

“Paper Presented at the 2019 ASN World Convention, Columbia University 2-4 May 2019”

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**Country Assessment for the Kyrgyz Republic: Fair Trial Standards and Meaning in Local
Context**

**American University of Central Asia
Bishkek, Kyrgyz Republic**

The “Country Assessment for the Kyrgyz Republic: Fair Trial Standards and Meaning in Local Context” was implemented with financial support from United States Agency for International Development (“USAID”) as part of the USAID project “Building the Future” in cooperation with the Research Office of the American University of Central Asia.

The information contained in this report does not necessarily reflect the position or opinion of USAID, the American University of Central Asia, or any other donors who may have contributed financially to the project.



**Country Assessment for the Kyrgyz Republic:
Fair Trial Standards and Meaning in Local Context**



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Acknowledgements

The authors would like to offer their sincere thanks and appreciation to the following for their assistance, without which this project could not, and would not, have been completed:

Advocates Training Center of the Kyrgyz Republic

Advokatura of the Kyrgyz Republic

AUCA Legal Clinic

Harvey Wagar

Students and staff of the American University of Central Asia

Umida Gapurova

The many anonymous individuals (advocates, prosecutors, judges, private citizens, representatives of civil society, etc.) who took their time to complete our research survey questionnaire, and those persons who graciously agreed to be interviewed as part of the research project.

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Abstract

Fair-trial rights are considered fundamental and core human rights. The Kyrgyz Republic, as a member state to a number of international treaties in the field of human rights, has undertaken the responsibility of being bound by these treaties, including the responsibility to guarantee fair-trial rights to its citizens and residents. This report presents findings of a country assessment of the legal framework and mechanisms of the Kyrgyz Republic, focusing specifically on the implementation of international fair-trial standards in the context of pre-trial and trial phase of criminal proceedings. The research project attempts to analyze and answer two core questions: 1) to what extent do international fair-trial rights exist in the Kyrgyz Republic; and 2) to what extent are there any deficiencies in the implementation of these rights in the criminal law procedural process attributable to weaknesses in the legal framework and justice institutions. The project aims at bridging the gap between formal law and actual legal practice by combining the analysis of current Kyrgyz legislation on fair-trial rights with a comprehensive survey of, and interviews with judges, prosecutors, attorneys, NGO representatives, academia and law enforcement bodies directly involved in or familiar with the Kyrgyz criminal justice process.

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List of Abbreviations

AUCA	-	American University of Central Asia
CC	-	Constitutional Chamber of the Supreme Court of the Kyrgyz Republic
CPC	-	Criminal Procedure Code of the Kyrgyz Republic
ECHR	-	European Court of Human Rights
EU	-	European Union
ICCPR	-	International Covenant on Civil and Political Rights
HRC	-	United Nations Human Rights Committee
LGBT	-	Lesbian Gay Bi-Sexual Transgender
NGO	-	Non-Governmental Organization
OSCE	-	Organization for Security and Cooperation in Europe
SC	-	Supreme Court of the Kyrgyz Republic
UNHR	-	Universal Declaration of Human Rights

Country Assessment for the Kyrgyz Republic: Fair Trial Standards and Meaning in Local Context

Introduction

The right to a fair trial is a norm of Public International Law, specifically in the branch of Human Rights Law, that is aimed at protecting individuals from violation and/or arbitrary interpretation of an individual's set of rights, including the right to liberty, presumption of innocence, and equality before the courts; generally, prevention of unlawful treatment of a person who is brought to charges before a court.

In addition to violation of the right to a fair trial, an individual could be subject to violations of other basic rights and freedoms, including rights to life, dignity, prohibition of torture, etc. Therefore, in order to understand the content of the right to a fair trial, one must go through the main instrument of the body of law that regulates that norm: the International Covenant on Civil and Political Rights of 1966 (the "ICCPR"), the international agreement that contains this right in Article 14.

The right to a fair trial is not expressly a non-derogable right under Article 4(2) of the ICCPR; however, the list of non-derogable articles includes a set of rights that implicitly relate to the right to a fair trial such as Article 6 (right to life¹), Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment²), Article 15 (no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed³). Taking into consideration the above-mentioned rights, one can conclude that Article 14 cannot be derogable if, in fact, those rights are primary obligations of States. However, one should mention that there are still discussions among specialists in the area of human rights, particularly among those who advocate that this right ought to be expressly non-derogable.

Section 1 of Article 14 of the ICCPR states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."⁴ First of all, the article refers to criminal charges, and that means that it refers to proceedings arising under criminal charges that are referred only against individuals. Secondly, the content of the article implies the rights and obligations of a person during two stages of a criminal procedure. The first stage is a set of rights and obligations during the procedure when a person is brought to criminal charges, including during the investigation process and preparation for the court proceedings. The second stage is the set of rights and obligations of a person during the court proceedings, including his/her right to different actions [in this report masculine terms will be used for convenience, but are intended to be gender neutral].

Interpretation of Article 14 of the ICCPR is usually made by the United Nations Human Rights Committee based on its practice in considering cases referred to it. In 2007, the Committee adopted *General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial*⁵. The Comment has interpretation of each right of a person charged with a criminal offence that is contained in the current Article. This Comment was used for the purposes of research to determine the sections into which Article 14 is separated. Those sections are the following: the

¹ United Nations, International Covenant of Civil and Political Rights, (1966), Art. 6.

² *Ibid*, Art.7.

³ *Ibid*, Art.15.

⁴ United Nations, International Covenant of Civil and Political Rights, (1966), Art.14 sec.1.

⁵ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007).

principle of equality before a court, presumption of innocence, rights of persons charged with a criminal offence, and right to a fair and public hearing. Each of these sections contains a set of rights under Article 14 that are going to be explored further in the current research.

Methodology

This research project employs a mixed methods design with triangulation across all data sources, including primary survey data, primary interview data, secondary literature, and international and national normative legal acts. Two rounds of piloting of quantitative research tools, as well as post-facto respondent validation of primary research inputs, were conducted to ensure validity of the results.

Research Question: This project began with two core research questions: (1) to what extent do fair trials rights exist in the Kyrgyz Republic, and (2) to what extent are any deficiencies in the trial process attributable to weaknesses in the legal framework and justice institutions? More than a year of preparatory research on fair trials by the Law Department of AUCA addressed these questions, identifying significant deficiencies in fair trial guarantees and *de facto* implementation of normative legal acts that guarantee procedural rights. This prior research included several months of court monitoring under the auspices of the AUCA Law Clinic, the Office of the Ombudsman of the Kyrgyz Republic, and the UNDP Rule of Law initiative. Trial monitoring identified problems with the treatment of defendants in court, frequent failures to follow standard procedures, and the mistreatment of observers (including the temporary arrest of one student observer who was mistaken for the criminal defendant). From 2016 to 2017, AUCA law faculty and students conducted additional preliminary case research to identify the body of cases where fair trial issues have been litigated and the topics on which they focus.

Based on this prior work and a literature review conducted from March to April of 2017, it became clear that fair trial rights are severely limited in the Kyrgyz Republic and that, while both the legal framework and justice institutions contribute to these deficiencies, justice institutions and the officials who comprise them appear to play an especially large role. In fact, failures to provide procedural fairness observed during trial monitoring and the large number of cases identified that deal with such issues suggested an endemic failure of the justice system to adhere to fair trial guarantees. The decision was thus made to narrow the research questions to: to what extent do current and prospective members of the justice system know about fair trial rights; what is their perception of these rights; and does either a lack of knowledge, a perception that these rights are unimportant, or both, contribute to the Kyrgyz Republic's poor track record on these issues?

Research Definitions and Conceptual Framework: Key definitions that underlie the research questions above were adopted from international law sources. Article 14 of the ICCPR and the Human Rights Committee's *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial* was used to define the universe of rights elemental to a fair trial, namely:

1. Equality before courts and tribunals;
2. A fair and public hearing by a competent, independent, and impartial tribunal established by law;
3. The presumption of innocence;
4. Additional rights of persons charged with a criminal offense, including the right to be informed promptly of the criminal charge(s) brought against him, adequate time and

facilities to prepare a defense, the right to communicate with counsel, the right to be tried without undue delay, and so on.

Research Tool Development, Piloting, and Implementation: With the project’s core questions and foundational definitions determined, a draft quantitative survey was completed with questions on each of the four fair trial elements listed above based upon the AUCA law department’s prior fair trials monitoring and case research. The quantitative survey went through two rounds of editing for style and content by all six faculty members of the research team before being translated and piloted. Piloting took place over the course of early May 2017, with detailed feedback provided on survey content, the wording of questions, and the ease of completion by seven professional members of the justice system and five students.

Stratified random sampling was the planned method of sampling for the quantitative survey, with a sample size of 227 individuals. This sample size was reached based on the indicative results of the pilot quantitative study, with a sample proportion of 30% chosen (i.e. an expected result of 30% of respondents agreeing or strongly agreeing with statements indicating shortcomings in fair trial procedures and implementation), a 5% margin of error, 90% confidence level, and an estimated population of 100,000 justice system actors in the Kyrgyz Republic.

Significant challenges were encountered almost immediately in achieving a true stratified, random sample. While the goal had been to access a mix of judges, prosecutors, advocates, law professors, law students, and civil society actors roughly proportional to their prevailing rates among justice system members overall, precise statistics on these prevailing rates were not discovered. Problematically, prosecutors in particular declined to participate in the study, with half of those asked to take part in the quantitative survey declining, and all of those asked to take part in qualitative interviews declining. Advocates and students were much more willing to respond, with close to 100% response rates. Overall, few individuals were open to participating if approached randomly by a researcher, but rather needed to be accessed through known channels: an acquaintance, a legal training instructor, a professor, etc. Advocates were accessed in partnership with the Advocates’ Training Center – where they complete their required training to maintain their bar membership – and were thus more willing to participate on the basis of the Center’s endorsement. As a result, the quantitative results of the study are more representative of the knowledge and perceptions of advocates and law students (who were open to professors’ requests that they participate), and the respondent pool cannot be said to be truly random. The precise breakdown of quantitative respondents by professional background is provided in chart M.1 below.

Chart M.1: Professions of quantitative survey respondents (whose data is used for the current interim update report)

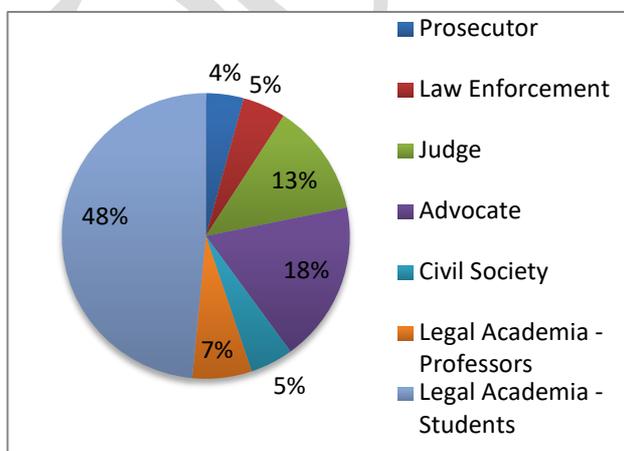


Figure 1 Professions of quantitative survey respondents

Note that, as of the time of publication of this report – August 15, 2017 – quantitative data collection is ongoing and additional responses are being processed.

Initial results from ongoing quantitative data collection were compiled and analyzed in June 2017 to identify emerging trends in the data. As expected, a significant proportion of justice system respondents were both aware of fair trial rights and perceived widespread problems with the implementation of them in the Kyrgyz Republic. This included, for example, the 32% of respondents believing it unlikely that a detainee would be informed of the reason(s) for his or her detention at the time it occurs, the 49% believing it unlikely that a suspect has an opportunity to question/have access to witnesses of the prosecution (and under the same condition) as to the witnesses of defense, the 33% believing it unlikely that a suspect would have access to private and confidential communication with legal counsel, and the 65% believing it likely that investigators would cause physical harm to or use other pressure to attain a confession from a suspect.

Building on these results, the research team developed a 15-question interview guide for in-person interviews with selected justice system representatives. The questions invited interviewees to help the research team understand emerging results from the quantitative survey, as well as to provide their own view of the validity of the outcomes. Qualitative interviews thus served a vital data validation function while helping the research team explore in more depth why these shortcomings in procedural fairness exist.

Qualitative interviews ranging from 45 to 120 minutes in length were held with ten members of the justice system in June and July 2017. In all, five advocates, two judges, one law professor, and two civil society representatives working on fair trial rights were interviewed. Notably, the research team attempted several times to speak with prosecutors but – as when distributing the quantitative survey – they roundly declined to participate.⁶

Data Analysis and Presentation: This report is an interim update on the study, and is written to supply parties interested in fair trials in the Kyrgyz Republic with initial insights based on the research team’s ongoing work. Quantitative data used for this report was cleaned, formatted, and analyzed over May and June 2017, though respondent answers are still being solicited for response through September 2017. Additional qualitative interviews are planned once the quantitative work is finalized. The current report thus provides initial results from the research team’s primary research, a brief overview of literature on fair trials in the Kyrgyz Republic, and comprehensive presentation of the domestic and international legal acts that provide the panoply of fair trial rights to citizens of the Kyrgyz Republic.

Ethical Considerations: Oral consent to participate in the study was attained from all primary research participants prior to their participation. Respondents to the quantitative survey were also provided with a written version of the oral consent script at the top of their surveys. Interviewees’ consent to participate was recorded as part of their interviews, and they were invited to review the content of the audio files prior to agreeing that the content be used for this report. All respondents were informed of their right to choose not to participate, their right not respond to specific questions if they so choose, that their identities would remain anonymous, that no private or personally identifiable information would be released about them, and that their responses were to be used solely for research purposes.

⁶ It is a significant research finding in and of itself that prosecutors were unwilling to participate in research on the justice system and fair trials. When asked why they would not participate – despite guarantees of anonymity and privacy – several noted it was not in line with their “professional position.” Researchers attempting to gather survey data from these prosecutors noted in subsequent research team meetings that prosecutors may not have trusted that their anonymity would be maintained, could have felt some insecurity in the safety of their official positions, or may have seen an inherent anti-law enforcement bias in the topic of fair trials. Regardless of the reason, the result is that prosecutors’ voices and opinions are notably absent from the current study and seemingly from fair trials research overall.

1. Equality before courts

Introduction. The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. This right is guaranteed under Article 14 of the ICCPR,⁷ which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” It specifically provides for equality before the courts and for the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, regardless of whether a criminal trial or a suit at law is involved.

The current section of this report analyzes one of the elements of the right to fair trial, that is, “equality before court” as set out in Article 14. The purpose of the research is to study the essence and content of the principle of equality of all before law and court in relation to all criminal cases. On this basis, the research objective is to develop provisions aimed at improving the theoretical model of this principle, identify the problems of its implementation on the basis of the analysis of survey results and interviews, and develop recommendations for improving criminal procedural legislation and rules on law enforcement activities.

1.1. Equal access to and equality before courts

The first sentence of Article 14(1) of the ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals”⁸ and has been interpreted to signify that all persons must be granted, without discrimination, the right of equal access to a court. This, on the one hand, means that establishing separate courts for different groups of people based on their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status would be a contravention of Article 14(1). On the other hand, this norm does not relate to the differentiation of the procedural rules that are applied during military courts in comparison to civilian courts.

The Kyrgyz Republic constitutionally recognized all fundamental human and citizen rights, and proclaimed the equality of citizens and the human right to a decent life and freedom. In the 2010 Constitution of the Kyrgyz Republic, a number of fundamental principles of the legal status of the individual are enshrined in a manner reflecting the wording of the international legal instruments on human rights. These international legal principles and norms have been repeatedly referred to in the decisions of the Supreme Court of the Kyrgyz Republic in support of its decisions. In some cases, the Supreme Court relied on universally recognized norms on rights and freedoms that were not directly consolidated in the Constitution of the Kyrgyz Republic.

Moreover, the Criminal Procedure Code of the Kyrgyz Republic provides (in part 4 of Article 1) that laws and other acts in the field of criminal proceedings shall not be adopted that abolish or derogate the rights and freedoms of a person and citizen, that violate the independence of the court and the competitive form of the process, or that give evidence to a pre-established force, contrary to universally recognized principles and norms of international law and the provisions of international treaties of an independent state in the Kyrgyz Republic.

The survey and interview results showed that equal access to the court and the overall principle of equality is not always observed in terms of equal treatment of everyone. The survey showed that certain reasons such as “being a foreigner” or a “poor person” might affect the criminal charges brought, if for different reasons. For example, if the person is a foreigner, then he might be arrested and kept in prison for the period of time of investigation as there might be concern that this person

⁷ United Nations, International Covenant of Civil and Political Rights, (1966), Art.14.

⁸ United Nations, International Covenant of Civil and Political Rights, (1966), Art. 14, Sec. 3.

would leave the country. Being a poor person also may influence how someone's rights are realized (e.g., he cannot hire good professional lawyer to assist with defense).

1.2. Equality before the court and tribunals

The HRC, in its Commentary, provides numerous circumstances in which the rights of equality before the courts and tribunals will be deemed as violated.⁹ Primarily, all individuals must be able to apply to the court without obstacles and regardless of personal affiliations, statuses or appearances¹⁰; in addition, all of the restrictions have to be explicitly stated and justified in the legislation¹¹.

The interview results show that both of the parties (defense and prosecution) are generally treated equally, but the prosecution office has domination on the subject of collecting evidence during investigation. The problem arises most particularly when the prosecutor's office does not provide the defense with information about, or access to, all witnesses and evidence (relying on the norm of the Criminal Procedural Code as to the "secrecy of investigation")¹² in order to prepare a defense.

1.3. Equality of parties

In guaranteeing "full equality" under Article 14 of the ICCPR, one of the additional requirements is the principle of equality of the parties.¹³ The primary duty of the State is to provide the same procedural conditions for both of the parties, as well as to "require a 'fair balance' between the parties, so that each party is given a reasonable opportunity to present their arguments in conditions that do not put such party into a disadvantageous situation in comparison with an opposing party".¹⁴

A number of legal acts in the Kyrgyz Republic directly or indirectly frame the equality of the parties. The Criminal Procedural Code of the Kyrgyz Republic stipulates that the defendant and the prosecutor in criminal proceedings are parties to whom the law provides equal opportunities to use procedural means to protect their rights and interests. The parties are provided with equal opportunities to acquaint themselves with the case materials, make petitions, ask questions to the process participants, witnesses or experts, demand recusals, give explanations to the court, and participate in the debate. Having equal procedural rights, the parties likewise have equal procedural duties.¹⁵ The Code of the Kyrgyz Republic on Administrative Responsibility in Article 3 provides that persons who have committed administrative violations are equal before the law – "[l]egislation on administrative liability is based on the principles of legality, equality of citizens before the law,

⁹ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 18.

¹⁰ United Nations Human Rights Committee Communication 468/1991, UN Doc CCPR/C/49/D/468/1991 (1993), Para 9.4.

¹¹ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 9.

¹² Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999 № 62, Art. 173.

¹³ United Nations, International Covenant on Civil and Political Rights, Art.14. Similar formulation can be found in the article 10 of the Universal Declaration of Human Rights, accepted by United Nations General Assembly's Resolution # 217 (III) on December 10, 1948, guarantees: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

¹⁴ Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999 № 62, Art. 256.

¹⁵ Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999 № 62, Art. 276.

democracy, humanism, justice, personal responsibility and the inevitability of punishment for an administrative offense.”¹⁶

One of the exceptions to the rules for equality is provided for the deputies of the parliament of the Kyrgyz Republic. According to the Constitution, a deputy of the Jogorku Kenesh of the Kyrgyz Republic has the right to immunity and cannot be prosecuted for activities in connection with the performance of the deputy's duties or for the results of voting in the Jogorku Kenesh during his term of office. Nonetheless, this exception is limited to the extent that any criminal or administrative responsibility is imposed by the court and is allowed only with the approval of the parliament (with the exception of grave crimes). As a general rule, a deputy cannot be detained or arrested, or subjected to a property search or personal search, except when he was caught at the scene of the crime. In these cases, the Prosecutor General makes a submission to the parliament within 24 hours to obtain its approval to prosecute the deputy. The deputy is subject to be released under the guarantee of the deputy's faction.¹⁷

The principle of equality is subject to special state legal protection in the Kyrgyz Republic. Its violation entails criminal liability. According to Article 134 of the Criminal Code of the Kyrgyz Republic, violation of the equality of human and civil rights and freedoms on the basis of sex, race, nationality, language, origin, property status and official status, place of residence, attitude to religion, beliefs, and/or membership in public associations which damages rights and legitimate interests of citizens is punished by a fine in the amount of two hundred to five hundred times the minimum wage, or in the amount of the wage or other income of the convicted person for a period of two to five months, or imprisonment for up to two years.

The survey and interview results show that equality of parties is not generally observed; for instance, as mentioned earlier, about half of the respondents replied that the defense does not always have access to the witnesses and evidence of the prosecution. The prosecution relies on a norm of the Criminal Procedural Code referred to as “the secrecy of investigation”. Also, the discussion above regarding representatives of the Jogorku Kenesh shows that the principle of equality of parties might not be observed in cases involving political figures according to the interviews conducted during the research.

Policy recommendations:

- To perform theoretical research in the area of the principle of equality of all before law and court, and how it can be practically integrated into the justice system of the State;
- To integrate into the criminal procedural law the principle of equality of all before law and court in a way that would promote the adequate meaning of the purpose and content of the principle.

2. Right to Fair Trial under Article 14 of the International Covenant on Civil and Political Rights: Rights of Persons Accused of Criminal Offenses

The “right to a fair trial” was expressly established as a fundamental international right with the adoption of the ICCPR. Although oftentimes referred to in the ICCPR and thought of as a “singular” right, the right to a fair trial is, in fact, a collective bundle of rights that are guaranteed to persons accused of criminal offenses. These conglomerate rights are applicable throughout the entire criminal procedural process, from the time a person is first accused or detained under the suspicion of having committed a criminal offense, and continuing through the investigative process up to and through the formal trial process. The vast majority of fair trial guarantees contained in the ICCPR are found in Section 3 of Article 14.

¹⁶ Kodeks ob Administrativnoi Otvetstvennosti [Administrative Code] August 4, 1998, № 114, Art. 3.

¹⁷ Konstitutsiia Kyrgyzskoi Respubliki [Konst. KR] [Constitution] June 27, 2010, Art. 16.

Although the ICCPR is an international treaty, its fair trial guarantees are not self-executing. Rather, these guarantees only become applicable and binding when a state ratifies the treaty. In the case of the Kyrgyz Republic, this ratification took place in 1994, with the treaty's provision entering into force in 1995. Actual implementation of the fair trial guarantees then occurs through the framework of national legislation. In Kyrgyzstan, implementation occurs through the Constitution and a number of other normative acts, including the Criminal Procedural Code, the Law on Prosecution Bodies, and the Law on the Committee of National Security 1994.

Of the many individual fair trial rights contained in Article 14, Section 3 of the ICCPR, primary attention in this research project was given to the following, all of which apply in the determination of any criminal charge against a person:

1. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
2. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
3. To be tried without undue delay;
4. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
5. To have free assistance of an interpreter if he does not understand or speak the language used in court;
6. To not be compelled to testify against himself or to confess guilt; and
7. To examine witnesses who are against him under the same conditions as those who are for him.¹⁸

To understand the full contemplated scope of these fair trial guarantees, it is helpful to refer to 2007 General Comment No. 32 by the United Nations Human Rights Committee.¹⁹ The Comment provides interpretation of and recommendations for implementing those guarantees based on the case law of the UN Human Rights Committee.

2.1. The right to be informed promptly, in detail and in a language the accused understands, of the nature and cause of the charge(s) against him

The General Comment to Article 14 states that the right of all persons charged with a criminal offense to be informed promptly and in detail, in a language that the accused understands, of the nature and cause of the criminal charges brought against them is “the first of the minimum guarantees in criminal proceedings.”²⁰ The right is applicable in all cases, including those in which the accused is not in detention.

Article 24 of the 2010 Constitution of the Kyrgyz Republic is the principal constitutional provision through which this right is implemented and guaranteed to criminal suspects in Kyrgyzstan. It states that “any detained person shall be informed [promptly] of the grounds for his detention; and 3) get a copy of the list of his rights”.²¹

The Criminal Procedure Code goes further in shaping the contours of this right. Article 40 states that a suspect “has the right to: 1) know what he is suspected of; 2) get a copy of the resolution on

¹⁸ United Nations, International Covenant of Civil and Political Rights, (1966), Art. 14, Sec. 3.

¹⁹ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007).

²⁰ Konstitutsiia Kyrgyzskoi Respubliki [Konst. KR] [Constitution], June 27, 2010, Art. 24.

²¹ *Ibid.*

institution of criminal proceedings against him or a copy of the record of detention.”²² (The same rights are afforded an accused person and defendant pursuant to CPC Article 42.)

The legal framework in Kyrgyzstan serves to implement the fair-trial guarantee of the criminally accused to be promptly informed about the nature of the charges they face. However, the current law contains no express provision that the accused be informed “in a language he understands”. In theory, the black letter of the Kyrgyz law could be satisfied, yet the fair-trial guarantees of Article 14 nonetheless be denied. For instance, if the accused is fully advised of the nature of the charges against him in either/or the Russian and Kyrgyz languages, it could be said that the requirements of CPC Article 40 have been met. Yet, if the accused is unable to understand the language in which the advisement is made, it would be as if no advisement was given at all, leaving the mandate of ICCPR Article 14 unmet. The Criminal Procedure Code Article 40 does give a suspect the right to “use services of an interpreter”.²³ It is, however, unlikely that a qualified interpreter would be present at the moment the required advisement is given, thereby, again, leaving the mandate of ICCPR Article 14 unmet.

An analysis of the data collected during this research project (“project data”) showed that thirty percent (30%) of those persons responding to the appropriate survey questions (“respondents”) did **not** believe that the right of a criminal suspect to be informed promptly of the nature and cause of the charge(s) against him was fully implemented and observed by law enforcement bodies in the Kyrgyz Republic. Although clearly not a majority opinion, the result is sufficiently high to raise the concern that the law enforcement authorities in Kyrgyzstan do not fully implement and observe this “first of the minimum guarantees in criminal proceedings” established under the ICCPR.

The project data did show that a majority of respondents felt that the law enforcement authorities in Kyrgyzstan did inform **detainees** of the nature of the charges against them. A small number of respondents opined that when the authorities did **not** inform a detainee about the reason of the detention, it was for the purpose of getting more information from the detainee, either through fear or intimidation or some other unspecified means.

In almost all cases when the cause and nature of detention is communicated to the accused, the detainee has already been brought into police custody and the arresting officer is in the process of drafting the necessary protocol required for detention. Sixty-two percent (62%) of respondents believed that, if the detainee speaks a language other than the state and/or official languages, the police promptly inform him about the reason of their detention in a language he understands. However, several interviewees responded that this is true only if the detainee is a Kyrgyz national. If the detainee is a foreigner who does not understand either Kyrgyz or Russian and a translator is requested, the detainee may remain in police custody for an extended period of time while a qualified translator who can explain the reason and nature of detention is obtained.

2.2. The right to have adequate time and facilities for the preparation of and to communicate with counsel of his own choice

The ICCPR guarantees a criminally accused person the right “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”²⁴ The General Comment to Article 14 notes that “[w]hat counts as ‘adequate time’ depends on the circumstances of each case.”²⁵ What constitutes “adequate time” will vary on a case-by-case basis and will be highly dependent on the nature of the charges - the more serious the charge(s), the

²² Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art.40, Para 1.

²³ *Ibid*, Art. 40, Para. 1.3.

²⁴ United Nations, International Covenant on Civil and Political Rights, Art. 14, Sec. 3(b).

²⁵ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 32.

more time that may be needed to prepare the case adequately. In certain circumstances, it may be necessary for the accused to request additional time for case preparation.

The Constitution of the Kyrgyz Republic is relatively silent as to this specific fair-trial guarantee. Article 24 of the 2010 Constitution states that “[from] the moment of actual detention a person should be kept safe, such person shall be granted an opportunity to protect himself personally, enjoy qualified legal aid from a lawyer as well as have an attorney”.²⁶ No other provision addresses the “adequate facilities” guarantee. The Criminal Procedure Code does, however, contain several relevant provisions.

From the moment of first interrogation, and in the case of detention from the moment the accused actually arrives at a law enforcement agency for preliminary investigation, a suspect has the right to have counsel present.²⁷ He has the right to “study records of the investigational proceedings he was involved in and comment on such records,” which comments must then be included into the official records.²⁸ (These same rights are afforded an accused person and defendant by CPC Article 42.)

Going to the realities in practice, however, the survey results show that around half of respondents stated that there will be enough time for preparation and the other half of respondents stated that attorney and defendant are not always provided with enough time for preparation of the defense. The interview results clarified that it sometimes happens that there is not enough time, or an attorney might not be qualified enough to be on time in preparation of the defense. As for “adequate facilities”, half of respondents noted that the conditions and facilities that are provided to meet with an attorney of an accused are not proper. First of all, there are technical limitations, and an attorney is not allowed to use any electronic device to record the conversation with an accused person. The conditions to meet with the attorney might be very severe, especially during winter time, with no heating, no electricity, etc. This might affect the process of preparation for a defense of the person accused of a criminal offence. Survey results and interview results showed that communication with an attorney is almost always private. The State observes this right in most of the cases (92% of participants stated this, along with 95% of interviewees). As for access to witnesses and materials, the survey results showed that around half of respondents (49%) do not believe that the defense attorney will have access to them. The interviewees also state that the prosecutor’s office has a practice of not providing access to all witnesses and materials of the case relying on the “secrecy of investigation”²⁹ norm of the Criminal Procedural Code.

2.3. The right to be tried without undue delay

The General Comment to ICCPR Article 14, Section 35 states: “The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3(c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice”³⁰. This provision identifies that time relates “not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal”³¹. All stages, whether in a court of first instance, or on appeal, must take place “without undue delay.”

²⁶ Konstitutsiia Kyrgyzskoi Respubliki [Konst. KR] [Constitution], June 27, 2010, Art. 24, Para. 5.

²⁷ Ugolovno - Protsessual’nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art.40, Para. 1.2.

²⁸ *Ibid*, Art. 40, Para. 1.10.

²⁹ Ugolovno - Protsessual’nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art. 176.

³⁰ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 35.

³¹ *Ibid*.

The survey results show that the cases are usually considered within the appropriate period of time, and without undue delay. However, the interview results show that in certain cases, the process of investigation and court procedure could be delayed due to circumstances such as political or business involvement. Overall, state body representatives generally observe the right of a person charged with criminal offence to consider a case without undue delay.

2.4. The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it

Article 14, paragraph 3(d) of the ICCPR contains three distinct guarantees:

“First, the provision requires that accused persons are entitled to be present during their trial. Proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, i.e., when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Consequently, such trials are only compatible with Article 14, paragraph 3(d) if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance.”³²

The national law of the Kyrgyz Republic has provisions in the Criminal Procedural Code that correspond to the provisions of the General Comment.

Second, the right of all accused of a criminal charge to defend themselves in person or through legal counsel of their own choosing and to be informed of this right, as provided for by Article 14, paragraph 3(d), refers to two types of defense. The first is when an accused consults a lawyer about the conduct of a case. The second is when a person refuses legal counsel. In certain cases, where the justice system requires it, a person cannot refuse the assistance of legal counsel (charge of a grave offense). Such restrictions shall be objective and there shall not be an absolute prohibition for an accused to refuse the legal assistance of an attorney.³³

National legislation presumes that a person accused of a criminal offense, by hiring an attorney, can provide the attorney with the accused’s preferences on how the case is to be conducted. The Criminal Procedural Code also states that the accused has the right to waive counsel, and that such waiver shall be allowed only upon the initiative of the accused.³⁴ However, the same legislation also identifies the cases in which, despite the refusal of legal assistance, an accused person shall have assistance of a lawyer (e.g., grave crimes, underage person, etc.).³⁵

Survey and interview results show that the right of an accused person to be tried in his presence is always observed. Usually, the accused is told that he has the right to defend himself in person or to have the assistance of an attorney during the detention procedure when the police officer drafts the detention protocol. In actual practice, almost everyone has an attorney either personally hired or provided by the State. The survey results show that, if an accused cannot afford to hire a legal counsel, he will be provided with the legal counsel by the State. However, interview results also showed that legal counsel provided by the State is not always helpful due to a number of

³² United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 36.

³³ *Ibid*, Para. 37.

³⁴ Ugolovno - Protsessual’nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art. 47, Para. 1.

³⁵ *Ibid*, Art. 46.

circumstances, including low salaries, insufficient training, “no incentives in winning the case”, and so on.

2.5. To have free assistance of interpreter if the accused does not understand or speak language used in court

The General Comment states that “[t]he right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by Article 14, paragraph 3(f) enshrines another aspect of the principles of fairness and equality in criminal proceedings. This right arises at all stages of the oral proceedings. It applies to aliens as well as to nationals.”³⁶

The national legislation of the Kyrgyz Republic also has a provision for free assistance of an interpreter if the person does not speak the language used in court.³⁷

Survey and interview results (97%) showed that at the stage of court procedure, an interpreter is always provided.

2.6. Not to be compelled to testify against himself or to confess guilt

“Article 14, paragraph 3(g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.”³⁸

The Kyrgyz Republic has a provision in its main law that “no one shall be convicted of a crime solely on the basis of his own confession to having committed an offense, as no one shall be obliged to testify against themselves”³⁹ The Criminal Procedural Code also states that all statements received in violation of law cannot be used in the materials of the case.

As a result of the survey and interviews, it is apparent that this right is not properly realized in Kyrgyzstan, as detained persons are often tortured to confess guilt in many cases. This occurs during both the detention and investigation process. A majority of survey respondents and interviewees stated that such a practice exists.

2.7. To examine witnesses who are against an accused under the same conditions as those for him

Section 3(e) of Article 14 of the ICCPR guarantees the right of accused persons to examine, or have examined, the witnesses against them, and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. “As an application of the principle of equality, this guarantee is important for ensuring an effective defense by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”⁴⁰

The national law of the Kyrgyz Republic has a general statement about the right of a person charged with a criminal offense to have access to all witnesses and materials of the case, to be

³⁶ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 40.

³⁷ Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art. 40.

³⁸ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 41.

³⁹ Konstitutsiia Kyrgyzskoi Respubliki [Konst. KR] [Constitution], June 27, 2010, Art. 26.

⁴⁰ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 39.

provided by the prosecutor's office.⁴¹ This right, protected by the Criminal Procedural Code of the Kyrgyz Republic, is not always implemented properly however. Interview and survey results show that, during the investigation process, the prosecutor might not show all evidence or provide access to all witnesses, relying on the "the secrecy of investigation"⁴² norm of the Criminal Procedural Code. Under this norm, a prosecutor has the right not to disclose all information including disclosing all witnesses, for the purpose of completing the investigation successfully (for example, to avoid a detainee bribing that witness).

3. The Presumption of Innocence

This section details the fair trial element of the presumption of innocence, as well as the Kyrgyz Republic's *de jure* and *de facto* realization of this core right. Each sub-section begins with a brief overview of the relevant international law definitions and holdings, followed by an overview of laws and regulations of the Kyrgyz Republic that confer and protect these rights as a matter of law. Finally, an assessment of the country's *de facto* realization of these rights is made based on relevant literature, as well as the results of the research team's quantitative and qualitative study conducted over spring 2017. Policy recommendations stemming from these observations are advanced for each element and presented as a whole at the end of this section. It should be noted that, given the expansive nature of the topic and the small space available for writing about it here, the information presented in this section is summary in nature and meant to provide only a high-level overview of the status of the presumption of innocence in the current justice system of Kyrgyzstan. Moreover, the current section focuses only on three core aspects of the presumption of innocence.

Introduction to the Presumption of Innocence: The presumption of innocence has been recognized as a core characteristic of fair trials in both international law and the domestic law of Kyrgyzstan. Indeed, the idea that "everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law"⁴³ is considered so important to the fair administration of justice that countries cannot derogate from this obligation under international law, even in times of emergency.⁴⁴ In the Kyrgyz Republic, Constitution Article 26(1) upholds the presumption of innocence, stating that, "everyone shall be presumed innocent of committing a crime until found guilty in accordance with the law," a guarantee that is repeated almost word for word in the Kyrgyz Republic's Criminal Procedure Code Article 17(1).

To transform these somewhat vague, general pronouncements on the presumption of innocence into implementable frameworks for legislation and adjudication, the UN Human Rights Committee has divided the presumption of innocence into six core elements.⁴⁵ Each of these elements are to be guaranteed by the State both *de jure* and *de facto* to meet their non-derogable obligations under international law. These six elements require that:

- (1) The court or tribunal must not predetermine the case before it;
- (2) guilt beyond reasonable doubt must be proved by the prosecution, except to the extent that presumptions of law or fact might be permissible;
- (3) the way in which an accused person is treated

⁴¹ Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code] June 30, 1999, №62, Art. 48.

⁴² *Ibid*, Art. 176.

⁴³ United Nations, International Covenant of Civil and Political Rights, (1966), Art. 14(2).

⁴⁴ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 16. Reiterating this point, the UN ECOSOC includes the presumption of innocence as a right that cannot legitimately be restricted under its Siracusa Principles (UN ECOSOC, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4, Annex (1985)).

⁴⁵ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 30. See also *Barberá, Messegué and Jabardo v Spain* [1998] ECHR 25, para 77.

should not be such so as to indicate that the accused is guilty; (4) and the media should avoid news coverage that undermines the presumption of innocence, and public authorities must similarly refrain from making public statements that would have the same effect. (5) The impact on the presumption of innocence of custodial remands or preventive detention and acquittals or stays of proceedings should also be noted, (6) as should the fact that violations of the presumption of innocence can be subsequently remedied through judicial proceedings.⁴⁶

3.1. The court or tribunal must not predetermine the case before it

At the core of the presumption of innocence is the concept that judges (and where relevant, jurors) shall not pre-decide the cases before them. Thus, the mere fact that an individual is a defendant or suspect must not lead judges to preconceive of him or her as having committed the crime charged. The European Court of Human Rights has found violations of this core guarantee where, for instance, judges have made public statements that reflect an assumption of the accused's guilt before trial.⁴⁷

As a matter of law in Kyrgyzstan, *de jure* guarantees against judicial predetermination of trial outcomes are embedded in statutes proscribing judicial bias. All judges must be “free from any preference or prejudice” in the administration of their official duties and must refrain from any comments that, “cast doubt on the impartial or objective review of the case.”⁴⁸ Judges are to “exercise justice impartially, without preference” for specific racial, national, sexual, or other categories⁴⁹ and to decide cases “independently and solely subject to the Constitution of the Kyrgyz Republic and its laws.”⁵⁰ Thus as a matter of law, judicial review cannot be based on discriminatory pre-conceptions. While these statutes do not directly state that a judge may not predetermine the outcome of a case before its conclusion, they rather clearly imply such a requirement via their ban of judicial bias, preference, and prejudice.

In practice, many of our respondents were skeptical that judges are free from prejudice, believing that a number of extraneous factors could influence judges' perceptions of a suspect's guilt. The most damning of such characteristics was poverty: 68% of respondents believed that a criminal defendant was at a disadvantage at trial if he was poor, while some 50% felt that being LGBT could negatively impact the trial outcome, and 36% believed so for ethnic minorities. This result – that being poor is perceived as the most significant disadvantage for criminal defendants during trial – would seem to be related to the perception that judges are susceptible to bribes and personal enrichment (and therefore poor people were destined to lose their cases). Correspondingly, 59% of respondents agreed that judges were “easily bribed” in criminal cases, while 65% believed that they can and do use their office to advance their own or their acquaintances' economic interests. Thus, according to the perceptions of those who work in the justice system, cases may be predetermined to some extent by judicial biases against inherent individual characteristics (such as ethnicity, gender, etc.), but even more so by wealth, influence, and corruption.

⁴⁶ OSCE, *Legal Digest of International Fair Trial Rights*, 2012, p. 91 – 92.

⁴⁷ See, e.g., *Lavents v Latvia* [2002] ECHR 786, para. 119.

⁴⁸ Kodeks Chesti Sud'i [Code of Ethics of the Judges of the Kyrgyz Republic, adopted on the X Conference of Judges of the Kyrgyz Republic], February 19, 2016. Judges are required by law to follow the requirements of this ethics code and to pledge an oath to fulfilling it when they take office (Law of the Kyrgyz Republic on the Status of Judges).

⁴⁹ Konstitutsionyi Zakon Kyrgyzskoi Respubliki “O Statuse Sudei Kyrgyzskoi Respubliki” [Constitutional Law of the Kyrgyz Republic “On the Status of Judges of the Kyrgyz Republic”], July 9, 2008, № 141, Art. 4.

⁵⁰ *Ibid.*, Art. 3, para. 2.

Table 1 Percent of respondents who believe that a suspect is at a disadvantage during criminal proceedings because he is:

Table 1 Percent of respondents who believe that a suspect is at a disadvantage during criminal proceedings

	Strongly agree	Agree	Disagree	Strongly Disagree	Don't know/No answer
Poor	41%	27%	9%	9%	14%
LGBT	35%	15%	13%	13%	23%
An ethnic minority	10%	26%	24%	21%	19%
A religious minority	13%	17%	30%	20%	21%
A woman	8%	24%	24%	24%	19%
A foreigner or stateless person	21%	25%	14%	21%	18%

The majority of those surveyed also believed that judges' independence was undermined not only by bribery and personal interest, but also due to their reliance on the government and political actors. Thus, 77% of respondents to the quantitative survey either "agreed" or "strongly agreed" with the statement that "the lack of independence of the judiciary from governmental authority is a significant problem," while only 35% agreed that "in practice, courts are free from political influence when they use their power" (51% disagreed outright and 13% did not answer). Political and governmental influences are thus seen as particularly strong, negative forces putting pressure on the judiciary and its ability to judge in an impartial manner. This – combined with skepticism regarding judges' use of their office for personal gain – results in a widespread belief that judges may pre-decide the outcome of cases or allow personal biases to influence their results.

Policy recommendations: Further research is needed to determine whether the widespread perception that judges are biased – as identified by pre-existing literature and the current study – reflects a reality of widespread corruption and bias, or is instead mere perception. Regardless, several recommendations can be made:

If bias and corruption are as widespread as they are perceived to be:

- In cases where judicial corruption has been identified, prosecute judges to the full extent of the law and publicize the results widely, making it clear that judicial prejudice will not be tolerated.
- Ensure that citizens are aware of mechanisms to complain about judicial corruption, such as the Office of the Ombudsman of the Kyrgyz Republic. When citizens do complain, conduct serious and in-depth investigations into their complaints and clearly communicate (i) whether anti-corruption proceedings will be pursued and (ii) the reasons why proceedings will or will not be pursued.

- Address the financial, social, and political incentives that may lead judges to deem poor defendants guilty at higher rates than rich defendants. Consider ways to decrease financial incentives (for example, by increasing judges' salaries) and social and political pressures (for example, by reviewing the rules by which judges must recuse themselves from specific trials, creating a system to randomly assign judges to trials and insulate them from pre-trial communication with the prosecution and defense, or putting in place an independent office to review judges' social and political networks and assign or remove them from cases accordingly).

In order to additionally address perceptions of the judiciary and the lack of trust in it:

- Conduct programs to connect ordinary citizens and members of the justice system informally, such as in interactive school trips to courtrooms and police stations where students can role-play and ask judges and officers questions (with parental participation if possible);
- Identify 'model' judges who make extra efforts to support defendants and use verdicts as teaching opportunities rather than purely punitive measures (particularly for minor offenses). Publicize the work of these judges and their approach to justice widely, including short clips and videos for use on T.V., radio, and social media.

3.2. Guilt beyond a reasonable doubt must be proven by the prosecution

Legislative guarantees of the presumption of innocence often include the phrase that no one shall be forced to prove his or her innocence. The European Court of Human Rights has held that, embedded within this concept are the dual elements that all doubts must be interpreted in the defendant's favor, while it is the prosecution that is responsible for overcoming those doubts and proving the defendant's guilt.⁵¹

The Kyrgyz Republic's Constitution, Criminal Procedure Code, and Law on the Prosecutor's Office make both of these requirements explicit as a matter of law. Constitution article 26(2) requires that, "any doubts in respect to culpability shall be interpreted for the benefit of the accused," a guarantee reiterated in Criminal Procedure Code articles 17(3) ("any doubts in respect to the culpability shall be interpreted for the benefit of the accused") and 17(4) ("a guilty verdict cannot be based on assumptions"). Meanwhile, the Criminal Procedure Code states that, "the burden of proving guilt and refuting arguments brought in the defense of a suspect (i.e., the accused) lies with the prosecution."⁵² The Law on the Office of the Prosecutor similarly makes clear that, "the duty of proving the defendant's guilt in court rests with the prosecutor."⁵³ Criminal defendants thus enjoy a legislative and constitutional right to receive the benefit of the doubt and to have prosecutorial responsibility for proving their guilt.

Interviews with advocates (i.e., criminal defense counsel) suggest that these standards are not always met. One advocate described several instances in which the prosecution failed to present any evidence against the accused apart from an assertion of guilt from the police.⁵⁴ Judges nevertheless "found [the defendants] guilty," and, in one case, blocked the defense attorney's efforts to introduce exculpatory evidence into the record for appellate review.

⁵¹ *Telfner v. Austria* [2001] ECHR 228, para 15; see also *Barberá, Messegue and Jabardo v. Spain* [1998] ECHR 25, para 77.

⁵² *Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR]* [Criminal Procedural Code], June 30, 1999, № 62, Art. 17(3). Note also that the Constitution of the Kyrgyz Republic places, "the burden of proof of guilt in a criminal case ... on the accuser" (art. 26(4)).

⁵³ Art. 40(2).

⁵⁴ Interviewee #5, June 2017. Because of the sensitive nature of the topics discussed, all advocates interviewed in-person were guaranteed full anonymity. As such, any information that may be personally identifiable has been removed and the use of gendered pronouns may or may not correlate with the actual gender of the interviewee(s).

Our current research reveals that almost none of these standards are met by the justice system in Kyrgyzstan. Though laws that explicitly ban the use of torture do exist,⁵⁵ specific guidelines on judicial treatment of evidence suspected to have been gained via self-incrimination (via torture) or on prosecutorial duties to disclose such issues and investigate alleged perpetrators were not identified. Meanwhile, some 39% of the study's quantitative respondents said they had dealt with at least one case where the accused complained of being tortured while in custody. Moreover, 109 (of 165, or 70%) had dealt with at least one case where the accused had suffered some form of degrading or cruel treatment while in custody, ranging from officials' refusal to provide needed food or water (29%) to physical violence (48%) to threats to health and safety (56%).⁵⁶ Notably, all 7 of the prosecutors (100%) to respond to the survey noted that they had dealt with at least one case where the accused complained of physical violence (100%), torture (100%), or threats to health and safety while in custody (100%). 29 of 30 advocates (97%) had dealt with at least one case of claimed mistreatment while in custody, with 77% having dealt with claimed threats to health and safety and 33% with torture. Of the 11 judges surveyed, six (55%) had encountered claims of mistreatment in their casework, while the remaining five judges left these questions blank. No judge claimed never to have dealt with such a case. Though the study pool is too small to draw conclusions, the authors believe that follow-up is needed to explore why prosecutors would have encountered such claims at a significantly higher rate than others (especially judges), and whether this finding holds over a large survey size. If so, it could indicate that significant investment is needed in ensuring that prosecutors adequately inform judges and advocates of the claims of torture brought by the accused.

Qualitative interviews were conducted with advocates who represent victims of torture to shed light on why this practice occurs and the ways in which they try to protect their clients from it, revealing a system of incentives and connections stacked against suspects. The most common reason raised for police torture was officers' desire to get a confession, with officers hoping to conclude cases quickly, and thereby meet their statistical performance metrics. Given police awareness of the Istanbul Protocol and the growing capacity of local doctors to implement it, methods that leave no physical mark – such as suffocation by plastic bag, placing acid inside the bags to burn suspects' lungs, and psychological torture – appear to be increasingly common.⁵⁷ Meanwhile, interviewed advocates cited the widespread use of “dezhournie advocati” or pocket advocates, who are either friends of or paid by the prosecution to ‘represent’ suspects by encouraging them to sign confessions and failing to raise claims of pre-trial torture (or to collect the evidence necessary to support such claims should their clients raise them themselves).⁵⁸ Though judges may be aware of the existence of such a practice, interviewed advocates complained that judges and prosecutors are themselves often friends, leaving their clients with little protection, and leaving advocates to face an uphill battle to bring such claims to trial.⁵⁹

⁵⁵ Ugolovno - Protsessual'nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code], June 30, 1999, № 62, Art. 305-1

⁵⁶ Of the 17 survey respondents who had never dealt with a case of the accused claiming some form of in-custody mistreatment, 14 were from legal academic backgrounds (13 students and 1 professor). Thus, while those with legal academic backgrounds constituted only some 55% of the survey respondent pool, they made up more than 82% of those who said they had never encountered a case where the accused complained of mistreatment while in custody. The disproportionate representation of students in this class of respondents may reflect their disconnect from the realities of the trial system, or simply the fact that many of them have yet to see such issues firsthand. Those with more direct trial experience – such as prosecutors and advocates – had significantly higher rates of encountering such problems (100% and 97%, respectively).

⁵⁷ This finding echoes work done by the Ombudsman's Office of the Kyrgyz Republic, whereby the use of such practices was found to be widespread and increasingly common (2015).

⁵⁸ For more on ‘pocket lawyers,’ see UNDP's *Access to Justice for Vulnerable Groups in the Kyrgyz Republic* (2014).

⁵⁹ These and similar problems are covered in detail in the four death-in-custody cases ruled on by the Human Rights Committee in the past several years, namely: *Moidunov v. Kyrgyzstan*, *Akunov v. Kyrgyzstan*, *Ernazarov v. Kyrgyzstan* (CCPR/C/113/D/2054/2011), and *Akmatov v. Kyrgyzstan* (CCPR/C/115/D/2052/2011).

Policy recommendations:

- Review the way in which prosecutorial and judicial performance is measured, such that justice officials are incentivized to make well-reasoned decisions on the basis of evidence rather than speeding cases through court;
- Advocates and legal academics can increase pressure on courts to make reasoned decisions by comprehensively reviewing case law and published judicial decisions, raising red flags where judges appear to have side-stepped standards of proof. Active court monitoring by civil society organizations – in partnership with advocates – can also raise pressure by creating public and vocal oversight of court process;
- Comprehensive legal system reform is needed to de-incentivize and properly prosecute instances of official torture. This could include (at a minimum):
 - Creating an Office of Police Investigations to ensure that charges of torture by police are handled by independent prosecutors who are not friends or acquaintances of the officers in question;
 - Reform of police performance metrics to remove incentives for quick confessions;
 - Identify, investigate, and disbar or prosecute pocket advocates;
 - Create facilities for advocates to be present inside of police stations and court facilities such that the accused can have immediate access to a lawyer (regardless of whether the police choose to inform him or her of this right);
 - Put in place clear regulations and standard operating procedures for prosecutors, advocates, and judges to follow when they are faced with claims of in-custody detention, and ensure that all justice system officials are aware of these procedures in detail;
 - Numerous additional recommendations to end torture in the Kyrgyz Republic have been advanced by the OSCE, Open Societies Foundation, and Anti-Torture Coalition. The authors of this report embrace these recommendations while emphasizing those listed above.

3.3. The accused must not be treated in a way that indicates guilt during trial

The presumption of innocence may be violated if the behavior of the judge or the conditions during trial give the impression that the defendant is guilty. Thus, the UN Human Rights Committee has stated that the shackling or caging of defendants during trial – which may give the impression that he is a dangerous criminal – are generally seen to violate the presumption of innocence.⁶⁰ Disparaging or prejudicial comments by the judge can also undermine the presumption, as can the failure of a judge and other justice officials to respond to prejudicial or hostile words or actions made by others in or out of the courtroom during trial.⁶¹

The Law on the Status of Judges similarly requires that judges not make public statements on cases at issue in court,⁶² while the Criminal Procedural Code requires that they “create the necessary conditions for the parties to exercise their procedural rights and obligations.”⁶³ This latter obligation presumably includes responding to and stopping hostile comments and actions by observers during trial that could undermine the defendant’s presumed innocence or impede the defense in making its case.

Especially in high profile and politicized cases, judges have failed to protect defendants – and their lawyers – from treatment that contributes to the appearance of guilt during trial. Indeed, even the

⁶⁰ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 30.

⁶¹ See, e.g., *Gridin v. Russian Federation*, HRC Communication 770/1997, UN Doc CCPR/69/D/770/1997 (2000).

⁶² Konstitutsionyi Zakon Kyrgyzskoi Respubliki “O Statuse Sudei Kyrgyzskoi Respubliki” [Constitutional Law of the Kyrgyz Republic “On the Status of Judges of the Kyrgyz Republic”], July 9, 2008, № 141, Art. 5(2)(2).

⁶³ Ugolovno - Protsessual’nyi Kodeks Kyrgyzskoi Respubliki [UPK KR] [Criminal Procedural Code], June 30, 1999, № 62, Art. 18(6).

Supreme Court of the Kyrgyz Republic has failed to protect defendants from such abuse. In one indicative example from a 2013 hearing that overturned a defendant's prior acquittal, Supreme Court judges "did not intervene to prevent [victims and witnesses for the prosecution] from assaulting the defense team or obstructing the hearing."⁶⁴

Policy recommendations:

- Implement legislation banning the use of cages or other incriminating spaces for holding defendants during trial;
- Provide judges and courtroom guards with information on what behavior is unacceptable in the courtroom as a violation of the presumption of innocence and put in place both legislation and implementing regulations that require judges to respond to such behavior;
- Create standard operating procedures for judges and courtroom guards – with simple checklists and instructions for proper implementation – detailing how to respond to behavior in the courtroom that undermines the defendant's rightful presumption of innocence;
- Train judges, prosecutors, courtroom guards, and defense attorneys on the proper response to in-courtroom behavior that undermines the presumption of innocence and provide additional training to defense attorneys on the steps they can take if judges fail to protect them and their clients.

4. Fair and public hearing by a competent, independent and impartial tribunal

The current section looks at the issues of the competency, independency, and impartiality of the judiciary. It provides a legislative analysis on this element at both international and national levels, as well as providing some case law of the Kyrgyz Republic and results of the quantitative and qualitative data collected for the purposes of current research project over spring 2017. The sections below look separately at each of the following issues: (a) defining tribunal, (b) competent tribunal, (c) independent tribunal, and lastly (d) impartial tribunal.

One of the fundamental, guaranteed fair trial rights is the right to be heard before a competent, independent and impartial tribunal. It has been prescribed in Article 14 of the ICCPR, which stipulates:

*"(1) ...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...."*⁶⁵

Similar guarantees are expressed in treaties of regional mechanisms of human rights protection. For example, Article 6 of the ECHR stipulates

*"(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."*⁶⁶

⁶⁴ "Kyrgyzstan: Violence Mars Supreme Court Hearing," Human Rights Watch, 2013, accessed 31 July 2017, available: <https://www.hrw.org/news/2013/04/04/kyrgyzstan-violence-mars-supreme-court-hearing>).

⁶⁵ United Nations, International Covenant of Civil and Political Rights, (1966), Art.14, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 1 March 2017].

⁶⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, Article 6, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html> [accessed 1 March 2017].

4.1. Tribunal

In comparative criminal justice, one can notice that there is no agreed upon opinion of what constitutes a ‘tribunal’. For some states, it could be courts of general jurisdiction; other states may practice military tribunals, customs courts, or other variations. Therefore, for the purposes of assessing the fair trial rights in Kyrgyzstan, it is important to define the notion of tribunal and how our understanding of tribunal corresponds to existing international standards, if there is such a thing.

The notion of a ‘tribunal’ is described by the Human Rights Committee as “a body, regardless of its denomination, that is established by law, is independent of the executive and the legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature”.⁶⁷

The European Court of Human Rights has referred to the concept of tribunal, in the substantive sense of this expression⁶⁸, as not necessarily being a court of law in the classic sense integrated within the standard judicial machinery of the country⁶⁹. The main characteristics of a ‘tribunal’ within the meaning of Article 6 are the power to give a binding decision that may not be altered by a non-judicial authority⁷⁰, combined with a mandate to determine matters within the tribunal’s competence “on the basis of rules of law, following proceedings conducted in a prescribed manner”⁷¹. As to the scholarly work in this field, just as with international mechanisms, there is no agreed upon opinion of the notion of tribunal. However, a majority of definitions share some common ground, with features including:

- Established by law;
- Should reach decisions on the basis of the clear prescription of law;
- Independence from other branches;
- No possibility for a decision to be altered by non-judicial authorities.⁷²

4.2. Competent Tribunal

One of the requirements of Article 14 is that State Parties shall form competent tribunals. According to General Comment 32 of the Human Rights Committee to Article 14 of the ICCPR, the following are the basic features of what constitutes a competent tribunal:

- It shall be established by law;
- It shall reach decisions on the basis of the clear prescription of law;
- There is no possibility for a decision to be altered by non-judicial authorities.

The Constitution of the Kyrgyz Republic, Criminal Code, Criminal Procedural Code and Laws on Status of Judges will be analyzed on the basis of the abovementioned requirements.

According to Article 93 of the 2010 Constitution: Justice in the Kyrgyz Republic shall be administered only by a court. Judicial power shall be exercised by means of constitutional, civil,

⁶⁷ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 18.

⁶⁸ Sramek v Austria [1984] ECHR 12, para 36; Belilos v Switzerland [1988] ECHR 4, Para 64.

⁶⁹ Campbell and Fell v the United Kingdom [1984] ECHR 8, Para 76.

⁷⁰ Findlay v the United Kingdom [1997] ECHR 8, para 77; Van de Hurk v the Netherlands [1994] ECHR 14, Para 45.

⁷¹ Sramek v Austria [1984] ECHR 12, para 36; Belilos v Switzerland [1988] ECHR 4, Para 64.

⁷² Allemeersch, B., A. Alen, and B. Dalle, “Judicial independence in Belgium” In *Judicial independence in transition—strengthening the rule of law in the OSCE region* (Max Plank Institute’s series on comparative and International law, ed. A. Seibert-Fohr, Heidelberg: Springer, 2012) 307–356.

Bell, J., *Judiciaries within Europe* (Cambridge: Cambridge University Press, 2006).

Garoupa, N., and T. Ginsburg, Guarding the guardians: Judicial councils and judicial independence, *The American Journal of Comparative Law* 57 (2009): 103–134.

criminal, administrative and other forms of legal proceedings. Specialized courts may be established by law. Creation of extraordinary courts shall not be permitted.

Thus, requirements prescribed in the Constitution correspond to the criteria for a competent tribunal developed by the HRC in General Comment 32.

Constitutional law on status of Judges No. 141 prescribes the following:

Judicial power in the Kyrgyz Republic belongs only to the courts represented by judges: Supreme Court of the Kyrgyz Republic (hereinafter - the Supreme Court); The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (hereinafter - the Constitutional Chamber of the Supreme Court); Local courts of the Kyrgyz Republic.

Analyzing the current legislative framework of the Kyrgyz Republic in this area allows us to conclude that both on the constitutional and sub-constitutional level existing legislation corresponds to the requirements for a competent tribunal as required by ICCPR Article 14.

4.3. Independent tribunal

Review of the existing literature on independent tribunals could be summarized covering the following:

- The manner in which judicial officers are appointed;⁷³
- The security of tenure of judicial officers, i.e., the duration of their term of office and the general principle that they should not be subject to removal;⁷⁴
- The existence of adequate guarantees protecting the tribunal and its members from external pressures;⁷⁵
- An outward appearance that the tribunal is independent.⁷⁶

Thus, for the purposes of conducting a country-wide analysis, it is essential to review the following laws of the Kyrgyz Republic: Constitution, Constitutional law on Status of Judges, Constitutional law on Constitutional Chamber of the Kyrgyz Republic, Constitutional Law on the Supreme Court of the Kyrgyz Republic and other relevant rules regulating the activities of the judiciary.

Within the framework of Article 14(1), the legislative framework of the Kyrgyz Republic will be analyzed as to its conformity with requirements for a competent, independent and impartial tribunal.

Another important requirement of Article 14 as to the nature of tribunals as a guarantee of fair trial rights is that the tribunal shall be independent. Based on General Comment 32 to Article 14 developed by the Human Rights Committee, the following features could be underlined as key components of what constitutes an independent tribunal:

⁷³ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 19 *Le Compte, Van Leuven and De Meyere v Belgium* [1981] ECHR 3, para 57; and *Campbell and Fell v the United Kingdom* [1984] ECHR 8, para 78; *Findlay v the United Kingdom* [1997] ECHR 8, para 73; *Bochan v Ukraine* [2007] ECHR, para 65; *Moiseyev v Russia* [2008] ECHR 1031, para 173.

⁷⁴ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 19; and *Campbell and Fell v the United Kingdom* [1984] ECHR 8, paras 78, 80; *Findlay v the United Kingdom* [1997] ECHR 8, para 73; *Bochan v Ukraine* [2007] ECHR, para 65; *Moiseyev v Russia* [2008] ECHR 1031, para 173.

⁷⁵ United Nations Human Rights Committee, General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), Para. 19; *Piersack v Belgium* [1982] ECHR 6, para 27; and *Campbell and Fell v the United Kingdom* [1984] ECHR 8, para 78; *Findlay v the United Kingdom* [1997] ECHR 8, para 73; *Bochan v Ukraine* [2007] ECHR, para 65; *Moiseyev v Russia* [2008] ECHR 1031, para 173.

⁷⁶ *Delcourt v Belgium* [1970] ECHR 1, para 31; and *Campbell and Fell v the United Kingdom* [1984] ECHR 8, para 78; *Findlay v the United Kingdom* [1997] ECHR 8, para 73; *Bochan v Ukraine* [2007] ECHR, para 65; *Moiseyev v Russia* [2008] ECHR 1031, para 173.

- Clear procedures and qualifications using objective criteria for the appointment of judges;
- Guarantees relating to their security of tenure until a mandatory retirement age or expiry of their term of office;
- Promotion, transfer, suspension and cessation of their functions (+ disciplinary sanctions against them);
- Actual independence of a judiciary from political interference by the executive branch and legislature.

On the basis of the abovementioned requirements, the Constitution of the Kyrgyz Republic, Criminal Code, and Laws on Status of Judges, Law on Supreme Court and Local Courts, Constitutional law on Constitutional Chamber of the Kyrgyz Republic and Law on Council for Selection of Judges will be analyzed. As for the last part of the independent tribunal component, the results of the survey conducted by our research team will be presented to reflect the actual independence of the judiciary from the political sphere.

The analysis of the existing law on appointment and dismissal procedures of the judiciary demonstrates that, even though formally those requirements might correspond to the criteria set forth by the Article 14 of the ICCPR, certain restrictions such as a probationary period and very broad terms such as “unimpeachable conduct” might also undermine the independence of the judiciary. In order to test the formal law against the actual practice, our research team analyzed the results of our. The results relating to the independence of the judiciary are depicted in Figures 2 and 3 below.

Based on an analysis of 165 replies, 110 (74%) of survey participants agree or strongly agree that the lack of independence of the judiciary is a significant problem, and 55 (25%) disagree or fully disagree.

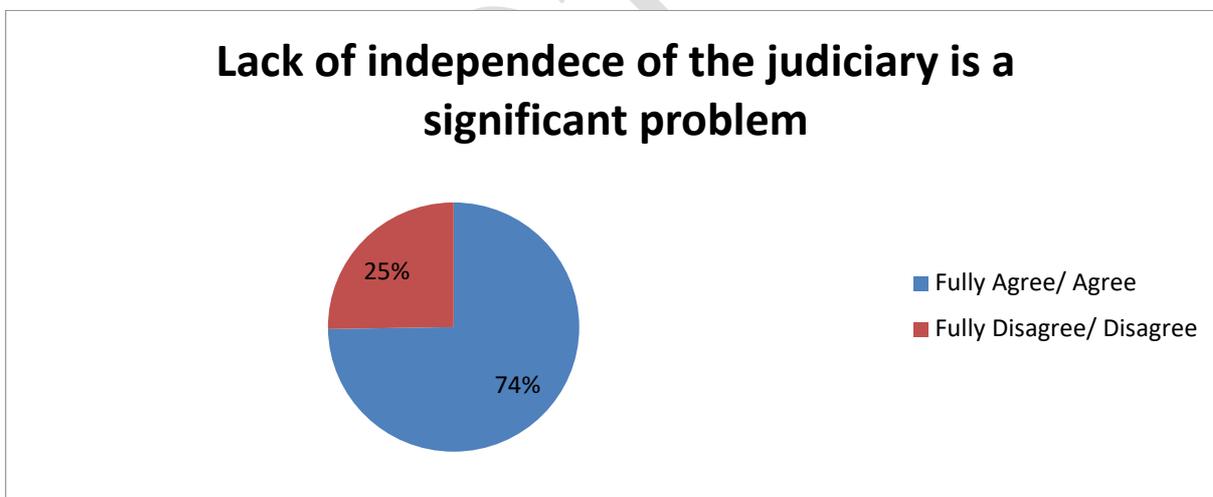


Figure 2 Survey outcomes on the issues of independence of the judiciary

Based on the same survey results, 42% of respondents agree, and 45% of respondents disagree, that state officials do not always obey the decisions of the courts.

State officials do not always obey the decisions of the court



Figure 3 Survey outcomes on the issue of obedience of the court decisions

These results demonstrate that a lack of judicial independence is one of the significant problems existing in the Kyrgyz Republic. Since the right to a fair and public hearing by a competent and independent tribunal is one of the key components of the fair trial right, it is essential to note that, in order for the Kyrgyz Republic to provide a guaranteed fair trial right, it also has to work on improvement of judicial independence.

Conclusion

The current research showed that the Kyrgyz Republic is no different from the vast majority of countries in the world today, in that it recognizes the fair-trial guarantees of persons accused of criminal offenses as defined by international treaties such as the International Covenant on Civil and Political Rights, and implements them through its national legal framework, including its Constitution and other procedural codes and normative legal acts. Nonetheless, the Kyrgyz Republic still faces many challenges when it comes to the implementation of certain specific fair-trial guarantees, such as the presumption of innocence, access to legal counsel, prohibition against torture, and equality before the court, to name just a few.

In achieving its objective, the research team surveyed over one-hundred sixty (160) criminal defense advocates, judges, prosecutors, academics, students and private citizens from throughout the country. Following an analysis of the collected survey data, numerous interviews were conducted with selected members of these groups to gain insight and understanding of the possible reasons for the findings. Through the analysis of the collected data, both the survey results and personal interviews, it was discovered that the understanding fair trial rights is different among lawyers who work as state officials (i.e., prosecutors) and those who work privately representing criminally accused persons (i.e., defense advocates). The perception of state officials still is heavily influenced by the country's former Soviet legal tradition, which itself then heavily influences the manner in which the State interprets and implements fair-trial guarantees, as the prosecutor's office is the dominant player in addressing criminal charges. Criminal defense advocates also are of the opinion that the State continues to heavily influence the way in which the fair-trial guarantees are implemented in the pre-trial stages of the criminal process.

It can be stated that suspects and detained persons in the Kyrgyz Republic have an abundance of constitutional rights along with the rights guaranteed by the ICCPR; however, numerous barriers to the realization of those rights exist within the Kyrgyz Republic. While both the legal framework and justice institutions contribute to these deficiencies, justice institutions and the officials who comprise them appear to play an especially large role. Therefore, the promotion and strengthening of the principles of rule of law, legality and constitutionalism among all branches of government

for the purposes of improvement of fair trial rights in the Kyrgyz Republic are crucially important. State servants must be called to account when they fail to comply with their duties and obligations.

Evidently, there needs to be a change in order to properly ensure the rights of every accused person awaiting trial in Kyrgyzstan. The researchers hope that the recommendations suggested will assist the government in a small way to re-evaluate the problems relevant to fair trial rights and to bring about some kind of positive change in the treatment of detainees/suspects.

DO NOT COPY

Sources Cited

Case law:

Barberá, Messegué and Jabardo v. Spain [1998] ECHR 25.

Gridin v. Russian Federation, HRC Communication 770/1997, UN Doc CCPR/69/D/770/1997 (2000).

Lavents v Latvia [2002] ECHR 786.

Telfner v Austria [2001] ECHR 228.

Delcourt v Belgium [1970] ECHR 1

Campbell and Fell v the United Kingdom [1984] ECHR

Findlay v the United Kingdom [1997] ECHR

Bochan v Ukraine [2007] ECHR

Moiseyev v Russia [2008] ECHR

Pescador Valero v Spain [2003] ECHR

Resheniye Konstitutsionnoy Palaty Verhovnogo Suda Kyrgyzskoy Respubliki ot 29 oktyabrya 2014 g. № 52-r, [Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, 29 October 2014 № 52-r]

Resheniye Konstitutsionnoy Palaty Verhovnogo Suda Kyrgyzskoy Respubliki ot 15 fevralya 2017 g. № 2-p. [Decision of the Constitutional Chamber under the Supreme Court of the Kyrgyz Republic, 15 February 2017 № 2-p.]

Opredeleniye Kassatsionnoy instantsii Bishkekskogo Gorodskogo Suda ot 18 sentyabrya 2013 g. [Ruling of the Cassation Level of the Bishkek City Court of 18 September 2013]

Postanovlenie Oktyabrskogo Rayonnogo Suda goroda Bishkek ot 4 fevralya 2015 g. [Ruling of the Oktyabr' District Court of Bishkek of 4 February 2015]

Postanovlenie Oktyabrskogo Rayonnogo Suda goroda Bishkek ot 16 yanvarya 2015 g. [Ruling of the Oktyabr' District Court of Bishkek of 16 January 2015]

Postanovlenie Oktyabrskogo Rayonnogo Suda goroda Bishkek ot 26 dekabrya 2013 g. [Ruling of the Oktyabr' District Court of Bishkek of 26 December 2015]

Postanovlenie Leninskogo Rayonnogo Suda goroda Bishkek ot 26 dekabrya 2013 g. [Ruling of the Lenin District Court of Bishkek of 26 December 2015]

Postanovlenie Oktyabrskogo Rayonnogo Suda goroda Bishkek ot 27 yanvarya 2014 g. [Ruling of the Oktyabr' District Court of Bishkek of 27 January 2014]

Legal normative acts:

International Covenant on Civil and Political Rights, 16 December 1966, United Nations

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950

Constitution of the Kyrgyz Republic (2016). Further

Criminal Procedure Code of the Kyrgyz Republic.

Ethics Code of Judges of the Kyrgyz Republic, adopted at the Conference of Judges of the Kyrgyz Republic on 19 Feb. 2016.

Law of the Kyrgyz Republic on Mass Media, 2 Jul. 1992 No. 938-XII (last amended 4 Jan. 2017 No. 1).

Law of the Kyrgyz Republic on the Status of Judges, 9 Jul. 2008 No. 141 (last amended 23 Dec. 2016 No. 216).

Interviews:

Anonymous interviews conducted during the research project

Personal Interview, Kakhramondzhon Sanginov (15 Jun. 2017).

Articles and commentary:

Abramson, Leslei W. "Appearance of Impropriety: Deciding When a Judge's Impartiality "Might Reasonably Be Questioned." *Georgetown Journal of Legal Ethics* 14 (2000-2001): 55-102.

Allemeersch, B., A. Alen, and B. Dalle. 2012. Judicial independence in Belgium. In *Judicial independence in transition—strengthening the rule of law in the OSCE region*, Max Plank Institute's series on comparative and International law, ed. A. Seibert-Fohr, 307–356. Heidelberg: Springer.

Bell, J. 2006. *Judiciaries within Europe*. Cambridge: Cambridge University Press.

Bodnar, A. 2012. Judicial independence in Poland. In *Judicial independence in transition—strengthening the rule of law in the OSCE region*, Max Plank Institute's series on comparative and international law, ed. A. Seibert-Fohr, 667–738. Heidelberg: Springer.

Boyum, K., and L. Mather (eds.). 1983. *Empirical theories about courts*. New York: Longman.

De Lange, R. 2012. Judicial independence in The Netherlands. In *Judicial independence in transition – Strengthening the rule of law in the OSCE region*, Max Plank Institute's series on comparative and international law, ed. A. Seibert-Fohr, 231–272. Heidelberg: Springer.

European Commission for the Efficiency of Justice (CEPEJ). 2010. *European judicial systems, efficiency and quality of justice*. Strasbourg: Council of Europe Publishing. Available online via <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet>.

European Judicial Training Network. "Judicial Impartiality: Between Law and Ethics." Accessed July 28, 2017. http://www.ejtn.eu/Documents/Themis%202012/Written%20paper_Spain_Magistrates_Ethics_and_Deontology.pdf.

Galligan, D.J. 2003. Legal failure: Law and social norms in post-communist Europe. In *Law and informal practices*, ed. D.J. Galligan and M. Kurkchiyan. Oxford: Oxford University Press.

Garapon, A., and H. Epineuse. 2012. Judicial independence in France. In *Judicial independence in transition – Strengthening the rule of law in the OSCE region*, Max Plank Institute's series on comparative and international law, ed. A. Seibert-Fohr, 273–306. Heidelberg: Springer.

Garoupa, N., and T. Ginsburg. 2009. Guarding the guardians: Judicial councils and judicial independence. *The American Journal of Comparative Law* 57: 103–134.

Guarnieri, C. 2007. *Autonomy and responsibility of the council: Should it be accountable for its actions?* SSDD working paper series, vol. 2. http://www.cires.unifi.it/upload/sub/SSDD/WORKING%20PAPERS/WP_Guarnieri.pdf.

Human Rights Watch. 2012. *Kyrgyzstan: Skewed Justice Over 2010 Conflict*. Available: <https://www.hrw.org/news/2012/10/28/kyrgyzstan-skewed-justice-over-2010-conflict> (last accessed 31 July 2017).

Human Rights Watch. 2013. *Kyrgyzstan: Violence Mars Supreme Court Hearing*. Available: <https://www.hrw.org/news/2013/04/04/kyrgyzstan-violence-mars-supreme-court-hearing> (last accessed 31 July 2017).

International Commission of Jurists. 2016. Kyrgyz Republic: ICJ observes an appeal hearing of the case against Azimzhan Askarov. Available: <https://www.icj.org/kyrgyz-republic-icj-observes-an-appeal-hearing-of-the-case-against-azimzhan-askarov/> (last accessed 31 July 2017).

Loucaides, Loukis G. *The European Convention on Human Rights: Collected Essays*. Leiden: Martinus Nijhoff Publishers, 2007.

OSCE Office for Democratic Institutions. 2012. *Legal Digest of International Fair Trial Rights*. Warsaw, Poland.

Samuels, Alec. "Impartiality: The British Judge." *Cambrian Law Review* 5 (1974): 44-60.

UN ECOSOC, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4, Annex (1985)

UN Human Rights Committee, General Comment 32 (*Article 14: Right to equality before courts and tribunals and to a fair trial*).

UNDP. 2014. *Access to Justice for Vulnerable Groups in the Kyrgyz Republic*.

Annexes

Annex I – Survey

The American University of Central Asia Law Division is conducting research on the topic of fair trial standards in the Kyrgyz Republic. Your input is very important and we would like to learn from your experiences and knowledge.

This survey contains 32 questions and is expected to take roughly 20 minutes to complete. You can choose at any time to skip a question, refuse to answer a question, or to end the survey if you choose. Your answers will be kept confidential and used for research purposes only. There is no such thing as a "good" or "bad" answer; please simply respond according to what you believe.

After the survey, we may reach out to you personally to ask if we can attribute your responses to you by name in research publications. You are free to refuse this request, and to ask to review all usages of your name and any personal identification information in any publications prior to its release. You are free at any time to revoke your participation or ask that your responses not be used.

Thank you for your time and cooperation.

Do you agree to participate in this survey?

- Yes, I agree to participate
- No, I do not wish to participate

For Statistical Purposes Only

Age	<input type="checkbox"/> 20-29	<input type="checkbox"/> 30-39	<input type="checkbox"/> 40-49	<input type="checkbox"/> 50-59	<input type="checkbox"/> 60-69	<input type="checkbox"/> 70+
Gender	<input type="checkbox"/> Male	<input type="checkbox"/> Female				

Region	<input type="checkbox"/> Chui	<input type="checkbox"/> Osh	<input type="checkbox"/> Batken	<input type="checkbox"/> Issyk kul	<input type="checkbox"/> Talas	<input type="checkbox"/> Naryn	<input type="checkbox"/> Jalal-Abad
Position	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Judge	<input type="checkbox"/> Attorney	<input type="checkbox"/> Practicing Lawyer	<input type="checkbox"/> Professor	<input type="checkbox"/> Civil Society	<input type="checkbox"/> Other
Education	<input type="checkbox"/> Law	<input type="checkbox"/> Other					
Year Degree Received							

Rights of Persons Charged with Criminal Offense

Please answer the following questions according to your perception of how the laws are applied in practice in the Kyrgyz Republic. Please mark your answers with an X in the appropriate box.

Section I – Pre-Trial Rights of the Accused

The following questions describe hypothetical situations. In each question, we will provide you with a set of assumptions. Please select the option that best represents your views.

Hypothetical Scenario No. 1

Please assume that a poor person is arrested on suspicion of robbery with violence. Assume that the suspect is taken into custody and detained at a local police station in the city where you live.

1. How likely is it that the suspect, at the time of arrest, will be informed of the reason(s) for his/her arrest?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Know/Not Applicable
--------------------------------------	---------------------------------	-----------------------------------	--	--

2. How likely is it that the suspect, at the time of arrest, will be informed of the reason(s) for his/her arrest in a language that he/she understands?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Know/Not Applicable
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3. How likely is it that the suspect, at the time of arrest, will be informed of the charge(s) against him/her?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Know/Not Applicable
--------------------------------------	---------------------------------	-----------------------------------	--	--

4. How likely is it that the suspect, at the time of arrest, will be informed of the charge(s) against him/her in a language that he/she understands?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Know/Not Applicable
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5. How likely is it that the suspect, after being arrested, will be promptly brought before a judge or other judicial officer authorized by law to exercise judicial power?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
--------------------------------------	---------------------------------	-----------------------------------	--	--	-----------------------------------

6. How likely is it that the suspect, if detained pending further proceedings, will be segregated from convicted persons who are held at the same detention facility?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
--------------------------------------	---------------------------------	-----------------------------------	--	--	-----------------------------------

7. How likely is it that the suspect, if detained pending further proceedings, will be subject to separate treatment appropriate to their status as an un-convicted person?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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b) if detained pending further proceedings, will have adequate time to prepare his/her defense?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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c) his correspondence with attorney will be private

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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8. How likely is it that the suspect will be able to obtain the attendance of any witness against him/her under the same conditions as any witness against him/her?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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9. How likely is it that the suspect remains in police custody without an indictment (or without formal charges) by the prosecutor, or by the competent judicial or administrative authority:

	Very Likely	Likely	Unlikely	Very Unlikely	Don't Know/Not Applicable
For more than three months?					
For more than one year?					
For more than three years?					

10. Assume that the prosecutor/judge/jury determines that there is probable cause (or probable responsibility) to hold the suspect in custody. How likely is the detained suspect to remain in custody without a formal conviction:

	Very Likely	Likely	Unlikely	Very Unlikely	Don't Know/Not Applicable
For more than three months?					
For more than one year?					
For more than three years?					

11. If the suspect does not have legal assistance, how likely is he/she to be formally informed about his/her rights to legal assistance, to defend him/herself in person and to be present during his/her trial?

	Very likely	Likely	Unlikely	Very unlikely	Don't know/Not Applicable
During the initial police custody?					
During pre-trial detention?					
During the trial?					

12. If the suspect requests access to legal counsel, how likely is it that he/she will receive legal counsel, either from a state provided advocate or a private advocate paid for by the suspect?

	Very likely	Likely	Unlikely	Very unlikely	Don't know/Not Applicable
During the initial police custody?					
During pre-trial detention?					
During the trial?					

13. If a suspect does not speak any of the official languages of the Kyrgyz Republic, how likely is it that he/she will be provided the free assistance of an interpreter?

	Very likely	Likely	Unlikely	Very unlikely	Don't know/Not Applicable
During the initial police custody?					
During pre-trial detention?					
During the trial?					

14. How likely is it that the police interrogators will inflict minor/severe physical harm, or use other tools of pressure, on the detained suspect to obtain a confession or admission to having committed the crime?

	Very likely	Likely	Unlikely	Very unlikely	Don't know/Not Applicable
During the initial police custody?					
During pre-trial detention?					
During the trial?					

Section II - Presumption of Innocence

15. Please take a look at this criminal defendant. Does he look guilty or not guilty to you?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
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16. In what ways does a defendant's behavior during trial impact the way you think of him or her?

	Positive Impact	Negative Impact	No Impact
The defendant interrupts you while you're speaking during trial.			
The defendant interrupts a witness for the prosecution during trial.			
The defendant starts crying when the details of the crime are being described.			
The defendant has agreed to testify at length as to his innocence.			
The defendant remains completely silent for the whole trial.			
The defendant refuses to testify or answer any questions.			

17a. Have any suspect/accused/defendant in cases you have tried claimed he or she was subjected to any of the following:

	Yes	No
Overcrowded housing conditions		

Threats to health and safety		
Physical abuse		
Torture		
Sexual abuse		
Denied access to necessary medical care or treatment		
Denied adequate food and water		
Denied access to legal counsel		
Denied access to light, fresh air and exercise		
Denied the right to free speech		
Denied the right to practice their religion		
Denied adequate bedding		
Other cruel or inhumane conditions of confinement		
Other (Please specify): a. b. c. d.		

17b. If you answered “yes” to any of the above-described complaints, please explain what action, if any, you took to investigate or correct the complaint:

(If more space is needed, please continue your answer on the last page of the questionnaire.)

18. If a criminal defendant has confessed to his or her guilt, do you do any investigation into the circumstances of the confession?

a. If “yes”, what do you do?

b. Do you think that judges should investigate the circumstances of a criminal defendant's confession?

c. Do you act differently if the defendant claims he or she was tortured?

Hypothetical Scenario No. 2:

Please assume that the local police detain a person suspected of committing a crime.

19. In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is:

	Very Likely	Likely	Unlikely	Very Unlikely	Don't Know/Not Applicable
(A poor person					
A female					
A member of an ethnic minority					
A member of a religious minority					
A foreigner (immigrant)					
Gay, lesbian, bisexual, or transgender					

20. In your opinion, how aware is the general population about their legal rights in the event of arrest or interrogation:

Very aware	
Somewhat aware	
Slightly aware	
Not aware at all	
Don't know/Not applicable	

Section III - Competent, Independent and Impartial Tribunal

Please indicate your feelings for each of the following statements:

21. In your opinion criminal trial judges must have extensive work experience to be qualified to deliver a competent judgment

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Know/Not Applicable
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22. In practice, the government's power is not concentrated in one person, but is distributed among different independent branches, for instance, the President or Prime Minister, the Congress or Legislative body, and the judges

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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23. The lack of independence of the judiciary from the government's power is a significant problem:

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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24. In practice, the national and local courts are free of political influence in their application of power:

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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25. The government always obeys the decisions of the high courts, even when they disagree with these decisions

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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26. In practice, if the judge is asking various challenging questions, interrupts the defense attorney, and provides the conclusions for the evidence provided, would you consider the judge to be interested in the outcome of the case (as for sentencing or releasing a person)?

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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27. In practice, the judge in the criminal proceedings is easy to bribe.

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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28. In practice, the judge might use or try to use its position to advance the personal or economic interest of him or through him.

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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29. In practice, race and sex or religion of the judge would influence decisions made in trial.

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Applicable	<input type="checkbox"/> Know/Not
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30. If the judge communicates informally with either of the parties of the case during the trial, as a reasonable person will the judge appear to be impartial

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Know/Not Applicable
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Section IV - Miscellaneous

31. How likely would your opinion of an accused's guilt or innocence be influenced by the fact that he or she is wearing clothing traditionally identified as being "religious" in nature?

<input type="checkbox"/> Very Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Unlikely	<input type="checkbox"/> Very Unlikely	<input type="checkbox"/> Don't Know/Not Applicable
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32. The Constitution of the Kyrgyz Republic retains the extensive supervisory powers of the Office of the Prosecutor. Such a "supervisory" prosecution model is in fact reminiscent of the old Soviet prokuratura model.

<input type="checkbox"/> Strongly Agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Strongly Disagree	<input type="checkbox"/> Don't Know/Not Applicable
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Annex II – Interview Questions

1. We recently asked 136 persons how likely would it be that detainee in the Kyrgyz Republic would be **informed at the time of the detention about the reason / reasons for being detained.**

62, 5% of those persons who answered stated that it would be likely and very likely.

32, 3% of those persons who answered stated that it would be unlikely and very unlikely.

- a. Do you believe police officers do not inform defendants of their rights because they want to get information from the defendant? If yes, what is the remedy for such violation?
- b. Can a detainee complain about the reasons for their arrest?
- c. Do you believe that detainee will have a possibility to have a lawyer, if police officers do not inform her about his/her rights as a detainee?

2. We recently asked 136 persons how likely would it be that detainee in the Kyrgyz Republic would be informed **after the detention about the charge and the rights of defendant.**

80, 8 % of those persons who answered stated that it would be likely and very likely

12, 5 % of those persons who answered stated that it would be unlikely and very unlikely

- a. What is the time frame for providing official charge against the detainee after the detention?

3. We recently asked 136 persons how likely would it be that suspect in the Kyrgyz Republic would be able **to question, or have questioned, any witness against him/her under the same conditions as any witness against him/her.**

44, 1 % of those persons who answered stated that it would be likely and very likely

48,5 % of those persons who answered stated that it would be unlikely and very unlikely

- a. Do you believe defendants are provided with all potential evidence in a case (state witnesses...) by the state?

If no, what is the remedy for such violation?

- b. Will the court stop/delay the case of defense to learn more about those state witnesses, as well as evidence procured by state?

- c. Will the court prohibit the state from using the evidence to support its case?

For example, in the US if you do not inform on the rights, then that evidence could not be used.

Rights of the defendants/suspects

4. We recently asked 136 persons how likely would it be that a criminal defendant/suspect in the Kyrgyz Republic would have:

- adequate time to prepare his/her defense before trial.

49% of those persons who answered stated that it would be unlikely or very unlikely.
Do you agree or disagree with these results? Why? Why not?

- adequate time to communicate with his/her attorney before trial.

36% of those persons who answered stated that it would be unlikely or very unlikely.
Do you agree or disagree with these results? Why? Why not?

- private and confidential communication with his/her attorney.

33% of those persons who answered stated that it would be unlikely or very unlikely.
Do you agree or disagree with these results? Why? Why not?

5. We recently asked 136 persons how likely would it be that a criminal suspect:

- during the application of preventative measures, would be informed of his/her rights to counsel, to defend himself personally, as well as the right to be personally present during his/her trial personal.

46% of those persons who answered stated that it would be unlikely or very unlikely.
Do you agree or disagree with these results? Why? Why not?

- during detention, would be informed of his/her rights to counsel, to defend himself personally, as well as the right to be personally present during his/her trial personal.

26% of those persons who answered stated that it would be unlikely or very unlikely.
Do you agree or disagree with these results? Why? Why not?

- during his/her trial, would be informed of his/her rights to counsel, to defend himself personally, as well as the right to be personally present during his/her trial personal.

71% of those persons who answered stated that it would be likely or very likely. *Do you agree or disagree with these results? Why? Why not?*

6. We recently asked 136 persons how likely would it be that a criminal suspect who qualifies for state-guaranteed legal aid would be provided with a qualified advocate,

- during detention. 51% of those persons who answered stated that it would be unlikely or very unlikely. *Do you agree or disagree with these results? Why? Why not?*

-during the application of preventative measures. 26% of those persons who answered stated that it would be unlikely or very unlikely. *Do you agree or disagree with these results? Why? Why not?*

-during his/her trial. 18% of those persons who answered stated that it would be unlikely or very unlikely. *Do you agree or disagree with these results? Why? Why not?*

7. We recently asked 136 persons how likely would it be that investigators would cause physical harm or use other methods of pressure on the suspect in order to obtain a confession:

- during detention of a criminal suspect. 65% of those persons who answered stated that it would be likely or very likely. *Do you agree or disagree with these results? Why? Why not?*

- during the application of preventative measures against a criminal suspect. 56% of those persons who answered stated that it would be likely or very likely. *Do you agree or disagree with these results? Why? Why not?*

- during the defendant's trial. 28% of those persons who answered stated that it would be unlikely or very unlikely. Do you agree or disagree with these results? Why? Why not?

Presumption of Innocence

8. In an anonymous survey that our team recently conducted with judges, students, and others involved in criminal trials in Kyrgyzstan, 40% of respondents said they had dealt with cases where the accused complained of torture pre-trial. 50% had had clients who complained of physical violence pre-trial. What is your reaction to these results?
9. Have you ever had a case where the accused complained about suffering a rights violation pre-trial?

IF YES:

- a. What was/were the violation(s)?
- b. What did you do about the person's complaint? [i.e. investigate, tell the prosecutor or judge, something else?]
- c. In your opinion, was the complaint credible?
 - i. Why or why not?
 1. If the complaint was credible: **Why do you think these kinds of rights violations happen in the Kyrgyzstani justice system?** [Interviewer: really try to focus the interviewee on the *Kyrgyzstani system*, not on general theories about why torture happens or stuff like that].
 2. If the complaint was not credible: **Why do you think accused people make false complaints? What are their goals and is this strategy effective?** [Interviewer: again, really try to focus the interviewee on the *Kyrgyzstani system*].

IF NO: Move on to question #3.

10. What characteristics do you think put a suspect at a disadvantage during criminal trials, and of them which one is the most important?
 - a. Why are these characteristics a disadvantage for criminal suspects?
 - b. Are there any specific examples from your work that you could share with us?
11. In our survey, 69% of respondents believed that poor suspects were either likely or very likely to be at a disadvantage during criminal proceedings (with 41% saying very likely). This was seen as more of a disadvantage than any other characteristic, including being LGBT, of a minority ethnicity, a female, or a foreigner. Could you help us understand this result?
 - a. Interviewer: if the respondent isn't sure what to say, add this prompt: **Do you agree with this result?**

- b. If the interviewee agrees: **Why do you think being poor is such a major disadvantage?**
- c. If the interviewee disagrees: **Could you tell us why you disagree with this result?** Interviewer: particularly interesting would be a discussion of what other factors the respondent believes to be more important or why exactly poverty is not a disadvantage during the criminal process.

Independence and Impartiality of the Tribunal

Independent tribunal

12. In our survey, 76% of the respondents believed that the lack of independence of the judiciary from the government's power is a significant problem. **Do you agree with this statement?**
- **If yes**, what makes you think that it is a significant problem?
 - What do you think about existing system of appointment and dismissal procedures of judges?
 - **If not**, do you think that existing guarantees on security of tenures, promotion, suspension and disciplinary sanctions are designed in guaranteeing the judicial independence?
13. In our survey, 59% of the respondents believed that state officials (i.e. representative of all branches of power) always obey the decisions of the courts even when they disagree with these decisions.

Do you agree or disagree with these results? Why? Why not?

- a. Have you encountered with cases when state officials did not obey the decisions of courts?
- b. Do you think that decision making process of courts is highly dependent on the influence of state officials?

Impartial tribunal

14. In our survey, 70% of the respondents believed that when a judge asks various complicated questions, interrupts the defense and gives conclusions on provided evidence this indicates that the judge is interested in the outcome of the case.
- a) The issue of impartiality is specifically addressed in one article of the Law on Status of Judges as well as the Code of Ethics of Judges. What do you think of the role of the Code of Ethics in the Kyrgyz Republic?
 - b) How do you think - what type of behavior will demonstrate the genuine interest of the judge to identify all of the issues to deliver just decision?
 - c) What if the judge is not to ask any questions, would you think that he/she is not biased or rather biased?
 - d) Would be your opinion if such behavior of the judge was directed toward (i.e. complicated questions, interrupting, concluding) toward both parties?

- e) How often could there be cases when a judge can give her opinion on the guilt of a person to third parties (prior the decision is delivered), for example to mass media?
- f) How often the judge can disqualify herself to hear the case? Are these disqualifications based on the grounds specified in Criminal Procedural code?
- g) Can there be a cases of a judge being involved in hearing the same case where he rendered a previous decision (i.e. when a judge was a trial judge and then became a judge at the appeal levels)?
- h) In the event if there was a motion to disqualify the judge, can the judge dismiss such motion? If yes, on what basis?
- i) Were there cases in your practice, when there was an issue of the impartiality, but neither of the parties filed the motion to disqualify at the trial? Can they file a claim based on the partiality to dismiss the decision?
- j) Were there any cases in your practice that there was a case initiated against the judge to violating the impartiality principles? Or any motions/claims to the court being filed?

15. In our survey, 65% of the respondents believed that a judge can use his or her position to promote his or her personal interests or the interests of someone else.

- a) Do you think it happens very often in practice? i.e. would you rather increase the percentage (e.g. higher than 65) or would you rather lower it?
- b) Have you encountered such circumstances in your experience?
- c) At what point in time the parties are aware of the composition of the court?
- d) What could be the economic interest of other people and how the judge can benefit out of that?
- e) Code of ethics of judges (Art.6) provides that the “judge is not to use his position and status for personal aims and to use it to satisfy the predominant interest of anyone regardless of (in violation of) law.” How would you understand “predominant interest /преимущественного удовлетворения”?

Annex III – Results of survey

Respondent Breakdown (Overall):

Prosecutor	Law Professor	ICNL	Judge	Ombudsman	GKNB	Law Enforcement	Law Student	Advocate
7	11	3	21	5	1	7	80	30
4%	7%	2%	13%	3%	1%	4%	48%	18%

Question 1 How likely is it that the suspect, at the time of arrest, will be informed of the reason(s) for his/her arrest?

Очень вероятно	30	18%	Very likely
Вероятно	80	48%	Likely
Маловероятно	35	21%	Unlikely
Очень маловероятно	13	8%	Very unlikely
Не знаю/Не относится	2	1%	Don't know/Not applicable
0	5	3%	
Total	165	100%	

Question 2 How likely is it that the suspect, at the time of arrest, will be informed of the reason(s) for his/her arrest in a language that he/she understands?

Очень вероятно	19	12%	Very likely
Вероятно	83	50%	Likely
Маловероятно	36	22%	Unlikely
Очень маловероятно	19	12%	Very unlikely
Не знаю/Не относится	2	1%	Don't know/Not applicable
0	6	4%	
Total	165	100%	

Question 3 How likely is it that the suspect, at the time of arrest, will be informed of the charge(s) against him/her?

Очень вероятно	40	24%	Very likely
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Вероятно	92	56%	Likely
Маловероятно	20	12%	Unlikely
Очень маловероятно	4	2%	Very unlikely
Не знаю/Не относится	4	2%	Don`t know/Not applicable
0	5	3%	
Total	165	100%	

Question 4 How likely is it that the suspect, at the time of arrest, will be informed of the charge(s) against him/her in a language that he/she understands?

Очень вероятно	22	12%	Very likely
Вероятно	95	50%	Likely
Маловероятно	25	22%	Unlikely
Очень маловероятно	15	12%	Very unlikely
Не знаю/Не относится	3	1%	Don`t know/Not applicable
0	5	4%	
Total	165	100%	

Question 5 How likely is it that the suspect, after being arrested, will be promptly brought before a judge or other judicial officer authorized by law to exercise judicial power?

Очень вероятно	46	28%	Very likely
Вероятно	60	36%	Likely
Маловероятно	37	22%	Unlikely
Очень маловероятно	14	8%	Very unlikely
Не знаю/Не относится	3	2%	Don`t know/Not applicable
0	5	4%	
Total	165	100%	

Question 6 How likely is it that the suspect, if detained pending further proceedings, will be segregated from convicted persons who are held at the same detention facility?

Очень вероятно	17	10%	Very likely
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Вероятно	39	24%	Likely
Маловероятно	57	35%	Unlikely
Очень маловероятно	34	21%	Very unlikely
Не знаю/Не относится	10	6%	Don`t know/Not applicable
0	8	4%	
Total	165	100%	

Question 7(a) How likely is it that the suspect, if detained pending further proceedings, will be subject to separate treatment appropriate to their status as an un-convicted person?

Очень вероятно	11	7%	Very likely
Вероятно	59	36%	Likely
Маловероятно	59	36%	Unlikely
Очень маловероятно	24	15%	Very unlikely
Не знаю/Не относится	6	4%	Don`t know/Not applicable
0	6	4%	
Total	165	100%	

Question 7(b) How likely is it that the suspect, if detained pending further proceedings, will have adequate time to prepare his/her defense?

Очень вероятно	23	14%	Very likely
Вероятно	81	49%	Likely
Маловероятно	44	27%	Unlikely
Очень маловероятно	9	5%	Very unlikely
Не знаю/Не относится	2	1%	Don`t know/Not applicable
0	5	4%	
Total	165	100%	

Question 7c How likely his correspondence with attorney will be private

Очень вероятно	23	14%	Very likely
Вероятно	69	42%	Likely

Маловероятно	45	27%	Unlikely
Очень маловероятно	11	7%	Very unlikely
Не знаю/Не относится	8	5%	Don't know/Not applicable
0	8	4%	
Total	165	100%	

Question 8 How likely is it that the suspect will be able to obtain the attendance of any witness against him/her under the same conditions as any witness against him/her?

Очень вероятно	11	7%	Very likely
Вероятно	58	35%	Likely
Маловероятно	57	35%	Unlikely
Очень маловероятно	27	16%	Very unlikely
Не знаю/Не относится	4	2%	Don't know/Not applicable
0	8	4%	
Total	165	100%	

Question 9(1) How likely is it that the suspect remains in police custody without an indictment (or without formal charges) by the prosecutor, or by the competent judicial or administrative authority:
For more than three months?

Очень вероятно	19	12%	Very likely
Вероятно	39	24%	Likely
Маловероятно	29	18%	Unlikely
Очень маловероятно	55	3%	Very unlikely
Не знаю/Не относится	8	5%	Don't know/Not applicable
0	15	4%	
Total	165	100%	

Question 9(2) How likely is it that the suspect remains in police custody without an indictment (or without formal charges) by the prosecutor, or by the competent judicial or administrative authority:
For more than one year?

Очень вероятно	3	2%	Very likely
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Вероятно	14	8%	Likely
Маловероятно	32	19%	Unlikely
Очень маловероятно	51	31%	Very unlikely
Не знаю/Не относится	10	6%	Don't know/Not applicable
0	55	4%	
Total	165	100%	

Question 9(3) How likely is it that the suspect remains in police custody without an indictment (or without formal charges) by the prosecutor, or by the competent judicial or administrative authority: For more then three years?

Очень вероятно	3	2%	Very likely
Вероятно	7	4%	Likely
Маловероятно	19	12%	Unlikely
Очень маловероятно	62	38%	Very unlikely
Не знаю/Не относится	17	10%	Don't know/Not applicable
0	57	4%	
Total	165	100%	

Question 10(1) Assume that the prosecutor/judge/jury determines that there is probable cause (or probable responsibility) to hold the suspect in custody. How likely is the detained suspect to remain in custody without a formal conviction: For more then three years?

Очень вероятно	23	14%	Very likely
Вероятно	43	26%	Likely
Маловероятно	35	21%	Unlikely
Очень маловероятно	46	28%	Very unlikely
Не знаю/Не относится	4	2%	Don't know/Not applicable
0	14	8%	
Total	165	100%	

Question 10(2) Assume that the prosecutor/judge/jury determines that there is probable cause (or probable responsibility) to hold the suspect in custody. How likely is the detained suspect to remain in custody without a formal conviction: For more then one year?

Очень вероятно	4	2%	Very likely
Вероятно	19	12%	Likely
Маловероятно	39	24%	Unlikely
Очень маловероятно	54	33%	Very unlikely
Не знаю/Не относится	3	2%	Don`t know/Not applicable
0	46	28%	
Total	165	100%	

Question 10(3) Assume that the prosecutor/judge/jury determines that there is probable cause (or probable responsibility) to hold the suspect in custody. How likely is the detained suspect to remain in custody without a formal conviction: for more then three years?

Очень вероятно	4	2%	Very likely
Вероятно	5	3%	Likely
Маловероятно	28	17%	Unlikely
Очень маловероятно	68	41%	Very unlikely
Не знаю/Не относится	9	5%	Don`t know/Not applicable
0	51	31%	
Total	165	100%	

Question 11(1) If the suspect does not have legal assistance, how likely is he/she to be formally informed about his/her rights to legal assistance, to defend him/herself in person and to be present during his/her trial During the initial police custody?

Очень вероятно	25	15%	Very likely
Вероятно	49	30%	Likely
Маловероятно	41	25%	Unlikely
Очень маловероятно	35	21%	Very unlikely
Не знаю/Не относится	1	1%	Don`t know/Not applicable
0	14	8%	
Total	165	100%	

Question 11(2) If the suspect does not have legal assistance, how likely is he/she to be formally informed about his/her rights to legal assistance, to defend him/herself in person and to be present during his/her trial During pre-trial detention?

Очень вероятно	28	17%	Very likely
Вероятно	74	45%	Likely
Маловероятно	25	15%	Unlikely
Очень маловероятно	16	10%	Very unlikely
Не знаю/Не относится	0	0	Don`t know/Not applicable
0	22	4%	
Total	165	100%	

Question 11(3) If the suspect does not have legal assistance, how likely is he/she to be formally informed about his/her rights to legal assistance, to defend him/herself in person and to be present during his/her trial During the trial?

Очень вероятно	51	31%	Very likely
Вероятно	64	39%	Likely
Маловероятно	6	4%	Unlikely
Очень маловероятно	11	7%	Very unlikely
Не знаю/Не относится	2	1%	Don`t know/Not applicable
0	31	19%	
Total	165	100%	

Question 12(1) 12. If the suspect requests access to legal counsel, how likely is it that he/she will receive legal counsel, either from a state provided advocate or a private advocate paid for by the suspect? During the initial police custody?

Очень вероятно	24	15%	Very likely
Вероятно	40	24%	Likely
Маловероятно	43	26%	Unlikely
Очень маловероятно	41	25%	Very unlikely
Не знаю/Не относится	1	1%	Don`t know/Not applicable

0	16	10%
Total	165	100%

Question 12(2) 12. If the suspect requests access to legal counsel, how likely is it that he/she will receive legal counsel, either from a state provided advocate or a private advocate paid for by the suspect? During pre-trial detention?

Очень вероятно	21	13%	Very likely
Вероятно	58	35%	Likely
Маловероятно	31	19%	Unlikely
Очень маловероятно	13	8%	Very unlikely
Не знаю/Не относится	1	1%	Don't know/Not applicable
0	41	25%	
Total	165	100%	

Question 12(3) 12. If the suspect requests access to legal counsel, how likely is it that he/she will receive legal counsel, either from a state provided advocate or a private advocate paid for by the suspect? During the trial?

Очень вероятно	49	30%	Very likely
Вероятно	53	32%	Likely
Маловероятно	15	9%	Unlikely
Очень маловероятно	13	8%	Very unlikely
Не знаю/Не относится	1	1%	Don't know/Not applicable
0	34	21%	
Total	165	100%	

Question 13(1) If a suspect does not speak any of the official languages of the Kyrgyz Republic, how likely is it that he/she will be provided the free assistance of an interpreter? During the initial police custody?

Очень вероятно	27	16%	Very likely
Вероятно	30	18%	Likely
Маловероятно	44	27%	Unlikely
Очень маловероятно	47	28%	Very unlikely

Не знаю/Не относится	3	2%	Don't know/Not applicable
0	14	8%	
Total	165	100%	

Question 13(2) If a suspect does not speak any of the official languages of the Kyrgyz Republic, how likely is it that he/she will be provided the free assistance of an interpreter?
During pre-trial detention

Очень вероятно	28	17%	Very likely
Вероятно	44	27%	Likely
Маловероятно	39	24%	Unlikely
Очень маловероятно	23	14%	Very unlikely
Не знаю/Не относится	1	1%	Don't know/Not applicable
0	30	18%	
Total	165	100%	

Question 13(3) If a suspect does not speak any of the official languages of the Kyrgyz Republic, how likely is it that he/she will be provided the free assistance of an interpreter?
During the trial?

Очень вероятно	52	32%	Very likely
Вероятно	50	30%	Likely
Маловероятно	21	13%	Unlikely
Очень маловероятно	10	6%	Very unlikely
Не знаю/Не относится	2	1%	Don't know/Not applicable
0	30	18%	
Total	165	100%	

Question 14(1) How likely is it that the police interrogators will inflict minor/severe physical harm, or use other tools of pressure, on the detained suspect to obtain a confession or admission to having committed the crime During the initial police custody?

Очень вероятно	60	36%	Very likely
Вероятно	51	31%	Likely
Маловероятно	24	15%	Unlikely

Очень маловероятно	12	7%	Very unlikely
Не знаю/Не относится	4	2%	Don`t know/Not applicable
0	14	8%	
Total	165	100%	

Question 14(2) How likely is it that the police interrogators will inflict minor/severe physical harm, or use other tools of pressure, on the detained suspect to obtain a confession or admission to having committed the crime During the pre-trial detention?

Очень вероятно	39	24%	Very likely
Вероятно	49	30%	Likely
Маловероятно	28	17%	Unlikely
Очень маловероятно	16	10%	Very unlikely
Не знаю/Не относится	5	3%	Don`t know/Not applicable
0	28	4%	
Total	165	100%	

Question 14(3) How likely is it that the police interrogators will inflict minor/severe physical harm, or use other tools of pressure, on the detained suspect to obtain a confession or admission to having committed the crime During the trial?

Очень вероятно	21	13%	Very likely
Вероятно	24	15%	Likely
Маловероятно	41	25%	Unlikely
Очень маловероятно	37	22%	Very unlikely
Не знаю/Не относится	8	5%	Don`t know/Not applicable
0	34	21%	
Total	165	100%	

Question 16(1) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant interrupts you while you're speaking during trial.

Положительное	26	16%	positive impact
Нейтральное	67	41%	negative impact

Отрицательное	49	30%	no impact
0	23	14%	
	165	100%	

Question 16(2) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant interrupts a witness for the prosecution during trial.

Положительное	31	19%	positive impact
Нейтральное	61	37%	negative impact
Отрицательное	44	27%	no impact
0	29	18%	
	165	100%	

Question 16(3) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant starts crying when the details of the crime are being described.

Положительное	29	18%	positive impact
Нейтральное	79	48%	negative impact
Отрицательное	29	18%	no impact
0	28	17%	
	165	100%	

Question 16(4) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant has agreed to testify at length as to his innocence.

Положительное	46	28%	positive impact
Нейтральное	55	33%	negative impact
Отрицательное	40	24%	no impact
0	24	15%	
	165	100%	

Question 16(5) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant remains completely silent for the whole trial.

Положительное	27	16%	positive impact
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Нейтральное	79	48%	negative impact
Отрицательное	30	18%	no impact
0	29	18%	
	165	100%	

Question 16(6) In what ways does a defendant's behavior during trial impact the way you think of him or her. The defendant refuses to testify or answer any questions.

Положительное	34	21%	positive impact
Нейтральное	59	36%	negative impact
Отрицательное	47	28%	no impact
0	25	15%	
	165	100%	

Question 17(a)(1-14) - Overall			Have any suspect/accused/defendant in cases you have tried claimed he or she was subjected to any of the following														
	17a1	17a2	17a3	17a4	17a5	17a6	17a7	17a8	17a9	17a10	17a11	17a12	17a13	17a14			
	Overcrowded housing conditions	Threats to health and safety	Physical abuse	Torture	Sexual Abuse	Denied access to necessary medical care or treatment	Denied adequate food and water	Denied adequate clothing, fresh air and exercise	Denied access to legal counsel	Denied the right to free speech	Denied the right to religion	Denied adequate bedding	Other cruel or inhumane conditions of confinement	Other			
Да	61	93	79	64	14	48	30	31	34	40	20	14	32	1	Yes		
Нет	60	39	47	64	100	71	87	86	80	76	93	99	82	30	No		

0	44	33	39	37	51	46	48	48	51	49	52	52	51	12	9
	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165
Да	37%	56%	48%	39%	8%	29%	18%	19%	21%	24%	12%	8%	19%	1%	Yes
Нет	36%	24%	28%	39%	61%	43%	53%	52%	48%	46%	56%	60%	50%	18%	No
0	27%	20%	24%	22%	31%	28%	29%	29%	31%	30%	32%	32%	31%	78%	
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	97%	

Question 19(1) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is a poor person

Очень вероятно	68	41%	very likely
Вероятно	47	28%	likely
Маловероятно	13	8%	unlikely
Очень маловероятно	17	10%	very unlikely
Не знаю/Не относится	5	3%	don't know/ not applicable
0	15	9%	

Question 19(2) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is female

Очень вероятно	10	6%	very likely
Вероятно	37	22%	likely
Маловероятно	44	27%	unlikely
Очень маловероятно	38	23%	very unlikely
Не знаю/Не относится	6	4%	don't know/ not applicable
0	30	18%	

Question 19(3) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is a member of ethnic minority

Очень вероятно	14	8%	very likely
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Вероятно	44	27%	likely
Маловероятно	37	22%	unlikely
Очень маловероятно	36	22%	very unlikely
Не знаю/Не относится	6	4%	don't know/ not applicable
0	28	17%	

Question 19(4) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is a member of Religious minority

Очень вероятно	17	10%	very likely
Вероятно	31	19%	likely
Маловероятно	47	28%	unlikely
Очень маловероятно	34	21%	very unlikely
Не знаю/Не относится	7	4%	don't know/ not applicable
0	29	18%	

Question 19(5) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is a Foreigner/stateless person

Очень вероятно	29	18%	very likely
Вероятно	44	27%	likely
Маловероятно	25	15%	unlikely
Очень маловероятно	34	21%	very unlikely
Не знаю/Не относится	4	2%	don't know/ not applicable
0	29	18%	

Question 19(6) In your opinion, how likely is the detained person to be at a disadvantage during the criminal process because he/she is LGBT

Очень вероятно	51	31%	very likely
Вероятно	27	16%	likely
Маловероятно	21	13%	unlikely
Очень маловероятно	24	15%	very unlikely

Не знаю/Не относится	12	7%	don`t know/ not applicable
0	30	18%	

Question 20 In your opinion, how aware is the general population about their legal rights in the event of arrest or interrogation

Очень хорошо знает	5	3%	Very aware
Немного знает	61	37%	Somewhat aware
В некоторой степени знает	50	30%	Slight aware
Вообще не знает	32	19%	Not aware at all
Не знаю/Не относится	1	1%	don`t know/ not applicable
0	16	10%	

Question 21 In your opinion criminal trial judges must have extensive work experience to be qualified to deliver a competent judgment

Полностью согласен	102	62%	Strongly agree
Согласен	44	27%	Agree
Не согласен	10	6%	Disagree
Полностью не согласен	5	3%	Strongly disagree
Не знаю/Не относится	0	0%	don`t know/ not applicable
0	4	2%	

Question 22 In practice, the government's power is not concentrated in one person, but is distributed among different independent branches, for instance, the President or Prime Minister, the Congress or Legislative body, and the judges

Полностью согласен	40	24%	Strongly agree
Согласен	70	42%	Agree
Не согласен	33	20%	Disagree
Полностью не согласен	8	5%	Strongly disagree
Не знаю/Не относится	9	5%	don`t know/ not applicable
0	5	3%	

Question 23 The lack of independence of the judiciary from the government's power is a significant problem:

Полностью согласен	64	39%	Strongly agree
Согласен	58	35%	Agree
Не согласен	19	12%	Disagree
Полностью не согласен	9	5%	Strongly disagree
Не знаю/Не относится	9	5%	don`t know/ not applicable
0	6	4%	

Question 24 In practice, the national and local courts are free of political influence in their application of power:

Полностью согласен	23	14%	Strongly agree
Согласен	34	21%	Agree
Не согласен	54	33%	Disagree
Полностью не согласен	34	21%	Strongly disagree
Не знаю/Не относится	15	9%	don`t know/ not applicable
0	5	3%	

Question 25 The government always obeys the decisions of the high courts, even when they disagree with these decisions

Полностью согласен	20	12%	Strongly agree
Согласен	50	30%	Agree
Не согласен	52	32%	Disagree
Полностью не согласен	21	13%	Strongly disagree
Не знаю/Не относится	14	8%	don`t know/ not applicable
0	8	5%	

Question 26 In practice, if the judge is asking various challenging questions, interrupts the defense attorney, and provides the conclusions for the evidence provided, would you consider the judge to be interested in the outcome of the case (as for sentencing or releasing a person)?

Полностью согласен	34	21%	Strongly agree
Согласен	55	33%	Agree

Не согласен	43	26%	Disagree
Полностью не согласен	11	7%	Strongly disagree
Не знаю/Не относится	16	10%	don`t know/ not applicable
0	6	4%	

Question 27 In practice, the judge in the criminal proceedings is easy to bribe

Полностью согласен	38	23%	Strongly agree
Согласен	60	36%	Agree
Не согласен	30	18%	Disagree
Полностью не согласен	12	7%	Strongly disagree
Не знаю/Не относится	18	11%	don`t know/ not applicable
0	7	4%	

Question 28 In practice, the judge might use or try to use its position to advance the personal or economic interest of him or through him.

Полностью согласен	31	19%	Strongly agree
Согласен	73	44%	Agree
Не согласен	20	12%	Disagree
Полностью не согласен	20	12%	Strongly disagree
Не знаю/Не относится	14	8%	don`t know/ not applicable
0	7	4%	

Question 29 In practice, race and sex or religion of the judge would influence decisions made in trial.

Полностью согласен	10	6%	Strongly agree
Согласен	38	23%	Agree
Не согласен	67	41%	Disagree
Полностью не согласен	30	18%	Strongly disagree
Не знаю/Не относится	13	8%	don`t know/ not applicable
0	7	4%	

Question 30 If the judge communicates informally with either of the parties of the case during the trial, as a reasonable person will the judge appear to be impartial (заседание после обеда или если судья «по-приятельски» общается с одной из сторон во время процесса), означает ли это что судья пристрастен (не объективен).

Полностью согласен	26	16%	Strongly agree
Согласен	57	35%	Agree
Не согласен	41	25%	Disagree
Полностью не согласен	20	12%	Strongly disagree
Не знаю/Не относится	16	10%	don`t know/ not applicable
0	5	3%	

Question 31 How likely would your opinion of an accused’s guilt or innocence be influenced by the fact that he or she is wearing clothing traditionally identified as being “religious” in nature?

Очень вероятно	5	3%	Strongly agree
Вероятно	19	12%	Agree
Маловероятно	51	31%	Disagree
Очень маловероятно	68	41%	Strongly disagree
Не знаю/Не относится	16	10%	don`t know/ not applicable
0	6	4%	

Question 32 The Constitution of the Kyrgyz Republic retains the extensive supervisory powers of the Office of the Prosecutor. Such a “supervisory” prosecution model is in fact reminiscent of the old Soviet prokuratura model.

Полностью согласен	22	13%	Strongly agree
Согласен	50	30%	Agree
Не согласен	43	26%	Disagree
Полностью не согласен	10	6%	Strongly disagree
Не знаю/Не относится	33	20%	don`t know/ not applicable
0	7	4%	