



LEGAL PROFESSION REFORM INDEX

FOR THE

KYRGYZ REPUBLIC

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VOLUME II



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Introduction

The Legal Profession Reform Index (LPRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative (ABA ROLI). It was developed by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with its other regional divisions in Africa, Asia and the Pacific, Latin America and the Caribbean, and the Middle East and North Africa. Its purpose is to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyers identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA ROLI or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA ROLI's companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), and Legal Education Reform Index (LERI) also provides information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in legal profession reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after more than a decade of working on this issue in the field, ABA ROLI has concluded that each of the 24 factors examined herein may have a significant impact on the legal profession reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the LPRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's Country Reports on Human Rights Practices and Freedom House's Nations in Transit. This assessment will not provide narrative commentary on the overall status of the legal profession in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process will not be a scientific statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA ROLI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, the LPRI focuses on professions that constitute the core of legal systems; i.e.,

professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA ROLI excluded from the LPRI such professions as notaries, bailiffs, and court clerks, because of variations and limitations in their roles from country to country. In addition, ABA ROLI decided to exclude judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, ABA ROLI has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI, an assessment tool for assessing the state of legal education in a given country.

Once ABA ROLI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocats*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *avocat aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). See Sanglade & Cohen, *The Legal Professions in France*, in *THE LEGAL PROFESSIONS IN THE NEW EUROPE: A HANDBOOK FOR PRACTITIONERS* at 127 (Tyrrell & Yaqub eds., 2nd ed. 1996). In addition to rights of audience, other factors further complicated efforts to define the term "lawyer," including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA ROLI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA ROLI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, therefore excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA ROLI decided to expand and contract the universe of lawyers depending on the factor in question.

Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA ROLI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." CAROTHERS, *PROMOTING THE RULE OF LAW ABROAD: THE KNOWLEDGE PROBLEM* at 8,

(CEIP Rule of Law Series, Working Paper No. 34, Jan. 2003). Moreover, as with the JRI, ABA ROLI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, JUDICIAL REFORM INDEX: MANUAL FOR JRI ASSESSORS at ii (revised ed. 2006).

In designing the LPRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on fundamental international and regional standards, such as the *United Nations Basic Principles on the Role of Lawyers*; the International Bar Association's *Standards for the Independence of the Legal Profession*, *General Principles of the Legal Profession*, and *International Code of Ethics*; the Union Internationale des Avocats' *Turin Principles of Professional Conduct for the Legal Profession in the 21st Century*; the Council of Europe's *Recommendation R(2000)21 on the Freedom of Exercise of the Profession of Lawyer*; and the CCBE's *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers*. In addition, ABA ROLI was able to rely on best practices ascertained through more than ten years of its technical legal assistance experience reforming the profession of lawyers in emerging democracies.

Drawing on these sources, ABA ROLI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers. To assist assessors in evaluating these factors, ABA ROLI developed a manual that provides a guiding commentary of the factors and the international standards in which they are rooted, clarifies terminology, and provides flexible guidance on areas of inquiry. A particular effort was made to avoid giving higher regard to common law, as opposed to civil law concepts, related to the structure and function of the profession of lawyers. Thus, certain factors are included that a common law or a civil law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer rather than model the LPRI on one country's legal profession system. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA ROLI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, the PRI, and the LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated –

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA ROLI developed the CEDAW Assessment Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996).



within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables ABA ROLI to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives ABA ROLI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a correlation committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA ROLI forms an ad hoc committee that includes the assessor, relevant Country Director and local staff, and select ABA ROLI D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials is meant to help identify issues and increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, the LPRI provides governments and legal system stakeholders with a comprehensive assessment of the state of legal profession in the country, thus enabling them to prioritize and focus reform efforts. Second, ABA ROLI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Third, the LPRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Fourth, combined with the JRI, the PRI, and the LERI, the LPRI contributes to a comprehensive understanding of how the rule of law functions in practice. Finally, the LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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Assessment Team

The 2014 Kyrgyz Republic LPRI assessment was led by Jessie Tannenbaum, ABA ROLI Senior Legal Analyst, who also served as overall project coordinator. Other members of the assessment team included Asel Djamankulova, Kyrgyzstan Office Staff Attorney, and Ulan Aralbaev, Kyrgyzstan Office Program Manager. Olga Ruda, ABA ROLI Deputy Director of Research and Assessments, served as editor of this report. The team received strong support from ABA ROLI staff including Europe and Eurasia Program Associate Lila Miller and Senior Program Officer Andrea Barton; Kyrgyzstan Country Director Azamat Kerimbaev, Field Financial Manager Albina Kozhontaeva, Deputy Field Financial Manager and Bishkek Office Manager Madina Talatbekova, and Technical Manager Rustam Sultanov; and Research and Assessments Office Director Simon Conté.

The conclusions and analysis contained in this report are based on interviews conducted in Kyrgyzstan in April 2014 and relevant legislation and other materials reviewed through the end of July 2014. Records of relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

Executive Summary

Brief Overview of the Results

The 2014 Legal Profession Reform Index (LPRI) for the Kyrgyz Republic presents a legal profession in a state of radical reform. In July 2014, a new Law on Advocacy was enacted, which for the first time creates a unified, national bar uniting an independent, self-regulating profession of licensed attorneys, collectively called the Advokatura. Even prior to the passage of the new law, the legal profession had developed significantly in the decade since the publication of the first LPRI for Kyrgyzstan. However, challenges remain for advocates and lawyers, and perhaps most troublingly, the independence of the legal profession has declined.

The analysis of this assessment is based upon the de facto situation under the 1999 Law on Advocacy, which was in effect at the time interviews were conducted, as well as analysis of both the 1999 Law on Advocacy and the New Law on Advocacy, which as of the date of this report has not been in force long enough to conduct de facto analysis. Of the 24 factors analyzed in this report, the correlations assigned to four factors (Professional Immunity, Preparation to Practice Law, Resources and Remuneration, and Continuing Legal Education) improved from negative in 2004 to neutral in 2014, while one factor (Role in Law Reform) improved from neutral to positive. One factor (Ability to Practice Law Freely) saw a decline from neutral to negative. While the remaining 18 factors received the same correlation in 2014 as they received in 2004, six of these factors received a negative correlation while only two received a positive one.

Positive Developments Identified in the 2014 LPRI

- The July 14, 2014, **entry into force of the New Law on Advocacy** marked a major milestone for the development of not just the profession of advocates, but entire the Kyrgyz legal system. The **creation of the Advokatura**, with corresponding increased autonomy and self-regulation of the profession, is widely expected to improve access to justice and the quality of legal services provided by advocates.
- **Professional associations of lawyers and advocates play a major role in law reform**, including in the drafting and passage of the New Law on Advocacy and the drafting of a package of new legislation on the criminal, civil, and administrative law and procedure and the legal aid system. These professional associations also promote their members' interests and those of the profession as a whole, advocate for the independence of the profession, and provide opportunities for professional development.
- The **Advocates Training Center (ATC)** was founded in 2008 and is now the primary provider of continuing legal education for Kyrgyzstani advocates and lawyers. The ATC offers short and long courses on a variety of legal topics and has reached several hundred participants. The **New Law on Advocacy requires advocates to engage in professional development activities** at least once every three years, and the ATC will operate under the Advokatura.
- As in 2004, discrimination in admission to the profession is prohibited by law and admission to the profession is non-discriminatory in practice. Advocates and lawyers are able to form an independent law practice as solo practitioners or in advocate and law firms, and did not report obstacles to forming a legal practice.

Major Concerns Identified in the 2014 LPRI

- **The one area of decline since 2004 is the independence of the profession.** Although professional independence is enshrined in law, in practice, **advocates face pressure**,

harassment, and even physical violence in the course of their professional duties, which significantly affects their ability to practice law freely and independently. A **Ministry of Justice Qualifications Commission, rather than a body created within the profession, controls licensing and revocation of licenses,** although the New Law on Advocacy gives advocates four seats on that commission. Corruption in the legal sector also has a negative impact on advocates' ability to practice law freely.

- There are **significant threats to the security and safety of advocates and lawyers.** Human rights defenders faced a notable risk of violence, especially but not exclusively when representing clients in connection with the June 2010 unrest in southern Kyrgyzstan. There are many reports of advocates, as well as defendants and witnesses, being physically attacked both inside and outside of the court premises, and law enforcement or other security officials have not intervened to stop or prevent these assaults. In some cases, these attacks have occurred in open court and court officials have not intervened; legal professionals also have faced violence outside the courtroom due to their advocacy for human rights.
- There are **special concerns related to non-advocate lawyers,** who work within companies or government agencies or in a solo practice or law firm and represent companies, agencies, or individuals in non-criminal matters. **The profession of lawyer is not regulated,** and there are no ethical rules or professional standards for lawyers, verification of their qualifications, or even records of the number of lawyers working in the country. Of particular concern is that **Kyrgyzstani law guarantees lawyer-client confidentiality only to clients of licensed advocates,** and non-advocate lawyers reportedly have been required to turn over client files to government bodies.
- There are **currently no laws or rules of professional ethics and conduct** that apply to all advocates, although **the New Law on Advocacy requires the creation of a professional ethics code.** Advocates' licenses may be invalidated for misconduct by the Ministry of Justice's Qualification Commission, rather than a body within the profession, and the circumstances under which an advocate's license may be invalidated are extremely limited. The New Law on Advocacy creates an Ethics Commission of the Advokatura, charged with considering complaints and recommending the appropriate action to the Ministry of Justice Qualification Commission.
- Interviewees consistently stated that **most people in Kyrgyzstan do not have access to a lawyer or advocate.** Statistics are not available on the number of advocates who are actually practicing law or on the number of non-advocate lawyers providing representation in non-criminal cases, but advocates are scarce in the regions. Indigent people face special difficulties in accessing legal services. Legal aid paid for by the State is currently available only in criminal cases for people who can prove indigence, and low fees paid to court-appointed advocates is believed to increase corruption and disincentivize advocates from providing representation in these cases.

Overall, the factor analysis shows that despite the continued existence of many areas of concern for the legal profession in the Kyrgyz Republic, there is significant cause for optimism. Many positive changes have already been made, and many initiatives—most prominently the enactment of the New Law on Advocacy and the formation of an independent, self-regulated, unified national bar mandated to provide continuing legal education, enforce ethical standards, and administer a fair and transparent qualification exam—are underway to address these outstanding concerns.

Kyrgyz Republic Background

The Kyrgyz Republic (Kyrgyzstan) is a Central Asian country bordering China to the east, Kazakhstan to the north, and Uzbekistan and Tajikistan to the west and to the south. The country covers an area of 199.9 square kilometers and has a multiethnic population of close to six million people, mostly consisting of ethnic Kyrgyz but with a significant population of ethnic Uzbeks and Russians as well. It is divided into seven administrative regions (oblasts) and 44 districts (raions) and towns, plus Osh City and the capital city of Bishkek. The state language is Kyrgyz, while Russian is recognized as official language.

Kyrgyzstan obtained its independence and sovereignty after the Soviet Union disintegrated in 1991 and Askar Akayev, a former physicist and head of the Kyrgyz Academy of Sciences, was elected as the first president. Furthermore, together with the representatives of seven other republics, the Kyrgyz Republic signed the Alma-Ata Accord to formally enter the new Commonwealth of Independent States. In 1992, the Kyrgyz Republic became a member of the United Nations and the Organization for Security and Co-operation in Europe.

Since its independence, the Kyrgyz Republic has faced considerable economic, social, and political challenges. While existing tensions in society remained below the surface for many years, in 2005 and 2010 the country experienced two revolutions. In 2005, President Akayev was accused of centralizing political power and using the courts to suppress free speech and to harass opposition candidates, which led to an uprising known as the "Tulip Revolution" and forced the President's resignation. Opposition leaders formed a coalition, and a new government was formed under new President Kurmanbek Bakiyev. However, the political stability disintegrated in 2010, with the ouster of Bakiyev regime in April, followed by the bloody clashes in the south of Kyrgyzstan that involved members of the two largest ethnic groups in the country (Kyrgyz and Uzbeks) in June. See Factor 1 below. After the ouster of President Bakiyev, Roza Otunbayeva was chosen on July 3, 2010, to serve as the interim President of the Kyrgyz Republic. On December 1, 2011, then-Prime Minister Almazbek Atambayev of the Social Democratic Political Party was elected to replace Otunbayeva as President of the Kyrgyz Republic, and continues to lead the country as of the date of this report.

The Kyrgyz Republic faces considerable economic challenges, but efforts for reform are underway. Economic growth improved in recent years, reaching 10.5% in 2013 (5–6% excluding the gold mining industry). WORLD BANK GROUP—KYRGYZ REPUBLIC PARTNERSHIP, PROGRAM SNAPSHOT at 2 (April 2014), at

<http://www.worldbank.org/content/dam/Worldbank/document/Kyrgyzrepublic-Snapshot.pdf> [hereinafter WORLD BANK SNAPSHOT]. The World Bank measured GNI (gross national income, formerly called GNP or gross national product per capita) at USD 990 (KGS 46,936³) in 2012. WORLD BANK COUNTRY DATA—KYRGYZ REPUBLIC, at <http://data.worldbank.org/country/kyrgyz-republic>. According to the World Bank, in 2012, 38% of the population lived below the poverty line, with over two million people living below the absolute poverty line of KGS 26,182 (USD 502.96) per year, and 250,000 people living below the food poverty line of KGS 15,434 (USD 296.49) per year. WORLD BANK SNAPSHOT at 9. This represented a 1.2% increase from 2010, with poverty rates dropping slightly in rural areas but increasing from 31% to 35% in urban areas. *Id.* at 9, 10. In July 2014, the World Bank announced that the Kyrgyz Republic, formerly considered a low income country, has been reclassified as a lower-middle income country. Press Release, World Bank, 2014 World Bank Income Classifications: Kyrgyz Republic Becomes Lower Middle Income Country (July 24, 2014).

³ Based on the average exchange rate for 2012 posted at oanda.com. Throughout this report, all other conversions of Kyrgyzstan Soms (KGS) to United States Dollars (USD) using the exchange rate posted at oanda.com for May 31, 2014: KGS 52.05=USD 1.00.

According to Transparency International's 2013 Corruption Perceptions Index, the Kyrgyz Republic is ranked 150th of 177 countries with a score of 40, indicating a high level of perceived corruption. See Transparency International, Corruption Perceptions Index 2013, at <http://cpi.transparency.org/cpi2013/results/>. The World Bank ranks the Kyrgyz Republic 68th of 189 countries for ease of doing business. World Bank, Doing Business—Economy Rankings (June 2013), at <http://www.doingbusiness.org/rankings>.

Legal Context

In 2010, the Kyrgyz Republic became the first parliamentary republic in Central Asia. The Kyrgyz Republic adopted its first post-Soviet Constitution in 1993, which it has subsequently amended several times over the past decade, including the 2007 reform which changed the Jogorku Kenesh (Parliament, literally Supreme Council) from a bicameral to a unicameral body. The current Constitution of the Kyrgyz Republic [hereinafter CONST.] was adopted by a public referendum on June 27, 2010, and maintained the unicameral parliamentary form of government. Despite Kyrgyzstan's struggle for political stabilization throughout ethnic conflicts, revolutions, economic troubles, transitional governments, and political party conflicts, it has remained a unitary parliamentary republic.

In the wake of the 2010 unrest, there is political will in Kyrgyzstan to improve democratic institutions, as evidenced by the latest judicial and prosecutorial reform initiatives. President Atambayev has taken significant steps towards rule of law reform. These efforts were reflected in the Decree of the President No. 147 *On Measures for Justice Improvement in the Kyrgyz Republic* (adopted Aug. 8, 2012) [hereinafter Presidential Decree on Justice Improvement]. Reforming of the judicial system implies renovation of the existing administrative, criminal, criminal procedure, and civil procedure legislation, as well as legislation regulating the organization and activity of courts and law enforcement bodies, and any other legislation directly or indirectly connected with issues of justice administration. According to the Decree, such legislation should meet public needs in its form and substance, employ scientific approaches and practical experience, and correspond to the international law and standards.

There is a real opportunity at this moment to reform the Advokatura (i.e., the profession of licensed attorneys, known as advocates) as well. Article 57 of the Constitution provides for an independent bar: "The organization and activities of the bar as a self-regulated professional community of advocates as well as the rights, obligations, and responsibilities of advocates shall be defined by the law." The Presidential Decree on Justice Improvement also proposed terms for the establishment of the unified national Bar, based on the existing professional structures for advocates, with a gradual transfer to the Bar of responsibility for issues including issuance of licenses, continuing legal education and professional development, professional discipline, and information and technical support, among others.

Two Laws on Advocacy were consecutively in effect during the writing of this report. The LAW ON ADVOCACY OF THE KYRGYZ REPUBLIC (Law No. 114, *adopted* Sept. 30, 1999, *entered into force* Oct. 21, 1999, *last amended* Oct. 12, 2013, *by* Law No. 191) [hereinafter 1999 LAW ON ADVOCACY], which was in effect while the assessment team conducted interviews in April 2014, was replaced by the LAW ON THE BAR OF THE KYRGYZ REPUBLIC AND ON ADVOCATE ACTIVITY (Law No. 135, *adopted* June 19, 2014, *entered into force* July 14, 2014) [hereinafter NEW LAW ON ADVOCACY] while this report was undergoing final revisions. Therefore, all of the de facto analysis included in this report is based upon the state of the legal profession under the 1999 Law on Advocacy, while de jure analysis of both the 1999 Law on Advocacy and the New Law on Advocacy is included in each factor of this report. As of the date of this report, it is too early to conduct de facto analysis of the state of the legal profession under the New Law on Advocacy.

The Law on Advocacy that was current at the time of interviews for this assessment was adopted and entered into force in 1999. It regulated the profession by, *inter alia*, defining advocate activity

and its principles, setting forth the professional freedoms of responsibilities of advocates, and establishing examination and licensing procedures. 1999 LAW ON ADVOCACY. It also identified the organizational forms of advocate activity and provides the legal basis for the establishment of solo practice and advocate firms.

A new law on advocacy was drafted in 2004 on the basis of formal and informal dialogue involving the Ministry of Justice [hereinafter MOJ], members of Parliament, the Advokatura, and representatives of the international community. Prior to 2014, the draft law had twice neared passage: in 2005, shortly before the overthrow of Askar Akayev, and again before the 2010 political revolution. In February 2012, the Parliamentary press service reported that the Parliamentary Committee on Constitutional Legislation, State Structure, and Human Rights had approved the bill in its second reading. The bill was not brought to the Parliament for a vote during the session ending in June 2012 because Committee Chair Alymbekov did not sign off on the second reading; consequently the bill was not placed on the Parliament's agenda. It was only following Mr. Alymbekov's dismissal that the draft law was once again placed on the Committee's agenda, which approved it in second and third readings in May-June 2014. Parliament finally adopted the law in late June 2014, and it was signed into effect by the President in mid-July. See *generally* NEW LAW ON ADVOCACY. The New Law on Advocacy affects many reforms, the most important being the legislative formation of an independent, self-regulated, unified national bar mandated to provide continuing legal education, enforce ethical standards, and administer a fair and transparent qualification exam.

A comprehensive code of legal ethics that regulates the conduct of all advocates in Kyrgyzstan has not yet been agreed upon and adopted, but some issues of professional responsibility are addressed in the 1999 Law on Advocacy, the procedural codes, and in charters of many public associations of lawyers. The MOJ promulgated the Rules of Professional Ethics of Advocates in 2003, but it was largely unenforced and was repealed in 2009. The New Law on Advocacy requires the Congress of Advocates to adopt a binding Code of Professional Ethics of Advocates.

In 1994, the Kyrgyz Republic adopted a new Criminal Procedure Code, but it was largely based on the Soviet-era code from 1960 that preceded it. Several years later, another Criminal Procedure Code was drafted with the participation of international legal experts. It entered into force in 1999 and has been amended on numerous subsequent occasions. CRIMINAL PROCEDURE CODE OF THE KYRGYZ REPUBLIC (Law No. 62, *adopted* May 24, 1999, *entered into force* June 30, 1999, *last amended* May 28, 2014, *by* Law No. 80) [hereinafter CRIM. PROC. CODE]. A new Civil Procedure Code was adopted later that year and took effect from January 1, 2000. This code, which replaces the 1964 Civil Procedure Code of the Kirghiz Soviet Socialist Republic, regulates the conduct of court proceedings in civil, administrative, and commercial cases. CIVIL PROCEDURE CODE OF THE KYRGYZ REPUBLIC (Law No. 146, *adopted* Nov. 24, 1999, *entered into force* Jan. 1, 2000, *last amended* Mar. 14, 2014, *by* Law No. 48) [hereinafter CIV. PROC. CODE]. Some aspects of advocate activity and legal representation, such as access to clients and the right to audience, are addressed in these procedural codes. Currently, a new Criminal Procedure Code, Civil Procedure Code, Administrative Procedure Code, Civil Code, Criminal Code, Administrative Code, Code on Administrative Offenses, and Law on Legal Aid are being drafted as part of a package of legislative reforms.

Overview of the Legal Profession

The term legal professional, or "jurist" as it is known in Kyrgyz Republic, is broadly defined, including anyone who has graduated from law school (which is a four or five year, undergraduate program) or law faculty. Upon receipt of their law diploma, most graduates pursue a career in the legal profession in one of the following capacities:

- **Lawyers** (non-advocate lawyers), or solicitors, who are allowed to work within companies or government agencies or on their own, and who represent companies, agencies, or individuals in non-criminal matters;
- **Advocates** (licensed, registered attorneys), who may represent clients in both criminal and civil materials, but are the only lawyers authorized to represent defendants in criminal cases;
- **Prosecutors**, who oversee investigations and prosecute criminal defendants on behalf of the state;
- **Investigators**, who investigate crimes and are a part of the various law enforcement bodies, such as Ministry of Internal Affairs, the prosecutor's office, and national security bodies;
- **Judges**, who work either in first instance or appellate courts of general jurisdiction, the Supreme Court, and the Constitutional Chamber of the Supreme Court;
- **Notaries**, who are responsible for filing certain types of contracts and real estate ownership records, as well as for verifying documents and certifying powers of attorneys, among other responsibilities; and
- **Community representatives**, who can only intervene in court proceedings on behalf of a non-governmental organization (NGO), similar to the process of filing an amicus brief, and are not required to have any legal education.

It is worth noting that a person does not need to be a jurist to represent a party in a civil case. A party can give a power of attorney to any person, regardless of whether that person has any legal education, and the person receiving the power of attorney can act as a representative of a party in any non-criminal case.

For reasons outlined in the LPRI Introduction, the scope of this report will be limited to advocates and lawyers, although the findings of some factors, such as those pertaining to legal education, can be applied to the broader legal profession as outlined above.

In conformity with Kyrgyz legislation, advocates are independent and may practice law in association with other advocates in a firm or as a solo practitioner. Advocates' practices are usually directed toward providing legal advice and services. The law permits the establishment of an advocate firm with any form of ownership and any type of organizational structure. Most advocate firms are relatively small in size, but there are a growing number that provide legal services throughout the country.

Organizations of Legal Professionals

Prior to the adoption of the New Law on Advocacy, there was no requirement that advocates must join or otherwise affiliate with an organization in order to practice law. It was a fundamental principle of advocate activity that membership in a professional association be voluntary. Advocates were not only guaranteed the right to join, but had the right to establish these types of organizations as well. Kyrgyzstan has a relatively robust civil society, and many advocates have been particularly active in this sphere.

The New Law on Advocacy requires all advocates to become members of the Bar (referred to as the Advokatura), defined as a self-governing professional association of advocates formed on the basis of common professional interests and charged with expressing and protecting these interests, facilitating continuing education of advocates, and developing the advocacy profession. The inaugural Congress of Advocates of the Kyrgyz Republic, which would formally adopt the Advokatura's Charter and establish its governing bodies, is expected to take place within six months from the effective date of the New Law on Advocacy.

There are a significant number of independent and self-governing associations comprised of advocates and other legal professionals that provide legal services to individuals throughout the

country, including some that offer legal aid to the indigent. Professional associations of legal professionals also promote the interests of the profession and its members by participating in initiatives to reform the Advokatura and increase self-regulation and independence from the State. Others seek to raise awareness and understanding among the general public of individual rights by disseminating bulletins and other materials about the law.

The Association of Attorneys of Kyrgyzstan [hereinafter AAK] is one of the most prominent public associations of lawyers and has played an important role in promoting the independence of the profession. A variety of other professional associations have also emerged in recent years and are helping to strengthen the profession. These include the Advocates' Union and the Collegia of Advocates of Osh and Batken. Groups such as Ferghana Valley Lawyers without Borders, Legal Assistance to Rural Citizens, Public Foundation Law Clinic Adilet, the Central Asian League of Lawyers, and the network of lawyers in the Civil Society Support Centers also play an important role in developing the legal profession and its public interest work.

While most legal professionals belong to one of these associations, a number of advocates still practice law without any affiliation. Legal professionals that do elect to affiliate with a professional association receive access to legal information and materials that pertain to the practice of law as well as training and educational opportunities.

Law students have formed public associations as well, including the Young Lawyers of the South.

Kyrgyz Republic LPRI 2014 Analysis

While de jure analysis of both the 1999 Law on Advocacy and the New Law on Advocacy is included in each factor of this report, the de facto analysis included in this report is based upon the state of the legal profession under the 1999 Law on Advocacy. As of the date of this report, it is too early to conduct de facto analysis of the state of the legal profession under the New Law on Advocacy. Correspondingly, the factor correlations given below and at the beginning of each factor are based upon the state of the legal profession in spring and summer 2014 while the 1999 Law on Advocacy remained in force. While the correlations drawn in this assessment serve to give a sense of the relative status of the factors analyzed, ABA ROLI emphasizes that the factor correlations and conclusions are of greatest use when viewed in conjunction with the underlying analysis.

Table of Factor Correlations

Legal Profession Reform Index (LPRI) Factor		Correlation		Trend
		2004	2014	
I. Professional Freedoms and Guarantees				
Factor 1	Ability to Practice Law Freely	Neutral	Negative	↓
Factor 2	Professional Immunity	Negative	Neutral	↑
Factor 3	Access to Clients	Neutral	Neutral	↔
Factor 4	Lawyer-Client Confidentiality	Neutral	Neutral	↔
Factor 5	Equality of Arms	Neutral	Neutral	↔
Factor 6	Right of Audience	Neutral	Neutral	↔
II. Education, Training, and Admission to the Profession				
Factor 7	Academic Requirements	Neutral	Neutral	↔
Factor 8	Preparation to Practice Law	Negative	Neutral	↑
Factor 9	Qualification Process	Negative	Negative	↔
Factor 10	Licensing Body	Negative	Negative	↔
Factor 11	Non-Discriminatory Admission	Positive	Positive	↔
III. Conditions and Standards of Practice				
Factor 12	Formation of Independent Law Practice	Positive	Positive	↔
Factor 13	Resources and Remuneration	Negative	Neutral	↑
Factor 14	Continuing Legal Education	Negative	Neutral	↑
Factor 15	Minority and Gender Representation	Neutral	Neutral	↔
Factor 16	Professional Ethics and Conduct	Negative	Negative	↔
Factor 17	Disciplinary Proceedings and Sanctions	Negative	Negative	↔
IV. Legal Services				
Factor 18	Availability of Legal Services	Negative	Negative	↔
Factor 19	Legal Services for the Disadvantaged	Negative	Negative	↔
Factor 20	Alternative Dispute Resolution	Neutral	Neutral	↔
V. Accountability and Transparency				
Factor 21	Organizational Governance and Independence	Neutral	Neutral	↔
Factor 22	Member Services	Neutral	Neutral	↔
Factor 23	Public Interest and Awareness Programs	Neutral	Neutral	↔
Factor 24	Role in Law Reform	Neutral	Positive	↑

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Conclusion	Correlation: Negative
<p>Although professional independence is enshrined in law, in practice, advocates face pressure, harassment, and even physical violence in the course of their professional duties. Human rights defenders faced a notable risk of violence, especially but not exclusively when representing clients in connection with the June 2010 unrest in southern Kyrgyzstan. An MOJ Qualifications Commission, rather than a body created within the profession, controls licensing and revocation of licenses, although the New Law on Advocacy gives advocates four seats on that commission. Corruption in the legal sector also has a negative impact on advocates' ability to practice law freely.</p>	

Analysis/Background:

Advocacy is defined as the activity of an advocate providing qualified legal assistance to natural persons and legal entities in protecting their rights, freedoms, and legitimate interests. It is licensed by the State. 1999 LAW ON ADVOCACY art. 2; *see also* CIV. PROC. CODE art. 2(1). The principles of the advocates' profession include the guarantee of the constitutional right to a defense, freedom and independence of the profession, the democratic and collective nature of relations among advocates, voluntary membership in professional associations of advocates, and compliance with the laws and rules of professional ethics. 1999 LAW ON ADVOCACY art. 3. Registered, licensed advocates are entitled to provide legal services anywhere in the Kyrgyz Republic and are not restricted from practicing abroad when the laws of the foreign country so permit. *Id.* art. 12. Advocates may carry out their professional activities individually or through law institutions, which are defined as legal entities the principal activity of which is to provide legal assistance. *Id.* arts. 19, 20.

Advocates' independence is guaranteed by law. The 1999 Law on Advocacy stated that an advocate shall be independent while carrying out his or her advocate activities and shall obey only the law. *Id.* art. 15. This professional independence extends to the advocate's selection of means and methods of defending a client's rights; an advocate shall not be bound by the opinions or assessments of any authorities or officials, including professional associations of advocates or law institutions. Advocates' right to represent the interests of their clients is not dependent on the discretion of the court, law enforcement authorities, officials, or any other circumstances. *Id.* Additionally, an advocates' freedom of movement may not be restricted if the movement is required in the course of providing legal assistance, except as specified by law. Interference in advocate activities in any form and by any authority, organization, institution, enterprise, official, or other person is prohibited. *Id.* art. 17. Anyone who creates obstacles, such as requiring a special permit to carry out advocate activity; interferes with advocate activity; threatens, insults, harasses, or slanders an advocate; or commits violence or threats against life, health, and property may face legal responsibility. *Id.* Specifically, any interference with the exercise of rights or carrying out of duties of a defender in criminal proceedings may be punishable by a fine of 100-200 monetary indicators (KGS 10,000–20,000, or USD 192.10–384.20)⁴, or, if committed by

⁴ A monetary indicator is a statutory indicator used for calculating the amount of social payments, economic penalties, administrative and criminal fines, and other payments that have no

a person with the use of his or her official position, a fine of 500–1,000 monetary indicators (KGS 50,000–100,000, or USD 960.50–1,921), or by imprisonment for a term of up to five years and prohibition on holding certain offices or engaging in certain activities for a term of up to three years. CRIMINAL CODE OF THE REPUBLIC OF KYRGYZSTAN art. 318-1 (Law No. 68, *adopted* Sept. 18, 1997, *last amended* July 1, 2014, *by* Law No. 108).

The New Law on Advocacy recently signed by the President, defines an advocate as a citizen of the Kyrgyz Republic who has been duly licensed to engage in advocate activity and is a member of the Bar (referred to as the Advokatura) of the Kyrgyz Republic. NEW LAW ON ADVOCACY art. 15. Advocate activity is defined as qualified legal assistance rendered professionally by persons licensed to engage in such activity to individuals and legal entities, government authorities, local self-government bodies, and, where required by law, to criminal defendants, for the purpose of protecting and securing their rights, freedoms, and interests, as well as ensuring access to justice. *Id.* art. 16.1. Advocates may carry out advocate activity either individually or through advocate organizations (e.g., firms or partnerships). *Id.* art. 16.2. Under the new law, legal assistance provided by advocates is not entrepreneurial (commercial) in nature. *Id.* art. 16.3.

The New Law on Advocacy defines the principles of advocate activity as independence and autonomy of advocates in carrying out their advocate activity; legality, equity, and humanism; engagement in advocate activity using methods and resources consistent with the law; compliance with the professional ethics code (to be developed following the passage of the new law); and respect for lawyer-client confidentiality. Advocates shall not be identified with their clients or with their clients' interests in carrying out advocate activity. *Id.* art. 17.

The New Law on Advocacy also guarantees advocates' independence. Interfering in lawful advocate activities or obstructing such activities is prohibited. An advocate is free to carry out advocate activity and to choose the means and methods for protecting the rights and interests of persons seeking legal assistance, and cannot be restricted by other people's opinions. *Id.* art. 29.1. Any person interfering in advocate activity or obstructing such activity shall be punished according to the law. *Id.* art. 29.2.

Many interviewees noted that the existing structure for licensing and discipline of advocates has the potential to negatively affect advocates' independence, both individually and collectively. The qualification examination, granting of licenses, and ability to withdraw licenses rests with a qualification commission within the MOJ, an executive-branch agency. *See* Factors 9, 10 below. Advocates pointed to the MOJ's 2003 adoption of professional ethics regulations, to be enforced by the MOJ, as an example of a potentially detrimental action taken by the executive-branch body to control advocates' professional activities; however, that regulation was revoked in 2009. In practice, advocates did not believe that the MOJ Qualification Commission had actually impeded the independence of the profession or an advocate's independent practice of law. The New Law on Advocacy envisions a greater role for the Advokatura in licensing and ethics enforcement, including by giving the Advokatura four seats on the Qualification Commission. NEW LAW ON ADVOCACY art. 21.2(1).

There are no laws specifically protecting the freedom to practice law of lawyers not licensed as advocates, who provide representation in civil, administrative, and economic cases,⁵ and the protections guaranteed in the 1999 Law on Advocacy or the New Law on Advocacy do not extend to lawyers who are not licensed as advocates. However, any representative in such cases enjoys the procedural guarantees provided by the Civil Procedure Code. Specifically, such a representative has the right to conduct any procedural actions on behalf of his or her client. CIV. PROC. CODE art. 58(1). The Code also declares that justice in civil cases is administered in line

connection to wage payments. Since 2006, the monthly value of monetary indicator has been set at KGS 100 (approximately USD 1.92).

⁵ By law, administrative and economic cases are heard in accordance with the general rules of civil procedure. *See* CIV. PROC. CODE arts. 259(1), 382(1).

with principles of adversarial proceedings and equality of parties, and that the court is to manage the proceedings in an objective and impartial manner. *Id.* art. 10; *see also* CRIM. PROC. CODE art. 48(1).

Despite these guarantees of freedom to practice law, in practice, advocates in Kyrgyzstan face pressure, harassment, intimidation, and even physical violence while carrying out their professional duties. This has been a particular problem in cases arising from the interethnic clashes in June 2010, although it is not limited to these cases. During June 10–14, 2010, there were violent clashes in southern Kyrgyzstan, primarily between ethnic Uzbek and ethnic Kyrgyz citizens. The violence began when a large crowd of ethnic Uzbeks gathered in central Osh in response to a fight between a few ethnic Kyrgyz and Uzbek men at a casino, and clashed with a crowd of ethnic Kyrgyz people. In response to rumors that ethnic Uzbeks were committing violent acts, crowds of ethnic Kyrgyz people attacked Uzbek neighborhoods in southern towns and cities, including Osh, Bazar-Korgon, and Jalal-Abad, beginning on June 11. At least 426 people died in the unrest, while several thousand buildings and 1,800 houses were destroyed. HUMAN RIGHTS WATCH, *DISTORTED JUSTICE* at 4 (June 8, 2011), at <http://www.hrw.org/node/99472/section/5> (*citing* the conclusions of the National Commission for the Investigation of the June Events in the South of Kyrgyzstan). Following these events, more than 300 people were detained, a majority of whom were remanded to pretrial detention, and human rights organizations received dozens of credible reports of torture and coerced confessions. *Id.* at 6; *see also* UNITED STATES DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: KYRGYZ REPUBLIC, at <http://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm>; FREEDOM HOUSE, NATIONS IN TRANSIT 2011: KYRGYZSTAN, at <http://www.freedomhouse.org/report/nations-transit/2011/kyrgyzstan>.

Advocates representing defendants charged in relation to the 2010 unrest have faced significant harassment and intimidation, as well as physical attacks.⁶ According to a report published by the International Commission of Jurists [hereinafter ICJ], advocates, as well as the defendants and witnesses, have been physically attacked both inside and outside of the court premises, and law enforcement or other security officials have not intervened to stop or prevent these assaults. ICJ, *INDEPENDENCE OF THE LEGAL PROFESSION IN CENTRAL ASIA* at 69 (Sept. 2013) [hereinafter ICJ *INDEPENDENCE OF THE LEGAL PROFESSION*]. Interviewees reported that people viewing the trial physically attack advocates in open court; law enforcement has refused to intervene, saying that courtroom security is the responsibility of bailiffs, but there are no bailiffs actually working in the courts. In at least one case, a human rights defender, Azimjon Askarov, who was a defendant in a murder case, and his co-defendants were beaten by law enforcement officials during breaks in the court proceedings. HUMAN RIGHTS WATCH WORLD REPORT 2014: KYRGYZSTAN, at <http://www.hrw.org/world-report/2014/country-chapters/kyrgyzstan> [hereinafter HRW WORLD REPORT 2014]; *see also* Open Society Foundations, *Askarov v. Kyrgyzstan*, at <http://www.opensocietyfoundations.org/litigation/askarov-v-kyrgyzstan>. In summer 2013, advocates representing their client in the appeal of a criminal conviction related to the 2010 unrest were physically attacked inside the Supreme Court building by supporters of the victim in the case. The court did not attempt to prevent or stop the beating, and security officers waited several minutes before intervening. ICJ *INDEPENDENCE OF THE LEGAL PROFESSION* at 69. Some cases were moved to a military garrison in Osh, ostensibly to protect advocates and their clients, but in at least two cases advocates and defendants were attacked: advocates Tatyana Tomina and Dilbar Turdinova and their client were hospitalized following an attack before a hearing on October 13, 2010, and advocates Nazgul Suyumbayeva and Dinara Turdumamatova were attacked during hearings on October 14, 2010. Bir Duyno-Kyrgyzstan, *Kyrgyzstan: Severe Deterioration of Situation for Human Rights Defenders and Advocates in Southern Kyrgyzstan* (Jan. 15, 2012), available at <http://anticorruption.kg/2012/01/15/kyrgyzstan-silnoe-uxudshenie-situacii-dlya-pravozashhitnikov-i-advokatov-v-yuzhnom-kyrgyzstane/> (*in Russian*).

⁶ For a discussion of ethnic bias as a motivation for these attacks, *see* Factor 15.

Despite these incidents, the ICJ reported, and interviewees for this assessment confirmed, that authorities have not taken any steps to investigate assaults on lawyers, witnesses, or defendants. *Id.* The Advocates Union has placed signs in courtrooms advising court attendees of appropriate courtroom behavior and possible sanctions for failure to behave properly, although, to interviewees' knowledge, no such sanctions have been enforced. Interviewees reported that this violence has intimidated defense witnesses, preventing them from appearing and thus denying defendants the right to call witnesses on their behalf. *See also* HRW WORLD REPORT 2014. It has also had a chilling effect on advocates, many of whom reportedly were discouraged from representing defendants in cases arising from the 2010 unrest due to fear of reprisals. ICJ INDEPENDENCE OF THE LEGAL PROFESSION at 69.

Several advocates and lawyers were charged and convicted in cases arising from the 2010 unrest. Most prominently, human rights defender Azimjon Askarov was sentenced to life imprisonment in connection to the killing of a police officer. However, it is widely believed that these charges were false, as Mr. Askarov was not in the area at the time of the police officer's murder, and were filed in retaliation for professional activities, which included documenting police abuse of detainees. *See* Open Society Foundations, *Askarov v. Kyrgyzstan*; HRW WORLD REPORT 2014. Mr. Askarov's advocates and witnesses in the case were verbally harassed, and witnesses were intimidated and prevented from appearing to testify. *Id.* Moreover, Mr. Askarov was reportedly detained in violation of criminal procedure laws, denied access to counsel while in custody, and was tortured. *Id.* Amnesty International reported on another advocate, Dilmurat Khaidurov, who was arrested, allegedly tortured, held in pretrial detention since 2010, and sentenced in January 2014 to seven years' imprisonment for organizing and participating in mass disorder. Amnesty International Live Wire, *Most of the People Who Died in Osh Were Uzbeks But It Is We Who Are Being Punished* (Feb. 11, 2014), at <http://livewire.amnesty.org/2014/0211/most-of-the-people-who-died-in-osh-were-uzbeks-but-it-is-we-who-are-being-punished/>. However, Amnesty did not allege that his arrest was motivated by his professional activities.

Advocates also have faced violence outside the courtroom in incidents that interviewees believed were related to their advocacy for human rights. Human Rights Watch reported that human rights advocate Ulugbek Azimov and members of his family were assaulted in 2013 in Bishkek, in an attack that his colleagues believed to be ethnically motivated. HRW WORLD REPORT 2014. An interviewee also reported that, in 2007, prominent defense advocate Ulugbek Miralimov was beaten to death in Osh; an investigation found that the attack was due to his professional activity. *Osh Lawyers Urge Finding Those Guilty of the Death of Well-Known Advocate* (Mar. 23, 2007), at <http://www.turmush.kg/ru/news:9933> (*in Russian*). In May 2014, advocate Dinara Turdumatova was beaten by an investigator who accused her of impeding the investigation when the investigator refused to incorporate her detained client's testimony into the interrogation minutes; the investigator is alleged to have struck her repeatedly in the head, and she required hospitalization for a concussion. *See* Kylym Shamy Center: *Investigator Beats Up an Advocate in Osh* (May 2, 2014), available at <http://svodka.akipress.org/news:136834> (*in Russian*). In September 2013, lawyer and anticorruption legal expert Nurlan Alymbayev was called in to the Prosecutor General's Office for interrogation as a witness in a corruption case, following which he was detained for two days as a suspect. Inkg.info, *Legal Expert Nurlan Alymbayev Detained in Bishkek* (Sept. 4, 2013), available at <http://inkg.info/news/pravozashchitniki/2929-v-bishkeke-zaderzhan-pravovoj-ekspert-nurlan-alymbaev> (*in Russian*). On December 3, 2013, the Ministry of Internal Affairs issued a statement alleging that two robbery suspects had retained defense advocates in order to help them escape and avoid punishment; however, prosecutors later opened an investigation into alleged torture of the suspects, which left one of them in intensive care following a suicide attempt. Kyrgyz human rights defense center Kylym Shamy viewed the Ministry's accusations as an attempt to undermine the work of human rights defenders in the face of a weak prosecution. Central Asia Voice of Freedom, *Kylym Shamy: Police Officers Trying to Escape Responsibility* (Dec. 4, 2013), available at <http://vof.kg/?p=13017> (*in Russian*).

Additionally, corruption may affect advocates' and lawyers' ability to practice law freely. Interviewees reported that it is common for advocates to act as middlemen, accepting money

from a client, taking a cut, and then paying a bribe to a prosecutor, judge, or other party to resolve the case in the client's favor. Because clients generally understand that cases can be resolved by paying a bribe, many clients prefer to hire an advocate who agrees to engage in corrupt behavior; as several interviewees put it, "clients prefer a lawyer who knows the judge over a lawyer who knows the law." This puts pressure on advocates and lawyers to participate in systems of corruption.

Interviewees also reported that it is common for investigators or judges to suggest that a suspect or accused be represented by an advocate, known as a "black" advocate, who will surreptitiously assist the investigator's case in exchange for money or for the investigator's referring more cases to the advocate. As discussed in Factor 19 below, this may be due to the low fees paid to advocates who agree to be appointed as counsel for indigent defendants. The UN Special Rapporteur on Torture, in his preliminary findings following a visit to Kyrgyzstan, noted that "State-appointed lawyers and judges were seen [by detainees as] formally present to rubberstamp decisions of the investigative officer rather than to undertake ex officio investigations or even routinely to ask persons brought from police custody how they have been treated." ICJ INDEPENDENCE OF THE LEGAL PROFESSION at 67.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Conclusion	Correlation: Neutral
Under law, advocates may not face sanctions for actions carried out in accordance with professional ethics norms or for statements made in the course of their professional duties, and this law is respected in practice. However, advocates reported that they are regularly identified with their clients and their clients' causes by both law enforcement and the general public, and some advocates, especially human rights defenders, have faced retaliation from law enforcement and members of the public for their professional activities.	

Analysis/Background:

Some guarantees of advocates' professional immunity are enshrined in law. Criminal proceedings may be initiated against an advocate in connection with his or her professional activity only by the Prosecutor General of the Kyrgyz Republic or by a Deputy Prosecutor General. 1999 LAW ON ADVOCACY art. 16. An advocate's office and vehicle may be entered, inspected, or searched, and his or her property may be seized or inspected only with a warrant issued by a prosecutor or a court. Advocates may not be subjected to personal search while they are carrying out their professional activities. *Id.* Professional associations of advocates must be immediately notified of initiation of criminal proceeding against an advocate, as well as an advocate's indictment, arrest, or detention. *Id.* Advocates may not be called to disciplinary, civil, administrative, or criminal responsibility for opinions provided in the course of carrying out their professional duties, for statements made in court or to law enforcement, or for any actions carried out in accordance with professional responsibility and ethical norms. *Id.*

The New Law on Advocacy contains similar guarantees. Under the new law, no advocate can be held liable for opinions expressed in the course of providing legal assistance. Criminal prosecution could only be initiated against an advocate in connection with his or her professional activities by the Prosecutor General of the Kyrgyz Republic or his or her deputy. NEW LAW ON ADVOCACY art. 29.3. Entry into an advocate's home, office, or vehicle for inspection, search, or seizure; personal search of an advocate; seizure of property; inspection or interception of postal

or wire correspondence; monitoring of telephone or other conversations; and arrest could only be carried out based upon a court warrant. No advocate could be subjected to personal search or inspection while performing his or her professional duties, except when caught at the scene of a crime that he or she committed, or as otherwise prescribed by law. *Id.* art. 29.4. The Advokatura and the MOJ must be notified immediately of initiation of criminal proceedings against an advocate, as well as an advocate's indictment, arrest, or detention. *Id.* art. 29.7 The new law also states that advocates should not be identified with their clients or with their clients' interests. *Id.* art. 17.2.

Lawyers who are not licensed advocates do not have the guarantees of immunity of the 1999 Law on Advocacy or the New Law on Advocacy, and the Civil Procedure Code also does not include any professional immunity guarantees for lawyers representing clients in civil, administrative, and economic cases.

Interviewees believed that advocates' immunity for actions taken in good faith in the course of their professional duties is generally protected. Interviewees were unaware of any case where an advocate was explicitly sanctioned for such actions. However, many interviewees believed that advocates are retaliated against for their professional activities, as discussed extensively in Factor 1. Many interviewees cited the case of human rights defender Azimjon Askarov, whom they believed to have been accused falsely in retaliation for his human rights advocacy.

Additionally, advocates are routinely identified with their clients and their clients' causes, by both law enforcement and the general public. For example, the ICJ received frequent reports of such identification. One advocate even reported that a law enforcement agent issued him a certificate saying he was part of a criminal group, because he represented clients who were alleged to be members of a criminal group. ICJ INDEPENDENCE OF THE LEGAL PROFESSION at 68. This tendency to identify advocates with their clients and their clients' causes appears to be a motivating factor in much of the harassment and violence that advocates representing clients in cases arising from the 2010 arrest face.

Factor 3: Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Although the right to counsel from the moment of detention is protected by law, in practice, advocates are routinely denied access to their detained clients, particularly in the period immediately following arrest and during the detainee's first interrogation. Some advocates reported being denied space to meet privately with their detained clients, or were only able to meet in a place where their conversation could be overheard by law enforcement.</p>	

Analysis/Background:

A person has the right, from the moment of actual detention, to use qualified legal assistance from an advocate and to have a defender. CONST. art. 24(5). A detained suspect or indicted person has the right to visit with his or her defense advocate. LAW ON MANNER AND CONDITIONS OF DETENTION OF PERSONS SUSPECTED OR INDICTED FOR COMMISSION OF CRIMES art. 16(1)(4) (Law No. 150, *adopted* Oct. 3, 2002, *last amended* Mar. 18, 2014, *by* Law No. 51) [hereinafter LAW ON TEMPORARY DETENTION]. This right to meet with one's advocate commences from the moment of first interrogation or, for detained suspects, from the moment of actual detention, and is not subject to any limits on the number and duration of the meetings, including on weekends. *Id.* art.

17(1), (5); 1999 LAW ON ADVOCACY art. 12; CRIM. PROC. CODE arts. 40(1)(4), 42(1)(9), 44(3). Meetings between advocates and their detained clients are to be held in private, under conditions that enable the detention facility employees to see, but not to hear them. LAW ON TEMPORARY DETENTION art. 17(2). In criminal cases that are heard under the rules of summary pretrial proceedings, advocates are admitted to participate in the case from the moment when the person that has committed a crime signs a written consent to have the case reviewed under such rules. CRIM. PROC. CODE art. 44(3). Additionally, a person charged with administrative misdemeanors has the right to legal assistance by an advocate, from the moment of his or her administrative detention or drawing up a report of a violation. CODE OF THE REPUBLIC OF KYRGYZSTAN ON ADMINISTRATIVE RESPONSIBILITY arts. 570(1), 572(4) (Law No. 114, *adopted* June 18, 1998, *last amended* July 18, 2014, *by* Law No. 140) [hereinafter CODE ON ADMIN. RESPONSIBILITY]. Upon a detained person's request, an advocate must be notified of his or her whereabouts in the shortest possible time. *Id.* art. 563(2). Furthermore, witnesses in criminal cases enjoy the right to have an advocate from the moment of their first interrogation. CRIM. PROC. CODE art. 44(3).

Advocates are no longer required to obtain permission from an investigator, prosecutor, or judge in order to access their clients. Instead, an advocate must be given an opportunity to meet with his or her detained client upon presenting a warrant order that confirms his or her representation of a detained suspect/indicted/defendant, as well as an identifying document. LAW ON TEMPORARY DETENTION art. 17(2).

However, in practice, many advocates reported being denied access to their clients in detention. Most often, detained persons either are not informed of their right to counsel or are not provided with a State-paid advocate if they cannot afford to pay a private one. However, some advocates even reported arriving at the police station only to be physically prevented from seeing their clients. Interviewees reported that they are most commonly prevented from seeing their clients detained by the police in the period immediately following arrest and during the initial interrogation, and that they are generally able to access clients held in prisons or detention centers. Some interviewees believed that police are not aware that advocates are no longer required to have permission to see their clients, while others believed that police deliberately prevent access in order to attempt to obtain a confession prior to allowing the suspect to consult with an advocate; on May 1, 2014, advocate Dinara Turdumatova was beaten by an investigator who accused her of impeding the investigation when he refused to include her detained client's statement in the investigative file. *See* Factor 1 above. Some interviewees also reported that they were denied space to confidentially meet with their clients in detention, violating lawyer-client confidentiality and making it impossible to privately discuss the case without the concern that law enforcement would overhear and use the information discussed against the client.

The rights of suspects and advocates to prepare a defense are enshrined in law. *See generally* CRIM. PROC. CODE arts. 40, 42, 48; 1999 LAW ON ADVOCACY art 12; NEW LAW ON ADVOCACY art. 25.1; CODE ON ADMIN. RESPONSIBILITY arts. 570, 572. These include the rights to gather evidence and conduct an investigation, review the case file and evidence against the suspect/accused/defendant, introduce evidence, and present motions and challenges. The defense advocate has the right to attend interrogations, ask questions with the consent of the investigator, and note in the file any comments regarding the authenticity or completeness of the record.

Interviewees reported that, while the law provides adequate time and facilities to prepare a defense, in practice, when suspects are denied access to counsel at the time of arrest or first interrogation, often the police obtain a confession. Such a confession is later used as evidence against the suspect, despite having been obtained in violation of proper procedures and sometimes through the use of coercion or physical violence. This negatively impacts the advocate's ability to present an effective defense.

Factor 4: Lawyer-Client Confidentiality

The State recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>The confidentiality of information revealed to an advocate by a client in the course of legal representation must be maintained, and most advocates protect client confidentiality in practice. However, correspondence sent to a detainee passes through detention facility staff and is subject to censorship, and there is no exception for correspondence sent from advocates to their clients. There is no guarantee of confidentiality for clients of lawyers who are not licensed as advocates, and lawyers reportedly have been required to turn over client files to government bodies.</p>	

Analysis/Background:

Advocates must maintain confidentiality of information revealed in the course of providing legal assistance, unless the client has agreed to disclose the information or the advocate believes he or she must disclose the information in order to prevent the client from causing death or serious bodily injury to another person. 1999 LAW ON ADVOCACY art. 13. Similarly, a defense advocate representing a criminal defendant may not disclose any information revealed to him or her in connection with providing defense or other legal assistance. CRIM. PROC. CODE art. 48(6). Confidential information includes issues on which a client seeks legal advice, the content of consultations, advocates' advice and explanations, and other information obtained by the advocate in the course of his or her professional duties. 1999 LAW ON ADVOCACY art. 13. Assistant advocates have the same duty of confidentiality as advocates. *Id.* art. 14. Advocates, assistant advocates, and staff in law organizations also may not use confidential information in furtherance of their own interests or those of third parties. *Id.* art. 13.

Advocates may not be interrogated as a witness on issues covered by lawyer-client confidentiality, and advocates are prohibited from disclosing confidential information to be used in an investigation, legal proceeding, administrative proceeding, or other law enforcement proceedings. Confidential information obtained from an advocate may not be admitted as evidence. *Id.* art. 17.

The New Law on Advocacy contains similar provisions regarding confidentiality. It defines as confidential any information relating to legal assistance being provided by an advocate for his or her client. NEW LAW ON ADVOCACY art. 30.1. The new law prohibits advocates from using confidential information in their own interest or in the interest of third parties. *Id.* art. 30.2. An advocate must keep confidential information that has become known to him or her in the course of providing legal assistance without the consent of a person seeking legal assistance. *Id.* arts. 25.2(5), 26.1(5). This duty also applies to assistant advocates. *Id.* 28.4. The New Law on Advocacy also includes additional protections for confidentiality. Specifically, any discovery, seizure, inspection, verification, or copying of documents, as well as any collection and use of information related to legal assistance rendered in a specific case is only permissible in the event of an advocate's indictment; or, during the hearing of civil, administrative, disciplinary, or administrative offense cases, only with the client's consent. *Id.* art. 29.5. Moreover, an advocate may not be summoned and interrogated as a witness in connection with circumstances that became known to him or her in connection with a request for or rendering of legal assistance, and is prohibited from providing any explanations or testimony on such circumstances, as well as from making available any materials for use in investigations, court proceedings, or by state authorities. *Id.* art. 29.6.

There are no guarantees of lawyer-client confidentiality for lawyers who are not licensed as advocates. Interviewees reported that, in at least one case, a law firm staffed by commercial lawyers who were not licensed advocates was required to give government authorities access to the files of a commercial client.

Another possible area of concern relates to the provisions on detainees' correspondence. By law, criminal suspects and indicted persons have the right to correspond with relatives and other persons without limits on the number of incoming and outgoing letters. LAW ON TEMPORARY DETENTION art. 19(1). However, all correspondence must be carried out through detention facility administration, and is subject to mandatory censorship (including translation of letters not in state or official language) by the administration or, where necessary, by the official or body in charge of the criminal case (i.e., investigator, prosecutor's office, or court). *Id.* art. 19(2), (3). The law does not contain a specific exemption from censorship requirement for correspondence between advocates and their detained clients. Although interviewees did not mention this issue as an area of concern and communication by mail with detained clients is rare, it does have the potential to result in obvious breaches of lawyer-client confidentiality.

In practice, interviewees reported that lawyer-client confidentiality is generally respected by advocates, with the exception of so-called "black" advocates who collude with authorities for corrupt purposes. Interviewees were not aware of situations where authorities violated lawyer-client confidentiality with respect to information that has already been gathered or disclosed by the client to the advocate. However, as discussed in Factor 3, many interviewees reported that advocates are frequently unable to meet with detained clients in a private setting, which effectively renders it impossible to protect the confidentiality of information disclosed to the advocate, as law enforcement authorities can easily listen to the conversation.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Equality of arms is protected by the Constitution and legislation, and generally respected in practice in civil, administrative, and commercial cases. However, interviewees reported that in criminal matters, they are not always given access to evidence and information gathered during the investigation, that investigators and prosecutors sometimes ignore exculpatory evidence and witnesses, and that judges often show favoritism toward prosecutors.	

Analysis/Background:

Equality of arms is enshrined in the Constitution and procedural legislation. CONST. art. 99(3); CRIM. PROC. CODE arts. 16(1), 18(1), (7), 48(1); CIV. PROC. CODE arts. 10(1), 38(5); LAW ON ADMINISTRATIVE PROCEDURES art. 3(3), (5) (Law No. 16, *adopted* Dec. 22, 2003, *last amended* July 30, 2013, *by* Law No. 178) [hereinafter LAW ON ADMIN. PROCEDURES]. In criminal cases, the functions of defense, prosecution, and court are at equal distance from one another, and are administered by different bodies and officials. CRIM. PROC. CODE art. 18(2). The burden of proof rests with the prosecutor, while the advocate is required to use all means and methods provided by law to defend the defendant. *Id.* art. 18(3), (4). The court is to maintain impartiality and objectivity while creating favorable conditions for the parties to exercise their procedural rights and duties, and the court may not take any party's side or express any interests other than the interests of law. The court's decision should be based only on evidence that was equally accessible for review by both parties. *Id.* art. 18(5)–(7). Parties are free to establish their own

position, as well as means and methods of defense independently of the court or other bodies or officials, and the court is required, upon a party's motion, to facilitate that party's access to necessary materials. *Id.* art. 18(8).

Similarly, in civil, administrative, and economic cases, parties enjoy equal procedural rights and bear equal procedural duties. CIV. PROC. CODE art. 38(5). The court must maintain impartiality and objectivity in managing the trial, explaining to parties their rights and responsibilities, creating conditions for comprehensive examination of evidence, establishment of case circumstances, and proper application of the law in resolution of disputes. *Id.* art. 10(2).

Advocates in criminal cases are entitled to collect evidence in favor of their clients, both personally and with the help of a private investigator; gather written statements of witnesses; prepare private reports of crime scene investigation; introduce evidence to the investigation and court; be present during indictment; participate in the interrogation of the suspect/accused/defendant and witnesses, as well as in any other proceedings in which they are involved, and ask questions with the investigator's permission; meet with the suspect/accused/defendant in private and without limitation on the duration and number of meetings; review records of detention, decisions on pretrial restraint measures, records of investigative proceedings, documents which were given or should have been given to the suspect, and, when the investigation is complete, review the entire case file; make copies of the case file or excerpts of any information contained therein; make motions and challenges; participate in court proceedings; appeal actions of the investigator, prosecutor, and court, and participate in the consideration of the appeal; and use any other legal means and methods for defense. CRIM. PROC. CODE art. 48(3), (4). Materials gathered by the defense advocate must, upon his or her request, be included in the case file, and must be examined and evaluated by the investigator, prosecutor, and court. *Id.* art. 48(7).

Lawyers in civil cases enjoy the same procedural rights as the parties they represent. CIV. PROC. CODE art. 58(1). Among others, this includes the rights to review the case file and make copies and excerpts of any information contained therein; present evidence; question other parties, witnesses, and experts; make motions and challenges; provide oral and written explanations to the court; introduce their own arguments concerning any issues that arise in the course of a trial; make objections against motions and arguments of other parties; and appeal court orders and decisions. *Id.* art. 35(1). *See also* CODE ON ADMIN. RESPONSIBILITY art. 572(5) (guaranteeing to advocates the rights to review the entire case file, introduce evidence, make motions and challenges, participate in hearing of cases, and file appeals).

Similar procedural rights are provided for by both the 1999 Law on Advocacy and the New Law on Advocacy. *See* 1999 LAW ON ADVOCACY art 12; NEW LAW ON ADVOCACY art. 25.1.

Despite adequate legal protection of equality of arms, interviewees reported that this principle is not respected in practice. Advocates reported that they are sometimes not given access to materials gathered during the investigative stage, and that access to the case file upon completion of the investigation may be delayed. Investigators have the discretion to disallow advocates from asking questions of the suspect/accused/defendant or witnesses during interrogations (*see* CRIM. PROC. CODE art. 48(4)) and to refuse to summon defense witnesses to provide information in the case, and advocates reported that investigators use their discretion to deny such requests. Investigators and prosecutors also reportedly often refuse the defense's request to gather evidence which may be exculpatory, and do not gather such evidence on their own initiative. Advocates interviewed by the assessment team also pointed out that investigators and prosecutors have significantly more resources available to gather evidence than most advocates do, and court-appointed advocates, who are paid very low fees and whose expenses aren't covered, have no resources at all to conduct their own investigation.

Interviewees believed that judges show significant favoritism toward prosecutors, and sometimes prevent the defense from presenting evidence, motions, or arguments while allowing all of the

prosecutor's evidence and arguments. In general, advocates believed most judges are disrespectful of advocates and advocates' rights. This may be most glaringly demonstrated by violence and harassment against advocates, particularly in cases arising from the 2010 arrest, and the reported failure of judges to intervene to prevent violence against advocates in open court. However, as discussed in Factor 1, some advocates have personal relationships with judges, and this can result in favorable treatment, even if there is no corruption involved.

The ICJ's findings support the information reported by advocates interviewed for this assessment. According to the ICJ report, advocates frequently face obstacles to providing an effective defense during the investigative stage of criminal cases. Advocates' requests to summon defense witnesses to speak with law enforcement authorities are often rejected by investigators, who have total discretion to agree to or dismiss these requests. ICJ INDEPENDENCE OF THE LEGAL PROFESSION at 68. Another example reported by the ICJ involved a judge ordering police to escort an advocate out of the courtroom in response to the latter's attempt to read a recusal motion out loud, despite the advocate's right to submit motions and arguments. *Id.* at 67. The ICJ also found that judges have set time limits for the defense's arguments and pleadings and interrupted advocates while they were making their statements, and that judges regularly deny defense requests to summon witnesses while regularly granting prosecutors' requests. *Id.* Advocates' access to documents may also be restricted, limiting advocates' ability to effectively represent their clients and impeding the accused person's right to adequate time and facilities to prepare a defense. *Id.* at 68. Additionally, advocates' ability to represent their clients is hindered by authorities' refusal to respond to requests for information, and courts may refuse to consider evidence presented by the defendants or the defense advocates, particularly evidence of torture. *Id.* at 67.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
The right of advocates in all cases and lawyers in non-criminal cases to appear before the courts is guaranteed by law, and formally respected in practice. However, interviewees reported that advocates' substantive participation in criminal cases is frequently restricted.	

Analysis/Background:

Advocates' right to participate in court proceedings is enshrined in law, and in certain criminal cases, the participation of an advocate representing the accused is mandatory.⁷ 1999 LAW ON ADVOCACY art. 12; CRIM. PROC. CODE arts. 46, 48(3)(10); CIV. PROC. CODE art. 52(1); CODE ON ADMIN. RESPONSIBILITY art. 572(5). Specifically, advocates have the right to submit evidence at the investigative and trial stage of proceedings; participate in court proceedings; make motions and challenges; appeal actions of the investigator, prosecutor, or court; and participate in the consideration of the appeal. 1999 LAW ON ADVOCACY art. 12; CRIM. PROC. CODE art. 48(3)(3), (3)(9)–(12); CIV. PROC. CODE art. 35(1); CODE ON ADMIN. RESPONSIBILITY art. 572(5). Under the New Law on Advocacy, advocate activity covers such issues as, *inter alia*, participating in

⁷ The participation of a defense advocate is mandatory when the defendant is charged with serious crimes, when the opposing party or a co-defendant has an advocate, for jury trials, and in all proceedings related to placement in pretrial detention or extension of the length of pretrial detention. CRIM. PROC. CODE art. 46; 1999 LAW ON ADVOCACY art. 12; NEW LAW ON ADVOCACY art. 25.1(11).

constitutional, civil, and administrative court proceedings; participating in criminal court proceedings and proceedings in administrative offenses cases; participating in the consideration of cases by arbitration courts, the international commercial arbitration court, and other conflict resolution bodies; representing a client's interests before state and local self-governance bodies, including those of other countries; representing a client's interests before international judicial bodies; and participating in proceedings relating to enforcement of judgments. NEW LAW ON ADVOCACY art. 24.1.

At a broader level, advocates have the right to represent and defend rights and lawful interests of individuals and legal entities before any bodies, enterprises, institutions, and organizations, regardless of their ownership, which are competent to resolve relevant issues. 1999 LAW ON ADVOCACY art. 12; NEW LAW ON ADVOCACY art. 25.1(1). Advocates, as well as non-advocate lawyers, also have the right to file motions and complaints during public officials' office hours and to receive written responses thereto; as well as to be present during the hearing of their motions and complaints before collegial administrative bodies and provide explanations as to their substance. 1999 LAW ON ADVOCACY art. 12; NEW LAW ON ADVOCACY art. 25.1(8)-(9); *see also* LAW ON ADMIN. PROCEDURES art. 8(1)-(2) (guaranteeing private parties the right to representation in proceedings before administrative bodies).

Interviewees believed that the right of audience is at least formally respected. Persons accused of crimes are not reported to have been denied access to counsel once the case has been brought before a judge, but the reported denial of access to counsel to suspects in police custody effectively prevents the suspect or his or her advocate from challenging the legality of the arrest. Moreover, to the extent that suspects may unknowingly find themselves represented by a "black" advocate colluding with the investigator, the suspect is effectively being denied access to a judicial remedy by his or her own advocate.

Although advocates' right to physically participate in court proceedings is respected, their substantive participation may be restricted. As discussed in Factor 5 above, it is common for judges to deny the defense's rights to present their own evidence, motions, or arguments. Judges may also refuse to summon witnesses, and intimidation by persons supporting the prosecution may turn witnesses away from appearing voluntarily. Kyrgyz law does not provide for habeas corpus or other extraordinary remedies, and judges reportedly frequently refuse to allow defendants to raise allegations of illegal detention, torture, and other abuses during the course of their criminal investigation.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
All legal professionals must have a university-level legal education, and one can also become eligible to qualify as an advocate by earning a master's degree in law after receiving a bachelor's degree in another field. Interviewees were generally critical of the quality of legal education, and reported that there are far more law graduates than there are legal positions available.	

Analysis/Background:

In order to become a licensed advocate, one must have completed "higher legal education." 1999 LAW ON ADVOCACY art. 8; NEW LAW ON ADVOCACY art. 19.1. In practice, the educational requirements to become an advocate can be fulfilled in one of two ways: by completing a full professional five-year program in law resulting in a specialist's degree; or by earning a two-year master's degree in law after having previously completed a four-year bachelor's degree program in any area of study, including law. Interviewees reported that the Kyrgyz Government had directed universities to phase out five-year degree programs, starting from 2012–2013 academic year, and require all students to complete a six-year dual program (four-year bachelor's/two-year master's program). *See generally* Government Resolution No. 496 *On Establishing a Two-Tier Structure of Higher Professional Education in the Kyrgyz Republic* (adopted Aug. 23, 2011).

Representatives in civil, administrative, and economic cases are not required to have completed any educational requirements or to have studied law. CIV. PROC. CODE art. 54. There are many lawyers who hold a law degree, but have not become licensed as an advocate, who provide representation in civil, commercial, administrative, and other non-criminal legal matters.

Presently, there are 11 law faculties in the Kyrgyz Republic:

1. American University of Central Asia (law student enrollment: 110 for 2013–2014 academic year, 90 for 2012–2013 academic year);)
2. International University of Kyrgyzstan (law student enrollment: 360 for 2013–2014 academic year, 140 for 2012–2013 academic year);
3. Law Institute of the Kyrgyz National Jusup Balasagyn University (law student enrollment: 800 for 2013–2014 academic year, 900 for 2012–2013 academic year);
4. Kyrgyz-Russian Slavonic University (law student enrollment: 747 for 2013–2014 academic year, 739 for 2012–2013 academic year);
5. Kyrgyz State Law Academy (law student enrollment: 1,200 for 2013–2014 academic year, 1,000 for 2012–2013 academic year);
6. Osh State University (enrollment data not available);
7. Jalal-Abad Institute of Law, Business, and New Information Technologies (annual law student enrollment of approximately 400–500);
8. Academy of the Ministry of Internal Affairs (annual law student enrollment of approximately 150);
9. Kyrgyz State Ishenali Arabayev University (enrollment data not available);
10. Kyrgyz-Russian Academy of Education (enrollment data not available);
11. Osh State Law Institute (enrollment data not available).

Interviewees were generally critical of the quality of legal education, stating that instruction is done primarily in lecture format and teaches students theory, not practical or analytical skills.

Several interviewees mentioned that corruption in the educational system continued to be a problem, which they believed contributed to the generally low abilities of law graduates. Interviewees reported that students can easily fail to attend class and instead pay a bribe to earn a passing grade. However, most interviewees believed that this sort of corruption is less common now than it was in the past, and professors have increased monitoring of class attendance. Interviewees also did not believe that students face retaliation or lowered grades for failing to pay a bribe, but rather that bribery is an option for some students who do not want to put in the work to earn a passing grade. Some interviewees mentioned that opportunities are limited for students whose primary language is Kyrgyz, as most instructors teach in Russian and almost all legal and educational resources are available only in Russian.

Interviewees also reported that there are far more law graduates than there are legal jobs available, although the number of law students has decreased substantially in the past decade from the roughly 26,000 students studying law at the end of 2003. ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR KYRGYZSTAN at 14 (2004) [hereinafter 2004 LPRI]. Decreased enrollment notwithstanding, the number of licensed advocates has more than tripled from 908 in 2003 to 3,394 in 2014, while interviewees reported that the amount of work available for advocates has not tripled. ABA ROLI, PRESENTATION OF RESULTS, STUDY OF THE ADVOCATE COMMUNITY DEVELOPMENT IN THE KYRGYZ REPUBLIC at 7 (Aug. 2012) [hereinafter STUDY OF ADVOCATE COMMUNITY DEVELOPMENT]; data on the number of advocates 3,394 was provided by the MOJ. While the majority of law graduates do not become advocates, interviewees reported that there are also more law graduates than there are jobs for lawyers and other legal professionals.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Most law graduates are not prepared to practice law. Since 2003, nine of the 11 law faculties in the country have begun offering clinical programs; participants in clinical programs are generally better prepared to begin their careers, but enrollment in the clinics is limited. Graduates must complete a year of work in legal practice before becoming eligible to take the advocate qualification exam, which is intended to improve the preparedness of advocates.	

Analysis/Background:

Advocates must complete one year of legal practice before taking the qualification exam, but law graduates may begin working in other legal professions immediately after graduating. In general, legal education is heavily theoretical, with little or no emphasis on helping students develop practical skills. Most of the law faculties operating in Kyrgyzstan, with the exceptions of the Kyrgyz-Russian Academy of Education and the Osh Law Institute, do offer clinical education programs, in which students provide direct legal services to indigent clients. However, only a small number of law students have been able to take advantage of these programs thus far, as the majority of clinics were only established over the past several years,⁸ and they are usually

⁸ The oldest clinical program in Kyrgyzstan, at the American University of Central Asia, has been operating since 2003, followed by the clinics at the Kyrgyz-Russian Slavonic University and the International University in Kyrgyzstan since 2005. Clinics at the Kyrgyz State Law Academy and the Kyrgyz National University were established in 2007, and those at the Osh State University and the Jalal-Abad Institute of Law, Business, and New Information Technology in 2012. The

limited to 20–30 students per year. All of the clinical programs reported that they select student participants through a competitive application process open to second- and/or third-year students, which includes a review of the students' grades and a test or essay. Students receive training, including on professional ethics, and are supervised by clinical faculty who are themselves licensed advocates. The clinics primarily provide legal services in non-criminal matters, including family law, property disputes, and other similar matters, although several clinics do occasionally provide advice on criminal cases.

Some law faculties also have moot court, mock trial, and client counseling teams, although Kyrgyz teams have been unable to participate in Jessup or other international moot court competitions since 2008 due to termination of donor support. A national client counseling competition was held in Bishkek twice (in February 2013 and February 2014) with support of ABA ROLI, but the availability of future funding for this event is currently uncertain.

Interviewees familiar with clinical programs stated that clinical students generally graduate with good practical skills as well as substantive legal knowledge. One interviewee familiar with the Jalal-Abad clinic reported that about half of the recent graduates who had participated in the clinic were now employed by judges in whose courts they had appeared while representing clients through the clinic. With the exception of the relatively low number of students who have participated in these programs, however, interviewees reported that law graduates were generally unprepared to practice law. This was of particular concern, since law graduates may practice in non-criminal areas of law without having to undergo any further training or certification or to obtain any practical experience.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Would-be advocates must pass a qualification exam, which is regulated and administered by the MOJ's Qualification Commission, except for persons who have worked for more than five years in certain State bodies and otherwise meet the requirements to be licensed as an advocate. Data from 2013 shows that exam passage rates were very low, at only 26.6%. Interviewees noted the lack of transparency and the role of the human factor in the Qualification Commission's decision-making process. However, they believed that the upcoming implementation of an electronic exam format would eliminate many opportunities for corruption. Interviewees believed that the current qualification requirements are not rigorous and were particularly critical of the provisions allowing certain State employees to be licensed without an exam.</p>	

Analysis/Background:

Admission to the profession is governed by the Law on Advocacy and regulations on the Qualification Commission. Under the 1999 Law on Advocacy, law graduates wishing to take the qualification exam for an advocate's license must have completed higher legal education, have at least one year of experience in legal practice or as an assistant advocate, and must not have been previously convicted of an intentional crime. 1999 LAW ON ADVOCACY art. 8. Candidates wishing to take the exam apply to the Qualification Commission by submitting the application, a signed personnel record form, proof of identity and of Kyrgyz citizenship, a notarized copy of a

newest two clinical programs, at the Academy of the Ministry of Internal Affairs and the Kyrgyz State Arabayev University, are currently in their first year of operation.

law school diploma, a notarized copy of a document confirming that an applicant has at least one year of legal experience, a reference letter from the last job, and a color photograph. REGULATIONS ON THE QUALIFICATION COMMISSION ON MATTERS OF ADVOCACY UNDER THE MINISTRY OF JUSTICE OF THE KYRGYZ REPUBLIC art. 19 (*approved by Government Resolution No. 79, Feb. 28, 2011, as amended by Government Resolution No. 148, Mar. 17, 2014*) [hereinafter QUALIFICATION COMMISSION REGULATIONS]. Upon passing the qualification exam, the applicant applies to the licensing body of the MOJ by sending the application, a decision of the Qualification Commission certifying passage of the exam, and an application fee of KGS 526 (USD 10.10). 1999 LAW ON ADVOCACY art. 9. The MOJ then has one month to review the application and either issue a license or provide a written explanation of rejection. *Id.*; QUALIFICATION COMMISSION REGULATIONS art. 26. If the candidate fails the qualification exam, he or she may retake it after at least one year has elapsed. 1999 LAW ON ADVOCACY art. 8; QUALIFICATION COMMISSION REGULATIONS art. 27. Additionally, candidates are entitled to appeal in court the Qualification Commission's decision concerning unsatisfactory exam results and the MOJ's decision rejecting the license, within one month from receiving a copy of such decisions. 1999 LAW ON ADVOCACY arts. 8, 9; QUALIFICATION COMMISSION REGULATIONS art. 25.

Advocates must be citizens of the Kyrgyz Republic and may not be employed as civil servants or municipal employees. 1999 LAW ON ADVOCACY art. 4; QUALIFICATION COMMISSION REGULATIONS art. 20. Persons who are declared legally incompetent or partially incompetent, have been convicted of an intentional crime, or have been dishonorably discharged from law enforcement agencies or other government bodies may not be admitted to the advocates' profession. 1999 LAW ON ADVOCACY art. 5; QUALIFICATION COMMISSION REGULATIONS art. 20. Persons meeting the other requirements to be licensed as an advocate, who have worked for five or more years in the prosecutor's office, as investigators with law enforcement bodies, in courts, in the legal departments of President's Administration, Parliament, or Government of the Kyrgyz Republic (or in other departments of these institutions, provided that the nature of their work required having a law degree), as well as the Parliament members holding law degree, may be licensed without taking the qualification exam. *Id.* art. 9.

Currently, the MOJ's Qualification Commission administers the qualification exam and reviews applications for the issuance of an advocate license. 1999 LAW ON ADVOCACY arts. 8, 9; *see also* QUALIFICATION COMMISSION REGULATIONS arts. 1, 5. The Commission consists of five members (including a chair and a secretary), who are selected from among the MOJ staff and representatives of public associations of advocates. QUALIFICATION COMMISSION REGULATIONS art. 3. The composition of the Commission is determined by the MOJ. 1999 LAW ON ADVOCACY art. 8; QUALIFICATION COMMISSION REGULATIONS art. 4. A chairperson is elected from among the Commission members and serves a one-year term. 1999 LAW ON ADVOCACY art. 8.

The qualification exam is to be administered at least once every three months. As soon as there are a sufficient number of applications, the MOJ sets the date and place for the exam, and notifies the registered applicants at least seven days prior to the scheduled exam date. QUALIFICATION COMMISSION REGULATIONS art. 18. The exam is taken entirely on paper and currently consists of 110 multiple choice questions, of which an applicant must answer 70% (i.e., 77 questions) correctly to pass. *Id.* arts. 21–22. Test results are announced on the day of the exam. *Id.* art. 24. The MOJ, with the support of ABA ROLI, is in the process of developing an electronic examination; the electronic format was expected to be used beginning in July 2014; however, the July exam was delayed and the electronic format has not yet been rolled out as of the date of this report. The inclusion of an oral exam or interview is also under consideration, which would be worth 5 points, and the total score required to pass would be increased to 82 out of 110 points.

Similarly to the 1999 Law on Advocacy, the New Law on Advocacy states that an advocate's license may be obtained by a citizen of the Kyrgyz Republic who has completed higher legal education, has at least one year of legal practice experience, and has passed the qualification examination. NEW LAW ON ADVOCACY art. 19.1. Licenses may not be granted to persons who have

been declared legally incompetent or partially incompetent; persons previously convicted of a crime, unless the conviction has been expunged or the record was cleared; those who have within the past year been fired from law enforcement agencies or other government bodies for commission of a disciplinary misconduct; persons whose advocate's license has previously been revoked; and former judges who have within the past year been dismissed from their positions for improper conduct. *Id.* art. 19.2. The types legal experience required to obtain an advocate's license have been expanded to include serving as a judge, working for the government, a municipality, a company's legal department, or a research institution (provided that the position required having a law degree); working as a law instructor in a vocational school, a higher education institution, or postgraduate professional education institution; and employment as an advocate, an assistant advocate, or a notary. *Id.* art. 19.3.

Under the new law, in order to be admitted to take the qualification examination, a candidate must apply to the MOJ and submit a personnel record form, proof of identity and of Kyrgyz citizenship, a notarized copy of a law school diploma, a notarized copy of a document confirming applicant's previous legal practice experience, a letter of reference from the last job, and a photograph. *Id.* art. 20.1. The MOJ may conduct an additional background investigation, and should determine whether the candidate may be admitted to the exam. *Id.* art. 20.2, 20.3. The MOJ's decisions rejecting the application to sit for the qualification exam may be appealed to court within one month following its adoption. *Id.* art. 20.3.

The New Law on Advocacy sets forth specific requirements for the qualification exam. Under the new law, the exam continues to be administered by the MOJ's Qualification Commission, which consists of four representatives of the new Advokatura selected by the Board of Advocates from among advocates with at least five years' experience, as well as three representatives of the MOJ. *Id.* art. 21.1, 21.2. The Government must establish the procedures for conducting the qualification exam. *Id.* art. 21.3. Exam takers have to answer 70% or more questions correctly in order to pass, and candidates who fail the exam may not retake it for six months. *Id.* art. 21.4. It was anticipated that, once adopted, the new law would no longer provide for certain legal professionals to be licensed as an advocate without first having to pass the qualification examination. This expectation did not materialize, however, and the New Law on Advocacy still permits certain State employees with at least five years of experience to obtain an advocate license without having to sit for the exam, although eligibility has been narrowed somewhat. Notably, those who obtained their experience in the prosecutor's office, as well as court employees (other than judges) are no longer eligible to obtain their license through this procedure. *Id.* art. 19.4. Moreover, in the event of acquiring an advocate's license while occupying an eligible State position, these individuals are required to apply to the MOJ within three days with a request to have the license suspended; failure to do so will result in annulment of the license. *Id.* art. 19.5.

Interviewees did not believe that the current qualification process is rigorous. Interviewees reported that in practice, the requirement of one year of practical legal experience is pro forma and does not serve to ensure that new advocates possess the skills required to provide effective representation of defendants in criminal cases. Interviewees also expressed significant concerns about the qualification examination; the paper format of the exam does not facilitate openness and transparency in the Qualification Commission's decision-making process, and creates grounds for the influence of the human factor and the emergence of potential corruption schemes. Interviewees reported that, although candidates are not coerced to pay bribes and that many candidates pass the exam on their own merit, many of the applicants do choose to pay a bribe to ensure passage. Interviewees were also optimistic that once the electronic exam is implemented in summer 2014, opportunities for corruption will be significantly reduced.

According to statistical information obtained from the MOJ, in 2013, the MOJ received 576 applications from candidates wishing to sit for the qualification exam for an advocate license. Of these, 48 applications were rejected because candidates did not meet the minimum legal practice experience requirement of one year or were current civil servants, and an additional 58 applicants

did not show up for the exam. Of the 342 candidates who took the exam, only 91 (26.6%) received the passing score of 70% and were licensed, while 251 candidates (73.4%) failed the exam.

Law graduates providing representation in only non-criminal areas of law are not required to obtain an advocate's license, and there are no qualification or certification requirements for these lawyers.

Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Advocates are licensed by the MOJ's Qualifications Commission, and denial of a license can be appealed in court. Under the New Law on Advocacy, four members of the Advokatura will sit on the Qualification Commission. The MOJ is responsible for keeping a state registry of advocates, but it is not regularly updated. In 2013, a majority of licenses were issued without examination to former employees of State bodies, and 44.58% of all advocates are former State employees licensed without passing the qualification exam.	

Analysis/Background:

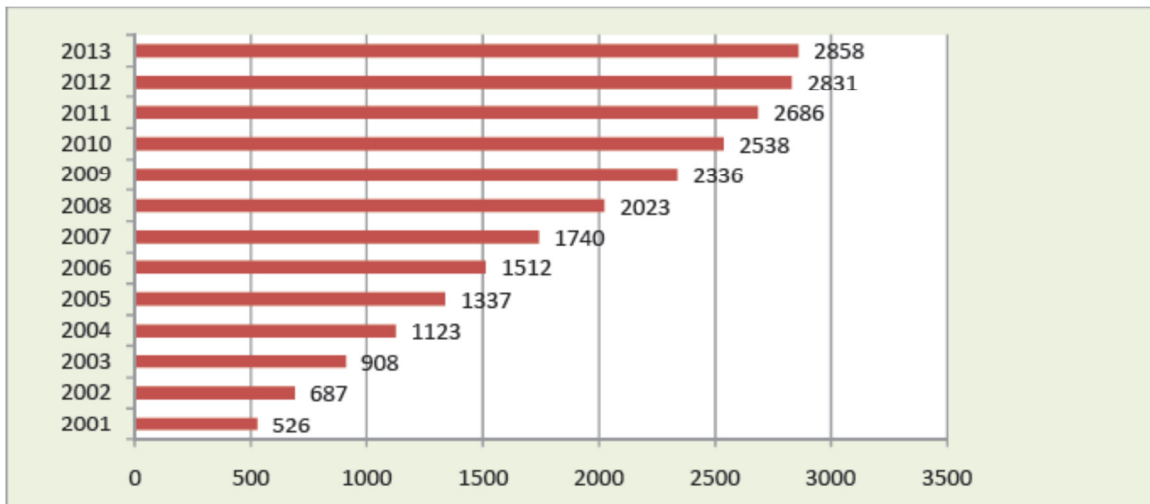
Under the 1999 Law on Advocacy, advocates' licenses are issued by the state body specifically authorized by the Government of the Kyrgyz Republic. LAW ON ADVOCACY art. 9. The MOJ serves as this authorized licensing body. QUALIFICATION COMMISSION REGULATIONS art. 5. The license is issued by the MOJ's Qualification Commission, which administers the qualification exam required for the applicants who do not fall into one of the several categories of State-employed legal professionals who are not required to take the qualification exam. LAW ON ADVOCACY art. 9. The MOJ licensing body must make a decision on the application for an advocate's license within one month of the date of the application. Both unsatisfactory exam results and a denial of the license can be appealed in court within one month of being notified of the MOJ decision. *Id.* arts. 8, 9; *see also* QUALIFICATION COMMISSION REGULATIONS arts. 25, 26.

Under the New Law on Advocacy, the issuance of licenses will be based on the decision of the Qualification Commission and an order of the MOJ. NEW LAW ON ADVOCACY art. 21.5. Although the Qualification Commission remains under the MOJ, the new Law specifies that the Commission consists of four representatives of the new Advokatura selected by the Board of Advocates from among advocates with at least five years' experience, in addition to three representatives of the MOJ. *Id.* art. 21.2. The Qualification Commission makes a decision on admission based on the exam results, and the MOJ then issues an order certifying the examination results. Candidates who are not admitted may appeal the MOJ's order to court within a month following its issuance. *Id.* art. 21.5. Within 10 business days, the MOJ must notify the Advokatura of the candidates who were granted a license, and the Advokatura is then required to notify the MOJ within five business days of an advocate's admission to the Bar. *Id.* art. 21.6.

Both the 1999 Law on Advocacy and the New Law on Advocacy require the MOJ to keep a state registry of advocates. This registry must include the advocate's name, address, date of licensing, registration number, business name and address, and a sample of his or her stamp; the New Law on Advocacy also requires the inclusion of the date the advocate joined the Advokatura. The advocate must notify the MOJ of any changes within one month. 1999 LAW ON ADVOCACY art. 11; NEW LAW ON ADVOCACY art. 23. In practice, interviewees reported that the registry is not kept up

to date and advocates do not inform the MOJ of changes; reportedly, it was last updated in 2006 through a volunteer effort to contact all advocates listed in the registry.

According to the most recent data obtained from the MOJ as of June 2014, there are currently 3,449 advocate licenses registered, but 14 of the registered advocates were not engaged in advocate activity due to emigrating from Kyrgyzstan and 41 of the registered advocates were deceased, putting the actual number of licensed advocates at 3,394.⁹ This reflected a significant increase in the number of advocates licensed since 2001:



Source: STUDY OF ADVOCATE COMMUNITY DEVELOPMENT at 7. The numbers indicate the number of advocates who held licenses during the preceding year.

Of the 2,858 advocates included in the registry in 2012, 1,274 (44.58%) had been licensed without taking the qualification exam after serving five years in a qualifying government position pursuant to Article 9 of the 1999 Law on Advocacy, while 1,584 (55.42%) were licensed after passing the qualification exam. According to the data supplied by the MOJ, of the 219 advocate licenses issued in 2013, only 91 (41.55%) were issued to persons who successfully passed the qualification examination; the remaining 128 (58.45%) new licenses were issued to qualifying former government officials pursuant to Article 9 of the 1999 Law on Advocacy.

Interviewees generally stated that the current licensing process could negatively affect the independence and autonomy of the advocates' profession, because the examination, licensing, and registration are entirely controlled by the State via the MOJ. However, interviewees did not report any specific incidences of abuse or misuse of the MOJ's licensing authority. While interviewees expected that new procedures set forth in the New Law on Advocacy would increase the independence of the profession by requiring that a majority of the members of Qualification Commission be advocates and by giving licensing authority to the Advokatura based upon the decision of the Qualification Commission, this was not included in the new Law on Advocacy, and the MOJ retains licensing authority while the Advokatura is required to admit an advocate upon notice from the MOJ that the advocate has been licensed.

⁹ According to a recent ABA ROLI study, there were 2,976 advocate licenses registered as of August 2012, but 118 of these were duplicates and 188 had been suspended, canceled, or revoked; the actual number of licensed advocates was 2,670. ABA ROLI, PRESENTATION OF RESULTS, STUDY OF THE ADVOCATE COMMUNITY DEVELOPMENT IN THE KYRGYZ REPUBLIC at 6 (Aug. 2012) [hereinafter STUDY OF ADVOCATE COMMUNITY DEVELOPMENT]. The data in the chart below represents the number of registered advocate licenses, excluding the 118 duplicates.

Factor 11: Non-Discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

<i>Conclusion</i>	<i>Correlation: Positive</i>
<p>Discrimination based on sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, or proprietary status is banned by the Constitution and laws of the Kyrgyz Republic. Interviewees reported no discrimination in admission to the profession of advocate or lawyer, although societal and cultural issues may present barriers for some women and ethnic minorities to complete the educational and other requirements to become an advocate or lawyer.</p>	

Analysis/Background:

The 2010 Kyrgyz Constitution states that no one in Kyrgyz territory or under Kyrgyz jurisdiction may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status, as well as other circumstances. CONST. art. 16(2). Special measures established by law and aimed at ensuring equal opportunities for various social groups in accordance with international commitments are not considered discrimination. *Id.* Men and women are specifically guaranteed equal rights and freedoms, as well as equal opportunities for their realization. *Id.* art. 16(4). Neither the 1999 Law on Advocacy nor the New Law on Advocacy restricts any category or group of people from entering the profession, except that advocates must be citizens of the Kyrgyz Republic. 1999 LAW ON ADVOCACY art. 4; NEW LAW ON ADVOCACY art. 19.1. The only persons who may not be admitted into the profession of an advocate are those declared legally incompetent or partially incompetent, convicted of an intentional crime (or any crime, under the new Law), or dishonorably discharged from law enforcement agencies, other government bodies, or a judicial office. 1999 LAW ON ADVOCACY art. 5; NEW LAW ON ADVOCACY art. 19.2. In civil, administrative, and economic cases, any legally competent person can serve as a representative, with certain exceptions (such as judges, investigators, prosecutors, or elected officials of representative or local self-governance bodies, or those with a conflict of interests). CIV. PROC. CODE arts. 54, 55.

In practice, interviewees reported that they were unaware of any discrimination in the admissions process. Interviewees believed that some members of ethnic minority groups were not as well represented in the legal profession relative to their representation in the general population (see Factor 15 below). However, this was not believed to be due to any discrimination in the admissions process, but rather due to other societal obstacles such as language, culture, or access to education. There are no programs or strategies aimed at increasing the number of women or minorities in the profession.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Positive
Advocates and lawyers may practice law as solo practitioners or in advocate and law firms, and did not report excessive regulations or obstacles to forming a legal practice.	

Analysis/Background:

Advocates may carry out their profession as a solo practitioner or with an advocate firm. Advocate firms are defined as legal entities, the primary activity of which is providing legal assistance. 1999 LAW ON ADVOCACY arts. 19, 20. Advocate firms can be established by any legal entity or individual, but may only be managed by an advocate and can only engage in advocate activity if at least one advocate is employed at the firm. An advocate firm may operate in any organizational form and under any type of ownership, and must be registered according to the procedures stated in the Law on State Registration of Legal Entities. *Id.* art. 20; *see also generally* LAW ON STATE REGISTRATION OF LEGAL ENTITIES AND THEIR AFFILIATES (REPRESENTATIVE OFFICES) (Law No. 57, *adopted* Dec. 26, 2008, *last amended* July 1, 2014, *by* Law No. 101). The registration process, which is administered by the MOJ under a “one-stop shop” principle, requires the submission of basic documents such as a completed application form, an incorporation decision, and copies of passports of founders and managers, and must be completed within three business days. LAW ON STATE REGISTRATION OF LEGAL ENTITIES arts. 4, 8, 11.

The types of advocacy activities that may be carried out by advocates include providing legal consultations, explanations of legal issues, and answering questions about legislation; drafting petitions, complaints, and other legal documents; representing a suspect during an investigation and a defendant in court; carrying out the duties specified in procedural codes in the preliminary inquiry, preliminary investigation, and before the courts; providing legal assistance to enterprises, institutions, organizations, and individuals; providing legal advice to persons and legal entities on business and foreign economic activities; providing advice on contracts and agreements; and providing other types of legal assistance as specified by law. 1999 LAW ON ADVOCACY art. 18. Foreign advocates may provide legal assistance consistent with interstate agreements between the Kyrgyz Republic and the advocate’s country. *Id.* art. 12. Advocates may employ assistant advocates, who must be law graduates and who may assist with cases on behalf of the advocate, but may not provide direct representation or provide representation during investigation, trial, or proceedings before government authorities. *Id.* art. 14.

Similarly, under the New Law on Advocacy, advocates are able to carry out activities either individually or as part of advocate firms. NEW LAW ON ADVOCACY art. 16.2. Advocate activity is defined as qualified legal assistance rendered professionally by persons licensed to engage in such activity to individuals and legal entities, government authorities, local self-government bodies, and, where required by law, to criminal defendants, for the purpose of protecting and securing their rights, freedoms, and interests, as well as of ensuring access to justice. *Id.* art. 16.1. The types of legal assistance that advocates are able to provide includes giving oral or written advice on legal matters; drafting applications, complaints, petitions, or other legal documents; participating in constitutional, civil, administrative, or criminal proceedings; participating in arbitration proceedings, international commercial arbitration, or other dispute resolution proceedings; representing the client’s interests before government authorities, local

self-government bodies, or other organizations; representing the client's interests before government authorities or other bodies of foreign countries or international judicial bodies, where permitted by applicable law or treaties; participating in the execution of judgments and representing a convicted client's interests in the penitentiary institutions; and providing any other assistance consistent with the laws of the Kyrgyz Republic. *Id.* art. 24.1, 24.2. Advocates from foreign countries may provide any type of legal assistance (except on issues related to state secrets) to individuals and legal entities on the basis of interstate agreements between the Kyrgyz Republic and the country of the advocate, and are included into a special registry maintained by the MOJ. *Id.* art. 24.3. Advocates may also employ law graduates as advocate assistants. *Id.* art. 28. The New Law on Advocacy also specifies that the advocate activity is non-commercial in nature. *Id.* art. 16.3.

While some successful attorneys and law firms, primarily in Bishkek, specialize in a single area of law, most advocates do not specialize in only one area of law. Many advocates practice a mix of criminal, civil, and administrative law in order to earn an adequate income, but some interviewees believed this lack of specialization lowers the quality of legal representation.

Lawyers who are not licensed advocates may also form solo practices or law firms, which, like any other business, must be registered as a legal entity pursuant to the Law on State Registration of Legal Entities. There are a number of business law firms staffed by non-advocate lawyers, as well as many lawyers operating as solo practitioners to provide representation in non-criminal cases.

In practice, advocates and lawyers reported no obstacles to forming a legal practice, either as a solo practitioner or as an advocate or law firm. There are many law firms operating in Kyrgyzstan, including several fairly large and successful commercial law firms. Some interviewees believed that there should actually be more barriers, noting that a new law graduate can open an office and advertise him- or herself as a lawyer with no regulation or other certification beyond that required for any other type of business. But generally, interviewees were satisfied with the opportunities available to form an independent legal practice and reported no major concerns.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
Advocates and lawyers have adequate access to laws and legal information through subscription databases, as well as for free via governmental websites. Many advocates and lawyers earn relatively low incomes, which interviewees believed contributes to corruption in the profession. Advocates appointed to represent indigent defendants earn particularly low fees.	

Analysis/Background:

With the exception of advocates providing state-guaranteed legal aid to indigent clients, advocates' and unlicensed lawyers' fees are not established by law or regulation. Advocates and lawyers are free to negotiate fees with their clients as part of the agreements for legal services. 1999 LAW ON ADVOCACY art. 22. Legal services agreements may specify either fixed fees or fees contingent upon the outcome of the case that the advocate is assisting with. *Id.* art. 23. Advocates who are employed by an advocate firm are paid a salary, as provided by the Labor Code. *Id.* art. 25. In the event of early termination of legal services agreement, an advocate is entitled to payment for actually rendered services, unless the agreement provides otherwise,

while a client may demand that the fee be refunded in part or in full if he or she is not satisfied with the quality of services rendered. *Id.* art. 24.

The New Law on Advocates simply provides, in connection with advocate fees, that the terms of payment for legal assistance rendered to client and the manner of compensation of advocate's expenses incurred in connection with provision of legal assistance are one of the essential terms of a civil law contract for provision of legal services. NEW LAW ON ADVOCACY art. 27.3. An advocate may not assign the rights to receive the fee and to compensation of expenses without specific consent from the client. *Id.* art. 27.4.

Advocates who agree to provide legal representation for indigent clients are paid for by the state and earn notoriously low fees. The fees for different types of services rendered by such advocates are regulated by the Government Resolution No. 594 *On Setting the Tariffs for Payment to Advocates Providing State-Guaranteed Legal Aid* (adopted Sept. 23, 2011, as amended by Government Resolution No. 247, May 7, 2013) [hereinafter *Resolution on Legal Aid Fees*] and are as follows:

- for providing legal assistance during a suspect detention at night, on weekends and holidays, KGS 800 (USD 15.37);
- for providing legal assistance during a suspect detention during the day, KGS 400 (USD 7.68);
- for taking up a criminal case (prior to verification of defendant's indigent status), KGS 1,000 (USD 19.21);
- for providing legal assistance at the investigation stage, KGS 1,500 (USD 28.82) for a case lasting up to two months, then KGS 198 (USD 3.80) per day, taking into account the length and complexity of the case;
- for providing legal assistance at the first instance trial stage, KGS 1,500 (USD 28.82) for a case lasting up to one month, then KGS 198 (USD 3.80) per day;
- for providing legal assistance at the appeals stage, KGS 1,500 (USD 28.82) for the first two appellate reviews, then KGS 198 (USD 3.80) per day for each additional review;
- for providing legal assistance at the supervisory review stage, KGS 1,000 (USD 19.21), including for the time needed to study the case, if an advocate was not involved at prior stages.

See *id.* art. 2. By law, these fees are also supposed to cover all out-of-pocket expenses incurred by an advocate in connection with providing legal assistance (e.g., transportation, per diem, etc.). *Id.*

However, interviewees stated that, in practice, advocates are paid KGS 1,000 (USD 19.21) for each procedural stage (investigation, trial, appeal, etc.) of the case.

Interviewees indicated that while talented lawyers and advocates can earn a high salary, many lawyers and advocates just make ends meet. Many interviewees believed that low incomes contribute to corruption in the profession, particularly "pocket" advocates who will request extra payments from clients or use bribes to resolve the case. Indigent clients may find themselves represented by "black" advocates who work against their clients' interests and aid the investigation. Interviewees also believed that most advocates and lawyers do not provide free legal aid to indigent persons because they cannot afford to take on a case without pay.

Advocates and lawyers have access to the legal materials and information necessary to provide competent legal services. Laws and legal information are made available in several newspapers, including *Erkin Too* (*Free Mountains*) and *Slovo Kyrgyzstana* (*Word of Kyrgyzstan*). Official texts of laws and normative acts are also made available on the MOJ website (www.minjust.gov.kg) and the Parliament's website (www.kenesh.kg) free of charge. However, obtaining laws and other legal information in the Kyrgyz language is reportedly much more difficult than obtaining them in Russian.

Several commercial databases, such as Adviser (www.adviser.kg), SPInform (www.kg.spinform.ru), and Toktom (www.toktom.kg), are available by subscription to legal professionals. They offer access to most domestic laws and normative acts of Kyrgyzstan, as well as comparative legal materials and legal news from other countries, particularly neighboring countries and the Russian Federation. Subscribers may access this information online or choose to receive updates via CD-ROM, which can be uploaded onto their computers.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>CLE was not mandatory under the 1999 Law on Advocacy, but the New Law on Advocacy requires advocates to engage in professional development at least once every three years. Currently, most CLE is offered by the Advocates Training Center (ATC), which began operations in 2008. Although interviewees were satisfied with the ATC's course offerings and quality of instruction, estimated participation has been low relative to the total number of advocates in the country.</p>	

Analysis/Background:

Continuing legal education [hereinafter CLE] was not mandatory for Kyrgyzstani advocates prior to the entry into force of the New Law on Advocacy, although one of the MOJ's functions includes organizing continuing education courses for advocates. See Government Resolution No. 764 *On the Ministry of Justice* sec. 6(e) (adopted Dec. 15, 2009, last amended by Government Resolution No. 112. Feb. 20, 2012). Although CLE is not mentioned in the 1999 Law on Advocacy, the New Law on Advocacy call on the Advokatura to facilitate CLE. NEW LAW ON ADVOCACY art. 2.1. The Charter of the Advokatura would identify procedures for CLE (see *id.* art. 4.2(5)), while the Board of the Advocates has assumed responsibility for endorsing CLE programs and organizing training (*id.* art. 7.3(6)). Under the new Law, the Advocates Training Center [hereinafter ATC] will operate under the Advokatura, and its Charter will be approved by the Congress of Advocates. *Id.* art. 10. Advocates are now required to "improve[their] professional knowledge and qualifications" at least once every three years; failure to do so will result in the revocation of an advocate's license. *Id.* arts. 26.1(6), 22.4(3).

Currently, there are many opportunities for advocates and lawyers to participate in voluntary CLE. The ATC was formed in 2008 by two voluntary professional associations, the Advocates Union [hereinafter AU] and the Attorneys Association of Kyrgyzstan [hereinafter AAK], and the Legal Center public foundation. The ATC operates as a non-profit public foundation, which carries out educational and training, informational, consultative, and organizational functions aimed at raising the level of professional skills of advocates and other legal professionals and preparing them for performance of new assignments. See ATC CHARTER art. 2.1 (approved Nov. 28, 2008). It is authorized to implement several types of training programs, including:

- programs raising professional qualifications, which serve to refresh theoretical and practical knowledge of lawyers, and which can be offered as short-term, on the job thematic trainings on specific legal issues lasting at least 72 hours; thematic and problem-focused seminars (72–100 hours) on scientific, legal, social, economic, and other broader issues; and long-term, in-depth educational programs focusing on contemporary legal problems and lasting at least 100 hours;
- practical internship programs with leading research and educational institutions, consultancy firms, and executive branch agencies, both in Kyrgyzstan and abroad; and

- professional retraining programs, aimed at imparting additional knowledge and skills and broadening the qualifications of lawyers, which may result in awarding of a new degree.

Id. art. 2.3. The ATC may implement these types of programs through a variety of activities, including stand-alone CLE courses; lectures and seminars offered jointly with other organizations; development, publication, and dissemination of training materials, manuals, and scholarly works; providing informational and consultative assistance to legal entities and individuals; implementing progressive and intensive training methodologies; cooperating with foreign and international institutions and experts; collecting and disseminating information on trends in the area of law; and conducting international conferences and symposia. *Id.* art. 2.4. Depending on the type of the program, training participants receive several types of certificates. *Id.* art. 5.7.

In practice, the ATC offers short (several hours) and long (3–5 days) courses on a variety of topics, including specific areas of law and professional ethics, as well as a long course for new lawyers or lawyers needing a refresher on legal skills and procedures. In 2014, the ATC is beginning to offer skills trainings on issues like conduct in court, Kyrgyz-language legal terms (as most law faculties teach in Russian), and law practice management. ATC has also developed a preparatory course for the advocates' exam, which it has offered once in the past and plans to continue offering in the future.

ATC courses are attended primarily by licensed advocates, but also by commercial and civil lawyers. The ATC offers two to three trainings each month, led by experienced local trainers with expertise in the topic of the training, including judges, prosecutors, advocates, journalists, and others. Trainings on general topics are typically donor-funded and free to participants, but law firms or other groups of advocates may request training on a specific topic and pay for the training. Trainings are held both at the ATC facility in Bishkek and in the regions.¹⁰ During its first five years of operation, the ATC offered approximately 400 trainings for a total of 1,500 participants (participants who attended more than one training program are counted once for each training they attended).

Advocates interviewed by the assessment team generally considered the current level of CLE completed by most advocates to be insufficient. Although the ATC counted about 1,500 training attendees when adding the sum of attendees at each training, interviewees affiliated with the ATC estimated that only approximately 450 individual participants had attended a training. Assuming all of these participants were licensed advocates (which is unlikely), this would represent roughly 1/6 of all licensed advocates. Even though most interviewees estimated that only about half of licensed advocates are actually practicing law, 450 advocates would represent only 1/3 of practicing advocates.

Interviewees generally agreed that many advocates and lawyers are well prepared, and that they are accustomed to individually ensuring their own professional development by staying abreast of legal developments, legislative changes, major cases, and other topics of importance to the legal profession, which may be one reason for the relatively low rate of participation in ATC trainings. However, interviewees also agreed that there are many advocates and lawyers who are poorly prepared to practice law and rely on bribery or nepotism to win their cases – or simply fail to provide effective legal assistance to their clients. While interviewees were mixed in their opinion of whether CLE should be mandatory for advocates, they agreed that advocates would benefit from regular participation in the trainings offered by the ATC. Many interviewees said they would like to see the ATC expand its course offerings and raise its profile in order to attract more participants. Several interviewees mentioned that potential clients seeking counsel have no way to determine which lawyer or advocate is best qualified or has the most experience in the subject matter of their case; interviewees suggested that certificates of course completion or other awards for professional development could help the general public identify the best counsel as well as prevent lawyers or advocates from making false claims about their knowledge and skills.

¹⁰ The ATC receives funding from ABA ROLI to hold trainings in the regions.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Conclusion

Correlation: Neutral

Discrimination is prohibited by Kyrgyzstani law, and interviewees reported no discrimination against women or minorities within the profession. However, women represent only 1/3 of advocates; no statistics are kept on the ethnic make-up of the profession. Interviewees reported significant harassment of Uzbek advocates, as well as advocates representing Uzbek defendants, in cases arising from the 2010 unrest in the south of the country.

Analysis/Background:

Although discrimination is prohibited in Kyrgyzstani law (see CONST. art. 16) and interviewees reported no discrimination against women or minorities, the number of women advocates remains relatively low. Of the 2,858 advocates registered with the MOJ in 2012, 967 (33.83%) are women while 1,891 (66.17%) are men. STUDY OF ADVOCATE COMMUNITY DEVELOPMENT at 6. Many interviewees believed that the number of women advocates is increasing, and interviewees noted that there are many women in leadership positions within the legal community, including with the local collegia, the AU and the AAK, the ATC, and in academia. No women interviewed by the assessment team believed that they had faced bias or discrimination during the course of their career, although some interviewees mentioned that there are cultural and social barriers, especially in rural areas, that may prevent girls from receiving the educational opportunities necessary to become a lawyer or advocate. This was affirmed by the findings of the US State Department Human Rights Report, which reported that traditional attitudes toward women in rural areas limit them to the roles of wife and mother and curtail educational opportunities. US DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: KYRGYZ REPUBLIC at 25. Statistics are not available on the number or percentage of advocates of minority group origin, but interviewees believed that persons of Russian ethnicity are well-represented in the profession and that while there are many ethnic Uzbek advocates in Osh and Jalal-Abad, they are underrepresented in the profession relative to the representation of ethnic Uzbeks in the general population.

The Kyrgyz Republic has a population of about 5.78 million people, comprising, 72.6% Kyrgyz, 14.47% Uzbek, 6.4% Russian, 1.1% are Dungan, 0.9% are Uighur, 0.87% Tajik, 0.71% Turks, 0.59% Kazakh, and 2.36% other ethnicities. National Statistics Committee, *National Composition of the Population as of Beginning of the Year*, available at <http://www.stat.kg/stat.files/din.files/census/5010003.pdf>. Muslims make up 75% of the Kyrgyz population, while 20% are Russian Orthodox and 5% practice some other religion or no religion. CIA WORLD FACTBOOK. Kyrgyz is the state language, while Russian is used as the official language, but members of all ethnicities have the right to preserve their native language and to the creation of conditions for learning and development of that language. CONST. art. 10. Although, by law, court proceedings may be held in either the Kyrgyz or Russian language, primary speakers of both Kyrgyz and Russian believed that the other language was overused to their detriment, preventing access to court filings and decisions. However, while the court proceedings may be conducted in Kyrgyz or Russian, persons participating in the proceedings who do not speak the language have the right to make statements, testify, file motions, and review the file in their native language, with an interpreter provided by the courts, and the indictment and verdict, as well as court documents in civil cases must be delivered to the accused or convicted person, as well as to parties in a civil case in a language he or she speaks. CRIM. PROC. CODE art. 23; CIV. PROC. CODE art. 11.

One major issue facing minority advocates is harassment and intimidation against Uzbek advocates, as well as against advocates of any nationality representing Uzbek defendants in cases arising from the 2010 unrest in Osh. See Factor 1 above. Many observers believe that violence against Uzbek advocates is ethnically motivated. For example, Human Rights Watch reported that ethnic Uzbeks have suffered torture, long terms in pretrial detention with no judicial remedy, violations of due process, and courtroom violence against both defendants and their advocates, with no intervention or sanction by the judge or court personnel. HUMAN RIGHTS WATCH WORLD REPORT 2014: KYRGYZSTAN available at <http://www.hrw.org/world-report/2014/country-chapters/kyrgyzstan>. Human Rights Watch also reported that ethnic Uzbek advocate Ulugbek Azimov and members of his family were assaulted in 2013, in an incident his colleagues believed to be ethnically motivated. *Id.* Most prominently, ethnic Uzbek human rights defender Azimjon Askarov was sentenced to life imprisonment for alleged participation in the killing of a police officer, although Mr. Askarov was shown to not have been present at the killing. Mr. Askarov was allegedly detained in violation of criminal procedure laws, police and prosecutors reportedly refused to allow Mr. Askarov to meet with counsel while in custody, prosecutors and the courts refused to investigate credible allegations that Mr. Askarov was tortured while in custody,¹¹ Mr. Askarov and his co-defendants were beaten by police during breaks in court proceedings, people shouted ethnic slurs at Mr. Askarov and his advocates, and witnesses were intimidated and prevented from appearing to testify on Mr. Askarov's behalf. *Id.*; see also Open Society Foundations, *Askarov v. Kyrgyzstan*, at <http://www.opensocietyfoundations.org/litigation/askarov-v-kyrgyzstan>. Amnesty International reported on the arrest, alleged torture, and conviction of another Uzbek lawyer, Dilmurat Khaidurov. Amnesty International Live Wire, *Most of the people who died in Osh were Uzbeks but it is we who are being punished* (Feb. 11, 2014), at <http://livewire.amnesty.org/2014/02/11/most-of-the-people-who-died-in-osh-were-uzbeks-but-it-is-we-who-are-being-punished/>. Further incidents of harassment of Uzbek advocates and advocates of any ethnicity representing Uzbek defendants were widely reported. See, e.g., IRIN, *Kyrgyzstan: Lawyers Demand Protection* (Oct. 19, 2010), at <http://www.irinnews.org/report/90814/kyrgyzstan-lawyers-demand-protection>; Fergana News Information Agency, *Beating Uzbeks' lawyers resumes in Osh* (May 22, 2014), at <http://enews.fergananews.com/news.php?id=2695>; Freedom House, *Kyrgyzstan Must Restore Order, Due Process to Courts* (Jan. 10, 2014), at <http://www.freedomhouse.org/article/kyrgyzstan-must-restore-order-due-process-courts>.

Interviewees did not believe there was active discrimination against ethnic minorities within the advocates' profession, but readily agreed that there were serious issues of societal discrimination leading to the harassment and abuse against some Uzbek advocates. Interviewees also cited societal and cultural attitudes that may prevent members of ethnic minorities from attaining the educational achievements necessary to enter the profession, and also mentioned that a general lack of access to justice for some minority groups may discourage members of those groups from wanting to work within the justice system.

¹¹ In late April 2014, a regional court reopened an investigation into allegations that Mr. Askarov was tortured while in custody. See Freedom House, *A Welcome Ruling in Askarov Case in Kyrgyzstan* (Apr. 30, 2014), at <http://www.freedomhouse.org/article/welcome-ruling-askarov-case-in-kyrgyzstan>.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>There are no laws or rules of professional ethics and conduct that apply to all advocates, although the 1999 Law on Advocacy and procedural codes do create basic standards of professional conduct for advocate. Additionally, the Advocates Union has an ethics code that applies only to its 300 members. The New Law on Advocacy requires the creation a professional ethics code, to be adopted by a future Congress of Advocates created under the same law.</p>	

Analysis/Background:

There are no official codes of conduct or ethics codes for advocates in the Kyrgyz Republic. The 1999 Law on Advocacy calls on advocates to comply with laws and rules of professional ethics (see 1999 LAW ON ADVOCACY arts. 3, 13), but with the exception of the AU's ethics rules applicable to its voluntary members, there are no laws or rules of professional ethics currently in force. In 2003, the MOJ promulgated Professional Ethics Rules for Advocates. However, the promulgation of these rules was widely criticized as detrimental to the independence of the profession, as they were prepared and issued by an executive branch agency rather than by the profession itself. They were not enforced, and in 2009 were revoked.

Existing laws, particularly the 1999 Law on Advocacy but also the procedural codes, do create basic standards of professional ethics for advocates. The 1999 Law on Advocacy sets forth advocates' responsibilities, which include basic ethical norms such as not representing two clients with opposing interests in the same legal matter, not withdrawing from representation of a criminal defendant, and not substituting a different advocate without the client's consent. Advocates must keep confidential information obtained during the course of representation, unless the client has consented to disclosure or the advocate believes that keeping the information confidential will result in someone's death or severe bodily injury. Advocates may not use confidential information to promote their own interests or the interests of a third party. 1999 LAW ON ADVOCACY art. 13. The Criminal Procedure Code also requires advocates to use all available legal means and methods of defense to obtain a client's acquittal or a lesser sentence, and prohibits advocates from representing two clients with conflicting interests, disclosing confidential information gathered in the course of representation, withdrawing or refusing to work on a case they have already accepted, or taking any action contrary to a client's interests. CRIM. PROC. CODE arts. 44(5), 48(1), (5), (6). In civil cases, a party may be represented by any person with a duly executed power of attorney; judges, investigators, prosecutors, and deputies of representative bodies of government and local self-governance may not serve as representatives, except as the authorized representative of an institution. CIV. PROC. CODE arts. 54, 55(1). A person may not represent a party if he or she has rendered legal assistance on the case to another party with conflicting interests; if he or she has participated in the case as a judge, prosecutor, expert, specialist, translator, or witness; or if he or she is related to an official participating in the consideration of the case. *Id.* art. 55(3). Advocates may serve as representatives in civil cases, unless their representation would violate provisions of laws governing the practice of law. *Id.* art. 55(2). It is important to note that the protection of lawyer-client confidentiality applies only to licensed advocates, and not to representatives in civil cases who are not also licensed advocates.

The New Law on Advocacy makes reference to a Professional Ethics Code, which must be adopted by the Congress of Advocates. NEW LAW ON ADVOCACY art. 6.3(4). The new law also sets forth advocates' duties, including to respect the laws of the Kyrgyz Republic and the professional

ethics code; to join the Advokatura within one month of receiving a license; to pay membership fees as required by the Advokatura; to make use of all lawful means and methods to protect clients' rights, freedoms, and legal interests; to keep confidential information that has become known to them in the course of providing legal representation; and to improve their professional knowledge and qualifications at least once every three years. *Id.* art. 26.1. Moreover, an advocate is prohibited from accepting representation of a client if this would be knowingly illegal in nature; to assume a position in a case contrary to the client's will; to disclose information revealed by a client in connection with rendering legal assistance, without the client's consent; and to abandon representation or defense. *Id.* art. 25.2. An advocate also may not accept representation of a client, if the advocate has previously provided legal assistance in this case to another client with opposing interests (except for serving as a mediator upon mutual consent of the parties); if he or she has an independent interest in the subject matter, different from that of a prospective client; if he or she has previously participated in the case as a judge, prosecutor, investigator, expert, translator, witness, victim, or civil plaintiff or defendant; and if he or she is related to an official who participated or is participating in the case in any capacity. *Id.* art. 25.2(2). Advocates will be held liable for failure to perform or inadequate performance of these duties, as required by law and the Charter of the Advokatura. *Id.* art. 26.2. For example, first violation of the Professional Ethics Code may result in suspension on an advocate's license, while a repeated violation may result in revocation of a license. *Id.* art. 22.

The AU also has a Commission on Advocate Ethics and Disciplinary Proceedings, which reviews reports of ethical violations by its 300 members. The Commission is authorized to impose sanctions against the AU members found guilty of a disciplinary misconduct, defined as dishonorable and undignified acts that discredit an advocate in the public's opinion, acts that lessen the professional prestige and authoritativeness of advokatura, facts of inappropriate behavior in the exercise of advocate activity, and advocate's failure to perform or inadequate performance of his or her professional duties or the Collegium's decisions. See REGULATIONS ON THE COMMISSION ON ADVOCATE ETHICS AND DISCIPLINARY PROCEEDINGS art. 6 (*adopted by AU Congress, Dec. 20, 2013*) [hereinafter AU ETHICS REGULATIONS]. The AU rules, as well as international standards and model codes on ethics, form the basis of the ATC's ethics training courses.

Interviewees unanimously agreed that corruption is rampant in the legal sector, and believed that the lack of ethics rules or an effective enforcement mechanism was detrimental to the profession, but especially to people who need legal assistance. Interviewees emphasized the existence of "black advocates," who collude with investigators against their clients' interests, and "pocket advocates" who may request money from indigent clients beyond the fees established by law and may also serve as middlemen to deliver bribes to officials, taking a cut for themselves. Interviewees agreed that the creation of a professional ethics code under the new law on advocacy would be an important step in building a more ethical profession, but also believed that a change in the mindset of advocates as well as in the institutional standards for the entire legal sector would be necessary to significantly reduce corruption.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Advocates' licenses may be invalidated for misconduct by the MOJ's Qualification Commission, but the circumstances under which an advocate's license may be invalidated are extremely limited. Interviewees believed that vesting the power to decide whether a license should be invalidated in an executive branch body violates the independence of the profession. The New Law on Advocacy creates an Ethics Commission of the Advokatura, charged with considering complaints and recommending the appropriate action to the MOJ's Qualification Commission.</p>	

Analysis/Background:

An advocates' license may be suspended or terminated by an agency authorized by the Government of the Kyrgyz Republic; in practice, this is the Qualification Commission under the MOJ. 1999 LAW ON ADVOCACY art. 10; QUALIFICATION COMMISSION REGULATIONS arts. 1, 5. The Commission receives citizen complaints about advocates' conduct on an ongoing basis, and meets monthly to review the complaints. However, under the existing law, an advocate's license may only be withdrawn if the advocate voluntarily relinquishes it, loses citizenship of the Kyrgyz Republic, commits a gross violation of law, or violates the requirements of Article 5 of the 1999 Law on Advocacy (namely, the advocate is declared legally incompetent or partially incompetent, was previously convicted for an intentional crime, or was dishonorably discharged from law enforcement agency or a government office). 1999 LAW ON ADVOCACY art. 10. An advocate's license may be suspended if the advocate is elected to Parliament or another public office or enters civil service. *Id.* An advocate may appeal the MOJ's decision to suspend or terminate the license to court within a month of receiving the copy of this decision. *Id.*; QUALIFICATION COMMISSION REGULATIONS art. 17.

The MOJ has two separate procedures in place to review allegations of disciplinary misconduct by advocates. First, as stated above, the MOJ's Qualification Commission reviews all complaints about advocates' conduct during its meetings, except complaints related to first-time offenses by advocates who are members of advocate professional associations, complaints requesting interpretation of the law in connection with an advocate's misconduct, and complaints that were previously reviewed by the Commission and contain no new allegations. QUALIFICATION COMMISSION REGULATIONS art. 12. The advocate in question is required to provide an explanation in writing within ten days of receiving a notification of complaint, but not later than three days prior to the Commission's scheduled meeting, and both the advocate and the complaining party must be informed not later than three days prior to the scheduled date of the meeting. *Id.* arts. 14, 15. The advocate also has the right to provide oral and written explanations during the hearing and offer evidence in his or her defense; however, advocate's failure to attend the meeting without a valid reason does not prevent the review of the complaint or the advocate's responsibility. *Id.* art. 15. The Qualification Commission makes its decisions by a simple majority vote of the members present, with the chair casting the tie-breaking vote. *Id.* art. 9. If the Commission finds allegations to be justified, it may recommend recourse measures against the advocate to be taken by the Minister of Justice (who has the ultimate authority to decide on these matters). *Id.* arts. 5, 16.

If the Qualification Commission or the MOJ receives a complaint concerning advocates who are members of professional associations of advocates, it is required to refer such complaints to the relevant professional association. The latter is required to review and respond to the complaint within one month. If the advocates' associations believes that the advocate should be subjected

to disciplinary measures, it must prepare an official opinion on this subject, which is then reviewed by the Qualification Commission. *Id.* art. 13.

The MOJ may also order an official investigation into alleged violations of the law or improper performance of professional duties by a licensed advocate, in order to verify and evaluate information concerning these allegations. *See generally* PROCEDURE FOR CONDUCTING OFFICIAL INVESTIGATION CONCERNING PERSONS LICENSED TO ENGAGE IN ADVOCATE ACTIVITY art. 2 (*approved by Government Resolution No. 79, Feb. 28, 2011*) [hereinafter PROCEDURE FOR ADVOCATE INVESTIGATION]. The MOJ establishes an ad hoc commission, consisting of advocates and MOJ staff, to conduct such investigation. *Id.* art. 3. The investigation may be triggered by reports and information provided by the management of advocate collegia or professional associations, complaints from individual and legal entities, requests from courts and law enforcement bodies, and media reports. *Id.* art. 4. As part of official investigation, the commission reviews all evidentiary materials and question possible witnesses, while the advocate being investigated has the right to provide oral and written explanations, submit evidence, and complain to the MOJ leadership as to improper actions by the investigating team. *Id.* arts. 5, 6. Following the investigation, the commission issues a conclusion with recommendations, which must be signed by all members; dissenting members are entitled to prepare their own statements. *Id.* arts. 7, 9. This conclusion is then passed on to the MOJ Qualification Commission, which reviews it at its meeting according to the procedures described above. *Id.* art. 9.

On the basis of the Qualification Commission's recommendation, the Minister of Justice, at his discretion, is authorized to issue a warning to an advocate or to terminate his or her advocate license. *Id.* art. 10. Only a single sanction can be imposed for each violation, and it must take into account gravity of the violation and circumstances under which it was committed. *Id.* arts. 11, 12. The MOJ's motivated order imposing sanctions is presented to advocate in person, as acknowledged by his or her signature. *Id.* art. 12.

The New Law on Advocacy provides for the creation of an Ethics Commission of the Advokatura. NEW LAW ON ADVOCACY art. 8. That Commission will have nine members elected by the Congress of Advocates for a term of three years, each of which must have been practicing as an advocate for at least five years. *Id.* arts. 8.1, 6.3(5). The Commission's members will serve on a full-time basis, and may not engage in advocate activity or serve on the Board of Advocates while on the Commission. *Id.* art. 8.2. The Commission will meet at least quarterly to review complaints and applications, and will make decisions by a simple majority vote of the members present (meetings must be attended by 2/3 of the commission members to have a quorum). *Id.* art. 8.1, 8.3-8.5. The Board of Advocates will make recommendations to the MOJ on the suspension or termination of licenses based on the decision of the Ethics Commission. *Id.* art. 7.3(9). The Ethics Commission's duties will be further defined by regulations approved by the Board of Advocates. *Id.* art. 8.6.

As is the case under the 1999 Law on Advocacy, the New Law on Advocacy authorizes the MOJ to suspend, revoke, and terminate advocates' licenses. *Id.* art. 22.1. An advocate's license may be suspended for a period of up to three years on the following grounds upon an advocate's own request, as well as if an advocate enters civil or municipal service (except in the capacity of a local parliament deputy), enters active military service, violates the Professional Ethics Code for the first time, or fails to pay his or her Advokatura membership dues. *Id.* art. 22.2, 22.3. An advocate may also have his or her license revoked if he or she is convicted of a crime, commits a repeat violation of the Professional Ethics Code, fails to participate in mandatory CLE (except during military service), or violates other provisions of the New Law on Advocacy. *Id.* art. 22.4. Finally, an advocate's license will be terminated in the event of the loss of Kyrgyz citizenship; death; declaration of an advocate as dead, missing, legally incompetent, or partially incompetent; failure to obtain a license within a one-month period without valid reasons or failure to become a member of the Advokatura within one month of obtaining a license; as well as based on a personal written request by an advocate. *Id.* art. 22.5. The MOJ's decision suspending, revoking,

or terminating an advocate's license may be appealed to court within one month following its issuance. *Id.* art. 22.6.

As discussed in Factor 16 above, the AU has ethics rules applicable to its advocate and advocate assistant members, as well as an Ethics and Disciplinary Commission to enforce these rules. The Commission, which consists of nine members with at least five years of advocate experience, reviews complaints against alleged misconduct by its members from individuals, legal entities (including advocate firms), officials and authorized government bodies, and the courts. AU ETHICS COMMISSION REGULATIONS arts. 1.2, 1.3, 2.1, 3.1. The Commission may also initiate a disciplinary proceeding against an advocate member upon its own initiative and decisions by the AU general meeting or board chair, as well as based on media reports. *Id.* art. 3.1. If the Commission finds that the allegations contained in the complaint are justified, it refers the case to the AU Managing Board for hearing. The advocate in question has the right to provide explanations, submit evidence, review case materials, and participate in all hearings; however, his or her refusal to utilize these rights does not preclude responsibility. *Id.* arts. 2.3, 4.1. Upon the Commission's request, the advocate is required to provide all materials needed for investigation, and is not entitled to refuse complying with this requirement due to lawyer-client confidentiality. *Id.* art. 1.5.

If the Managing Board finds an advocate member guilty of disciplinary misconduct, he or she may be subject to one of the following disciplinary sanctions: citation; reprimand; strict reprimand; warning; expulsion from the Collegium; and termination of advocate's assistant's employment. Additionally, the AU may also petition the MOJ with a request to terminate an advocate's license. *Id.* arts. 1.10, 4.2. The AU Board may also recommend that the advocate pays a compensation for all damages that resulted from violation. *Id.* art. 4.3. As with the MOJ proceedings, an advocate may only be subject to a single penalty for each violation, which must be commensurate with the gravity of the offense; and the penalty must be imposed not later than six months from the day that the misconduct was discovered, but in any event not later than one year from the day it was committed. *Id.* arts. 1.8, 1.9, 2. The advocate may appeal the AU's disciplinary decision to the MOJ within a month from the decision. *Id.* art. 4.5.

Interviewees agreed that there is a lacuna in the enforcement of disciplinary sanctions. While the MOJ has the limited authority to issue warnings and withdraw licenses, interviewees affiliated with the MOJ indicated that they are hesitant to be active in disciplinary enforcement, as this may negatively affect the independence of the profession. Indeed, according to the data provided by the MOJ, it issued disciplinary warnings to 13 advocates in 2011, 15 in 2012, and 23 in 2013; and terminated licenses of only 6 advocates in 2011 and 2012 each, and 12 advocates in 2013.

On the other hand, interviewees affiliated with the AU said they had no real authority to impose disciplinary measures beyond referring a complaint to the MOJ. Interviewees agreed that the establishment of an Advokatura-controlled Ethics Commission would be likely to significantly increase disciplinary enforcement while protecting the independence of the profession. Some, however, believed it did not go far enough, as the new law still leaves the final authority to withdraw licenses with the MOJ.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Negative
Interviewees consistently stated that most people in Kyrgyzstan do not have access to a lawyer or advocate. While the ratio of advocates to the general population in Kyrgyzstan is relatively good compared to other countries in the region, advocates are concentrated in Bishkek and Osh City, and statistics are not available on the number of advocates who are actually practicing law. Data is also not available on the number of non-advocate lawyers providing representation in non-criminal cases.	

Analysis/Background:

Everyone has the right to qualified legal aid. CONST. arts. 24(5), 40(3). In criminal cases, the right to an attorney begins at the moment of actual detention. *Id.* art. 24(5). The State is obligated to guarantee equal access to legal assistance to all persons residing or located in its territory, as well as information on how to obtain legal assistance. 1999 LAW ON ADVOCACY art. 6; NEW LAW ON ADVOCACY art. 18.1. The State is also required to provide legal aid at its expense to eligible individuals, in cases specified by law. CONST. art. 40(3); NEW LAW ON ADVOCACY art. 18.2. Some courts make available on their websites a list of advocates practicing in the area of the court's jurisdiction, as well as advocates providing legal aid in that area.

The number of advocates has increased significantly in the past decade. In 2004, there were a total of 1,192 advocates in the country, or one advocate for every 4,045 people. ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR KYRGYZSTAN at 35 (2004). As of August 2012, there were 2,670 validly licensed advocates, or one advocate for every 2,079 people. According to the MOJ, the number of registered and licensed advocates as of May 2014 was 3,394, for a ratio of one advocate for every 1,702 people. However, as in 2004, advocates remain unevenly spread throughout the country, with the ratio of advocates to the population significantly higher in some regions than in others.

Despite the overall increase in the number of advocates, many regions have a relatively low number of advocates relative to the population.

NUMBER OF ADVOCATES PER REGION (2012)

Region	Bishkek City	Batken	Chuy	Issyk-Kul	Jalal-Abad
Advocates	1,566	60	356	122	228
Population (thousands)	874.4	448.9	822.6	448.0	1,054.3
Ratio	1:558	1:7,481	1:2,311	1:3,672	1:4,624
Region	Naryn	Osh City	Osh	Talas	Kyrgyz Republic
Advocates	64	315	105	42	2,858*
Population (thousands)	264.9	255.8	1,147.7	235.3	5,551.9
Ratio	1:4,139	1:812	1:10,930	1:5,602	1:1,943*

Source: STUDY OF ADVOCATE COMMUNITY DEVELOPMENT at 7; Kyrgyz Statistical Agency, at www.stat.kg. *This includes the 188 registered advocates whose licenses had been suspended, canceled, or revoked. See

Factor 10 above. If those 188 advocates are subtracted, there are 2,670 advocates, or a ratio of one advocate for every 2,079 people nationwide.

The ratio of advocates to the population in Kyrgyzstan is similar to that of Russia (1:2,150), and significantly better than in Kazakhstan (1:4,180), Tajikistan (1:8,900), or Azerbaijan (1:12,550). STUDY OF ADVOCATE COMMUNITY DEVELOPMENT at 8. However, it should be noted that not all licensed advocates listed in the registry are actually practicing law; the Study of Advocate Community Development found that, of a random sampling of 20 registered, licensed advocates, six did not practice law, four were unreachable because their contact information was out of date, and one had died. *Id.* at 7. Of the remaining nine licensed advocates, seven practiced law full time and two practiced law part time; in other words, only 45% of the sample were practicing law. *Id.* at 8. Therefore, the chart above does not accurately reflect the number of advocates actually available to provide representation to persons in need of legal assistance, and it also does not reflect lawyers providing representation in civil matters who have not become registered as advocates.

COURT CASES FILED AND HEARD IN THE KYRGYZ REPUBLIC (2012–2013)

	2012		2013	
	Cases filed	Cases heard	Cases filed	Cases heard
Supreme Court – total	4,555	3,669	4,314	4,111
Criminal	1,380	1,347	1,399	1,416
Civil	1,824	1,366	1,811	1,821
Economic	518	353	379	268
Administrative	776	546	643	528
Admin. offenses	57	57	82	78
Cassation – total	3,630	2,788	3,517	3,037
Criminal	1,059	889	873	834
Civil	1,688	1,321	1,650	1,429
Economic	269	194	321	223
Administrative	444	261	486	384
Admin. offenses	170	123	187	167
Appellate cases – total	7,922	5,831	7,611	6,271
Criminal	2,468	2,109	2,542	2,102
Civil	3,000	2,207	3,159	2,568
Economic	623	404	488	379
Administrative	950	711	909	709
Admin. offenses	339	400	574	513
First instance – total	127,917	110,968	134,664	119,024
Criminal	16,697	16,424	16,466	16,193
Civil	62,128	53,279	67,752	59,273
Economic	7,376	5,349	6,704	4,916
Administrative	4,577	2,629	5,073	2,838
Admin. offenses	37,139	33,287	38,669	35,804

Source: REPORT ON ACTIVITY OF THE SUPREME COURT OF THE KYRGYZ REPUBLIC FOR 2013 (COMPARED TO 2012), in BULLETIN OF THE SUPREME COURT OF THE KYRGYZ REPUBLIC, VOL. 1 (2014) at 115-120, available at http://jogorku.sot.kg/sites/default/files/photos/byulleten_web_0.pdf (in Kyrgyz and Russian); REPORT ON ACTIVITY OF THE LOCAL COURTS IN THE KYRGYZ REPUBLIC FOR 2013 (COMPARED TO 2012), in BULLETIN OF THE SUPREME COURT OF THE KYRGYZ REPUBLIC, VOL. 1 (2014) at 120-129, available at http://jogorku.sot.kg/sites/default/files/photos/byulleten_web_0.pdf (in Kyrgyz and Russian).

Availability of legal services also cannot be estimated without comparing the number of cases before the courts with the number of lawyers available to provide representation. As the chart below shows, in 2012 127,917 new cases were filed in first instance courts nationwide,¹² and the first instance courts heard 110,968 cases (which may have been filed in previous years). However, as there is no data on the number of non-advocate lawyers providing representation in civil and administrative cases, availability of legal services cannot be calculated on this basis. Of the cases filed in 2012, 16,697 were criminal cases,¹³ or 5.84 cases for each licensed advocate; however, this assumes that every advocate in the country practices criminal law, and that the nationwide distribution of cases matched the nationwide distribution of advocates.

It is therefore difficult to estimate the true availability of legal services throughout the Kyrgyz Republic.

In civil cases, individuals may be represented by anyone with a duly executed power of attorney, other than judges, investigators, prosecutors, deputies of representative bodies, advocates whose acceptance of the case violates the law on advocacy, or a person who has a conflict of interest. CIVIL PROC. CODE arts. 54, 55. Law graduates who are not licensed as advocates may build a career as a lawyer providing representation in civil matters, but there is no registration or record of how many such lawyers are, in fact, practicing.

Although solid statistics are not available, interviewees universally agreed that most people in Kyrgyzstan do not have adequate access to a lawyer or advocate. Free legal aid is only available in criminal cases, leaving persons with civil legal issues who are unable to pay a lawyer generally unable to obtain legal representation. See Factor 19 below. Although advocates are available for those able to pay in Bishkek and Osh City, outside of these urban areas, interviewees were unanimous in stating that there are not enough advocates to meet the legal needs of most communities. People are frequently unable to travel, due to lack of transportation or funds for transportation, to the nearest town or city to find an advocate, as well as to attend court proceedings even if they were to present their case. However, some interviewees also stated that there is not enough work available in rural areas to encourage advocates to set up law offices there. In areas served by law faculties' legal clinics, students provide advice and representation to persons who might not otherwise have a lawyer, primarily in civil cases. Interviewees believed that the lack of advocates leaves persons suspected of crimes vulnerable to violations of their rights, as they are unlikely to have access to an advocate at the time of their arrest and questioning.

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Legal aid paid for by the State is available only in criminal cases. Fees paid to court-appointed advocates are very low, which, interviewees believed, disincentivizes advocates from providing representation in these cases and increases corruption. Although suspects or accused persons have the right to counsel from the moment of actual detention or first interrogation, indigent persons may not receive counsel until they have proven indigence.	

¹² The assessment team was not able to find similar data broken down by region.

¹³ Only licensed advocates may provide representation in criminal cases.

Analysis/Background:

The Constitution guarantees the right to legal aid and provides that legal aid should be rendered at the State's expense in cases provided for by law. CONST. art. 40(3). The 1999 Law on Advocacy holds that the State shall guarantee free legal assistance and defense of citizens who lack the ability to pay. 1999 LAW ON ADVOCACY art. 6; *see also* LAW ON STATE-GUARANTEED FREE LEGAL AID arts. 2, 3 (Law No. 227, *adopted* June 25, 2009) [hereinafter LAW ON LEGAL AID] (guaranteeing qualified legal aid at State expense to every citizen lacking legal means to pay for it). Similarly, under the New Law on Advocacy, in cases provided for by law, advocates who provide state-guaranteed legal aid receive payment for their services from the state budget. NEW LAW ON ADVOCACY art. 18.2. State-guaranteed legal aid is available to suspects/accused/defendants at all stages of criminal proceedings, and can be provided in the form of consultations, drafting of legal documents, and defense and representation of individual's rights and lawful interests in court. LAW ON LEGAL AID art. 5. The law provides for establishment of the nine-member National Council on State-Guaranteed Legal Aid under the President of the Kyrgyz Republic [hereinafter National Legal Aid Council] which, along with the MOJ and the professional organizations of advocates, serves as the governing and coordinating body for the legal aid system. *See generally id.* Title 3.

In criminal cases, a suspect or accused person has the right to a defense advocate and the right to meet with his or her advocate in private from the moment of actual detention or first interrogation, without any limits on the quantity and duration of the meetings. LAW ON TEMPORARY DETENTION art. 17. The Criminal Procedure Code establishes a right to a defense advocate selected by the suspect, accused, or defendant. CRIM. PROC. CODE art. 45(1). The suspect, accused, or defendant may request that the defense advocate be assigned by the investigator or court. *Id.* art. 45(2). The investigator or court may also suggest or assign a defense advocate if the advocate chosen by the suspect, accused, or defendant is unable to participate in the case; the investigator or court may contact the local collegium to assign an advocate. *Id.* art. 45(3). When the defense advocate was assigned by the investigator or trial, the advocate will be paid by the State. However, if convicted, the suspect/accused/defendant may be required to pay back the expenses to the State. *Id.* art. 45(5).

The suspect/accused/defendant may waive the right to counsel upon his or her own initiative and chose to defend him- or herself, although the waiver is not binding on the court. *Id.* art. 45(1)–(3). Participation of a defense advocate is otherwise obligatory when the suspect/accused/defendant so requests; if the suspect/accused/defendant is unable to independently realize his or her right to defense due to a disability; if the suspect/accused/defendant does not speak or is not proficient in the language of the proceedings; if the suspect/accused/defendant is a minor; if the suspect/accused/defendant is accused of a felony; if the suspect/accused/defendant is completing military service; or when a representative of the victim or civil plaintiff is participating in the proceedings of the case. A defense advocate's participation is also obligatory during judicial review of the investigator's motion to take the suspect into custody or to extend the term of pretrial detention. *Id.* art. 46; *see also* NEW LAW ON ADVOCACY art. 25.1(11).

A suspect has the right to be informed of his or her rights, which include a right to counsel from the moment of first interrogation or, if he or she is detained, from the moment of arrival at the preliminary investigation agency. CRIM. PROC. CODE art. 40(1)(3), (4). The investigator is authorized to make arrests and to arrange for a defense advocate. *Id.* art. 36(11), (12). Persons who request an advocate and cannot afford to pay one must first demonstrate indigence, which is defined as an annual income below a certain threshold set by the Government of the Kyrgyz Republic. LAW ON LEGAL AID art. 6. This eligibility threshold changes annually with the adoption of the republican budget law, which sets the minimum monthly wage for the given year. *See Resolution on Legal Aid Fees* art. 1. Thus, for 2014, the indigence threshold for legal aid purposes is defined as an annual income of less than KGS 10,800 (USD 207.49), although it is unclear to what extent, if at all, this requirement is enforced. *See* LAW ON THE REPUBLICAN BUDGET OF THE KYRGYZ REPUBLIC FOR 2014 AND ON FORECAST FOR 2015-2016 art. 13 (Law No. 227,

adopted Dec. 19, 2013) [hereinafter LAW ON THE REPUBLICAN BUDGET FOR 2014]. Notably, this income requirement does not apply to minors, legally disabled individuals, persons with serious speech, vision, and hearing disabilities, and mental illnesses, registered unemployed individuals, and military servicemen. LAW ON LEGAL AID art. 7. Even though this threshold is expected to go up to KGS 11,640 (USD 223.63) for 2015 and to KGS 12,720 (USD 244.38) for 2016 (see LAW ON THE REPUBLICAN BUDGET FOR 2014 art. 13), this income requirement, if enforced, nevertheless appears to exclude many impoverished people from accessing state-paid legal aid. According to the World Bank, in 2012, 38% of the population lived below the absolute poverty line, defined as an income of KGS 26,182 (USD 502.96) per year. WORLD BANK SNAPSHOT at 9; see also National Statistics Committee, Population Standard of Living in the Kyrgyz Republic 2008-2012: An Annual Report, at 17–18, 87 (2013), at <http://stat.kg/images/stories/Uroven%20jizni.last%202013.pdf> (*in Russian*).

An individual seeking free legal aid from the State may apply with the relevant request to the MOJ (which serves as the day-to-day coordinator of the legal aid program), a court, prosecutor, investigator, or an advocate, and has the right to appeal the rejection. LAW ON LEGAL AID art. 8. Once the request is approved, the legal aid recipient has the right to receive qualified legal assistance in a timely manner and to file complaints in connection with the assistance rendered to him or her. *Id.* art. 9.

Advocates who are interested in providing free legal aid to indigent clients must apply to the National Legal Aid Council in order to be placed on the State Registry of State-Guaranteed Legal Aid. *Id.* art. 19. Once an advocate's request is approved, the MOJ will enter into an agreement on provision of State-guaranteed legal aid with an advocate, making him or her eligible to participate in the system. *Id.* arts. 17, 20. If an advocate accepts a legal aid case, he or she is required to provide qualified legal assistance to the client in a timely manner and to comply with minimal quality standards. *Id.* art. 21.2. Failure to comply with these obligations may result in the advocate being disciplined by the MOJ, in the form of a warning, a suspension of an advocate's membership on the legal aid registry for a period of one to three months, or termination of the agreement between an advocate and the MOJ. *Id.* art. 22.

Reportedly, investigators will often suggest that the suspect select an advocate known to the investigator that the investigator tells the suspect will do a good job at a low cost, in order to avoid having to wait for the financial proof to be completed or because the suspect does not meet the definition of indigence. If the suspect agrees, the advocate selected by the investigator is reportedly often a "black" advocate who assists the investigator and fails to protect his or her client's interests. Similar problems were reported with advocates appointed by judges. Reportedly, advocates who are paid by the State also frequently ask their client to pay them, accept bribes from the investigator, or fail to provide effective representation for their clients; interviewees believed that this is due to the extremely low fees paid to appointed advocates, which is only KGS 1,000 for each stage of the case, not enough to cover even basic expenses like transportation to the court.

Interviewees believed that because of the low fees, few advocates accept appointments in State-paid cases, and those that do generally are not well-qualified and cannot find private clients. According to information provided by the MOJ, in 2013, there were 300 advocates registered to provide free legal aid, of which 33 had been expelled. Therefore 267 advocates are actually providing legal aid, broken down by region as follows:

- Bishkek City, 130 advocates;
- Batken region, 6;
- Chuy region, 29;
- Issyk-Kul region, 16;
- Jalal-Abad region, 31;
- Naryn region, 6; and
- Osh region, 43.

These numbers are clearly insufficient, particularly when compared to the population, percentage of the population living in poverty, and geographic area of the regions. One interviewee from Jalal-Abad reported seeing a judge call a random advocate from a court hallway and appoint him to represent an indigent defendant.

By law, there is no State-provided legal aid for civil cases. See LAW ON LEGAL AID art. 5. Some civil society organizations, primarily funded by international donors such as Soros and the United Nations Development Programme, provide legal assistance for civil matters, as do the university legal clinics mentioned in Factor 8 above. A small number of advocates provide pro bono legal assistance, but most interviewees reported that advocates generally cannot afford to take unpaid work. In general, interviewees overwhelmingly reported that persons needing legal representation in civil matters who cannot afford to hire a lawyer or advocate will simply not be able to obtain legal counsel.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
The International Court of Arbitration and the Courts of Elders provide alternatives to litigation in business and family or property disputes, respectively. These courts operate outside the judiciary, and no alternatives to litigation exist for cases within the judicial system.	

Analysis/Background:

The 2002 Law on Arbitration Courts permits parties to civil disputes to refer the matter to a permanent or an ad hoc arbitration court. See *generally* LAW ON ARBITRATION COURTS IN THE KYRGYZ REPUBLIC arts. 1, 3 (Law No. 135, *adopted* June 28, 2002, *last amended* June 11, 2004, *by* Law No. 73) [hereinafter LAW ON ARBITRATION COURTS]; see also CONST. art. 58. Most types of civil disputes may be referred to arbitration, including investment disputes and disputes involving individuals. LAW ON ARBITRATION COURTS arts. 1, 45, 46. Disputes that may not be submitted to arbitration are those involving complaints against enforcement officers; establishment of legally significant facts; restoration of rights under lost securities; bankruptcy; compensation of damages to an individual's life or health; defamation and protection of business reputation; inheritance; marriage and divorce; personal, non-property relationships between spouses, parents and children, and other family members; adoption, child custody, and foster care; and registration of civil statuses. *Id.* art. 45.2. Arbitration courts are authorized to issue decisions resolving disputes brought before them that are final and not subject to appeal, and which are subject to compulsory enforcement at court in case of the parties' failure to comply voluntarily. *Id.* arts. 28, 40-41.

At present, the International Court of Arbitration [hereinafter ICA] is the only permanent arbitration institution operating in Kyrgyzstan. The ICA is an independent legal entity and public foundation established in affiliation with the Kyrgyz Republic Chamber of Commerce and Industry, and was formally registered by the MOJ in September 2002. The ICA is not part of the Kyrgyz judiciary. The types of disputes that may be referred to the ICA include those involving contractual and other civil relationships, including foreign trade and investment disputes. REGULATIONS OF THE INTERNATIONAL COURT OF ARBITRATION art. 2.3 (*adopted by* the ICA Board of Trustees on Feb. 8, 2007, *effective* July 1, 2007) [hereinafter ICA REGULATIONS]. Among others, this includes disputes over the purchase, sale, and delivery of goods; service and labor contracts; barter of goods and services; transportation of cargos and passengers; trade representation and intermediation; leasing; scholarly and research exchanges; construction of industrial and other facilities;

licensing; investment; credit and settlement-related transactions; insurance; and other types of business activities. *Id.* art. 2.4 Matters may be referred to the ICA only pursuant to a pre-existing arbitration clause or agreement between the parties. *Id.* art. 2.2.

The ICA maintains a website at www.arbitr.kg, where it makes available news and information about arbitration, relevant legislation, arbitration rules and procedures, and a list of qualified arbitrators that parties may use. Samples of model arbitration clauses that may be incorporated into commercial contracts, as well as standalone arbitration agreements are also available electronically. In addition, the ICA has conducted an outreach campaign to raise awareness about arbitration among legal professionals and members of the business community. This campaign relied on television commercials, placement of advertisements in newspapers such as OBSHCHESTVENNYI REITING (PUBLIC RATING), and roundtable discussions. Several articles on arbitration have also been published in PRAVO I PREDPRINIMATEL'STVO (LAW AND BUSINESS) magazine.¹⁴ Despite these efforts, however, most interviewees were unfamiliar with the work of the ICA and how arbitration functions in practice.

Currently, the ICA has 187 arbitrators, of which 75 are international arbitrators from 22 countries including the UK, Sweden, France, the US, Russia, the Netherlands, Belarus, Turkey, Kazakhstan, Ukraine, Uzbekistan, India, Austria, Croatia, and Romania, and 112 are Kyrgyzstani. The arbitrators come from a number of professional fields, including law, economics, finance, and business.

The Courts of Elders, which are traditional, community-based bodies operating outside the Kyrgyz judicial system, also provide an opportunity for Kyrgyzstani people to resolve disputes referred to them by courts, prosecutors, other law enforcement bodies, as well as individuals. LAW ON COURTS OF ELDERS art. 1 (Law No. 113, *adopted* June 4, 2002, *last amended* July 18, 201, by Law No. 144). The Courts of Elders may be created by decisions of local residents or local parliaments and are made up of elders – five to nine local men and women aged 50 and above, who enjoy respect of community residents. *Id.* arts. 1, 8, 9, 11. Their tasks include protecting the rights and legal interests of citizens; assisting in strengthening law and order and preventing encroachment on community property; and fostering respect for the law, norms, historical customs, and traditions. *Id.* art. 3; CONST. art. 59. They accomplish these goals by means of persuasion, community pressure, seeking reconciliation between parties, and issuance of equitable decisions compliant with the law. LAW ON COURTS OF ELDERS art. 3. Although, by law, Courts of Elders may hear civil cases submitted by local courts, if permitted by civil procedure laws, and criminal cases that have been suspended and submitted by courts, prosecutors, investigators, and inquiry bodies, if permitted by criminal procedure laws, the procedural laws currently do not provide for such possibilities. In practice, therefore, the Courts of Elders consider only applications made by citizens (with the mutual consent of both parties) for settlement of property and family disputes, with the goal of reaching reconciliation of the parties. *Id.* art. 4. Among others, these include disputes relating to debt collection, seizure of property illegally held by another person, rent payments, restitution of property damages, division of marital property, ethnic marital and family traditions, failure by parents to support their children or failure by non-minor children to support their disabled parents, wage payments, land irrigation, and minor crimes not punishable by imprisonment. *Id.* art. 15. The Courts of Elders may not review cases in which a court decision has already been made, an administrative penalty imposed, or a decision adopted by another Court of Elders. *Id.* art. 4. Decisions of the Courts of Elders may be appealed to district courts, and the latter are also charged with providing the Courts of Elders with advisory assistance on proper application of the law. *Id.* arts. 30, 34.

Interviewees stated that arbitration is commonly used for commercial disputes with a pre-existing arbitration agreement, but forms of alternative dispute resolution are not used in cases filed within

¹⁴ See, e.g., *Arbitration in Action. Arbitration: The Verdict is Final*, LAW AND BUSINESS, Oct. 5, 2002; *Arbitration: What is Good for Business is Good for Everyone. The Essence and Advantage of Arbitration*, LAW AND BUSINESS, Dec. 6, 2002.

the judicial system. Several interviewees suggested creating alternatives to criminal prosecution, such as mediation, deferred prosecution, or plea bargaining. Interviewees believed that mediation could be used in both civil and criminal cases to reduce caseloads and resolve disputes more efficiently.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>The New Law on Advocacy creates a self-governing, independent professional association of advocates with compulsory membership for all licensed advocates; it is expected to hold its first meeting in fall 2014. Prior to the adoption of the new law, there was no unified national bar in Kyrgyzstan. There are a number of voluntary professional associations representing advocates and other legal professionals; these associations are self-governing and independent of state authorities.</p>	

Analysis/Background:

All associations of legal professionals in the Kyrgyz Republic are, for now, voluntary. According to Article 3 of the 1999 Law on Advocacy, membership in bar associations should be voluntary. Associations of advocates currently include collegia of advocates (in some districts, called Advokatura) in several regions and the districts of Bishkek, the Advocates Union. The Attorney's Association of Kyrgyzstan, in addition to advocates, also accepts as members lawyers and other professionals with legal educational background, including non-citizens, as well as law students as associate members. CHARTER OF THE ATTORNEYS ASSOCIATION OF KYRGYZSTAN art. 4 (*adopted* Dec. 18, 2003) [hereinafter AAK CHARTER]. There is also a newly-formed Central Asian League of Lawyers with approximately 40 members from the five Central Asian countries, as well as associations for legal professionals in specific areas of law, such as the Ferghana Valley Lawyers without Borders (migration law), Legal Assistance to Rural Citizens, and the Network of Lawyers in Civil Society Support Centers.

The collegia are loosely defined local associations of advocates, which originated as mandatory local bars in the Soviet era. There are seven collegia in the regions, and four in Bishkek. Each local collegium carries out its own activities, but generally they assist in arranging for advocates to be appointed to represent indigent defendants, coordinate training opportunities with the ATC, and lobby for the protection of the procedural rights of advocates.

The AAK is a legal entity with approximately 400 members created as a public association under the Law on Non-Profit Organizations. AAK CHARTER arts. 1, 2(1). Founded in 1995, it seeks to unify attorneys of different professions in order to protect and represent the interests of its members; to assist in legal training; to provide members with information and materials relevant to their practical work; to participate in law reform, legal awareness and legal culture improvement efforts; to establish professional relations with similar organizations in Kyrgyzstan and abroad; to organize conferences, symposia, roundtables, and workshops to strengthen the professional status of attorneys; to publish legal bulletins, newsletters, and magazines, and participate in the creation of legal films; and to carry out charitable activity. *Id.* art. 3. The AAK is led by the general assembly of members, which convenes annually, and also has a nine-member managing board, an executive director, and an audit commission. *Id.* art. 5. The AAK can form committees on various areas of law (e.g., civil, family, tax, procedural, etc.), and may also establish regional offices in those regions where it has at least 10 members. *Id.* art. 6.

The Advocates Union was established in 2002 to be the national association for advocates. It currently has approximately 300 members and, like AAK, is a legal entity created as a public association under the Law on Non-Profit Organizations. CHARTER OF THE ADVOCATES UNION OF

THE KYRGYZ REPUBLIC arts. 1.1, 1.3, 2.1 (*adopted* Sept. 13, 2002) [hereinafter AU CHARTER]. Its primary mission is to improve and reform the advocacy profession, to improve the systems and procedures available for the protection of human rights, and to ensure progressive development of democracy in Kyrgyzstan. *Id.* art. 3.1. To this end, the AU works to ensure high standards of advocates' skills and professional ethics; to protect professional and social rights of advocates; to advocate for globally recognized principles and guarantees of the independence of the bar; to assist the development of legal scholarship and the improvement of legal culture; to strengthen professional and cultural ties among advocates from different regions; to promote a civil society dialogue; to conceptualize the reform and development of the bar; to advance the rule of law; to strengthen the role of an advocate in society; to improve the performance of advocates in providing qualified legal assistance and protecting human rights; to conduct training activities and legal awareness raising efforts; to prepare and publish brochures, manual, journals, guidelines, monographs, and compilations of legislation; to participate in legislative drafting efforts alongside authorized government institutions; to represent its members before government bodies; and to develop international relations with advocates from abroad. *Id.* art. 3.2. Similarly to the AAK, the AU's governance structure consists of the general conference of members, which convenes at least once every two years, a 15-member board, an executive director, and an audit commission. *Id.* arts. 5.1, 6. Membership in the AU is open to all licensed Kyrgyzstani advocates, and the organization has primary regional units in regions where it has at least three members. *Id.* arts. 5.2, 7.1. The AU is currently working to strengthen its institutional framework and organizational development.

The Central Asian League of Lawyers was established in 2011 following a regional program funded by the US State Department Bureau of International Narcotics and Law Enforcement Affairs and implemented by ABA ROLI. Attorneys who participated in the defense attorney training and exchange under that program decided to form the League. Its primary goal is to exchange information and experience among lawyers from Kyrgyzstan, Kazakhstan, Turkmenistan, Uzbekistan, and Tajikistan. The members also provide legal advice to citizens of the Central Asian countries who need assistance while visiting another Central Asian country.

The recently promulgated New Law on Advocacy provides for the creation of a self-governing professional association of advocates with compulsory membership of all licensed advocates in the Kyrgyz Republic, charged with expressing and protecting professional interests of advocates, facilitating CLE, and developing the advocacy profession. NEW LAW ON ADVOCACY art. 2.1 The new Bar (referred to as the Advokatura) will be a non-profit legal entity with an independent legal structure, operating as a civil society organization rather than as part of any national or local government. *Id.* art. 2.2, 2.3. It will have branches in each region, as well as in Bishkek City and Osh City. *Id.* art. 2.4. It will be governed by a Charter specifying its operating procedures, powers, and structure, and managed by a Congress of Advocates (serving as its highest governing body convened once every three years) and a Board of Advocates (a nine-member executive body elected by the Congress of Advocates by secret ballot for a three-year term). *See generally id.* arts. 4-7. The same governance structure will be mirrored at each regional branch level. *Id.* arts. 12-14. At the national level, the Advokatura would also operate an Ethics Commission, an Audit Commission, and the ATC. *Id.* arts. 8-10.

By law, the inaugural Congress of Advocates of the Kyrgyz Republic, which would formally adopt Advokatura's Charter and establish its governing bodies, must take place within six months from the effective date of the New Law on Advocacy – i.e., before the end of January 2015. *Id.* art. 31.1. The number of delegates for the inaugural Congress will be determined by the MOJ, taking into account regional representation quotas. *Id.* art. 31.2.

Some interviewees reported that the creation of a mandatory, unified national bar has been opposed on the grounds that mandatory membership violates the right to freedom of association. However, the overwhelming majority of interviewees agreed that a unified national bar comprising all licensed advocates is essential to the creation of an independent, autonomous, self-governing legal profession in accordance with international norms.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>The voluntary professional associations of lawyers and advocates promote the interests and independence of the profession, particularly related to professional development and training and legislative reform. The New Law on Advocacy lists expression and protection of advocates' professional interests as a primary goal of the Advokatura.</p>	

Analysis/Background:

As described in Factor 21 above, protecting and representing the interests of the legal profession as a whole and of their members, as well as providing education opportunities and other services to members are among the primary functions of the various voluntary professional associations of lawyers and advocates in Kyrgyzstan. These entities have taken an active role in promoting the interests of the profession. Perhaps most notably, the AAK and AU collaborated with another non-profit organization, the Legal Center, to create the ATC. The AAK and AU are also actively involved in law reform, as discussed in Factor 24 below, and supported the passage of the New Law on Advocacy and the creation of a unified national bar.

Collegia have also been successful in advocating for the rights and interests of advocates. For example, various collegia collaborated to support the repeal of legal provisions requiring advocates to have the permission of the prosecutor or investigator before being permitted to meet with a client in custody. The Central Asian League of Lawyers serves as a mechanism for exchange of ideas and experience among lawyers and advocates from the five Central Asian countries. The issue-specific associations provide support for advocates and lawyers in specific areas of law; for example, the Ferghana Valley Lawyers without Borders, which focuses on migration law, has been involved in legislative drafting and providing training for State agencies.

The AU alone has established standards for professional ethics for its members, as discussed in Factors 16 and 17 above. It has an ethics and disciplinary committee that reviews complaints on an ad hoc basis, but has no authority beyond referring complaints to the MOJ qualifications committee.

The New Law on Advocacy lists expression and protection of professional interests of advocates, facilitating CLE opportunities for advocates, and development of the advocacy profession as the primary goals of the Advokatura. NEW LAW ON ADVOCACY art. 2.1. These goals are anticipated to be spelled out in much greater detail in the Advokatura's new Charter that will be adopted by the inaugural Congress of Advocates (*id.* arts. 4.2(1), 31.1); however, the new Law does mention the authority of the Congress of Advocates to adopt the Code of Professional Ethics for Advocates and the Charter of the ATC, as well as to appoint members of the Ethics Commission. *See id.* arts. 6.3(4), (5), 10.2. The Board of Advocates, in turn, is identified as the body competent to represent the Advokatura before government bodies and other entities, to approve the advocates' CLE program and to organize trainings under this program, and to protect social and professional rights of advocates. *Id.* art. 7.3(1), (6), (8).

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.

Conclusion

Correlation: Neutral

The AAK has several programs to raise public awareness of legal issues. Representatives of professional associations interviewed by the assessment team indicated a desire to be more active in promoting public education, but did not have the funds to do so.

Analysis/Background:

As described in Factor 21 above, efforts to promote public awareness of the law and legal system and to improve the general legal culture of the population are among the primary functions of professional associations of lawyers and advocates. While many interviewees stated that public awareness of their rights and legal issues is generally low, several professional associations have taken a somewhat active role in promoting public education about the law. Representatives of these associations indicated a desire to be more active in promoting public education if donor funds were available.

Since 1996, the AAK has published the magazine PRAVO I PREDPRINIMATEL'STVO (LAW AND BUSINESS), the mission of which is to promote dialogue between lawyers and business professionals and provide legal information on business matters. The AAK, with support from the USAID Commercial Law Development Project, produced a series of pamphlets, called *My Right*, on legal issues affecting the public, and was supported by the Soros Foundation in a project aimed at increasing the general public's legal knowledge and informing the public about their rights and responsibilities. The AAK, with donor support, has also monitored proceedings in criminal cases, and created an audio-video series entitled *Legal Advice*, which informs the public about legislation. See AAK Website, Projects, at www.aak.kg/index.php?option=com_content&view=article&id=90&Itemid=107.

The AU reportedly monitors the availability of free legal aid services. The assessment team did not receive information on any other public awareness efforts carried out by the AU.

The New Law on Advocacy does not reference the Advokatura's functions related to public interest and awareness efforts, and it remains to be seen whether these issues will be addressed in the Charter of the Advokatura.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Conclusion

Correlation: Positive

Both major professional associations are involved in the drafting of a comprehensive package of legislative reforms to civil, criminal, and administrative laws, and actively supported the development of the New Law on Advocacy.

Analysis/Background:

As discussed in Factor 21 above, both the AAK and the AU, in their respective Charters, identify among their principal tasks participating in legal reform, legislative drafting efforts, and improvement of the legislative process. The AAK's Charter also provides for establishment of various committees on discreet areas of the law, whose task is to discuss issues related to their assigned area of law and inform members about relevant developments; to submit recommendations and prepare drafts of new laws or amendments to existing laws; and, subject to approval of the managing board, to provide expert opinions on draft legislation, both upon official request from government or other entities and on their own initiative. AAK CHARTER arts. 6.3, 6.4.

Members of the AAK and the AU have been involved in the working groups drafting the new laws that are expected to be presented to Parliament as part of a major justice sector reform package, including a new Criminal Procedure Code, Civil Procedure Code, Administrative Procedure Code, Civil Code, Criminal Code, Administrative Code, Code on Administrative Offenses, and Law on Legal Aid. The criminal law reforms include decriminalization of certain acts currently considered crimes, suspended sentences, the introduction of mediation in criminal cases, the creation of a probation system, and the development of a mechanism for introducing jury trials. Both the AU and AAK were involved in the drafting of the New Law on Advocacy and provided feedback on drafts of the law.

The New Law on Advocacy does not mention the Advokatura's role in Kyrgyzstan's law reform efforts, and it remains to be seen whether these issues will be addressed in the Charter of the Advokatura.

List of Acronyms

AAK	Association of Attorneys of Kyrgyzstan
ABA ROLI	American Bar Association Rule of Law Initiative
ATC	Advocates Training Center
AU	Advocates Union
CLE	Continuing Legal Education
ICA	International Court of Arbitration
ICJ	International Commission of Jurists
KGS	Kyrgyzstan Soms
LPRI	Legal Profession Reform Index
MOJ	Ministry of Justice
UN	United Nations
USAID	United States Agency for International Development
USD	United States Dollars