



**Government of The Kyrgyz Republic**

Millennium Challenge Account Threshold Plan

Submitted to the  
Government of the United States of America

15 May 2006

## Kyrgyzstan Millennium Challenge Account Threshold Country Plan

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Kyrgyz Republic

Submitted by President of the Kyrgyz Republic, Kurmanbek Bakiyev

### Section I

#### A. Mission Statement

The Government of Kyrgyzstan will reduce corruption and enhance professionalism in the judiciary and law enforcement sectors. This 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: develop an effective and fair judicial system; improve the transparency of key law enforcement divisions; and increase detection and punishment of official corruption.

The proposed program will supplement and expand the impact of other programs that have been planned or are being implemented using domestic resources and donor support (United States Agency for International Development (USAID), The Organisation for Security and Cooperation in Europe (OSCE), World Bank, and the International Narcotics Law Enforcement Agency of the Department of State (INL). 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; and a case management system for the Procuracy. The threshold program will also enhance reforms aimed at achieving independence of the judiciary, improving of the system of checks and balances in the law enforcement sector, increasing 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. Finally an integrated corruption strategy must have several goals. Transparency, accountability, oversight and deterrence are all elements of an integrated attack on corruption.

The Kyrgyz Republic has been working to combat corruption. In particular, the Law on the Declaration of Incomes by Officials was passed in 2004. The President approved the State Strategy to Fight Corruption in June, 2005. The Financial Intelligence Unit was established by Presidential Decree in September, 2005. The National Council on Fighting Corruption and the National Agency on Preventing Corruption were establishing in October, 2005. The Kyrgyz Republic was the first among Commonwealth of Independent States countries to sign the United Nations Convention Against Corruption which was then ratified by Parliament under the current President in 2005. The Action Plan to implement on the State Strategy to Fight Corruption was developed and approved in 2006.

#### B. Indicator Focus

There are a number of standard analyses and surveys that have been conducted or are underway which provide insight into the status of the rule of law. These studies will assist gauging the efficacy of assistance. The topics addressed in these analyses include the appointment and selection of the judges,

prosecutors and police, powers within the criminal justice system, financial resources, the structure and function of the justice system and accountability, transparency and efficiency of the justice system. These studies will provide the baseline and the performance indicators against which progress will be measured.

#### 1. **American Bar Association/Central and East European Law Initiative (ABA/CEELI) Indices:**

A. Judicial Reform Index (JRI). The baseline study was conducted in 2003 and little has changed. In that study Kyrgyzstan received a ranking of “neutral” or “negative” in the following categories:

- 1) Selection/Appointment Process
- 2) Continuing Legal Education
- 3) Judicial Jurisdiction of Civil Liberties
- 4) Budgetary Input
- 5) Adequacy of Judicial Salaries
- 6) Guaranteed Tenure
- 7) Objective Judicial Advancement Criteria
- 8) Judicial Immunity for Official Actions
- 9) Removal and Discipline of Judges
- 10) Case Assignment
- 11) Judicial Associations
- 12) Judicial Decisions and Improper Influence
- 13) Code of Ethics
- 14) Judicial Conduct Complaint Process
- 15) Publication of Judicial Decisions
- 16) Case Filing and Tracking Systems
- 17) Computers and Office Equipment

Kyrgyzstan will conduct modified JRI studies once a year over the course of the project’s implementation to measure progress in these areas, with the goal of achieving tangible positive results by the end of the project.

B. Legal Professional Reform Index (LPRI). The baseline study was conducted in 2004. As with the JRI, a modified LPRI could be run periodically over the course of the project to measure progress on certain indicators in the index.

C. Prosecutor Reform Index. ABA/CEELI is finalizing this index now. The baseline study would need to be conducted in year one of the project. A modified index could be run periodically over the course of the project.

D. The International Covenant on Civil and Political Rights Index (ICCPR). ABA/CEELI is finalizing this index now. The baseline study would need to be conducted in year one of the project. A modified index could be run periodically over the course of the project.

2. **USAID Monitoring Country Progress Data**, Democratization section. The underlying indices for this data set are pulled from Freedom House’s *Nations in Transit* and *Freedom in the World* publications. The “democratization” section includes survey questions on the indicator categories that the Government of Kyrgyzstan has chosen for the TCP plan. Specifically, this data set measures: electoral process, political pluralism, functioning of the government, rule of law, independent media, and corruption.

3. **INL Criminal Justice Sector Assessment Rating Tool.** International Narcotics Law Enforcement Agency of the Department of State is finalizing this rating tool now. The tool covers five criminal justice sectors and is meant to show a country's progress in reforming its criminal justice sector over time. The five sectors examined are: criminal laws, the judiciary, prisons, borders and customs, and international cooperation. The baseline study would need to be conducted in year one of the project. A modified version of the tool (in particular the sections on criminal laws and the judiciary) could be run periodically over the course of the project.

4. **INL International Narcotics Country Survey Report, Money Laundering and Priority Crimes.** This is an annual survey conducted by International Narcotics Law Enforcement Agency of the Department of State that provides anecdotal information and recommendations on Kyrgyzstan's progress towards combating money laundering, terrorist financing, and corruption.

C. Preliminary Budget

Please see Annex C for the budget portion of this proposal.

## Section II

### D. Program Activities and Performance Objectives

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

##### Strategic Goal:

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

We will reduce the level of corruption in the judiciary by increasing its independence from the other branches of power and from the judicial leadership, by changing the procedures for judicial selection and removal, by increasing social and other guarantees provided to judges and by increasing their professional responsibility.

We will change court administration practices by computerizing court and case management. This will increase management efficiency, provide for the random assignment of cases, enable courts to issue their opinions more quickly, improve the collection of judicial information and broaden access to the Judicial Opinion Database. To fulfill this task we will use the Threshold Millennium Challenge Corporation Program (MCC) to focus our efforts at political reforms within the framework of fair justice indicators, most particularly as concerns reducing corruption.

##### **Expected results from achieving judicial independence:**

Judicial independence will be guaranteed by the State and established in the Constitution or other laws of the country.

Courts will settle the cases impartially, based on facts and in accordance with law, without any unlawful influence or interference, direct or indirect, from anyone for any reason.

The principle of judicial independence will create the right to demand that the courts be given the necessary operational capacity to adjudicate fairly in accordance with the rights of the parties. The State will provide the facilities necessary for the courts to carry out their proper function.

The judges will be free to form associations or other organizations to protect their interests, improve their qualification and preserve their judicial independence.

Persons selected for judges' positions will be of high moral quality and professional skill.

Judicial terms of appointment, their personal safety, adequate remuneration, working conditions, pensions and retirement age will be guaranteed by law.

Accusations or complaints against a judge in connection with the judge's performance of his/her professional duties will be promptly and impartially considered in accordance with applicable law. The judge shall have the right to respond and to a fair hearing.

Judges will bear responsibility for violations of the judicial code of ethics.

There will be established procedures and bodies to exercise public supervision and judicial supervision over judges and their work. The procedures will make it possible to discover judicial misconduct and take appropriate measures to correct it.

### **Expected results from improving the effectiveness of the judicial system.**

Court proceedings will be conducted openly and will permit the attendance of the public and representatives of the mass media.

Judicial opinions from proceedings held openly will be in the public domain and will be available for public scrutiny. Such judicial opinions will be published and made publicly available through electronic databases, compilations and other publication, to which any person may have easy access. Statistics on judicial decisions that have been adopted, reversed, appealed or enforced will be publicly available.

Procedural documents, including trial records and transcripts, will be true and accurate and will not be subject to improper alteration by any judge or staff member, and shall be accessible to the public.

Each judge will have sufficient support personnel for case management and legal research to enable the judge to perform his/her duties.

New judicial positions will be created as needed.

The judicial system will maintain a docket management and case management system for effective adjudication. The system will be automated and will assign cases randomly. The judicial system will be equipped with computers and other equipment sufficient for effective adjudication.

All judges will be provided in a timely fashion with information on law and practice and with other scholarly and public information necessary for their work.

Judges regularly undergo and pass professionally developed training courses in law based on curriculum developed by the judges themselves. The courses keep judges abreast of new developments in the law and proposed legislation.

The judicial system or another authorized body summarizes and disseminates information on judicial practice.

The effectiveness of the courts will be recognized by a substantial portion of the public.

### **The Situation Today with Respect to Judicial Independence**

Judges today find themselves in a system of vertical political control. This both frees them of direct responsibility to society and makes them dependent on their judicial and political superiors. This is the result of a confluence of a number of inter-related factors that have a synergistic effect: (1) the closed nature of the process of judicial appointment and removal; (2) judges' susceptibility to undue influence from within and outside the judicial system; (3) the lack of judicial self-governance; (4) the lack of budgetary independence for the courts; (5) the absence of an effective process for receiving and addressing citizens' complaints against judges; and (6) the lack of effective physical protection for judges. (These issues, along with those described in the next section, are given elaborate treatment in ABA-CEELI's *Judicial Reform Index for Kyrgyzstan*, published in 2003.)

Appointment and Removal. Under the current Constitution, the President appoints judges with the

consent of the Parliament. The process by which the President selects candidates for appointment is not sufficiently open. The body that reviews judicial candidates for the President; the National Council for Judicial Affairs, has been created by Presidential decree, and its composition is determined solely by the President. Moreover, its role is largely advisory. In addition, selection criteria and procedures are not sufficiently objective. Furthermore, the review of judicial nominees by Parliament has similarly lacked fairness and openness. Lastly, the procedure for removing a judge from office lacks an effective mechanism and sufficient definition in the law, which makes it possible for the procedure to be misused.

Judges' Susceptibility to Undue Pressures. The nature of the appointment process and the ever-present possibility of removal leave judges susceptible to pressures from both inside and outside the judicial system. Judges feel compelled to take into account the opinions and positions of judges of higher courts, since their record of reversals is given considerable weight during the review process. There is a wide-spread perception that "telephone justice" (i.e., the transmission of instructions to the judge by judicial and political superiors) and corruption are frequent occurrences during adjudication.

Lack of Judicial Self-Governance. Rank-and-file judges have very little voice in the management of the judicial system. Such issues are decided by the Chairman of the Supreme Court and the Court Department, the body responsible for handling court house-keeping matters, which is within the Ministry of Justice. Most judges have no say in the formation of the judicial budgets that are sent to Parliament or in the disposition of the funds that are budgeted. The same is true for all other areas of policy-making and management of the courts.

Lack of Budgetary Independence. The courts are permitted to develop their own budget proposals for review by Parliament, but they are required to stay within pre-determined parameters set by the Ministry of Finance. After Parliament has approved the annual budget for the judicial system, control over those funds is transferred to the Ministry of Finance. The courts must apply to the Ministry of Finance through the Court Department for funding. Often the courts do not receive the full amount allocated in the budget, or receive the funds after considerable delay. Moreover, the courts must have Ministry of Finance approval for many expenditures, even if they are within the amounts approved for the courts in the national budget.

Inadequate Complaints Process. It is known that many judges conduct themselves inappropriately in the course of judicial proceedings and violate rules of ethics and procedure. No effective mechanisms and procedures are in place for the transparent processing and review of complaints that citizens bring against judges. Internal reviews that do take place are carried out in closed session and no information on their findings is made available to the public.

Lack of Adequate Physical Protection for Judges. Events of the past year demonstrate the vulnerability of judges and their families to physical threats and abuse. Judges of most courts are provided no physical protection in their court rooms or in their private lives.

### **The Situation Today with Respect to the Effectiveness of the Courts**

The effectiveness of the judicial system is hampered by a number of problems: (1) court staff levels are inadequate and inappropriately allocated; (2) in many courts courtroom facilities are inadequate to make public hearings possible; (3) information management procedures are out-dated; (4) there is not institutionalized public access to judicial opinions and judicial information; (5) procedures for adjudicating commercial cases are unduly burdensome; (6) judges lack adequate access to legal information; and (7) the enforcement of judicial decisions is ineffective and inefficient.

Number and Allocation of Court Staff. Judicial case loads have been increasing steadily every year, and

the courts have not been given the additional staff and organization to enable them to cope effectively. While the Constitutional Court and the Supreme Court are sufficiently staffed with support personnel, most of the remaining courts have only one secretary and a limited number of support staff who perform a variety of functions. Most courts also lack judicial clerks. Nor does the geographical and substantive distribution of judges conform to the demands of the courts' case loads, with many judges being extremely overworked, while others are not fully utilized. No caseload guidelines have yet been established.

Inadequate Court Facilities. Although Kyrgyzstan law provides that judicial proceedings must be open to the public, the lack of court rooms makes it impossible for this requirement to be met.

Out-dated Information and Other Management. Most courts use Soviet-era information management procedures that do not meet the requirements of a modern judicial system. Case and docket management are carried out by hand. Court chairpersons assign cases at their own discretion, which is a source of undue influence on other judges. Records of trial proceedings are not verbatim; instead, summaries are recorded by hand, and their contents are at the sole discretion of the judge and recording secretary.

Positive steps have been taken in modernizing case and court management. Kyrgyzstan has received and implemented a World Bank grant for the development of a court information management system. That funding sufficed, however, to fully automate only five courts, with an additional fourteen courts receiving one computer each. The remaining 59 courts remain non-automated.

Lack of Institutionalized Public Access to Judicial Information. Since 2001 Kyrgyzstan courts have cooperated closely with USAID to create a Database of Judicial Opinions, in which 37 courts participate and which now contains over 30,000 opinions in a format that permits research. It is planned that the database will be turned over to the judicial system this year, but transitional financial assistance will continue to be needed in order for the courts to maintain it. Judicial statistics are maintained by the Court Department, but the information is not publicly available (e.g., on the number of cases heard, appealed and reversed, and on the status of the enforcement of judgments).

Unduly Burdensome Procedures for Adjudicating Commercial Cases. Judicial procedures currently provided for in the Civil Procedure Code are unduly time-consuming for commercial cases arising in a market economy. While private arbitration exists, it is not yet widely used or well known within the business community.

Judges' Inadequate Training and Access to Legal Information. To date judicial training has been funded largely by USAID and other donors working with the Judicial Training Center. The Judicial Training Center and the judicial training activities remain severely under-funded. Moreover, no annual training requirements have been established for judges, and their attendance is not mandatory.

Judges and courts are provided with inadequate legal information. At times judges are forced to ask parties for copies of the relevant laws. Selected courts received access to local commercial electronic legislative databases through funding provided by USAID.

Ineffective Enforcement of Judgments. In practice judgments are enforced without the involvement of the courts. Enforcement officials often perform their duties improperly and overstep their authority. In addition, citizens are not subject to penalties for failing to comply with the demands of enforcement officials. Judgments are enforced with delays.

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

Tactical Goals or Outputs:

We propose to create a new body to replace the National Council for Judicial Affairs that will oversee the selection of judicial candidates for nomination by the President and will oversee the removal of judges. The new body will likely be called the Judicial Qualifications Committee (JQC). The JQC will include representatives of the judiciary, the Parliament, the Government, the Ombudsman and civil society, none of whom will be appointed by the President. The JQC will be established by constitutional law, the Law on the Status of Judges, and will provide that judicial representatives be elected by the Judicial Council, and that Parliament, the President, the Government the Ombudsman and civil society each determine their own representatives. The law will provide that civil society be represented by members of professional associations or other highly respected individuals. The JQC will consist of twenty persons as follows: ten judges; two representatives of Parliament; one representative of the President; one representative of the Government; one representative of the Ombudsman and five representatives of civil society. Of the ten seats reserved for judges, six will be designated for judges from the lower courts, three for judges from the Supreme Court, and one for a judge from the Constitutional Court. The law will provide that the representatives of State bodies may be private citizens.

Members of the JQC will have two-year terms and may not be appointed more than once. The JQC will develop its own rules and procedures, with the chairmanship changing with each session. Decisions of the JQC shall be adopted by a two-thirds majority. The JQC shall have its own administrative office of from three to five persons and shall be affiliated with the Court Department. Note that no funding received under this proposal will be used to support the work of the JQC.

The JQC will carry out judicial selection on an objective basis and will make formal recommendations to the President; it will also approve or prepare recommendations concerning the removal of a judge from office. The JQC shall have the authority to insist that its recommendations be acted upon. When the JQC reaffirms its recommendation, the President will be required to nominate that candidate for Parliamentary approval. This shall apply equally to judges of the Supreme Court and the local courts.

The JQC will also review complaints against judges and will forward the complaints to the Judicial Council in order for that body to apply disciplinary measures; consider the removal of the judge from office at the recommendation of the Judicial Council; and formulate such a recommendation to the President.

We also propose to increase the term of office for judges of all courts who are appointed for second and subsequent terms, and to permit judges to serve until they attain 70 years of age. It is also necessary to develop clear procedures governing the dismissal of judges for violations of the rules of professional conduct and for violations of the law.

In connection with establishment of the procedure for the appointment of judges described above, the current practice of rotating judges from court to court must be abandoned. If a judge does not want to work in a court where he/she has been appointed, that judge will have to participate in the competition for another vacancy, albeit as a privileged candidate.

At the first available opportunity, we will seek to have these procedures for judicial appointment and removal established in the Constitution.

A functional analysis will be conducted to determine the optimal size and structure of the judiciary system. This would also help to resolve an acute problem of uneven distribution of caseloads among

courts. Upon completion of the functional analysis the question of increasing salaries and social protections for judges and judicial personnel will be considered.

We propose improving the judicial training program. The JTC has, in principle, sufficient capacity to carry out acceptable training programs even within 2006, but it is necessary to have a law that requires judges to take and pass continuing education courses once every two years. In addition, a detailed training program and attendance schedule must be established for every judge, along with a reliable estimate of all related expenses. The budget of the JTC must also be developed on that basis.

#### Operational Goals or Outputs:

1. Developing amendments to the Constitutional Law “On the Status of Judges” to establish the JQC, its powers, its composition, the procedures for its operation, and the terms of the office and responsibilities of its members; and submitting the amendments to Parliament by May 15, 2006.
2. Getting the legislation adopted by December 31, 2006 (in view of the fact that this is a constitutional law and by law must be reviewed in two readings).
3. Establishing a commission to oversee the conduct of a functional analysis of the judicial system and determining the commission’s tasks and deadlines, by June 15, 2006.
4. Publishing the results of the work of the commission and developing the legislation necessary to carry out the commission’s recommendations, by October 15, 2006.
5. Having the administrative functions required to support the JQC assumed by a section created within the Court Department, by December 31, 2006.
6. Transferring to the JQC responsibility for administering the qualifying examination currently used by the Judicial Training Center, by December 31, 2006.
7. Amending the Law on the Status of Judges to require judges to undergo training on a regular basis; submitting the amendments to Parliament by May 15, 2006 for adoption by December 1.
8. In the course of the functional analysis of the judicial system calculating the costs for training every judge and having this reflected in the budget of the JTC, by October 15, 2006.

### **Measure 2.** **Steps towards achieving judicial independence**

#### Tactical Goals or Outputs:

It is necessary to change the existing vertical structure within the judicial system in order to prevent judges of higher courts from unduly influencing judges of lower courts. This will be done by changing the process of making policies that apply to the judicial system. This has traditionally been performed by the President’s Administration along with the chairpersons of the Supreme Court and of the Constitutional Court.

Ultimately, such changes should be reflected in the Constitution. That, however, is a political process that depends on a number of variables, and for that reason at present we can only commit to seeking to amend the Constitution at the first available opportunity. For the present we will amend the Law on the Status of Judges to provide for the creation of a body of self-governance within the judiciary, a Judicial Council, that will be empowered to address all issues related to the management of the judiciary, including the development of proposed budgets; defending the budget proposals in Parliament; allocating resources; administering sanctions on judges for misconduct and other matters. Members to the Council shall be elected by the Congress of Judges, which will convene once each year. The Congress of Judges will also elect its representatives on the JQC and decide all other matters within its powers under the Law on the Status of Judges.

The Judicial Council must operate on a democratic basis. The Judicial Council will consist of eleven members that shall be elected by the Congress of Judges by secret ballot for two-year terms. Eight of the members shall be judges from the lower courts of the seven Oblasts and Bishkek, two shall be from the Supreme Court and one shall be from the Constitutional Court.

No judge may serve two terms in succession. The Chairperson of the Judicial Council shall be elected by and among its members for a term to be determined by the Council. Decisions shall be taken by a simple majority. Members of the Council shall receive a salary increase of 50% during their tenure as members. The Council shall determine its work regime; it will be supported by the Court Department.

The Judicial Council will be responsible for developing judicial policy, defending and advancing judges' rights and legitimate interests; representing the judicial branch to other State bodies and organizations and to society; allocating budgeted resources; overseeing training for judges and judicial personnel; determining judges' service rank; imposing sanctions on judges for misconduct; electing and removing the chairpersons and deputy chairpersons of the lower courts; examining questions of efficient management of the courts and addressing all other questions related to the development of the judiciary.

The creation of the Judicial Council will reform the manner in which policies governing the judicial system are formulated. Accordingly, court chairpersons will assume the role of judges on whom certain additional administrative responsibilities are given that concern overseeing the work on support personnel and dealing with house-keeping questions. Note that under this scheme the Chairperson of the Supreme Court will be elected by and among judges of the Supreme Court.

The Court Department, which carries out administrative functions for the judicial system, will be removed from the Ministry of Justice and placed under the control of the Judicial Council in order to create a true separation between the judicial and executive branches.

#### Operational Goals or Outputs:

1. Developing and submitting to Parliament amendments to the Constitutional Law "On the Status of Judges" The amendments will describe in detail, where possible, the authority of the Congress of Judges and the Judicial Council in order to prevent the enactment of regulations that could cast doubt on the legitimacy of decisions taken by these bodies. The amendments shall also provide for the procedure for the election of chairpersons of the courts and their powers. (To be submitted by May 15, 2006, with approval by October 1, 2006.)
2. Convening the Congress of Judges in order to elect the Judicial Council, thus setting the precedent for such events, by November 1, 2006.
3. Establishing a budget for conduct of the Congress of Judges, and making provision for these expenses in the national budget, by November 1, 2006.
4. Drafting a Presidential Decree mandating the reorganization of the Court Department and the transfer of its administrative functions for the judicial system to the Judicial Council. The Court Department shall be the executive and administrative arm of the Judicial Council. (By November 1, 2006.)
5. Developing and submitting to Parliament amendments to the Law "On Basic Principles of Budget Law in the Kyrgyz Republic", the Law "On the Government of the Kyrgyz Republic", the Law "On the Supreme Court and Lower Courts of the Kyrgyz Republic" to establish the powers of the Judicial Council to develop budgets for the judicial system and present them to Parliament. (To be submitted by May 15, 2006, with approval by October 1, 2006.)
6. Disbanding existing judicial qualification boards as soon as the Judicial Council is formed, so that all matters of judicial discipline will thereafter be under the authority of the Judicial Council. The Council's authority will be established in the Law "On the Status of Judges of the Kyrgyz

Republic.” The same law will establish a comprehensive list of grounds and procedures for disciplinary sanction on judges.

7. Requiring the Judicial Council by law to publish regularly or disseminate in electronic form reports with statistics and explanatory information on complaints brought against judges, by November 1, 2006.
8. Requiring that all decisions related to complaints brought against judges be sent to JQC and that the JQC take them into account when selecting judicial nominees. These procedures shall be provided for in the Law “On the Status of Judges,” by December 1, 2006.
9. Placing the Judicial Training Center under the authority of the Judicial Council, by November 1, 2006.

### **Measure 3.**

#### **Development of commercial law**

##### **Tactical Goals or Outputs:**

We propose to conduct a review of relevant laws in order to remove administrative barriers imposed on business and to improve citizens’ and business persons’ access to courts. In particular, adjudication procedures will be simplified for commercial cases, and the laws and procedures governing the enforcement of judgments will be improved. The procedures for paying court fees to be paid when bringing a case to court will be improved, since the current procedures discourage citizens and business persons from bringing cases to court.

Upon completion of the functional analysis of the judicial system, a decision will be made on creating specialized courts and judicial specializations. Possibly a constitutional law will be enacted that creates specialized courts or introduces judicial specialization by increasing the number of judges or providing specialized training.

The work that is underway to improve the Civil Procedure Code by removing contradictions that prevent effective court procedures will be completed.

The enforcement of judgments is not within the jurisdiction of the judicial system, and the Government of the Kyrgyz Republic will strive to improve the Law “On the Enforcement of Judgments” to improve the effectiveness of enforcement.

##### **Operational Goals or Outputs:**

1. Developing and submitting to Parliament amendments to the Civil Procedure Code, by May 15, 2006.
2. Developing and submitting to Parliament amendments to the Law “On State Fees,” by May 15, 2006.
3. Adoption of the above by Parliament by October 1, 2006.

### **Measure 4.**

#### **Computerization of courts**

##### **Tactical Goals or Outputs:**

With the support of the World Bank the Supreme Court has developed a Court Information Management System. The CIMS provides judges with access to an electronic database of laws and regulations and judicial opinions. All this will significantly improve the quality of decisions and create transparency in

the judicial system by providing broad public access to judicial opinions. Nevertheless, this project has not yet succeeded at creating a single integrated system, since it includes less than one quarter of all the courts in the country (19 courts out of 78).

We hope to expand CIMS to all courts by stages. All of the projects and institutions formed within the framework of this Program will work together in order to achieve this goal.

The Court Information Management System will be extended to all the courts in Kyrgyzstan, which will make random case assignment possible. Funds will be used to integrate the judicial system into a single judicial information network; to train judges and administrative staff; to provide public access to judicial opinions through the Internet; and to conduct a public information campaign in society on how to use of the system.

The Supreme Court, together with the Government and professional non-government organizations (Association of Lawyers of Kyrgyzstan, Association of Attorneys of the Kyrgyz Republic, ABA/CELLI, etc.) as well as with other organizations such as the OSCE will monitor and evaluate progress in carrying out these activities.

#### Operational Goals or Outputs:

1. Determining a budget for the complete expansion of the CIMS, by May 15, 2006.
2. Developing a plan for the staged introduction of the CIMS to courts and determining the level of funding necessary to maintain the system from year to year. We plan to increase the annual budget for the judicial system each year in order to introduce the CIMS smoothly, which ultimately will be maintained with funding from the national budget. (By June 15, 2006)
3. Making possible the integration of the CIMS with the existing Judicial Opinion Database in order for both to contain the maximum number of judicial opinions, by July 15, 2006.
4. Examining the feasibility of integrating the CIMS with other legal information systems (e.g., “Adis” of the Ministry of Justice and the commercial databases “Toktom” and “Adviser”), by July 15, 2006.
5. Developing and adopting instructions on case management procedures based on the CIMS, by November 15, 2006.
6. Providing judges with access to Internet so that judges and courts can communicate by electronic mail; and determining the cost and including this amount in the budget for the judicial system, by January 1, 2007.
7. Creating Web Sites for the Judicial Council and the Court Department in order to provide public access to judicial opinions and to other information related to operations of the judicial system, by January 1, 2007.
8. Developing and submitting to Parliament amendments to the Law “On the Supreme Court and Lower Courts” that require the courts to make judicial decisions issued in connection with open court proceeding available to any person, by May 15, 2006.
9. Training judges and administrative personnel on use of the CIMS. (ongoing)
10. Increasing up to three in the oblast courts, the Bishkek city court and the Supreme Court the number of staff positions assigned to maintain the CIMS. These staff positions may be organized into separate administrative section of the court. Officers of such section in the Supreme Court will be authorized to coordinate the work of their counterparts in the lower courts. (By December 31, since this is determined by the Budget Law )
11. Determining the budget requirements for maintenance of these sections in the courts and including these amounts in the budget for the judicial system, by December 31, 2006.

12. Developing and submitting to Parliament amendments to the Law “On the Supreme Court and Lower Courts of the Kyrgyz Republic” that rescind the chairpersons’ authority to assign cases to their fellow judges, by May 15, 2006.

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

Strategic Goal or Outcome:

The goal is for Kyrgyz law enforcement institutions to be less corrupt and better able to effectively combat corruption within their ranks. In order to do that, a thorough functional analysis of the Bishkek MVD (size, scope, organization, operations, lines of authority, and responsibilities) must be done. This analysis will permit proper reflection as to what elements in the MVD should be abolished, which reduced and which transferred to other state agencies.

**Measure 1.**  
**Oversight and management**

Tactical Goals or Outputs:

The MVD will be reformed to deal with public safety and criminal investigation exclusively. Areas dealing with licensing will be transferred out of the MVD. This will free up resources and professionalize the MVD. If the non public safety aspects are removed from MVD it will provide an opportunity to reduce corruption. For example the removal of certain functions the traffic police from the MVD will provide resources for public safety at the MVD and remove a great source of open public corruption.

New applicants to the MVD will be screened for and vetted against corruption. Hiring practices will be changed. The current hiring process allows for many opportunities for corruption. The new hiring process will consist of applicants having to take and pass an objectively administered test for entry that includes both a rigorous written exam administered with independent monitoring. Current officers will be vetted against corruption. Vetting will include background checks, financial disclosures, and polygraphs for cause. The hiring and vetting process will be both objective and transparent and appear so to the public. A personnel manual that requires standard operating procedures with a required ethical component to establish clear, transparent and consistent police behavior will be written and adopted.

Once hired, officers will undergo annual performance reviews that will focus on the quality of work performed, not the number of cases opened or closed. Reviews will incorporate a review of citizen complaints and any Internal Affairs complaints against officers. In addition, a system of performance-based promotions will be enacted. These performance-based promotions will be made based on internal standard operating procedures to permit consistency of the application of the law by the officers on the citizenry.

Currently the Personnel Security Service of the MVD is responsible for the detection of police misconduct matters. This Service is ineffective and will be abolished. This unit will be replaced by a true Internal Affairs Service which will be made up of dedicated, vetted officers who have the authority to investigate all disciplinary and misconduct matters of the police both reactively from citizen complaint and proactively based on information from other sources. This Unit will investigate and punish acts of corruption, malfeasance, and unethical conduct by law enforcement agents. This Service will be developed after a rigorous, transparent selection process of officers that consists of additional written and oral exams, background checks and possible polygraphs for cause. In order to maintain consistent policies for the Internal Affairs to follow, internal, MVD standard operating procedures will be adopted to promote consistency of the application of the law by the officers on themselves.

Currently a system for financial disclosure by officers exists but it is rarely followed. Annual submission of financial disclosure forms will be made mandatory as a condition of initial and continued employment, and disciplinary action will be carried out for non-compliance through the Internal Affairs Unit with cross reference to a Civilian Review Board if necessary.

In addition, there is no coherent, organized, systematic police misconduct complaint acceptance and coordination process. An office of complaint review that has complaint forms, and complaint files and will work in conjunction with the Internal Affairs Service, the MVD personnel office, the Civilian Review Board and the public will be set up, staffed and maintained. It will be fully accessible to the public and maintain files that are used in officer annual performance reviews.

Operational Goals/Outputs:

1. All current officers are vetted by July, 2007.
2. Those who do not meet vetting requirements are dismissed by July, 2007.
3. New objective and transparent hiring procedures are created and institutionalized in a personnel manual by July, 2007.
4. Annual performance reviews are conducted for all personnel July, 2007.
5. Standard internal operating procedures are developed and implemented with public input July 2007.
6. Sanctions are imposed for failure to comply July, 2007
7. The Personnel Security Service of the MVD is abolished by December, 2006
8. An Internal Affairs Service in the MVD is created by December, 2006.
9. A selection process is effectively implemented and members are vetted by July, 2007.
10. A system of annual declared financial disclosures is effectively implemented
11. In case of failure to declare disclosures sanctions are imposed for failure to comply July, 2007.

**Measure 2.  
Civil monitoring**

Tactical Goals or Outputs:

In order to add transparency and confidence to the efforts at reform of police corruption, a civilian review board will be established. The Board will consist of people whose membership is determined by international best practices to represent all members of society related to criminal justice system including but not limited to members of the police, judiciary, prosecution, civil society (NGOs, media), and the public. The Board will coordinate with the Internal Affairs Unit and the Prosecutor's office on complaints of police misconduct and corruption.

Operational Goals or Outputs:

1. The civilian review board is created by January, 2007.
2. The citizen complaint mechanism is introduced and used by the public, the civilian review board or the Internal Affairs Unit July, 2007.
3. Cases of police misconduct are being actively investigated. Ongoing from present.

**Measure 3.  
Training and equipment**

Tactical Goals or Outputs:

In order to adequately detect, investigate and prosecute serious corruption and organized crime, police officials need to be equipped and trained with modern law enforcement tools. Investigations are usually proactive or reactive in nature. Reactive investigations require common police tools such as fully functional vehicles, radios and lifesaving equipment. A modern police force cannot function without the implements to respond quickly and professionally to crime scenes. Without modern functioning equipment, a police force cannot serve the public good. Similarly with complex investigations, proper training is essential. In order to undertake the investigation and detection of complex corruption, money laundering and narcotics cases, police must understand how the investigations mesh with the prosecutions. They must understand the law and facts of a case. They must understand sophisticated techniques of investigation and detection. Training is essential to this understanding. Adequate tools and legal police training on special investigate techniques, controlled deliveries, undercover agents, ethics, and the use of modern, functioning equipment are crucial to developing a police force that is modern, ethical and effective as a public safety entity. A more professional police force creates respect for itself amongst the civil society. It is trusted more and leads to a more open, less corrupt society.

Operational Goals or Outputs:

1. MVD personnel are trained on modern law enforcement techniques from January, 2008.
2. Personnel training is institutionalized within MVD and on-going trainings occur on a quarterly basis beginning January, 2008.
3. Training curriculum developed by July, 2007.
4. Incidents of excessive use of force, and coercion decrease by 25% by July, 2007 and by 45% by July, 2008.
5. All personnel are provided with the minimum amount of training and equipment to effectively investigate corruption and other complex criminal cases by September, 2009.

### **Component 3. More effective criminal prosecutions**

#### Strategic Goal:

As Kyrgyzstan struggles to achieve a less corrupt society, it needs a criminal justice system that functions in a manner that is fair and predictable, and that is capable of effectively investigating and resolving the cases presented to it. Kyrgyzstan needs a criminal justice system that operates free of corruption from within ranks of the actors in that system, whether they be members of the judiciary, the Procuracy, the law enforcement agencies, or the defense bar. Accordingly, the goal of this component is to establish a more objective, neutral and fair justice sector in Kyrgyzstan by bringing greater transparency and balance to its processes, and through reduction of corruption within its ranks. In order to do that, many areas of the criminal justice system will need to be reformed. These include legislative reforms of the Criminal Penal Code, Criminal Procedure Code and related laws; a thorough functional analysis of the Procuracy (size, scope, organization, operations, lines of authority, and responsibilities) with an eye to key institutional and operational reforms of that institution; and emphasis on increased professionalism of the Procuracy through training, financial disclosure and establishment of a code of ethics. Lastly, the public must be educated by information and through participation that corruption is not a way of life.

#### **Measure 1. Legislative Framework and Institutional Reform**

#### Tactical Goals or Outputs:

The Criminal Procedure Code and Penal Code will be amended to reflect international standards of the International Covenant on Civil and Political Rights (ICCPR) to which Kyrgyzstan is a party. First and foremost, the responsibility for the sanctioning of arrest and decisions on pre-trial detention will be shifted from the Procuracy to the judiciary. Responsibility for approval of wiretaps, searches of homes, interceptions of mail, and similar special investigative techniques will be shifted from the Procuracy to the judiciary. Currently there are two phases of a criminal investigation – the detection phase and the investigatory phase. Police and prosecutors should work together at the detection phase. Previously, evidence gathered at the detection phase (including but not limited to written explanations and notes, tape recordings of talks and conversations, written and recorded electronic and non-electronic communications), was inadmissible in court. Evidence gathered at the detection stage of the investigation should be admissible at the court proceedings. This will aid in transparency of criminal investigations and actions of investigators when facts are presented to a neutral and detached magistrate. Practices and procedures will be established within the judiciary to execute these added responsibilities, and judges will be trained (see this component, measure three) to execute these added responsibilities.

The Criminal Procedure Code will be evaluated and if needed amended to add a form of abbreviated trials wherein the accused is permitted, subject to court approval, to admit guilt and proceed to the penalty phase for more serious crimes. Practices and procedures will be established within the court system to execute this process. Additionally, the Government will undertake a public debate amongst the relevant groups, including but not limited to members of the police, judiciary, prosecution, civil society (NGOs, media) and the public regarding legislation of a form of abbreviated trials.

The Criminal Procedure Code will also be amended to add a form of jury trials or application of jury trials to certain corruption crimes. Practices and procedures will be established within the court system to

execute this process. As with abbreviated trials, the Government will undertake a public debate amongst the relevant groups, including but not limited to members of the police, judiciary, prosecution, civil society (NGOs, media) and the public regarding legislation enacting jury trials.

A coherent, organized regime of anti-corruption laws will be enacted. Currently, the Penal Code does not adequately provide police and prosecutors with sufficient clarity as the definition of corruption is still disputed. Crimes in the Penal Code devoted to Conduct of Public Officials and Employees and Corruption will be consolidated. As a result, coherent anti-corruption legislation will be developed and enacted.

Kyrgyzstan is predominantly a cash based economy with a high prevalence of narcotics trafficking in the region and active organized crime. As such, legislation creates a Financial Action Task Force (FATF) compliant money-laundering law is needed and will be enacted so that the regional problem of money laundering can be adequately combated.

To enforce a money laundering law, a special unit within the Procuracy will be created that is properly vetted, trained and committed to detect, investigate and prosecute corruption related crimes and financial crimes. This unit will work with a dedicated financial intelligence unit and other law enforcement agencies.

Currently there is a system of Elder Courts whereby older, respected members of the community will sit as a court and judge local, minor disputes. In order to judge the efficacy of these Elder Courts, a functional analysis of the use of the Elder Courts to adjudicate minor criminal offenses will be undertaken. After such analysis is undertaken, legislation should be harmonized to integrate these courts into the judicial system. In addition, consideration should be given to the reclassification of minor criminal offenses to make such offenses administrative offenses.

The redundant system of administrative actions for business that allows for corruption will be eliminated after an assessment and revision of the administrative organizations and regulations related to business regulation. Additionally, the Government will eliminate the common practice of unjustified and frequent inspections by officials, and establish a mechanism for business complaints for administrative corruption. Officials who engage in administrative corruption and bribe taking will be removed and prosecuted.

A legislative and administrative system of witness security will be enacted in order to foster an environment in which witnesses will be able to testify in a secure and safe environment. Legislation on crimes against witnesses will be enacted. A working witness security program will be established.

#### Operational Goals or Outputs:

1. Amendments to the revised Criminal Procedure Code that shifts power from the Procuracy to the judiciary will be made July, 2007.
2. There will be a national discussion on both abbreviated trials and jury trials by January, 2007.
3. Written recommendations for how to proceed with both abbreviated trials and jury trials will be drafted by May, 2007.
4. Practices and procedures for abbreviated trials and jury trials will be established January 2008.
5. Anti-corruption laws will be enacted within January, 2007.
6. A vetted money-laundering unit will be established in the Procuracy by January, 2007.
7. The administrative business inspection situation will be evaluated and reformed within July, 2007- July, 2008.
8. The Elder Courts will be evaluated and decisions on their integration into the judicial system will be made within July, 2007-July, 2008.

9. Laws and administrative measure for a witness security program will be enacted by July, 2008.

## **Measure 2. Prosecutorial-Judicial Training**

### Tactical Goals or Outputs:

There are currently approximately 700 prosecutors in Kyrgyzstan. There is a well equipped training facility in Bishkek. The Prosecutor Training Center should be organized so that it can provide training and professional development to the prosecutors both when mandatory and voluntary. It should be a resource for prosecutors to use legal research tools and obtain training in legal developments. It should be a location for prosecutors to exchange ideas. It should maintain a library of the required research materials for prosecutors. It should provide training by subject matter on complex criminal investigations and prosecutions (corruption, money laundering, organized crime, narcotics, trafficking in persons). It should develop core advocacy skills curriculum for new and experienced prosecutors and maintain a consistent training schedule. Particular curriculum on the development of skills related to the investigation and detection of organized crime, corruption and money laundering should also be developed. The Center should work with advocates (criminal defense lawyers) in order to suggest rules and legislation on matters of common concern. The training center will be made available to the judges and defense attorneys for training on the legislative amendments. The training center should be made available to the judges and court staff and defense attorneys for skills development trainings.

### Operational Goals or Outputs:

1. The creation of legal and factual resource materials at the training center will be developed January, 2007.
2. The reproduction of all Penal Codes and Procedure Codes in digital form will be completed January, 2007.
3. 700 prosecutors will be trained in basic skills level consistent with International Covenant on Civil and Political Rights by July, 2008.
4. 350 judges will be trained on new legislation (once passed) within one year of passage by July, 2008.
5. Criminal defense attorneys will be trained as space and interest permit, intermittantly by July, 2007.
6. The number of investigations and prosecutions on corruption, money laundering, and organized crime cases will increase both in quantity and quality by January-December 2007.

## **Measure 3. Reporting and disclosure**

### Tactical Goals or Outputs:

In order to combat corruption amongst the authorities, there is a need to develop and institutionalize a system of financial disclosure for public officials maintaining privacy (to include prosecutors) including sanctions for failure to comply and training on the same. There is a law on civil servants that will provide requirements for this. However, since the prosecutors are in a particular position of trust and power, they must not only be above suspicion; they must avoid any circumstance that even appears to show them as untrustworthy. Therefore, there should be a particular requirement for financial disclosure with

appropriate respect for privacy rights. Despite the existence of the requirements that civil servants maintain ethical and professional conduct, there will be the development of a code of ethics particularly for prosecutors. This will include effective oversight and enforcement mechanisms both internal to the Procuracy and external to the Procuracy. This will occur by making necessary amendments to the Administrative Liability Code and the criminal responsibility of public officials into the Official Malfeasance Chapter of the Criminal Code. The civilian review board of Component 2 may be used as recourse.

Operational Goals or Outputs:

1. In order to facilitate transparency and confidence in the Procuracy, 90% of public officials comply with financial disclosure requirements by July, 2007.
2. The remaining 10% of officials are sanctioned for failure to follow the requirements for financial disclosure by January, 2008.
3. While maintaining the appropriate respect for personal privacy, the Kyrgyz mass media will have access to financial disclosure forms by July, 2007.
4. A code of ethics for prosecutors will be developed, including enforcement sanctions, and implemented by July, 2007.

**Measure 4.  
Public education**

Tactical Goals or Outputs:

In order to remove corruption, the tolerance of the public towards official corruption at every level, has to be removed. The pervasive attitude of acceptance of even the minimum bribe justified by an attitude of consistency and ease must be eliminated. To that end, the public must be educated at every level. Educational institutions must integrate anti-corruption messages into curricula. There will be a public awareness campaign with the involvement of mass media and an accountability campaign of detection, investigation and prosecution of corruption. The use of the anti-corruption tip line at the Prosecutor General's office will be promoted. A functional analysis of different methods to provide the population to be intolerant of bribes and greater reporting will be made.

Operational Goals or Outputs:

1. Educational institutions will integrate anti-corruption messages into curricula January, 2007.
2. There will be a national anti-corruption public awareness campaign with the involvement of mass media, implemented January, 2007
3. There will be a 100% increase in calls to anti-corruption tip line by January, 2007.

E. Sustainability

Pervasive corruption led to mass protests of Kyrgyz citizens resulted in the resignation of the President and Prime Minister of the Kyrgyz Republic on March 24, 2005. As a result, the fight against corruption became a prime focus of the administration of President Kurmanbek Bakiev. President Bakiev is sincere about his willingness to reform a very heavily corrupted society. He has committed high members of his administration to reform projects and these members are highly motivated and reform minded people who speak frankly about reform. He has committed resources to reducing executive power and establishing a more transparent approach to governing in a country where corruption and crime are endemic. Members

of his administration articulate a political will to change elements of their government that will make a real difference.

F. Management Team and Implementing Partners

See Annex A attached hereto and incorporated herein.

G. Donor Coordination and Country Consultation

See Annex B attached hereto and incorporated herein.

H. Final Budget

See Annex C attached hereto and incorporated herein.

## **ANNEX A**

### **Management Team and Implementing Partners**

The national coordinator for the Kyrgyz Republic to the MCC is Mr. Busurmankul Tabaldiyev who is the head of the Department of Defense and Security. A steering board consists of members representing the Presidential Administration of the Kyrgyz Republic, the Prime Minister's office, the Parliament and the Supreme Court, representatives of NGOs and the U.S. government. The Kyrgyz Government will be represented by officials of The Office of the President who through heads of working groups represent the interests of the Procuracy General of Kyrgyzstan, The Supreme Court of Kyrgyzstan and the Ministry of The Interior (The MVD). These members are:

Component 1: Rule of Law and Effectiveness of the Judicial System

Mr. Rustam Madaliyev

Component 2: Fighting Corruption in Law Enforcement Subdivisions

Mr. Damir Saghyrbayev

Component 3: More Effective Criminal Prosecutions

Mr. Timur Karabayev

## ANNEX B

### Donor Coordination and Country Consultation

Soros Foundation-Kyrgyzstan, an NGO, in conjunction with the Kyrgyzstan Millennium Challenge Team organized a day long conference during the week of April 20, 2006 on the Threshold Program proposal which solicited comments and suggestions from civil society. It was well organized and well attended by a wide spectrum of civil society government officials and parliamentarians. Civil society was able to comment on the three components of the proposal and criticize freely. A record of the event was to be posted on Soros' local web site [www.open.kg](http://www.open.kg). The Kyrgyzstan Millennium Challenge Team encouraged the members of civil society to continue to review the proposals posted online and to contact the principle drafters of the three components of the proposal directly with their provided phone numbers.

In addition, Soros Foundation members are already in discussions with MVD members to participate in the Civilian Review board.

The Organisation for Security and Cooperation in Europe has been involved for some time with police training and equipment donation.

United States Agency for International Development (USAID) has maintained a project ending May 21, 2006 to develop the judiciary and may continue to work with the courts on the Judicial Opinion Database. USAID has also funded the Judicial Reform Index. (See page 3).

The European Bank for Reconstruction and Development through the International Development Law Organization will be carrying out judicial training courses in commercial law for the next 2 years.

The Department for International Development of the Government of the United Kingdom may be providing assistance to the Judicial Training Center

The World Bank provided a grant that led to the creation of the Court Information Management System, a judicial automation system which is a centerpiece of Component One's action plan.

The United States Department of Justice is planning on sending a Resident Legal Advisor for one to two years to coordinate Rule of Law and Justice issues during the implementation phases of a justice sector assistance program.

**Government of Kyrgyzstan**  
**MCC Threshold Country Plan**  
**Annex C**

Name of Activity	Technical Assistance	Material Assistance	Training and Capacity	Other	Total
<b><u>Component 1</u></b>					
1. Increase the efficiency of judicial personnel management.	\$1,500,000		\$500,000		\$2,000,000
2. Increase the independence of the judicial system.	\$1,000,000	\$500,000	\$500,000		\$2,000,000
3. Introduce a judicial information system.	\$500,000	\$2,000,000	\$500,000		\$3,000,000
4. Reform commercial legislation.	\$250,000		\$250,000		\$500,000
					<b>\$7,500,000</b>
<b><u>Component 2</u></b>					
1. Reorganize Bishkek MVD to increase oversight and management.	\$1,000,000		\$1,000,000		\$2,000,000
2. Establish and sustain a Civilian Review Board.	\$250,000	\$100,000	\$150,000		\$500,000
3. Improve the material and technical basis of law enforcement officers.	\$1,000,000	\$1,000,000			\$2,000,000
					<b>\$5,500,000</b>
<b><u>Component 3</u></b>					
1. Improve the legislative and institution framework.					
2. Build Prosecutorial skills through training.	\$1,250,000	\$250,000	\$1,000,000		\$2,500,000
3. Increase accountability and disclosure.	\$250,000	\$250,000	\$1,000,000		\$2,500,000
4. Conduct public education and outreach.	\$250,000	\$250,000			\$500,000
					<b>\$5,500,000</b>
<b>THRESHOLD PLAN TOTAL</b>					<b>\$17,500,000</b>

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