

# MILLENIUM CHALLENGE ACCOUNT THRESHOLD PROGRAM CONCEPT PAPER OF THE KYRGYZ REPUBLIC

## IMPROVEMENT OF FIGHTING CORRUPTION INDICES IN 2006-2007

### I. Brief information about the country

The Kyrgyz Republic is one of the former Soviet Union countries, bordering on such large countries as China, Kazakhstan and Uzbekistan, with a population of approximately 5,100,000. Since acquiring independence in early 1990's, the Kyrgyz Republic proclaimed itself as a democratic and secular republic based on the rule of law. Since development of market economy was proclaimed as one of the main principles, during the years of independence the Kyrgyz Republic has been implementing active reforms of government institutions.

### II. Problem justification

A quality government system has not been formed yet in the country, as the process was hindered by high level of corruption. Widespread corruption became one of the reasons for mass protests that led to toppling the president and prime minister on March 24, 2005. That is why the dismantling of the corrupted system is one of the priorities for the new government. The government has taken several measures towards solving this problem: a law on income declaration by officials was passed on August 7, 2004; the Governmental Strategy on Fighting Corruption was approved on June 21, 2005; the Agency for Financial Intelligence was established by presidential decree on September 8, 2005; on October 21, 2005, the National Council for Fighting Corruption (with civil society involvement) and the National Agency for Preventing Corruption were established by a presidential decree. The Kyrgyz Republic was the first among CIS countries to sign U.N. Anti-corruption Convention, which was ratified by the parliament in 2005. However, effective implementation of these laws and efficiency of the established structures is an important issue.

### III. Vision

The Kyrgyz government realizes in full the destructive role of corruption that impedes dynamic development of the country and its people. The country's government and higher authorities have challenged corruption by declaring struggling corruption the first priority on agenda. We intend to practically prove our commitment to diminish corruption even apart from donor funded programs.

Over the next two years the Kyrgyz Government wants to implement anticorruption programs that will improve the effectiveness of government, raise the accountability of government officials and instill confidence in the public that there is rule of law and that justice can be obtained. Our anticorruption program would include reforming key government institutions that have direct impact on businesses and the population. These would include the tax and customs administrations and the agencies responsible for healthcare, healthcare financing and education. These institutional reforms would increase transparency and raise the accountability of government officials and provide citizens with mechanisms for registering complaints. These reforms would be undertaken without any MCC threshold support.

In future, the key factor of successful fighting corruption will be elimination of prerequisites for corruption though: (1) increasing the system transparency; (2) distinguishing levels of decision making, enforcement and monitoring; (3) establishing clear regulations and ensuring consistent control of their enforcement; (4) revising the licensing system towards decrease of

punitive measures, and; (5) increasing accountability and prosecuting corruption under all existing legal regulations, as well as actively involving civil society in all ant-corruption initiatives.

### **III. Goals**

The goal of the proposed threshold program is to reduce the corruption level and enhance professionalism in judiciary and law enforcement sector, which will have a significant multiplying effect on the society and the economy of the Kyrgyz Republic. The program will encompass three basic tools to combat corruption: achieving higher transparency of processes, increasing salaries, and more effective detection and punishment.

The proposed program is to supplement and expand the impact of other programs that have been planned or are being implemented using domestic resources and donor support (USAID, OSCE, World Bank, etc.). These programs include planned reforms of the traffic police and the Ministry of Internal Affairs; judiciary reform with the use of the resources available through the Global War on Terrorism program; computerization of courts; a program to increase the capacity of law enforcement subdivisions of the Kyrgyz Republic. The threshold program will also enhance reforms aimed at achieving independence of the judiciary, improvement of the system of checks and balances in the law enforcement sector, increase of salaries of the judiciary and law enforcement staff, and improvement of human resources administration in all participating agencies.

Reforms implemented under this program will have not only a direct impact through reducing corruption but also an indirect impact through increasing government effectiveness through improving rule of law, and voice and accountability. The program is aimed at improvement of the Ruling Justly MCA indicator category – control of corruption, governance effectiveness, rule of law, voice and accountability.

#### **Component 1. Rule of Law – Effectiveness of the Judiciary System**

Goal: To reduce corruption in the judiciary, to enhance the independence and effectiveness of the judiciary system.

The most serious problems with the judiciary system of the Kyrgyz Republic are:

- abuses and violations of defined legal procedures by the judges, including bribery of judges and “telephone justice”;
- incomplete realization of principles of justice publicity and transparency;
- lack of judiciary independence and lack of open public access to court decisions;
- lack of trust to courts;
- problems with searching, processing and keeping judiciary documentation and with the information exchange between courts; and also
- legislation imperfection causing administrative barriers and limited access to legal defense for individuals and business entities.

**Proposed program:** The Kyrgyz Republic is committed to establishing an effective and independent judiciary. Some of the policy changes needed to accomplish this will involve the approval of laws and/or executive decree. This would include the law on the Status of Judges, amendments to the law on the Supreme Court and Local Courts, and some other laws. The purpose is to give Courts more independence from the Executive Branch and the ability to self-discipline. Another change will involve an increase in the salaries of the judges. The latter is expected to be financed by the Kyrgyz government. Other activities

proposed below will be financed by the threshold funding, as will be more fully detailed in the Concept Paper Implementation Plan.

**Measure 1. Increasing the efficiency of judiciary personnel management**

A new law on the Status of Judges will stipulate the authorities of an independent body ensuring public and professional control over judges, a system for selection and appointing only qualified personnel and the authority to conduct internal investigations. A functional analysis is to be conducted in order to determine the optimal size and structure of the judiciary system. This would also help to resolve an acute problem of uneven distribution of the load between courts.

**Measure 2. Steps towards achievement of independence of courts**

A Council of Judges (or another body of the judge community) will be created in order to develop legal policy and strategy of court activities and to manage the courts, to protect them from political encroachments, and to adopt a draft annual budget of courts and its further presentation in the parliament.

The existing Court Department performing some of these functions will be withdrawn from the Ministry of Justice and placed under the authority of either the Council of Judges or the Supreme Court in order to provide for real separation of the judicial and the executive branches of power. One of the key functions of the Council will be ensuring budget independence, which will require making changes to the laws of the Kyrgyz Republic («On Main Principles of Budget Law in the Kyrgyz Republic», «On the Government of the Kyrgyz Republic», «On the Kyrgyz Republic Supreme Court and Local Courts»).

**Measure 3. Protection of Citizens from Rent Seeking Behaviour.**

Related legal regulations are to be revised to eliminate administrative barriers in business activities and increase the access to legal defense for individuals and business entities. In particular, changes will be made aimed to simplify legal procedures and reduce the process time for commercial cases. Changes will also be made to the procedure and amount of state duties to be collected upon proceedings as such duties constitute substantial limitation for individuals and business entities in their addressing to courts. Further work will be carried out to improve performance of specialized courts, first of all those administrative and economic.

**Measure 4. Introduction of Judiciary Information and Management System**

The system of judiciary information and management will be introduced in all courts of the Kyrgyz Republic, which will allow to ensure automatic distribution of cases. The funds will be used for uniting the entire court system into a single corporate information network, training judges and court personnel, providing citizens with a free access to court verdicts through the Internet, and conducting a public information campaign on the use of the system.

The Supreme Court of the Kyrgyz Republic and the GOKG, in cooperation with professional NGOs (Association of Jurists of Kyrgyzstan, Association of Advocates of the Kyrgyz Republic, ABBA/CELLI etc.), will monitor and evaluate the implementation of activities aimed at increasing the quality and efficiency of the court system and improving legislation to prove for independence of the judiciary system.

Anticipated results:

- creation of effective legislation providing for increased independence of the court system and the responsibility of judges;

- creation of a body independent from the executive branch of power, which will be responsible for material-technical and financial support of courts;
- development of the judiciary budget by the judge community;
- reduction of corruption in the judiciary system through a mechanism internal to the judicial branch for investigation and discipline;
- transparency of judiciary proceedings, free access of citizens to court decisions;
- increased responsibility of judges for quality of case consideration and decisions made;
- an enhancement in judicial salaries.

### **Measures underway to solve the problems**

In order to better monitor decisions taken at lower court levels, with the support from the World Bank, the Supreme Court has implemented measures to establish an automated Judicial Information and Management System. The system allows judges to have access to the electronic database on laws, regulations and judiciary decisions, which gives the Supreme Court the ability to monitor decisions in the participating courts. This significantly improves the quality of decisions made and ensures transparency of the court system through wide public access to court decisions. However, the World Bank project did not establish a comprehensive system because it covered less than one fourth of the courts (19 out of 78).

Estimated budget: USD 7-9 million

### **Component 2. Fighting corruption in law enforcement subdivisions**

**Vision:** Reforms in government agencies will not be effective if citizens do not have confidence that there is rule of law and that they can obtain justice. Every person exposed to corruption should know which authority to approach and should be confident about justice and rule of law. To achieve this, we must implement reforms in law enforcement bodies and in the judiciary. These reforms need to be implemented quickly in order to quickly build confidence. The government has already begun to take steps in this area. The President signed a decree calling for the reorganization of the police services. Expanding them under the Threshold Program would help to accelerate the reforms.

**Purpose:** To reduce the level of corruption of Bishkek MVD law enforcement Officers as a pilot stage of the proposed program.

**Problem:** Corruption at all levels of the Internal Affairs Forces, , the lack of an effective Internal Affairs Unit to investigate corrupt officers the lack of transparency of activities and the lack of civil society oversight.

The main goals under this component are: conducting a comprehensive functional analysis of the Internal Affairs Forces,; the creation of an effective Internal Affairs Division to investigate corrupt officers and deter corruption; the vetting of officers including the use of polygraphy testing; a raise of salaries; training officers in modern and democratic law enforcement practices with training provided by foreign law enforcement experts; allowing civil society to play a role in oversight of the MVD law enforcement activities.

**Measure 1:** By restructuring of the existing subdivisions, to increase the capacity of the unit investigating corrupt officers within the Bishkek militia. In law enforcement reform, a respected Internal Affairs Unit (IAU) is a significant part of the overall process of insuring honesty within policing and to build public trust. Its staff will be recruited through competition based on criteria compliant with international standards. Regular reports will be

presented to civil society. This unit would receive training from international experts in internal investigations (both Administrative and criminal) and learn the scope of performing inspections.

**Measure 2:** Development of effective system of public (civil) monitoring of law enforcement structures. As a part of this system, establishment of Police Ombudsman Institute (conditionally) is planned to monitor observance of human rights, liberties and legal interests of persons facing power abuse by law enforcement officers. In addition to functions of human rights and liberties protection, the public monitoring mechanism will implement a public relations campaign will increase public awareness of rights and responsibilities of both citizens and law enforcement forces. Furthermore, it is expected that the Police Ombudsman Institute will also work to protect rights, liberties and legal interests of law enforcement officers facing power abuse by higher rank officers or actions admitted by civilians.

**Measure 3:** To strengthen performance of the Kyrgyz Interior Ministry Human Resource Department. A unit will be designated within the Human Resource Department that will be responsible for the vetting process of viable candidates for law enforcement functions (to include vetting of the personnel section, and offering training in personnel management, testing procedures, the administration of polygraph examinations, physical and mental agility testing, and medical and psychological evaluations. To improve the quality of medical and psychological evaluation of persons recruited to law enforcement structures, the capacity of the Interior Ministry's medical military commission will be strengthened and its logistics base expanded.

**Measure 4.** *To strengthen material and technical resources of law enforcement subdivisions that are involved in fighting corruption, recruiting and training personnel in modern law enforcement techniques including and using advanced information technologies, special equipment and good training programs.*

It is expected that these reforms will:

- Reduce corruption and abuse of power among the staff of the Bishkek Department of Interior and increase the number of honest and un-corrupted officers within the Internal Affairs Forces.
- Increase the professional level of the Bishkek Internal Affairs Forces as well as
- the public trust in the Internal Affairs Forces.

Estimated budget – 2.5 -4 million US Dollars

### **Component 3. More Effective Criminal Prosecution**

**Problems:** Low solving rate of corruption cases, insufficient coordination and checks and balances among the various instances charged with criminal law enforcement (e.g., police, prosecutors, and courts); lack of a unified database both on anti-corruption and on money laundering activities of Kyrgyz law enforcement organizations; poor training of court, police and prosecutor personnel engaging in investigation of corruption cases; poor accountability of such personnel to the civil society.

#### **Measure 1:**

In consultation with civil society and international experts, drafting a package of legislation for comprehensive reform of criminal law enforcement in the Kyrgyz Republic, including

any recommended reallocation of authorities among the various institutions involved, possible introduction of jury trial system or associated judges system, methods of coordination among courts, police and prosecutors, and appropriate human resource reforms, including adequate levels of staff and salaries.

**Measure 2:**

Introducing a system of continuous training of court personnel, police investigators and prosecutors engaged in anti-corruption investigations based on the international experience and methods.

**Measure 3:**

Working out and implementing a system of reporting statistical information on the activity of law enforcement bodies of the Kyrgyz Republic engaged in anti-corruption activity and fighting money laundering, including but not limited to the auditing of the declaration of assets of public officials.

**Measure 4:**

Introducing a unified database on all corruption cases revealed by law enforcement agencies and other bodies engaged in anti-corruption activity. These two measures will allow the transparency and accountability to the civil society.

**Measure 5:**

Conducting an inventory of previously started criminal cases involving high-ranking officials in corruption and promulgation of the results of investigation.

Expected results include

- More effective prosecution capability of the Kyrgyz Republic, especially concerning cases of official corruption;
- higher professionalism of court, police and public prosecutors in dealing with anti-corruption activity;
- higher accountability of the offices of court, prosecutors and police to the civil society.

Estimated budget: 3 to 4 million US Dollars

**Institutional mechanism for coordination of the concept implementation:**

A steering committee comprised of members representing the Presidential Administration of the Kyrgyz Republic, the Prime Minister's office, the Parliament and the Supreme Court (possibly also representatives of the National Anti-Corruption Council ), together with an equal number of NGO representatives (selected jointly by the Kyrgyz Government and the U.S. Embassy), and representatives of the U.S. Embassy will jointly execute the program with the input of the Kyrgyz Government.

Project duration: 24 months

Total estimated budget: \$15 million