economy. Where laws are not working, where entrepreneurs and investors do not trust the courts to enforce contract rights or judicial protection of property rights, it is more profitable for them to work in the shadow economy with its established traditions and mechanisms or to avoid investing in Kyrgyzstan at all. As recently as August 2009, the World Bank and European Bank for Reconstruction and Development found that 42 percent of firms operating in Kyrgyzstan, across a broad spectrum of sectors and sizes, felt that the Kyrgyz court system was a problem for doing business in Kyrgyzstan. This was an increase of 4 percent over the results in 2005 and was greater than the regional average for Europe and Central Asia and for the Southern CIS countries.<sup>6</sup> According to the World Economic Forum’s Global Competitiveness Report 2009-2010 the Kyrgyz Republic fares poorly when international business executives were asked to rate the efficiency of the Kyrgyz judicial system in resolving private business disputes; the Kyrgyz system rated 125 out of 133 countries, reflecting a score of 2.6 on a seven point scale.<sup>7</sup>

ES3. In the aftermath of the global financial crisis, the focus on the competitiveness of the Kyrgyz Republic’s investment climate has only heightened. As countries look for ways to attract trade and investment, the ability of their judicial system to resolve commercial disputes in a fair, quick and cost-effective manner and offer secure protection of property rights can be a key attraction or a harmful obstacle in the eyes of newly-risk adverse domestic and foreign

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<sup>3</sup> World Bank, Joint Country Support Strategy for the Kyrgyz Republic (2007 – 2010), May 23, 2007, paras. 89-91.

<sup>4</sup> Joint Country Support Strategy Progress Report for the Kyrgyz Republic for the Period 2007 – 2008 (2009).

<sup>5</sup> Kyrgyz Government, Country Development Strategy (2007-2010), Section 5.2.5. Extension approved by the National Council, February 2009 and signed by the President.

<sup>6</sup> EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) 2008-09, BEEPS-At-A-Glance 2008-09 Kyrgyz Republic (August 2009), <http://go.worldbank.org/RQQXYJ6210>

<sup>7</sup> World Economic Forum, Global Competitiveness Report 2009 – 2010, section 1.09 (2009).

businesses and investors. A focus on the impact of the Kyrgyz Republic's judicial system and the rule of law on the investment climate should have been the responsibility of the Central Agency for Development, Investment and Innovation created in 2009 within the Institute of the President (CADII), as it was charged with formulating policies to improve Kyrgyzstan's business and investment environment and the formulation of national economic development strategies and programs.<sup>8</sup> The CADII was eliminated when state authority passed to the Temporary Government on April 7, 2010 as a result of public unrest. Fulfilling this function will now require the Supreme Court and Judicial Council, in conjunction with the Government, to identify weaknesses in the Kyrgyz judicial system and develop strategies to overcome and address them. The World Bank and SDC believe that this Judicial System Diagnostic will be a useful input as the judicial leadership and the Government undertake to develop the programs and projects necessary to improve the Kyrgyz judicial system.

### **New Data Sources**

ES4. In order to gain a deeper understanding of the role and impact of Kyrgyzstan's judicial system in society and a clear appreciation of the process and procedures used when Kyrgyz courts hear commercial cases the Diagnostic Team commissioned a Court User Survey and Commercial Case File Analysis. The **Court User Survey** covered courts in Bishkek and all seven regional authorities in order to solicit the perceptions and opinions on the operation of the courts and legal system from 500 citizens using the courts.<sup>9</sup> Results from the Survey revealed the following:

- 30.6 percent of company respondents felt that the Kyrgyz judiciary was a problem for doing business in the country;
- Only 30 percent of respondents were satisfied with court enforcement of contracts and only slightly more respondents (34.4 percent) were satisfied with court protection of property rights;
- Court users who came to court to participate in a trial in some fashion were significantly less satisfied with their experience (ranging from 14.3 percent to 40 percent expressing satisfaction) than those people coming to court for more administrative reasons (ranging from 44.8 percent to 57.1 percent satisfied);
- As a result, only 27.2 percent of respondents generally look to Kyrgyz courts as the primary option for resolving disputes while two-thirds prefer negotiations between parties as the primary option;
- Overall less than 2 percent of respondents selected arbitration or mediation as their first choice for resolving disputes with 10 percent generally identifying mediation as a method they would use (these figures change little when limited to commercial disputes); and
- Only 37 percent of respondents were satisfied with the quality and convenience of Kyrgyz courthouses.

ES5. The picture presented from the Court User Survey is one of consistent perceived dissatisfaction with the operation and outcomes from the Kyrgyz judicial system. Equally

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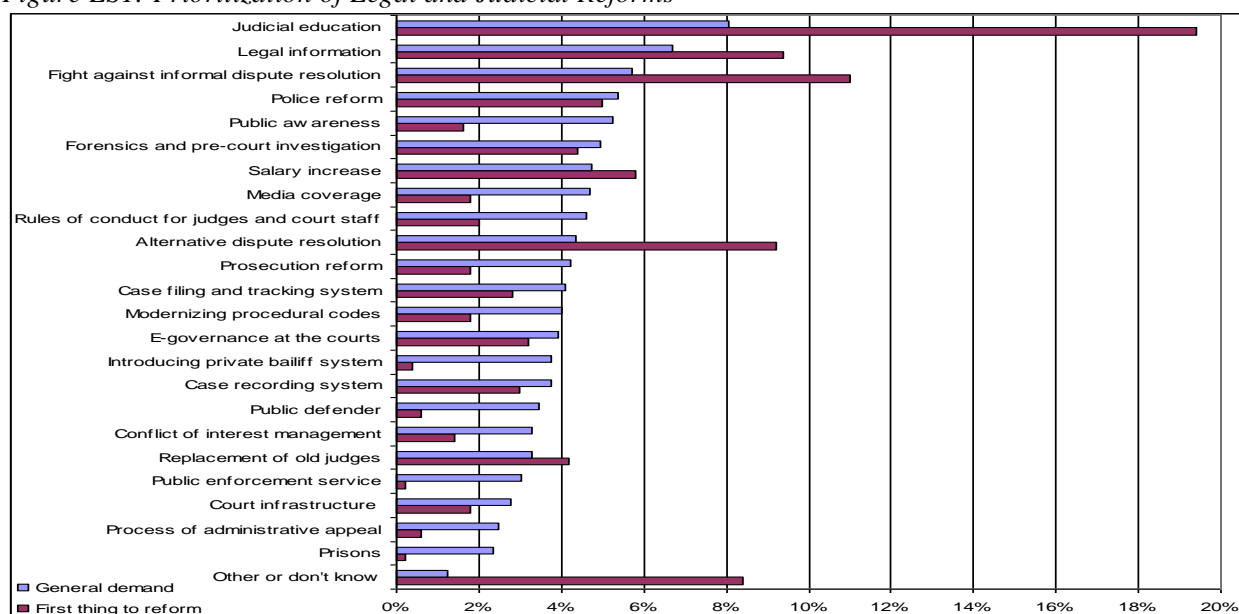
<sup>8</sup> Regulations on the Central Agency of the Kyrgyz Republic for Development, Investment and Innovations, section III, para. 5, approved by Decree #443 of the President of the Kyrgyz Republic (October 26, 2009).

<sup>9</sup> Court User Survey Methodology described in Annex C.

troubling, less than 30 percent of all court users surveyed agreed that Kyrgyz courts were affordable, quick, uncorrupted and able to enforce their decisions. Interestingly, while 63.6 percent of respondents believe that judges follow ethical rules of conduct, only 2.4 percent of respondents identified “honesty” as the first characteristic they would associate with judges. While all justice sector professions fared poorly in this assessment, judges rated worse than prosecutors, police and advocates. Judges were rated highly for objectivity (first characteristic for 55.2 percent of respondents) but were rated at the bottom for “knowledge.”

ES6. This picture provides the Kyrgyz donors and the Government with a snapshot of the issues and problems that require further analysis and attention if the Kyrgyz judicial system is to respond to the demands of businesses and citizens for a fair, efficient and effective dispute resolution method. Respondents were also asked to identify their priorities for future judicial reforms. Figure ES1 provides a full list of the general or weighted demand for judicial reforms. While the Government may not want to strictly follow the priorities identified through the Survey, the results focusing on judicial education, improved access to legal information, reforming informal dispute resolution and raising public awareness of legal rights provide a good roadmap for developing reforms that can have a good impact on public perception of the delivery of legal and judicial services. Interestingly over 50 percent of court users surveyed believe Kyrgyzstan can benefit from international justice reform assistance, though 16 percent believe international assistance will be inefficient in the absence of political will for reform from the Government and judiciary.

*Figure ES1: Prioritization of Legal and Judicial Reforms*



*Source:* Kyrgyz Republic Court User Survey, 2008

ES7. The **Commercial Case File Analysis** provided the Diagnostic Team with a picture of the issues faced by parties in a broad range of economic and commercial cases and allowed for a deeper understanding of the constraints that cut across Kyrgyz courts.<sup>10</sup> This analysis reveals

<sup>10</sup> The Commercial Case File Analysis covered a sample of 385 cases processed in 2006 with a final recorded

that parties to a commercial dispute in Kyrgyzstan face a number of issues when they bring their dispute to court: procedural obstacles (failure to observe legal deadlines/timelines); unclear and conflicting laws; judges who lack sufficient knowledge of new or amended laws and procedures; lack of cooperation with courts by other institutions; and political, financial or other connections used improperly to influence outcomes.

ES8. Procedural issues appeared in nearly 60 percent of all the cases and made up the largest group of observed issues. Institutional problems appeared in approximately 31 percent of the cases and knowledge issues appeared in over 28 percent of the cases. Issues of improper political influence while difficult to detect could be found in almost 2 percent of the cases. Each case revealed approximately 1.5 issues with the greatest number of issues identified in property cases. Over half the cases sampled involved debt collection and over a quarter of the cases fell into the category of “other” commercial cases. Property disputes made up slightly more than 11 percent of the sample.

ES9. According to the Analysis, procedural problems generally fell into three categories: (i) ineffective service of notice of hearing or notice to appear; (ii) failure to provide necessary documents to the court or by the court; and (iii) lack of judicial control over the proceedings through inability (or lack of desire) to enforce existing procedural rules, including time limits, court fees, etc. The **greatest observed procedural problem is the delay in consideration of commercial cases**; only 42 percent of commercial cases are resolved within the statutory time limit of 35 days according to a 2008 functional analysis conducted by USAID.<sup>11</sup> These delays are closely associated with the number of hearings that it takes to resolve a dispute.

ES10. Procedural law allows for the quick settlement of economic disputes. Problems arise as a result of the failure of judges to comply with norms regulating time limits set for economic case consideration. Reforming the Kyrgyz **case management system** could have a big impact on addressing the procedural shortcomings and corresponding backlog. The Kyrgyz Republic’s procedures do not provide for uniform case screening or a case management process that would allow judges and parties to plan ahead for the taking of evidence, the scheduling of hearings, etc. Instead cases are “managed” simply through a series of hearings many of which, as the Case Analysis revealed, have to be cancelled or postponed because of lack of preparation.

ES11. Of the 80 cases that exhibited legal problems, the nature of the problems included: court decisions that were recounted very briefly, judges who did not recite legal norms, and a lack of regulation on the subjects of the dispute. It is therefore impossible to make specific conclusions about the legal norms that the judge has used in making his or her decision. It can be concluded that **some judges do not have adequate knowledge of the norms of material and procedural law, they are overloaded with cases or they do not have the time to provide a detailed account of the court decision.**

ES12. Institutionally, the Analysis uncovered a number of cases in which **the time limits for the provision of information by state and local government bodies (e.g. the state registry, notary offices, ministries and agencies, mayor’s offices, city and village**

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decision selected from all regions of Kyrgyzstan. Annex D describes Analysis’ methodology.

<sup>11</sup> USAID, Functional Analysis of the Kyrgyz Republic Judicial System, p. 5, 2008.

**administrations) were violated** when courts requested necessary documents or evidence. While there were no cases when court inquiries for information were completely ignored, administrative agencies often provided required information in an untimely manner with the court having to make repeated requests for information.

ES13. How a judge uses the procedures and powers under his or her control and how he or she tends to decide cases or motions in favor of one party over another has a significant impact on the enforcement of economic rights. In reviewing economic cases for the Case Analysis, the Diagnostic Team found many cases of judges not fulfilling their responsibilities leaving a general impression that the judges were passive and uninterested in taking control of the cases they heard. Judicial behavior is also influenced by the perception and level of corruption within the judiciary. **Executive branch influence in the judiciary remains an obstacle to improved judicial independence.** According to Freedom House's 2009 Nations in Transit Report<sup>12</sup>, the Kyrgyz Republic's "Judicial Framework and Independence" is rated at 6.0 (on a scale with 1 representing the highest level of democratic progress and 7 the lowest), a fall from the 5.5 rating in 2007. The Case Analysis also turned up cases with evidence of political interference in decisions held in favor of state bodies.

### **Identifying Issues and Obstacles**

ES14. Expert analysis provided detailed assessments a number of sectors in Kyrgyzstan's judicial system. In reviewing opportunities for **legal education and judicial training** the Diagnostic Team noted that opportunities for law students to gain practical legal skills are limited by the lack of clinical courses. Law schools also suffer from a shortage of highly qualified professors (with advanced degrees) and more importantly, a shortage of Kyrgyz language law texts. Corruption also remains a serious problem in the law schools where allegations of admission, grades and diplomas for sale are common place.<sup>13</sup>

ES15. The Judicial Training Center (JTC) for the Kyrgyz Republic, located in Bishkek, has been in operation since 1998. Originally established by the Kyrgyz Judges' Association and the Department of Courts as a unit within the Ministry of Justice, the JTC is now under the direct supervision of the Supreme Court. However, in practice, the Judicial Council has greater influence on JTC operations, working with JTC on curriculum, programming, and budget. Applicants for judgeships must pass a qualifying examination and interview, but continuing legal education is not mandatory for sitting judges, nor is it listed explicitly among the factors considered in judicial promotions. The JTC provides voluntary CLE for sitting judges, training approximately 300 judges per year. The State funds the JTC, but inadequately; donors therefore support the great bulk of its programs. The uncertainty of this funding will need to be overcome if the JTC is to fully implement its proposed Strategic Plan which is designed to ensure the JTC's continued sustainability and allow it to take fuller control over its curriculum which is greatly influenced by donor interests.

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<sup>12</sup> Freedom House, Nations in Transit 2009, p.285 (<http://www.freedomhouse.hu/images/nit2009/kyrgyzstan.pdf>)

<sup>13</sup> See, e.g., A. Aslanbekova, System of Higher Education in Kyrgyzstan to be Reorganized (Central Asia-Caucasus Institute, Johns Hopkins University, Analyst 12/19/2001); Legal Profession Reform Index for Kyrgyzstan (ABA-CEELI, 2004).



ES16. Legislative changes have given Kyrgyz judges authority to sanction investigative actions, including the issuance of arrest warrants, which used to be entirely within the authority of the prosecutor's office. This shift requires not only that judges and prosecutors become familiar with the new law but also understand the implications of this change in the balance of power between them. As a result, this shift in power will require training for judges and prosecutors to understand their altered roles and training to enable advocates to exploit the opportunities for vigorous defense that the change represents. Recent Constitutional and legislative changes developed to increase the independence of the judiciary will require judges to learn how to exercise their independence responsibly. Part of the learning is recognition that judicial independence is not absolute, and that it implies accountability – accountability to the law, to the parties before the court, and to the society at large.

ES17. **Appropriate courthouses** are essential to the efficient functioning of a modern judicial system. Facilities that support, rather than inhibit, the efficient operations of the court; are accessible and inviting to the public; provide security for all users; and display the transparency and dignity of the judicial process, serve as a symbol of the value the government places on the country's judicial system. To function well there must be adequate space in the basic courts of Kyrgyzstan to hold hearings and trials, for judges and their staff to work effectively and safely, and for parties and the public to have ready access to hearings and court documents. An adequate amount of space is needed in order to implement initiatives to increase efficiency and decrease case backlogs in the judiciary. A minimum level of environmental quality—water tight buildings, sufficient power supply to the building and electrical distribution within the building—is necessary for implementing any improvements in use of IT and modern business and case management systems.

ES18. While the President directed the Court Department to take an inventory of existing buildings and develop standards and plans for the construction of new court buildings in mid-2007, lack of adequate funding has required the Kyrgyzstan Government to address only the most critically deteriorated court buildings, rather than executing a program of periodic major reinvestment in building modernization and construction. Despite the efforts of the Court Department to stretch scarce budget funding, Kyrgyzstan's courts are plagued by a long list of building problems:

- Lack of adequate space for offices, courtrooms, holding cells and archives;
- Structurally deteriorating buildings including falling ceilings, damaged floors, cracked walls and leaky windows and roofs (location in a high seismic zone exacerbates many of these problems);
- Electrical systems that are antiquated and many appear to be dangerous;
- Lack of adequate heating systems, water, and toilet facilities, in some locations these utilities do not exist at all; and
- Lack of basic security features including separate circulation paths and basic security systems.

ES19. The condition of Kyrgyzstan's court facilities make it difficult for courts to operate efficiently and with dignity. Poor working conditions have a cost in staff effectiveness and morale and inconvenience to the public. The lack of space for separation of parties has serious

implications for the integrity of court operations and public safety. The successful implementation of any judicial reform or modernization effort on the part of the Government and international donors is directly and negatively affected by the poor condition of Kyrgyzstan's court infrastructure. Most importantly, the poor state of Kyrgyz court facilities serves to undermine citizens' respect for the judiciary and the rule of law.

ES20. The health of the country's judicial system is a critical factor in assessing the implementation of **alternative dispute resolution methods** (ADR). Unfortunately, the Kyrgyz legal and judicial systems continue to operate in an environment that may hinder the expansion of ADR. Notwithstanding this situation, on paper arbitration has made significant progress in the Kyrgyz Republic. In 2002, Kyrgyzstan passed an Arbitration Act which is used for both domestic and international arbitrations and in 2003, an arbitration institute, the International Court of Arbitration, was registered and it is actively pursuing arbitration in Kyrgyzstan. The Institute has published its own arbitration rules and has approximately 190 arbitrators on its rolls. The number of arbitration cases is increasing and as of January 1, 2011 Institute arbitrators handled approximately 280 cases.

ES21. In contrast, while interest in **mediation** is increasing, it is a relatively new concept in the Kyrgyz Republic. While the results of the Court User Survey analyzed above reveal little interest in mediation now, either from individuals or companies, the Survey results show a large majority of respondents that would choose a negotiated settlement as their first choice to resolve a dispute. Given its focus on assisted negotiations led by a trained mediator, mediation, if properly designed, should respond to this stated preference.

### **Summary Recommendations for Reform**

ES22. These recommendations flow from the Diagnostic Team's analysis and assessment of the situation in Kyrgyzstan's judicial system. A complete description of the Team's recommendations is contained in Chapter 3 which ends with a Recommendations Implementation Plan providing a tentative timetable for actions.

#### **1. Institution Building**

ES23. In accordance with the new Constitution adopted on June 27, 2010, substantial institutional changes have taken place in the judicial system. The Constitutional Court and National Council on Justice Affairs were dissolved and instead the Constitutional Chamber within the Supreme Court and the Council for Judicial Selection will be created. Several innovations for strengthening the independence of the judicial system were included as well. **How thoroughly and quickly the Kyrgyz Government implements the provisions of the Constitution adopted in June 2010 will be a measure of the seriousness and direction of its judicial reform efforts.** Strengthening the judicial self-governing institutions, including the Judicial Council, the Council for Judicial Selection and Court Department is critical to implementing the judicial structures. These institutions can strengthen the independence of the judiciary from the executive branch and improve its effectiveness and transparency.

ES24. In light of the history of corruption and continuing concerns about Presidential influence over the judiciary, **the judicial self-governing bodies will require strong leadership to take clear independent actions in the face of pro-executive tendencies that they are likely to experience.**<sup>14</sup> One objective for these bodies should be to clarify the laws and regulations governing judicial conduct, including judicial ethics and the disciplinary process. Strong discipline against abuse of power and public acknowledgement of judicial misconduct will be required for improved judicial independence and an improved public perception of how judges operate and behave. The recent strong disciplinary actions taken by the Judicial Council in response to complaints against judges are a positive sign in this direction.<sup>15</sup> Judicial independence must mean more than freedom from control by other branches of government. **An independent judiciary is one that earns the respect and deference of other branches and the public by taking seriously its responsibility to discipline itself and be accountable for its actions and decisions.** Corruption and its perception by the public can also be combated by the Council for Judicial Selection's transparent and objective control over the judicial selection process, decreasing the Presidency's discretionary power to inject politics into the selection process.

ES25. **Sufficient state funding for the self-governing institutions is a prerequisite to the full and effective functioning of an independent judicial system.** The Court Department requires a trained staff and sufficient financial support to provide effective administrative support to the courts. The Judicial Training Center must receive sufficient support and an adequate, sustainable budget if it is to serve the role of ensuring qualified judicial candidates and raising the level of professionalism throughout the judiciary. To work towards a fully functioning judiciary that is free from corruption and other outside influences, the Kyrgyz Government should review the compensation levels for judges and court administrative staff. While salaries for judges have recently been increased, they remain relatively low and contribute to corruption in the judiciary.<sup>16</sup> Compensation levels could be increased in conjunction with the Court Department's efforts to measure and evaluate judicial performance through the development of **specific performance indicators that reward those judges that are most efficient and productive.**

## **2. Improving the Processing of Economic Cases**

ES26. It is recommended that the time set out to dispose of economic cases under the Civil Procedure Code should be analyzed to consider the obstacles that prevent economic cases from being disposed within the current 35-day limit. This review process should also consider ways to reduce parties' ability to seek adjournments or postponements of trials. Simultaneously, courts should **decide on a uniform method for improving the delivery of summons and notices** (e.g. through the creation of court units or the use of private delivery services) and move to adopt and implement it quickly, through changes in the Civil Procedure Code if necessary.

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<sup>14</sup> The recent reorganization of the Government and Presidential administration is an example of the centralization and consolidation of power that the Kyrgyz judicial self-governing institutions will need to offset.

<sup>15</sup> Fifty-nine judges sanctioned out of a review of 396 complaints, including 14 judges dismissed.

<sup>16</sup> "Judicial Reform Index for Kyrgyzstan", p.17, ABA-CEELI, 2003.

ES27. Improving case management will require the development of standards for case processing time, requirement for early case screening (to determine complexity and therefore assignment to specialized departments once they are established) and early settlement discussions, development of a uniform trial postponement policy and improved court control over continuances. The development of these case management policies and processes will depend on the collection, compilation and dissemination of systemic case management data and statistics. Improved court information technology hardware and software can assist in this process. The sustained rollout and mandatory use of the Court Information Management System, with random case assignment and the publication of court decisions, should create a good foundation for improved efficiency and transparency. However, **proper sequencing of case management reforms is crucial.**

ES28. In order to address state institutions' delays and disputes with judicial requests and orders, the Diagnostic Team recommends that the Government work closely to ensure that administrative bodies have sufficient understanding of court rules and procedures to comply with them. The judiciary can improve this situation through the consistent imposition of courts fines and penalties on organizations that violate the procedures set for responding to judicial requests.

### **3. Building Human Capacity**

ES29. It is clear that law students and legal professionals in the Kyrgyz Republic will benefit from improvements in their education. In light of the new demands of international law, the complexities of changing and sometimes contradictory domestic law, and the importance of strengthening the nascent separation of powers between the executive and judicial branches, continuing education is not just a benefit but a necessity. A number of steps can be taken to improve legal education and judicial training.

ES30. The process of licensing and accrediting law schools should be objective, fair, and transparent, and should encourage innovative approaches to legal studies. In order to improve law students' practical skills – oral and written advocacy, organization and presentation of a case, drafting of contracts – law schools should provide more opportunities for clinical courses.

ES31. **The Judicial Congress and Judicial Council should establish a program of continuing legal education and hold judges to it** through the inclusion of training requirements in the judicial evaluation process. Part of judicial accountability is the duty to remain current with the law, and judges should require it of themselves.

ES32. **The Judicial Training Center should fully implement its proposed Strategic Plan in order to ensure its survival and for its curriculum.** The JTC should develop a one-year, five-year, and ten-year plan which will direct its efforts and maximize its resources. The near-term plan should show how the JTC will finance, furnish, and use the physical space that the government has pledged to provide. The plans should lay out a curriculum which addresses the needs of the judiciary for initial pre-appointment training and for continuing education. A longer-range plan must show how the Government will provide most of the Center's support, with donor assistance at the margins. The proposed Strategic Plan is a comprehensive and detailed effort to guide the development of the JTC. However, its implementation will require

support and coordination from the other branches of government and clear financial commitments.

#### 4. Rebuilding Modern Judicial Infrastructure

ES33. The age, deteriorated state, lack of needed space (and the difficulty of expanding existing buildings), and the lack of basic building systems in Kyrgyz courthouses **make it unlikely that any current facility can be upgraded economically to a functional, modern court facility.**<sup>17</sup> Any continued investment in the existing inventory should be limited to necessary repairs to prevent further structural deterioration.

ES34. The first step in rebuilding Kyrgyzstan's judicial infrastructure should be the **development of a Strategic Capital Investment Plan (SCIP)**. The SCIP will focus on the functional needs of the modernized Judiciary, take advantage of best practices in courthouse design in other countries, and include, as an integral part of all activities, consultation with the users of the court facilities (judges, court staff, attorneys, and citizens) in order to build a strong consensus for the Plan. The SCIP should include: (i) architectural and engineering design standards, including those recently adopted by Government Resolution; (ii) inventory of existing facilities; (iii) costs and strategies for sustainable operation, maintenance and replacement; (iv) criteria for priorities investments; (v) multi-year capital investment program; and (vi) a detailed project schedule.

#### 5. Piloting Mandatory Mediation in the Courts

ES35. The Diagnostic Team **recommends that greater use of the ADR methods of mediation and arbitration be encouraged in Kyrgyzstan.** Mediation, in particular, will provide citizens with a relatively inexpensive and speedy method of dispute resolution. In order to test the viability of an increased use of mediation, the Team recommends that a First Instance District Court in Bishkek be designated to adopt a court rule that would require parties to participate in a mediation process as a precursor to having their claims heard in the Court. The pilot will attach mediation to the court system through a compulsory procedure. In such a compulsory mediation system, all disputes in the courts are automatically referred to mediation provided they do not fall within an exempt class, such as bankruptcy and cases involving the Government of Kyrgyzstan. If successful, this requirement could be rolled out over time and in phases to other Kyrgyz courts.

ES36. As a first step in introducing a pilot, the Diagnostic Team recommends that a mediation law, based on the UNCITRAL Model Law on Mediation, be created. The essential features of UNCITRAL Model Law on Mediation that should be included in a Kyrgyz law are: (i) the parties select one or more mediators; (ii) a mediator must be impartial and independent; (iii) a mediator must disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence; (iv) the parties are free to agree on the manner in which the mediation will be conducted; and (v) all information relating to the mediation proceeding shall

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<sup>17</sup> This conclusion is based on the assumption that the courthouses visited by the Diagnostic Team are representative of the entire inventory as was portrayed by the Team's Court Department counterparts.

be kept confidential. Mediation's legitimacy among the legal community can be reinforced by including the mediation procedure within the Kyrgyz Civil Code.

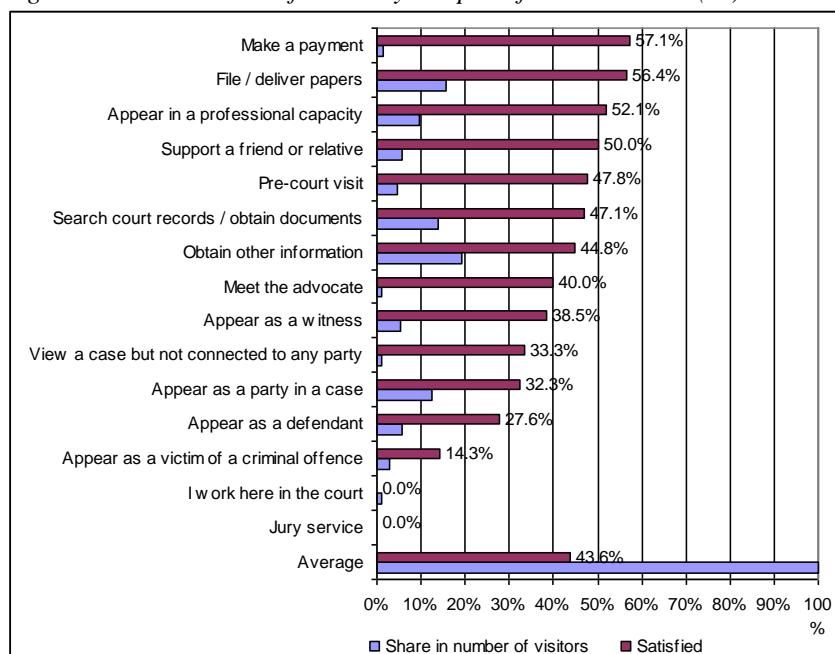
## 1. PERCEPTIONS OF THE KYRGYZ JUDICIAL SYSTEM: A COURT USER SURVEY

1. In order to develop a “picture” of the Kyrgyz judicial system the Diagnostic Team engaged a local survey firm to conduct a public survey of people using the Kyrgyz court system. This Court User Survey was conducted in the spring of 2008 and covered Bishkek and Kyrgyzstan’s seven regions. The Survey focused both on people using the courts and more specifically on those people that work in the judicial system. (See Annex C for description of survey methodology.) The Survey results report the perceptions of Kyrgyz citizens using and going to the courts. While the results represent opinions that are hard if not impossible to verify independently, they do describe what people think about the services that are being provided by Kyrgyz courts and about the people and infrastructure operating within this system. As such, the Diagnostic Team has summarized a number of the more interesting results in this chapter and an overall description of the result is contained in the “Kyrgyz Courts At-A-Glance” table found at the end of this chapter.

### A. Court User Profiles and Satisfaction with the Courts

2. Official judicial statistics report information on the number of cases by type and geography, number of judges per court, and many other details about the judicial system. However, this information is not sufficient to gain an understanding of how public perceptions of the judiciary are related to everyday operation of the courts. An important aspect for understanding this relationship is having information on the frequency and purpose of court visits. The random sample of 500 visitors used in the Court User Survey makes it clear that people most frequently come to the court to file (15.6 percent) or obtain (33.2 percent) documents or information. As shown in Figure 1, while 56.4 percent of visitors are satisfied with the relevant services for filing papers, obtaining documents is more difficult and visitor satisfaction goes down to 47.1 percent for court records and 44.8 percent for other information.

Figure 1: Outcome Satisfaction by Purpose for Court Visit (%)



Source: Kyrgyz Republic Court User Survey, 2008

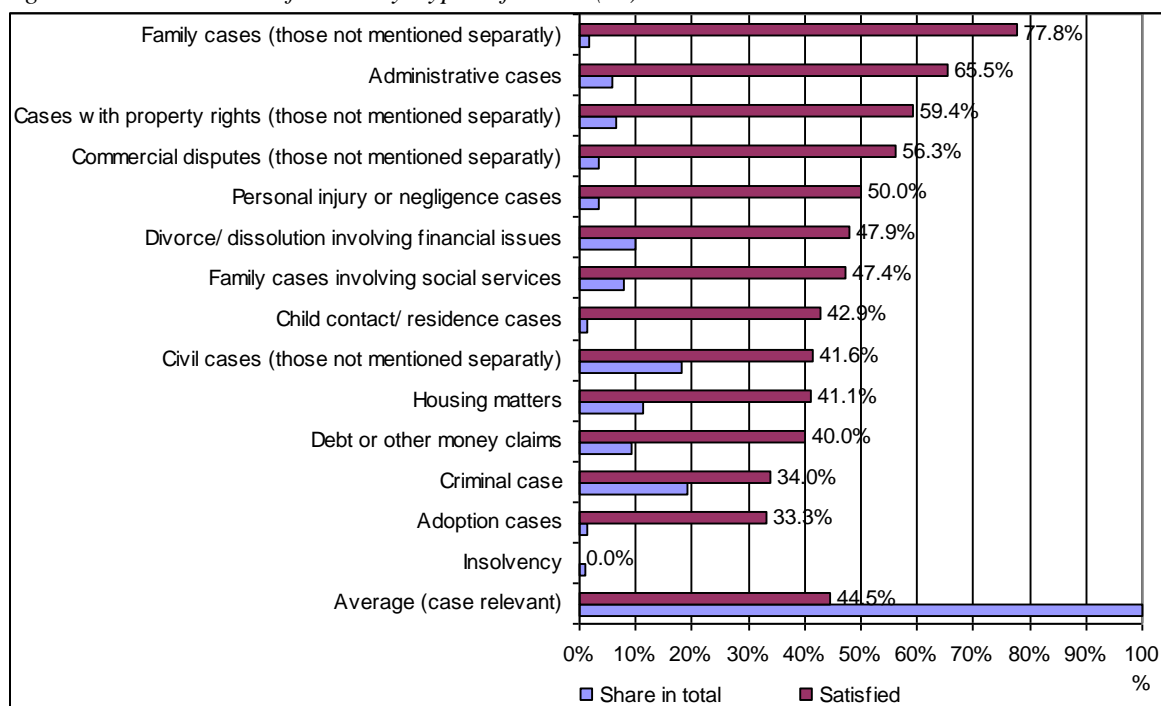
satisfaction goes down to 47.1 percent for court records and 44.8 percent for other information.

People who appear in courts in a professional capacity (9.6 percent of the sample) or those who come to support other people (5.6 percent of the sample) are almost equally satisfied with the court services.

3. Court users who participated in a trial in one way or another were significantly less satisfied with their experience with results ranging from 14.3-40 percent. (Figure 1). Interestingly, there was very little difference in the low level of satisfaction with the quality and fairness of trials for visitors who were not directly connected to a party (1.2 percent of sample) at 33.3 percent compared to those visitors who were parties to a trial at 32.3 percent. This is strong evidence of **a consistent perceived dissatisfaction with the fairness of trials** on behalf of court users regardless of whether they are parties to the case (or affiliated with the parties) or not.

4. Court user satisfaction varies according to the type of case. (Figure 2 below). Satisfaction with trial outcomes was above 50 percent for less sensitive family, administrative and property rights cases and commercial disputes. However, divorce cases involving financial issues or family cases involving social services or child contact or residence issues result in a much lower court user satisfaction rate. This may be explained by the high stakes and emotions involved in these cases which result in greater dissatisfaction for the losing side. Overall only 44.5 percent of respondents were very or somewhat satisfied with the outcome of their cases.

*Figure 2: Outcome Satisfaction by Types of Cases (%)*



**Note:** In this figure 10 people working at courts were excluded from the total number of respondents, which explains the 44.5% average satisfaction versus the general 43.6% average indicated in other figures.

**Source:** Kyrgyz Republic Court User Survey, 2008

5. Kyrgyz nationals made up 69.6 percent of the respondents. Russians and Uzbeks made respectively 17 percent and 7 percent of the sample. None of the other national minorities reached 2 percent of the sample. The Kyrgyz and Russian populations seem to be relatively

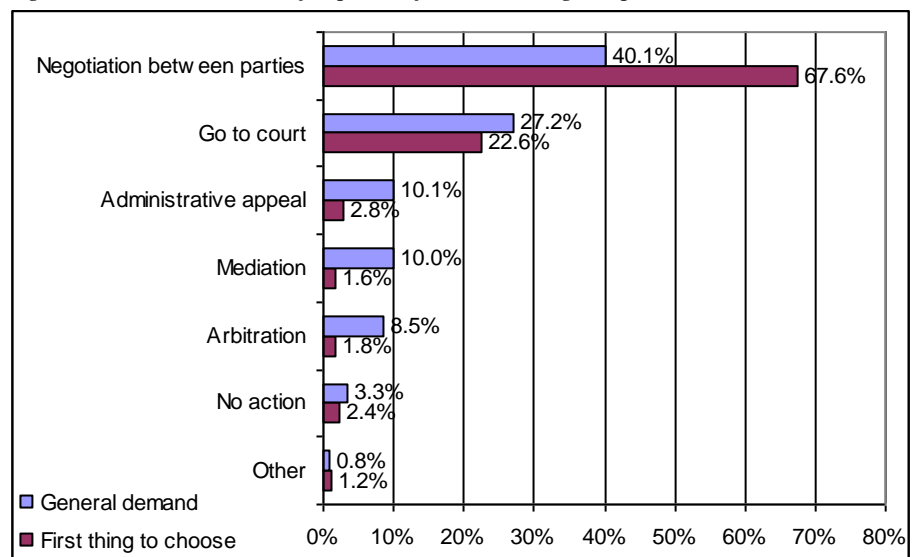


more satisfied (46 percent and 42.4 percent respectively) than minorities groups such as Tatars, Uzbeks and Uhiugurs (all below the 40 percent level), but the Survey did not provide enough information to determine whether this difference is a result of discrimination.

## B. Dispute Resolution Methods

6. The measure of the competitiveness of courts vis-a-vis other dispute resolution mechanisms is reflected through society's demand for alternative methods for resolving disputes. According to the Survey over two-thirds of respondents (67.6 percent) would prefer to resolve disputes through negotiation with the other party as a first choice. (Figure 3). Only 22.6 percent of respondents would prefer to go directly to court as a first choice. For private firms, however, going to court is more preferable with 30 percent of private companies considering it as their first choice. (See Table 1 below.) It is noteworthy that, while none of the companies prefer arbitration as their first choice, 5 percent of companies do cite mediation as their first choice. Overall less than 2 percent of respondents selected arbitration or mediation as their first choice. Going to court is the second choice overall among all respondents. Companies and NGOs have different preferences from individuals. These results are based on a snapshot of respondents' first preferences. Further analysis of the full ranking and summary based on the construction of weighted scores of the priority of different choices<sup>18</sup> reveals that the "general demand" may diverge from respondents' first choice. When looking at

Figure 3: Prioritization of Options for Resolving Disputes



Source: Kyrgyz Republic Court User Survey, 2008

<sup>18</sup> For a number of questions covering a range of topics, respondents were asked to rank the importance of various institutions, practices, instruments, etc. For the purposes of this study such prioritization is reported in two ways:

- First priority cases: these indicators report the proportion of respondents that indicated a particular option as being the "first source", "first thing to choose", "first way to...", etc.
- Weighted scores: these indicators report the general assessment, demand or preference based on weighted differentiated scores depending on priority level. In this indicator the least prioritized rankings get a weight equal to 1 and rankings considering the same option with a higher priority increase the weight in 1 point steps. The overall score of each option is then calculated as a sum-product of rankings and the number of respondents who indicated the same ranks. Then the likelihood of each kind of indicator is obtained by calculating the share of the score for one option as percentage of the sum of the similar scores for the full set of alternative options.

In many cases the two rankings are close enough in terms of sequence, but the general assessment usually gives a more balanced picture of court user preferences.

general demand, mediation and arbitration switch their places in the ranking and taking no action becomes the last choice from the reported options.

7. Similar differences are also observed when comparing first choices and the general demand for methods to resolve disputes by type of case (family, commercial, administrative, etc.). (See Figures 4 and 5 below.) The relative readiness of companies to resolve disputes in court corresponds to a similar approach regarding commercial disputes. A thorough review of commercial cases is given below and provides a clearer picture of how commercial cases are processed in Kyrgyz courts by type of respondent.

*Table 1: Preferences for Resolving Commercial Disputes*

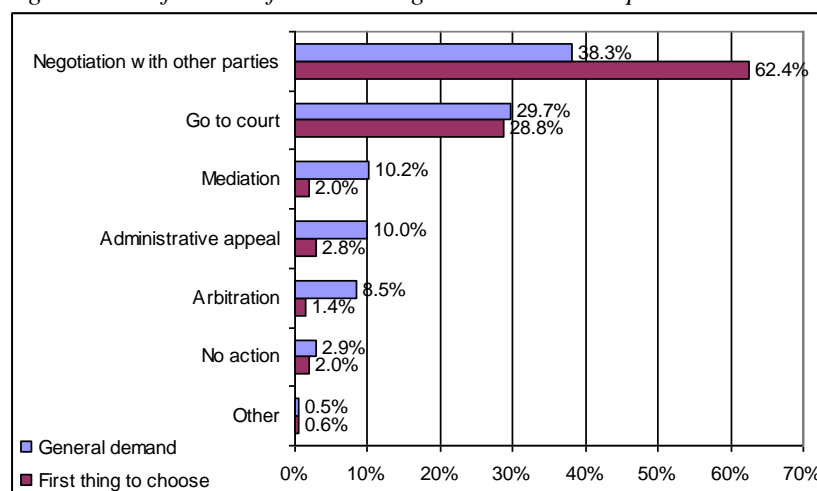
Priority #	Type of Dispute Resolution	Individuals	Companies	NGOs	Public Entities/ Serv.	In General
1	Negotiation between parties	61.1%	70.0%	71.4%	100.0%	62.4%
2	Go to court	29.4%	30.0%	23.8%	0.0%	28.8%
3	Administrative appeal	3.1%	0.0%	0.0%	0.0%	2.8%
4	No action	2.0%	0.0%	4.8%	0.0%	2.0%
5	Mediation	2.2%	0.0%	0.0%	0.0%	2.0%
6	Arbitration	1.5%	0.0%	0.0%	0.0%	1.4%
7	Other	0.7%	0.0%	0.0%	0.0%	0.6%

*Source:* Kyrgyz Republic Court User Survey, 2008

8. Although there is some demand for mediation and arbitration services among all respondents in general, compared with that for administrative appeal, it is notable that there is little interest by commercial companies, who should normally be the main consumers of these services.

9. In the case of administrative disputes, (Figure 5) though going to court is more popular on average, with 42.4 percent of respondents considering it as a first choice, for

*Figure 4: Preferences for Resolving Commercial Disputes*



*Source:* Kyrgyz Republic Court User Survey, 2008

private companies the same indicator jumps to 65 percent. Because these disputes generally pit a private interest against the State, it is reasonable to expect private entities, individuals and companies, to seek a formal third party like a judge to resolve these disputes.

10. It is noteworthy that while resorting to offering a bribe to resolve an administrative dispute is the fourth choice overall, and only 4.8 percent of people would try this option as their first choice to resolve administrative disputes, in principle 28.6 percent of respondents were

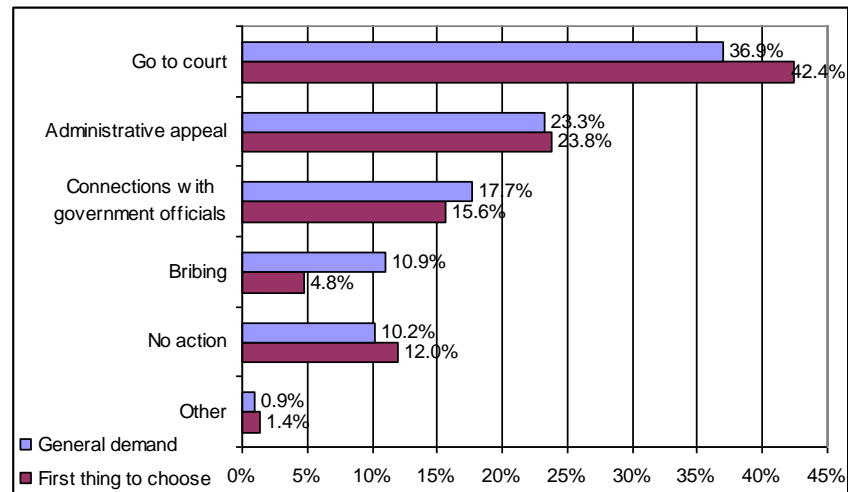
ready to offer a bribe or use personal connections when they have disputes with authorities. It should be noted that bribery in administrative cases may involve officials other than judges and may occur before cases reach court.

11. When it comes to family disputes, going to court becomes a less attractive option. Only 9.3 percent of individuals consider this as the first

option, which is comparable to the general response from all respondents. The first option for individuals in family disputes is for negotiation between parties (68.2 percent). Around 14 percent of surveyed people would consider taking no action to resolve these disputes.

12. Court user preferences to resolve non-family civil disputes (e.g. property rights, etc.) are led by negotiations between the parties (first choice for 70 percent of companies and 60.2 percent for all respondents). Individuals are more inclined to resolve these disputes in courts (27.4 percent versus 20 percent of companies). Companies show the greatest interest in mediation amongst respondents, with 5 percent considering it as a first choice.

Figure 5: Preferences for Resolving Administrative Disputes



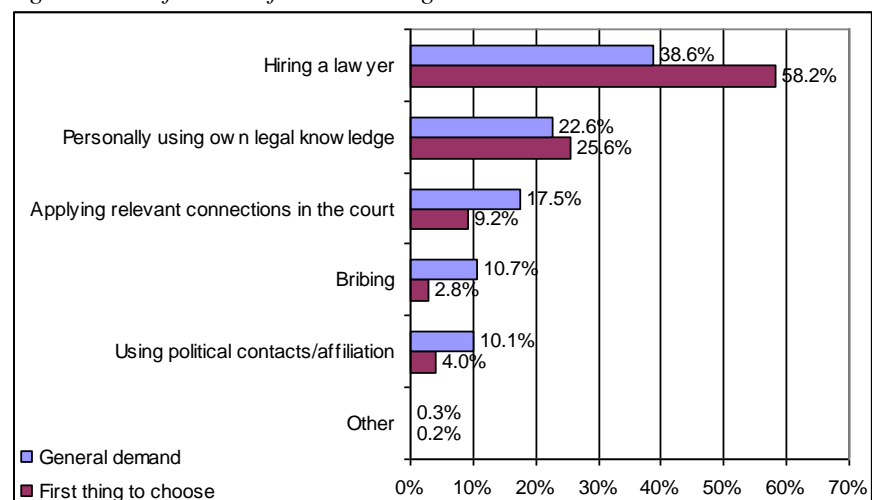
Source: Kyrgyz Republic Court User Survey, 2008

## C. Evaluating Court Services

### 1. Protecting interests in court

13. When a case is filed in the court, almost 58.2 percent of court users prefer to hire a lawyer to represent their interests as a first option. (See Figure 6). Another 25.6 percent prefer to represent their interests personally because they feel confident in their knowledge. This is evidenced by the fact that respondents with a higher level of education reflected more confidence and willingness to represent themselves in court as a first option. Although using personal

Figure 6: Preferences for Protecting Interests at Court



Source: Kyrgyz Republic Court User Survey, 2008

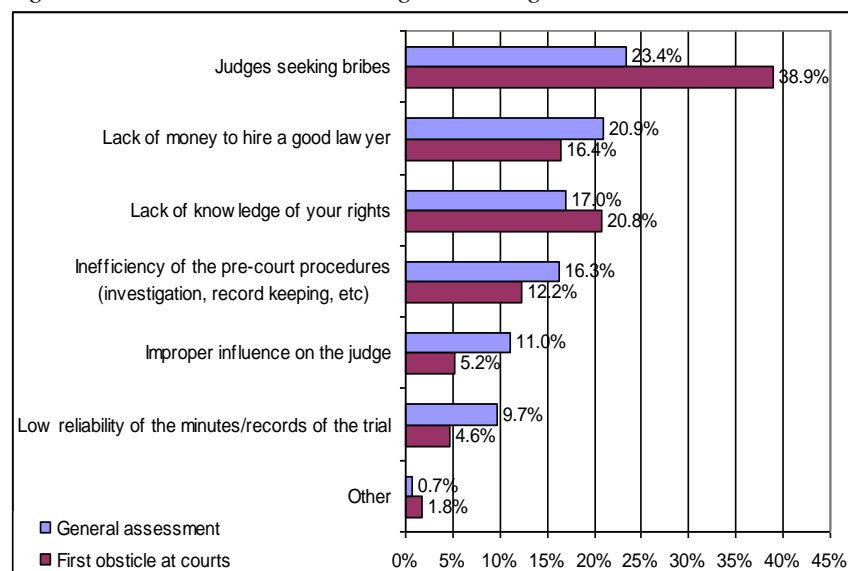
Although using personal

connections or bribing judges is not the first choice of action for most respondents, more than one in ten respondents (10.7 percent) would use a bribe to “win” their case as a general preference. While only slightly less (9.2 percent) would consider using connections to influence court decisions as a first choice and 17.5 percent of respondents would use these connections as a general preference.

14. The general demand for the possible solutions at courts is mostly in-line with the snapshot of first priorities with the exception that in general people will try to apply political affiliation almost as often as they will try to bribe judges though political contacts are preferred as a first priority more than bribing. By the time people get to court more of them are ready to consider bribery. Of the 30.6 percent of respondents who would offer a bribe to resolve an administrative dispute, 35 percent of them would consider bribing the judge once the case reaches the court. One purpose of bribery in courts could be to ensure a certain judge hears your case: Although 54.2 percent of court users believe that there is an objective mechanism for case assignment, at least 15.6 percent of respondents believe personal connections and the influence of judges are decisive when cases are assigned to particular judges, allowing room for parties to influence this process.

15. Rent seeking behavior of judges, lack of money to hire lawyers and a lack of legal awareness are the primary obstacles for protecting legitimate interests at court (Figure 7). Over one-third of all respondents (34.4 percent) perceived an improper influence on the judge – whether financial or other pressure – as a general obstacle to the legitimate operation of the courts. An additional third of the respondents (37.9 percent) felt that they lacked the resources – money and information – necessary to seek court protection of their interests. These results point to areas where legal aid and improved access to legal information could

Figure 7: Obstacles to Protect Legitimate Rights at Courts



Source: Kyrgyz Republic Court User Survey, 2008

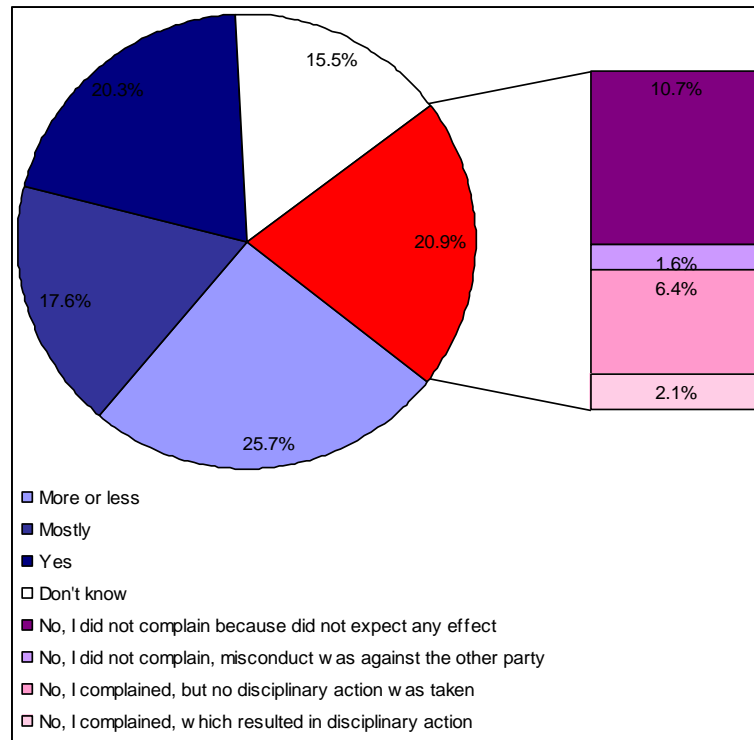
have a direct impact on people’s use and perception of Kyrgyz courts. Lastly, over one quarter of respondents (26.3 percent) felt that inefficient and ineffective court procedures and processes were a general obstacle to their belief in the usefulness of Kyrgyzstan’s courts.

## 2. Honesty in the courts

16. According to the Court User Survey 63.6 percent of respondents believe that judges follow ethical rules of conduct, while 20.9 percent stated that they observed violations of these

norms. (Figure 8). However, only 8.5 percent of these respondents complained about judges' improper behavior. Of those that complained, disciplinary action against the judge was taken in only about one quarter of the cases. These results could point to a need for more transparent and objective methods for handling complaints against judicial conduct.

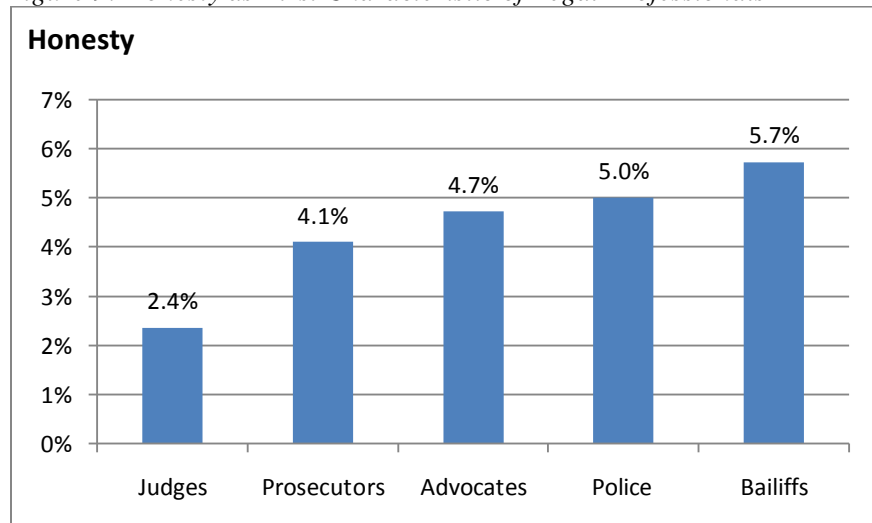
*Figure 8: Judges Follow Rules of Conduct (Ethics)*



Source: Kyrgyz Republic Court User Survey, 2008

17. Another way of looking at the issue of corruption and judicial ethics in court is to identify whether court users believe that judges are honest and compare this to their views of other legal professionals. In the Court User Survey only 2.4 percent of respondents identified “honesty” as the first characteristic they associate with judges. (Figure 9). When compared with other legal professions, respondents found judges to be the least honest of all; though no member of

*Figure 9: Honesty as First Characteristic of Legal Professionals*



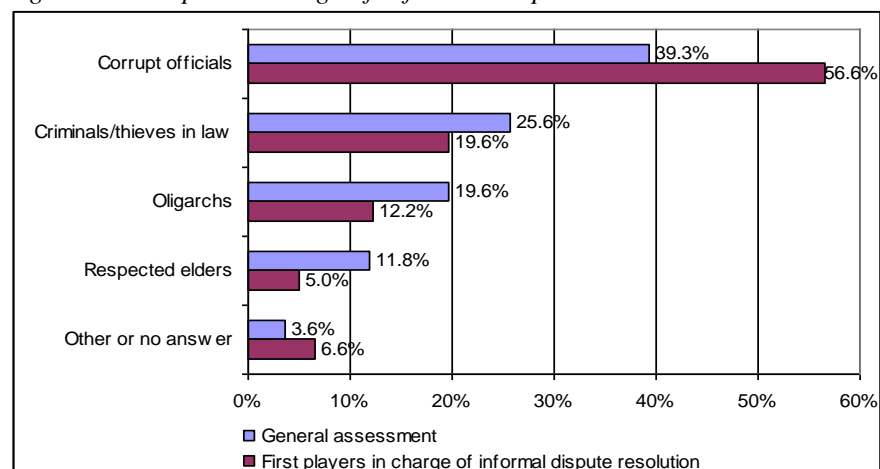
Source: Kyrgyz Republic Court User Survey, 2008

the legal profession crossed the 6 percent threshold for respondents listing honesty as a first characteristic. These results point to a broadly held negative perception of all legal professions and very low respect and appreciation of those professionals working in the legal and judicial sector.

18. In contrast, 55.2 percent of respondents indicated objectivity as the first feature characterizing the judges, placing judges ahead of advocates, bailiffs, prosecutors and police for this characteristic. Unfortunately, court users rated judges at the bottom of the list in terms of knowledge as well as honesty. While these results only measure the perceptions of respondents and not the actual behavior of the officials/professionals, they still point to a large gap between with what one would expect to find in a judicial and legal system and what respondents actually find in practice. These results identify a strong need for strengthened legal and ethical training not just for judges but all actors in Kyrgyzstan’s justice system.

19. Another troubling result from the Survey is the perception that “informal” dispute resolution is managed either by corrupt officials, criminals or oligarchs. (Figure 10). From this we could conclude that when people refer to informal methods of resolving disputes they are actually referring to corruption or illegal (and possibly violent) alternatives to courts.

*Figure 10: People in Charge of Informal Dispute Resolution*

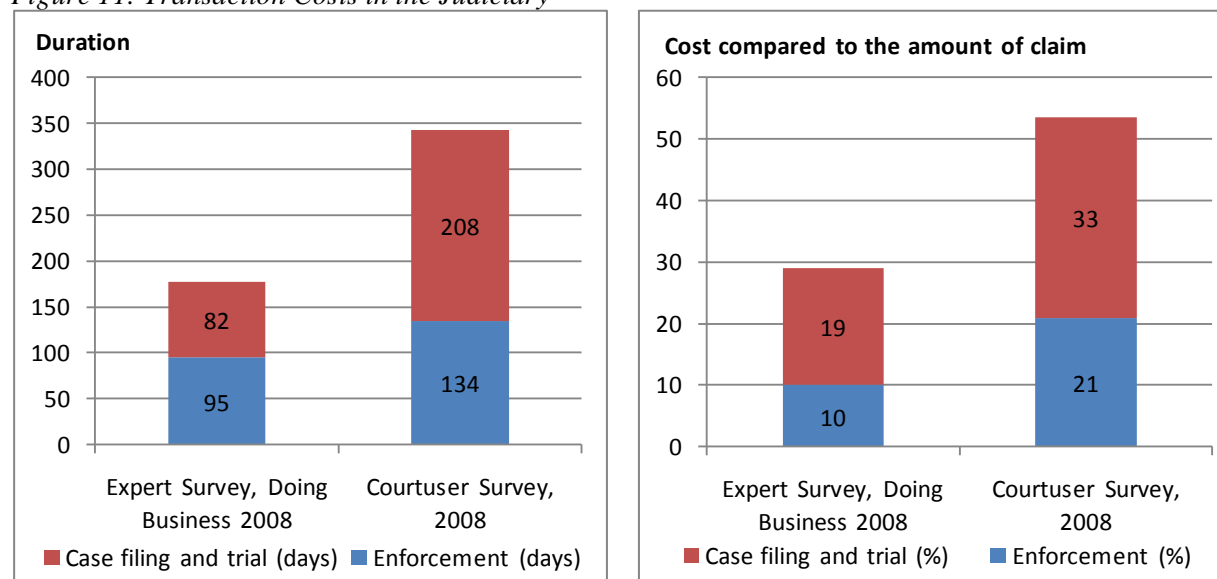


Source: Kyrgyz Republic Court User Survey, 2008

### 3. Cost of using costs

20. The Court User Survey questionnaire included a number of questions asking respondents to share information about the transaction costs (time and money) and final outcome (compensation) from their experience with different dispute resolution methods. Though very few respondents reported details for dispute resolution mechanisms other than courts making the results less reliable, we find it useful to aggregate this information in Figure 11 and draw some tentative comparisons among available dispute resolution options.

Figure 11: Transaction Costs in the Judiciary



Source: Doing Business 2008 and Kyrgyz Republic Court User Survey, 2008

21. There are a number of possible explanations for the wide variance between the results found in the Court User Survey and those from the Doing Business expert survey. First, the Survey may capture both formal and informal payments, so this could explain the higher cost for cases in relation to recovery found in the Survey. Second, the Doing Business analysis is limited to a “typical” debt recovery case while the Survey captures results from a range of cases: commercial, civil, property as well as family and administrative cases that may involve financial interests. Lastly, the variety of cases captured by the Court User Survey also impacts the average length of time for completing a case as reported by the respondents which could explain the large difference with the Doing Business results.

#### D. Overall Perceptions of Courts

22. As part of the Survey respondents were asked to classify how often they felt that courts exhibited certain specific characteristics: “affordability”, “quickness”, “honesty or being uncorrupted”, and “fairness and impartiality”. In general, respondents tended to continue the trend of negative perceptions of the operation of courts by responding most often as “sometimes” and “seldom”, with “never” as the third most popular response for these characteristics. (Figure 12).

23. A comparison of positive responses<sup>19</sup> about courts allows one to match up court user perceptions from the 2008 Business Environment and Enterprise Perception Survey (BEEPS)<sup>20</sup> and the Court User Survey, although it is impossible to ensure full comparability of data given

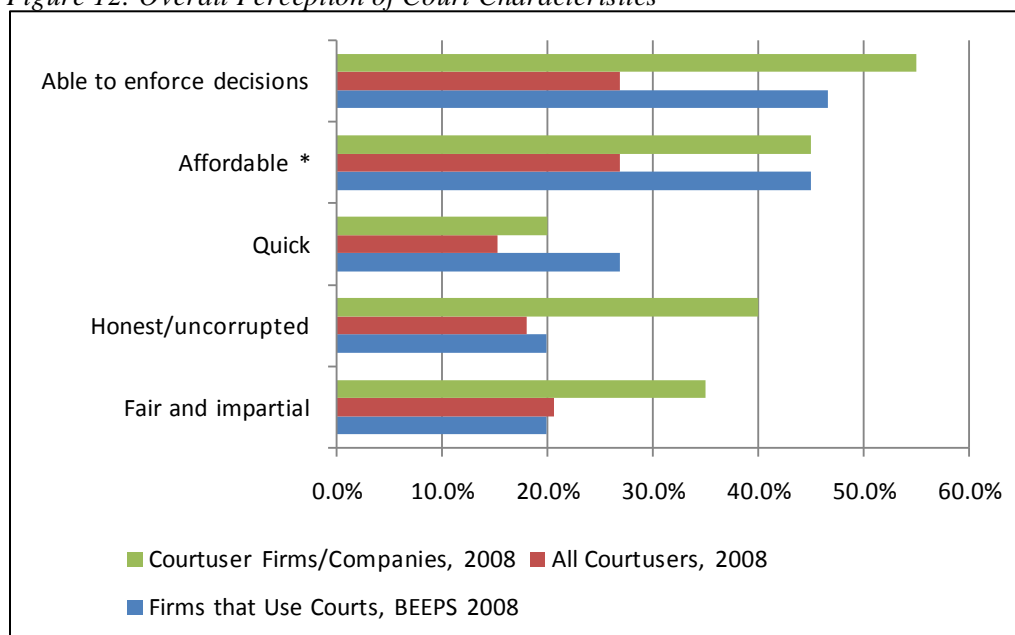
<sup>19</sup> Positive responses are those where respondents answered that they “always”, “usually” or “often” agree that the statement applies to the courts.

<sup>20</sup> BEEPs is a product of the EBRD and World Bank measuring the perception of businesses in the Europe and Central Asia region which surveys a broad cross section of businesses and enterprises from manufacturing, service and agricultural sectors.



the methodological differences. Figure 12 includes the 2008 Court User Survey results for all court users, and more specifically for firms, compared with the BEEPS 2008 findings for firms that used the courts. The most striking feature of the chart is that regardless of the characteristic or the survey tool, all results show a satisfaction level below 60% with only one characteristic, ability to enforce decision, showing a result over 50%. So court user satisfaction with Kyrgyz courts, particularly for all respondents to the Court User Survey, is uniformly low.

Figure 12: Overall Perception of Court Characteristics



\* Affordability of courts for firms that use courts is measured using data from BEEPS 2005.

**Note:** BEEPS 2008 questionnaire combines the question on Fairness and Impartiality of courts is with “uncorrupted”.

**Source:** Kyrgyz Republic Court User Survey, 2008 and Business Environment and Enterprise Performance Survey (BEEPS) 2008

24. Firms’ perceptions of the “affordability” of Kyrgyz courts are consistent across the two survey tools (although BEEPS 2005 data must be used for this characteristic). For the “ability to enforce decisions” firms surveyed in the Court User Survey were slightly more satisfied than the sample of firms that used courts captured in BEEPS 2008 findings. For the measure of the courts’ “quickness” the results are reversed with BEEPS 2008 firms more satisfied with the speed of Kyrgyz courts. The greatest divergence in the results can be found in the response to questions regarding whether courts are “honest and uncorrupted” or “fair and impartial.” In both cases firms participating in the Court User Survey were significantly more satisfied with Kyrgyz courts as fair and uncorrupted. One explanation for these distinctions can be found in the sample size (the number of respondents to the Court User Survey representing businesses was rather small only 20 out of 500 respondents) and composition (BEEPS 2008 identifies court using firms as those that have been to court within the past three years so there is a time lag in the perceptions of these firms).

25. In order to gauge the impact of Kyrgyz courts on businesses, the Court User Survey asked respondents whether they felt that the judicial system was **capable of enforcing commercial contracts**. The largest group of respondents who had a positive view of the court

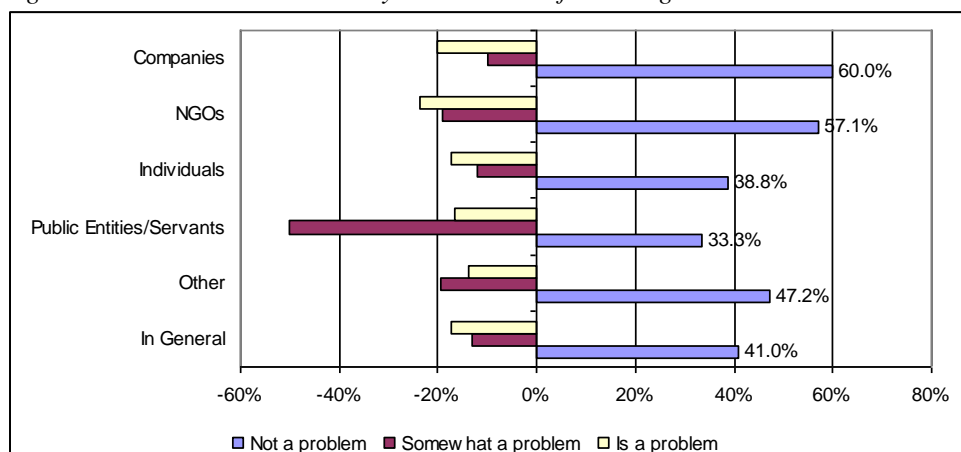


system's ability to enforce contracts believes that contracts are enforced only partially (31.8 percent of respondents). Around 22.4 percent of respondents believe that contracts are mostly enforced and only 7.6 percent are more optimistic and think that contracts are fully enforced. As a group, representatives of private companies were the most confident in the system's ability to enforce contracts (with 70 percent thinking that contracts are fully or mostly enforced). Only 25.4 percent of surveyed individuals agreed with the same statement.

26. Only 34.4 percent of those surveyed were fully or mostly confident in the **protection of their property rights** by the Kyrgyz judicial system. As with contract enforcement, the level of confidence was highest in the case of private companies (65 percent) and lowest in the case of individuals (31.1 percent). Such optimism on behalf of private company representatives is likely a result of better legal awareness and the ability to allocate greater resources to protect their property interests. In contrast, individuals face deficiencies in access to legal information and in finding funds to afford legal representation as noted above.

27. Among the more interesting observations arising out of the Court User Survey is the fact that more private company (60 percent) and NGO (57.1 percent) representatives do not consider the judiciary as being an obstacle for doing business than individuals (i.e. people who came to the court to present their own interests) and public servants. (Figure 13). One explanation could be the fact that companies who are likely to have more and more frequent contact with the courts already know and generally have accepted the rules of the game. In contrast, individuals who are less frequent or newer court users may find the existing system more problematic to navigate successfully. The acceptance of the existing situation while ignoring the judiciary as a potential problem also leads many organizations to use some form of alternative or informal dispute resolution mechanism.

*Figure 13: Whether the Judiciary is a Problem for Doing Business*



*Source:* Kyrgyz Republic Court User Survey, 2008

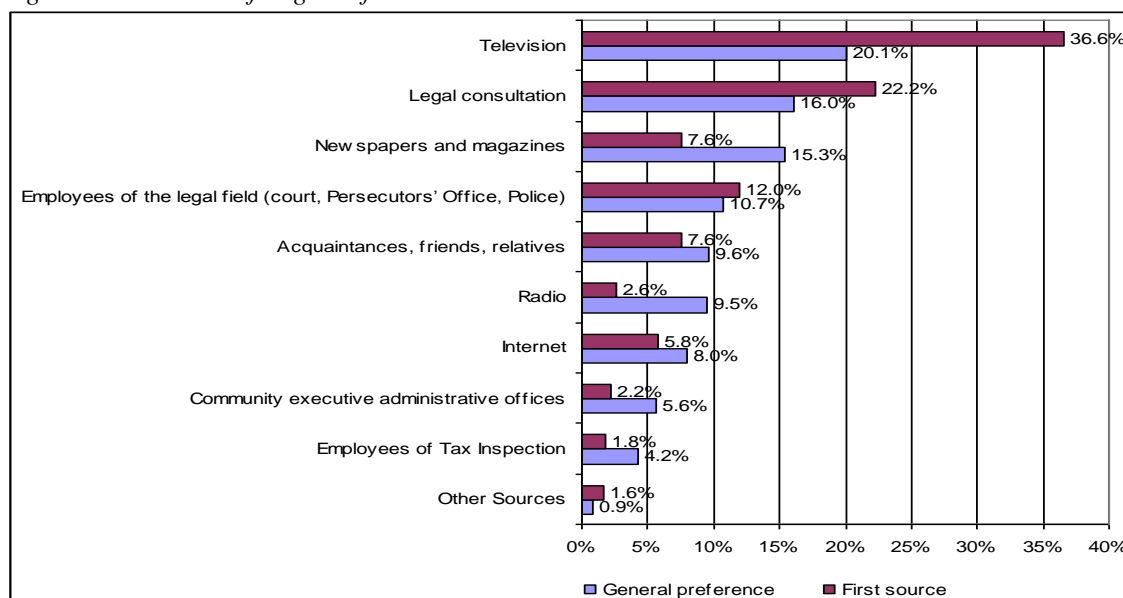
28. The same bias from surveying people who actually go to the court compared with the average citizen whose perception of the judicial system is not based on first-hand experience is evidenced by a question regarding whether the judicial system acts as a problem for people living in the country. Though 21.1 percent of individual respondents to the Court User Survey mentioned that the judiciary is a problem for living, the results of the Life in Transition 2006

EBRD/World Bank survey suggest that almost 70 percent of the Kyrgyz population find the courts to be a problem or obstacle to living their lives. The broader sample in the Life in Transition survey likely formed their more negative views based on media reports, anecdotes from friends and other second or third-hand sources. According to 38 percent of NGO representatives' response to the Court User Survey (which could also capture the opinion of people who do not visit courts frequently) courts are more or less a problem for living in the Kyrgyz Republic.

## E. Access to Legal Information

29. The sources of legal information were ranked by Survey respondents and television was mentioned as the number one information source by 36.6 percent. (Figure 14). Legal consultations and printed media were also among the top three information sources. Compared to other media options, it would appear that the most effective way to improve the “legal literacy” of Kyrgyz people is through the use of TV shows that illustrate and explain the role of the judicial system, provide information on citizens' and legal entities' legal rights and provide insight into how courts operate in practice. Similar efforts in the Caucasus (Armenia and Georgia) have had some success.

Figure 14: Sources of Legal Information

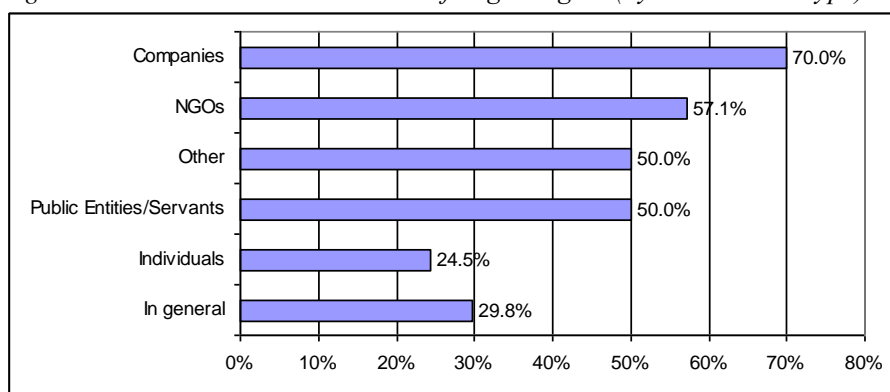


Source: Kyrgyz Republic Court User Survey, 2008

30. Interestingly, over a quarter of individual court users (26.4 percent) do not think they need to access legislation in order to know their rights. Another 13.9 percent of individual court users have no means of accessing legislation and a further 7.4 percent do not know where to buy necessary publications. Though all the companies and public entities have the means to access legislation, some NGOs (4.8 percent) still face such constraints. All public entities know where they can buy necessary publications and 83.3 percent of their representatives obtain all the legislation they need. Overall, however, only 26 percent of court users claim to have good access to legal information. In a similar vein, almost half of court visitors find it difficult to obtain information on procedures and the court schedule inside courthouses.

31. Access to information does not necessarily mean that court users feel that they are aware of their legal rights and responsibilities. While public entities feel they have reliable access to legal information, only 50 percent of representatives of public entities feel they are aware of legal rights. (Figure 15). In contrast, representatives of commercial companies felt much more confident in their legal knowledge - 70 percent indicated that

*Figure 15: Court Users' Awareness of Legal Rights (by Court User Type)*



*Source:* Kyrgyz Republic Court User Survey, 2008

they were aware of their company's legal rights. More broadly, across all survey respondents just under 30 percent felt that they were aware of their legal rights. These results reinforce the general need for more comprehensive and far-reaching efforts to educate the Kyrgyz public on legal rights in addition to simply improving public access to legal and judicial information.

## F. Priorities for Legal and Judicial Reforms in the Kyrgyz Republic

32. A priority for the Kyrgyz Government should be to reform judicial education according to the first priority responses from court users. According to these respondents the top 10 judicial reform priorities include the fight against "informal dispute resolution". (Table 2). Presumably this refers to the criminal/corrupt practices discussed above even though the earlier analysis revealed that the use of alternative dispute resolution is not widespread. This may be explained by the fact that people using that type of dispute resolution do not often come to the courts, and therefore had less chance to be represented in the survey sample. Greater access to legal information and improved legal awareness is the third priority for judicial reform.

*Table 2: Top 10 Priorities for Legal and Judicial Reform*

Rank	JJR Activities	Individuals	Companies	NGOs	Public Entities/ Servants	General Public
1	Judicial education	20.1%	15.0%	9.5%	16.7%	19.4%
2	Fight against informal dispute resolution	11.3%	10.0%	4.8%	16.7%	11.0%
3	Legal information	9.5%	5.0%	4.8%	33.3%	9.4%
4	Alternative Dispute Resolution	8.8%	20.0%	4.8%	16.7%	9.2%
5	Increase of salaries	6.0%	5.0%	0.0%	16.7%	5.8%
6	Police reform	5.3%	5.0%	0.0%	0.0%	5.0%
7	Forensics and pre-court investigation	3.8%	5.0%	19.0%	0.0%	4.4%
8	Replacement of old judges	4.2%	10.0%	0.0%	0.0%	4.2%
9	E-governance at the courts	3.1%	5.0%	4.8%	0.0%	3.2%
10	Case recording system	3.1%	0.0%	4.8%	0.0%	3.0%

*Source:* Kyrgyz Republic Court User Survey, 2008

### Appendix: Kyrgyz Courts at a Glance

No.	Selected Survey Indicators	Value
1	Court visitors satisfied <sup>21</sup> with outcome	43.6%
2	Legal information is accessible	57.0%
3	Courts are affordable	59.0%
4	Arbitration as a primary option for resolving disputes	1.8%
5	Awareness on legal rights	29.8%
6	Courts as a primary option for resolving disputes	22.6%
7	Court users believe judges observe ethical norms	63.6%
8	Easy to get general guidance at courts	62.2%
9	Easy to obtain information on procedures and schedule	53.8%
10	Generally positive feedback on the ability of courts to enforce their decisions	63.0%
11	Hiring a lawyer as the first thing people do when they appear in court	58.2%
12	Court users found courts to be impartial	47.8%
13	Inefficient pre-court procedures as a primary obstacle to protect legitimate rights at the court	12.2%
14	Judicial corruption as a primary obstacle to protect legitimate rights at court	38.9%
15	Judiciary is a problem for doing business	30.6%
16	Judiciary is a problem for living	22.0%
17	Mediation as a primary option for resolving disputes	1.6%
18	Negotiations between parties as a primary option for resolving disputes	67.6%
19	Court users say it is easy to finding court buildings	81.8%
20	Quality of court security service is good	36.2%
21	Quality of courthouse design / convenience is good	37.0%
22	Time spent waiting for hearing or consultation was reasonable	38.2%
23	Satisfied with contract enforcement through courts	30.0%
24	Satisfied with protection of property rights through courts	34.4%
25	Satisfied with security solutions in court design (availability of secure places for parties)	33.6%
26	Share of court users who are generally ready to bribe the judge if needed	35.0%
27	Share of court users who are inclined to apply corrupt practices (including bribing) as the first thing they do when they appear in court	16.0%

*Source:* Kyrgyz Republic Court User Survey, 2008

<sup>21</sup> Court users found to be “satisfied” reflect responses of “very satisfied” or “somewhat satisfied”.

## 2. DIAGNOSING THE PROBLEMS IN KYRGYZSTAN'S JUSTICE SYSTEM

33. The Diagnostic Team reviewed a number of features and sectors in the Kyrgyz Republic's justice system by engaging international experts, conducting interviews with local judicial, governmental and nongovernmental representatives, analyzing commercial case files and conducting comparative justice reform analyses. This chapter summarizes the problems, obstacles and issues that were identified in the: (i) judicial process; (ii) human capacity in the justice system; (iii) physical infrastructure; and (iv) alternative dispute resolution through this review.

### A. The Judicial Process

34. In order to get a clearer understanding of how economic or commercial cases are handled in Kyrgyz courts the Diagnostic Team engaged a local legal NGO to conduct a detailed analysis of a representative sample of these cases. This analysis reveals that parties to a commercial dispute in Kyrgyzstan face a number of issues when they bring their dispute to court: procedural obstacles (failure to observe legal deadlines/timelines); unclear and conflicting laws; judges who lack sufficient knowledge of new or amended laws and procedures; lack of cooperation with courts by other institutions; and political, financial or other connections used to influence outcomes. In this chapter the Diagnostic will review and analyze these systemic judicial constraints that were found in Kyrgyz courts.

35. According to the World Bank's Doing Business 2009 database, it takes 177 days to enforce a simple contract for a debt in the Kyrgyz courts and costs approximately 29.0 percent of the debt. This compares positively with a regional average of 425 days and 23.4 percent in Eastern Europe and Central Asia, and an average for the OECD states of 462 days and 18.9 percent. However, the simple debt case used for this analysis is not necessarily indicative of the issues that arise in other types of economic cases. The Commercial Case File Analysis (Case File Analysis or Analysis) provides a picture of the issues faced by parties in a broader range of economic cases and allows for a deeper understanding of the constraints that cut across the Kyrgyz courts. (See Annex D for a description of the Case File Analysis methodology.)

36. **Summary Results from Commercial Case File Analysis.** The most frequent types of issues found in the commercial case files were:

- procedural problems – 59.0 percent of all cases reviewed;
- institutional problems – 31.4 percent of all cases; and,
- knowledge problems – 28.6 percent of all cases.

These three problems were also the most observed issues across the whole sample of issues found in all the files as shown in Figure 16 below.

37. Over half of the cases in the sample involved debt collection (53.2 percent). The next largest group was cases involving a range of "other" commercial issues (26.2 percent). Cases

involving property ownership disputes made up the third most observed group (11.2 percent). On average, approximately 1.5 issues were found in each type of case. Interestingly, if we discount the other commercial cases, property ownership cases had the greatest number of issues observed per case (1.77). This may be explained by the fact that legislation in this area is relatively new and open for interpretation and the interests at stake can be quite high for the parties making it more likely that outside influences could come into play. On a regional basis, the greatest issues per case were found in the courts of Osh (2.6), Jalalabad (2.2), and Batken (1.6). Bishkek's courts averaged 1.25 issues per case.

38. The following sections will look more closely at each of the specific issues or problems analyzed in the Commercial Case File Analysis.

### 1. Procedural problems

39. Out of 385 assessed cases, 227 contained procedural problems.

The majority of these procedural problems centered on:

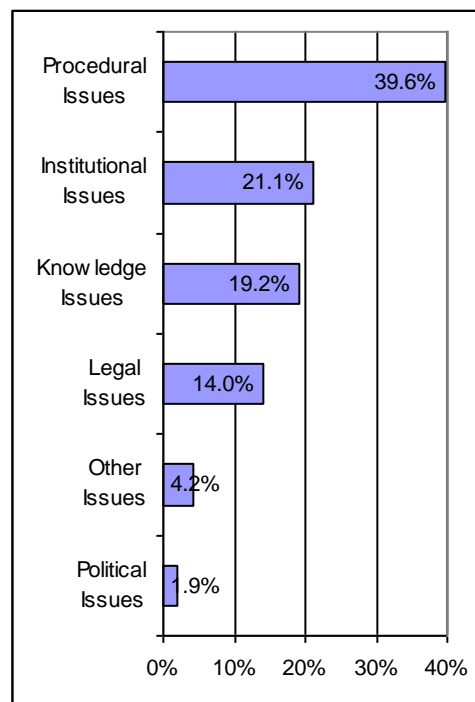
- Ineffective service of notice of hearing or notice to appear;
- Failure to provide necessary documents to the court or by the court; and
- Lack of judicial control over the proceedings through inability (or lack of desire) to enforce existing procedural rules, including time limits, court fees, etc.

40. Across all regions an average of 59 percent of all reviewed cases observed procedural issues, with 39.6 percent of all issues identified being procedural. Procedural issues were most frequent in Jalalabad (72.1 percent of cases), Bishkek (69.4 percent), Osh (66.7 percent) and Chui (64.4 percent), and were least common in Issykul (6.5 percent). The presence of procedural issues was especially high in contract enforcement cases (72.7 percent of these cases), other cases (72.3 percent of these cases) and cases with creditor's rights (64.0 percent of these cases).

41. The principal procedural problem discovered was that of **delays in the consideration of court cases**. According to the Civil Procedure Code economic dispute cases should be considered and decided within 35 days of the submission of a statement of claim declaring the commencement of court proceedings.

42. A Functional Analysis conducted by USAID consultants in 2008 found that although the statutory time to consider economic cases is one month, or 30 days, (plus an additional 5 days for

Figure 16: Issues Found Across Commercial Case Files



Source: Kyrgyz Republic: Commercial Case File Analysis, 2008

the Judge to consider whether to accept the case<sup>22</sup> only 42 percent of cases are resolved within this time.<sup>23</sup> The Functional Analysis found that generally if a case is not disposed of in one hearing, it will not be considered within the 35 day time-frame. Additionally, a case with five hearings on average takes an additional 45 days for disposition, which is twice the time for a case with four hearings.<sup>24</sup> It is recommended that the courts endeavor to minimize the total number of hearings in all but the most complex cases, with the object of avoiding the additional delays associated with multiple hearings. Additionally, the USAID report found that when comparing the ratio of economic cases disposed to cases filed against other types of cases between 2005 - 2007, the clearance rate for economic cases was lowest at 91 percent (against the highest clearance rate of 101 percent in criminal cases).<sup>25</sup>

43. It cannot be concluded that judges are not aware of the existing norms for terms of case consideration, as they are obliged to follow the legal norms related to procedural terms in their everyday activities. In most cases judges observe the terms related to issuing the declaration regarding the starting court proceedings and set the date of the first sitting within the legislative time limits.

44. **Ineffective summons and notice.** Cases are plagued by a series of procedural problems and abuses that create postponements and continuances. The courts violate time limits for the consideration of economic disputes due to impediments created by the courts themselves, by the parties involved or by other stakeholders. Common causes for continuances include an appeal of an interim ruling or the unavailability of the parties due to illness, business, or military duty.

45. A procedural problem that the Diagnostic Team found to be particularly troublesome and a leading cause of cancelled hearings was the difficulty in effectively serving a summons or notice on a party to a case or a witness. Courts are burdened with serving complaints on parties and delivery is often inefficient, inaccurate or late. Cases are processed manually and standards for processing (time, type of case, etc.) play little or no role.

46. Problems with the service of notices or summons are a leading cause of cancelled hearings. Court notices are sent out to inform the parties to the case of the date of the sitting by registered mail later than necessary, and as a result parties are often absent on the sitting due to lack of information. Return mail receipts can reach the court after the date of the sitting and judges postpone the first sitting as a result, frequently leading to a delay of around 10 days.

47. Procedural law in the Kyrgyz Republic allows for consideration of the case in absence of the defendant when the court has due evidence that the defendant was notified about the date, time and place of the court sitting. However, court sittings are often postponed in connection with the absence of the duly notified defendant. Even when properly served and aware of the obligation to attend, defendants routinely choose not to attend proceedings as a means of delay. The problem is therefore not solely attributable to lack of notice. Courts also postpone sittings in

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<sup>22</sup> Kyrgyz Civil Procedure Code, Article 388.

<sup>23</sup> USAID Functional Analysis of the Kyrgyz Republic Judicial System, p. 5, 2008.

<sup>24</sup> USAID Functional Analysis of the Kyrgyz Republic Judicial System, p. 5, 2008.

<sup>25</sup> USAID Functional Analysis of the Kyrgyz Republic Judicial System, p. 28, 2008.

connection with the reclamation of evidence and applications for postponement of the court hearing submitted by the parties.

48. **Case Management.** Procedural law allows for the quick settlement of economic disputes. Problems arise as a result of the failure of judges to comply with norms regulating time limits set for economic case consideration, and in some cases as a result of inadequate qualifications of the representatives of the parties. Parties incorrectly define the subject of the dispute and submit claims without observing the rules of jurisdiction and locus standi, leading to cases being returned to the parties unconsidered.

49. Judges do not expound the procedural rights of the parties, and minutes of the court proceedings are often very short and inadequately reflect court proceedings. A review of appeal, cassation and review appeals revealed that the evidence and speeches of many parties was not reflected in the minutes of court proceedings. Additionally, courts do not adhere to norms of the law that regulate the formulation of a court decision. The references to specific norms and regulations used in making a decision are often absent from decisions.

50. Reforming the Kyrgyz case management system could have a big impact on addressing the procedural shortcomings and corresponding backlog. The Kyrgyz Republic's procedures do not provide for uniform case screening or a case management process that would allow judges and parties to plan ahead for the taking of evidence, the scheduling of hearings, etc. Instead cases are "managed" simply through a series of hearings many of which, as the Diagnostic's case analysis revealed, have to be cancelled or postponed because of lack of preparation. Duty Judges are used in a few courts to review new cases before being given to the registry, thereby reducing the number of cases that may be rejected by the Judge due to deficiencies in the filing process.



*Box 1: Case Study - Procedural and Legal Issues in Property Dispute*

In this case an entrepreneur, Party A, entered a lease with a state forestry authority, Party B, to lease land to grow trees. However, Party B sought a court order to cancel the lease and transfer control of the land to the local self-government authority. A third party then constructed houses on the land, in violation of tender and auction procedures. This violated Kyrgyz land law, under which titles to land may only be forfeited by judicial procedures, and not by the local self-government authority. The court granted the order to cancel the lease and issued an official act of entitlement to the local authority.

**Procedural Issues:**

Party A brought an action against Party B to invalidate the order that had cancelled the lease. In violation of the Civil Procedure Code, which requires initiation of proceedings with 5 days of a statement of claim, the Inter-district Commercial Court accepted the statement of claim 14 days after receipt. Additionally, under the Civil Procedure Code claims accepted by the court must be considered within a month, yet consideration of this case took two months.

**Intervention Issue:**

According to the case file, Party A discovered evidence that the land withdrawn from him had been transferred to a company established by the spouse of a high-ranking Governmental policymaker, who exerted pressure on the court, resulting in bias. Despite gaining media attention in which Party A claimed corruption and provided documentary evidence to support his claim, the Court rejected the claim. On appeal the case was heard without Party A, despite his advance notice to the court that he could not attend on that date due to medical treatment he was undergoing.

**Legal Issues:**

Land Law is relatively new in the Kyrgyz Republic, and this case exposed a lack of clarity in this category of laws. Many law and regulations are in conflict and contradict each other, meaning judges can selectively use the legislation to make a biased decision.

## **2. Legal problems**

51. Out of 385 assessed cases, 80 contained legal problems. Cases with legal problems typically had the following issues as a subject of dispute: debt reimbursement, tax collection (including land tax), the collection of contract payment for delivered goods and services, collection of social fund payments, reimbursement of credit indebtedness, claims against collateral property, reimbursement of electricity charges, recovery of material and moral damage, execution of contract conditions, invalidation of non-normative acts of state and local governance organs which violate rights of individuals and juridical entities, and recognition of enterprise insolvency. Most frequently the legal issues were related to property ownership cases (32.6 percent of these cases) and creditor rights (32.0 percent of these cases).

52. Of the 80 cases that exhibited legal problems, the nature of the problems included: court decisions that were recounted very briefly, judges who did not recite legal norms, and a lack of regulation on the subjects of the dispute. It is therefore impossible to make specific conclusions about the legal norms that the judge has used in making his or her decision. It can be concluded that **some judges do not have adequate knowledge of the norms of material and procedural law, they are overloaded with cases or they do not have the time to provide a detailed account of the court decision.** However, this conclusion cannot be extended to all cases, as there were cases with a detailed and motivated explanation of the court decision, with references to material and procedural norms of the law. In these cases decisions were sequential and well-reasoned and it was evident that certain judges are adequately qualified and with an overall workload does not impede the quality of their decisions.

53. There were also cases when legal relationships connected to the subject of the dispute were not fully regulated by legislation, and in these cases judges had the opportunity to make a decision at their own discretion in accordance with legal analogies. Taking into account that legislation of the Kyrgyz Republic is fairly new, responsible authorities do not always adjust it in accordance with newly passed normative and legal acts. As a consequence many normative and legal acts contradict each other or have unfilled gaps. Therefore judges with an extensive knowledge of legislation have a selective choice of legal norms and the opportunity to make arbitrary decisions.

54. In accordance with the civil procedural law a statement of claim submitted to the court should contain the name of the court to which the claim is submitted, the postal addresses of the parties and their bank details, the circumstances on which the plaintiff is basing his or her claim, and evidence that confirms the circumstances, price of the claim (when appropriate), substantiation of the claimed or disputed monetary amount, claims of the plaintiff with reference to laws or other normative acts to one or several defendants separately, information about pre-court proceedings taken to settle the dispute out of court (when appropriate for the category of the dispute), and a list of the documents attached to the statement of claim.

55. Courts accept claims that do not comply with the norms of the procedural law, including the absence of the references to legislative acts and the addresses and bank details of the parties. In court definitions there is often no information about the terms of appeal of court decisions, judges do not elaborate procedural rights of the parties, minutes of the court proceedings are often incomplete and motivation of the decision and references to specific norms and regulations used in making a decision are often absent.

56. These facts testify either for incompetence of the judges and overload of court cases per judge in connection to which judges cannot pay adequate attention to full and substantiated description of the court decision and or for inadequate professional representation of the parties.

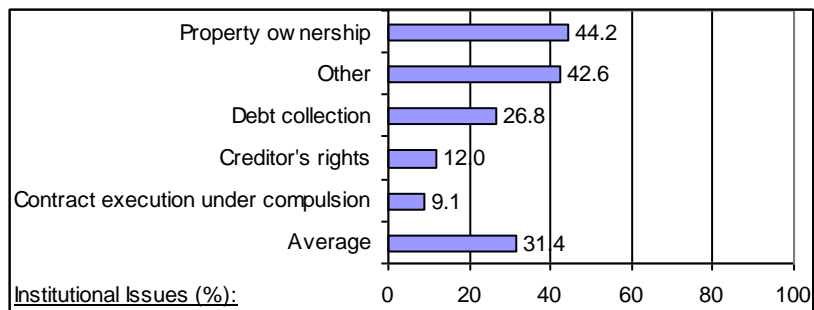
57. There is also a specific problem connected to the lack of legal knowledge related to the rates of state levies to be paid by plaintiffs and by the courts. Quite often plaintiffs submitting a claim to court are not paying the full state levy and the staff of the court office accepts such claims. As a result the inadequate payment of state levies comes to the attention of the judge during the course of proceedings, and he or she returns statements of claim due to incorrect or insufficient payment of the state levies. This impedes timely consideration of economic disputes.

### 3. Institutional Problems

58. Out of 385 assessed cases, 121 or 31.4 percent contained indications of institutional problems. The leading type of cases with institutional issues were property ownership cases (44.2 percent of these cases) with a higher frequency compared with the average level of 31.4 percent of all cases.

Figure 17: Institutional Issues by Type of Case

Source: Kyrgyz Republic: Commercial Case File Analysis, 2008



59. Power of attorney provided by parties to their legal representatives was often inadequate in form resulting in the postponement of court proceedings. According to civil law, power of attorney should contain all the details of the powers of the representative, but in practice the powers were described very generally. Some judges considered cases with parties represented through inadequate power of attorney, leading to an assumption that judges do not have adequate knowledge regarding the legal norms and requirements set for content and appearance of power of attorney.

60. There were also cases in which the time limits for the provision of information by state and local governance bodies (e.g. the state registry, notary offices, ministries and agencies, mayor's offices, city and village administrations) were violated when courts requested necessary documents or evidence for the comprehensive consideration of the case. There were no cases when court inquiries for information were completely ignored, but there were cases where the provision of required information was provided in an untimely manner and cases when the court had to make repeated requests for information.

61. Courts often practiced passing information requests through the parties and did not control their execution. Quite often courts make requests to legislative bodies with questions regarding the correct interpretation of legislative norms, as laws are often formulated in an unclear way. Combined with the problem of violations by legislative bodies on the terms of provision of requested information, this leads to delays.

### 4. Political and Judicial Practice Problems

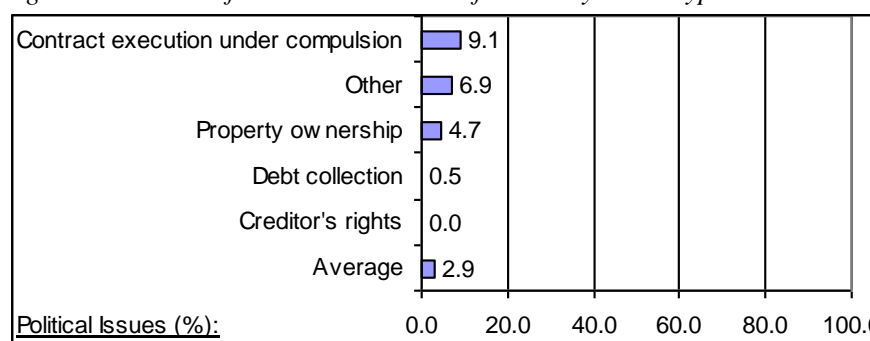
62. The Diagnostic Team examined the role that judicial behavior and practice play in constraining the enforcement of economic rights. By judicial behavior, we refer to the way judges "judge" or the practice and attitude that they bring to their jobs as judges. How a judge uses the procedures and powers under his or her control and how he or she tends to decide cases or motions in favor of one party over another has a significant impact on the enforcement of economic rights. In reviewing economic cases for the Diagnostic's Case Analysis, the Team has noted that in many cases the judges were not fulfilling their responsibilities, and there is a

perception that the judges appeared passive and uninterested in taking control of the cases they heard. In addition, even when a judge does try to exert herself and force the parties to obey court orders and procedures, there is a chance that these efforts will not be enforced (or recognized by a higher level court), which could act as a disincentive for judges to continue to fully perform their judicial functions.

63. Problems rooted in judicial behavior and practice can include not enforcing time limits for certain actions, not following procedural rules that would allow for the protection of assets or the use of authenticated documents, and not using the tools available to judges under existing law to proactively manage cases – all issues covered more directly in the subsections above.

64. There also can be a high risk of bias due to influence exerted on their decision-making by people in politically influential positions. Political issues were observed only in an average of 2.9 percent of total cases examined across the country, and were found in only four regions – Osh, Bishkek, Jalalabad and Chui. The most politically sensitive cases were those related to contract enforcement (9.1 percent of these cases).

*Figure 18: Issues of Political/Outside Influence by Case Type*



*Source:* Kyrgyz Republic: Commercial Case File Analysis, 2008

65. One case appeared to reveal political influence based on a review of the case file and accompanying press reports. The defendant in this case was the wife of an influential member of the cabinet council of the Government of the Kyrgyz Republic. During the court proceedings the court appeared to be pressured by this official, leading to biased consideration of the case, together with violations of the plaintiff's and his lawyer's procedural rights. The plaintiff and his lawyer released to the mass media a statement regarding corruption of Kyrgyz judicial bodies, specifically in the judgment of their case, providing supporting documents. The media responded with stories calling for the court to consider the case without bias in national newspapers and television reports. However, all measures taken by the plaintiff and media were unsuccessful in influencing the court to make an unbiased decision, and the claim failed.

66. Judicial behavior is also influenced by the perception and level of corruption within the judiciary. Executive branch influence in the judiciary remains an obstacle to improved judicial independence. According to Freedom House's 2009 Nations in Transit Report<sup>26</sup>, the Kyrgyz Republic's "Judicial Framework and Independence" is rated at 6.0 (on a scale with 1 representing the highest level of democratic progress and 7 the lowest), a fall from the 5.5 rating in 2007. The World Economic Forum's Global Competitiveness Report 2009-2010 ranked the Kyrgyz Republic 125 out of 133 countries, reflecting a score of 2.6 on a seven point scale (as measured by responses of businesses to a single question in an executive survey).

<sup>26</sup> Freedom House, Nations in Transit 2009, p. 285 (<http://www.freedomhouse.hu/images/nit2009/kyrgyzstan.pdf>)

67. In other cases, there is evidence of political interference in decisions held in favor of state bodies. However, defining political interference more specifically is difficult, without documentary proof. From the analysis of the claims against state bodies in the Case File Analysis it can be seen that even where the plaintiffs' claims were well justified, the court has nonetheless adjudicated them. This shows that the problem of political interference in the court proceedings exists.

*Box 2: Case Study - Abuse of Power By Judges and Other Officials*

This bankruptcy case started as a dispute between two parties over the delivery of goods, which became a rigged attempt to bankrupt one party. Party A, a company that delivers goods, and an affiliate of another company, Party B, signed a contract for the staged delivery of goods. According to the Contract, Party B should pay in installments after each completed delivery. Party A fulfilled all the Contract conditions, including delivering the goods on time. However, during the last delivery Party B claimed that the quality of the delivered goods did not match the quality of goods described in the Contract. Party B urged Party A to remove the poor-quality goods and to deliver goods of the appropriate quality. Party A refused to comply with the demand and claimed payment for the delivered goods. Negotiations failed to reach an amicable agreement. Party A pursued a claim against Party B at the Inter-district Court for Economic and Administrative Cases, to adjudge the Party B affiliate insolvent.

The court case lasted one year before the Inter-district Court on Economic and Administrative Cases, the Panel of Judges on Economic and Administrative Cases of the Oblast court and the Panel of Judges on Economic and Administrative Cases of the Supreme Court. It is likely that this case involved an attempt to raid the company, i.e. take Party B, the affiliate, away from its owner. According to case materials, the raid was designed by influential high officials. The local courts found in favor of Party A, which was to the advantage of the high officials. The Inter-district Court on Economic and Administrative Cases and the Panel of Judges on Economic and Administrative Cases of the Oblast court satisfied the bankruptcy suit and the affiliate (Party B) was adjudicated as insolvent. However, the Panel of Judges on Economic and Administrative Cases of the Supreme Court held that the actions of signing the contract for goods delivery, starting a legal conflict and pursuing the claim in court had been part of a scheme to cause Party B to become insolvent and to appoint their special administrator. The Supreme Court cancelled the lower courts' judgments and rejected the bankruptcy case against Party B.

**Procedural problems:**

It is likely that this case was "sponsored" by high officials and as a result there were no violations of procedural deadlines. On the contrary, the trial was expedited by the courts, to the advantage of the "sponsors". However, the proceedings were delayed because of the need to hear the legislative body's response to the court's requests for interpretation of the active legislation.

**Legal problems:**

According to the law, affiliates are not legal entities and cannot be a respondent at court or a party in a case: the respondent should be the legal entity which has established the affiliate. However, the judges in this case held the affiliate (Party B) to be insolvent. Having disagreed with the lower courts' judgments, Party B's representatives filed a complaint to the Supreme Court, which overturned the judgments of the lower courts.

**Political problems:**

Influential high officials were involved in the trial and it was apparent that there was a level of corruption and an interest for the judges. Party B's representatives brought the case before the mass media claiming corruption in the judiciary.

**Institutional problems:**

Even though insolvency issues are very well defined in legislation, Party B and the court sent enquiries to the legislative body for an official interpretation of the legislative norms. The response was received after the second inquire in one month.

## **B. Human Capacity – Training and Education**

### **1. Legal Education**

68. In Kyrgyzstan, the term “legal professional” or “jurist” includes anyone who has graduated from a law faculty. After a period of internship and success on a qualifying examination, law school graduates enter the legal profession in one of several categories. Advocates represent clients in both criminal and civil cases. Lawyers who are not advocates may represent their clients only in non-criminal matters; they work in commercial enterprises, government agencies, NGOs, law firms, or independently. Judges serve in first-instance or appellate courts of general jurisdiction, the Supreme Court, or the Constitutional Court. Prosecutors oversee criminal investigations and prosecute defendants on behalf of the state. Investigators investigate crimes, working with prosecutors and police. Notaries are responsible for filing certain types of contracts and real estate ownership records, as well as for preparing and authenticating documents of legal significance.<sup>27</sup>

69. All jurists are graduates of law faculties. There are three large universities with law faculties in the Kyrgyz Republic, branches of some of these universities in the provinces, and a number of smaller private institutions throughout the country. According to the Ministry of Education, there are 6 public and 5 private universities in Kyrgyzstan with the authority to grant law degrees. The Kyrgyz National University has approximately 1500 full-time law students, the Russo-Slavic University approximately 800, and the Legal Academy approximately 500. About one-third of law students are women, with an equal proportion of female judges, prosecutors, and advocates. As in many other countries, students begin their law studies directly after graduation from secondary school, and complete them through full-time study for four years for a diploma, or five years for a baccalaureate degree.

70. Several of the smaller institutions were consolidated or merged with larger ones pursuant to a 2003 Presidential decree (No. 264 on Establishment of the Kyrgyz State Law Academy, August 12, 2003). In July 2006 the Ministry of Education recommended further closures. Nevertheless, the Dean of one of the larger law faculties estimated in 2008 that the country’s universities produce 6000 law graduates each year. If this figure is correct, it means that the smaller institutions are still graduating over 5000 students per annum.

71. Data from the Ministry of Education is unable to supply the number of smaller educational institutions which offer legal training, but according to the Director of Licensing efforts are underway to reduce the number of smaller legal institutions, due to concerns about the quality of their instruction and facilities. The Ministry of Education has the power to suspend, modify, or revoke such institutions’ authority to operate, but according to one highly-placed source at a private university the power is used sparingly, and appeals by an institution can slow or divert the process.

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<sup>27</sup> Prosecutorial Reform Index for Kyrgyzstan (American Bar Association, March 2007); Legal Profession Reform Index for Kyrgyzstan (American Bar Association, October 2004); Judicial Reform Index for Kyrgyzstan (American Bar Association, June 2003).

72. The smaller institutions have been criticized for low academic standards. The larger ones, however, appear to provide solid grounding in the law. All institutions provide a standard curriculum, supplemented by a limited number of elective courses.<sup>28</sup> Students are required to perform six weeks of internship in the four-year program and 15 weeks in the five-year program.

73. The opportunities for university training in practical legal skills are limited. There are active clinics at the major law faculties, but students who participate in them do not ordinarily receive academic credit for their work, and the universities provide little more than space for the clinics; donors such as Soros and OSCE provide the funds. Some universities have small postgraduate programs in law, although most Kyrgyz students who pursue advanced degrees do so elsewhere.

74. After receiving their diplomas or degrees, law students spend a year in apprenticeship to practicing lawyers or prosecutors. They then take the national qualifying examination, and if they pass, they are authorized to practice law. The State licenses prosecutors and advocates; others are unlicensed.

75. Two shortages affect legal studies. First, the shortage of professors with advanced degrees in the law. The Ministry of Education recommends that 30 percent of law faculty have advanced degrees. There appear to be no official statistics, but one Dean said that there are fewer than 70 people in the country with JuDr and PhD degrees in the law, and that only some of these are professors. Another source reports only 5 law professors with doctorates.

76. Second, there is a shortage of law books in the Kyrgyz language. Most texts are in Russian, which has been adequate in the past, but with a growing number of entering students with limited Russian skills, and with the government's encouragement of Kyrgyz language use, there is a clear need for instructional materials in Kyrgyz.

77. Corruption is a serious problem in Kyrgyz law schools and in Kyrgyz society in general: Transparency International places the Kyrgyz Republic at 162 out of 180 on its 2009 Corruption Perceptions Index (with higher ranks representing less corruption).<sup>29</sup> Freedom House's 2009 Country Report on Kyrgyzstan assesses that "corruption is pervasive in Kyrgyz society and bribes are frequently required to obtain lucrative government positions".<sup>30</sup> These international assessments are corroborated by the Court User Survey discussed in Chapter 1 above. At law schools, it is widely believed that admission, good grades, and diplomas are available for the right price.<sup>31</sup>

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<sup>28</sup> Students preparing for careers in the law follow a curriculum prescribed by the Ministry of Education. Most courses are mandatory, although there has been movement toward a greater number of electives in recent years. The core curriculum includes courses in Constitutional law, private and public law (both domestic and international), criminal and civil procedure. Future prosecutors focus more closely on criminal law: they take four semesters of criminal law and criminal procedure (378 hours and 240 hours respectively and related mandatory courses in criminology, criminal investigations, and forensics. Ministry of Education and Culture State Education Standard of Higher Vocational Education, 2003, 2004.

<sup>29</sup> Transparency International, Corruption Perceptions Index 2009.

<sup>30</sup> Freedom House, Country Report: Kyrgyzstan, 2009.

<sup>31</sup> Direct evidence of corruption at law schools is of course elusive. Academic as well as lay observers, however, believe that it is pervasive. See, e.g., A. Aslanbekova, System of Higher Education in Kyrgyzstan to be Reorganized

## 2. Continuing Legal Education

78. For judges and prosecutors, there are facilities and opportunities for continuing legal training (CLE). No such resources are yet available for advocates or other lawyers.

79. **Judges.** Recent and far-reaching legislation has released the Kyrgyz courts and judges from the control of the Ministry of Justice (discussed in detail in Chapter 3 below). A law enacted in March 2008 created two “bodies of judicial self-governance”: the Judicial Congress of the Kyrgyz Republic and the Judicial Council. Law of the Kyrgyz Republic on Bodies of Judicial Self-Governance (20 March 2008). The Congress is a group of all Kyrgyz judges which elects from its number the fifteen judges of the Judicial Council. The Judicial Council protects the rights and independence of judges, supervises their discipline, and administers the court system. Day-to-day court administration is the responsibility of the Court Department, which in April 2008 was removed from the Ministry of Justice and placed under the supervision of the Supreme Court. Decree of the President of the Kyrgyz Republic on Court Department and Judicial Training Center under the Supreme Court of the Kyrgyz Republic, 21 April 2008.

80. The Judicial Training Center (JTC) for the Kyrgyz Republic, located in Bishkek, has been in operation since 1998. Originally established by the Kyrgyz Judges’ Association and the Department of Courts as a unit within the Ministry of Justice, since April 2008, the JTC has been under the direct supervision of the Supreme Court. Decree of the President of the Kyrgyz Republic on Court Department and Judicial Training Center under the Supreme Court of the Kyrgyz Republic, *supra*. In practice, it is the Judicial Council rather than the Supreme Court which has the greater influence on JTC operations, working with JTC staff on curriculum, programming, and budget.<sup>32</sup>

81. At the present time in accordance with the Presidential decree as of December 14, 2009, revised on January 20, 2011, applicants for judgeships must pass an entrance examination which consist of a written test and an interview, but continuing legal education is not mandatory for sitting judges, nor is it listed explicitly among the factors considered in judicial promotions. According to its Chair, the Judicial Council takes an interest in the training of judges, both before the initial examination and later in their careers. Proposals were studied to extend training before judges are appointed to the bench. According to the abovementioned Presidential Decree, the training is full-time and lasts for five months, three and a half months are for theoretical and practical studies, one and a half months for internship.

82. For several years, the JTC has provided voluntary CLE for sitting judges, training approximately 300 judges per year. The State funds the JTC, but inadequately. Government financial support for the JTC is approximately \$35,000 per year.<sup>33</sup> Donors therefore support the

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(Central Asia–Caucasus Institute, Johns Hopkins University, Analyst 12/19/2001); Legal Profession Reform Index for Kyrgyzstan (ABA-CEELI, 2004).

<sup>32</sup> Interview with Larisa Gudnichenko, Justice of the Supreme Court and Chair of the Judicial Council, September 2008.

<sup>33</sup> Government funding was \$39,500 in 2006, \$33,000 in 2007, and projected as \$38,000 in 2008.



great bulk of its programs. GTZ, EBRD, OSCE, USAID, ABA, and the EU among others have provided funds and experts for the courses.

83. Most likely because of the *ad hoc* nature of its funding, the JTC has only recently developed, with the help of the EBRD and USAID, a draft strategic plan for its continued viability.<sup>34</sup> The Government has committed itself to funding new quarters for the Center, but no money has been allocated for that purpose.

84. The JTC has had limited control over its finances, and due to the dependence on donor support, it also has had limited control over its curriculum, which is largely set in accordance with its donors' wishes and interests. That said, the Center has presented courses which participants have found to be of value.<sup>35</sup> Often the faculty for the courses is Kyrgyz judges or law professors. It is common for donors to bring experts from Russia, Germany, the US, and other countries to teach areas of law (e.g. bankruptcy, or international treaties) for which there are no local experts. The best of the courses have provided comprehensive textbooks for the judges' use after the course has ended.

85. **Prosecutors.** Regulations governing the Procuracy state that professional development is the duty of all prosecutors, and they are expected to have professional training every five years.<sup>36</sup>

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<sup>34</sup> Strategic Plan of the Judicial Training Center of the Kyrgyz Republic Supreme Court 2009-2011.

<sup>35</sup> Interview with Larisa Gudnichenko; interview with Albek Davletov, Justice and First Deputy of the Supreme Court; interview with Marit Rasmussen, Country Director, ABA-CEELI, September 2008.

<sup>36</sup> The regulations go much further in setting admirably broad goals for professional development:

- 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;

To further this aim the government established a Professional Development Center (PDC)\_for Prosecutors, which opened in Bishkek in 2005, and has offered courses to prosecutors since 2006.<sup>37</sup> The PDC has received support from international donors including ABA, USAID, OPDAT, UNDP and the OSCE, as well as from the government. Unlike the JTC, it occupies space provided by the State. The PDC has offered courses to prosecutors since 2006.

86. The Kyrgyz bar is neither organized nor self-regulating. There is a small Association of Lawyers of Kyrgyzstan and a smaller Guild of Advocates. The State administers the qualification exam to would-be lawyers (both advocates and non-advocates), and admits them to practice, but it licenses only advocates, not other lawyers. The license is not subject to periodic renewal, and it does not depend on continuing education. There is therefore no mechanism, compulsory or voluntary, for encouraging jurists who are not judges or prosecutors to continue their legal education.

87. **Lawyers.** Kyrgyzstan has no training center for lawyers comparable to the JTC or the PDC for judges and prosecutors. From time to time a donor offers training to lawyers; in September 2008, for example, ABA-ROLI presented a day-long training for advocates at the JTC. There have been some recent trainings, reportedly successful, for judges, prosecutors, and advocates together.<sup>38</sup>

### 3. Shifts in Power – Impact on Education

88. **Court control of arrest, detention, search, and seizure warrants.** Recent legislation has put Kyrgyz judges in charge of “sanctions” – arrest, detention, search, and seizure warrants, which used to be entirely within the authority of the prosecutor’s office.<sup>39</sup> This shift requires not only that judges and prosecutors become familiar with the new law but also understand the implications of this change in the balance of power between them.

89. The Soviet model of court practice which was in place in Kyrgyzstan was that of a prosecutor vested with broad discretion and backed by the legal and political power of the State. There was a nod to due process but little of its substance. The power of the State behind the prosecutors was such that an indictment nearly always led to a conviction; indeed, the general attitude was that the indictment would not have been brought if the defendant were not guilty.

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- 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....
- 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

<sup>37</sup> 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), 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).

<sup>38</sup> See footnote 5, *supra*.

<sup>39</sup> Criminal Procedure Code of the Kyrgyz Republic, Articles 32, 119 (2008). See also Government of The Kyrgyz Republic, Millennium Challenge Account Threshold Plan, submitted to the Government of the United States of America, 15 May 2006.

Conviction rates approached 100 percent. Judges were secondary actors, and advocates for the accused were nearly invisible.

90. This model, deeply ingrained in the society, did not change when the Soviet era ended. Little by little, however, revisions to the law and changes in public opinion have altered it. The transfer of power over sanctions from Kyrgyz prosecutors to Kyrgyz judges is an example of the change.

91. The model established in many international covenants, particularly in human rights covenants, by contrast, is that of equal adversaries, prosecutor and defense counsel, and a neutral arbiter, the judge, with the defendant's innocence presumed and the burden of proving guilt on the State.<sup>40</sup> Former Soviet states have seen greater or lesser changes in their methods – some have juries in certain cases, some have given greater latitude to defense counsel. But the changes have been slow, in part because old habits and expectations are deeply held, in part because the changes represent shifts of power; and no one gives up power easily.

92. Transferring from prosecutors to judges the control of sanctions is a significant re-balancing of power. Firstly, it will require education for judges and prosecutors to understand their altered roles. Secondly, it will require the education of advocates to exploit the opportunities for vigorous defense that the change represents. As a general historical rule, criminal defense lawyers have been, if not passive, at least only minimally active. Putting the sanction power in the neutral hands of the judge makes it possible, and necessary, for advocates to challenge the use of the power. Advocates must learn not just what the law says, but how to conduct pre-detention hearings, how to challenge seizure orders, and the like. Thus a procedural change shifts the relative powers among judges, prosecutors, and advocates, and the shift makes education of all three groups a priority.

93. Similarly, all three groups, plus non-advocate lawyers, will have to broaden their legal knowledge in order to learn international treaty provisions on contracts, intellectual property rights, due process in criminal proceedings, and other matters. Such treaty provisions will be of greater importance in the future as the Kyrgyz Republic integrates its legal system with those of other countries. Finally, Kyrgyz law itself is complicated, changeable, and sometimes contradictory. Sorting out its ambiguities and inconsistencies requires continuing education.

94. Prosecutors need to learn how an independent judiciary will change prosecutorial historic power and how to function within the changed system. Advocates need to learn how to represent their clients more zealously in an environment which protects judges' independence and gives them control of the court system.

95. **Legal protection of judicial independence.** Two major changes in Kyrgyz law give greater authority and independence to judges. First, the law of March 2008 creating the Judicial

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<sup>40</sup> The following human rights treaties are in force in Kyrgyzstan: International Covenant on Civil and Political Rights, Convention Against Torture and Cruel, Inhuman, or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on Economic, Social, and Cultural Rights, Convention on the Rights of the Child, and International Convention on the Elimination of All Forms of Racial Discrimination.

Congress and Judicial Council.<sup>41</sup> Among other powers, these two bodies now control the professional development of judges, disciplinary actions against sitting judges, the review of draft laws affecting the judiciary and courts, the protection of judges' rights, and the budget of the court system. This is a significant step toward separating the judicial function from the executive functions of the Ministry of Justice.

96. The second change is in the Presidential Decree of April 2008, which removes the Court Department and the JTC from the jurisdiction of the Ministry of Justice and places them under the control of the Supreme Court.<sup>42</sup> Judges are now in charge of their own discipline and training, and responsible for recommendations for appointments to the bench. They also supervise the administration of the court system. Powers which had been shared with the Ministry of Justice now belong to the judges themselves.

97. Like the shift of power over warrants from prosecutors to judges, the two changes described above have implications for legal education. In the first place, judges will need to learn how to exercise their independence responsibly. Independence in thought and action is not inborn, but it can be learned, and there are programs which help that learning.<sup>43</sup> Part of the learning is recognition that judicial independence is not absolute, and that it implies accountability – accountability to the law, to the parties before the court, and to the society at large. In Soviet times the State held judges strictly accountable but granted them no independence. In some post-Soviet countries judges have expected a complete reversal, to independence without accountability. It can be difficult to balance the two, but professional training has been shown to be effective in achieving the balance.

### **C. Physical Infrastructure – Deteriorating Court Facilities**

98. Appropriate facilities are essential to the efficient functioning of a modern judicial system. Facilities that support, rather than inhibit, the efficient operations of the court; that are accessible and inviting to the public; that are secure for all users; and that display the transparency and dignity of the judicial process, serve to the citizens as a symbol of the value the government places on the country's judicial system.

99. To function well there must be adequate space in the basic courts of Kyrgyzstan to hold hearings and trials, for judges and their staff to work effectively and safely, and for parties and the public to have ready access to hearings and court documents. There must be a sufficient number of courtrooms at each location to prevent delays in scheduling trials—delays which contribute to inefficient proceedings and a growing backlog of cases. An insufficient number of courtrooms often also leads to hearings being held in judicial offices, creating opportunities for *ex parte* conversations, and perceptions of (or actual) inappropriate influence. An appropriate level of security affects the safety of judges, judicial staff, prisoners, and the general public. In

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<sup>41</sup> Law of the Kyrgyz Republic on Bodies of Judicial Self-Governance (20 March 2008).

<sup>42</sup> Decree of the President of the Kyrgyz Republic on Court Department and Judicial Training Center under the Supreme Court of the Kyrgyz Republic, 21 April 2008.

<sup>43</sup> For example, the CEELI Institute in Prague, Czech Republic, has developed a two-week course titled “Judging in a Democratic Society,” which examines relations between branches of government and with the press, political pressure on judges, codes of ethics and their enforcement, and issues of public trust. Many judges from former Soviet states, including Kyrgyzstan, have taken the course.

addition to being unsafe, inadequate security creates the potential for judges and staff to be subject to intimidation that could impact their handling of high profile criminal and corruption cases.

100. An adequate amount of space is needed in order to implement initiatives to increase efficiency and decrease case backlogs in the judiciary: adding more judges; initiating use of juries in some trials; and adding new functions, such as legal assistants for judges. A minimum level of environmental quality—water tight buildings, sufficient power supply to the building and electrical distribution within the building—is necessary for implementing any improvements in use of IT and modern business and case management systems. Sufficient space for the public to visit the court buildings to conduct business and to attend court proceedings; and building designs that permit greater access to citizens with disabilities promote citizens’ access to justice and increase the transparency of judicial actions.

## **1. Assessing Kyrgyzstan’s Court Facilities<sup>44</sup>**

101. There are currently 70 courts in Kyrgyzstan and 374 judges (115 Oblast Court judges, 237 Rayon Court Judges, and 22 Inter-rayon Court Judges), occupying 26,257 m<sup>2</sup> of usable and an estimated 31508.4 m<sup>2</sup> of gross space, including circulation space. Annex A contains a complete listing provided by the Court Department of all locations, the size of usable space in square meters, and the number of judges and staff at each.

102. The Court Department, which was moved from the Ministry of Justice to the control of the Judiciary in 2008, provides some of the logistical support, including facilities, for the judiciary and ancillary elements, such as the Court Executives (who enforce court decisions), as well as being responsible for enforcement of court decisions. Within the Judiciary, the Court Department is somewhat independent from the Supreme Court, the Judicial Council, and the National Council on Justice Affairs, in that the head of the Court Department is appointed by the President of Kyrgyzstan. The Court Department has a central staff of approximately 30 people, and logistical support people located in each oblast. The largest staff (almost 200 of the approximately 275 people in the Department) is in the Court Executives unit.

103. In recognition of the importance of adequate facilities to the functioning and modernization of Kyrgyzstan’s courts, the President of Kyrgyzstan issued in May 2007 a decree that, among other matters, directed that,

The Court Department under the Ministry of Justice of the Kyrgyz Republic shall:

- within a month submit to the Supreme Court of the Kyrgyz Republic its proposals regarding staff size of local courts in the Kyrgyz Republic in proportion to the staff size of local court judges;
- jointly with the Supreme Court of the Kyrgyz Republic submit proposals for improvement of conditions of the administration of justice, including development of evidence-based standards for offices of local

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<sup>44</sup> A consultant to the World Bank team for court infrastructure visited Kyrgyzstan from April 3 to 11, 2008. During the mission, he visited the following court locations: Bishkek City Court; Chui Oblast Court, Bishkek; Chui Inter Rayon Court; Bishkek Economic Court; Osh City Court; Inter Rayon Economic Court; Uzgen City Court; Jalal Abad Oblast Court; Suzak Rayon Court; and Kara Suu Rayon Court. At each location he toured the facility (and the offices of the Court Executives, if in the same or an adjacent building) and discussed with the presidents of the courts and other judges the condition of the buildings and the impact on court operations. The locations visited were portrayed as typical of the rest of the inventory.

courts of the Kyrgyz Republic, construction of new buildings for local courts of the Kyrgyz Republic based on such standards;  
 - take inventory of the existing buildings of local courts and inspect them for compliance with the developed standards.

104. Lack of adequate funding from revenues has required the Kyrgyzstan Government to address only the most critically deteriorated court buildings, rather than executing a program of periodic major reinvestment in building modernization and construction. The table below shows the funding requested by the Court Department on behalf of the judicial system and the amount the government was able to allocate.

*Table 3: Court Budget Requests and Allocations*

	Requested					Allocated				
	2005	2006	2007	2008	2009	2005	2006	2007	2008	2009
<b>Total Court Department Request</b>	<b>280.9</b>	<b>289.4</b>	<b>318.4</b>	<b>583</b>	<b>544.4</b>	<b>139.9</b>	<b>123.5</b>	<b>173.4</b>	<b>189.4</b>	<b>353.2</b>
Buildings and facilities	53.9	87	59.6	240.2	56.3	12.3	8.8	30.4	25.1	26.3
Machines and equipment	3.3	6.7	79.6	34.2	26.7		0.6	15.7	8	26.7

*Source:* Data provided by the Court Department under the Ministry of Justice of the Kyrgyz Republic

105. Despite the efforts of the Courts Department to stretch scarce budget funding, Kyrgyzstan's courts are plagued by a long list of building problems. Only one building occupied by the courts was apparently built as a courthouse. The rest of the courts are in Soviet-era (1950's and 1960's construction) buildings--many originally intended for other purposes, e.g., the Bishkek City Court is housed in a former factory kindergarten. The court buildings are largely of 2 and 3 story, double-brick walled construction with wood floors, and, with few exceptions, have not been even cosmetically upgraded because of lack of government funding.

106. The courts suffer from a lack of space:

- insufficient number of office
- too few courtrooms or small "make-do" courtrooms where proceedings have to be held (e.g., small judges' offices where proceedings often have to be held)
- a lack of public spaces such as waiting areas outside courtrooms or areas to view files
- inadequate (unsecure and unhealthy) holding cell space for prisoners; and
- lack of appropriate space for archives.

*Picture 1: Lack of Filing System*



*Picture 2: Inadequate Archives*



*Picture 3: Outdoor Waiting Area*



*Picture 4: Detention Cells*



*Picture 5: Detention Cell*



*Source:* Gerald Thacker

107. Many courts, including those in Bishkek, the country's busiest, are in structurally deteriorating buildings (falling ceilings, damaged floors, cracked walls from structural deterioration and earthquake damage, and leaky windows and roofs). Much of the country is in a high seismic zone, which has implications for construction costs to provide for safeguards. Electrical systems are antiquated and many appear to be dangerous – making it difficult to install computers, printers, copiers, and fax machines in most buildings without major electrical system upgrades.

*Picture 6: Electrical System*



*Source:* Gerald Thacker

*Picture 7: Crumbling Walls*



108. Almost all buildings are without adequate heating systems, water, and toilet facilities and in some locations these utilities do not exist at all. Courts buildings are not accessible to handicapped citizens.

109. Courts also lack basic security features:

- Most have no separate circulation paths within the buildings for judges, the public, and prisoners;
- Most existing courthouses also do not provide sufficient security for judges and staff or for the public and witnesses;

*Picture 8: Outhouse*

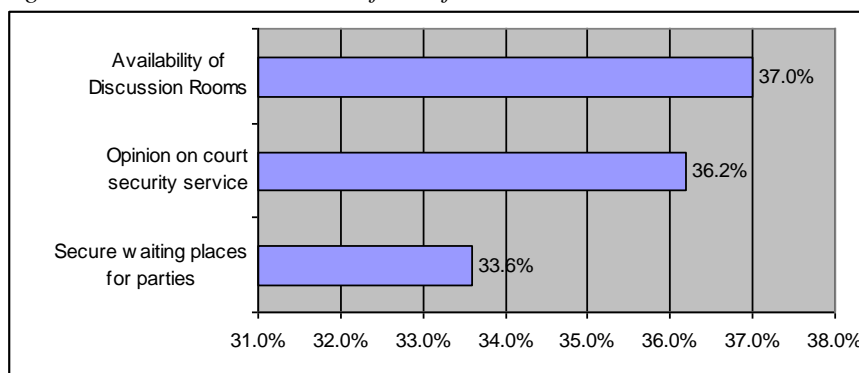


*Source:* Gerald Thacker

- Judges' offices are easily accessible by the public and litigants; and
- Most courts lack the security systems necessary to unload and hold prisoners at the courthouse or even to separate prisoners from witnesses.

110. The condition of court facilities has an effect on how the citizens of Kyrgyzstan feel about the judicial system. The Court Users Survey (Chapter 1, above), conducted by the World Bank in 2008, indicates a very low level of satisfaction with the availability of space and the level of security

*Figure 19: Court Users' Level of Satisfaction with Courthouses*



*Source:* Kyrgyz Republic Court User Survey, 2008

in court facilities for visitors. The survey also found that court users are unhappy with unexplained delays in procedures, and almost half of the visitors find it difficult to obtain information on procedures and the schedule.

111. **Space for Court Executives.** While the court buildings visited were in extremely bad condition (even those in which the government had invested in some refurbishment had serious structural problems, in addition to other functional deficiencies—several with recent earthquake damage), the conditions of the Court Executives were even worse. Court Executives are responsible for enforcing the decisions of the courts. They are a primary contact with citizens trying to enforce decisions issued by the court. The Court Executives are in cramped shared offices that do not permit citizens any privacy in discussing their cases. There is little office equipment and furniture; the spaces are often unheated; there are no toilet facilities; and no space for the public to wait before their interviews. The staff have no cars to carry out their functions, and use either public transportation or hitchhike. These conditions and lack of equipment have created a large backlog in the Court Executives' work.

## 2. Impact of Dilapidated Court Facilities

112. The condition of Kyrgyzstan's court facilities make it difficult for courts to operate efficiently and with dignity. Poor working conditions have a cost in staff effectiveness and morale and inconvenience to the public. The lack of space for separation of parties has serious implications for the integrity of court operations and public safety. The successful implementation of any judicial reform or modernization effort on the part of the government and international donors is directly affected by the poor condition of Kyrgyzstan's court infrastructure. Lack of space is inhibiting the implementation of several government initiatives in the judiciary: adding more judges; using juries in some trials; adding legal assistants for judges. Courthouse conditions will directly impact any future investments in information technology, as well, on the part of international donors and the government.



113. Most importantly, these facilities conditions color the public's image of the judicial system. The present situation in Kyrgyzstan does not support, and in fact serves to undermine, citizens' respect for the judiciary and the rule of law.

114. The age, deteriorated state, lack of needed space (and the difficulty of expanding existing buildings), and the lack of basic building systems in the sites visited, which are portrayed as being representative of the entire inventory, **make it unlikely that any current facility can be upgraded economically to a functional, modern court facility**. Any continued investment in the existing inventory should be limited to necessary repairs to prevent further structural deterioration, e.g., repairing roof leaks, and the entire inventory replaced over a five-year period. Although more exact estimates must be developed, replacing the entire inventory could cost more than \$40 million—an amount of investment that will likely be difficult for the government to finance from current revenues.

#### **D. Non-Judicial Options – Status of Alternative Dispute Resolution**

##### **1. Alternative Dispute Resolution (ADR) methods.**

115. Mediation, negotiation and arbitration are often confused with one another. Mediation differs from negotiation in that **negotiation** consists of the parties meeting with one another in order to solve their dispute, whereas **mediation** consists of having a third party facilitate and control the discussions between the parties. An **arbitrator** has power to issue a binding decision. A mediator's role is not to make decisions, but to facilitate and assist the parties to communicate and reach their own mutually acceptable settlement.

116. **Mediation** is a process of intervention in a dispute or negotiation by an acceptable, neutral third party who is knowledgeable in effective negotiation procedures. The third party (mediator) has no authoritative decision making power. The mediator's purpose and objective is to act as a facilitator who assists the disputing parties in voluntarily reaching their own mutually acceptable settlement of some or all the issues in dispute. Mediation is based upon the democratic principle of self-determination, which recognizes the rights of persons to make their own voluntary non-coerced decisions. In mediation, the parties themselves shape the outcome of the negotiation.

117. While the parties are encouraged to participate and speak freely, there are rules of conduct that must be followed. By getting the parties to agree to follow three fundamental rules while in mediation, the mediator sets the conditions for open communication. The rules are:

- to refrain from interrupting, in any way, another party while they are speaking,
- to avoid the use of any offensive, derogatory language, innuendo or implication, and,
- to show respect for the other party and the mediator.<sup>45</sup>

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<sup>45</sup> Michael L. Smith, Ottawa Carleton Dispute Resolution Centre, quoted in Nelson, R. "Arbitration and Mediation of Business Disputes" (1987), *Gowling and Henderson Centennial Series 1* at 16-17.

118. Once the parties agree to follow the ground rules, the mediator leads through the mediation process.

119. A more formalized and ritualized form of mediation (the “Western Mediation Model”) has grown rapidly in the United States and Canada in the last 20 years and is now adapting and spreading to other parts of the world. In the Western Mediation Model, “mediation” is defined as “the intervention into a dispute or negotiation of an acceptable, impartial and neutral third party who has no decision making authority, but who will assist the parties in finding a solution which acceptably meets their interests”.

120. The rapid growth has been fueled by the benefits commonly associated with the mediation process. A list of these benefits includes the following:

- **Cost Efficiency.** Mediation has proven to significantly reduce the monetary costs associated **with** dispute resolution when compared with arbitration or traditional litigation.
- **Timeliness.** Mediation can significantly reduce the duration of the dispute as well as the amount of individuals' time actually required to bring the dispute to resolution.
- **Confidentiality.** Like arbitration, mediation is generally a confidential process making it **preferable** to the public dispute resolution of the court system.
- **Face Saving.** Related to confidentiality, it is simply true that an effective mediator can assist all parties in finding an acceptable solution and still “save face” — individual dignity remains intact.
- **Durability and Sustainability.** Evidence in North American surveys indicate that resolutions crafted by the disputants in mediation are more durable than outcomes imposed by a court or arbitrator.
- **Relationships.** Mediation can be less damaging to the relationship between disputants than traditional court processes — an important consideration when the parties may have future dealings.
- **Control over Outcome.** In mediation, the disputants agree on their own resolution to the dispute. A court or arbitrator does not impose it.
- **Creativity.** Mediation encourages disputants to think “outside the box” and consider creative solutions to their dispute that go far beyond what a judge or arbitrator could order.
- **User Friendly.** People that have participated in mediations have reported that they find the process much more satisfying than the traditional court process.
- **Transformation.** It is suggested that mediation provides the opportunity for individuals to better understand the perspective of others and that this “acknowledgement” leads to personal empowerment that can be transformative for the parties involved.

121. **Arbitration** is a process where the parties agree (generally by adopting an “arbitration clause” as part of a contract) that an arbitrator will resolve the dispute. Parties are free to agree to use either institutional arbitration (the services of an arbitration institute) or “ad hoc arbitration” (the services of an individual arbitrator) to resolve the dispute. The powers of the

arbitrator are described in the arbitration clause. The jurisdiction of the arbitrator is therefore a matter of agreement between the parties. The parties are free to prescribe the procedure to be followed by the arbitrator or to select the procedure of an arbitration institute. The arbitrator is essentially a “private judge” who conducts a private trial. The arbitrator’s final decision is “binding” on the parties, and, short of substantial legal error, enforceable by the courts.

## **2. Status of Mediation and Arbitration in Kyrgyz Republic**

122. The health of the country’s judicial system is a critical factor to consider in determining recommendations for alternative dispute resolution. Unfortunately, the Kyrgyz legal and judicial systems continue to operate in an environment shaped by its Soviet past: the powerful (i.e., the state) usually win in court; law served the state so citizens are suspicious of using their new freedom and rights under the law; and the lack of a strong, organized and professional legal profession limits citizens’ effective access to the judicial system. Not only do these characteristics continue to color Kyrgyz citizens use of the courts, they also act as obstacles to the expansion of ADR methods in Kyrgyzstan.

123. As a result of a serious disrespect for law, throughout the 1990's, corruption in the courts was perceived to be endemic and widespread, and continues to be an obstacle in the justice system today. (See data from Court User Survey described in Chapter 1 above.) A lack of faith in the independence of judges, widespread corruption and the extremely slow speed of many legal processes have all fuelled public disaffection with the court system. Some people have turned elsewhere to resolve disputes, particularly in civil matters. Informal local leaders, many with criminal connections, are called upon to arbitrate in some disputes. Others seek satisfaction through informal use of religious codes, such as Sharia law, which is not recognized in the legal system.

124. Adjudication through state courts remains as the first option for a modern state. However, ADR has a critical role in the dispute resolution process, particularly through the introduction of mediation. But, ADR methods work best and most fully in conjunction with strong state courts.

125. **Arbitration** in Kyrgyzstan has made significant progress. Kyrgyzstan ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”)<sup>46</sup> on December 18, 1996, and it was entered into force on March 18, 1997. The New York Convention provides that signatories will agree to enforce foreign arbitration awards in their state courts. In 2002 Kyrgyzstan passed an Arbitration Act which is used for both domestic and international arbitrations. In 2003, an arbitration institute, the International Court of Arbitration, was registered. The Institute is actively pursuing arbitration in Kyrgyzstan. Its dispute resolution clause (below) has been inserted in 5,000 contracts:

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<sup>46</sup> The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards was passed by the United Nations on June 10, 1958. Since that time over 120 countries have ratified the convention and entered it into force in their respective countries.

*Article 7.05 Dispute Resolution*

*The Parties hereby acknowledge and agree that any disputes arising out of or in connection with this Agreement, controversy or claim arising out of or relating to this Agreement, including any disputes dealing with execution, violation, termination, breach or invalidity hereof, shall be settled in the International Court of Arbitration (Bishkek)(the “ICA”) in accordance with the ICA Arbitration Rules by one arbitrator appointed in accordance with the ICA Arbitration Rules. The substantive law governing the case will be the laws of the Kyrgyz Republic. The seat and place of arbitration shall be the city of Bishkek, Kyrgyz Republic. The Russian language shall be used throughout the arbitral proceedings. Arbitration award rendered by ICA shall be final.*

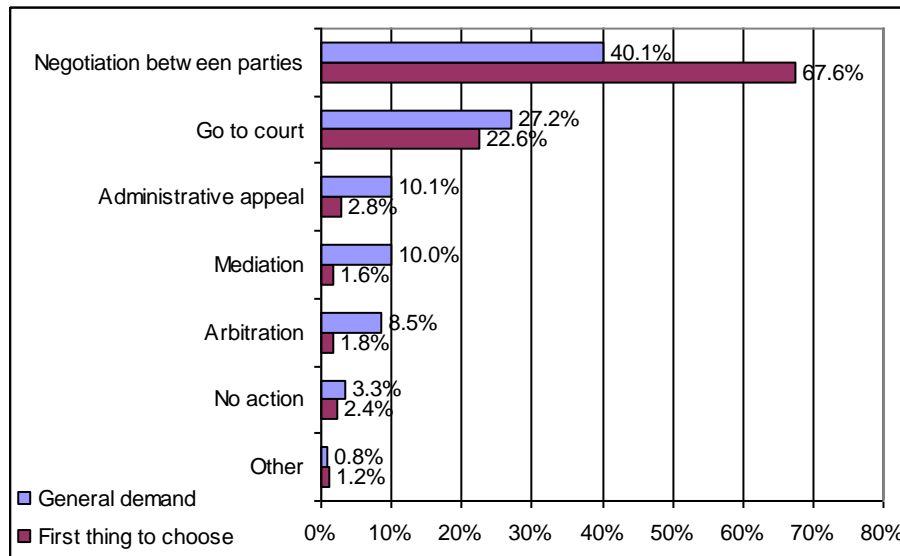
*Nothing herein shall be construed as a cancellation, waiver or other termination of any immunity, privilege or benefit granted to the Pledge holder under any relevant international treaty or any applicable law.*

126. The Institute has published its own arbitration rules. It has approximately 190 arbitrators on its rolls, of which approximately 117 are local. The procedure to be designated an arbitrator requires a letter of recommendation from two existing arbitrators and one CV. As of January 1, 2011 the Institute handled about 280 cases. The number of cases is increasing each year. According to the Chairperson of the Arbitration Institute, Kyrgyz courts respect and enforce arbitration awards.

127. Interest in **mediation** is increasing in Kyrgyzstan. According to the magazine published by the American Chamber of Commerce (AmCham) chapter in Kyrgyzstan (Issue #4, 2008), a roundtable on “*Mediation as an alternative path to dispute resolution*” was conducted in July 2008, under the technical support of the USAID Project on the Improvement of Business Environment in the Kyrgyz Republic. The roundtable was held to promote and develop mediation in the Kyrgyz Republic and in other regions of Central Asia. Participants included not-for-profit organizations, state agencies, banks, international donor organizations, law and other companies in the Kyrgyz Republic. The round table discussed the creation of a legislative base for mediation, organizing and conducting trainings for prospective mediators and their certification, and the prospect of developing an Institute for Mediation in the Kyrgyz Republic.

128. Mediation is a relatively new concept in the Kyrgyz Republic. While the results of the Court User Survey analyzed above reveal little interest in mediation now, either from individuals or companies, the Survey results do show a large majority of respondents that would choose a negotiated settlement as their first chose to resolve a dispute. (See Figure 20 below.) Given its focus on assisted negotiations led by a trained mediator, mediation, if properly designed, should respond to this stated preference. Mediators assist two parties in dispute to find a mutually acceptable point of resolution, where ideally, no one loses, but each can win. A mediation decision is made taking into account the interests and goals of the parties in dispute, yet not trying to find guilt in one of the parties. Thus, if broadly promoted, mediation could be an attractive option for companies and businesses.

Figure 20: Prioritization of Options for Resolving Disputes



Source: Kyrgyz Republic Court User Survey, 2008

### 3. Efficacy of “Informal Courts” and Aqsaqal Courts.

129. As described above, citizens will turn to informal methods of dispute resolution if the courts are not working. From an informal investigation,<sup>47</sup> it appears that criminal infiltration of legitimate businesses is widespread in Kyrgyzstan. These businesses are apparently forced to purchase protection - a “Roof” - to whom they go for assistance in resolving disputes. If such criminal activity exists, then this is a problem which can only be partially addressed by improving the operation of, and citizen trust in, the state courts. As the state courts improve, criminal control of dispute resolution, outside the courts, will gradually dissipate.

130. Aqsaqal Courts were introduced in 1995 and were an attempt to duplicate the role of clan elders in dispute resolution in Kyrgyz society. For example, individuals with a dispute within a particular clan would go to the elder of that clan who would then work out a possible solution to the dispute. According to the Executive Director and the Legal Counsel for LARC (Legal Assistance to Rural Citizens), which provides legal services to the rural population in Kyrgyzstan, especially in the field of land and agrarian law, there are numerous disputes among farmers over land ownership rights. The LARC officials noted that in a number of disputes, particularly in more remote parts of Kyrgyzstan, citizens in a land dispute turn to elders within the Aqsaqal system in an attempt to resolve a dispute rather than to the state court system. As a general rule, these elders were unable to resolve the disputes and the parties had to turn to the Courts, leading to apparent dissatisfaction by the citizens who utilize the Aqsaqal Courts with informal methods of dispute resolution. Furthermore, the Ministry of Justice has noted that the Aqsaqal system was not working well.<sup>48</sup> Ironically, the citizens are apparently also dissatisfied with informal methods of dispute resolution.

<sup>47</sup> The Diagnostic Team’s investigation into “criminal” control of dispute resolution is solely based on published articles, surveys, and anecdotal information.

<sup>48</sup> Interview with Diagnostic Team member, December 2008.



### 3. IDENTIFYING SOLUTIONS AND RECOMMENDATIONS FOR JUSTICE REFORM

131. In this Chapter, the Diagnostic Team reviews the Kyrgyz Government's recent judicial reform efforts comparing legislative and regulatory reforms with their institutional implementation. The Team provides suggested solutions and recommendations for further reforms and implementation efforts designed to address the issues and overcome the obstacles identified through the assessment in Chapter 3. These suggestions are further summarized and a tentative timetable for their implementation is provided in the Recommendations Implementation Plan at the end of the Chapter.

#### A. Implementing Government Institutional Reforms

132. Following a period of constitutional and institutional uncertainty with the adoption of Constitutional changes in late 2006, the annulment of those changes by the Constitutional Court in September 2007 and the adoption after public unrest of a revised Constitution on June 2010, the Kyrgyz Republic created a framework for comprehensive reform of its judicial system. **How thoroughly and quickly the Kyrgyz Government implements the provisions of the new Constitution will be a measure of the seriousness and direction of its judicial reform efforts.**<sup>49</sup>

133. The creation or re-creation of new self-governing institutions, such as the Judicial Congress, the Judicial Meeting, the Judicial Council as well as the Council for Judicial Selection, together with judicial capacity-building initiatives, is critical to implementing the judicial structures envisioned in the 2010 Constitution. These new institutions can strengthen the independence of the judiciary from the executive branch and improve its effectiveness and transparency. However, to attain these objectives these judicial governance institutions should be established with a clear division of responsibility over the various facets of judicial governance. Issues of overlapping roles and institutional prerogatives among the Supreme Court, the Judicial Council, the National Council on Justice Affairs, and the Court Department have been a challenge in the past.

#### 1. Self-Governing Institutions and Judicial Independence

134. Following the adoption of the Constitution in October 2007, a number of institutions were created to strengthen judicial independence, including the Judicial Congress and the Judicial Council. The Law on Bodies of Judicial Self-Governance was approved by the Jogorku Kenesh on February 15, 2008, creating the Judicial Congress and the Judicial Council. The major tasks of these judicial bodies include the protection of the rights and interests of judges, improvement of the judiciary and legal proceedings, and the representation of judges in relation

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<sup>49</sup> A primary vehicle supporting this reform effort is the Millennium Challenge Corporation's (MCC) Threshold Program implemented by USAID from 2008 – 2010. The objective of the agreement between the government of the Kyrgyz Republic and the MCC is to improve the rule of law and control corruption with a focus on enhancing professionalism in the judiciary, law enforcement and criminal justice systems. Millennium Challenge Account Threshold Program Assistance Agreement Between the Kyrgyz Republic and the United States of America for the Program to Improve the Rule of Law and Control Corruption (approved March 14, 2008).

to government bodies, public associations and international organizations. In the context of the latest political changes in the Kyrgyz Republic as well as the adoption of the new Constitution in June 2010, a new judicial self-government body called Judicial Meeting was created in addition to the Judicial Congress and the Judicial Council.

135. The Judicial Congress is the representative body for the Kyrgyz judiciary. It is tasked with approving regulations set out by the Judicial Council and other judicial self-governing bodies, and determining major judicial policy direction. The Congress meets once every three years and is chaired by the Chairperson of the Judicial Council. The Judicial Meeting is the primary body of judicial self-government and operates at the level of each court. It includes all judges of one specific court and its key authority is to elect the Court Chairperson and the Court Chairperson's Deputies for the relevant rayon, city, oblast courts and the Supreme Court of the Republic.

136. The Judicial Council's tasks include the protection of the rights, interests and independence of judges; the improvement of the judiciary and legal proceedings; and coordination of judicial reform implementation. An objective for both the Judicial Congress and Judicial Council is to work to clarify the body of laws and regulations that regulate judicial conduct, including judicial ethics. Since its creation, the Judicial Council has taken a strong stand in its disciplinary review of complaints against judges. As of the end of 2009, the Council had processed 396 complaints out of a total of 804 (including a backlog), leading to 58 cases of sanctions against judges, of which 14 ultimately led to dismissal.<sup>50</sup> Seven more judges faced criminal charges in court. While these figures exhibit an effort to get tough on judicial misconduct, there is some concern raised over the procedures used and grounds for some of the Judicial Council's disciplinary actions.

137. Judicial independence is guaranteed by a number of laws. According to the Constitution, judges shall maintain independence, with subordination only to the Constitution and the law, and no one has the right to demand an explanation from a judge on a specific court case.<sup>51</sup> The Law on the Status of Judges (approved July 9, 2008; amended January 19, 2010) states that all judges are irremovable and prohibits interference in judges' activity and the functioning of judicial self-governance. Under the Law on the Supreme Court and Local Courts (passed July 18, 2003), courts shall exercise judicial power autonomously and independently from the will of any person, and shall obey the Constitution, and other procedural laws. Interference in the administration of justice is not permitted by any citizens.

138. However, in the recent past judicial independence has been weakened by accusations of pro-presidential activities and corruption against a number of Constitutional Court judges. In 2006, the Parliament expelled three Constitutional Court judges for supporting the President. At the same time, the Constitutional Court's Chairperson was selected as one of the top five candidates of the President's political party, raising serious concerns regarding the impartiality

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<sup>50</sup> President Bakiev, Speech at the Celebration of the 85<sup>th</sup> Anniversary of the Supreme Court of the Kyrgyz Republic (December 16, 2009); data derived from reports prepared by the Judicial Council with assistance from the Millennium Challenge Account Threshold Program.

<sup>51</sup> Constitution of the Kyrgyz Republic, Article 83, adopted by referendum October 21, 2007.



and independence of the court.<sup>52</sup> After the April 2010 events, the Constitutional Court was abolished and replaced by a Constitutional Chamber of the Supreme Court. In light of the history of executive influence in the highest level of the judiciary, **the judicial bodies will require strong leadership and will need to take clearly independent actions in the face of pro-executive tendencies that they are likely to experience.**

139. It is envisioned that the new judicial bodies of self-governance will reinforce the status of judges to exist independently and subordinate only to the Constitution and Kyrgyz laws. In practice, however, the separation between the judiciary and the presidency will have to prove itself.

## **2. Selection, Promotion and Evaluation of Judges**

140. The 2007 Constitution gave the National Council for Justice Affairs responsibility for proposing the appointment and dismissal of local court judges, to be approved by the President<sup>53</sup>. Constitutionally, the President also submits candidates for the Constitutional and Supreme Courts to the Parliament for approval. In accordance with the 2010 Constitution the Council for Judicial Selection is the legal successor of the National Council for Justice Affairs. **Given the historical interdependence between the President and the judiciary, the continuation of a significant degree of Presidential control over judicial selection and promotion, will likely make it difficult to dispel charges of judicial politicization.**

141. The Law on the National Council for Justice Affairs<sup>54</sup> set out this body's main functions in regard to the selection of judge candidates for local courts including their appointment, transfer, removal and dismissal, and established the procedures for administering the judicial qualification exam. Members of the National Council participated on a voluntary basis, with members representing public associations and the legislative, executive and judicial branches. In their recommendations to the government, the International Crisis Group had suggested that the representation of judges in the National Council for Judicial Affairs be increased while participation by members of the presidential administration and parliamentary deputies (set out under the 2007 Constitution<sup>55</sup>), should cease in order to give the judiciary exclusive control over the management of the judicial career in Kyrgyzstan (as has been done in a number of Eastern European and former Soviet countries).<sup>56</sup> At the present time and in order to implement the provisions of the 2010 Constitution the draft law on the Council for Judicial Selection has been developed. This draft law changes the procedure for forming the Council for Judicial Selection.

142. The Presidential Decree on Further Improvement of Court Performance in the Kyrgyz Republic (approved May 3, 2007), provides for the creation of additional local court judges under a competitive selection process, while guaranteeing that established judges in local courts will retain their positions until the expiration of their original terms of office. Prior to the passing of the Presidential Decree, observers noted that lower court judges were appointed

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<sup>52</sup> Nations in Transit, p.324, 2008, Freedom House.

<sup>53</sup> Constitution of the Kyrgyz Republic, Article 46, adopted by referendum October 21, 2007.

<sup>54</sup> Approved August 20, 2007.

<sup>55</sup> Constitution of the Kyrgyz Republic, Article 84, adopted by referendum October 21, 2007.

<sup>56</sup> "Kyrgyzstan: The Challenge of Judicial Reform", International Crisis Group, 10 April, 2008.

according to their connections and based on bribes, rather than their qualifications, skills and merit. **The transparent and objective performance of its constitutional authorities over this appointment process will determine whether the Council for Judicial Selection can successfully combat the role of corruption in the selection process and decrease the President's discretionary power to inject politics into the selection process.**

### 3. Court Administration and Judicial Training

143. The Presidential Decree moving the Court Department and Judicial Training Center under the authority of the Supreme Court (approved April 21, 2008), created a single system for management of the courts and judicial education. The Court Department was moved from the jurisdiction of the Ministry of Justice ostensibly in order to integrate it into the system of judicial governance created by the 2007 Constitution and to provide it with independence from the executive branch. However, the President retained the power to appoint the head of the Court Department, effectively negating formal change. At the present time and in accordance with the Law on Amending the Law on the Supreme Court and Local Courts, the Supreme Court Chairperson's responsibilities include the appointment and the dismissal (with consent of the Judicial Council) of the head of the authorized state body (Court Department) under the Supreme Court, which supports the functioning of the local courts. The head of the authorized body may be dismissed from this position upon proposal of the Judicial Council based on the results of the review of its annual report.

144. The 2008 Presidential Decree sets out the functions and responsibilities of the Court Department, along with its cooperation with the Judicial Training Center. A key task for the Court Department is to support the activity of local courts and the development of workload standards for judges and administrative staff. The Department is also asked to lead the effort to: (i) develop statistical analyses of the history of the execution of judicial acts (decisions); (ii) codify legislation; and (iii) create a database of legal acts. However to accomplish these tasks, the Court Department will require additional staff and **the government must invest in staff training and provide sufficient financial support to ensure that the Court Department can effectively achieve its goals.**

145. The 2008 Presidential Decree provides that the Court Department will take measures to provide for the independence, inviolability and security of judges, and will maintain personnel files on local court judges and employees of the Court Department and its regional units. However, the Decree does not establish the content of the personal information to be stored regarding judicial staff. Will the stored information be based on statistics on judges' workloads, their rulings and personnel information? Or will it contain more personal information? In light of judges' and staff's legitimate privacy concerns, **it is recommended that the government define which government bodies or institutions will have access to these files and carefully clarify (and limit) the content of the Court Department's personnel files.**

146. Under the authority of the Supreme Court, the Judicial Training Center will exclusively oversee the education and continual training of judges and judge candidates for local courts as well as the training of court administrative staff.<sup>57</sup> In addition, the Judicial Training Center will

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<sup>57</sup> Regulation on the Judicial Training Center under the Supreme Court of the Kyrgyz Republic, approved April 21,

form working groups to develop and comment on laws, develop relationships with foreign institutions to further the field of training, and create a legal resource center. To implement these functions fully and effectively and provide quality education and training, **the Judicial Training Center must receive sufficient state support and an adequate budget, both of which were lacking when the Center was under the authority of the Court Department.**<sup>58</sup>

147. Previous attempts to improve the professionalism of judges have been undermined by the high level of corruption in the judicial system, compounded by the low salaries for legal professionals.<sup>59</sup> **To work towards a fully functioning judiciary that is free from corruption and other outside influences, the Kyrgyz Government should review the compensation levels for judges and court administrative staff.** While recently increased, the current relatively low salaries for judges, while higher than that for other civil servants, are considered by international observers to contribute to corruption in the judiciary.<sup>60</sup> Compensation levels could be increased in conjunction with the Court Department's efforts to measure and evaluate judicial performance by **developing specific performance indicators that reward those judges that are most efficient and productive.**

148. An area that the new laws and institution building have left untouched is how to improve the transparency of the judicial system. This can be done directly by clarifying the relationship between the press and the courts. The public's access to court proceedings and rulings also should be clarified and expanded. In theory, court cases are open to the public, with the exceptions of some family law issues and mediation proceedings. However, in practice, some high profile cases have been held in small courtrooms that could not accommodate the press, and some civil cases are held in the judge's offices due to a lack of courtrooms. There is a clear need to establish rules in this area and provide an opportunity to improve the public's perception of the Kyrgyz judicial system. **It is recommended that the relationship between the courts and the media be clarified in law or regulation in order to allow the press to access judicial proceedings and increase the transparency of the judicial process.**

149. The introduction of strong judicial self-governance institutions, in theory, should result in improved judicial performance, increased transparency and act as a check against the powers of the executive branch and forces of corruption. However, it will require political and judicial will and cooperation to build strong effective institutions and fill the remaining legislative and regulatory gaps. Judicial leadership will be crucial to this effort.<sup>61</sup>

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<sup>58</sup> "Judicial Reform Index for Kyrgyzstan", p.18, ABA-CEELI, 2003.

<sup>59</sup> "Kyrgyzstan: The Challenge of Judicial Reform", International Crisis Group, 10 April, 2008.

<sup>60</sup> "Judicial Reform Index for Kyrgyzstan", p.17, ABA-CEELI, 2003.

<sup>61</sup> Laws, agreements and decrees described in this section include:

- Law on the Supreme Court and Lower Courts, passed July 18, 2003
- Presidential Decree on Further Improvement of Court Performance in the Kyrgyz Republic, approved May 3, 2007
- Law on the National Council for Justice Affairs, approved August 20, 2007
- Constitution of the Kyrgyz Republic, adopted October 21, 2007
- Millennium Challenge Account Threshold Program Assistance Agreement Between The Kyrgyz Republic And The United States Of America For The Program To Improve The Rule Of Law And Control Corruption, approved March 14, 2008

## **B. Improving the Processing of Economic Cases**

150. It is recommended that the time set out to dispose of economic cases under the Civil Procedure Code should be reviewed based on the relatively low ratio of cases that are completed under the current statutory timeframe. Additionally, the Government should conduct an analysis to consider the obstacles that prevent economic cases from being disposed within the current 35-day limit. Analysis should examine the reasons behind postponement and cancellation of hearings, including lack of preparation, plus procedural problems and abuses that create postponements and continuances. As described below, ineffective summons and the service of notices are a leading cause of cancelled hearings. It is recommended that the Civil Procedure Code should also be revised to reduce the parties' ability to seek adjournments or postponements of trials.

151. **Improving summons procedures.** The Diagnostic Team recognizes the problems caused by the existing inefficient summons procedures. Courts should decide on a preferred uniform method for improving the delivery of summons and notices (e.g. through the creation of court units or the use of private delivery services) and move to adopt and implement it quickly. Significant change in judicial attitude and practice as well as change in lawyers' practice and views will be necessary to implement reform and for the reforms to have a real impact on the clearing of the backlog and improving judicial efficiency going forward. Judicial training and incentives to apply the new procedures are crucial.

152. Developing standards for case processing time, providing for early case screening (to determine complexity and therefore assignment to specialized departments once they are established) and early settlement discussions, developing a uniform trial postponement policy and improving court control over continuances should be implemented and rolled out throughout Kyrgyz courts. Adjournments should only be granted with good cause, with a date scheduled to next hear the case.

153. In addition, there is a critical need for specialized training for judicial staff on case management. Judicial staff should also have clarified authority to take on additional roles in managing and processing cases. For this to be implemented, the Kyrgyz courts and judicial leadership must develop a number of standardized policies and processes to guide staff responsibilities. In particular, court staff should be provided with opportunities to try to address the delays and backlog of economic cases.

154. **Case management reforms.** The development of standardized policies and processes for case management will depend on the collection, compilation and dissemination of systemic case management data and statistics. The judiciary (with the help of the Ministry of Justice) will need to take a leadership role in requesting this information and ensuring that it is organized to assist in the policymaking process, and then ensuring that judges and court staff fully understand

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- Presidential Decree on Court Department and Judicial Training Center under the Supreme Court, approved April 21, 2008
  - Law on Bodies of Judicial Self-Governance, approved February 15, 2008
  - Law on the Status of Judges, approved July 9, 2008

how the information has been used to improve judicial efficiency. The automatization of the case management system is often seen as an answer to backlogs and inefficiency problems that plague judicial systems. However, software is only useful if it is used to track revised and improved judicial practices and procedures and when it has a clear, user-friendly interface to encourage a high utilization rate by court staff.

155. The continued rollout of the Court Information Management System (CIMS), started under the Millennium Challenge Account Threshold Program, can assist in this process. CIMS provides for internal controls, allows for improved transparency by making court decisions public and includes random case assignment to decrease the leverage of court chairman and cut down on corruption opportunities. Draft legislation has been prepared to make the CIMS mandatory for use by all courts with sufficient IT equipment.<sup>62</sup>

156. Over time, if fully implemented, these reforms can improve the efficient functioning of the courts. But without additional procedural reforms, case management improvements and behavioral changes these recommendations will not have their intended impact on judicial efficiency nor will they be sustained.

157. The backlog and delay in getting a case through court have had a negative effect on business's perception and use of the courts to resolve their disputes. As procedural problems are the main cause of violations of time limits set for considering economic cases, this can lead to an unwillingness for business owners to settle economic disputes in court. Alleviating the backlog should not be an end in and of itself, however. Rather, elimination of the backlog should be seen as a means to a broader objective for the Kyrgyz Republic's judicial system: improving the investment climate by raising business confidence in the Kyrgyz Republic's judicial dispute resolution process and thereby removing an obstacle to increased commercial activity and investment.

158. **Addressing legal knowledge deficiencies.** To overcome the problems identified in the previous chapter involving judges lacking sufficient legal knowledge to fully and properly justify their decisions under the rapidly changing Kyrgyz legislative and regulatory system, it is recommended that activities for the professional development of judges and continuing education of judges be prioritized and implemented. Training should encompass re-education for judges on procedural law. In addition, the backlog of cases must be addressed, to ensure that judges are not too overloaded to be incapable of providing detailed accounts of court decisions. This can be addressed through the case management suggestions described above. Judicial attitudes must also be addressed when analyzing reasons behind poor legal reasoning (as discussed below). The Diagnostic Team recommends that legislation defining the relationship between parties (and in particular between parties and government officials) should be passed to prevent unfair bias (or the appearance of bias) in the court.

159. Legislation establishing the state levies and other legal knowledge issues should be clarified. Fully trained and competent court staff should have the knowledge regarding the rates of state levies and should not accept claim statements without prior adequate payment of the

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<sup>62</sup> Draft Law of the Kyrgyz Republic on Amendments to the Kyrgyz Republic's Law "Of the Supreme Court of the Kyrgyz Republic and Local Courts" (draft provided by USAID Threshold Program consultants).

state levy. By strengthening the experience of court staff, the time spent by the courts considering economic disputes will be substantially shortened.

160. **Relations between government institutions and the courts.** In order to address state institutions' delays and disputes with judicial requests and orders, the Diagnostic Team recommends that the Government work closely to ensure that government bodies understand rules and procedures and processes, that administrative agency staff is provided with training and incentives to apply the official procedures. This situation could be substantially improved by systematically imposing courts fines and penalties as well as special definitions on organizations that allow violations of terms set for providing information. This will require additional resources and expertise that the Government may need to seek from donors.

161. **Influencing judicial behavior and combating political influence in courts.** Changing judicial behavior is a long term concern and Government strategy should include an actively enforced, strong, clear and fair disciplinary mechanism to combat bribery and the abuse of power. Strong discipline against abuse of power and public acknowledgement of judicial misconduct will be required for improved judicial independence and an improved public perception of how judges operate and behave. Judicial independence must mean more than freedom from control by other branches of government. An independent judiciary is one that earns the respect and deference of other branches and the public by taking seriously its responsibility to discipline itself and be accountable for its actions and decisions.

162. Independence in the judicial system could be targeted through sufficient financing of court staff and setting adequate remuneration for judges in combination with a targeted training program. The development of performance standards that can be tracked and used in conjunction with increased remuneration to build incentives for increasing the efficiency and accountability of judges and judicial staff will also improve independence and performance of the judicial system. Setting standards that require training before judicial candidates can be selected for the bench is a start, but only the beginning of a long process of changing practice and behavior. While the government and the judiciary have increased measures to increase judicial independence, increased funding of the system will increase efficiency and act as a deterrent to corruption.

### **C. Building Human Capacity in the Justice System**

163. It is plain that law students and legal professionals in the Kyrgyz Republic will benefit from improvements in their education. In light of the new demands of international law, the complexities of changing and sometimes contradictory domestic law, and the importance of strengthening the nascent separation of powers between the executive and judicial branches, continuing education is not just a benefit but a necessity. The recommendations which follow aim to improve the country's system of legal and professional education:

- a. **Law schools should provide more opportunities for the development of practical legal skills.** The major law schools appear to give their students a solid grounding in the law. As the practice of law changes, however, students need to learn the skills that they will use in practice: oral and written advocacy, the organization and presentation of a

case, examination and cross-examination, the drafting of contracts, the pursuit of human rights, and the like.

- b. **The process of licensing and accrediting law schools should be objective, fair, and transparent, and should encourage innovative approaches to legal studies.** Until 1993 there was only one university in Kyrgyzstan offering legal training. Estimates since then have placed the number of law schools as high as fifty. The Ministry of Education now seeks to consolidate the schools, primarily under the umbrella of the Legal Academy. But competition among law schools, public and private, can improve the quality of education, just as a monopoly or oligopoly can stifle it. The law program at the private American-Central Asian University in Bishkek, for example, offers courses and teaching methods not available elsewhere. It is appropriate for the Ministry of Education to require law schools to meet standards, but the standards should not be so restrictive as to discourage innovative practices, and they must be applied openly and even-handedly.
- c. **Corruption in the law schools must end.** Not only does bribery taint the donor and the donee, cheapen the efforts of those who are honest, and devalue the diploma, it establishes from the very beginning, and among those who will administer it, the expectation that the law is for sale. The problem extends far beyond the law schools and it resists reform. But the change must start somewhere, and if law schools punish students and teachers who are corrupt that is a beginning.
- d. **The Judicial Training Center should finalize and fully implement its strategic plan necessary for its growth and for its curriculum.** The JTC has suffered from insufficient funding for most of its existence. It needs a one-year, a five-year, and a ten-year plan which will direct its efforts and maximize its resources. These plans need to contain sober assessments of the financial resources that are likely to be available to the Center, both from the government and from other supporters. The near-term plan should, for example, show how the Center will finance, furnish, and use the physical space that the government has pledged to provide. A longer-range plan must show how the government will provide most of the Center's support, with donor assistance at the margins – a complete reversal from the situation as it exists today. The plans should also lay out a curriculum which addresses the needs of the judiciary for initial pre-appointment training and for continuing education. The proposed Strategic Plan is a comprehensive and detailed effort to guide the development of the JTC. However, its implementation will require support and coordination from the other branches of government and clear financial commitments. Support for an educated and independent judiciary is a fundamental obligation of government, and Kyrgyzstan must begin planning now to meet that obligation.
- e. **As part of self-government, the Judicial Congress and Judicial Council should establish a program of continuing legal education and hold judges to it.** Now that judges have the power to govern themselves, they should hold themselves to high standards both of independence and of accountability. Part of accountability is the duty to remain current with the law, and judges should require it of themselves. Their pursuit of professional development should also be a factor in promotions. The Congress and

Council should work with the Judicial Training Center on the short- and long-range plans described in (d) above.

- f. **The Judicial Council should work with the Judicial Training Center to develop a course of study for those who wish to become judges according to the “Provisions for Training for Candidates for a Local Court Judge of the Kyrgyz Republic.”**<sup>63</sup> This project is already underway, with proposals from the JTC under consideration by the Judicial Council. As described in the Provisions for Training, such a course of study should strive to provide comprehensive, practical and objective training to judicial candidates in order to provide them with “professional judicial skills.” Establishing such a program will improve the quality of the judiciary and add to the public respect which judges enjoy in many countries.
- g. **The JTC and other organizations should continue the practice of mixing judges, prosecutors, advocates, and lawyers in training courses.** The Chair of the Judicial Council and another Supreme Court judge spoke highly of such mixtures as a way of introducing the groups to each other’s problems, of reducing misunderstandings, and of redirecting grumbling toward positive solutions.
- h. **Lawyers should create their own governance body.** Without a bar organization that sets standards for its members, one of two things will happen: there will be no standards, or someone else – the State, in all likelihood – will set them. These are poor alternatives. Lawyers benefit from self-government as judges do; with it they can establish rules, a code of ethics, and standards of practice which will improve their professionalism and the public’s belief in it. Among the standards is that of continuing legal education. Lawyers should require it of themselves.
- i. **Donors’ efforts toward legal and judicial reform need coordination.** Many governments and international organizations wish to help the Kyrgyz Republic improve its legal and judicial education, and many contribute money and manpower to do so. What appears to be lacking is an overall strategy: there is some repetition in training programs, and there are educational gaps in areas in which donors are not particularly interested. It is suggested above that the Judicial Training Center be in charge of its own curriculum. In practice that means either establishing the curriculum and seeking donor support for it, or (less desirable and only temporarily) working with donors so that their training interests mesh to form a coherent program overall. Either way, greater coordination is necessary.
- j. **The State must fund its judiciary and court system.** The Kyrgyz Republic has taken significant steps toward a judicial and court system that is independent and self-regulating. Donors have been of great help in supporting those efforts and in providing funds and guidance to the developing institutions. In the final analysis, however, it is the State that must ensure that its judicial branch, including the JTC, has the financial resources to carry out its duties effectively and independently. One part of the donors’

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<sup>63</sup> Presidential Decree “On Approval of Provisions for Training for Candidates for a Local Court Judge of the Kyrgyz Republic”, December 14, 2009.



efforts has been to work with the State toward that end, and that initiative should continue until the resources for permanent and adequate State funding of the judicial branch become a reality.

164. It remains to be seen whether the changes in Kyrgyz law will increase judicial independence in fact as well as in theory, as in some former Soviet countries similar laws have been enacted without causing any real change. Educational programs for judges, prosecutors, and lawyers – and if possible for members of the executive and legislative branches as well – will make real change more likely.

#### **D. Steps to Rebuilding Modern Judicial Infrastructure**

165. If the courthouses visited by the Diagnostic Team are representative of the general conditions of the judicial facilities, as the team was told by the then-Director of the Judicial Department, Kyrgyzstan's judicial infrastructure is badly in need of refurbishment and heavy investment in new construction in order to support a modern judicial system. The age, deteriorated state, lack of needed space (and the difficulty of expanding existing buildings), and the lack of basic building systems in the sites visited, which are portrayed as being representative of the entire inventory, **make it unlikely that any current facility can be upgraded economically to a functional, modern court facility.**

166. An adequate amount of space is needed in order to implement initiatives to increase efficiency and decrease case backlogs in the judiciary: adding more judges; initiating use of juries in some trials; and adding new functions, such as legal assistants for judges. A minimum level of environmental quality—water tight buildings, sufficient power supply to the building and electrical distribution within the building—is necessary for implementing any improvements in use of IT and modern business and case management systems. Sufficient space for the public to visit the court buildings to conduct business and to attend court proceedings; and building designs that permit greater access to citizens with disabilities promote citizens' access to justice and increase the transparency of judicial actions.

#### **1. Estimating Construction Costs**

167. The Court Department has not developed an estimate of the costs of replacing the court facilities that are truly inadequate for modern court use, since their focus has been on making only the most critical repairs and refurbishment.<sup>64</sup> However, some range of potential costs for replacing the entire inventory can be calculated. The table in Annex B shows the costs of replacing just the current space occupied, and the costs of replacing the current space with additional space, using substantial construction techniques and quality, durable materials. The costs range from \$9.5 million to replace the current inventory at an estimated \$300 per square meter of construction costs (exclusive of furniture and office equipment) to \$41 million to replace the current inventory and double the amount of current space at an estimated cost of

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<sup>64</sup> The Judicial Council requested 189,000,000 SOM for construction for 2009 and the Ministry of Finance indicated that 163,000,000 SOM would potentially be made available over three years, with 60,000,000 SOM available the first year (2009). USAID Judicial Reform Assistance Project and the Kyrgyz Republic Millennium Challenge Account Threshold Program, *Functional Analysis Of The Kyrgyz Republic Judicial System* (2009).

\$650 per square meter (again, for construction only). While more assessment of needs and estimates of costs must be done, it is likely the actual costs of providing the Kyrgyzstan judiciary with a modern, functional, sustainable space will be closer to the higher end of the range rather than the lower.

168. An official of the State Agency on Architecture and Construction, Public Construction and Supervision Division, estimated the current costs of construction of a finished building in Bishkek to be \$300 per square meter. He said that any cheaper labor costs in the rayons would be offset by increased costs of transportation of building materials. At the request of the Diagnostic Team, an official from a European donor agency surveyed colleagues who had recent experience in construction projects in Kyrgyzstan. Her investigation indicated a construction cost of \$650 per square meter for international style construction, exclusive of land. The officials of the Court Department indicated that newly constructed residences in Bishkek were being sold for \$1000 per square meter; if land costs and development costs were subtracted from this number, it would probably be very close to the \$650 per square meter estimate found by the European official. Interviews of selected construction firms in September 2009 for the construction of school facilities indicated a similar estimate of \$650 per square meters. This information supports the position that the costs of replacement of the court facilities will be at the high end of the estimated range of costs. All parties interviewed on the matter of construction costs indicated that the rate of inflation in the industry has been very high in the recent past, and is expected to continue to increase in the future, both in the costs of materials and of labor.

169. The traditional materials used in the construction of homes and small office and retail buildings (double brick thick masonry walls, with tiled flooring and metal or tile roofs) are readily available in Kyrgyzstan. While supplies of domestic cement are available for more substantial construction, good quality steel and materials for interior finishing are usually imported, most likely from China or Russia; even cement is occasionally imported. Such imports are subject to fluctuations in price and availability, and to often high transportation costs.

170. Skilled construction labor for traditional construction techniques is readily available in the country, but there is some shortage in skilled labor needed for more substantial construction techniques. Similarly, there are a large number of small local construction companies, but most of the larger companies are international, including companies based in China, Russia, and other large countries in the region.

171. Weather conditions, particularly severe winters, limit the construction window for most parts of the country to 7 or 8 months of the year, or less in some regions. Distances are not great between towns, but road conditions make travel slow and, therefore, transportation costs for construction materials from Bishkek to remote areas are a major cost component.

172. The country is in a high seismic activity zone, which has recently resulted in extensive damage to court facilities. In order to address the seismic conditions, specialized construction techniques and materials must be used in any new court facilities, with an accompanying impact on costs.

## **2. Capital Investment Planning**

173. The first step in addressing Kyrgyzstan’s deteriorating judicial infrastructure should be the development of a Strategic Capital Investment Plan (SCIP). The SCIP will focus on the functional needs of the modernized Judiciary, take advantage of best practices in courthouse design in other countries, and include, as an integral part of all activities, consultation with the users of the court facilities (judges, court staff, attorneys, and citizens) in order to build a strong consensus for the Program. The SCIP should have the following components:

- (i) **Discussion of the major problems, issues, and concerns** in the Judiciary’s facilities program, determined through a survey of users;
- (ii) **Architectural and engineering design guidelines and standards**, including prototypical concept designs, developed through a functional analysis of user requirements in a “modernized” judicial system;
- (iii) **Profile of the existing judicial facilities**, including such information as the location, size, ownership, type of construction, occupancy, major problems, compliance with the design guidelines and standards described above, etc.;
- (iv) **Costs and strategies for sustainability** including operation, maintenance, and replacement;
- (v) **Criteria for prioritizing capital investment projects**, including full integration of the strategic goals of the Kyrgyz government’s judicial program;
- (vi) **A multi-year capital investment program** (projects and estimated costs by budget year, using the criteria for prioritizing projects described above); and
- (vii) **A detailed project schedule** for projects to be designed and constructed during the next 3 to 5 years.

174. Representatives from the courts and other officials with knowledge about the future of the courts in general and the specific location for which a plan is being developed in particular meet to reach a consensus about the future requirements for the building. Staff with appropriate technical knowledge can then develop the plan of activities (and costs) that will meet the future needs. A few of the key features of the SCIP are described in more detail below.

175. A **Design Guide** contains information about courthouses that differentiates them from other types of government buildings.<sup>65</sup> Pursuant to a Government resolution approved in August

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<sup>65</sup> The USAID Kyrgyz Judicial System Functional Analysis report praised the Court Department for its own efforts to create space standards for court facilities, but noted that the “space standards adopted have not gone through a rigorous review by a facilities committee which is the norm for adoption of such standards. Court officials indicate that the standards were not developed scientifically and merely reflect best guess estimates of the appropriate standards. . . the standards only focus on spatial standards and do not address important relational standards that are key to a successful courthouse design.” Kyrgyz Judicial System Functional Analysis, *supra* note 50.

2009, the Kyrgyz Republic has adopted a set of standards and guidelines for the design and construction of local courthouses.<sup>66</sup> These standards should include the following topics:

- the types of spaces found in courthouses, e.g., courtrooms, judges offices, intake offices, and the activities that typically occur in the spaces that would determine appropriate sizes, finishes, electrical and lighting requirements, and so on;
- the appropriate adjacencies for the spaces, i.e., which spaces need to be near other spaces or on specific floors;
- appropriate sizes for each type of office, portrayed either as a specific size, i.e., 15 M<sup>2</sup> for Regional Court judges' offices, or as square meters per staff person, which must then be multiplied by the number of staff to occupy the space at a specific location to determine the room size; and
- requirements that differ from other government buildings or ordinary building regulations for electrical; lighting; security; wall and floor finishes; heating and air-conditioning; telecommunications; location, parking, and sitting; landscaping; overall courthouse façade design and appearance; handicapped access and accommodation; and exterior and interior signage.

176. It is important that the court judges and staff have input into the design standards, at the very least in the review of the draft proposed to the court, so that they understand and support them. The Design Guide for Kyrgyzstan Courts can then be used not only for designing new space and evaluating existing space, but also as a basis for developing budget estimates for new space and alterations. The Design Guide can serve as a tool for ensuring some degree of equality of space, as well, among court facilities, to preclude extravagant expenditures in any location. It's also important that the government units who will be involved in funding, e.g., the Ministry of Finance, also understand and support the Design Guide standards; representatives from those offices should have an opportunity to comment on a draft Design Guide.

177. **Multi-Year Capital Investment Plan.** A capital plan uses appropriate prioritizing criteria to sort the cumulative facilities needs of the judiciary into budget years for funding and execution purposes. The level of funding actually provided is, of course, a controlling factor in how a capital plan is executed and the frequency and extent of its revision. Appropriate prioritizing criteria would include factors such as:

- time period in which additional space to house new staff is needed
- health and life safety issues
- security issues
- building condition issues affecting the facility's stability, e.g., severe roof leaks or building foundation problems
- staff operating and efficiency issues
- electrical, heating, power issues

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<sup>66</sup> Resolution of the Government of the Kyrgyz Republic “On Approval of Standards for Service Premises for Local Courts”, Resolution No. 492 (August 5, 2009). These standards replaced those prepared by the Court Department and were developed with assistance from the Millennium Challenge Account Threshold Program.

- total staff affected by a facility project (e.g., a project affecting 20 staff might take precedence, all other factors being equal, over a project affecting 3 staff)
- costs
- Goals of the Kyrgyzstan government's Judicial program

178. Prioritizing factors, to be successful in their usage, should be openly arrived at and simple to apply. The first step is to develop a consensus among policy makers within the judiciary and the government about which criteria to use and their relative importance; for example, are health and life safety issues more or less important than staff operating or efficiency issues, and by how much. Policy makers might assign weights to the factors they select so that mathematical calculations can determine the relative standing of competing projects in a given budget year.

179. Once projects have been ranked they can be sorted into budget years based on ranking and urgency. For example, a facility adding 30 percent more staff in 5 years might have a higher ranking than one adding 10 percent more in two years, but would not need to be funded first. It is critical that the government provide input as to the expected level of funding to be supported in each budget year so that the multi-year plan is realistic in expectations. As noted above, the capital plan must be reviewed and revised each year to take into account current information about funding and changes in priorities.

180. **Detailed Schedule of Projects.** Once a multi-year plan of required projects is developed, a detailed schedule of projects reflecting the specific actions (assessment, design, and construction) for each project on a yearly basis. The detailed schedule of projects should include a procurement schedule, which is integrated with the government's budget schedule. This detailed schedule or management plan should be carefully integrated with the other aspects of the capital program, e.g., the IT program and furniture purchase program.

181. Once fully developed the Strategic Capital Investment Plan would thus provide the government:

- a professional, consistent assessment of the current inventory to help determine the costs and priority of replacement, or rehabilitation and expansion, if possible from a sustainability perspective;<sup>67</sup>
- the development of space standards and guidelines to reflect the functional requirements of a modern judiciary and any planned functional innovations (such as space for juries) planned by the government or that would occur from further diagnostics by the World Bank and the Swiss government, such as IT installations;
- a calculation of the amount and type of space needed at each location; and
- a priority construction and emergency repair budget over an appropriate (perhaps 5 year) period.

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<sup>67</sup> The replacement rate would depend both on available funding and the capacity of the government to procure and manage the construction.

## E. Piloting Mandatory Mediation in the Courts

182. The recommendations and suggestions above are directed at helping to improve the Kyrgyz Republic's state justice system – from human capacity building to replacing physical capital and from fully activating new judicial governance organizations to revising judicial procedures. In addition to these proposals, the Diagnostic Team **recommends that greater use of the ADR methods of mediation and arbitration be encouraged in Kyrgyzstan.** Mediation, in particular, will provide citizens with a relatively inexpensive and speedy method of dispute resolution.

### 1. What is compulsory, court-annexed mediation?

183. One way to test the viability of an increased use of mediation is to attach mediation to the court system through a compulsory procedure that could be used in a pilot court. For instance a First Instance District Court in Bishkek could be designated to adopt a court rule that would require parties to participate in a mediation process as a precursor to having their claims heard in the Court. If successful, this requirement could be rolled out over time and in phases to other Kyrgyz courts. While the Court User Survey noted little direct experience with mediation among Kyrgyz court users, the Survey results revealed that over two-thirds of all respondents would look to negotiations as a first option to resolve a dispute. As an “assisted” form of negotiation, mediation annexed to a court in an initial pilot could find support among Kyrgyz citizens. In addition, business interest in mediation is on the rise as illustrated by participation of wide range of organizations in the July 2008 AmCham roundtable.

184. In such a compulsory mediation system, all disputes in the courts are automatically referred to mediation provided they do not fall within an exempt class, such as bankruptcy and cases involving the Government of Kyrgyzstan. There is to be no discretion in the referral mechanism or parties may corrupt the system to keep cases in the courts. If the dispute is not resolved through the mediation, then the matter is referred back to court. If there is a settlement rate of between 60 percent and 70 percent through the mediation, then parties will be encouraged to bring cases for court-annexed mediation in the belief that there will be a mediated settlement prior to returning to the court system. Evidence in other jurisdictions (Argentina, Philippines, Canada and the United States) demonstrates a success rate of over 70 percent in a compulsory mediation program.

185. There are three critical issues in a compulsory mediation system:

- How long should the mediation take?
- Who pays for the mediator's services?
- Who can be a mediator?

#### *Box 3: Experience with Compulsory Mediation*

Evidence in other jurisdictions around the world demonstrates a high success rate in compulsory mediation. All disputes in the courts are automatically referred to mediation and if the dispute is not resolved then the matter is referred back to court. Both Argentina and the Philippines (civil law jurisdictions) had severe defects in their courts including corruption and delays when mandatory mediation was introduced.

**Argentina:** Compulsory mediation in Argentina began with a pilot project. Following the adoption of law mandating mediation in most cases (exceptions included bankruptcy, criminal cases and cases involving the government), compulsory or mandatory mediation was introduced in twenty civil courts in Buenos Aires. The court staff was well trained and judges were involved in the process. (Argentina's Code of Civil and Commercial Procedure provides that conciliatory agreements can be certified by the courts and subsequently upheld. This enables parties to have the security of a binding agreement without the concern that a judge might not uphold it.) Judges maintained some control over the system because they assigned the cases to the mediators and assisted the mediators with procedural issues such as service of process, preliminary injunctions and the resolving conflicts that might arise during mediation. Since judges had a strong role to play in the mediation process this aided the promotion and utilization of mediation. However, it also indicated reliance for the success of mediation on judicial participation and support in ADR programs.

The Argentina case was particularly successful - in the first year 81,727 cases were assigned by the civil courts of appeal to mediation, of which only 22,209 or 27 percent returned to court for judicial resolution after attending the mediation.

**Philippines:** Mediation has also gained success in the Philippines. The Chief Justice of the Supreme Court of the Philippines highlighted some of the key issues facing the judiciary in the Philippines, such as: congestion, corruption, and limited economic and human resources. These issues have made it difficult for Filipinos to trust the legal system. ADR was introduced to help address some of these issues. The stated purpose for promoting mediation was similar to those for other countries, including the desire to relieve the courts' dockets, and make justice more accessible and efficient. In 2001, the Philippine Department of Justice piloted a mediation project which was held in several cities. Ninety-three percent of the cases that were referred for mediation settled. The mediation program was a success, and in October of 2001, mediation was formally instituted as a court-referred and court-related form of dispute resolution.

**Albania:** In contrast to the examples above, in Albania a mediation institute was created as a private entity but there was no mandatory referral of cases. Referrals were totally voluntary and depended on the discretion of judges and the parties. As a result, almost no cases were referred from the courts and the institute spent considerable time and resources marketing itself and soliciting cases from lawyers and businesses. This was a slow and costly process which takes significant time to build up a positive reputation for mediation in the country.

**Sources:**

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Legal Vice Presidency, The World Bank, Argentina: Legal and Judicial Sector Assessment (Washington, DC: The World Bank, 2001) at 64-65.

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Department of Justice, Republic of the Philippines, "News and Events: DOJ Launches Nationwide Mediation Project" (March 22, 2004), online: Department of Justice, Republic of the Philippines <[http://www.doj.gov.ph/news\\_03-22-04.html](http://www.doj.gov.ph/news_03-22-04.html)>.

The World Bank, Albania Legal and Judicial Reform Project, Implementation Completion Report, p. 10-11 (2006).

186. Under the compulsory mediation program in the City of Ottawa, Canada, it was agreed that the mediation was to be no longer than 3 hours at a low hourly rate for the mediator. The parties paid for the mediator. Economic conditions in Kyrgyzstan may dictate against the parties paying. In that case, funds must be made available to pay the mediator. Mediators working in a compulsory system should be highly trained; untrained mediators have the potential of doing harm in that they might seek to influence parties improperly. The training should include "basic" and "advanced" mediation training. However, outside a mandatory system, requirements for

who can be a mediator can be more flexible, and a mediator could be anyone that the parties may select.

187. Compulsory mediation is not a panacea. Disputes between parties are serious and difficult but the evidence shows that mediated solutions are incredibly satisfying as both sides feel that their interests have been resolved through the settlement.

## **2. Conditions for successful mediation in Kyrgyzstan**

188. **Role of judges.** As in other jurisdictions, judicial support and leadership are critically important in introducing mandatory mediation; having a judicial “champion” is critical to success. Due to the enhanced role of the judge in the civil law system, it is necessary for judges in post-Communist countries to have an integral role in promoting mediation to ensure its success. This creates legitimacy in the process and is more consistent with the civil law system.

189. Mediated agreements (and arbitral decisions) should be recognized as binding and enforceable under Kyrgyz law. Unbiased and independent courts are necessary to enforce mediated agreements and arbitral decisions. If mediated agreements are not enforced voluntarily the parties should be able to return to the courts to seek enforcement. Judges should not be able to overturn “mediated settlements” (or arbitral awards) unless there is substantial legal error. A successful ADR system works with the respect of the courts. Even in societies in which there is comprehensive legislation governing ADR, corrupt courts may not enforce these decisions. Without this fallback for enforcement, ADR results could be seen as arbitrary and will not be used. This remains a risk for mediation in Kyrgyzstan given the level of corruption that remains in the court system. For mediation to succeed in Kyrgyzstan, it is incumbent on the judiciary and lawyers to refer cases to mediation. Judges must be part of the solution. However, the judge should not run the mediation program at the pilot court because the judge may eventually have to review and enforce a mediated agreement. This is best done by a court administrator.

190. **Legislative mandate.** There is no mediation law in Kyrgyz. As a first step in introducing a pilot, the Diagnostic Team recommends that a mediation law, based on the UNCITRAL Model Law on Mediation, be created. Using the UNCITRAL Model Law will provide the Kyrgyz effort with international legitimacy and help to ensure that all the key provisions are addressed. The essential features of UNCITRAL Model Law on Mediation that should be included in a Kyrgyz law are:

- the parties may select one or more mediators;
- a mediator must be impartial and independent;
- a mediator must disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence;
- the parties are free to agree on the manner in which the mediation will be conducted;
- the mediator may meet with the parties together or separately;
- all information relating to the mediation proceeding shall be kept confidential;
- all aspects of the mediation are confidential, and, a party (including the mediator) cannot be compelled to give evidence in court; and,



- unless the parties otherwise agree, a mediator shall not act as an arbitrator in respect of a dispute that was the subject of a mediation.

191. Another step to developing legitimacy in the ADR field is to legislate the procedure pertaining to mediation and arbitration. Having a set procedure within the Kyrgyz Civil Code would further develop mediation's legitimacy in the local legal community and would clarify outstanding confusion about the process. Ideally, this would mean that lawyers and the judiciary would be more inclined to support and promote ADR.

192. **Role of mediators.** Mediators should be fair and balanced and not corrupt. Existing codes of ethics "universally condemn the idea of mediating in cases where the mediator has a pecuniary or any other kind of self interest in a particular settlement outcome".<sup>68</sup> The mediator is supposed to be "impartial in his or her views and neutral in his or her relationship to the parties".<sup>69</sup> Codes of ethics can be regulations of Government or codes of private organizations.

193. Mediators should be legally immune from either criminal or civil action. Mediation legislation should ensure the confidentiality and privilege of the mediator sessions and protect mediators from subpoenas and other legal mechanisms. The role of mediators is to facilitate, not coerce, settlement. There should be an "underlying commitment to an ideal of neutrality"<sup>70</sup> in ADR. "Self-determination and mediator impartiality and neutrality"<sup>71</sup> are the "central values which undergird the codes of conduct"<sup>72</sup> of ADR. These principles should be enshrined in the Kyrgyz mediation law.

194. **The parties.** The parties should understand that in mediation they cannot be forced to settle. The crucial aspects of mediation are that it is a voluntary process, a consensual process, and a non-binding process. The parties must all agree to participate in mediation, and be willing to "jointly explore and reconcile their differences". The mediator has "no authority to impose a settlement", and hence has no coercive power. The mediator does, however, have persuasive power, which may be influential in assisting the parties to resolve their differences.<sup>73</sup> Parties to a mediation or arbitration should be able to seek independent legal advice and the ADR process should not preclude the right to counsel. Access to counsel and the availability of independent legal advice gives the process credibility and allows the parties to feel that their position has been fully represented.

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<sup>68</sup> Catherine Morris, "The Trusted Mediator: Ethics and Interaction in Mediation" in J. Macfarlane (ed.), *Rethinking Disputes: The Mediation Alternative*, Toronto: Emond Montgomery, 1997, p. 321. Morris is quoted by Wellington at para 52, see note 4 below.

<sup>69</sup> Moore, C., *The Mediation Process: Practical Strategies for Resolving Conflict*, San Francisco: Jossey-Bass, 1986. Moore is quoted by Wellington at para 55, see note 4 below.

<sup>70</sup> Alex Wellington, "Taking Codes of Ethics Seriously: Alternative Dispute Resolution and Reconstitutive Liberalism" (1999) 12 *Can. J. L. & Juris.* 297, at para 44.

<sup>71</sup> *Ibid.*, at para 51.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, at para 12.

## F. Recommendations Implementation Plan

<i>Sector or Action</i>	<i>Short-Term</i>	<i>Medium-Term</i>	<i>Long-Term</i>
<b>Legislation or Regulation</b>	<ul style="list-style-type: none"> <li>• Create case management working group to review and analyze processing of economic and civil cases under the Civil Procedure Code and to make recommendations for legislative and court rule changes.</li> <li>• Adopt legislation or resolution mandating the use of the Court Information Management System in those courts with sufficient IT infrastructure.</li> <li>• National Council on Justice Affairs to clarify and publicize criteria and procedure for the appointment of judges.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduce amendments to Civil Procedure Code to improve case processing efficiency and effectiveness.</li> <li>• Develop and adopt legislation to clarify the role of media and press in accessing judicial proceedings.</li> </ul>	
<b>Institutional and Practical Reform</b>	<ul style="list-style-type: none"> <li>• Conduct review of legislative authorities for the Supreme Court, Judicial Council, National Council on Justice Affairs (NCJA) and Court Department to identify and resolve overlaps and uncertainties.</li> <li>• Authority to Appoint Head of Court Department should be moved from the President to the Judicial Council or Supreme Court.</li> <li>• Court Department to clarify policy and procedures on content of and access to personnel records of judges</li> </ul>	<ul style="list-style-type: none"> <li>• Court Department staffing and remuneration to be reviewed and improved as necessary to improve Department's administrative performance.</li> <li>• Finalize implementation of automation implementation action plan with priority projects, budgets and timelines identified and agreed.</li> <li>• Develop dedicated IT support staff in Court Department.</li> <li>• Develop judicial and court performance</li> </ul>	<ul style="list-style-type: none"> <li>• Develop and adopt a clear performance standards used for evaluation of judicial performance and linked to remuneration program.</li> </ul>

<i>Sector or Action</i>	<i>Short-Term</i>	<i>Medium-Term</i>	<i>Long-Term</i>
	<p>and court staff.</p> <ul style="list-style-type: none"> <li>Courts should identify and agree on uniform delivery method for summons and amend court rules or propose legislative amendments to implement changes.</li> <li>Identify court IT hardware and software needs to continue and sustain the rollout of the Court Information Management System to improve efficiency and provide judicial statistics.</li> <li>Government to clarify and enforce rules and procedures for cooperation of administrative agencies and departments with court requests.</li> </ul>	<p>standards based on initial court and case management statistics.</p> <ul style="list-style-type: none"> <li>Develop program for the continued increase in remuneration for judges and court staff.</li> <li>NCJA should actively enforce strong, clear, fair and transparent disciplinary mechanisms to combat bribery and the abuse of power within the judiciary.</li> </ul>	
<b>Legal and Judicial Education and Training</b>	<ul style="list-style-type: none"> <li>Ensure law school accreditation standards that are objective, transparent and allow for innovation.</li> <li>The Judicial Training Center should implement its Strategic Plan in coordination and cooperation with the Government and legislature..</li> <li>The Judicial Congress and Judicial Council should establish a program of continuing legal education tied to judicial evaluations.</li> <li>The Judicial Council and JTC should agree on a pre-appointment training curriculum.</li> <li>Develop targeted training program for judicial staff with emphasis on</li> </ul>	<ul style="list-style-type: none"> <li>Law schools should provide more opportunities for the development of practical legal skills through the implementation of clinical courses.</li> <li>Lawyers should establish a bar organization that sets standards for its members, which can establish rules, a code of ethics, and standards of practice.</li> </ul>	<ul style="list-style-type: none"> <li>Funding levels for JTC should be established to allow for self-sufficiency with donors providing assistance at the margins.</li> </ul>

<i>Sector or Action</i>	<i>Short-Term</i>	<i>Medium-Term</i>	<i>Long-Term</i>
	procedural rules and case management.		
<b>Court Infrastructure</b>	<ul style="list-style-type: none"> <li>Continued investment in the existing court inventory should be limited to necessary repairs to prevent further structural deterioration – upgrading existing buildings is not recommended.</li> <li>Conduct a full profile of the conditions of existing judicial facilities.</li> <li>Review design standards adopted by Government Resolution in light of international models and consultations with judges and court officials.</li> </ul>	<ul style="list-style-type: none"> <li>The Government should develop a <b>Strategic Capital Investment Plan</b> which should include: <ul style="list-style-type: none"> <li>➤ Evaluation of existing facilities;</li> <li>➤ Design Guide;</li> <li>➤ Criteria for prioritizing capital projects;</li> <li>➤ Multi-year capital investment program; and</li> <li>➤ Detailed project schedule.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Fund and implement capital investment program.</li> <li>Develop maintenance standards and procedures for new facilities.</li> </ul>
<b>Alternative Dispute Resolution</b>	<ul style="list-style-type: none"> <li>Encourage greater use of the ADR methods of mediation and arbitration through development of a public information campaign.</li> <li>Draft and adopt a new mediation law based on the UNCITRAL Model Law on Mediation.</li> <li>Develop a program to identify and offer training for prospective mediators..</li> <li>Mediated agreements (and arbitral decisions) should be recognized as binding and enforceable under Kyrgyz law.</li> </ul>	<ul style="list-style-type: none"> <li>Identify <b>pilot court in Bishkek to host compulsory mediation process</b> through the adoption of a court rule and managed by court administrator.</li> <li>Clarify procedures for mediation and arbitration through amendments to the Civil Code, including clear recognition that mediated agreements are binding and enforceable in court.</li> </ul>	<ul style="list-style-type: none"> <li>Evaluate the compulsory mediation pilot program through survey of participants, judges and mediators.</li> <li>If successful, prepare plan for the rollout of compulsory mediation in all Kyrgyz first instance courts.</li> <li>Adopt rule or legislation requiring compulsory mediation for specified class of cases in all Kyrgyz first instance courts.</li> </ul>

## **ANNEXES**

## Annex A: Courts of Kyrgyzstan

### Information on Areas Actually Occupied by Employees of Local Courts, Judiciary Department and Court Executives of the Kyrgyz Republic

№	Court Title	Location (address)	Actual usable area (m2)	# of judges	# of court staff	# of auxiliary staff	# of court executives PSSI	# of PSSI auxiliary staff	# of Judiciary Dept staff	# of JD auxiliary staff	Notes
1	2	3	4	5	6	7	8	9			
	oblast courts										
1	Bishkek city court	Bishkek, 64 Ibraimov	824	28	26	24					
2	Chuy oblast court	Bishkek, 62 Yudahin str.	890	17	19	17					
3	Osh oblast court	Osh, 3 Muminov str.	901	15	15	11					
4	Jalal Abad oblast court	Jalal Abad, 2 a Erkindik str.	488	13	12	9					
5	Issyk Kul oblast court	Karakol, 13 Tynystanov str.	544	12	11	9					
6	Naryn oblast court	Nar yn 18 Taranchy str.	530	10	9	9					
7	Talas oblast court	Talas, 206 May 1 str.	310	10	8	11					
8	Batken oblast court	Batken, 54 Sydykov str.	261	10	8	10					
	Bishkek city										
9	Lenin rayon court	Bishkek, 275 Chuy prospect	1581	16	23	13	11	1			
10	Oktyabr rayon court	Bishkek, 27/1 6 micro-district	532	13	22	15	10	1			
11	Pervomay rayon court	Bishkek, 132 Baytik batyr str.	857	14	24	13	10	1			
12	Sverdlov rayon court	Bishkek, 16 Suyumbaev str.	784	15	21	13	11	1			
	Chuy oblast										
13	Sokuluk rayon court	Sokuluk, 7 Shkolnaya str.	565	8	14	11	6	1			

14	Alamudun rayon court	Lebedinovka,7 Shkolnaya str.	702	9	15	12	8	1			
15	Issyk Ata rayon court	Kant, 3 Lenin str.	346	6	14	11	6	1			
16	Chuy rayon court	Tokmok, 377 Lenin str.	210	2	5	9	3	1			
17	Tokmok city court	Tokmok, 377 Lenin str.	320	5	9	10	4	1			
18	Jayil rayon court	Kara Balta, 43 March 8 str.	947	6	11	9	5	1			
19	Moskow rayon court	Belovodskoe, 1 Pobeda str.	345	6	11	9	4	1			
20	Kemin rayon court	Kemin, 3 Lenin str.	590	3	7	8	4	1			
21	Panfilov rayon court	Kaindy, 13a Mira str.	290	2	5	7	3	1			
	Osh oblast										
22	Osh city court	Osh, 7 Ashimahunov str.	1030	15	20	14	14	1			
23	Kara Suu rayon court	Kara Suu, Lenin str.	650	6	10	7	5	1			
24	Uzgen rayon court	Uzgen, Lenin str.	488	4	7	7	3	1			
25	Aravan rayon court	Aravan, 3 Chkalov str.	244	3	6	5	2	1			
26	Nookat rayon court	Nookat, 4 Kalinin str.	390	3	6	5	3	1			
27	Chong Alay rayon court	Daroot Korgon, Tsentralnaya str.	252	2	3	5	1	1			
28	Alay rayon court	Gulcho, Lenin str.	221	2	4	5	1	1			
29	Kara Kulja rayon court	Kara Kulja, Lenin str.	234	2	3	5	1	1			
	Jalal Abad oblast										
30	Jalal Abad city court	Jalal Abad, 2a Erkindik str.	no building	6	10	9	4	1			
31	Ala Buka rayon court	Ala Buka, 56 Ibraimov str.	150	2	2	5	1	1			
32	Suzak rayon court	Suzak	507	4	7	8	5	1			
33	Tash Komur city court	Tash Komur, Sh. Sydykov str.	200	2	5	7	2	1			

3 4	Mayлуу Suu city court	Mayлуу Suu, 17 Lenin str.	156	2	4	6	1	1			
3 5	Toktogul rayon court	Toktogul, 11 A. Suerkulov str.	550	3	6	7	2	1			
3 6	Nooken rayon court	Massy, 17 Lenin str.	240	3	6	7	3	1			
3 7	Aksy rayon court	Kerben, 143 Umetaliyev str.	215	2	5	7	2	1			
3 8	Bazar Korgon rayon court	Bazar Korgon, 49 B. Osmonov str.	383	4	7	7	3	1			
3 9	Kara Kul city court	Kara Kul, 51 Klubnaya str.	no building	2	2	5	1	1			in the Tax Inspectorate building
4 0	Chatkal rayon court	Kanysh Kyia, 2 Lenin str.	no building	2	3	5	1	1			in the Post office building
4 1	Toguz Toroo rayon court	Kazarman, 86 Lenin str.	138	2	2	5	1	1			
	Issyk Kul oblast										
4 2	Ak Suu rayon court	Ak Suu, 37 Gagarin str.	297	3	5	7	2	1			
4 3	Balykchi city court	Balykchi, 31 Gagarin str.	255	3	6	7	2	1			
4 4	Issyk Kul rayon court	Cholponata, 214 Soviet str.	564	5	8	7	4	1			
4 5	Tyup rayon court	Tyup, 54 Elebaev str.	191	3	6	7	2	1			
4 6	Tong rayon court	Bokonbaev, Bolot Mambetov str.	187	2	5	7	3	1			
4 7	Jeti Oguz rayon court	Kyzyl Suu, 57 Bazaar str.	291	3	6	7	2	1			
4 8	Karakol city court	Karakol, 70 Kyshtobaev str.	630	4	8	7	4	1			
	Naryn oblast										
4 9	Ak Talaa rayon court	Baetovo, 62 Manas str.	47	2	4	6	1	1			
5 0	Kochkor rayon court	Kochkor, 137 Orozbek str.	207	2	5	6	2	1			
5 1	At Bashy rayon court	At Bashy, 65 Chatyr Kul str.	124	2	4	6	2	1			
5 2	Naryn city court	Naryn, 18 M. Taranchy str.	436	3	5	6	2	1			
5	Naryn rayon	Naryn, 18 M.	261	2	4	9	2	1			



3	court	Taranchy str.									
5	Jumgal rayon	Chaek, 106 E.									
4	court	Matyev str.	272	2	4	6	1	1			
	Talas oblast										
5		Talas, 285 Lenin									
5	Talas city court	str.	249	3	6	6	2	1			
5		Talas, 2 Madiev									
6	Talas rayon court	str.	243	2	5	6	2	1			
5	Bakay Ata rayon	Bakay Ata, 112									
7	court	Manas str.	161	2	5	5	2	1			
5	Kara Buura rayon	Kyzyl Adyr, 34									
8	court	Pobeda str.	183	3	6	9	2	1			
5	Manas rayon	Pokrovka, 6									
9	court	Mukay Ake str.	165	2	3	5	2	1			
	Batken oblast										
6	Leylek rayon	Isfana, 5 Lenin									
0	court	str.	172	2	3	7	2	1			
6		Suluktu,									
1	Suluktu city court	Koshbulak v,									
6	Kyzyl Kiya city	Juraev str.	310	2	2	5	1	1			
2	court	Kyzyl Kiya, 3									
6	Kadamjay city	Chehov Str.	240	3	6	7	2	1			
3	court	Pulgon, 2 Jalilov									
6	Batken rayon	str.	289	4	7	7	3	1			
4	court	Batken, 36									
	Inter-rayon	Kommunist str.	187	2	3	5	2	1			
	(economic) courts										
6	Bishkek inter-	Bishkek 32 M.	no								
5	rayon court	Gvardiya str.	buildin	7	10	8	5	1			in the Justice Ministry building
6	Chuy inter-rayon	Bishkek 32 M.	no								
6	court	Gvardiya str.	buildin	5	9	8					in the Justice Ministry building
6	Osh inter-rayon	Osh, 3 Muminov									
7	court	str.	130	3	5	7					
6	Jalal Abad inter-	Jalal Abad, 9									
8	rayon court	Abdrahmanov str.	109	2	3	7					
6	Issyk Kul inter-	Karakol, 136									
9	rayon court	Jamansariev str.	638	2	4	6					
7	Naryn inter-rayon	Naryn, 32 Lenin									
0	court	str.	153	1	2	6					
7	Talas inter-rayon	Talas, 285 Lenin	200	1	2	6					

1	court	str.								
7	Batken inter-rayon court	Batken, 54 T. Sydykov str.	202	1	2	6				
2										
		Judiciary Department (JD)								
1	Central Staff of JD (Bishkek)	Bishkek, 64 Ibraimov str.						29	15	in the Bishkek city court building
2	Chuy oblast JD	Bishkek, 64 Yudakhin str.	130					4	4	
3	Osh oblast JD	Osh, 3 Muminov str.						7	4	
4	Jalal Abad oblast JD	Jalal Abad, 40 Shopokov str.						8	7	
5	Issyk Kul oblast JD	Karakol, 70 Kommunist str.						5	4	
6	Naryn oblast JD	Naryn, 18 Taranchy str.						4	5	
7	Talas oblast JD	Talas, 12 Stepnaya str.						4	6	
8	Batken oblast JD	Batken 56 T. Sadykov str.						5	7	

## Annex B: Range of Costs for Replacing and Increasing Court Space

Court Level	Current		Cost Range*			Additional Space		
	Number	Usable M²	Gross M²	\$300	\$650	125%	\$300	\$650
<b>Oblast</b>	6	4747	5,696	\$1,708,920	\$3,702,660	7120.5	\$2,136,150	\$4,628,325
<b>Rayon</b>	56	20078	24,094	\$7,228,080	\$15,660,840	30117	\$9,035,100	\$19,576,050
<b>Inter-rayon</b>	8	1432	1,718	\$515,520	\$1,116,960	2148	\$644,400	\$1,396,200
<b>TOTAL</b>	<b>70</b>	<b>26257</b>	<b>31508.4</b>	<b>\$9,452,520</b>	<b>\$20,480,460</b>	<b>39385.5</b>	<b>\$11,815,650</b>	<b>\$25,600,575</b>

Additional Space			Additional Space		
150%	\$300	\$650	200%	\$300	\$650
8544.6	\$2,563,380	\$5,553,990	11392.8	\$3,417,840	\$7,405,320
36140.4	\$10,842,120	\$23,491,260	48187.2	\$14,456,160	\$31,321,680
2577.6	\$773,280	\$1,675,440	3436.8	\$1,031,040	\$2,233,920
<b>47262.6</b>	<b>\$14,178,780</b>	<b>\$30,720,690</b>	<b>63016.8</b>	<b>\$18,905,040</b>	<b>\$40,960,920</b>

\* Based on research on prices from September 2009.

## Annex C: Court User Survey Sample and Methodology

**Survey geography:** Bishkek, and all 7 regions of the Kyrgyz Republic (Chui, Talas, Issyk-Kul, Naryn, Osh, Djalalabad, and Batken).

**Place of the survey:** at the entrance to the court building.

### Object and Subject of the Survey:

The objects of the survey are:

- Visitors to a court (civilian citizens)
- Representatives of juridical entities

The subjects of the survey are: their opinions, judgments and assessments, made by the respondents.

Data collection with the purpose of obtaining reliable information was implemented with the use of a quantitative method of survey in the form of a standardized individual interview at the entry point to the building of a court.

A total of 500 interviews were conducted. The sample size is calculated by means of the method of confidence intervals in the Republic as a whole.

- 1) This sample size will provide reliable information, taking into consideration goals and objectives of the survey made in the Republic.
- 2) Confidence level – 95% ( $z=1,96$ )
- 3) Sample error will not exceed  $\pm 4,4\%$  at republican level

During the analysis at republican level sample error should not exceed 5%.

### Distribution of the Sample Size:

Based on the distribution of the number of legal cases for 2007 in the regions, the sample size was distributed pro rata in the regions.

Region	Number of cases, 2007 r.	%	Sample, number of respondents
Bishkek	35228	30,7	154
Osh	16293	14,2	71
Djalalabad	13171	11,5	58
Batken	4588	4,0	20
Naryn	3996	3,5	17
Issyk-Kul	10242	8,9	45
Talas	3774	3,3	16
Chui	27306	23,8	119
<b>Total</b>	<b>114598</b>	<b>100</b>	<b>500</b>

**Allocation of Interview Points:**

<b>Region</b>	<b>Number of courts</b>	<b>Inter-district courts</b>	<b>Total /Sample</b>
Bishkek	7	1	8
Osh	9	1	10
Djalalabad	13	1	14
Batken	6	1	7
Naryn	7	1	8
Issyk-Kul	8	1	9
Talas	5	1	6
Chui	9	1	10
<b>Total</b>	<b>64</b>	<b>8</b>	<b>72</b>

**Selection of Respondents:**

Selection of respondents at the entrance to a court was made by means of systematic approach. Depending on the number of people visiting a court, the survey firm selected respondents in different sequencing. For example where the number of visitors is small, all court users were sampled. However, where court visitors came in large numbers every third visitor (or greater) was selected to respond to the Survey questions.

## Annex D: Commercial Case File Analysis Methodology

The Commercial Case File Analysis included 385 economic cases that were processed in 2006 and on which the final decisions were made. The sample size of 385 was set so that the Analysis would provide a 5% margin of error using the Simple Random Sampling method. These cases were selected at random from among those in the Inter-district Courts in Kyrgyzstan's seven oblasts and from Bishkek City Court. To ensure that the Analysis included only closed cases, the sample was limited to those cases filed or opened during 2006 with a final judgment and no appeal. The geographic distribution of the economic cases was based on the number of these cases in each of the eight subject courts in proportion to the total number of 2006 economic cases<sup>74</sup>:

**Table 2.1. Geographic Distribution of Case Files**

Bishkek City	Talas Region	Chui Region	Naryn Region	Osh Region	Jalalabat Region	Batken Region	Issyk-Kul Region
121	21	73	8	63	43	25	31

To ensure sufficient randomness, the Kyrgyz lawyers conducting the Case File Analysis chose every tenth case from the case register until they reached the allotted number of closed and completed cases to be reviewed for each court. In some instances, the lawyers went through the 2006 case register a number of times until they compiled the allotted number of cases.

The selected cases were classified by type of dispute: contract enforcement, debt recovery, creditor's rights, property rights and other economic cases. The case files were then read and analyzed by the Kyrgyz lawyers in order to identify problems, issues and constraints that delayed or influenced the outcome of the court's decision. These systemic constraints or issues were classified into the following categories of "problems": legal, procedural, knowledge, institutional, political/outside influence and other. While a certain amount of conceptual overlap is unavoidable, the categories were defined for the Kyrgyz legal reviewers as follows:

- legal problems - substantive law unclear; contradictory legislative provision, Judge did not cite the relevant law in the ruling;
- procedural problems - procedural law unclear; document not served; parties not in court, hearing delayed, multiple hearings used;
- knowledge problems - judge does not appear to have sufficient knowledge, judge did not communicate how s/he reached his/her decision in the ruling;
- institutional problems - registry not correct; trustee not efficient, access to legal information not available, government or private institution fails to provide requested information or obey court request; and
- outside influence present - political or bureaucratic interference, outside third party interference, including corruption.

These categories were identified at the start of the analysis based on previous case analyses completed by the World Bank team.

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<sup>74</sup> Data for these calculations was provided by the Court Department.

## Annex E: Activities of Other Donors

Donor Organization	Implementing Agency/Project Contact person (tel number or e-mail address)	Status	Description
<b>UNODC, European Union, Swedish Government</b>	<p>UN Office on Drugs and Crime (UNODC), Vera Tkachenko – International Project Manager, Mobile 0555787912, <a href="mailto:vera.tkachenko@unodc.org">vera.tkachenko@unodc.org</a></p> <p>Key state partner is State Service for Execution of Punishment of the Kyrgyz Republic and the Ministry of Justice of Kyrgyzstan</p>	<p>In progress</p> <p>(Starting date – December 2009, end date – December 2012)</p>	<p>Project “Support to Reform of the Prison Service of the Kyrgyz Republic” is funded by the EU (90%) and Swedish Government. The project aims to assist with the implementation of the rule of law in the Kyrgyz Republic with a programme that focuses on the reform of the prison service,. This includes development of policy, strategy and planning capacities of the prison service, to transform broad objectives into action plans and targeted, high-quality training to enable staff to implement plans despite staff shortages and financial constraints. The expected results of the project are:</p> <ol style="list-style-type: none"> <li>1. Improved prison reform and alternatives o imprisonment legislative/normative framework, with prison reform policy and strategy established;</li> <li>2. Improved institutional capacity of the prison administration to manage prisons effectively, in line with UN standards and norms, promoting the social reintegration of offenders;</li> <li>3. A healthier working and living environment in prisons, contributing to the prevention of disease and promoting mental and physical health established.</li> </ol>
<b>USAID</b>	<p><b>ABA CEELI</b> Nurlan Bakirov, Staff Attorney American Bar Association, Rule of Law Initiative (ABA ROLI), 8 Isanova Street, office 4, Bishkek, 720017, Kyrgyzstan T: +996 (312) 31-41-41/89/96 F: +996 (312) 31-42-09 <a href="mailto:nbakirov@elcat.kg">nbakirov@elcat.kg</a> <a href="http://www.abanet.org/rol/">http://www.abanet.org/rol/</a></p>	<p>Established 1993</p>	<p>Established the Association of Attorneys of Kyrgyzstan, the first independent bar association in the Kyrgyz Republic. Assisted in establishing the Kyrgyz Judges Association. Created the Library Centers for Legal Information (Bishkek and Osh), the first publicly accessible legal libraries. Established street law teaching centers and created revised nationwide law school curricula on ethics and advocacy skills.</p>
<b>US INL &amp; US DOJ</b>	<b>ABA CEELI</b>	2005	<p>The criminal law reform program focuses on enhancing the skills of the criminal defense bar, ensuring access to justice for the indigent, and supporting the establishment of a unified national bar.</p>
<b>ABA ROLI, Centre Prava, British Embassy</b>	<b>ABA ROLI</b> (Rule of Law Initiative)	<p>Established 2007 to consolidate its five overseas Rule of Law programs, including</p>	<p>The Advocates Training Center (ATC) was registered as a public foundation with the Ministry of Justice, December 2008. The ATC, with ABA ROLI support, has provided training to licensed advocates since July 2009. In partnership with the Centre Prava public foundation, ABA provides funding and material support to the ATC, including continuing legal</p>

Donor Organization	Implementing Agency/Project Contact person (tel number or e-mail address)	Status	Description
		CEELI	education, street law centers, and organized jury trial trainings for Kyrgyz judges, prosecutors and defense attorneys.
USAID	Association of Civil Society Centers for Advocacy, Aidar Mambetov, Director <a href="mailto:aidar@acssc.kg">aidar@acssc.kg</a>	2005	USAID supported and financed the advocacy campaign “I am for the Honest Elections” during the 2005 presidential elections.
EBRD and IDLO	EBRD and IDLO	Launched 2006	Judicial reform program to improve commercial capacity of judges and strengthen the Judicial Training Center. Ongoing projects include a judicial training program focused on commercial law and a project related to money laundering within the banking sector.
EU	<a href="mailto:taru.kernisalo@eeas.europa.eu">taru.kernisalo@eeas.europa.eu</a> Project manager in charge of Rule of Law portfolio	Preparatory stage	Preparation of new Rule of Law action for amount of 14 million EUR to be financed by EU. The foreseen starting date: 2013
GIZ	(this EU funded project lead by Mr Harsdorf has finished, Jana's project is ongoing) <a href="mailto:jana.schuhmann@giz.de">jana.schuhmann@giz.de</a> <b>Jana Schuhmann</b> Legal Adviser and Programme Manager Supporting Legal and Judicial Reform in Central Asia, German International Cooperation (GIZ), Toktogul Str. 96-2 720001 Bishkek, Kyrgyzstan T +996 312 90 91 32 (16) F +996 312 90 91 30 M +996 772 00 17 48 M +49 179 51 405 46 (out of Kyrgyzstan) Skype: jana.schuhmann <a href="http://www.giz.de">http://www.giz.de</a>	2008-2010	Regional legal reform project: signed agreement of cooperation with Supreme Court and Judicial Training Centre (NO prosecutors) on developing judicial practice, improving training of judges Provide Trainings on Civil – and Civil Procedure laws for judges and advocates, support working groups in legal reforms (Civil Procedure Code and the Law on Administrative procedures), support working groups on writing legal text books (Commentary of Criminal and Civil procedure Code and legal methods), support legal program on community radio in the region aimed at spreading legal information, support Supreme Court in publishing judicial decisions, Produced TV-program in 2007 and 2008, content: debates about judicial reforms and broadcasting shows on court trials
USAID	ICNL	2009 – 2012	<b>The Legal Support for Civil Society regional program</b> This program will strengthen the legal, regulatory, institutional and information environment which protects and enables the growth of civil society organizations.
ICRC	ICRC Mr Christoph Hartmann, Head of the KYR Office, <a href="mailto:chhartmann@icrc.org">chhartmann@icrc.org</a>	Ongoing	Work with universities and the MOD in teaching Human Rights, and assists places of detention through rehabilitating infrastructure and equipment, and in control of tuberculosis in prisons.



Donor Organization	Implementing Agency/Project Contact person (tel number or e-mail address)	Status	Description
<b>USAID</b>	<b>MCC</b> <a href="mailto:amukanbaev@ktnet.kg">amukanbaev@ktnet.kg</a> Anvar Mukanbaev, Deputy Legal Advisor MCC, MCATP Kyrgyzstan Component 3, Criminal Justice Reform Department of Justice Tel: 0996 312 323368 Fax: 0 996 312 323369 Jenishbek Arzymatov Project Management Specialist Millennium Challenge Account Threshold Program, USAID/CAR/Kyrgyzstan Country Office tel: + 996 312 551 241, ext. 4507 fax: +996 515 777 203 <a href="mailto:jarzymatov@usaid.gov">jarzymatov@usaid.gov</a>	2007 - 2010	The Millennium Challenge Account Threshold program supplemented existing and planned projects in the Kyrgyz Republic, including reform of the Ministry of Internal Affairs, the judiciary, law enforcement capacity and judicial independence.
<b>OSCE</b>	OSCE	2003 - 2010	The Police Assistance Program aims to improve the professionalism and operational capacity of the Kyrgyz police force and serves as a basis for comprehensive police reform.
<b>OSCE</b>	OSCE	Implementing	Legal and institutional reform: supports the bringing of national legislation in line with the OSCE and other international commitments; promotes democratic elections, enhances judicial skills; reform of the prison and criminal justice systems; and improves the capacity of NGOs to independently monitor court trials and detention.
<b>SDC</b>	<b>PF "LBDF"</b> Almaz Musabaev - Director Legal and Business Development Foundation Tel.: +996 312 456519/20/21 Fax: +996 312 456520 E-mail: <a href="mailto:development@lbd.kg">development@lbd.kg</a> <a href="http://www.lbd.kg">http://www.lbd.kg</a>	Since 2000 Phase VI – 2011-2013	Supports the local Public Association "LARC - Legal Assistance to Rural Citizens", providing legal services, mainly on land related issues. Since 2010 with a special component in the South on restoration of documents and protection of rights.
<b>Soros Foundation</b>	Ruslan Khakimov <a href="mailto:ruslan@soros.kg">ruslan@soros.kg</a>	2006 - 2008	Criminal justice reform and technical assistance including reform of the judicial system, civilian oversight of policing, human rights protection. Criminal justice reform and provide technical assistance. Last year launched projects: <ul style="list-style-type: none"> <li>- Human rights</li> <li>- Reform of the Judicial system</li> <li>- Migration</li> <li>- Legal aid</li> </ul> Development of legal education.
<b>UNDP</b>	<a href="mailto:alexander.kashkarev@undp.org">alexander.kashkarev@undp.org</a> Country Office, Programme Officer Tel 611213	Since 2004	The program trained law enforcement officers on how to treat detainees/convicts based on Human Rights. The UNDP has also worked on building government capacity, working with the Security Sector of the Parliament.

