

Overall Score:

64 - Weak

Legal Framework Score:

87 - Strong

Actual Implementation Score:

42 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

According to legislation, non-commercial organizations can engage in any legal activity declared in their mission statement that is not prohibited by law.

References:

The Constitution, Article 21; Law on Non-commercial Organizations of October 15, 1999, Article 12.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

There are no formal legal or regulatory bans for raising money from foreign or domestic sources.

References:

The Law on Non-commercial Organizations of October 15, 1999, No. 111.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Information on the property and the structure of non-commercial organizations must be submitted to the state bodies, not to the general public. This is, in fact, a common rule for all kinds of legal entities.

References:

The Law on Non-commercial Organizations, Article 17.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

There are no barriers on the formation of NGO's, including those focused on anti-corruption.

References:

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Although CSOs are part of the political-decision process, their role is limited with certain issues like gender, ecology, etc. Political leaders have much more influence.

References:

Modern trends and perspectives of NGO development in Kyrgyzstan, materials from round tables, Bishkek 2007 (Soros Foundation's publication).

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

Alisher Saipov, editor of the Uzbek-language newspaper Siyosat," was shot dead on October 24, 2007. He edited the region's only Uzbek-language publication, which challenged the government and reported for the Voice of America.

References:

Outspoken Uzbek Reporter Killed (article by Natalia Antelava, BBC Central Asia correspondent). <http://news.bbc.co.uk/2/hi/asia-pacific/7061171.stm>

A committee on the protection of journalists calls to resume investigation of murder of Kyrgyz journalist.
22 D52@0;O 2008 3.

<http://www.monitoring.kg/?pid=126&cid=2&nid=1649>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Any citizen age 14 and older can form or become a member of the trade union of his or her choice, but the number of employees required to form a trade union has to be three or more.

References:

Law on Trade Unions of August 4, 2004, No. 105, Article 2.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

The trade unions are not organized by sector or profession. For example, there is no trade union for medical doctors, but there is a trade union in every hospital in which all workers are members. Therefore, it is difficult to set up a trade union in private companies where owners can easily take preventive measures against the establishment of a trade union. Additional barriers to organizing trade unions exist, such as intimidation at work or retribution firings.

References:

Kuban Omuraliev, Executive Director, Kyrgyz Parliamentarians Against Corruption, September 8, Bishkek.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The current constitution was adopted on January 15, 2007. It contains all regulations on human rights and mass media that were in the previous edition of the constitution adopted in 1998. According to Article 36 of the constitution, culture, arts, literature, science and the mass media are free. This clause makes the mass media an object of the cultural sphere rather than the political or socio-economic spheres. Article 65 says that no laws shall be made to abridge freedom of speech, including the press.

References:

The Constitution of the Kyrgyz Republic as of January 15, 2007.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

According to Article 14 of the constitution, every citizen has a right to free thoughts, speech and print and expression of thoughts and views.

References:

The Constitution of the Kyrgyz Republic as of January, 2007.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

38

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | **50** | 25 | 0

Comments:

After closing one newspaper, Alibi,” because of creditors, its former editorial staff registered another one, “Achyk Sayasat.

References:

Monitoring report of Kyrgyz mass media.

<http://www.monitoring.kg/?pid=136&bid=80>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

References:

The Law on Mass Media.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There might be some delays, but there was no evidence last year when print media was not registered in Kyrgyzstan.

References:

A confidential source.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no licenses required for print media, but a registration process required for all business entities in Kyrgyzstan. One doesn't need a license for media, but still needs to register it in the Ministry of Justice. The latter has a lot of possibilities to postpone a registration because of formalities. Registration of business in Kyrgyzstan is not an easy process.

References:

A confidential source.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

31

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

Comments:

There may be problems with the distribution of broadcast bandwidth. The government might freeze the process, saying that there is no bandwidth, or they may announce a bid that contains discriminative conditions for the media.

References:

A confidential source.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

References:

The Law on Mass Media.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The government might freeze the process, saying that there is no bandwidth.

References:

Confidential source.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses require a visit to a specific office. According to the deputy head of the National Communications Agency, more than 40 companies are in a queue to get radio frequencies..

References:

More than 40 TV companies are waiting for their radio frequencies. 24.kg news agency, October 20, 2008, www.24.kg.

A confidential source.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

50

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | **50** | 25 | 0

Comments:

There is a draft law in Parliament to control the content of Internet sites. There is also the first case in Kyrgyzstan where a citizen (a member of opposition party) was punished for content of his personal web blog. He published a photograph of a voting paper before Parliament's election start and was charged with a violation of confidential information and physical trespass.

References:

Radio Free Europe/Radio Liberty: Attempts to control Internet in Kyrgyzstan

<http://ca-news.org/news/38078>

Prosecutor General's Office instituted legal proceedings against Edil Baisalov, 12/6/2007.

<http://www.24.kg/election/2007/12/06/70523.html>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | **50** | 25 | 0

Comments:

After publication on his personal website, Edil Baisalov was banned from Parliament elections in which he was set to lead the party's list of candidates (December 2007).

References:

Kyrgyzstan: The Art of Political Assassination, by Bruce Pannier for RFE/R, with contributions from Burulkan Sarygulova and Amirbek Usmanov, January 15, 2008. No comments.
<http://www.kyrgyzreport.com/?p=459>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

33

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

The law requires that journalists should provide reliable information, but prohibits damaging personal honor and dignity. Individuals who think that their honor and dignity were damaged by the media can appeal to the court, which makes a decision. The media might deny requests for damaging information from the person concerned.

References:

The Law on Mass Media, July 2, 1992, Article 17.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Recently two Kyrgyz newspapers, Alibi” and “De-facto,” had to pay big penalties for publication of unconfirmed information, which was deemed as slander by the courts. NGO representatives think there is a trend to more strict reaction of the courts on such cases. In this context, media owners most likely will limit corruption-related publications. However, it might have a positive effect in terms of encouraging journalists to be more professional and accurate.

References:

Recently judges are getting more tough on journalists, reported a media representative.
www.monitoring.kg

A confidential source.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Print media are much more free and most of the broadcast media are very positive to the government. As experts reported, it might be because of new owners of broadcast media.

References:

The opposition lost its media. Redistribution of property also affected the media markets. 2/27/2008.
<http://www.journalist.kg/?pid=174&nid=269>

A confidential source.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

20

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

Comments:

The law only stipulates who has the right to establish a mass media entity. There are no requirements to disclose ownership details.

References:

The Law on Mass Media, July 2, 1992, Article 5.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

Comments:

There is no requirement for a disclosure in the law. Mass media companies have the same rights and obligations as any legal entity in Kyrgyzstan.

References:

The Law on Mass Media, July 2, 1992, Article 5.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

A court case against De-Facto newspaper showed that journalists were not professional in their reporting. Many corruption-related publications might be corrupted themselves.

References:

Roza Otunbaeva: Let to Close De-Facto Newspaper, Medet Sadyrkulov, 6/27/2008, 17:49, 24.kg News Agency, Nargiza Yuldasheva.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | **25** | 0

Comments:

State TV devoted over 76 percent of coverage to the authorities and state radio gave some 76 percent of coverage to the authorities. Election coverage in private TV showed a similar bias..

References:

OSCE/ODIHR Election Observation Mission Final Report, Warsaw, April 24, 2008, http://www.osce.org/documents/odihr/2008/04/30844_en.pdf

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

OSCE/ODIHR Election Observation Mission Final Report, Warsaw, April 24, 2008.

http://www.osce.org/documents/odihr/2008/04/30844_en.pdf

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

On September 9, 2008, the editor of the Alibi newspaper was arrested by the Bishkek city police department. His newspaper published an article about a criminal case in which, according to the newspaper, the President's relative was involved. The

relative registered a claim and won the case in court. The newspaper now has to pay a penalty totalling 1 ml. soms (more than US\$25,000). The editor was arrested because his newspaper did not pay the penalty. After a media campaign and protests by opposition leaders, the editor was released by the Bishkek city prosecutor on September 11, 2008.

References:

Ex-editor of Alibi newspaper was released from custody. <http://www.monitoring.kg/?pid=126&cid=1&nid=1765>

Prosecutor General's Office recognized that Editor-in-Chief of Alibi did not conform to the law.

<http://www.tazar.kg/news.php?i=9275>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There were cases when journalists were harmed, but there is no evidence that these incidents were related to their professional activities.

References:

Bulletins of the Center for Journalism in Extreme Situations.

[http://www.cjes.ru/bulletin/?bulletin_id=3078\)=eng](http://www.cjes.ru/bulletin/?bulletin_id=3078)=eng)

Confidential source.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

Alisher Saipov, editor of the Uzbek-language newspaper Siyosat, was shot dead in October 24, 2007. He edited the region's only Uzbek-language publication, which challenged the government and reported for the Voice of America.

References:

Outspoken Uzbek Reporter Killed, by Natalia Antelava, BBC Central Asia correspondent.
<http://news.bbc.co.uk/2/hi/asia-pacific/7061171.stm>

Committee on Protection of Journalists calls to resume investigation of murder of Kyrgyz journalist.
<http://www.monitoring.kg/?pid=126&cid=2&nid=1649>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

44
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The access is guaranteed, but there is no written procedure for obtaining information.

References:

The Law on Guarantees and Free Access to Information, December 5, 1997, Article 3.

The Law on Access to Information of State Organs and Local Self-governments, November 14, 2006, Articles 3 and 4.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

There is a possibility to redress through a court.

References:

The Law on Guarantees and Free Access to Information, December 5, 1997, Article 12.

The Law on Access to Information of State Organs and Local Self-governments, November 14, 2006, Article 35.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Usually there are press services in the state organs that should provide information for the media and the general public.

References:

The Law on Access to Information of State Organs and Local Self-governments, November 14, 2006, Article 33, requests that every state organ should have a structural unit and staff responsible for providing information to citizens.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

25

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

Comments:

Records take time to obtain, but citizens usually do not appeal to courts. Recently a human-rights activist, Maxim Kuleshov, won a case in a court when some local authorities ignored his request to give information on staffing and salaries in local governments.

References:

In Kyrgyzstan, a district court is called to account for local government's officials after a claim by a human-rights activist, September 15, 2008, 24.kg News Agency. <http://www.24.kg/community/2008/09/15/92421.html>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

Comments:

Usually a request for information travels between different organizations or simply might be ignored.

References:

Monitoring of State Strategy on Combating Corruption, Bishkek, 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is a practice that state bodies answer if they receive a complaint or grievance from a citizen. Civil servants are accountable for a number of letters/documents they prepared. Therefore, the answer might be formal, but at least civil servants react to complaints. But a request for information is something new to administrative practice and appeals might be ignored.

References:

In Kyrgyzstan, a district court is called to account for local government's officials after a claim of human-rights activist, September 15, 2008, 24.kg News Agency. <http://www.24.kg/community/2008/09/15/92421.html>

A confidential source (a civil servant).

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The most effective way to get hidden information is to appeal to a court, but is expensive and time consuming.

References:

In Kyrgyzstan, a district court is called to account for local government's officials after a claim of human-rights activist, September 15, 2008, 24.kg News Agency. <http://www.24.kg/community/2008/09/15/92421.html>

A confidential source (a civil servant)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

The laws on access to information and state secrets gives a space to civil servants to deny an information request because of state secrecy or because information might be for internal use only.”

References:

A confidential source (a civil servant).

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

52
II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Citizens of the Republic elect the President, members of the Parliament and local self-government. The minimum age limitation for voting is 18 years.

References:

The Constitution of the Kyrgyz Republic, January 15, 2007, Article 1.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Elections to state and local self-government organs are mandatory and should take place within regular timeframes, as required by the relevant laws (the Constitution, the Election Code, etc.).

References:

Election Code of the Kyrgyz Republic, May 29, 1999, Article 7.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

42

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

The main concern is the Kyrgyz immigrants, about 500,000. It is almost a quarter of all voters in Kyrgyzstan. In Russia, there are 250,000 Kyrgyz immigrants, but only 13 voting sites were organized in big Russian cities during the last elections in 2007.

References:

Damir Usenbaev, Internet Magazine Oasis, No. 19 (63), October 2007.

<http://www.ca-oasis.info/oasis/?jrn=64&id=492>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | **25** | 0

Comments:

In the last parliamentary elections, 24 votes for the Kyrgyz Social Democratic Party were easily changed to 1,024. Independent observers had no chance to see how the ballots were counted.

References:

Generous Thousands for SDPK," Aidar Bolotbaev, Litsa newspaper, January 10, 2008.

www.baibolov.kg

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

Comments:

The parliament elections on December 16, 2007, were announced unexpectedly. Since they were to be the first elections based on the party system, parties of the opposition did not have much time to be prepared for the election, while the party of the president had some advantages. Many polling places were not ready and voters could not find themselves on voters' lists.

References:

Final report of Taza Shailoo: Associations on Monitoring Pre-term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

Statement on the Kyrgyzstan Referendum of the US Mission to the OSCE, October 25, 2007. www.osce.org

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

50

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

The Constitution of the Kyrgyz Republic, January 15, 2007, Article 8.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Individuals with a history of criminal activities, or those under the criminal process are banned from running for office.

References:

The Constitution, Article 23, the Law on Civil Service.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Although there is no evidence that the government created barriers for registration of opposition party members, there are difficulties in registering new parties. Since many parties are phantoms (have no office, staff, funding. etc.) they are registered just in case" it turns out to be easier to buy a registered party rather than create a new one.

References:

Political Parties in Kyrgyzstan: What if Elections Were Held Tomorrow?" Tamerlan Ibraimov.
<http://www.ipp.kg/en/analysis/360/>

A confidential source (a party member).

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Opposition member Ishenbai Kadyrbekov was registered as a candidate for deputy of the Bishkek city council. He was arrested by the Finance Police in Bishkek on April 25, 2008. Ishenbai Kadyrbekov was accused of power abuse and malfeasance. Opposition leaders think that it was a political case, not criminal. The Central Election Commission (CEC) made a decision that he be released during elections and participate in the elections. However, a district court denied the decision of the CEC.

References:

Azimbek Beknazarov: Kyrgyz Authorities Bar Ishenbai Kadyrbekov from the Ballot to Local Self-Governments, 9/16/2008, 24.kg News Agency, Jyldyzbek Ibraliev. <http://www.24.kg/community/2008/09/16/92619.html>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Two parties (Social Democrats and Communists) have 19 votes in total against 71 votes of the ruling party. As an International Crisis Group report cited, these parties were allowed to be in the parliament as the most harmless ones.

References:

Kyrgyzstan: A Deceptive Calm, Briefing No. 79, Asia, August 14, 2008. http://www.crisisgroup.org/home/index.cfm?action=cw_search&l=1&t=1&cw_country=60&cw_date=

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

50

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Central Election Commission is legally separated, but in practice staffed by partisans.

References:

The Law on the Central Election Commission.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Members of election commissions are usually government employees (teachers, medical doctors, social workers). This situation makes them dependent on the government.

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE assessment of the Kyrgyz Republic Election Code, Warsaw, July 7, 2007.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Election commission members are nonprofessional, volunteer staff, except the chairpersons of the regional commissions and the city of Bishkek's commissions. Usually they given only a short training before elections.

References:

Final report of Taza Shailoo Associations on monitoring of pre-term parliament elections 16 December, 2007
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections, 2007.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Important information is missing in the last report of the Central Election Committee. Mandates of new members of parliament were distributed before the official reporting of election results.

References:

Kyrgyz Opposition Queries Election Figures, by Gulnara Mambetalieva in Bishkek, (RCA No. 537, March 12, 2008).

Final report of Taza Shailoo Associations on monitoring of pre-term parliament elections 16 December, 2007

http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agency is selective with enforcement of rules. For instance, Mr. Edil Baisalov, an opposition Social Democrat party (SDPK) candidate, was de-registered as a candidate and excluded as a member by an advisory vote of the CEC and by two CEC resolutions dated December 4.

De-registration of Mr. Baisalov was triggered by an image of a ballot that appeared on Mr. Baisalov's Internet blog. The CEC argued that Mr. Baisalov had revealed the security features of the ballots and, by this act, obstructed the conduct of the elections. At the same time, campaigning by the local administration in favor of the President's party, Ak Jol, was observed by the OSCE/ODIHR EOM in some instances. Campaign material in favor of Ak Jol, in the form of flags, posters and leaflets, was observed on the official premises of local authorities and election administrations.

References:

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections, 2007.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

63

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

Voters have no sufficient time to correct errors before voting.

Some Precinct Electoral Commissions were observed to be closed during working hours.

One political party expressed its concerns to the OSCE/ODIHR mission about the registration of voters in Batken region.

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.

http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost^o voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

The Election Code, General Part, Article 55.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Some of the court decisions were politically motivated and contrary to the principles of the Rule of Law. Courts were not able to consider all appeals by the day of election; they were not ready for these.

References:

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections, 2007. http://www.osce.org/documents/odihr/2007/12/28916_en.pdf

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007. http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Police officers were used to block ballots from observers during counting of ballots. In some places, police take out the independent observers from precincts when the counting starts..

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

Foreign (international) observers have to be accredited at the Central Election Commission before elections. Domestic observers are proposed by candidates.

References:

Election Code, Article 17.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Observers were restricted from monitoring the ballot-counting process.

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections, 2007.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Central Commission on Elections and Referendums.

References:

The Election Code of the Kyrgyz Republic.
www.shailoo.gov.kg

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

II-3. Political Financing

20. Are there regulations governing the financing of political parties?

43

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law considers donations as a possible legal source of party financing. There is no definition of private contributions as a special source. A limit for individual donations is 100,000 soms (US\$2,500).

References:

The Law on Political Parties, Article 17.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | **NO**

Comments:

The Electoral Code regulates the limits of donations to election funds by political candidates to different elected posts, but not political parties.

References:

The Electoral Code, Articles 51, 64, 74, 85, and 92.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

The same articles on election funds regulates all kind of donations.

References:

Electoral Code, Articles 51, 64, 74, 85, and 92.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

The limits are established for a specific political campaign, but not for the overall party's expenditures.

References:

Manual on collection, accounting and expenditures of candidates and political parties election funds approved by the Central Election Commission, October 25, 2007, No. 91. www.shailoo.gov.kg

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

Any candidate can request and receive information on donations to other candidates' funds. This rule applies only to candidates,

not parties.

References:

The Electoral Code, Article 51.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

Financial control for election funds is implemented by the election committees. Control on political parties' financing should be made by the tax inspector.

References:

The Electoral Code, Article 52.

The Law on Political Parties, Article 22.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The candidates shall be monitored by the election commission and the political parties shall be monitored by the tax inspector.

References:

The Election Code, Article 52.

The Law on Political Parties, Article 22.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

83

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

The Electoral Code regulates the limits of donations to election funds of political candidates to different elected posts.

References:

The Electoral Code, Articles 51, 64, 74, 85, and 92.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

The same articles on election funds regulate all kinds of donations.

References:

Electoral Code, Articles 51, 64, 74, 85, and 92.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Manual on collection, accounting and expenditures of candidates and political parties election funds approved by the Central Election Commission, October 25, 2007, No. 91.
www.shailoo.gov.kg

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

Any candidate can request and receive information on donations to other candidates' funds.

References:

The Electoral Code, Article 52.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

Comments:

No independent monitoring is required. Financial control on election funds is implemented by the election committees. Control on political parties' financing should be made by the tax inspector.

References:

The Electoral Code, Article 52.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The Central Commission on Elections and Referendums is responsible for monitoring and enforcing laws and regulations for the financing of individual political candidate's campaigns.

References:

The Electoral Code, Article 52.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

8

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Limits are so high that they are meaningless in the context of the overall costs of running a campaign. For instance, the last campaign cost the party about 100,000,000 soms (more than US\$2,500,000). And the total limit for a party's electoral fund is exactly 100,000,000 soms (US\$2,500,000). At the same time, a limit for individual donations is 100,000 thousand soms (US\$2,500). So a thousand party members or their relatives can easily donate all the party's election funds and do it in a legal manner.

References:

Political Parties in Kyrgyzstan: What if Elections Were Held Tomorrow?" Tamerlan Ibraimov.
<http://www.ipp.kg/en/analysis/360/>

Instructions on Collecting, Accounting and Making Expenditures of Candidates' and Political Parties' Electoral Funds, approved by the Central Election Commission, No. 91, October 25, 2007.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Limits are a bit more than US\$10,000, which is not very much. There is no enforcement for violations.

References:

Instructions on Collecting, Accounting and Making Expenditures of Candidates' and Political Parties' Electoral Funds, approved by the Central Election Commission, No. 91, October 25, 2007.

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | **50** | 25 | 0

Comments:

The limit is 100,000,000 soms (US\$2,500,000), which is not enough for one campaign, let alone all other activities.

References:

Political Parties in Kyrgyzstan: What if Elections Were Held Tomorrow?" Tamerlan Ibraimov.
<http://www.ipp.kg/en/analysis/360/>

Instructions on Collecting, Accounting and Making Expenditures of Candidates' and Political Parties' Electoral Funds, approved by the Central Election Commission, October 25, 2007, No. 91
www.shaloo.gov.kg

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:

Although the organized transfer of voters by bus and giving bribes to voters were recognized in the last elections, the expenses of the parties were not investigated.

References:

Final report of Taza Shaloo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections 2007.

http://www.osce.org/documents/odhr/2007/12/28916_en.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The agency is partisan in its application of power.

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.

http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections 2007.

http://www.osce.org/documents/odhr/2007/12/28916_en.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Party finances are not audited.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The limit is too low (5000 soms {US\$127}) for a candidate to a president) to be realistic.

References:

Political Parties in Kyrgyzstan: What if Elections Were Held Tomorrow?" Tamerlan Ibraimov.
<http://www.ipp.kg/en/analysis/360/>

Instructions on Collecting, Accounting and Making Expenditures of Candidates' and Political Parties' Electoral Funds, approved by the Central Election Commission, October 25, 2007, No. 91.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There is no enforcement of violations.

References:

Instructions on Collecting, Accounting and Making Expenditures of Candidates' and Political Parties' Electoral Funds, approved by the Central Election Commission, October 25, 2007, No. 91.
www.shailoo.gov.kg

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections 2007.
http://www.osce.org/documents/odihr/2007/12/28916_en.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Final report of Taza Shailoo: Associations on Monitoring of Pre-Term Parliament Elections, December 16, 2007.
http://www.baibolov.kg/mat_smi/matorig08/zkl.pdf

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections 2007.
http://www.osce.org/documents/odihr/2007/12/28916_en.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of

power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁶⁷Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

44

27a. In practice, the chief executive gives reasons for his/her policy decisions.

Comments:

The task of the new legislature, presidential aides say bluntly, is to implement the president's will with minimal discussion and zero dissent.

References:

Kyrgyzstan: A Deceptive Calm, Asia Briefing, No. 79, August 14, 2008, Report of International Crisis Group.

<http://www.crisisgroup.org/home/index.cfm?id=5627&l=1>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Supreme Court of the Kyrgyz Republic shall be the highest body of the judicial power in regard to civil, criminal and administrative judicial proceedings, as well as in regard to commercial disputes and other matters as the law may envisage. The Constitutional Court shall be the highest body of the judicial power for the protection of the Constitution of the Kyrgyz Republic.

References:

The Constitution, Articles 85 and 86.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

An inter-district court in the Kyrgyz Republic has dismissed a lawsuit filed by the country's Vice-Speaker of Parliament against agreements between the government and the Toronto-based Centerra Gold company. But earlier on June 17, the same court invalidated Centerra's Southwest and Sarytor mining license and the Kumtor exploration license. The lawsuits were against the governmental agency on natural resources, which issued the licenses.

References:

Kyrgyz Court Dismisses Case Against Centerra Project, by Liezel Hil. <http://www.miningweekly.com/article.php?id=141749>
Published on August 27, 2008.
Delo newspaper, No. 24 (733), June 25, 2008.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Executive orders undermine the power of laws as it was with the Law on Combating Corruption and the President's Order to create the National Agency of Preventing Corruption. The Agency has no a real power partly because its responsibilities are not approved by the law.

References:

Monitoring of State Strategy of Combating Corruption, September, 2007, Bishkek.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

The president (head of state) and all former presidents of the Kyrgyz Republic are granted immunity. They shall not be brought to court for criminal or administrative offenses because of their action or inaction during their presidency. Exceptions are made for presidents discharged from office as a result of impeachment.

References:

The Constitution, Article 49.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

The prime minister, ministers, and other civil servants might be prosecuted for crimes they commit.

References:

The Law on Civil Service, Article 37.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

The Law on Civil Service, Chapter V, June 30, 2004.

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Law on Civil Service, Chapter V, June 30, 2004.

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

The Law on Civil Service, Chapter V, June 30, 2004.

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The law on declaration of income and assets stipulates that the Agency on Civil Service Affairs as a body is responsible for checking declarations of civil servants, including high officials but not auditing. This is not an independent body, because the head of the agency is a presidential appointee. The agency shall examine the data presented in declaration, but there is no procedure for doing this, and the agency's staff are not certified auditors or appraisers.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004, Article, 6.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

The law on civil service restricts relationships with the private sector only while civil servants are in service and one year after they leave their office. Elected officials and ministers are not bound by those restrictions.

References:

The Law on Civil Service, Article 11, June, 30 2004.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are rarely or never enforced.

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and un-enforced.

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

Comments:

Executive branch asset disclosures are not audited.

References:

Monitoring of State Strategy for Combating Corruption, September, 2007, Bishkek.
Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007 at the OECD Headquarters in Paris.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

100

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The Civil Service Agency has to publish asset-disclosure forms in its bulletin and on the government's website.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108, Article 7.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

www.24.kg
www.csa.gov.kg

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records can be obtained online.

References:

www.24.kg
www.csa.gov.kg

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

This rule covers any violation by state power.

References:

The Constitution, Article 15, Paragraph 14.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as

failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Government personnel are regularly used to support activities of the ruling Ak Jol party.

References:

Kyrgyzstan: A Deceptive Calm, Asia Briefing, No. 79, August 14, 2008

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission.

The Kyrgyz Republic Pre-term Parliamentary Elections, 2007.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Constitutional court shall disregard any legal act that it regards as unconstitutional.

References:

The Constitution, Article 85.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Court is sometimes partisan in its application of power. Thus on September 14, 2007, the Constitutional Court disregarded a law on the regulation of Parliament and on this basis, the Constitution, approved by the Parliament, was disregarded too. Eventually the Parliament was made dissolute by the president.

References:

<http://www.ks.kg>

Kyrgyzstan: A Deceptive Calm, Asia Briefing, No. 79, August 14, 2008, International Crisis Group's Report.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The members of the parliament can be the subject of criminal proceedings, but only with the approval of the parliament. Otherwise they have immunity.

References:

The Constitution, Article 56.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

The Law on Civil Service, Chapter V, June 30, 2004.

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

The Law on Civil Service, Article 11, June 30, 2004.

References:

The law on civil service restricts relationships with the private sector only while civil servants are in service and one year after they leave the office. Elected officials are not subject to these restrictions, however.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

There is a very general rule in the law on civil service that restricts receiving gifts, money or services for action or inaction in relation to discharge of their official duties.

References:

The Law on Civil Service, Article 11, June 30, 2004.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

The law on declaring income and assets stipulates that the Agency for Civil Service Affairs, as a body, is responsible for checking declarations of civil servants, including high officials, but not auditing. This is not an independent body because the head of the agency is a presidential appointee. The agency shall examine the data presented in the declaration, but there is no procedure to do this, and the agency's staff members are not certified auditors or appraisers.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004, Article 6.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting.

Meeting of the Istanbul Anti-Corruption Action Plan on September 27, 2007, at the OECD Headquarters in Paris.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting.

Meeting of the Istanbul Anti-Corruption Action Plan on September 27, 2007, at the OECD Headquarters in Paris.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting.

Meeting of the Istanbul Anti-Corruption Action Plan on September 27, 2007, at the OECD Headquarters in Paris.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

100

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

All data must be published by the Civil Service Agency.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

<http://www.24.kg/community/2008/08/11/89557.html>

http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records can be obtained online.

References:

<http://www.24.kg/community/2008/08/11/89557.html>

http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

The Law on Access to Information of State Bodies and Local Self-governments, November 14, 2006, Chapters III and IV.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

Records are available online.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records can be obtained online.

References:

<http://www.24.kg/community/2008/08/11/89557.html>

[http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61\)=1251](http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61)=1251)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

National-level judges have to be appointed by the parliament upon proposal of the President.

References:

The Constitution, Articles 46 and 83.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

High-level judges are selected in some cases purely on basis of political loyalty.

References:

The Legal Profession Reform Index for Kyrgyzstan, American Bar Association.

Kyrgyzstan: The Challenge of Judicial Reform, Asia Report, No. 150, International Crisis Group Report, April 10, 2008. http://www.crisisgroup.org/home/index.cfm?action=cw_search&l=1&t=1&cw_country=60&cw_date=

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

National-level judicial nominees have to be selected by the National Council, which consists of representatives of all branches of power.

References:

The Law on the National Council on Justice Affairs, August 20, 2007, No. 155, the Constitution, Article 46.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

63

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Judges have to announce their decision at the court's session, but they can announce only the concluding part.

References:

The Rules of the Supreme Court, approved by the Plenum of the Supreme Court, October 22, 2004, No. 9, Article 4.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

Military courts are not transparent to the public. Recently, three security-service officers were given a verdict of guilty by the Bishkek military court. However, according to their lawyers, the charge was based on open materials published on the Internet.

References:

The Military Court of Kyrgyzstan has started a consideration of an appeal of security officers condemned for high treason. <http://www.24.kg/investigation/2008/09/09/91939.html>

American Bar Association, Judicial Reform Index for Kyrgyzstan, June 2003.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

There is a disciplinary commission for judges.

References:

The Law on Status of Judges, March 30, 2001, No. 35, Article 9.

President's Decree on Qualification on the Collegiums of Judges, December 19, 2003, No. 414.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Regulation on Qualification of the Collegiums of Judges, approved by President's Decree, June 8, 2005, No. 223.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Judges are good at defending themselves, but they are not good at punishing themselves, ” per an interview to the International Crisis Group by a leading lawyer.

References:

Kyrgyzstan: The Challenge of Judicial Reform Crisis Group, Asia Report, No. 150, April 10, 2008.

http://www.crisisgroup.org/library/documents/asia/central_asia/150_kyrgyzstan_the_challenge_of_judicial_reform.pdf

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

The Judicial Disciplinary Commission does not effectively penalize offenders.

References:

Kyrgyzstan: The Challenge of Judicial Reform Crisis Group, Asia Report, No. 150, April 10, 2008.
http://www.crisisgroup.org/home/index.cfm?action=cw_search&l=1&t=1&cw_country=60&cw_date=

American Bar Association, Judicial Reform Index for Kyrgyzstan, June 2003.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108, Article 1.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

According to the code, judges have to fight corruption, but there is no specification of what corruption is.

References:

The code of the Kyrgyz Republic's Judge's Dignity, approved by the Fifth Conference of Kyrgyz Republic's Judges, June 8, 2006, Article 2.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The law on declaring income and assets stipulates that the agency of Civil Service Affairs, as a body, is responsible for checking the declarations of civil servants, including high officials, but not auditing. This is not an independent body because the head of the agency is a presidential appointee. The agency shall examine the data presented in declaration, but there is no procedure for doing so, and the agency's staff members are not certified auditors or appraisers.

References:

The law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004, Article 6.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

There is no restriction for judges to enter a private-sector position. According to Code of Dignity, judges should abstain from financial and business ties that can call into question their impartiality or affect execution of their professional duties. These rules apply to retired judges as well.

References:

Code of the Kyrgyz Republic's Judge's Dignity, approved by Fifth Conference of Kyrgyz Republic's Judges, June 8, 2006, Article 6.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

Cooling off periods are non-existent. For example, a former Chairman of The Supreme Court said that she used to be a private entrepreneur after dismissal in 2005.

References:

Mayor of Kyrgyzstan's capital city, appointed a former Chairman of the Supreme Court as an adviser. 09/09/2008, 24.kg News Agency. <http://www.24.kg/personnel/2008/09/09/91923.html>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Not a single court case is decided in Osh without money. We, the lawyers, have turned into middlemen; we only take bribes to the judges from our client, said a lawyer from the provincial Osh city in his interview.

References:

Kyrgyzstan: The Challenge of Judicial Reform Crisis Group, Asia Report, No. 150, April 10, 2008.

http://www.crisisgroup.org/home/index.cfm?action=cw_search&l=1&t=1&cw_country=60&cw_date=

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting.

Meeting of the Istanbul Anti-Corruption Action Plan on September 27, 2007, at the OECD Headquarters in Paris.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

National-level judiciary asset disclosures are not audited.

References:

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan on September 27, 2007, at the OECD Headquarters in Paris.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

100

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Records are available online.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, August 7, 2004, No. 108.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online

References:

<http://www.24.kg/community/2008/08/11/89557.html>

[http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61\)=1251](http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61)=1251)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records can be obtained online.

References:

<http://www.24.kg/community/2008/08/11/89557.html>

[http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61\)=1251](http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61)=1251)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The parliament shall not make amendments requiring increases in expenditures if the government cannot provide sources to cover them.

References:

The Law on Main Principles of Budget Law, Article 15, The Constitution, Articles 58 and 65.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The Republican (central) budget was significantly increased because of the food and fuel crises. All additional expenditures were approved by the parliament.

References:

K. Bakiev signed amendments to the law on the Republican budget of the Kyrgyz Republic for 2008.

<http://www.for.kg/goid.php?id=65752&print>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Legislators are occasionally overwhelmed by the volume of work to be performed. Members of parliament are not given sufficient time to consider documents they receive.

References:

Kyrgyzstan: A Deceptive Calm, Asia Briefing, No. 79, August 14, 2008.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

42

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The state budget for 2008 was approved in a hurry, which did not allow CSOs to participate properly in public hearings.

References:

Kyrgyz human rights activists charged members of parliament with violations of budget transparency principles. 2/5/2008, 18:04, 24.kg News Agency, Jyldyzbek Ibraliev.
<http://www.24.kg/community/2008/02/05/75825.html>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | **50** | 25 | 0

Comments:

Budget hearings are mostly supported by international organizations and recently, more or less, have input from local CSOs at the municipal level.

References:

For a Transparent Budget, by Galina Luneva, December 12, 2007, No. 131 (22160), Kyrgyzstan: Local Government Initiative (LGI), Phase II.
<http://www2.urban.org/centers/iac/pdsdev/pdescrip.cfm?ProjectID=308&allprojects=1>

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | **25** | 0

Comments:

The budget is available in a very broad manner, rather than along the budget lines of salaries and equipment; it's impossible to understand how much was spent for every item.

References:

For a Transparent Budget, by Galina Luneva, December 12, 2007, No. 131 (22160).

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

25

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Even such basic institutions as a system of state purchasing or budget oversight are absent. The reports on budget implementation are submitted to the Central Treasury of the Ministry of Finance. The parliament's committee can request a report from a particular ministry or agency, but this is not a formal or regular report.

References:

Fighting Corruption in Kyrgyzstan, by Talaibek Koichumanov, March 22, 2006, issue of the CACI Analyst.
<http://www.cacianalyst.org/?q=node/3839>

Interview with an expert on the budget (confidential source).

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The committee is comprised of legislators from both the ruling party (or parties) and opposition parties, although the ruling party has a disproportionate share (8 of 11) of committee seats.

References:

Structure of the Committee on Economy, Budget and Finance.

<http://www.kenesh.kg/structure/committees/committee4/>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | **25** | 0

Comments:

Most of investigations are initiated by the individual deputy's request.

References:

Investigations of the opposition party (Social Democrats).

http://www.kenesh.kg/structure/fraction/social_democratic/interpellations/

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

According to the law, a permanent committee of the parliament must consider all proposed budget expenditures and incomes.

References:

The Law on the Main Principles of Budget Law in the Kyrgyz Republic, June 11, 1998, No. 78, Article 41.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁷² Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Civil Service Law stipulates that in Kyrgyzstan civil service personnel perform their functions on the basis of professionalism, competence, initiative and integrity.

References:

The Law on Civil Service, August 11, 2004, No. 114, Article 4.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

The Law on Civil Service, August 11, 2004, No. 114, Article 4.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The civil servants can apply to the Agency for Civil Service Affairs for appeals against disciplinary decisions or to a court for both disciplinary issues and labor disputes.

References:

The Law on Civil Service, August 11, 2004, No. 114, Articles 39 and 43.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The civil servants convicted of corruption shall be deprived of the right to occupy certain positions or engage in certain activities for a period up to three years.

References:

The Criminal Code of the Kyrgyz Republic, Article 303.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

36

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The number of administrative civil servants fired for political reasons is still high. Usually these firings are concealed with structural reorganizations and staff cuts.

References:

Report on Monitoring of State Strategy on Combating Corruption, September 2007, Bishkek.

A confidential source (a civil service expert).

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

Most high-level civil servants have origins from the southern provinces of the Kyrgyz Republic. Civil servants are still not all appointed through competitive processes.

References:

Monitoring of State Strategy of Combating Corruption, September 2007, Bishkek.
<http://www.24.kg/community/2008/06/27/88707.html>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

Comments:

Political leaders or senior officials usually appoint family members or friends to favorable positions in the civil service, or give other favorable treatment. The system of the public servants recruitment and promotion envisions certain qualification requirements for candidates for public service positions. However, in reality, there are no clear criteria for the selection of candidates for the public service positions.

References:

Kyrgyzstan: A Deceptive Calm, Asia Briefing No. 79, August 14, 2008. <http://www.crisisgroup.org>

Monitoring report adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Functions and tasks of the state bodies are not clear and job descriptions for civil servants are very formal. Because ministries and agencies usually perform different kinds of tasks in their day-to-day work than those they were required to perform, they should still be familiar with their actual job descriptions before they are appointed.

References:

UNDP, Functional Analysis of Ministries and State Agencies: Methods and Approaches, 2003.
www.undp.kg

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants may have bonuses in amounts up to 100 percent of their basic salary. These include: 50 percent bonus for irregular working hours, a bonus for civil service rank, four quarterly bonuses per year, two months salary as a bonus for annual leave,

and one month's salary for material aid. All bonuses are included in the annual budget of a ministry or agency under the section titled Salary.”

There are many other benefits regulated for special kinds of civil servants, like prosecutors. In addition to their monthly salaries, prosecutors receive the following benefits under law:

1. Thirty to 45 days of annual leave, depending on longevity, with allowances for additional leave.
2. Housing allowance and temporary housing when needed.
3. Public transportation certificates.
4. Full pension at retirement.
5. Disability insurance.
6. Complimentary uniforms.
7. Daycare, summer camp, and boarding school for minor dependents.
8. Home telephone service.

References:

President's Decree, No. 196, 2000

American Bar Association, Prosecutorial Reform Index for Kyrgyzstan, March 2007.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | **50** | 25 | 0

Comments:

Information on competitions for public service positions is not always published. Information on competitions for low-ranking public service vacancies is published and made available to the public, but information on competitions for senior public positions generally is not published.

References:

Monitoring report adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

There are different ways of making appeals ineffective. For example, a public servant's refusal to continue service in new labor conditions may serve as grounds for terminating their service by the public authority. The decision of a public authority on a public servant's rotation cannot be appealed in court, but only at the Civil Service Agency.

References:

Monitoring report adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

A confidential source (a civil service expert).

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | **75** | 50 | 25 | 0

Comments:

Salaries of civil servants are in so-called protected items in the state budget, which have to be paid first. Usually civil servants get paid on time, although some exceptions may occur.

References:

A confidential source (a civil service expert).

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

A clean record regarding corruption is not included in the list of requirements for administrative civil servants. For political civil servants (ministers, heads of agencies), there are no requirements at all. The most recent scandal happened when two tax inspectors were shot to dead in Bishkek because one of them reportedly was a member of an organized criminal group.

References:

In law enforcement bodies, there is an opinion that one of two tax inspectors killed was, in the past, an active member of a criminal group, per Jyldyzbek Ibraliev, 9/16/2008, 24.kg News Agency.
<http://www.24.kg/investigation/2008/09/16/92563.html>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

A civil servant who is aware of conflicts-of-interest shall take measures to prevent it. Usually they are requested to inform their top managers.

References:

The Law on Civil Service, Article 9.
The Law on the Fight Against Corruption, Article 11.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

Civil service law restricts relationships with the private sector only while civil servants are in service and one year after they leave office, but these restrictions are for administrative civil servants only. Ministers and other political appointees are not bound by this rule.

References:

The Law on Civil Service of the Kyrgyz Republic, Article 11.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

According to the law, the administrative civil servants shall not accept any kind of gift or hospitality in connection with fulfillment of their official duties.

References:

The Law on Civil Service, August 11, 2004, No. 114, Article 11.

The Law on Fighting Against Corruption, March 6, 2003, No. 51, Article 12.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

Comments:

Partial control over the completeness and reliability of the information contained in public officials' declarations is exercised by the Agency for Public Service Affairs jointly with the public official who files the declaration.

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004, Article 6.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

Comments:

Current guidelines are very generic and there is no procedure or staff to enforce such a provision. In any case, the cooling-off period of one year is too short.

References:

Confidential source (a civil service expert).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:

The regulations are not effective since they do not provide civil servants or their management with clear definitions of gifts, hospitality or other benefits. There are no regulations on what civil servants should do if they are approached with gifts or other illegal proposals.

References:

A confidential source (a civil service expert).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Current guidelines are very generic and there is no procedure or staff to enforce such a provision.

References:

A confidential source (a civil service expert).

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Monitoring report adopted at the 7th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

100

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The records are available online.
www.csa.gov.kg

References:

The Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members, June 30, 2004.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

www.24.kg
[www.csa.gov.kg http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251](http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are available online.

References:

www.24.kg

[www.csa.gov.kg http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251](http://www.csa.gov.kg/index.php?option=com_content&task=blogsection&id=8&Itemid=61&lang=1251)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The government declares protections for whistleblowers.

References:

The Law on Civil Service, Article 8.

The Law on the Fight Against Corruption, Article 9.

Criminal Procedure Code, Article 314, 9 (note).

The Law on Protection of Rights of Witnesses, Victims and Other Participants of Criminal Legal Proceedings, August 16, 2006, No. 170.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

According to independent international experts, it is too early to assess the effectiveness of the new system of witness protection, and strong efforts are required to implement the new legal provisions in practice. According to independent monitoring of the State Strategy on Combating Corruption, citizens are not protected when they report on corruption due to financial and other burdens.

References:

Monitoring of State Strategy of Combating Corruption, September 2007, Bishkek.

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

Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, adopted September 27, 2007, at the OECD Headquarters in Paris.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The criminal code envisions responsibility for corruption in the private sector, which includes abuse of office or power, commercial bribery, etc. But there are no specific regulations on private-sector employees who report about these and other corruption offenses. Private-sector employees who report on corruption can ask for protection like any other witnesses.

References:

Criminal Code of the Kyrgyz Republic, October 1, 1997, No. 68, Chapter 23,

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

According to independent monitoring of the State Strategy on Combating Corruption, citizens are not protected when they report about corruption due to financial and other burdens.

References:

Monitoring of State Strategy of Combating Corruption, September 2007, Bishkek.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Hotlines and contact phones for reporting corruption or harassment do exist in most ministries and agencies, but there is no regulation and special staff to serve them. According to independent monitoring of the State Strategy on Combating Corruption, hotlines are not effective since citizens do not see any results for their efforts. Moreover, absence of attention to hotlines leads to a skeptical attitude toward whistle-blowing mechanisms.

References:

Monitoring of the State Strategy of Combating Corruption, September 2007, Bishkek.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The internal-reporting mechanism for public-sector corruption has no separate funds. According to the government's regulation, funding would have to be found within the existing budget. So it is an additional expenditure for the state bodies. For public procurement, for example, there is no evidence that stakeholders are using it.

References:

The Regulation of the Government on Public Receptions and Phone Hotlines, May 12, 2005, No. 184.
Kyrgyz Republic, Public Procurement System Assessment, November 10, 2007, World Bank document.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

There are efforts to react quickly to complaints received through hotlines, but they have limited effectiveness.

References:

The Bell” Program of the Ministry of Economical Development received more than one hundred complaints on inspections, according to the Kabar News Agency, August 8, 2008.
www.kabar.kg

A confidential source (a civil service law expert).

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

No effective mechanisms and procedures are in place for review of complaints that citizens bring against judges. Internal reviews that do take place are carried out in closed sessions and no information on their findings is made available to the public. Detection in police misconduct matters is ineffective. The service conducting this function will be abolished. Investigations through internal reporting mechanisms are not common in the civil service.

References:

Millennium Challenge Account Threshold Plan, May 15, 2006.
A confidential source (a civil service expert).

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Hotlines are common in most offices of law-enforcement bodies and other places where bribes might take place.

References:

The Regulation of the Government on Public Receptions and Phone Hotlines, May 12, 2005, No. 184.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

51. Is the public procurement process effective?

85

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Procurement officials are not considered a special group within the civil service law. All civil servants shall not participate in a bid where they have conflicts-of-interest. The latter include restrictions on making deals between organizations in which they work and organizations where they have relatives, shares or other interests. The law provides general principles of ethics for civil servants, including procurement staff. However, no code of professional conduct applies to procurement in particular.

References:

The Law on State Procurements, May 24, 2004, No. 69, Article 5.
Article 10, Law on Civil Service, No. 114, August 11, 2004.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

There is no provision for training, although at least one member of the bidding commission has to be a certified procurement specialist. A certificate can be obtained only through training.

References:

The Law on State Procurements, May 24, 2004, No. 69, Article 13.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Little evidence is available for prosecution and punishment for corrupt practices in public procurement.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Incomes and assets of procurement specialists might be monitored by the Agency for Civil Service Affairs as they would be for any other civil servants.

References:

The Law on Civil Service, August 11, 2004, No. 114.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The minimum margin for procurement of goods and services is 100,000 soms (US\$2,500) and the maximum margin is 1,000,000 soms (US\$25,000). For a sum equal or exceeding the maximum margin, an announcement is to be published in the mass media and the Government Procurement Bulletin.

References:

Government Regulation on Minimum Level of Procurement of Goods, Works and Services, September 16, 2005, No. 440.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

The Law on State Procurements, May 24, 2004, No. 69, Article 38.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The decisions of a purchasing organization, as well as disputes arising in the process of procurement, shall be settled in a court.

References:

The Law on State Procurements, May 2004, No. 69, Article 67.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

The Law on State Procurements, May 24, 2004, No. 69, Article 67.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Regulations about Formation of the Database of Unreliable (Unfair) Suppliers (Contractors) and Procedure of its Application: Approved by the Order of the State Commission on Public Procurements and Material Reserves, January 13, 2005, No. 8.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Little evidence is available on prosecution and punishment for corrupt practices. There is the regulation in the database for unreliable suppliers, but one is not published at the website, as it has to be according to the law. There is no proven experience such a system has been applied.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

A confidential source (a former procurement specialist).

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

General rules of procurement are available to the public online at <http://goszakupki.gov.kg> and in newspapers.

References:

The Law on State Procurements, May 24, 2004.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Purchasing organizations have to announce results of bids in the State Procurement Bulletin.

References:

The Law on State Procurements, May 24, 2004, No. 69, No. 30.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Public procurement regulations are available online.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

General rules are available online at websites of the procurement agency or the ministry of justice.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | **50** | 25 | 0

Comments:

Information on bids is published, but its quality is poor. Information on the website is not updated because funds are lacking.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

Comments:

Complaint decisions and procurement plans are not always open to the general public.

References:

Kyrgyz Republic Public Procurement System Assessment, World Bank, November 10, 2007.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

The state-owned organizations and corporations are not allowed to compete for state property to be privatized.

References:

The Law on Privatization of State Property, March 2, 2002, No. 31, Article 12.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There is no a special regulation, but public officials involved in privatization are considered as being like any other civil servant.

References:

The Law on Civil Service, August 11, 2004, No 114, Article 11.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Some civil servants want to have a share in business, not just to take bribes. This is typical for privatization. There is no special mechanism or procedure to deal with a possible conflict-of-interest.

References:

K. Baibolov (MP), Corruption in Kyrgyzstan. The Law Can Change Nothing ... But We Need to Fight," 11:05, 10/4/2003.
<http://www.centrasia.ru/newsA.php4?st=1049958300>

Confidential source (a civil service expert).

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

The law on privatization is available online. The Concept of Privatization, approved by the Parliament and the Program of Privatization, includes a list of state properties for privatization in the next two to three years in addition to general recommendations on how it should be implemented. This information is made available to the public.

References:

The Law on Privatization of State Property, March 2, 2002, No. 31, Article 21.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The lists of entities to be privatized are published, but they are outdated, and, in general, declared plans are failed plans.

References:

List of entities to be privatized until the end of 2007, September, 2008. <http://spf.gov.kg>

Kyrgyzstan: A Deceptive Calm, Asia Briefing No 79, August 14,

2008. http://www.crisisgroup.org/library/documents/asia/russian_translations/b79_kyrgyzstan_a_deceptive_calm_rus_web.pdf

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The general public must be informed about the date, place and time and provided the contact phone numbers of privatization authorities. After completion of a bid, the final price of a privatized property has to be published. All of this information is to be announced in the local press.

References:

The Law on Privatization of State Property, March 2, 2002, No. 31, Article 21.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Politically-sensitive information about important entities (for example, hydro-power stations, gold mining) is sometimes hidden.

References:

Kyrgyzstan: A Deceptive Calm, Asia Briefing No. 79, August 14, 2008.
<http://www.crisisgroup.org/>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

A full package of financial documents can be obtained usually after payment of fee. Only authorized entities can get the records at a local office of the State Property Fund.

References:

Advertisements on bids.

<http://spf.gov.kg>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁹National Ombudsman

56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The ombudsman has immunity and is elected by the parliament. No state body is allowed to interfere with the ombudsman.

References:

The Law on Ombudsmen, Kyrgyz Republic, July 31, 2002, No. 136, Articles 4, 6.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to members of parliament, B. Beshomov, an Ombudsman, is influenced by the President's appointment. Formally, an Ombudsman is approved by the parliament, but in the current situation, deputies have no chance to reject the President's proposal.

References:

Baktybek Beshimov: An Ombudsman Should Not Be Appointed by the President. 2/6/2008, 24.kg News Agency, Zarina Saifudinova.

Kyrgyzstan: A Deceptive Calm, Asia Briefing No. 79, August 14, 2008, International Crisis Group's Report. <http://www.crisisgroup.org/home/index.cfm?id=5627&l=1>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The first ombudsman, Tursunbai Bakir Uulu, served his term without removal. The current ombudsman, Tursunbek Akun, was

elected through a normal legal procedure. Early removal of the ombudsman would be a very complicated process. The ombudsman has immunity and the law clearly defines the instances when he or she can be removed.

References:

Kyrgyz Parliament Approved Ombudsman Tursunbek Akun's Report on His Activities in 2007. 11/9/2008, 12:54, 24.kg News Agency.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff of the ombudsman is sufficient and there are no vacancies to date.

References:

www.csa.gov.kg

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The office of the ombudsman makes appointments on the basis of civil service law. But the new ombudsman is changing staff members. Thus, in March 2008, a chief-of-staff and the head of a territorial branch left their positions.

References:

Reports of the Civil Service Agency for 2007.

www.csa.gov.kg

http://www.csa.gov.kg/index.php?option=com_content&task=view&id=719&Itemid=91&lang=1252

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to Dean M. Gottehrer, a member of the Associations of Ombudsmen, the Kyrgyz ombudsman has a separate budget line in the state budget and the salaries of the officers are at the same level as high officials. The ombudsman's office in budget expenditures is in the same section as a President's office.

References:

International Consultant Dean M. Gottehrer's assessment of ombudsman's budget.

<http://www.minfin.kg/modules/smartsection/item.php?itemid=316>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online, but they are sometimes out-of-date.

References:

www.ombudsman.kg

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman makes investigations upon a citizen's request or by his own initiative. He is active now in cases where human rights were violated. In particular, he is against limitations to demonstrations currently introduced in Kyrgyzstan after civic unrest in April 2008.

References:

Kyrgyz Ombudsman will undertake his own investigation of cases when authorities make barriers for demonstration against transferring the resorts and lands near the border of Kazakhstan.

4/30/2008, 24.kg, News Agency, by Daniyar Karimov.

<http://www.24.kg/community/2008/04/30/83669.html>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman cannot deal directly with offenders (there is no such a provision in the law). Sometimes state bodies do not cooperate with the ombudsman or they create impediments to his activities. At the same time, there are administrative sanctions to those state bodies that ignore the ombudsman's recommendations.

References:

Special Report of the Ombudsman on Relationships with Judicial Bodies.
www.ombudsman.kg

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman (Akyikatchy) shall inform the state body, official or a legal entity of the action or act that has been subject to a complaint on a decision to allow them to submit a written report within 15 days. Usually, the state bodies respond in a timely fashion.

References:

Kyrgyz Parliament approved Ombudsman Tursunbek Akun's report on his activities in 2007, 9/11//2008, 12:54, 24.kg News Agency.

Special Report of the Ombudsman on Relationships with Judicial Bodies, www.ombudsman.kg

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In general, complaints are acted on quickly, but it depends mostly on what kind of appeal is under consideration. More than half of all complaints are related to civil-law issues and the rest is related to criminal process problems.

References:

Kyrgyz Parliament approved Ombudsman Tursunbek Akun's report on his activities in 2007, 9/11/2008, 12:54, 24.kg News Agency.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

The Law on the Ombudsman of the Kyrgyz Republic, July 31, 2002, No. 136.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online.

References:

www.ombudsman.kg

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports can be obtained online.

References:

www.ombudsman.kg

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

There is an ombudsman of the Kyrgyz Republic who shall exert control over the execution of the constitutional, human and civil rights and freedoms in the territory of the Kyrgyz Republic.

References:

The Law on Ombudsmen, Kyrgyz Republic, July 31, 2002, No. 136.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

56

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Chamber is legally independent.

References:

The Law on the Chamber of the Accounts of the Kyrgyz Republic, No. 117, August 13, 2004.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Two chairpersons were removed in the last three years and a new one was appointed in 2007. There is no legal provision for justifying the chairman's removal.

References:

Chamber of Accounts website.
www.ach.gov.kg

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The chamber is comprised of the chairman and 14 auditors. Audits, in practice, are made by auditors and inspectors of the chamber.

References:

The Report on Functional Review of the Chamber of Accounts of the Kyrgyz Republic, UNDP/DFID joint project, Bishkek, 2004.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law of the Chamber, effective since September 2004, all of its auditors have to have international certificates in audit and accounting. As of today, most of the auditors don't have a certificate. Most auditors are experienced in old accounting systems, although commercial and governmental accounts have been transformed according to international accounting standards. International organizations have proposed building the capacity of the chamber, but the current Public Finance Reform Project was terminated in 2005.

References:

The Report on Functional Review of the Chamber of Account of the Kyrgyz Republic, UNDP/DFID joint project, Bishkek, 2004.

Kyrgyz Republic – Public Finance Reform.
www.minfin.kg

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law of the Chamber of Accounts (CA), the parliamentary committee determines the budget requirements for the CA. This provision has strengthened funding of the CA. Usually, the chamber receives regular funding.

References:

Midterm budget framework for 2007 to 2010.

Information on financing from state budget for 2005 to 2006.
www.cazna.gov.kg

Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006.
www.worldbank.org

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports on budget compliance are generally submitted to parliament within two months. The law authorizes the chamber to provide information regarding its activity to the mass media. However, there is no requirement to provide copies of the annual report on the performance of the chamber to the mass media.

References:

Kyrgyz Parliament Approved the Report of the Chamber of Accounts' Chairman for 2007. 4/4/2008, 24.kg, News Agency, Nargiza Yuldasheva. <http://www.24.kg/parliament/2008/04/04/81107.html>

Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006. www.worldbank.org

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are often ignored or given superficial attention.

References:

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16/09-2008 15:04 , 8H:5: , «24.kg» , K;4K715: <http://www.24.kg/investigation/2008/09/16/92629.html>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The chamber makes investigations according to its annual and operational plans, which have to be approved by the Council of the Chamber (which comprises all auditors and the chairman). The plans include the work of the President and the parliament. But the chairman can start unplanned investigations, which then need to be approved by the council. This allows some room to start partisan investigations.

References:

The Report on Functional Review of the Chamber of Accounts of the Kyrgyz Republic, UNDP/DFID Joint Project, 2004, Bishkek.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

50

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

The Law on the Chamber of Accounts, August 13, 2004, Article 62.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not available for the public, although they are not secret. Last year the chamber did not publish its reports, but put them on their website. But the chamber gives excerpts to the mass media to publish. It means that the information is not secret, but journalists or other interested people need to go to the chamber or to the parliamentarians to get reports.

References:

Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006.
www.worldbank.org

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Retrieving reports requires a visit to the main office of the chamber in the capital city.

References:

Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006.
www.worldbank.org

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Chamber of Accounts is a supreme audit institution for all state-owned entities.

References:

The Law on the Chamber of Accounts, August 13, 2004, No. 117.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

69
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no problem with staffing, but the turnover rate at the middle and low levels are high.

References:

The EBRD World Bank Business Environment and Enterprise Performance Survey (BEEPS).
A confidential source (a civil service expert).

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The state budget covers only the salaries of the staff and the public utilities for the tax inspection office, as well as other state bodies in the Kyrgyz Republic. All other expenditures are covered from special accounts for which the tax inspection office accumulates funds from part of the collected taxes, penalties and incomes from selling documentary stamps, tax returns. etc. In this regard, the tax inspection is one of the rich” agencies in Kyrgyzstan. The special accounts are part of the budget of all ministries and agencies and they exist despite all the government’s efforts to abolish them.

References:

Mid-term Budget Framework of the Kyrgyz Republic 2007-2010.
www.minfin.kg

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The customs office has enough staff and vacancies occur at the usual rate of turnover.

References:

Civil Service Agency Reports for 2008.
www.csa.gov.kg

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Customs-inspection entities are funded as regularly as other state bodies (up to 99% every fiscal year). However, the majority of its expenses are covered by special accounts.

References:

Mid-term Budget Framework of the Kyrgyz Republic for 2007 to 2010.
www.minfin.kg

Information on financing from the state budget for 2005 to 2006.
www.cazna.gov.kg

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

There is an authorized government agency for tax collection called the State Committee on Taxes and Dues.

References:

The Tax Code of the Kyrgyz Republic, June 26, 1996, No. 25, Article 10.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

At the level of statistics, it is obvious that not every taxpayer pays taxes. If all taxpayers paid taxes, tax collection would amount to 50 percent of the GDP, not 20 percent as it is now.

The mechanism for tax checkups is designed only for the staff of the Tax Service to be able to charge money and make exactions. On average, a tax inspection costs about \$400 for a business; in which case a bribe to the tax inspector is implied.

References:

Tax Reforms: Myths and Reality," Sergei Sabko, Institute of Public Policy.
<http://ipp.kg/en/analysis>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The State Customs Committee is responsible for export and import control.

References:

Customs Code of the Kyrgyz Republic, July 12, 2004, No. 87, Chapter 51.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

25

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Kyrgyzstan has a very high rate of smuggling because laws regarding customs are ineffective. According to some estimates, around 70 percent of all alcoholic products on the market are illegal imports and around 100 tons of alcohol is smuggled into Kyrgyzstan every day.

References:

President Approves Underage Drinking Law.”

http://www.iwpr.net/?apc_state=hrubbkg337358&l=en&s=b&p=bkg&o=337358

The EBRD World Bank Business Environment and Enterprise Performance Survey (BEEPS), 2005, Doing Business, 2008.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

30

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The State Committee on State Property is a ministry in the government.

References:

A decree of the President about some issues of improvement of a control system of joint-stock companies with the state shareholding and the state enterprises, April 27, 2006, No. 188.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The State Committee on Management of State Properties has nominal responsibilities for the management of state properties. In fact, all state-owned companies are managed by a related ministry. For example, a main part of state property is the power engineering companies, but they are managed by the Ministry of Industry, Energy and Fuel Resources.

References:

The Report on the Functional Review of the State Committee on Management of State Property of the Kyrgyz Republic, UNDP/DFID Joint Project, 2004, Bishkek.

Deputy request of Beshimov to the Minister of Industry, Energy and Fuel Resources.

http://www.kenesh.kg/structure/fraction/social_democratic/interpellations/

Organizational chart of the State Committee.

http://spf.gov.kg/index.php?option=com_content&task=view&id=8&Itemid=39

Organizational chart of the Ministry of Industry, Energy and Fuel Resources.

<http://www.mpe.gov.kg/ru/?d=ministry/scheme>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The committee has a predictable source of funding that is fairly consistent from year to year.

References:

Mid-term Budget Framework of the Kyrgyz Republic for 2007 to 2010.

www.minfin.kg

Information on financing from the state budget for 2005 to 2006.

www.cazna.gov.kg

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The committee does not effectively investigate financial irregularities. The most corrupted sector is energy engineering and distribution is totally under responsibility of the state, but there is no attempt to investigate financial irregularities by the committee.

References:

Murat Djuraev: Energy Sector Should Be Privatized. The question: Is the Government Able to do it Properly? April 17, 2008.

<http://www.for.kg/goid.php?id=63058&print>

Despite Corruption Concerns, Kyrgyzstan s Energy Sector Will Be Privatized, by Erica Marat, June 22, 2007.

http://jamestown.org/edm/article.php?volume_id=420&issue_id=4153&article_id=2372247

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There were no penalties so far for offenders.

References:

Murat Djuraev: Energy Sector Should Be Privatized. The question: Is the Government Able to do it Properly?, April 17, 2008.

Despite Corruption Concerns, Kyrgyzstan's Energy Sector Will Be Privatized," by Erica Marat, June 22, 2007.
http://jamestown.org/edm/article.php?volume_id=420&issue_id=4153&article_id=2372247

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

0

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

State-owned companies, except for joint-stock ones, are not open to the public. They are responsible to the government.

References:

The decree of the president about some issues of improvement of a control system of joint-stock companies with the state shareholding and the state enterprises, April 27, 2006, No. 188.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | **0**

Comments:

Financial data is not publicly available.

References:

<http://spf.gov.kg>

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

State-owned companies should be audited by the Chamber of Accounts. In respect to transaction auditing, no standards are specified. The chamber is now introducing international standards. Staffing levels and skills of the state auditors are still based on the chamber's previous structure.

References:

Kyrgyz Republic: PEFA, Public Financial Management Assessment, Final Report, Jan. 18, 2006.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of state-owned companies are not available as separate information. They can be indirectly reflected in reports on budget execution. During the year, reports on budget execution are generated on a regular and timely basis. The reports are not comprehensive and are not compatible with budget estimates.

References:

Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006.
www.worldbank.org

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The state committee provides information on the largest state-owned companies in a very general manner. Reports are not available to most citizens.

References:

<http://spf.gov.kg>
Kyrgyz Republic: PEFA PFM Assessment, Final Report, Jan. 18, 2006.
www.worldbank.org

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

A decree of the President about some issues of improvement of a control system of joint-stock companies with the state shareholding and the state enterprises, April 27, 2006, No. 188.

References:

The State Committee on Management of State Properties is responsible for control over state-owned entities.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

43
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

The Law on Licensing has no discriminative norms except for activities where the state has a monopoly.

References:

Law on Licensing in the Kyrgyz Republic, March 3, 1997, No 12, Article 3.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

License denials can be appealed in a court.

References:

Law on Licensing of the Kyrgyz Republic, March 3, 1997, No 12, Article 3.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the type of license needed. For example, there is a list of business activities that require special orders to obtain a license, including such businesses as construction, alcohol production, notaries and medicine. In these cases, a license will take months.

References:

Doing Business, 2008.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Doing Business, 2008

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

The Law on Basics of Technical Regulation in the Kyrgyz Republic, May 22, 2004, No. 67, Article 41.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

The Law on Basics of Technical Regulation in the Kyrgyz Republic, May 22, 2004, No. 67, Article 41.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

The Law on Basics of Technical Regulation in the Kyrgyz Republic, May 22, 2004, No. 67, Article 41.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Inspections of businesses are, in many instances, ostensibly to search out violations of various laws, but in reality are conducted

for the purposes of extorting money or obtaining other illegal benefits.

References:

Licenses, Infrastructure and Public Utilities.

<http://www.business-anti-corruption.com/normal.asp?pageid=357>

Doing Business, 2008.

<http://www.doingbusiness.org/>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

References:

Licenses, Infrastructure and Public Utilities.

<http://www.business-anti-corruption.com/normal.asp?pageid=357>

Doing Business, 2008.

<http://www.doingbusiness.org/>

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Licenses, Infrastructure and Public Utilities.

<http://www.business-anti-corruption.com/normal.asp?pageid=357>

Doing Business 2008.

<http://www.doingbusiness.org/>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁶Anti-Corruption Law

73. Is there legislation criminalizing corruption?

78

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

Most corruption-related crimes are defined as grave crimes in the criminal code. Attempted grave crimes have to be punished as completed crimes with references to Article 27, "Criminal preparation," and Article 28, "Criminal attempt," of the Code.

References:

The Criminal Code, Articles 27, 28, and 303.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

The Criminal Code, Article 170.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | **NO**

Comments:

Offering and/or promising a bribe is not a crime in the Kyrgyz Republic, although these actions could be considered an attempt to give a bribe (which is a crime). Since an attempt is considered a criminal act, individuals can be criminalized, whereas an offer or promise is not considered an act per se (since it may only be a verbal promise that is never acted upon).

References:

Criminal Code, Chapter 30.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

These articles stipulate different types of bribes.

References:

Criminal Code, Articles 310 to 312.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Only national state officials can be given a bribe.

References:

The Law on Combating Corruption, March 6, 2003, No. 51, Article 6.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Misuse of budget (i.e., public funds) by public officials and inflicting damage on public or governmental interests is considered a crime in the criminal code, Article 308.

References:

Criminal Code, Article 308.

The Law on Combating Corruption, Article 13.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Misusing any information received during execution of official duties is illegal.

References:

The Law on Combating Corruption, Article 13.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

The Law on Counteracting Terrorism Financing and Money Laundering, November 8, 2006.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Organized crime is defined in Part 4 of Article 31 of the Criminal Code. An organized criminal group is defined as a stable group of people aimed at committing a crime. The participation of an organized criminal group is considered an aggravating circumstance in the commission of any crime.

References:

The Criminal Code, Article 31.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

42

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The decree created a monitoring body for the national agency on preventing corruption, the Council on Fighting Corruption, which consists of six members, including two representatives of civil-society organizations.

References:

President's Decree, Oct. 21, 2005.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The report stated that the agency remains very weak. It lacks political support and has little influence among state authorities and it suffers from a low budget and poor cooperation with other public institutions and law-enforcement agencies.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The new commissioner of the agency was assigned in June 2008. His predecessor worked only 1.5 years and was dismissed officially because he needs to improve his health.

References:

Information of the President's press service.
<http://www.president.kg/ru/press/adm/1895/>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | **50** | 25 | 0

References:

Report on Monitoring of State Strategy on Combating Corruption, September 2007, Bishkek.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The average salary in the agency is around 1500-2000 SOM (around US\$38 to US\$50). There seems to be inefficient distribution of resources within the NAPC and as a result some members of the staff are leaving the agency, which further weakens its limited resources.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

The agency suffers from a low budget. Instead of 28 million SOM (US\$711,000) requested for 2007 it obtained 7 million SOM (US\$178,000).

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | **25** | 0

Comments:

The agency mainly organizes awareness campaigns, distributes booklets, posters and other information materials, but does not publicly present reports on their substantial activities.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

While the agency asks for additional powers to be more effective, it does not perform its ordinary functions.

References:

Report on Monitoring of State Strategy on Combating Corruption, September 2007, Bishkek.
Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:

According to the information in the Prosecutor General's Office, so far no investigation has been started based on the information provided by the agency.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

88

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

For the ordinary citizen, the agency seems to be the last resort to find help against unjust treatment or for those who have encountered corruption.

References:

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The number of complaints received by the agency is increasing and only a few of them are anonymous.

References:

Most of the complaints on corruption were received from Chui Oblast's inhabitants: Jyldyzbek Ibraliev, April 10, 2008, 24.kg News Agency.
www.24.kg

Monitoring report adopted at the 7th monitoring meeting of the Istanbul Anti-Corruption Action Plan, September 27, 2007, at the OECD Headquarters in Paris.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

Although the agency formally has been in effect since 2005, the fact that the president has established it undermines its activities. The agency would be much more powerful if its statute had been adopted through a law made by the parliament.

References:

National Agency on Preventing Corruption, created by the President's Decree, Oct. 21, 2005, No. 476.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

YES | NO

References:

The Constitution, Articles 14 and 15.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Confidential source (a legal expert).

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Confidential source (a legal expert).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Confidential source (a legal expert).

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

Comments:

There are marshals of the court, but they are not very effective. Kyrgyz courts have no sergeants who can enforce a court's decision. Usually police officers are used to help the marshals, but that is not legal, in fact. The sergeants will be introduced soon as it is clear from the speech of the head of state.

References:

Speech of President K. Bakiev at the Sixth Judges Conference, April 25, 2008.
Confidential source (a legal expert).

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

The Constitution, Article 83.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the

budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

National-level judges are commonly influenced by politics and personal biases or incentives.

References:

A confidential source (a legal expert).

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

The chairmen and the deputy chairman of the Supreme Court distribute cases among judges according to the law. The process is rather subjective since there is no legal procedure for it.

References:

The Law on the Supreme Court, Articles 20 and 21.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

The Constitution, Article 83.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

American Bar Association , ABA/CEEL, Judicial Reform Index, 2004.

Confidential source.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

American Bar Association , ABA/CEEL, Judicial Reform Index, 2004.

Confidential source.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

86

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

A confidential source (a legal expert).

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

Comments:

Although there is no specific gender biases, the situation with bride kidnapping is still worrying. Some estimates of bride kidnapping rates in Kyrgyzstan put the figure at about 30 percent of all marriages. In the most cases, neither the kidnapped girls nor their parents appeal to the courts.

References:

International Journal of Central Asian Studies, Vol. 8, 2003.
Confidential source (a legal expert).

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

According to the law, the state provides legal aid and protection free of charge if the citizen has no means to pay for it.

References:

The Law on Lawyers' Activities, March 24, 2004, No. 47, Articles 6 and 26.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

State-provided legal aid is available, but flawed. There are cases of pocket” lawyers who come to police stations just to sign papers.

References:

Report at a round table, Zarina Saifudinova, June 18, 2008. Aziza Abdrasulova: In Kyrgyzstan, 95 Percent of Deferred Have No lawyers.

<http://www.24.kg/community/2008/06/18/87707.html>

Confidential source (a legal expert).

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes judges can refuse a grievance because a plaintiff did not pay state dues. Now there is a draft law which allows a court to consider a claim before the state dues is paid.

References:

A speech of President K. Bakiev at the Sixth Conference of Judges, April 25, 2008.

Confidential source (a legal expert).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

A confidential source (legal expert).

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Courtrooms are always accessible to citizens.

References:

A confidential source (legal expert).

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

17

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to a confidential source, most high level law-enforcement officers are selected on the basis of their origins from the southern regions, which is the homeland of the president of the republic.

References:

A confidential source (a legal expert).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

American Bar Association, Prosecutorial Reform Index for Kyrgyzstan, March 2007,

A confidential source (a legal expert).

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Investigations, especially against high-level officials and politicians, are possible only if there is a green light from the president or his close relatives. Just recently, an opposition leader, Ishenbai Kadyrbekov, was accused of malfeasance related to civil works in public schools, but two other ministers who took part in the affair were not even interrogated, presumably because both are loyal members of the ruling party.

References:

A confidential source (a legal expert).

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

58

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Citizens can complain through the ombudsman or the Commission of Human Rights.

References:

The Law on Ombudsman of the Kyrgyz Republic, July 6, 2007, No. 97, Article 3.

The President's Decree on the Commission of Human Rights, July 5, 1997, No. 204.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Both the ombudsman and the Commission of Human Rights has no power to investigate complaints; they can only pass the complaints to the related law-enforcement bodies.

References:

A confidential source (a legal expert).

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Prosecutor's Office, the Ministry of Internal Affairs, the Finance Police and the Customs Service can investigate cases related to malfeasance. Every law-enforcement agency has an internal investigation unit that deals with corruption and other malfeasance with the staff. Usually these types of units are subordinate to the head of an agency.

References:

Criminal Procedure Code, June 30 1999, No. 63, Article 63.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The agency/entity does not effectively investigate or does not cooperate with other investigative agencies.

References:

A confidential source (a legal expert).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The law does not provide immunity for law-enforcement officers.

References:

Law on Organs of Internal Affairs, January 11, 1994, No 1360-XII, Article 11.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

There are many cases when law-enforcement officers have been accused of corruption or other crimes. But the investigations are selective. At the same time, as stated in the PRI report, The Prosecution Service is generally believed to be inadequate in its efforts to prosecute corruption, police misconduct, and cases involving the violations of human rights. There is a troubling perception that prosecutors are complicit in, or at least tolerate, corruption and overlook human rights violations by state actors”.

References:

American Bar Association, Prosecutorial Reform Index for Kyrgyzstan, March 2007.

A confidential source (a legal expert).

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.