



# Equal before the law?

A study of how citizens experience  
access to justice  
in Kazakhstan, Kyrgyzstan and Tajikistan

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## List of Abbreviations

ABA	American Bar Association
CRRC	Caucasus Research Resource Centers
EF	Eurasia Foundation
EFCA	Eurasia Foundation of Central Asia
GBAO	Gorno-Badakhshan Autonomous Oblast
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (previously GTZ)
HRW	Human Rights Watch
IBRD	International Bank for Reconstruction and Development
LARC	Legal Assistance to Rural Citizens
NetLAC	Network of Rural Legal Aid Centers
NGO	Non-Governmental Organization
OSCE/ODIHR	Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights
PLWHA	People living with HIV/AIDS
PSU	Primary Sampling Unit
PWDs	People with Disabilities
UN	United Nations
UNDP	United Nations Development Program
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development

# Executive Summary

In mid-September 2010, the Eurasia Foundation (EF) launched a six-month research and assessment project to prepare a multi-year access to justice program in Central Asia for the Finnish Ministry for Foreign Affairs. The program expects to primarily focus on Kazakhstan, Kyrgyzstan and Tajikistan. Finland is supporting this effort as one of the flagship programs under its Wider Europe Initiative.

This report is the main result of that assessment project and has been carried out by a partnership between the Eurasia Foundation, the Eurasia Foundation of Central Asia (EFCA) and the Caucasus Research Resource Centers (CRRC), a program of the Eurasia Partnership Foundation (EPF). It consisted of extensive desk research, expert interviews, a large representative survey (covering all three countries) and focus groups in order to provide a more detailed view of the problems facing women and youth. The survey was designed and overseen by CRRC and was carried out by the local research company M-Vector.

In total, the research project conducted 1,904 completed interviews, around 80 semi-structured expert interviews and 9 focus groups. The research results provide an overview of legal problems in the countries and of the current operation of the legal system, as well as helping us to illuminate six key barriers to justice.

The first part of the research (summarized in Figure 1) identified the problems facing people in the three countries.

**Figure 1: List of the top five problems considered “common” or “very common” for each country**

Rank of problem	Kazakhstan	Kyrgyzstan	Tajikistan
1 <sup>st</sup>	theft	theft	problem divorce
2 <sup>nd</sup>	problem divorce	document registration	document registration
3 <sup>rd</sup>	violent crime	problem divorce	violence in the home
4 <sup>th</sup>	document registration	dispute with official over land or property	theft
5 <sup>th</sup>	violence in the home	violent crime	dispute over land or property (with neighbor or officials)

As we can see, in all three countries, theft, problem divorce (defined as divorce where there is major disagreement over children, money or property), document registration and violence in the home are among the top five biggest problems.

Our focus groups also highlighted key issues. The focus groups with women drew attention to the prevalence of domestic abuse and the practical hurdles to divorce or separation. They also explained how all of these problems are made worse by documentation issues relating to property and marriage. Youth and people with disabilities, by contrast, were far more likely to identify social issues as their main problems. This includes issues such as access to employment, education and social services; whilst these are not legal issues, they do have legal components.

In spite of these recognized problems, the level to which people engage with any outside authority for help is extremely low. Kazakhstan has the highest engagement with the formal legal system, but even there only 6% have been in court as a plaintiff in the last 5 years. In Kyrgyzstan and Tajikistan people are far more likely to go to an informal authority with their legal issues. The most likely source of external authority is the head of the village or a group of village elders. Very few people referred to religious leaders to arbitrate disputes, even in Tajikistan.

## Barriers to Justice

The main part of this research document combines the different sources of evidence to identify six “barriers to justice”. These can be found in Section six and include:

1. Unwillingness to involve others in solving disputes
2. Poor knowledge of the law
3. Lack of resources
4. Practical hurdles to using the courts
5. Corruption and perceived corruption
6. Structural bias in the legal system

These six barriers to justice comprise different *kinds* of barriers and in a sense represent a hierarchy. The first two hurdles, the unwillingness to involve others and poor knowledge of the law, are the reasons why someone may not even look for justice in the first place. Lack of resources and practical hurdles are the reasons why, even if people seek justice, they may not be able to physically access it. Finally, corruption and structural biases are the reasons why, even if people seek justice and can physically access the institutions, the outcome may not be fair.

The first barrier to justice is that a significant proportion of the population is reluctant to involve others when they face a conflict. Around ¼ of respondents in Kazakhstan and Kyrgyzstan thought that you should not involve an external authority in resolving land disputes. In Tajikistan more than 40% would not involve external authority in conflicts about land.

The unwillingness to involve others became more pronounced with family disputes and domestic violence, especially in Tajikistan. There, almost half the respondents thought that a woman should not involve an outside authority in stopping physical abuse in the home. Focus group discussions suggested that this was because exposing discord would bring shame upon a family.

The second barrier to justice is lack of knowledge. Our survey showed that people have a poor understanding of their legal rights in all three countries. Only 50% of Kazakhs, 43% of Kyrgyz and 31% of Tajiks knew they had the right to free legal counsel in a criminal case. This has severe implications regarding the likelihood of them gaining justice if they are ever arrested for a crime.

There is limited knowledge around the legal status of marriages. Close to ½ of Kazakhs, ¼ of Kyrgyz and more than ¾ of Tajiks did not know that a marriage carried out only by a religious leader is not recognized by the state. This limits women’s ability to protect their rights in the event that their marriage breaks down.

The third barrier to justice is simply the lack of resources. The focus group discussions highlighted that one of the reason for not seeking outside help to solve a legal problem is because lawyers are considered very expensive. Lack of knowledge compounds this challenge: although 60% of Kazakhs said they knew where to get affordable legal advice, only ⅓ of Kyrgyz and ⅓ of Tajiks knew where to go.

The fourth barrier to justice is a set of practical difficulties for people who want to use the court system. Whilst every district has a court, this still leaves the court outside practical reach in many large and sparsely populated districts, particularly in Kazakhstan. Also, Kyrgyzstan and Tajikistan have very low numbers of lawyers in some areas of the country. This may be driven by limited demand for legal services in those areas but is still important from a program development point of view. In the absence of lawyers on the ground, resources and knowledge are unlikely to open up access to justice.

Documentation is also a significant practical barrier to access to justice. The need for a *Propiska*, or housing registration, makes life particularly hard for internal migrants as, without *Propiska*, it may be hard to pursue certain cases in the courts or to gain access to social services. The lack of formal marriage

licenses traps wives, by removing their right to child support or property in the event of separation. Finally, relaxed documentation governing post-divorce settlement makes it easy for husbands to avoid sharing property or paying child support even when they are shown to be legally liable.

The fifth barrier to justice is corruption. This is the most common complaint about the court system in all three countries. In Kazakhstan, 61% of people thought the court system was corrupt. In Kyrgyzstan, it was 73%. In Tajikistan, it was lower, at 22%, but there are good reasons to believe this low level reflects a cultural resistance to public complaint rather than a higher level of satisfaction. Focus groups in all three countries were unequivocal in their criticism of corruption in the police and courts.

The sixth barrier to justice is a set of structural biases in the legal system. These are commonly reported upon by legal experts and the rule of law literature. The final section organizes these structural barriers into four main categories: the power of the prosecutor, lack of judicial independence, the classification of cases and traditionalist biases in informal law.

The first of the structural barriers is the power of the prosecutor in the post-Soviet system. In this system the prosecutor and the investigator dictate the terms of the investigation and, through that, the evidence that will be presented. They also play a crucial role in deciding on pre-trial detention and the evidence they present is the starting point for all subsequent discussion. In contrast, the defense has far more limited rights to investigate or to present their own evidence. The defense lawyer is also poorly paid and has little to gain by entering into conflict with the prosecutor.

The second structural barrier is lack of judicial independence. This needs to be seen as different from financial corruption as it is not simply a reflection of a judge's inclination to accept bribes (although it might include this) but can reflect the structural relations inside the judiciary as well as between the judge and government officials. It is also reflected in the lack of judicial professionalism. There is little or no tradition of judicial independence in the Central Asian legal system. Judges are subject to pressure from prosecutors and government officials and the system as a whole (as suggested above) is structured to encourage them to rely more heavily on the prosecutor than the defense. This has been changing recently in all three countries, with a range of amendments to criminal procedural codes having been instated, but it continues to be a practical problem.

The third structural barrier is the classification of cases. Beyond the civil/criminal division, the Central Asian system also has a category of "administrative offences law". Administrative cases usually include minor offences like traffic violations but can also include other offences like unlicensed public assembly or even domestic violence. The use of administrative offences law can create a barrier to justice, according to some, because the protections offered under administrative law are less substantial than the protections offered under criminal law. Therefore, by increasing the use of administrative offences law the state is effectively lessening the level of legal protections upon those prosecuted in this way.

The final structural barrier to justice is the traditionalist bias in informal law. Informal law includes the *Aksakal* courts of elders in Kyrgyzstan, the *Mahalla* committees in Kyrgyzstan and Tajikistan and the use of village leaders as arbiters in all three countries. Between them, these informal authorities are utilized far more widely than the formal courts, particularly in Kyrgyzstan and Tajikistan. They have the twin benefits of being both cheaper than the formal court system and also of being better understood by the local communities. However, they also tend to be conservative, particularly regarding social and domestic issues. This can mean that outcomes are worse for vulnerable groups like women and young people.

Taken together, this research has provided a comprehensive picture of the legal problems facing people across the three countries in Central Asia as well as the practical mechanisms that people commonly use to resolve them. It has also allowed us to integrate professional expertise and nationwide perceptions in order to identify the practical barriers to justice.

Our survey aimed to give a picture of all the three countries on a wide range of issues, but many of the areas we covered merit further research. For instance, in each of the countries some regions, and some groups, are far more marginalized than others. More geographically focused surveys or larger surveys that sample at a sub-national level could give us a more finely-grained picture of these differences and would be useful in identifying geographies to target for intervention.

The research also demonstrated that a range of authorities other than the courts are called upon to resolve disputes. This “informal justice” is extremely complex in its social operation and if programs are going to work with these authorities, there will need to be a far more detailed description of this informal justice system than we provide here. While there has been some research conducted on *Aksakal* courts in Kyrgyzstan, there seems to be a lot less about *Mahalla* committees in Kyrgyzstan and Tajikistan, the significance of religious law in Tajikistan and the informal use of local government officials for resolving disputes in all three countries.

Finally, our research tried to develop a detailed understanding of the problems faced by various vulnerable groups. We combined that, wherever possible, with material from the research literature in order to highlight the structural reasons why these groups are disadvantaged. However, these structural explanations differ from country to country and only with a narrower focus will it be possible to discover likely means of correcting the problems we identify. This is particularly true in the treatment of women and young people.

The access to justice program that follows this research will certainly follow up on some of these issues. However, our research provides a useful start as it offers a more comprehensive picture of legal practices and access to justice in Central Asia than we believe has existed to date.

# 1 Methodology

The research focused on Kazakhstan, Kyrgyzstan and Tajikistan, as they are expected to be the focal point for the access to justice program. The research had four parts: a literature review, expert interviews, focus groups and a large representative survey. The focus of the research was on the legal system and dispute resolution as they are experienced by people across these communities. The investigation of these experiences was combined with an analysis of the legal literature and expert interviews in order to generate a deeper understanding of why the barriers to justice exist.

The literature review covered access to justice issues in Central Asia and analyzed methodological best-practice in legal research elsewhere. While there is little general information on access to justice in Central Asia, considerable research has been done on particular legal issues and particular countries. As we proceeded with the research, it became increasingly clear that it would be enormously useful to a range of actors to provide an overview of the legal problems facing Central Asia. This research project aims to provide such an overview.

Expert interviews were conducted throughout the research design and implementation process from July 2010 to February 2011. In July 2010, prior to designing the overall research, we conducted initial interviews with NGOs already working in legal reform in Central Asia. This was then expanded in the initial phases of the program design in October and November, 2010. Discussions with NGO representatives provided a picture of existing NGO activity in the legal field in Central Asia and helped to frame the overall research. Legal experts were particularly important given the extremely limited literature that exists on access to justice in Central Asia. These interviews helped us to understand the general context and to prioritize subjects for the questionnaire.

Focus groups provided us with an opportunity to look in more detail at issues and categories of people who would not be well represented in the survey. The project as a whole was interested in focusing on vulnerable groups. In consultation with the Finnish Ministry for Foreign Affairs, and following on from our initial interviews, it seemed women, young people and people with disabilities (PWDs) were worthy of particular attention. With the help of local NGOs we organized focus groups with women and young people in each of the three countries. Because the challenges faced by PWDs very much depend upon the nature of the disability in question, we did not think that it would be possible to gain a comprehensive overview of their situation through focus groups so in that case we restricted ourselves to expert interviews, conducting interviews with NGOs who represent different categories of disabilities in each of the three countries.

## 1.1 The survey

The largest part of the project was a survey carried out in all three countries in December 2010 and January 2011. The survey was conducted by the local research company M-Vector, which was chosen after an open bidding and extended selection process. CRRC provided the original questionnaire as well as methodological oversight on every aspect of the project. In addition to sending CRRC staff to Central Asia to provide input on the interviewer and supervisor trainings, CRRC also gave feed-back on sampling frame construction, sample design, questionnaire translation, data entry, data cleaning, and survey weighting.

M-Vector used census data in each country to construct sampling frames. The sampling frames were made up of lists of all settlements (cities, towns, and villages). The sampling frames had regional macro-strata which included top-level administrative units (oblasts), capitals and major cities. Within the strata that were not major cities, settlements were broken down into urban and rural sub-strata. The sampling frames included the population size of each settlement.

We utilized a multistage sample design. Primary sampling units (PSUs) were selected from each stratum via simple random sampling. In the major cities, administrative districts or voting districts were used as the PSU. In the other strata, settlements were used as PSUs. Within the settlements, households were

selected for interview via random walk, a form of systematic sampling which approximates a simple random sample. Within these households, one respondent was chosen through the “last birthday method” to ensure randomization.

In all three countries we had a sample of 800 individuals. In Kazakhstan, there was a 67% response rate and so there were 535 interviews completed. In Kyrgyzstan, with a 78% response rate, we had 624 interviews and in Tajikistan the response rate was 93% so we had 745 interviews.

Figure 2: Unweighted demographic profile of respondents (%)

	Kazakhstan	Kyrgyzstan	Tajikistan
Women	59	54	52
Youth (18-26)	21	31	23
Ethnic national	52	78	83
Receiving disability allowance	7	6	4
Married	57	71	80
Completed secondary education or higher	89	94	77
Employed	56	40	34
Less than \$100 per month	42	66	80
Employment in the private sector	23	12	2
Employment in the public sector	19	17	24

## 2 Structure of results

In presenting the results we have integrated all of the research findings thematically. Section 3 will give a brief background to the region and in particular its legal system. Sections 4 and 5 will provide the results of the survey and the focus groups as they relate to legal problems and the utilization of the legal system. This is intended to highlight the areas and issues that our survey showed we should prioritize with the resulting project.

Section 6 will then present the rest of the survey results and interpret them through the analysis and insights provided in the expert interviews and in the existing literature. The presentation and interpretation of the results will, in this way, elaborate on six “barriers to justice”. These are:

1. Unwillingness to involve others in solving disputes
2. Poor knowledge of the law
3. Lack of resources
4. Practical hurdles to using the courts
5. Corruption and perceived corruption
6. Structural bias in the legal system

These six barriers to justice comprise different *kinds* of barriers. They do, of course, overlap in a range of ways, but they can be conceptually separated into three categories. The first two hurdles, the unwillingness to involve others and poor knowledge of the law, are the reasons why someone may not even look for justice in the first place. Lack of resources and practical hurdles are the reasons why, even if people seek justice, they may not be able to physically access it. Finally, corruption and structural biases are the reasons why, even if people seek justice and can physically access the institutions, the outcome may not be fair.

Finally in Section 7 we look at the programs that currently exist in the region regarding access to justice.

### 3 Overview of the three countries

Central Asia as a region is woven together by similarities and interconnections in government, history, culture and geography. Many of these similarities are relevant when considering access to justice. However, for our purposes, the most relevant similarity is the structure of government and the judiciary left behind by the Soviet system. Similarities in the judicial and court systems will be a major focus of this overall research, particularly in Section 6.6.

In terms of government, the legacy of the Soviet system has been a centralized system with weak political freedoms. With a dominating executive, the Presidents in all three countries had effective control over the appointment and dismissal of judges.<sup>1</sup> Within that similar trajectory, there are significant differences between the countries, as Kazakhstan and Tajikistan remain much more centralized. In the most recent analysis by Freedom House, while Kazakhstan and Tajikistan were classified “not free”, Kyrgyzstan improved its ranking from “not free” to “partly free”.<sup>2</sup>

Kazakhstan’s President Nursultan Nazarbayev came to power in 1990 and has retained control throughout. The degree of his reach was illustrated by the 2007 election in which his Nur Otan Party gained all the seats in the lower house of parliament with 88% of the vote. In Tajikistan, President Emomali Rahmon has been in power since 1992. Here, too, the ruling People’s Democratic Party of Tajikistan holds 52 of the 63 seats in the Assembly of Representatives and an overwhelming majority in the National Assembly.

In Kyrgyzstan, control is less centralized, especially after the ousting of President Kurmanbek Bakiyev in spring 2010, and the appointment of interim President Roza Otunbayeva. Since that time there has been a range of major changes. Firstly, a new constitution was adopted as the result of a referendum on 27 June 2010. This transformed Kyrgyzstan into a semi-parliamentary state and increased the number of parliamentary seats from 90 to 120. In addition, the dissolution of Bakiyev’s party led to a significant proliferation of political parties. In the parliamentary election of October 2010, five parties each won 15-25% of the seats. While it is hoped that this new constitutional arrangement and political pluralism will significantly improve the freedom of the judiciary particularly vis-à-vis political pressure, the general consensus seems to be that it is too soon to know if the constitutional changes will have this effect.<sup>3</sup>

Another shared feature of the three countries is corruption. Already functioning as a lubricant for the sticky Soviet command economy, corruption became pervasive following the collapse of the Soviet Union, as the state controls upon it dissolved. In 2010, out of 178 countries in Transparency International’s Corruption Perception Index, Kazakhstan ranked 105<sup>th</sup>, Tajikistan ranked 154<sup>th</sup> and Kyrgyzstan ranked 172<sup>nd</sup>.<sup>4</sup> This corruption is seen as particularly acute in the legal process, as the police, courts and judiciary are some of the least trusted institutions in each of the three countries.

Kazakhstan, Kyrgyzstan and Tajikistan also have some similarities in their treatment of vulnerable groups, orphans, people with disabilities, women and ethnic minorities. With orphans and people with disabilities, the state provides support that allows them to avoid complete destitution, but in exchange

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<sup>1</sup> None of these facts are in dispute, though for a clear summary of the situation in each country go to: Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Kazakhstan. Washington: US State Department. Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Kyrgyzstan. Washington: US State Department, Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Tajikistan. Washington: US State Department.

<sup>2</sup> Arch Puddington. (January 2011). Freedom in the World 2011: The Authoritarian Challenge to Democracy. Washington, USA: Freedom House. ([http://www.freedomhouse.org/images/File/fiw/FIW\\_2011\\_Booklet.pdf](http://www.freedomhouse.org/images/File/fiw/FIW_2011_Booklet.pdf))

<sup>3</sup> This does not mean that such a change is not taking place. Research of this kind tends to experience a significant time-lag.

<sup>4</sup> The CPI is a composite of assessments by a range of different organizations. See Transparency International (2010), *Corruption Perception Index 2010*, ([http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)), reviewed 11<sup>th</sup> January 2011

expects them to remain passive consumers of assistance rather than actively seeking access to their rights. Ethnic minorities have generally been marginalized. Most commonly, this marginalization has been driven by the gradual erosion of the use of the Russian language as a lingua franca through which all ethnicities could communicate in a given country, and its replacement with a single indigenous language in each country. In extreme cases we have also seen pogroms, for example in the case of Uzbeks in Southern Kyrgyzstan. Women, especially in rural areas, suffer from what the anthropologist Ernest Gellner called the "Tyranny of Cousins", as they are prevented from seeking access to their rights by constraints placed on them by family members and the community.

Even with these similarities there are also significant differences that any regional research project must take into account. The most obvious difference is that Kazakhstan is dramatically larger and wealthier than the other two, as can be seen from Figure 3.

Figure 3: Key country statistics for Kazakhstan, Kyrgyzstan and Tajikistan

Country	Population (million)	Surface area (km <sup>2</sup> )	GDP per capita (PPP) USD	Rural population (% of total)	Agricultural as % of GDP
Kazakhstan	15.8	2 724 900	11 510	42%	6%
Kyrgyzstan	5 .3	199 950	2 283	64%	29%
Tajikistan	7	142 550	1 972	74%	22%

Source: World Bank (reviewed January 11<sup>th</sup> 2011), World DataBank, (<http://databank.worldbank.org/ddp/home.do>)

Kazakhstan has more than double the population of Tajikistan and three times the population of Kyrgyzstan. It is more than ten times the size of Kyrgyzstan and almost twenty times the size of Tajikistan. Kazakhstan is also the wealthiest country in Central Asia and has more than five times the per-capita GDP of the other two. In connection to this, far more of the population of Kyrgyzstan and Tajikistan is rural and dramatically more of their GDP is based on agriculture.

That said, it is still worth keeping in mind that all three countries still have large numbers of rural poor. As one can see in the breakdown of our respondents in Figure 2, even Kazakhstan has 42% of its population reporting a household income of less than \$100 per month.

Each of the three countries also includes significant divisions of wealth based on geography and ethnicity. Kazakhstan was the only Soviet republic with its titular nationality not a majority. Extensive out-migration by non-Kazakhs and the government’s policy of inviting ethnic Kazakhs from surrounding states has changed this. Generally speaking, discrimination exists but is not pronounced, though there is a sense of growing nationalism, reflected in policies promoting the Kazakh language and a near total ban on labor out-migration.

Regional variations in wealth and poverty are perhaps a more serious division than ethnic boundaries. Regionally, cities like Astana and Almaty have around double the per-capita income of the rest of the country and the oil-producing regions have about 50% higher income than the average. The more agriculturally-oriented regions in the North and South of Kazakhstan are ½ below the national average.<sup>5</sup> This spurs extensive internal migration, with newcomers to cities sometimes finding it difficult to adapt.

Kyrgyzstan is divided centrally along an east-west axis by mountains. The two halves of the country are only connected by one tunnel, and the roots of the 2005 and 2010 revolutions stem from this division. In 2005, it was the south which largely put Bakiyev in power, thus setting the stage for the 2010 revolution, which was largely driven by the North. Southerners are generally perceived to be more conservative and

<sup>5</sup> Nathan Associates. (May 2006). Kazakhstan Regional Disparities: Economic Performance by Oblast: USAID. p7-8 ([http://pdf.usaid.gov/pdf\\_docs/PNADG258.pdf](http://pdf.usaid.gov/pdf_docs/PNADG258.pdf))

religious and northerners more cosmopolitan. North/South tensions are also exacerbated by an ethnic divide, as most of the ethnically Uzbek population lives in the South of the country.

In the South, disagreements over land and political power have also created conflict between ethnic Kyrgyz and ethnic Uzbeks. The June 2010 ethnic violence in the region highlighted this tension. The government's attempt to cast the majority of blame on Uzbek leaders suggests that the divide may be deepening rather than healing.

In Tajikistan, regional differences were a contributing factor to the civil war. In Soviet times, Tajikistan's rulers were often drawn from Sogd Oblast in the northwest of the country. During the chaos that followed the break-up of the Soviet Union, opposition groups from Garm and the Pamirs launched an unsuccessful bid to take power. Khatlon Province in the South West supported those from Sogd Oblast. The opposition was motivated not only by regionalism, but also by the desire to increase the level of democracy and provide more room for Islam.

Because of the regional character of the civil war, discussions of regional tensions are politically sensitive and more prominent than public discourse might suggest. To give just one example of how these differences are masked, Pamiris - who are significantly linguistically and religiously different from other Tajiks, are nevertheless classified as "Tajik".

Finally, in Kyrgyzstan, as in Kazakhstan, urban-rural wealth inequality spurs internal migration, with thousands of people coming to Bishkek and Osh, where a lack of housing, education and job skills create a deep division between newcomers and native-born residents.

### **3.1 Overview of the legal system in Central Asia**

In spite of many revisions over the last twenty years, the dominant model for the legal system in Central Asia continues to be the Soviet system. This criminal system is inquisitorial, rather than adversarial, which means that the prosecutor is given pre-eminent investigative powers and has greater influence in the legal case that may follow than the defense lawyer. The prosecutor decides to investigate a case and often directs the investigator (who usually instructs the defense lawyer). The prosecutor also generally plays a crucial role in deciding whether pretrial detention is necessary and presents a completed written case to the judge. The written evidence provided by the prosecutor is then generally considered more reliable than information provided under cross-examination in the court-room. In this way the system creates a significant "imbalance of arms" in favor of the state (to be discussed in more detail in 6.6.1).

In each of the three countries the defendant has the right to a lawyer and one can be provided by the state in criminal cases if the defendant cannot provide their own. To defend a case in a criminal court it is necessary to be a registered lawyer, but anyone can argue a civil case.

In all three countries there are three main levels of the court. The court of the first instance is in the capital of the municipality (or *rayon*). Above that is the regional (*oblast*) court which can act as the court of first instance for some cases but which is usually simply used as the court of appeal. Finally, there is the Supreme Court that is located in the capital. There are also economic courts for trying business cases and military courts, but we will not discuss these in this research.

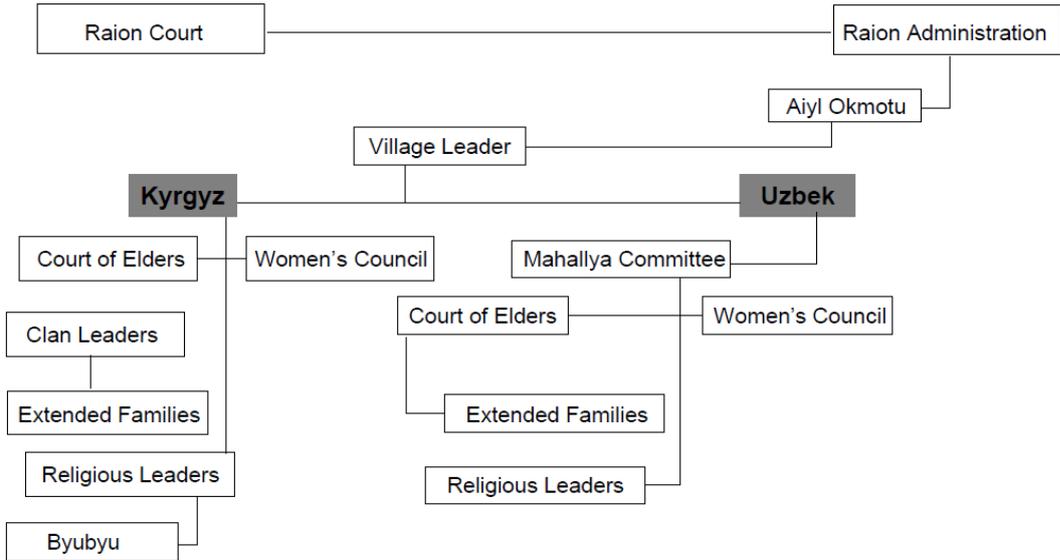
These courts consider three main categories of cases: civil, criminal and administrative. While the civil/criminal divide is familiar to most readers, administrative cases may not be, particularly to those coming from a common law tradition. Administrative cases usually include minor offences like traffic violations but can also include other offences like unlicensed public assembly or even domestic violence. The classification of cases as "administrative" can therefore be important from an access to justice sense because different classifications afford different protections to the accused.

In each of the three countries there are also lower levels authorities who often work to arbitrate disputes.

In Kyrgyzstan, below the municipal court is the *Aksakal* or Court of Elders; this is recognized by the state. In Tajikistan and in some parts of Kyrgyzstan there is also the *Mahalla* committee system. This is not part of the formal government or legal process in either country. Kazakhstan has no informal legal system, though in all three countries, the village leader or the head of the local government is used for informal dispute resolution.<sup>6</sup>

The connections between the different levels of the court system are complicated when one tries to include the informal elements but is represented in Figure 4.

Figure 4: Institutions that enforce customary law in Kyrgyzstan



Ref: Giovarelli, R. and C. Akmatova (2002). Local Institutions that Enforce Customary Law in Kyrgyzstan, International Bank for Reconstruction and Development: Agriculture & Rural Development Department

Each of the three countries has extremely high conviction rates in the formal court system (many sources report it at 90-99% but the official figures are particularly hard to attain for Kyrgyzstan and Tajikistan). Imprisonment continues to be the main punishment in criminal cases. However, levels of incarceration differ wildly across the region. Out of the 216 countries considered by *World Prison Brief* Kazakhstan had the 12th highest prison population in the world in 2010 (as a proportion of its population), Kyrgyzstan was 104<sup>th</sup> and Tajikistan was 108<sup>th</sup>.<sup>7</sup>

The prison population in Kyrgyzstan has seen a dramatic decline in recent years. At its highpoint in 1998, Kyrgyzstan imprisoned 462 people for every 100,000 of its population, which gave it one of the highest imprisonment rates in the world. By 2005 this had dropped to 316 per 100,000. However between 2005 and 2009 this dropped by almost 60% again and now stands at 133 people per 100,000.<sup>8</sup>

Reform in each of the three countries has focused on different elements and occurred at different speeds. As summarized by an EU report,

<sup>6</sup> Renee Giovarelli, & Cholpon Akmatova. (2002). Local Institutions that Enforce Customary Law in Kyrgyzstan 2002: International Bank for Reconstruction and Development: Agriculture & Rural Development Department

<sup>7</sup> Kings College London World Prison Brief (accessed 13<sup>th</sup> January 2011), *Entire World – Population Rates per 100,000 of the National Population*,

([http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_stats.php?area=all&category=wb\\_poprate](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poprate))

<sup>8</sup> Kings College London, World Prison Brief (viewed 13<sup>th</sup> January 2011), *Prison Brief for Kyrgyzstan* ([http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=99](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=99)). Supplemented by email exchange with Roy Walmsley, Director ICPS World Prison Brief (13<sup>th</sup> January 2011).

“Kyrgyzstan and Kazakhstan are further advanced in updating their legal systems than some of the other Central Asian countries... In Uzbekistan, Kazakhstan and Kyrgyzstan the focus is on reform within the judicial courts. In Tajikistan the priority is on penal reform”.<sup>9</sup>

## 4 Legal problems facing respondents

One of the first main priorities of the survey was to try and identify which legal problems are most prominent. In order to do this we developed, in consultation with legal experts in the region, a list of problems that we thought might be major issues. We then asked people to what extent they considered these to be problems in their community and which category of problem they had experienced during the previous 5 years.

Figure 5: Problems that are either considered “common” or “very common” in Kazakhstan (%)<sup>10</sup>

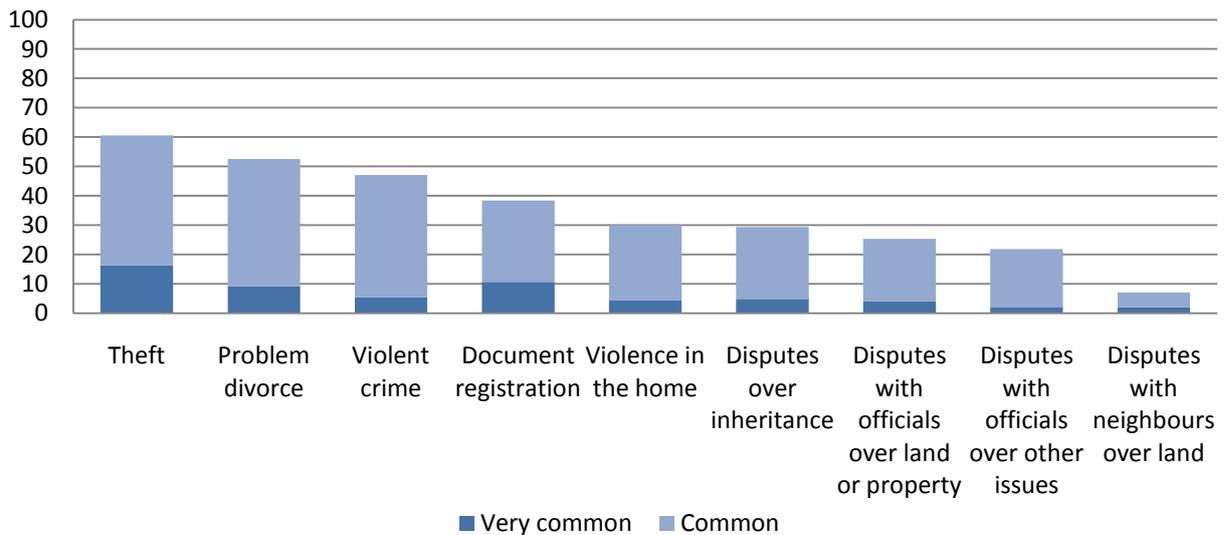
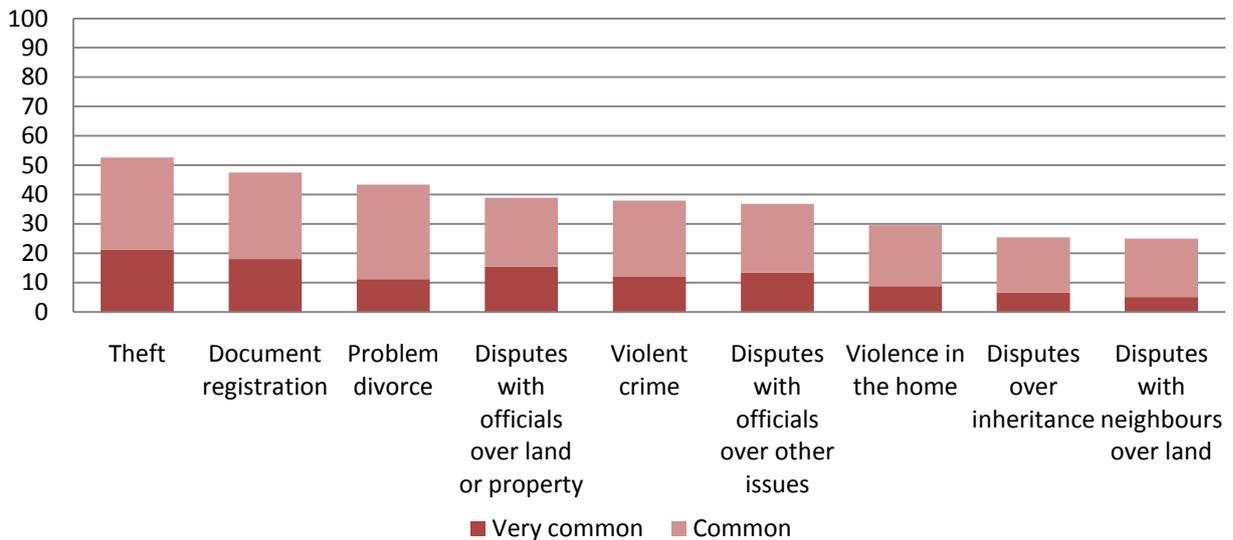


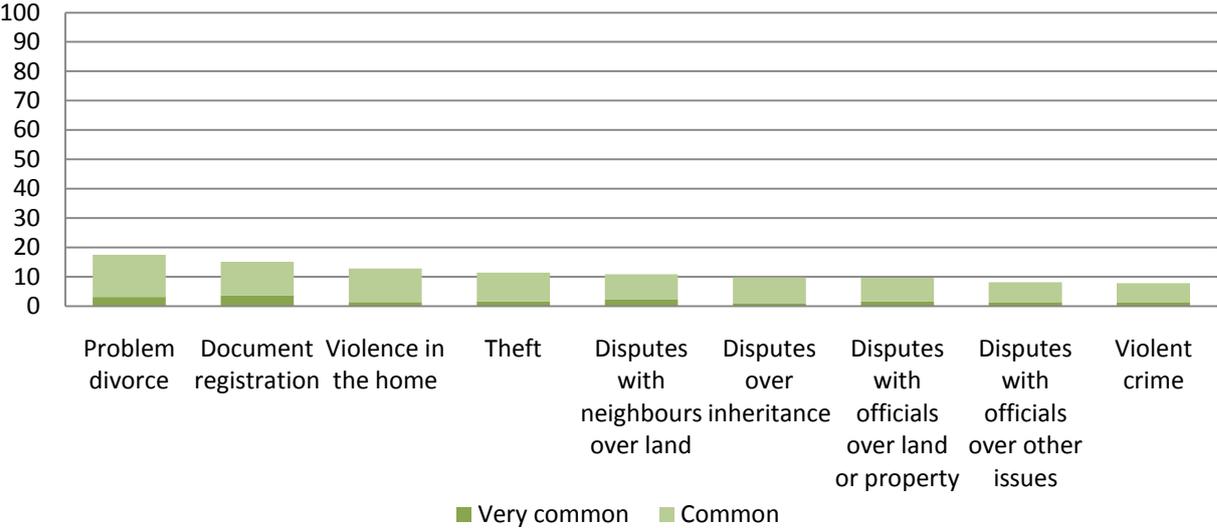
Figure 6: Problems that are either considered “common” or “very common” in Kyrgyzstan (%)



<sup>9</sup> Rico Isaacs. (August 2009). The EUs Rule of Law Program in Central Asia. *EU Central Asia Monitoring*, 9. p3

<sup>10</sup> Note that in an interview we defined “problem divorce” as a divorce where there is ‘major disagreement over children, money or property’. There are, of course, many more forms of problem divorce but we used this definition here for the purpose of clarity and consistency.

Figure 7: Problems that are either considered “common” or “very common” in Tajikistan (%)



Two facts stand out from these results. First, problems appear to be far greater in Kazakhstan and Kyrgyzstan than in Tajikistan. However, while it is possible that the level of legal problems is lower in Tajikistan, it is also possible that people are simply less prepared to complain openly about problems. Particularly taken in conjunction with other answers to our survey questions, the research team was generally of the opinion that low levels of negative attribution reflected conservatism in Tajik society rather than a greater general level of satisfaction.

There is a range of possible reasons for this conservatism in Tajikistan. Tajikistan is the poorest of the three countries and the most rural. It was the subject of a bloody civil war. It also has an extremely strong central government. Any of these characteristics might lead to conservatism and quiescence.

Regardless of the absolute values, the second fact that stands out from these results is that the biggest problems are fairly similar across the three countries. This is more obvious if we look at the top five categories of problems side by side.

Figure 8: List of the top five problems considered “common” or “very common” for each country

Rank of problem	Kazakhstan	Kyrgyzstan	Tajikistan
1 <sup>st</sup>	theft	theft	problem divorce
2 <sup>nd</sup>	problem divorce	document registration	document registration
3 <sup>rd</sup>	violent crime	problem divorce	violence in the home
4 <sup>th</sup>	document registration	dispute with official over land or property	theft
5 <sup>th</sup>	violence in the home	violent crime	dispute over land or property (with neighbors and officials)

As we can see, theft, problem divorce and document registration are in the top five for each country. On top of that, violence in the home is in the top five for Kazakhstan and Tajikistan and is the 7<sup>th</sup> biggest problem in Kyrgyzstan (and so is not shown in Figure 8). Similarly “disputes with officials over land or property” is in the top five for Kyrgyzstan and Tajikistan but is the 7<sup>th</sup> biggest problem in Kazakhstan (and so is not shown in Figure 8).

### 4.1 Problems facing women

To try and understand the problems that face women specifically, we were able to both analyze the survey data and combine that with focus group information. First, we looked at the ranking of problems for female respondents.

Figure 9: List of the top five problems considered “common” or “very common” by women in each country

Rank of problem	Kazakhstan	Kyrgyzstan	Tajikistan
1 <sup>st</sup>	theft	theft	problem divorce
2 <sup>nd</sup>	problem divorce	violent crime	theft
3 <sup>rd</sup>	violent crime	problem divorce	document registration
4 <sup>th</sup>	documents registration	violence in the home	violence in the home
5 <sup>th</sup>	violence in the home	disputes in families over inheritance	disputes in families over inheritance

As one can see, the ranking of problems is fairly similar to the problems listed by the population in general across all three countries. It is exactly the same in Kazakhstan for women as for the entire population. In Kyrgyzstan it is interesting that woman consider both violence in the home and disputes over inheritance to be bigger problems than does the population as a whole. In Tajikistan, one the other hand, violence in the home is considered a slightly less important problem by woman than it is by the general population.

#### 4.1.1 Domestic violence

In our preparatory research and expert interviews, domestic violence and equitable divorce settlement were highlighted as major problems and as access to justice issues in Central Asia. For that reason, we built a range of questions into our questionnaire to tackle these issues. However, in order to gain a more detailed account of the difficulties facing women we also conducted focus groups with women from women’s crisis centers. We conducted six focus groups in total, two for each country: one urban and one rural.

Unsurprisingly, as many of them were all victims of domestic abuse, many of the women highlighted domestic abuse as their primary security concern. As one woman put it,

“The threat is not from thieves or terrorists but from family members: from the husband, husband’s brother, mother-in-law or one’s own brother”. (Housewife, 38, married, Belovodsk, Kyrgyzstan)

As this quote suggests, and as we had been told in our expert interviews, the abuser is not always the husband but can also be another family member, particularly the mother-in-law.

“There are mothers-in-law who have lived in abusive relationships and they think it is normal. They say ‘My mother-in-law also used to humiliate me, and I went through that. And if I went through that, you also have to, like in the army’”. (Housewife, 42, married, Almaty, Kazakhstan)

All six of the focus groups argued that domestic violence was commonplace. For example, one woman argued that,

“Where I lived literally every second woman was in my condition with the husband drinking, insulting and beating them, though everyone is afraid to talk about it out loud”. (Custodian, 39, civil marriage, Bishkek, Kyrgyzstan)

There was also a strong sense that domestic abuse is not restricted to poor families but can affect anyone. In Bishkek one woman said, “I have relatives who are rich, but they are in the same situation – the husband drinking and beating the wife”. (Housewife, 54, married, Bishkek, Kyrgyzstan).

Similarly, a woman in Almaty said,

“I think rich families have the same problems. In rich families men have girlfriends and the wives know about it. But they don’t leave the husband because they have children”. (Housewife, 29, Almaty, Kazakhstan)

Most of our focus groups across the three countries highlighted the same reasons for this abuse. The main reasons are unemployment, frustration and alcohol as well as a culture with a low regard for women. However, as we will discuss in the next section and throughout Section 6, our focus group respondents also highlighted the role of barriers to justice in encouraging domestic abuse. It was clear from many of the discussions that because women were trapped by difficult circumstances, their husbands and families felt emboldened to treat them as they pleased, without fear of retribution or loss.

#### **4.1.2 Divorce**

Connected to the problem of abuse were the difficulties that women would face if they tried to separate from husbands.

More or less all focus group participants agreed in all of the three countries that the hurdles to divorce are cultural and practical and not legal. The first hurdle is that if you are not registered as married then you have no legal rights as a wife and so cannot get a divorce.

This is a big problem in rural areas because many women do not tend to ask for legal documents and, as our survey below suggests, may often not feel that they need them. As a woman in Kyrgyzstan told us,

“In the village many people live without documents until their death. And when you want to run away from abuse, you can’t go anywhere without documents”. (Lecturer, 26, married, Issik-Kul, Kyrgyzstan)

If one is legally married then the focus groups agreed that the main problem of separating and divorcing a husband is a combination of social stigma and economic constraints. The first reason why women stay with their husbands, according to the focus groups, is that there is huge social pressure to do so. As a woman in a Tajik focus group suggested,

“My grandmother would always tell me, ‘You need to tolerate. We women are created for a family. If the husband brings something, be thankful, if he is handsome, if he is ugly, accept and be thankful. When he beats you also be thankful that you are married. If he divorces you or you become a widow no one will respect you.’” (Teacher, 56, widow, Tursun-zadeh, Tajikistan)

A second reason is fear. Since women do not feel protected by the law, the threats made by abusive husbands seem believable.

The third reason is economic. According to all of the focus groups, child support is extremely hard to get. As one woman from Kyrgyzstan said, “Only one out of 1000 will have child support.” (Housewife, 42, married, Bishkek)

Even where women are legally entitled to some kind of income support (for children, there is almost never income support for wives as there is in the West) there are three ways in which men can get out of it. First, they can buy a certificate that shows they have a very small salary. This was mentioned in all

three countries. The second option is that where children do not have proper birth-certificates then the father can deny paternity. As one woman in Kyrgyzstan told us, “I couldn’t do anything. Even his mother told me to prove that the child is his.” (Housewife, 46, divorced, Dmitriyevka, Kyrgyzstan). Third, if a husband is living abroad, as with many migrants in the region, he may be outside of the jurisdiction of the court.

Similarly, while women are entitled to half of a couple’s communal property on divorce, the consensus among the focus group participants across all three countries was that it was relatively easy for men to avoid relinquishing this communal property. In Kazakhstan, one woman pointed out a common practice to avoid separation of property: “A lot of men reregister all the property to their mothers, sisters. 85% live like that.” (Accountant, 31, divorced, Issyk, Kazakhstan)

In the absence of guarantees of income or property the only hope for a woman leaving her husband is if she can get work, but the focus groups argued that it is very hard for woman to get work as they are generally not very well educated, particularly in rural areas where education may be discouraged for women. As one woman in rural Tajikistan said, “My father-in-law was trying to suffocate me. He didn’t want me to study or work.” (School director, 35, married, Dushanbe)

All of this makes escape from a bad marriage practically impossible. The same problems of rights to child support and property also make life difficult for deserted wives. This is also a huge problem in the region and is made easier for husbands by the high levels of labor migration.

**4.2 Problems facing youth**

Young people, particularly children deprived of parental care, were also identified by our preliminary research as a group deserving special attention. One way to look at the problems of this group is to simply select the youngest group of respondents from our survey and look at the problems they identified as most commonplace.

Figure 10: List of the top five problems for youth (18-26 years) considered “common” or “very common” for each country<sup>11</sup>

Rank of problems	Kazakhstan	Kyrgyzstan	Tajikistan
1st	theft	problem divorce	problem divorce
2nd	violent crime	theft	difficulties registering documents
3rd	problem divorce	difficulties registering documents	violence in the home
4th	difficulties registering documents	disputes with state officials over land or property	theft
5th	violence in the home	disputes with state officials over other issues	disputes with neighbors over land or property

As we can see, the profile of problems is fairly similar to the other two cases (the general population and women specifically), although “problem divorce” is considered a more pronounced problem by Kyrgyz and Tajik youth than the general population and in Kyrgyzstan different kinds of disputes with the state (over documents, land/property and other matters) comprise 3 of the top stated problems.

To supplement this analysis, we organized three youth focus groups that talked to young people between the ages of 17 and 24.

The youth we spoke to represented different at-risk groups in each of the three countries. The Kazakhstan focus group was conducted with the alumni of orphanages who are currently living in a

<sup>11</sup> It is probably a little dangerous to try and draw strong conclusion from these results, as the age category of 18-26 represents only 21% of Kazakh, 36% of Kyrgyz and 23% of Tajik respondents. As a result, it should be seen as indicative rather than representative.

youth house, or halfway house following an orphanage. The Kyrgyzstan focus group was conducted with youth from newly built, unregistered districts around Bishkek (otherwise known as *novostroyka*). The Tajikistan focus group was conducted with the beneficiaries of the Child Rights Center, which works with vulnerable groups of youth including alumni of orphanages, the homeless, those registered with the police or those from juvenile colonies.

In Kazakhstan, talking to orphaned young people, we found that most of the participants named financial and housing problems as their main difficulties. Housing was one of the reasons that made the participants feel less secure than other young people in Kazakhstan. Security for them meant economic security first. The government (according to the conversation) does not provide them with housing. As one young woman told us in Almaty, “This housing is temporary, until you’re 29. When you turn 25, you start to think where you will be going in four years.” (Student, 22, female, Almaty, Kazakhstan)

Most saw no practical way that they would ever be able to buy their own apartments. As one young man told us, “Even if you work your entire life, you will not be able to afford to buy a house.” (Unemployed, 21, male, Almaty, Kazakhstan)

As another said, this means that even if one’s situation is relatively good, the threat of homelessness is always in the background. Some of the young people were housed as part of their university education but said that even this was fairly insecure. As one said, “If you enter the university and you have sponsors, they may refuse to pay the next year. I was in such a situation.” (Legal consultancy, 23, male, Almaty, Kazakhstan)

Beyond that, the young people identified the lack of a family to protect them as their main source of insecurity. As one young woman said, “A young person from a family knows that his parents and relatives will protect him – that is his safety.” (Student, 22, female, Almaty, Kazakhstan)

As preliminary survey results and some discussions with experts had suggested that documentation might be an issue, we also asked the group about any problems they had, particularly in relation to securing *propiska* or housing registration. While they accepted that it could be a problem generally, all of the participants in our focus group had *propiska*.

The youth in Kyrgyzstan, in the new districts (or *novostroyka*) also said that the main problems they have are related to economics and social service provision. In general they complain that the new districts lack trash collection, good road connections to the city, street lights (the lack of which encourages crime), police stations, medical clinics and schools. They also often suffer from electricity cuts.

Education is one pressing concern. Because of a lack of local schools, parents are forced to send their children to city schools which are hard to reach. As a result, as one young woman told us, “Some parents, because of financial difficulties, cannot send their children to school. The child is already nine, but does not go to school.” (College student, 18, female, *novostroyka* in Kyrgyzstan)

Another pressing concern was the high rate of crime. Some blamed this on the absence of policing while for others there was a belief that policing would not make much difference.

In the focus group in Tajikistan the youth we spoke to were orphans, children who had been prosecuted for a crime, or the homeless. Most were registered with the police. The assessment of this group was almost certainly colored by the fact that they had all been helped into university or college places by the NGO that organized the focus group.

In terms of education, while they complained about the quality of education at the boarding schools, many of them had been helped by the NGO into university and said that, as orphans, they are allowed

entrance into university with lower scores than would normally be required. Their main difficulty with university was that they had to work while they studied in order to pay for food and clothes (they were provided with dorm places).

All of the participants had *propiska* but they were concerned that once they leave the dorm where they are registered now, they will face problems. The government does not provide housing for orphans, and they will end up on the streets with no housing or *propiska*.

To try and probe their attitudes towards the police and the courts we gave the group the hypothetical scenario “if one of your group is attacked by a gang should they contact the police?”. Across all three countries there was a wide consensus that they should not. As one young man put it,

“If he were robbed by a gang, the gang would tell him, ‘if you tell anyone about this then we will kill you’. Even if he tells the police and they [the gang members] are caught, they have connections so they will get off.” (College student, 20, male, novostroyka in Kyrgyzstan)

In Tajikistan the biggest security concern was that they were convinced that, as orphans, they were likely to be accused of crimes they did not commit. As a result, they certainly would not go to the police if they got into trouble.

### **4.3 Problems facing people with disabilities (PWDs)**

In order to investigate the problems facing people with disabilities we conducted 10 expert interviews with disability rights organizations, four in Kyrgyzstan and three each in Tajikistan and Kazakhstan. Generally speaking, the organizations prioritized social problems as the most immediate and pressing concerns facing PWDs. In particular, they highlighted the difficulties in securing employment as well as difficulties in gaining access to education or full health benefits.

With most of the organizations, we asked about the access to justice issues related to the inability of the law to protect the PWD’s rights to inclusion. All three countries have signed up to various international charters to protect the rights of PWDs. They also all have constitutions that privilege international law over national law so these charters should have immediate effect. However, these rights are largely ignored. For example, none of the countries has domestic laws on inclusive education or explicit laws that prohibit discrimination on the basis of physical disability.

In Kazakhstan, Zhasnur (an organization representing people with hearing impairments) and the Astana Union of Disabled Children focused heavily on the difficulties in school integration. But it seemed as though this is more of a social resource provision issue than something that would be corrected with a new law. In Kyrgyzstan, Fenomen, an organization that works for the blind and hearing impaired, pointed out that education is generally unavailable to the blind as there are no text books in Braille.

Similarly, in Kyrgyzstan, Psychological Health and Society, a mental health NGO, said that healthcare is very inaccessible because there are only three psychiatric hospitals in the country. People living in the regions do not have the money to go to hospitals. If they manage to get to the hospital, they stay there for years because they do not have the resources to go back or their relatives do not have the money to get them out of the hospital.

Domestic laws that do offer some protections are generally not enforced. While most of the organizations we spoke to said that disabled people did get their social payments (though these are small), it was often suggested that they did not know their rights beyond that. As we were told by the Kazakhstan based Shyrak Association of Women with Disabilities, “Only 1 in 10 disabled women would know her rights.” For example, many categories of the disabled have the right to free medicine and even a regular trip to a sanatorium, but they often do not realize this.

Moreover, the operation of the old Soviet laws can be counter-productive. For example, Fenomen in Kyrgyzstan highlighted the fact that there are explicit provisions that provide positive discrimination for employment in Kyrgyzstan. Under the law, companies with more than 20 employees must have a workforce comprising of at least 5% PWDs. However, the same law classifies some people with disabilities as unemployable.

The Society of the Blind in Tajikistan also suggested that the employment laws for the disabled are ineffective, as they tended to be connected to the production of particular goods which the country no longer produces.

Other laws are problematic because they require people to be registered disabled. For example, Psychological Health and Society said that there is a law on psychiatric health which registers people with psychiatric disorders. Generally, people with psychiatric disorders who are registered with a psychiatric clinic have to hide that fact to go to school or university or to get employment. If anyone finds out that they have the disorder then they will be expelled or fired.

This exacerbates a high level of discrimination in all three countries that makes the integration of disabled people extremely difficult. The situation for women with disabilities is even worse as they are discriminated against not only because of their disability, but also because of gender.

In terms of access to justice, understood narrowly, different organizations all highlighted physical access to the courts (with wheelchair ramps) and communication hurdles created by an absence of sign-language or Braille services. This is helped in Kazakhstan by the fact that there is a provision of 30 hrs of free sign language translation for the hearing impaired.

In Kazakhstan, Dybys (focusing on children with hearing impairments) also said that disabled people often face difficulties in terms of being taken advantage of by their family, particularly in relation to property.

However, these issues were generally considered small compared to the broader social protection issues, particularly because it seems as though few PWDs would be likely to use the courts to resolve issues of access or social provision even if they were more available. There was a strong sense in our interviews that it is better to simply apply pressure to the administrators responsible for providing the service rather than to take an issue to court.

Fenomen said that their most common complaint is people being incorrectly classified by the state and, consequently, not gaining the social support they are due. However, the usual strategy they employ to fix this problem is for the director to contact the organization and threaten to involve the Mayor's office. This has, apparently, always worked.

Also in Kyrgyzstan, the Association for People with Disabilities was hopeful about the ability to affect change, but did not suggest this would happen through legal mechanisms. They pointed out that the recently elected parliament has the country's first disabled MP, whom they hope will lobby for their interests.

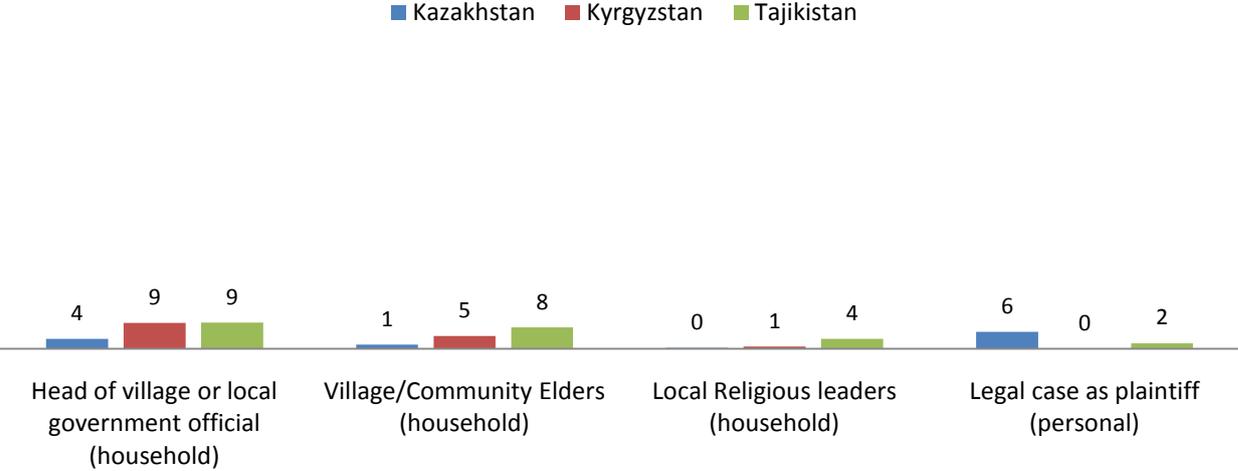
## **5 Usage of different judicial measures**

In addition to identifying problems, the research was particularly concerned about identifying the ways in which people seek to resolve their disputes. To do this, we asked questions about people's actual experience and how they would respond to certain hypothetical situations.

In terms of actual experience, we asked people about their use of the court system over the past 5 years and if they had turned to any of a range of institutions for help on legal issues. In Figure 11 we combined

the answers to those questions to see how many people in each of the three countries have addressed different institutions with legal problems.

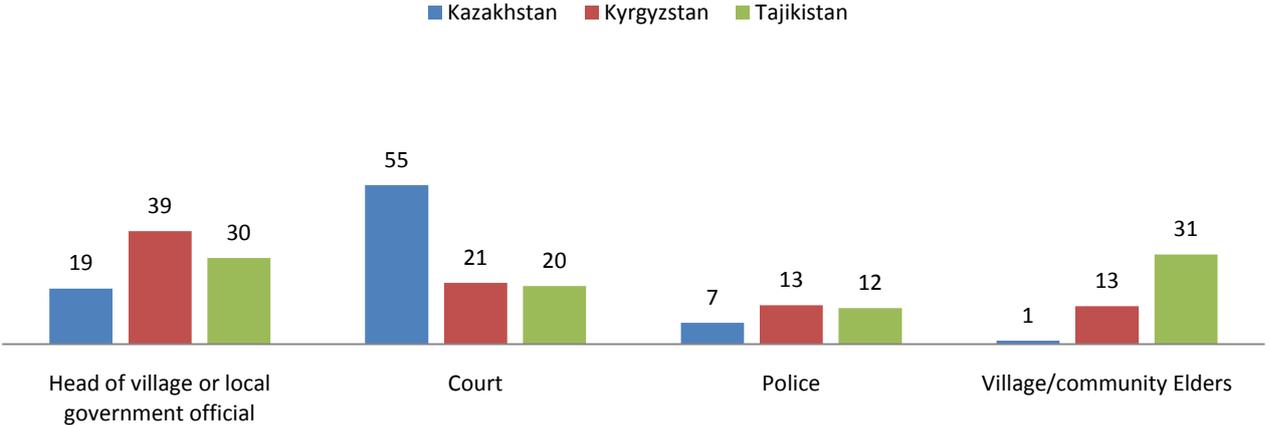
Figure 11: The different institutions that respondents have turned to with a legal issue in the last five years (%)



As one can see, the number of people who approached any authority with a legal problem was low and only in Kazakhstan did more people approach a lawyer than a local government official. In Kyrgyzstan and particularly Tajikistan it was far more likely that they would visit the head of village/government official or the village and community elders.

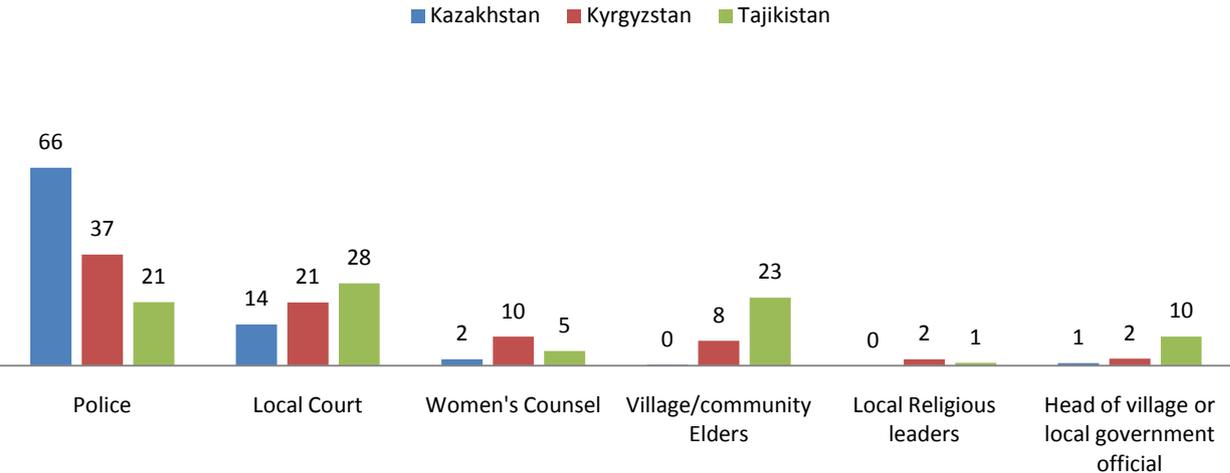
On top of these questions about actual experience, we set a number of hypothetical scenarios to see which authority people thought someone would be most likely to take a particular problem to. In the survey we asked people about where they would take disputes with their neighbor over land, where a woman would go if she was being abused by a member of her family and where she would go if she was engaged in a problematic divorce.

Figure 12: What is the most likely authority to which a person would take a dispute with a neighbor over land (%)



As we can see, and consistent with the prior result, only in Kazakhstan is someone likely to take these issues to the court. People in Kyrgyzstan are more likely to take them to the head of village/government official than to anyone else (including the court and the police combined) and are as likely to take them to the village elders as the police. In Tajikistan they are more or less equally likely to take them to the head of village/government official or a community elder. In Figure 13 we asked the same question about domestic violence.

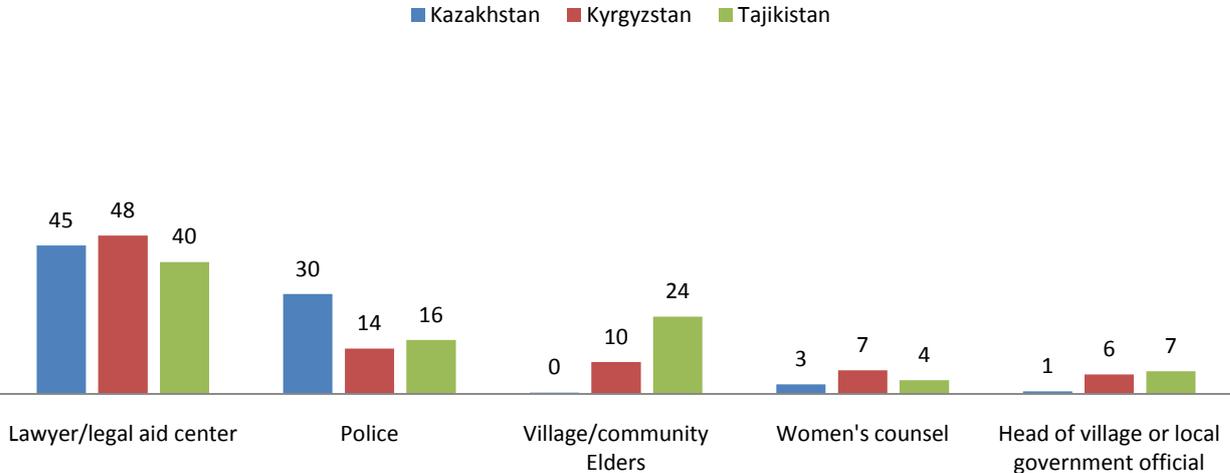
Figure 13: Except relatives, what is the most likely authority to which a woman would go if she has been beaten by a member of her family? (%)



In the case of domestic violence, we also see a clear division between Kazakhstan on the one side and Kyrgyzstan and Tajikistan on the other. In Kazakhstan, the overwhelming majority sees this as a problem that a woman would take to the police or courts. In Kyrgyzstan, the combined percentage for police and courts is 58% and in Tajikistan it is 49%. On the other hand only 3% of respondents in Kazakhstan would take it to the other less formal sources, while 22% of Kyrgyz and 39% of Tajiks would do so.

In Figure 14 we asked the same question about divorce.

Figure 14: If a woman is being unfairly treated by her husband during a divorce, and decides to seek help from an outside authority, to whom is she most likely to go for help? (%)



In the case of a divorce, the profile over whom to approach is very different. In particular, involving either a lawyer or the police is a far more likely avenue of enquiry than involving a village head or local government official, with significantly more than half the respondents in all three countries identifying the former as the most likely option, although almost 1/3 of Tajik respondents and 1/4 of Kyrgyz respondents said they would still expect an informal source to be involved. Almost no Kazakhs expected this kind of involvement.

### 6 Barriers to justice in Central Asia

The bulk of the survey questions, expert interviews and focus groups were concerned with looking at the question of barriers to justice in the three countries. In this section, we combine the results from the survey and focus groups with the literature review and expert interviews in order to explain six key barriers to justice. These are:

- 6.1 Unwillingness to involve others in solving disputes
- 6.2 Poor knowledge of the law
- 6.3 Lack of resources
- 6.4 Practical hurdles to using the courts
- 6.5 Corruption and perceived corruption
- 6.6 Structural bias in the legal system

These barriers should not be seen in isolation. They are clearly mutually reinforcing in a wide range of ways. The unwillingness to include others in disputes is partly a function of lack of trust in the system that results from corruption and structural biases in the system. Poor knowledge of the law probably reflects the irrelevance of the court system for most people (for all of the other reasons). Lack of resources both discourages lawyers from starting legal practices in the regions and makes new and existent practices less reliable.

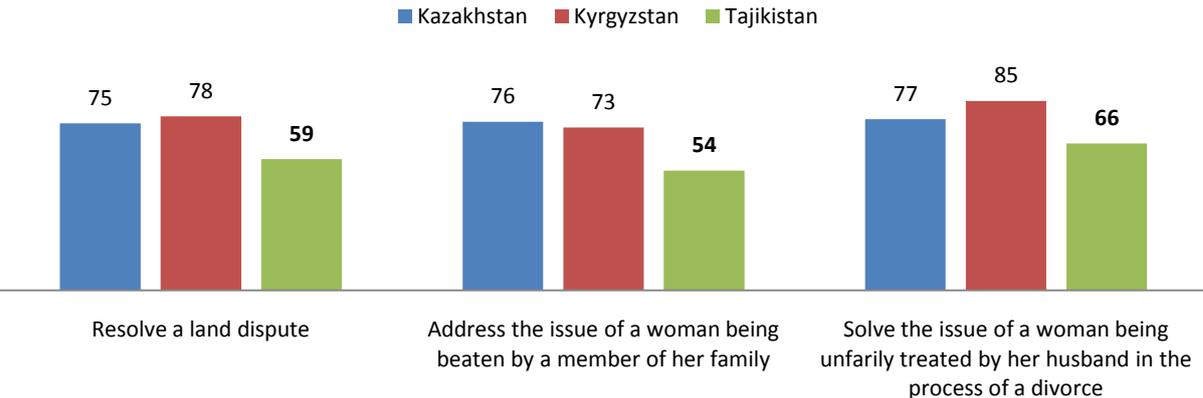
Nevertheless, these different barriers make useful conceptual divisions and form something of a hierarchy. Unwillingness to involve others and lack of knowledge make it unlikely that people try to become involved with the formal legal system. Lack of money and the small number of lawyers mean that even if people want to become involved with a formal legal system they often cannot do so. Finally, corruption and structural biases mean that even if people overcome the earlier hurdles, the outcome may not be just.

**6.1 Unwillingness to involve others to resolve disputes**

One of the earliest barriers to justice expressed in our discussions with Central Asian legal experts was a lack of willingness to take certain issues to court.

One indicator of this fact was the low numbers of people who have taken any legal dispute to an external authority in the last five years (shown in Figure 11 on p24). To address this issue directly we asked a number of hypothetical scenarios, asking people how individuals in their community should respond to a range of disputes. In Figure 15 we show the percentage of people who said that one should involve an external authority in order to solve three problems.

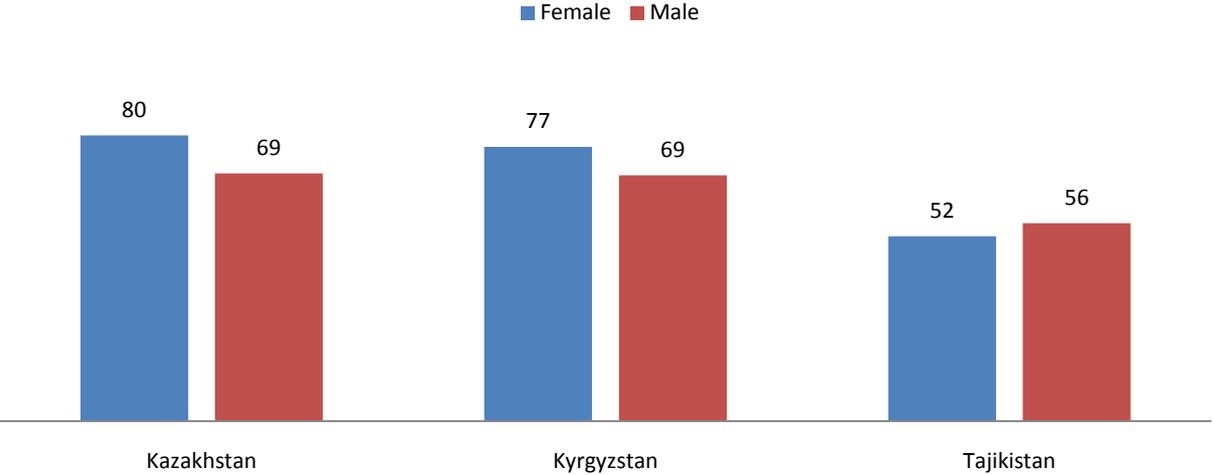
Figure 15: People who say you should involve an external authority to resolve a number of different problems (%)



As we can see, ¾ of respondents in Kazakhstan and Kyrgyzstan thought that you should involve an external authority to resolve the various disputes, while in Tajikistan ½ of respondents, at most, thought you should involve outsiders. Clearly, that between ¼ and ½ of people do not think that outsiders should be involved at all is a major barrier to justice.

Unsurprisingly, given the conservatism of the three countries, domestic abuse evinced a low level of suggested outside involvement. To examine this number a little further, we broke it down by gender in the three countries.

Figure 16: People who say that a woman who is beaten by a member of her family should involve someone outside her family to stop it (%).



The breakdown by gender was as you would expect in Kazakhstan and Kyrgyzstan, with more women than men saying that a woman who is beaten by her husband should involve someone in stopping it. In Tajikistan, however, the situation is reversed and women are slightly less likely to suggest that the abused wife should get help.

The sense that there is something shameful about women looking for help if they are the victims of domestic abuse was strongly supported by our focus groups. In Kyrgyzstan a woman told us, “There is a saying - Good wives do not take the garbage out of the house and they do not leave.” (Lecturer, 26, married, Issik-Kul, Kyrgyzstan)

In Kazakhstan, one woman told us, “In the village, if a woman walks around with bruises, everyone says it is her own fault.” (Housewife, 22, married, Chilik, Kazakhstan).

And in Tajikistan a woman explained that the shame is not simply a matter for the victim.

“My father is very afraid. He is worried I will divorce. He wants me to stay and live with my husband. He is worried about what others will say.” (Unemployed, 27, married, Dushanbe, Tajikistan)

As a result, many focus group participants suggested that not even a woman’s family will get involved. One focus group participant said,

“When I called my parents, my father told me: ‘You left this house in white and we will bury you in white as well. Don’t think that we will help you. It is your husband’.” (Entrepreneur, 36, divorced, Bishkek, Kyrgyzstan)

Others suggested that neighbors were also unhelpful.

“In our village also, if they [husbands] are drunk, you have to hide. You run to the neighbors, but they don’t open the door, saying it is your family, go deal with it yourself.” (Housewife, 38, married, Belovodsk, Kazakhstan)

Though the stigma attached to separation and divorce can stop someone from looking for help, there was a general sense that once abused wives had sought help, the families were supportive of them. A member of our focus group in Kazakhstan suggested, “My relatives were excited to hear there are

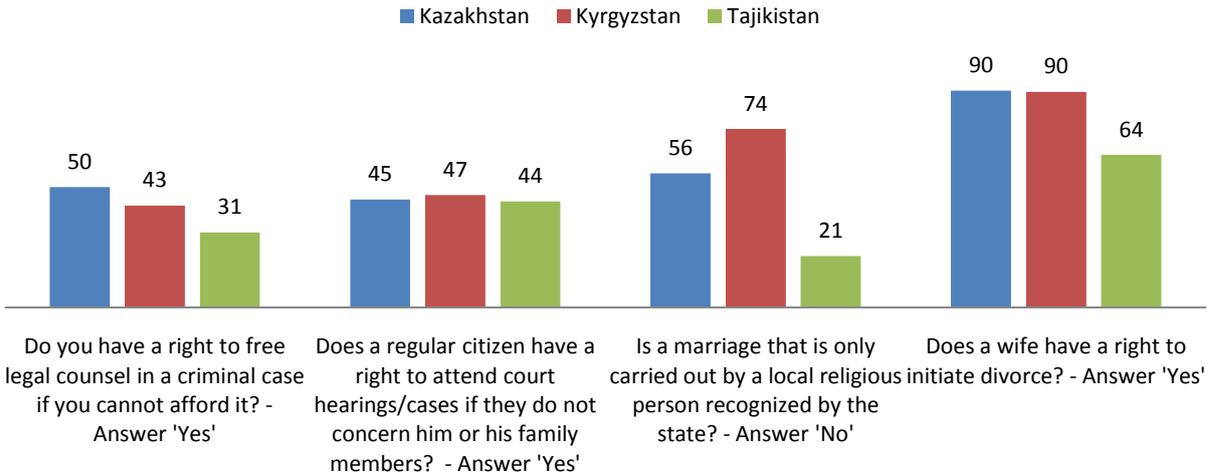
organizations like this [women’s crisis center] in Kazakhstan.” (Works at a church, 30, separated, Baltabay, Kazakhstan)

Similarly, the existence of outside help can, of course, have some impact on the abuser’s behavior. “Now that he knows that there is someone who can defend me it restricts him a little.” (Hairdresser, 37, married, Chilik, Kazakhstan)

**6.2 Poor knowledge of the law**

To investigate knowledge of the law, we asked the respondents a series of “yes”/“no” questions about general legal rights and legal rights that related to our particular areas of interest. The proportion of the population who answered correctly on four key issues is listed below.

Figure 17: Knowledge of legal issues (correct answers %)



It is worth noting that since these are “yes-no” questions, an absolutely random answer (suggesting no knowledge) would still give us 50% correct answers. Therefore, only in the case of the final question on divorce can we be confident that the population has clear knowledge of the subject. Almost all of the rest of the correct answers could be statistically accounted for by guesswork.

The first two questions shown here relate to general knowledge of legal rights and show extremely low levels across the three countries. The low knowledge in the first question is the more troubling of the two, since if someone does not know about their right to a criminal defense they are unlikely to ask for one or have one provided. The fact that knowledge of this right is so low may reflect the fact that it is often not effectively available, or judged to be worthless for reasons that will be discussed below.

The lack of knowledge on the right to attend a court hearing is not quite so immediately significant, though it does suggest a complete lack of understanding of the fact that transparency is supposed to be part of this process.

Ignorance on the third question is perhaps the most worrying. During our expert interviews there was some acceptance that people in Tajikistan’s rural areas would not understand the need for legal documentation to ensure a state-recognized wedding, but no-one suggested that the level of ignorance would be so high. This problem was confirmed by our focus groups in Tajikistan, “I didn’t know about my rights before coming to this center. It turns out that as a woman I also have rights.” (Hairdresser, 45, divorced, Pokrovka, Tajikistan)

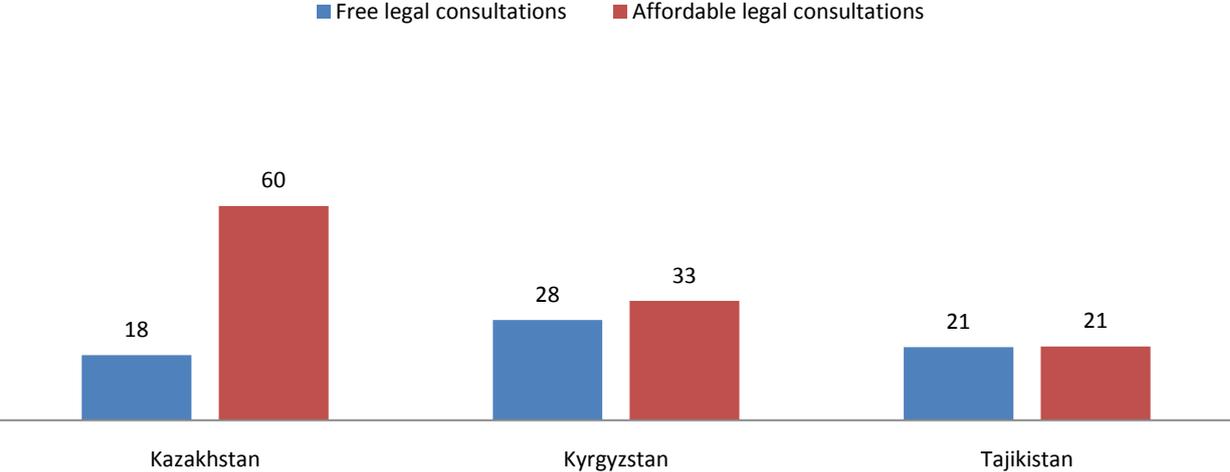
Equally interesting is the fact that all of our expert interviews in Kazakhstan suggested this would not be an issue in Kazakhstan as we were told everyone understood the need for legal documentation, but

even in Kazakhstan only slightly over half of those asked got the question right. This is very troubling since, as we will suggest in Section 6.4, the lack of wedding certificates can create significant barriers to justice if the marriage breaks down and either party wants a divorce.

### 6.3 Lack of resources

To investigate the significance of lack of resources on access to justice, we first started by asking people if they knew of places where they could get either “free” or “affordable” legal consultations.

Figure 18: Knowledge about where to get free and affordable legal consultations (%)



The higher knowledge of free consultation in Kyrgyzstan and Tajikistan probably reflects the higher level of NGO work providing such services in those countries.

In terms of affordability, the responses to this question fit very clearly with the socio-economic divide between the countries that was discussed in Section 2 (which is as we would have expected). While 60% of Kazakhs knew where to find affordable legal consultations, only 1/3 of Kyrgyz families and around 1/3 of Tajiks did.

In Tajikistan the number who said they knew where to find affordable legal consultation was almost exactly the same as the number who said they could find free consultation. This is perhaps unsurprising; the very high levels of poverty mean that, for the vast majority of the population, if it is not free then it is not affordable.

In our focus groups, the barrier to justice provided by resources was presented rather differently. While women could not generally afford to hire lawyers, this was the narrower concern.

The far more substantial issue, and one already discussed at length in Section 4.1.2, was that women lack any way to gain access to the resources they need to feed and accommodate themselves and their children. As a result, they are tied to their marital situation, however bad.

As one woman in Tajikistan told us,

“I am not filing for a divorce. I am not because my children need a place to live. He is kicking me out of the house every day, but I stay. Where will I go with my four children?” (Housewife, 32, separated, Dushanbe, Tajikistan)

## 6.4 Practical hurdles to the court system

Another category of concerns that was expressed in the expert interview relate to the practical issues of access to the court and judicial process. For the purpose of our analysis, we have broken this down into issues of physical accessibility and the documentation requirements for certain courts and cases.

### 6.4.1 Physical access

Each of the countries are administratively divided into large regions (or *oblasts*) and smaller districts (or *rayons*). The lowest level courts, and the courts of the first instance, are the district level courts. These are usually located in the district center or capital. In Kazakhstan, in 2006, there were 260 lower district courts with 1,851 judges. This averages about 2 courts per district.<sup>12</sup> In Tajikistan in 2008 there were 68 district level courts, which is about 1 court per district.<sup>13</sup> In Kyrgyzstan there is also one court per district.

However, the size and population density of these regions varies enormously, so that even with one court per district these courts may be a long way from one's own community. Kazakhstan is the most extreme case. The Ulytau district in the central region of Karagandy has a population of only 14,300 but a size of 122,000 km<sup>2</sup>. The other countries are far smaller but are still very sparsely populated in places. For example, in Tajikistan the eastern district of Murghob in Gorno Badakhshan Administrative Oblast has a population of 16,900 but covers a mountainous terrain with an area of 38,442 km<sup>2</sup>.

To gauge the level of isolation in the three countries, we asked our survey population to estimate how far they are from their district capital (where the courts are usually located). Kazakhstan showed the greatest level of isolation, with over 80% located more than an hour's travel from the capital and over 40% located 4hrs or more away. In Kyrgyzstan, about 40% are an hour or more away and in Tajikistan only about 10% are an hour or more away.

The feeling that rural areas may be more cut off from the protections afforded by the state was also confirmed by our focus groups, even though none of the focus group participants were from truly isolated parts of country. As one woman from a rural area in Kyrgyzstan said, "It is comparably better in Bishkek. In the villages there are no police. Even if you call the police, they will only come the next day." (Housewife, 48, divorced, Tyup, Kyrgyzstan)

A similarly placed woman in Tajikistan made the same observation, "Generally women in the village have to defend themselves. Some endure, some manage to struggle, but there is no help from officials." (Hairdresser, 45, divorced, Pokrovka, Tajikistan)

Physical and practical access is also, of course, a problem for people with disabilities, as few courts have wheelchair access and none in the region (so far as our investigation suggested) provided sign-language translation or Braille transcription of documents.

Another issue that relates to physical access is the accessibility of lawyers. We already saw in Section 6.3 that people do not know where to find an affordable lawyer. Up to this point we assumed that this lack of availability was the result of limited resources, but there is another possible explanation: a scarcity of lawyers in rural areas.

In all three countries one can divide those who provide legal services into three main categories: registered and accredited lawyers, non-registered jurists and notaries. The main division in the rights of these groups is that in order to defend a criminal case in court one needs to be a registered lawyer, while anyone can work on a civil case as long as they have power of attorney from the defendant/plaintiff.

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<sup>12</sup> Chemonics International Inc. (1 November 2006). Kazakhstan Judicial Assistance Project: Annual Report 2006: for USAID.

<sup>13</sup> American Bar Association. (August 2008). Judicial Reform Index for Tajikistan. Washington, USA.

The system under which lawyers operate in Kazakhstan and Tajikistan is a continuation of the Soviet Collegium of Advocates. Kyrgyzstan does not have a unified bar system or a fixed set of requirements for registered lawyers. This is often seen as a hurdle for anyone trying to find competent representation.<sup>14</sup>

In all three countries the state is obliged to provide a criminal lawyer for those who cannot provide one for themselves. However, there are considerable questions over the likely availability and reliability of the lawyer.<sup>15</sup> The state defense lawyer is appointed by the state investigator if the person being investigated asks for this. Obviously this is severely affected by the knowledge that a defendant has of their rights, since many of our interviews suggested that a lawyer may not be offered unless asked for. Even then, many experts said that the state-appointed defense lawyer is motivated to conclude the case quickly, since compensation is low. They are also likely to be biased toward the person who hired them: the investigator.

Perhaps as significantly, in each of the three countries the prosecutors have a right to hold individuals without charge for a considerable period of time (usually three days). During that time they will often not see a lawyer at all. As the American Bar Association observes in Tajikistan, “A detainee’s first opportunity to meet with an advocate may not be until several days after arrest and only when the detainee is prepared to sign a confession”.<sup>16</sup>

Even when a lawyer is provided, the quality of that lawyer may be very low. Part of the reason for this is that in each of the three countries, and particularly in Kyrgyzstan and Tajikistan, the government seems to be very slow at paying its state appointed lawyers and, even when it does so, the payment is low. In Kyrgyzstan, for example, state-appointed lawyers are paid 125 som (\$2.70) per day. Even in Kazakhstan the US state department reports, “In practice, defense attorneys reportedly participated in only half of all criminal cases, in part because the government did not have sufficient funds to pay them”.<sup>17</sup>

Another factor limiting access to lawyers is the actual number of accredited lawyers distributed across the country. There is massive variation in the availability of lawyers both across and within countries. According to Freedom House, “Kazakhstan currently has a surfeit of lawyers, as this profession is perceived to be among the most ‘prestigious’”.<sup>18</sup>

In contrast, Kyrgyzstan and Tajikistan have relatively few practicing lawyers, and as one can see in Figure 19 and Figure 20 they are unequally distributed.

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<sup>14</sup> Cynthia Alkon. (2007). The Increased Use of 'Reconciliation' in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern? *Pepperdine Dispute Resolution Law Journal*. p65

<sup>15</sup> Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Tajikistan. Washington: US State Department. (<http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136094.htm>), Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Kazakhstan. Washington: US State Department. (<http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136088.htm>), Bureau of Democracy Human Rights and Labor. (March 11 2010). 2009 Human Rights Report Kyrgyzstan. Washington: US State Department. (<http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136089.htm>)

<sup>16</sup> American Bar Association. (2006). Legal Profession Reform Index: Tajikistan. Washington, USA. p4

<sup>17</sup> Bureau of Democracy Human Rights and Labor. (March 11 2010a). 2009 Human Rights Report Kazakhstan. Washington: US State Department. (<http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136088.htm>)

<sup>18</sup> Bhavna Dave. (2009). Kazakhstan *Nations in Transit*: Freedom House.

Figure 19: Number and distribution of lawyers by region in Kyrgyzstan (2003)

Region	Population	No of advocates	No of trained advocates per 10,000 population
Bishkek City	762,300	611	8.0
Batken oblast	382,400	15	0.4
Jalal-Abad oblast	869,300	112	1.3
Issyk-Kul oblast	413,100	53	1.3
Naryn oblast	249,100	26	1.0
Osh oblast	1,175,900	226	1.9
Talas oblast	199,900	27	1.4
Chui oblast	770,800	112	1.5
Total	4,822,000	1192	2.5

Ref: American Bar Association (2004), Legal Profession Reform Index: Kyrgyzstan, Washington, USA p35

Figure 20: Number of licensed collegium advocates in the regions of Tajikistan (2005)

Region	Population	No of advocates	No of trained advocates per 10,000 population
Dushanbe	619,400	184	2.97
Sogd oblast	1,992,600	149	0.75
Rayons of Republican Subordination	1,467,600	41	0.28
Khalton oblast	2,344,600	47	0.21
GBAO	215,800	2	0.09
Total	6,640,000	423	0.64

Reference: Originally prepared by Alternative NGO Report (2005) to the United National Human Rights Committee in Relation to the Examination of the Initial Report by the Republic of Tajikistan on the Implementation of the International Covenant on Civil and Political Rights.<sup>19</sup>

It is difficult to assess the absolute numbers here. The United States, for example, is commonly cited as having around 30-40 lawyers per 10,000, though within the United States there is also wild variation with some states reportedly showing as few as 4 lawyers per 10,000.<sup>20</sup>

However, even if in some places the number of lawyers is what one would expect of a transitional country, two facts remain. Firstly, there is about ¼ the number of advocates, as a proportion of the population, in Tajikistan as in Kyrgyzstan. Secondly, inside countries the inequity of distribution is even more severe than across the countries. In both countries, around half the advocates are concentrated in the capital city, even though it represents a relatively small proportion of the population.

This apparent under-supply is odd given that there are massive numbers of law students relative to the number of practicing lawyers. The American Bar Association suggests that there were as many as 12,000-13,000 law students in Tajikistan in 2005.<sup>21</sup> Therefore, it seems likely that, at least in the capital, the biggest hurdle is demand rather than supply. As poverty is almost certainly higher in rural areas, one might expect that the problem would be demand in these regions too; however, the picture is probably more complicated. It is hard to believe that the whole region of Gorno-Badakhshan (GBOA) in Tajikistan

<sup>19</sup> American Bar Association. (2006). Legal Profession Reform Index: Tajikistan. Washington, USA. p33

<sup>20</sup> There is no single site that seems to give a definitive answer to international comparison in per capita lawyers, but a number of sites have calculated this per state for the United States. For example, <http://lawschooltuitionbubble.wordpress.com/2010/09/08/numbers-crunched-the-aba%E2%80%99s-number-of-attorneys-per-state-and-per-gross-state-product/>

<sup>21</sup> American Bar Association. (2006). Legal Profession Reform Index: Tajikistan. Washington, USA. p2

only requires two qualified lawyers. More likely is that, given the immense and sparsely populated geography of the region, there is never sufficient demand in any given sub-region for more than two lawyers to maintain a business.

#### **6.4.2 Documentation**

Problems relating to documentation are a considerable barrier to justice across the region. As our survey suggested in Section 4, “documentation” as a general category was mentioned as a major problem in all three of the countries. This reflects the high documentation requirements for social assistance and social service provision as well as the documentation required to access justice.

Three forms of documentation were specifically mentioned during our different enquiries. The first was the housing registration document or *propiska*. This document is used to control internal migration, as it requires people to be officially registered as resident in one place and so essentially requires permission for movement. This creates a problem when interacting with the government. For example, if one wants to gain social services, get treatment from a hospital, go to school or go to court, officials will want to see a *propiska* to check that a person falls within their particular catchment area. This obviously creates a problem if that person does not have a *propiska* or they are registered in the wrong place.

This can happen for two reasons. Firstly, if a child is not properly registered when he/she is born or if someone is an illegal migrant, then they simply may not have a *propiska* at all. Second, even if one has a *propiska* and moves without permission, one may be registered in the wrong place.

Our survey showed 94% of people in Kazakhstan, 89% of people in Kyrgyzstan and 98% of people in Tajikistan registered with *propiska* within their own district. This may suggest that this is a fairly substantial problem, at least in the first two countries. However, the problem may be more severe than these numbers suggest, as people who are not registered in the right place may be nervous about admitting it.

Finally, even if the *propiska* problem is not an issue for most of the population, it clearly is an issue for certain vulnerable groups. Housing registration is a particular issue for migrants, whether internal or external. It may also be an issue for children in rural areas, since not registering children (and so documenting their parentage) can create a problem over their rights to child support if their parents separate.

The second documentation issue that emerged during our research was marriage registration. Only 1/3 of people in Tajikistan, about 1/2 in Kazakhstan and 3/4 in Kyrgyzstan realized that you needed more than a religious ceremony in order to have a marriage that is recognized by the state. This has profound implications for what would happen in the event of a divorce, as women who are not formally married would have no rights to property or child support. Clearly, formal registration does not solve access to justice issues in domestic situations, but it is a necessary first step.

Connected to this, a persistent documentation issue that emerged in our focus groups with women in each of the three countries was the ease with which men could abuse documentation requirements in order to avoid their responsibilities in the event of divorce. In particular, the child support payments that men are required to pay are related to their income, but many women said that it is extremely easy for men to avoid this by paying to have documents produced apparently proving that they earn very small salaries. Similarly, in order to avoid division of property, men can register their assets under the name of another member of the family.

Of course, these are difficult issues. In a situation where most couples live alongside their extended families, simple divisions of property may not be fair. Similarly, where incomes are small and much work occurs informally or outside of the country, it is difficult to get access to accurate information on earnings or to compel fathers to pay for the support of their children after a separation. However, it is clearly essential, if women are to gain access to justice and to create disincentives for domestic abuse or

abandonment, that women are not trapped by material circumstances and thus forced to stay in difficult or even violent situations. One part of fixing this problem may be to make it harder for fathers to provide false documents.

### 6.5 Corruption and perceived corruption

It is more or less universally accepted that corruption is a big problem in the region. On a scoring system of 0-10, where zero is highly corrupt and 10 is totally uncorrupt, Transparency International’s Global Perception Index gives Kazakhstan 2.9, Kyrgyzstan 2.0 and Tajikistan 2.1. This places Kazakhstan 105<sup>th</sup>, Tajikistan 154<sup>th</sup> and Kyrgyzstan 164<sup>th</sup> out of 178 countries.<sup>22</sup>

For the purposes of our analysis, we asked a number of different questions about the effectiveness of the court system and corruption came out as the number one concern.

Figure 21: In resolving disputes, Kazakhstan’s court system is....(%)



Figure 22: In resolving disputes, Kyrgyzstan’s court system is....(%)

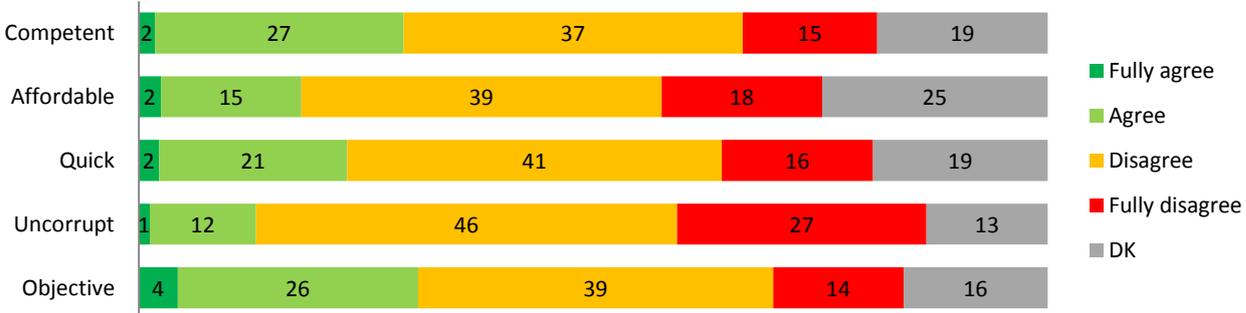


Figure 23: In resolving disputes, Tajikistan’s court system is....(%)



If we focus on the “disagree” and “fully disagree” then we can immediately see how unfavorable the assessment of the court system is according to different estimations in each of the three countries.

<sup>22</sup> Transparency International (reviewed 14<sup>th</sup> January 2010), Global Perception Index ([http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results))

A number of facts stand out from these three tables. First, both Kazakhstan and Kyrgyzstan have clear and extremely negative assessments of their court systems. Second, in all three countries the assessment that the court system is “corrupt” (or “I disagree that it is uncorrupt”) is worse than any of the other elements we asked about it. In Kazakhstan, 61% of respondents think the courts are corrupt and in Kyrgyzstan that number is 73%.

The oddity is that Tajikistan seems to have such higher levels of trust. This is strange because none of the legal experts we spoke to came to this judgment and it was not reflected in any way in our focus groups. One explanation for conflict is that people were simply less prepared to be openly critical in Tajikistan than in the other two countries. This conclusion is supported by the fact that only 20% of people in Tajikistan disagreed (in the above question) that the system is “affordable”. However, in a separate question 80% said they did not know where to find an affordable lawyer (see above Figure 18, p29).<sup>23</sup>

Even if the population as whole is more conservative in their assessment, the findings can still be valuable. For a start, realizing that people are more conservative in Tajikistan is incredibly important for programming in the country. The degree to which a person is comfortable to speak to a fairly pleasant stranger (like our interviewers) tells us a lot about the level of social capital in a country and the ease with which outsiders can expect to help affect change. Also, these findings are meaningful because they at least show that even in Tajikistan, corruption is the biggest problem that the population identifies within the court system, with almost ¼ prepared to say so.

We also asked people about the institutions they trust and in the table below we combined the “fully distrust” and “rather distrust” responses from questions about specific institutions and listed the top five least trusted institutions below.

Figure 24: Five least trusted institution by country

Rank of least trusted institutions	Kazakhstan	Kyrgyzstan	Tajikistan
1	Police	Judges	Religious institutions
2	Religious institutions	Legal system	NGOs
3	Judges	Police	Banks
4	Legal System	Prosecutor’s office	Local government
5	Health care system	Religious institutions	Police

Obviously what matters for our purposes is that 3 out of the top 5 least trusted institutions in Kazakhstan and the top 4 least trusted institutions in Kyrgyzstan are related to the legal system. Tajikistan’s results are hard to interpret for the same reasons as explained above.

The belief that corruption is prevalent was reflected in our focus groups even more clearly. In Kyrgyzstan, talking about domestic abuse, one woman told us, “Even if the police take him away, in our village if he has 200 som, they let him go. He comes back home and starts beating you more.” (Housewife, 30, married, Kara-Balta, Kyrgyzstan). Similarly, another woman in Kazakhstan said, “We do not have any justice. The one who pays more, wins.” (Housewife, 42, married, Almaty, Kazakhstan)

For the same reason, the male orphans we spoke to in Kazakhstan said that they would not go the police if they were robbed or attacked by criminals. One young man said, “Imagine the criminals who attacked me; I go to the police and there is no point. Even if they get arrested, they will be let free in any case.

<sup>23</sup> As suggested before, there are good reasons why Tajikistan might be more conservative than the other two. Tajikistan has a higher level of poverty and a higher rural population. It also had a brutal civil war which, according to many commentators, has significantly reduced the population’s appetite for political conflict.

They are criminals, they have money and connections.” (Legal consultancy, 23, male, Almaty, Kazakhstan)

The orphans did think that the situation would be different for children with parents, but mainly because their parents would have money and could bribe the authorities. As one young man said, “If they [the parents of the victim] don’t pay the police, they will treat him like they would treat youth from the orphanages.” (Unemployed, 21, male, Almaty, Kazakhstan)

In Kyrgyzstan, young people from the new settlement expressed general cynicism about the effectiveness of the police to provide security. They agreed they would not go to the police if attacked by a gang. They feel that the police are corrupt - as one young man said, “The police are also corrupt. They will take a bribe and let the offenders go.” But they also feel that criminals are powerful, and as one young woman said, “If the criminal gangs do something, you can’t go to the police. The police are afraid of them.” (College student, 19, female, Kyrgyzstan)

Both women and youth also said that they would probably be ignored by the police if they went with a complaint. People from the novostroyka in Kyrgyzstan said, “Even if the guy from the city is guilty, they [the police] can still blame it on the one from the novostroyka.” (College student, 20, male, Kyrgyzstan)

In Tajikistan we encountered the same concerns. On the most basic level, there was the fear that the police were unlikely to help,

“The police, they will not do anything until you give them money. Money decides everything now. It is unfair. If they find the one who was guilty, but that person pays money, the one who first approached the police, the one who is the victim, will be named guilty, because he didn’t pay. You can buy the police today”. (Student, 23, female, Dushanbe, Tajikistan)

At a more extreme level, some participants said that, because they are from a vulnerable group, if they get involved with the police then they may end up being accused of a different unsolved case.

“Some say ‘if you end up there [the police station], you will admit that you killed Lenin’. It is the case in reality. I was tortured and beaten. They were telling me about the little children that have gone missing in Dushanbe. And then they put a gun in front of me and told me if I didn’t tell them that I did it, they would shoot me dead.” (Student, 18, male, Dushanbe, Tajikistan)

## **6.6 Structural biases in the legal system**

The vast majority of the assessment above was built upon the large survey that we conducted in the three countries. This gives us some useful and practical insights into the operation of the legal system and the way that the population feels about it. However, in addition to these issues there is a body of fairly disparate literature that highlights problems over access to justice that result from the structure of the system.

These problems can lead to lack of trust or to systematic biases even if they are not noticed by the people who are trying to use the system. However, they are clearly important because they might provide insights into how better access to justice can be provided. In the following section, we will consider some of the concerns that are most commonly expressed in the literature.

### **6.6.1 The power of the prosecutor in the post-Soviet inquisitorial system**

The first structural barrier to justice is the overall bias in the system in favor of the prosecutor. In spite of many revisions to the system over the last twenty years, the basis of the legal system in Central Asia continues to be the Soviet system. Though this is described as adversarial, it often continues to be largely inquisitorial.

The central difference between adversarial and inquisitorial systems (for our purposes) is the relative power of the prosecution. In the adversarial system the prosecutor and defense find themselves in roughly the same position vis-à-vis access to evidence, presentation of material to the judge and rights to enquiry. However, in the inquisitorial system the prosecution has far more power and rights than the defense. This creates what is often called an “imbalance of arms”.

In general, this imbalance of power manifests itself in four ways.

Firstly, the prosecutor and investigator set the terms of the investigation and have significant influence on the measures of pre-trial restraint and interrogation. Though the person being investigated has a right to a lawyer, that right is not always exercised for a range of reasons. Even when it is, if the defense lawyer is appointed by the state then they will be appointed by the investigator, who is often responsible for signing the paperwork necessary to secure payment. Also, state lawyers may change during the course of one case and at different parts of the process. So, one may have one lawyer for the interrogation, another for pre-trial and a different lawyer for the trial itself.

Secondly, the police have extremely low investigatory skills and so rely heavily on interrogation of witnesses as the basis for any case. It is generally expected that a confession will be extracted. As Cynthia Alkon writes in a US Law Journal in 2007,

“After the police make an arrest, they conduct the ‘investigative stage.’ Typically, this is the stage of the process when the police routinely obtain or extract confessions from the defendant. All four [our three countries’ plus Uzbekistan’s] criminal justice systems operate under the belief that the evidence is incomplete without a statement from a defendant. That statement is usually a confession of guilt”.<sup>24</sup>

Thirdly, in the inquisitorial system the court process is heavily weighted towards the prosecutor. The prosecutor presents a complete written case to the judge and this is generally assumed to be true.

Finally, the defense lawyer has relatively few rights, limited investigatory powers and even less motivation to spend time investigating a case in detail. In Kazakhstan, for example, the defense lawyer has no automatic right to include witnesses outside the list provided by the prosecutor. Finally, if the evidence provided by the prosecution is deemed insufficient then the judge will not necessarily dismiss the case, but can send the case back for further investigation. This often happens several times.

These biases can be seen in the extremely high conviction rates (often 90% or more). It is, therefore, reasonable to say that the most important decision regarding an individual’s likelihood of incarceration is the prosecutor’s decision to prosecute in the first place. As a result, as Alkon explains,

“The average person charged with a crime in Central Asia enters a world where rights are not respected, where confessions are expected, and where conviction is inevitable in the absence of adequate money or connections to secure release from both prison and further criminal prosecution. The day-to-day practices in the criminal justice systems of Central Asia have changed little since the time when the Soviets ruled. The rights of the state still stand supreme over the rights of the individual”.<sup>25</sup>

After the investigation, the case goes to trial and will usually be judged by a single judge (or, in serious cases, a panel of judges) and will not involve plea bargaining and will almost never involve a jury. The

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<sup>24</sup>Cynthia Alkon. (2007). The Increased Use of 'Reconciliation' in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern? *Pepperdine Dispute Resolution Law Journal*, p61

<sup>25</sup> Ibid. p59

usual punishment for a crime is imprisonment and there are few uses of alternative sentencing, even for juveniles, though these options often exist in the legislation.<sup>26</sup>

This situation is clearly changing across the three countries. In all three countries the judge now has to agree to pretrial detention. However, as this approval is given around 99% of the time, the impact of this change has so far been limited.<sup>27</sup> This may also result from extremely low levels of judicial independence and professionalism, which will be discussed below.

In Tajikistan, a new criminal code entered into effect in April 2010. This includes changes to judicial oversight of a number of facets of the legal process including, importantly, pretrial detention. However, it has been suggested that even with these amendments, the judicial system does not offer the protections that one would expect for a defendant. For example, application of pre-trial detention may be based entirely on the seriousness of the charges, thus allowing for detention even where evidence is weak and risk of flight is minor.<sup>28</sup>

In civil cases, the state prosecutor is generally supposed to play a very different role, or to be absent. As a result, one would expect the judge to become the most important legal professional. However, even in civil cases the prosecutor is often involved. Under the law in each of the three countries, the prosecutor is required to be involved if the civil case is against the state, involves a minor or may involve the infraction of a law. This last provision usually gives the prosecutor fairly wide latitude to insert themselves, and with themselves both individual and state interest, into the system.

#### **6.6.2 Lack of judicial independence**

In all three countries the judiciary is one of the most problematic elements of the legal system. In the Soviet system, judges did not operate as independent arbiters of the political process, but rather worked as arms of the state. As Alkon explains, the weakness of the judiciary “reflects the historical development of the judiciary in the former Soviet Union. Under the Soviets, a judge simply agreed with whatever the prosecutor requested”.<sup>29</sup>

In spite of a range of constitutional changes in the three countries, governmental influence over the judiciary remains, largely because it continues to be a useful means of eliciting resources and because it can be utilized in the political arena. In addition to this, in the post-Soviet period the opportunity/necessity for corruption (already present in the Soviet system) has increased for two reasons. First, judgments are more financially valuable in a capitalist society where decisions on civil cases may determine who owns major assets. Second, low salaries for judges both create and reflect the expectation that graft will be part of the judicial remuneration package.

As we will see later in more detail, while the problems of political pressure, financial corruption and lack of professionalism are common across the region, the details differ. In Kazakhstan in particular, while a constitutional amendment and subsequent legislation have worked to reinforce presidential appointment over the judiciary, continued and significant increases in funding have led to an improvement in professionalism and training. OSCE/ODHIR assisted in opening a new judicial academy in 2004 and USAID has developed a judicial mentoring program. Kazakhstan is the only one of the three countries where financing for the judiciary has been increased significantly. As a USAID judicial assessment comments, “Kazakhstan stands in notable contrast to its neighbors in allocating significant amounts of resources to improving work conditions for judges”.<sup>30</sup>

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<sup>26</sup> Ibid. p61-3

<sup>27</sup> Bhavna Dave. (2009). *Kazakhstan Nations in Transit*: Freedom House.

<sup>28</sup> 2010 *Final Report*, 3<sup>rd</sup> Expert Forum on Criminal Justice for Central Asia, ODHIR, Dushanbe, p16

<sup>29</sup> Cynthia Alkon. (2007). The Increased Use of 'Reconciliation' in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern? *Pepperdine Dispute Resolution Law Journal*. p64

<sup>30</sup> Chemonics International Inc. (1 November 2006). *Kazakhstan Judicial Assistance Project: Annual Report 2006*: for USAID.

Kazakhstan has also recently instituted a hybrid jury-trial system where ten jurors take evidence and then deliberate under the direction of a judge. The results of the 2007 OSCE/ODIHR trial monitoring program showed that this reform had a very positive impact on the Kazakh criminal justice system, improving access to justice and criminal procedure guarantees for the defendants.<sup>31</sup> . A US State Department Assessment did mention that this resulted in a welcome increase in acquittal rates in jury trials.<sup>32</sup> However, significant problems remain at the implementation level. The preliminary ODIHR assessment in 2010 showed “lack of the appropriate skills on the part of judges, defense lawyers and prosecutors necessary to relay information to jurors in plain yet professional language”.<sup>33</sup> In order to increase the trust in this institution, a comprehensive training program is needed for all criminal justice professionals in Kazakhstan.

As a result of these various measures, Freedom House increased Kazakhstan’s “Judicial Framework and Independence Index” from 6.25 to 6.00, the first improvement of its kind in 7 years.<sup>34</sup> However, there is little doubt that the system continues to be highly corrupt with, as has been mentioned already, high level of political influence, bribe taking and consequently low levels of public trust.

As for the other two countries, the main problem regarding judges continues to be corruption, even before we start to talk about professionalism. Underlying this is the same resource disparity between the countries that we have seen on other issues. As the American Bar Association said of Tajikistan in 2008, although “judges’ salaries have been increasing, judges, especially at lower courts, simply do not earn enough to support their families, increasing the temptations of corruption”.<sup>35</sup>

### 6.6.3 The classification of cases

In the literature on the Central Asian legal system the classification of cases is seen to have an impact on access to justice mainly through the use of administrative offence law.<sup>36</sup> The category of “administrative offence law” is applied to some cases that involve disputes with the government. The modern administrative courts work differently in the three countries, in some cases requiring a judge and in others being carried out simply by a government functionary. However, it is generally agreed that administrative courts across the three countries offer fewer protections for the defendant/accused than criminal courts and that as a result, the over-use of this category could pose a problem for access to justice.<sup>37</sup>

The fact that “administrative offense law” offers fewer protections than the criminal system would seem sensible if administrative offences only covered minor infractions like motoring offences or disputes over government paperwork, but administrative cases can also include more serious conflict with the government that may (in some cases and countries) involve incarceration. For example, political activities such as protests are generally classified under administrative law. In Kazakhstan, blurring the line between criminal and administrative offenses is one of the ways the legal system has of side-stepping a range of protections for accused people.

As a report from the OSCE/ODHIR *Expert Forum on Criminal Justice* observes,

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<sup>31</sup> 2007 OSCE/ODIHR Jury Trial Monitoring report (In Russian).

([http://lex.kz/netcat\\_files/154/63/h\\_26402f64f4bf817b46106ce704ac2a90](http://lex.kz/netcat_files/154/63/h_26402f64f4bf817b46106ce704ac2a90))

<sup>32</sup> Bureau of Democracy Human Rights and Labor. (March 11 2010a). 2009 Human Rights Report Kazakhstan. Washington: US State Department. (<http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136088.htm>)

<sup>33</sup> 2010 *Final Report*, 3<sup>rd</sup> Expert Forum on Criminal Justice for Central Asia, ODIHR, Dushanbe, p15

<sup>34</sup> Bhavna Dave. (2009). Kazakhstan *Nations in Transit*: Freedom House.

<sup>35</sup> American Bar Association. (August 2008). Judicial Reform Index for Tajikistan. Washington, USA. p5

<sup>36</sup> There also seems to be continuing problems over the use of public/private divisions in criminal law, but these are extremely technical in nature and so beyond the scope of this research.

<sup>37</sup> European Union - Kazakhstan. (September 2009). Judicial Systems and Places of Detention: Towards European Standards (Final Report). Almaty, Kazakhstan. p1

“the continuing liberalization of criminal law in Central Asia pushes a growing number of offences from the criminal into the ‘administrative’ realm. At the same time, serious issues with regard to the lack of due process in handling administrative offences persist, while the stakes for the affected individuals and businesses may be high”.<sup>38</sup>

The same can be said for “reconciliation” procedures, which are increasingly used in Kazakhstan. In the West, “reconciliation” is used as a strategy for victim-offender mediation. However, in Kazakhstan it has been suggested that the increase in the use of “reconciliation” has been used as a procedure for avoiding court settlement of disputes. As Alkon argues, the principle reason for the increased use of reconciliation in Kazakhstan is, “to stop a complaint from proceeding into the system”.<sup>39</sup>

The result of this, she argues, is that victims may be put into situations where reconciliation (which will involve dropping charges in some cases) is expected, even if serious and violent crime is involved. As a result,

“in sharp contrast to the safeguards provided in many western countries, prosecutors make no effort to ensure that crimes involving sexual offenses, including rape, receive careful screening that considers whether reconciliation provides sufficient safeguards for the victim”.<sup>40</sup>

#### **6.6.4 Traditionalism in informal cases**

In the broadest sense, informal and customary law are simply different systems for dispute resolution and settlement that do not exclusively rely on the police and the courts. In Kyrgyzstan, the main form of customary law is *Aksakals*, or courts of elders. In Tajikistan it is the *Mahalla* Committees. In all three countries, the village leader or representative of local government is also a common authority that people appeal to.<sup>41</sup>

##### **6.6.4.1 Different forms of informal legal settlement**

Kyrgyzstan has the only officially recognized “informal” court system, called *Aksakal Courts*, or courts of elders. The *Aksakal* Court system was institutionalized by presidential decree in 1995. In 2006 there were around 1,000 of these courts across the country.<sup>42</sup> While the *Aksakal* courts have been presented as a continuation of a traditional court system that predated the Soviet system, whether these courts are a continuation, a recreation or an invention of the modern Kyrgyz state continues to be a matter of dispute.<sup>43</sup>

An *Aksakal* court has between three and nine members and they are unpaid. Members of the court are generally respected members of the local community including former heads of collective farms, local government or former school teachers. They are directly elected at a village meeting and, by law, have this role for 4 years, but often are re-elected repeatedly. The court is free.

The *Aksakal* system was created as a response to increases in petty crime and often deals with small local crimes like the theft of livestock as well as disputes between locals over land or local resources. It is also often a location for resolving family disputes like divorces and the division of property that goes with it, domestic abuse or drunkenness.<sup>44</sup>

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<sup>38</sup> 2010 *Final Report*, 3<sup>rd</sup> Expert Forum on Criminal Justice for Central Asia, ODHIR, Dushanbe, p7

<sup>39</sup> Cynthia Alkon. (2007). The Increased Use of 'Reconciliation' in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern? *Pepperdine Dispute Resolution Law Journal*. p80. This sentiment has also been expressed by judges that our research team interviewed in Kazakhstan

<sup>40</sup> Ibid.p72

<sup>41</sup> Phone interview with legal NGO member and legal expert, Almaty, Kazakhstan, December 2011

<sup>42</sup> Judith Beyer. (2006). Revitalisation, Invention and the Continued Existence of the Kyrgyz *Aksakal* Courts: Listening to the Pluralistic Accounts of History. *Journal of Legal Pluralism*, 53-54. p145

<sup>43</sup> Ibid.

<sup>44</sup> Rural Development Institute. (2009). Integrating Customary Land Tenure into Statutory Land Law: A Review of Experience from Seven Sub-Saharan African Countries and Kyrgyzstan. Washington, USA: USAID. p63

The *Aksakal* court is a strange hybrid of formal and informal. It is often seen as informal because it resolves disputes using a combination of formal law and local customary law and because it is locally run by largely untrained individuals. At the same time, the resolution of the disputes is often informal. *Aksakal* courts cannot imprison a person, and while they have the right to impose fines the *Aksakal* courts often impose behavioral constraints that are monitored at a community level.

In spite of this apparent informality, in its current form it is part of the state-sanctioned Kyrgyz legal system. Petitions to the court must be made in writing, decisions are registered and sent to the police and appeals against decisions can be made to the district court within 10 days.

In Tajikistan, and in the Uzbek sections of Kyrgyzstan, there is a different form of informal settlement system, the *Mahalla* Committees. *Mahalla* committees in Tajikistan are not formally integrated into the legal system (unlike *Aksakal*) though they are governed by the “Law on the organs of unauthorized activity”. The *Mahalla* Committee consists of 3-5 people (though that number is not clearly defined) and is elected by an open meeting of the members of the *Mahalla* (or small sub-region). They then elect their own chairman.

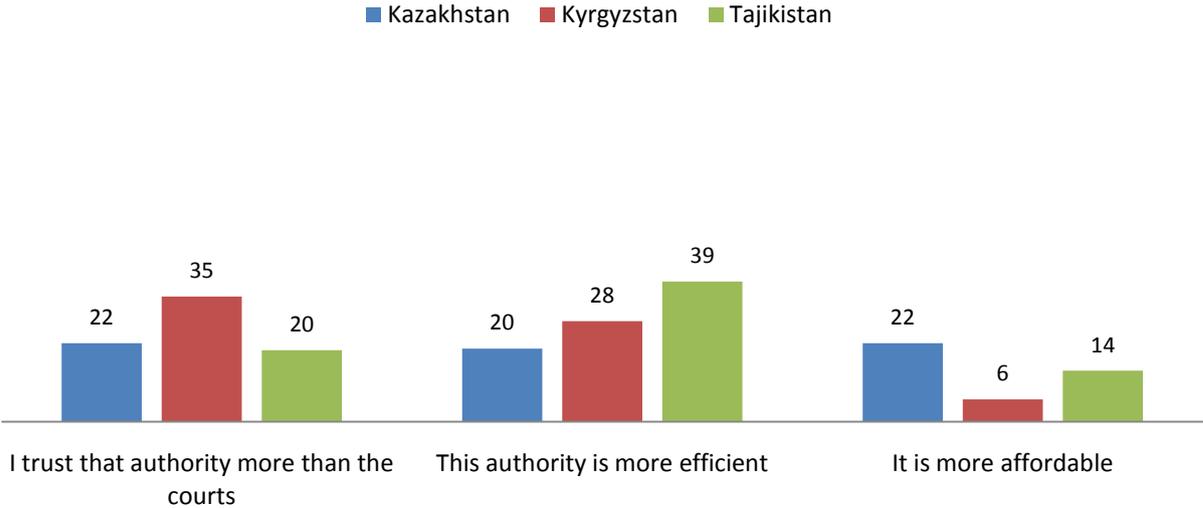
The role of these committees in resolving disagreements seems to be even more informal than the *Aksakal* in that individual members will often be approached to rule on a particular issue and will be able to do so without written application or any review process. However, if a dispute is large or serious enough then the entire committee may meet to consider it.

In a similar way, all three countries also tend to use village leaders or local government officials to resolve disputes. In Kazakhstan, this figure, called the *Akim*, is the main form of informal dispute resolution. In many ways, even though this person is a formal part of the government, this is the most “informal” resolution system of all; it is generally approached as a mechanism for navigating the complicated intersection of public and private interests and so may be the jumping-off point for government corruption.

#### **6.6.4.2 Benefits and costs of the informal system**

The informal justice systems operate differently in the different countries, but the costs and benefits are largely the same. On the positive side, local informal adjudication mechanisms and customary courts can provide an inexpensive system for resolving certain disputes. It is also possible that they are more trusted because they are closer to home, involving respected “elders” or, at least, individuals who are known to the local community. In our survey we asked respondent who said they would take an issue to an informal court, why they would do so.

Figure 25: Reasons for using informal authority rather than the courts (%)



However, in the literature there are serious concerns about the effectiveness of these informal authorities. These concerns usually fall into three main categories.

Firstly, those practicing customary and informal law may not know the law very well and will probably not be trained in its application. This creates questions over the arbitrariness and consistency of the different laws.

Secondly, if the informal legal system effectively allows a different set of laws to operate in parallel to the formal legal system, this may create concerns over which legal system takes precedence. Allowing religious law to become the *de facto* rule creates concerns about Islamicization. In addition, customary law and religious law are usually far more conservative than formal laws. This is particularly worrying from the point of view of gender issues, since traditional rules may offer inherent biases in favor of men (particularly regarding issues like divorce and property).

Thirdly, and connected to the second point, allowing some cases to be decided under customary law may effectively mean that those cases are not taken as seriously by the state. The range of sanctions available under customary law is generally not as severe as under formal civil/criminal law. In particular, customary law will often look for reconciliation of two parties or impose behavioral sanctions on one side rather than imposing a fine. Imprisonment is rarely an option. This is a problem because informal law will generally deal with domestic and family conflict. As a result, even where this conflict involves violence, it may be effectively decriminalized.

A paper by Human Rights Watch suggested that cases are often referred to the *Aksakal* court system to keep them out of the formal system. In this way, the *Aksakal* court may provide a vehicle for the police and courts to avoid dealing with the cases they don't take seriously.

This is problematic as *Aksakal* courts appear to be particularly responsible for cases that deal with violence in the home and/or divorce. Human Rights Watch points out that,

“While Kyrgyz law envisions that some domestic violence cases will be handled by the *Aksakal* courts, police appear to resort excessively and inappropriately to this option in order to get rid of such cases, which they deem unworthy of their time and attention”.<sup>45</sup>

<sup>45</sup> Human Rights Watch. (2006). Reconciled to Violence: State Failure to Stop Domestic Abuse and Abduction in Kyrgystan.p63

As a result, HRW argues that this

“robs women of their access to justice and the full range of options for protection envisioned under the law. *Aksakals*, unlike police and courts, cannot issue orders of protection for women at risk of continued violence. Nor can they detain or imprison abusers. Once the police pass on cases that would rightly be prosecuted under the Criminal Code to the *Aksakals*, the case is no longer considered a criminal matter, but a social problem”.<sup>46</sup>

The International Bank for Reconstruction and Development (IBRD) makes a similar point about the role of *Aksakals*:

“Most often the courts of *Aksakals* see women related to domestic violence and division of property when there is a divorce. [However] Customs and traditions in many cases preclude women from exercising their legal rights to property by going to the *rayon* court”.<sup>47</sup>

For example, in the case of allocating land, while the law requires an equal division of property upon a divorce, customary law tends to treat land as the property of the man and the woman usually “takes the children and returns to her family”.<sup>48</sup>

## 7 Existing programs

The final part of the report will offer a very brief overview of the large existing rule of law programs operating in these three countries. This information is not intended to be exhaustive but it is essential to provide a general overview of the activities already being undertaken so that one can ensure that any programs developed are complementary to existing work.

The interventions below are organized by country and by category. On top of this and at a cross regional level, OSCE/ODIHR provides an annual criminal justice forum which brings together criminal justice practitioners from all five countries of the region to discuss the policy recommendation for the reform of justice sector.

### 7.1 Kazakhstan

#### Structural reforms

In 2007 the Soros Foundation developed a concept for reforming state-sponsored legal assistance, and the USAID-sponsored dialog program in 2009 led a civil-society working group in preparing reform recommendations. This advocacy lost momentum following the financial crisis.

A leading local organization which works towards structural reforms in Kazakhstan is Legal Policy Research Centre. They produce policy papers that set the reform agenda in the justice sector and are widely consulted by the Kazakh authorities and civil society. The work of the Centre has had a direct impact on the official legal Policy Concept and has led to the introduction of judicial authorization of arrest and reforms in administrative justice/procedure. It also works across the whole of Central Asia.

Kazakhstan is a leader in Central Asia in reforming the juvenile justice system, with the Soros Foundation and UNICEF closely involved. In 2011, UNICEF has plans to expand the juvenile courts from Almaty and Astana to each oblast. This will involve the training of judges, prosecutors, police, advocates and social workers so that they can all effectively use the new system.

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<sup>46</sup> Ibid.p63

<sup>47</sup> Renee Giovarelli, & Cholpon Akmatova. (2002). Local Institutions that Enforce Customary Law in Kyrgyzstan 2002: International Bank for Reconstruction and Development: Agriculture & Rural Development Department p17

<sup>48</sup> Ibid. p18

Kazakhstan introduced jury trials in 2007, and has received support from USAID, OSCE and other donors in training personnel and equipping courtrooms. The ombudsman has just 12 staff and no branches.

### **Training and support of judges**

The European Union is supporting a 3.4 million Euro program, led by Acojouris, on judicial and legal issues to help the government set and implement reform policies, to strengthen the lawyers or *advokatura*, and to build institutional capacity. UNDP has a separate project which focuses on increasing information (in particular electronic information) provided by courts and related agencies. USAID is also sponsoring training for judges, and has helped outfit several courts with video recording equipment to address problems in corruption as well as court reporting.

### **Legal education**

The Ministry of Justice is attempting to assert more control over advocates. Officials say this is to address concerns over professionalism, but advocates fear it is an attempt to assert undue influence. Despite concerns that education is deteriorating, few donors are focusing in this area.

### **Legal services for vulnerable groups**

The Almaty College of Advocates supports the provision of qualified defense counsel to juveniles. Labor migrants to Kazakhstan are also exceedingly vulnerable to rights abuses. However, they are a difficult group to assist because they are nearly all in the shadow economy and are, by definition, mobile.

## **7.2 Kyrgyzstan**

### **Structural reforms**

The June 2010 constitution, into which the Venice Commission provided much input, necessitates revising a large part of the legislative base. A range of donors have been assisting in this legal reform, which is led by the Ministry of Justice. The government is also interested in a wide range of structural reforms, including training for judges in issuing warrants and introducing a more transparent system for assigning cases to judges to limit opportunities for corruption.

Jury trials may be introduced in 2012, attracting donor interest. The OSCE/ODIHR and Soros Foundation led the assistance program in this area of reform.

Kyrgyzstan has passed a law reforming state-subsidized legal assistance. The Soros Foundation-Kyrgyzstan and OSCE have been leading donors in introducing the new policy, but there may not be government financing to put the new law into practice.

Kyrgyzstan's ombudsman is the strongest in Central Asia. The United Nations is its main donor, assisting with a case-management system.

Some civil society activists also said that with the new government, reforming the housing registration system could be possible. The OSCE is one organization working in this area.

### **Training and support of judges**

GIZ (previously GTZ) is the leading international donor working with the Supreme Court and the training center for judges. The U.S. Government's Millennium Challenge Corporation from 2007-2010 ran a \$16 million program largely focused on judicial reform, producing a set of recommendations to increase judges' independence, professionalism and ethics.

### **Legal education**

ABA ROLI in 2008 set up an advocate's training center which provides ongoing continuing education to about 25 lawyers a month. They have also been running the "Street Law" program for legal education of youth with support from USAID. Via this program, ABA ROLI was also working in madrasahs.

The Legal Assistance to Rural Citizens (LARC) network conducts regular seminars for farmers on legal issues.

#### **Legal services for vulnerable groups**

The LARC network of 12 independent NGOs, funded by the Swiss, gives legal assistance to farmers, largely on land issues.

Donors have focused on providing defense lawyers for suspects in the June 2010 ethnic violence in Southern Kyrgyzstan, and are supporting the more mundane work of restoring documents lost in the revolution and ethnic violence. NGOs such as the Human Rights Advocacy Center and the Center for International Protection, both in Osh, are among the chief implementers of this donor assistance.

On a larger scale, international organizations and NGOs have been challenging the government's version that members of the Uzbek community provoked the violence. A new issue stemming from the upheaval is likely to be commercial disputes, regarding damaged or lost property and loan defaults.

The NGO Adilet provides legal counsel to a variety of vulnerable groups, in particular refugees, children, PLWHA and drug users. However, Adilet has only a single office in Bishkek.

#### **Informal law**

UNIFEM sponsored training on women's land issues for *Aksakal* Courts, and OSCE is currently working with *Aksakals* to improve their understanding of, and positive influence on, human rights and conflict dynamics.

### **7.3 Tajikistan**

#### **Structural reforms**

The U.S. State Department and UNDP are funding training and information dissemination on recent reforms to the criminal code. Among the international community, the OSCE has taken the lead in supporting the ombudsman's office (established in 2009) by, for example, helping develop a case-management system.

The Constitutional Court's main donor is the Open Society Institute Assistance Foundation, which focuses on professionalism and giving ordinary citizens access to the court.

The Bureau of Human Rights and Rule of Law is researching state-supported legal aid and will present a concept for reform in early 2011.

A cross-cutting need for reform is the provision of information on legal issues

#### **Training and support of judges**

Helvetas, as part of a \$3 million program, is the major trainer of judges, working with the Judicial Training Centre to increase competence and professionalism.

#### **Legal education**

ABA ROLI is the main trainer of advocates. It is engaged in a nationwide training effort for advocates, prosecutors and law enforcement bodies on the new criminal procedure code. It also works with law faculties, and has developed law courses on topics such as human rights and comparative Islamic law for the Islamic Institute and on trial advocacy skills for Tajik State National University. ABA ROLI runs youth programming at the Islamic Institute in the form of debate clubs. No law school currently has a student legal clinic.

#### **Legal services for vulnerable groups**

Helvetas maintains a list of 33 legal aid centers and another 57 agencies providing some sort of legal assistance throughout the country. Despite this, some remote areas have few (if any) lawyers. Legal-aid programs include:

- The Network of Rural Legal Aid Centers (NetLAC), focused on farmers but also providing other services to rural residents, supported by the Swiss
- USAID's Land Reform Program supporting 10 NGOs, consulting farmers
- The League of Women Voters, in Isfara, Khujand and Dushanbe, defending the legal interests of women, supported by the Swiss
- The Bureau of Human Rights' nine offices, supported by a mix of donors
- ABA ROLI providing direct legal assistance to women via mobile legal clinics and training for local government and community leaders.

Women are well-represented in the above projects, but the need is great in particular rural areas, and programs like the Swiss-funded Prevention of Domestic Violence program cover just part of the country. Rural land issues appear well-supported for the present, with USAID and the Swiss government together supporting 20 assistance centers for farmers. UNICEF, via the NGO Children's Rights Center, has had some success with alternative sentencing under its Juvenile Justice Alternatives Project, but few others are working in this area. ABA ROLI and Soros have worked jointly on a program to support parent organizations with legal education and aid. No significant programs are addressing access to justice for people with disabilities.

#### **Informal law**

Donors perceive an increase in the use of Islamic and other types of extra-legal resolution schemes, but there has been little research or programming.







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