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Kyrgyzstan Decentralization Assessment

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Decentralization and Local Government Program in the Kyrgyz Republic

Strategic Objective 2.1: Governing Justly and Democratically

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**DECENTRALIZATION / LOCAL GOVERNMENT PROGRAM (DLGP)
IN THE KYRGYZ REPUBLIC**

KYRGYZSTAN DECENTRALIZATION ASSESSMENT

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I. EXECUTIVE SUMMARY

USAID has been a major source of support for the decentralization process in Kyrgyzstan through a succession of local government programs going back to 1998. The current program is engaged actively in strengthening the policy and legal framework for local self-government, while working directly in and with local self-governments to enhance their ability to make good use of the authority and resources they have. USAID rightfully can claim a share of the success of the process to date.

The question at the heart of this assessment is whether and, if so, to what extent there is a need to shift the focus of ongoing activities under the current program. This report recommends that USAID maintain the current structure of the workplan, while introducing a gradual shift in the emphasis in certain of the activities. This includes:

- o Emphasizing the consolidation and preservation of progress made to date in decentralization over additional reforms to expand the scope of local self-government
- o Providing greater emphasis to direct assistance to the local councils to develop their role in achieving responsive and accountable local governance
- o Considering possible assistance to the Association of Municipalities, subject to a prior agreement to equal representation in the general assembly and on the board of directors to council members and mayors, with selection done through free elections by association members

Part II of this report explains the basis for these recommendations. Part III discusses the recommendations in more detail.

II. UNDERSTANDING AND EVALUATING DECENTRALIZATION

A process of change leading to a viable system of local government

It has been nearly 15 years since the process of decentralization began in central Asia, including Kyrgyzstan. Many experts on the subject will argue that this is a long-term process that still has many more years to go. After all, it is not a simple issue to transfer functions, resources and assets from one level of government to another, develop new fiscal and administrative arrangements and strengthen management skills and practices among those receiving new responsibilities. Decentralization also leads to a redefinition of the role of the central government and its agencies. It is often this issue that takes the most time.

Further, decentralization in certain sectors has proven especially difficult. In the social sectors, such as education, health and social assistance, the challenge is to ensure equity in a decentralized system. In the area of infrastructure, considerations of efficiencies of scale raise questions about the proper way to structure a decentralized administration of utilities.

While it is clear that decentralization is a process that will continue for years, that does not mean that the benefits of the process will not accrue until all the reforms are in place. Decentralization is a means to an end, not an objective of and in itself. Decentralization is a process of change whose objective is to create a viable system of local government.

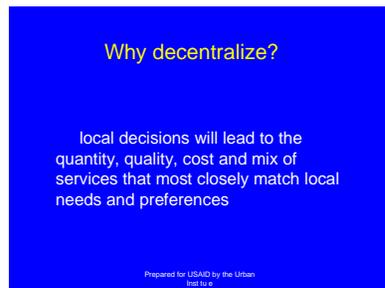
At what point in the process can we say that we have achieved this objective – at least minimally – even if not all the pieces are fully in place?

At what point is it appropriate and necessary to ask whether local governments should be making a difference, whether the quality of life in cities, towns and villages is improving as a result of actions taken by local governments?

At what point do we begin to expect such results?

The ability to make local choices in response to local needs and priorities

The economic theory of decentralization tells us that it is a process that can and should lead to the improvement of the services that citizens receive from government by creating conditions that allow local governments to balance local needs and expectations regarding the quantity, quality, cost and mix of services. This is a useful concept that combines in one short statement the political and service objectives of decentralization.



In a context where resources are scarce relative to needs and expectations, “better” is not a question of achieving optimum efficiency in a particular service but of considering competing needs and expectations within and among services to find the balance that best approximates local preferences. Priorities will vary within a city. What residents in one neighborhood may want is not necessarily the same as what those in a different neighborhood expect. The local business community also will have priorities that differ from those of city residents. With their place of business located in the downtown areas of the city, they will want to see improvements there, rather than in the residential areas.

In effect, the focus is not just on efficiency – doing things the right way – but also on effectiveness – doing the right things.

Objective research on the subject in Kyrgyzstan shows that different communities have different preferences and expectations regarding public services. Box 1 below summarizes key results of a survey conducted for USAID in 2006.¹

¹ In 2006, the USAID Central Asian Republics Local Government Initiative II and in support of the Small Cities Infrastructure and Capacity Building Project overseen by the Agency for Community Development and Investment (ARIS), contracted with several local Kyrgyz NGOs to conduct a poll measuring citizens' attitudes and assessment of various aspects of local self-government operations. The poll was conducted with approximately 100 citizens in all 25 cities of Kyrgyzstan (150 persons in Jalal-Abad and Tokmok, and 200 persons in Bishkek and Osh) in February and March 2006.

Box 1: Citizens in different cities have different priorities and issues for what local self-government should be doing. This supports the argument for decentralization. Detailed questions on the major service areas of water, solid waste collection, and road repair show varying attitudes among citizens residing in different cities. With regard to water, respondents were asked about readiness to pay more if service was better. Balykchy’s respondents were strongly against this (72% of respondents, while the combined average was 41%), even though it scored high rates of dissatisfaction with water provision (a total 35% was satisfied and very satisfied, while the combined average for the two categories was 55%). At the same time, 93% of respondents in Kara-Suu were willing to pay more even though their satisfaction rate was slightly higher than Balykchy’s (39%).

There is also a wide range with regard to readiness to pay more for solid waste collection: over 90% of residents in Kara Suu and Nookat are ready to pay more while less than half of respondents in 7 cities were willing to pay more (and only 11% in Kant). Interestingly, there was wide national correlation with regard to roads – at least 57% in every city feels that their maintenance is ‘very important’ while not more than 11% in any one city feels that it is not important.

The four building blocks of fiscal decentralization

The Urban Institute’s fifteen years of experience supporting decentralization in transition countries of the NIS and central and eastern Europe show that there are four key fiscal decentralization reforms that determine the ability of local governments to respond to local needs and priorities:

- o Clear assignment of authority to perform specific functions
- o Some degree of tax and fee authority
- o Ownership of the assets used to deliver public services
- o A local budget process that is independent of the central budget process



When coupled with the democratic election of local officials, these fiscal decentralization reforms provide the basis for responsive and accountable local government.

We refer to these as the “building blocks” of fiscal decentralization because they work together to form the fiscal foundation of autonomous local financial management. All four are necessary. Local governments are enabled and empowered to make a difference, to improve the quality of life in cities, towns and villages only if all four building blocks are in place. Any one that is missing weakens the foundation and impairs the viability of local governments. Overlapping functional assignments between local and national governments create confusion among citizens on whom to hold accountable. Lack of local tax and fee authority makes it impossible for local governments to trade off higher

Not everything is decentralization

- Local functions
not clear
subject to arbitrary modification
- Local taxes and fees
with a uniform national rate and base
- Local budgets
subordinated to the State budget
- State not local public property

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local service payments for better service quality. Public service companies still under State control impair the ability of local governments to manage service quantity, quality and cost. A local budget process dependent on revenue and/or expenditures decisions made by higher levels of government cannot be responsive to local priorities.

At the point in the process of decentralization when these four “building blocks each are minimally in place and local officials are democratically elected by the local community² we can say that there is a viable system of local government. At this point it is appropriate and necessary to ask whether local governments are making a difference, whether the quality of life in cities, towns and villages is improving as a result of actions taken by local governments. At this point it is appropriate to begin to expect that local governments deliver tangible results valued by the local community. This is a key moment in the decentralization process.

THE STATUS OF DECENTRALIZATION IN KYRGYZSTAN

Decentralization 1993 to 2007

The current process of decentralization in Kyrgyzstan began in 1993 when the Constitution adopted in that year established the legal basis for local governments “which govern local affairs in accordance with the law and at their own initiative.”

In 1996 a presidential decree combined several villages to form *aiyl okmotus* – larger territorial administrative units better able to achieve an effective and efficient scale of operation. In Kyrgyzstan, these reforms created the basis for local self-government in both rural areas. This important step has yet to occur in most of the ex soviet republics and remains as a major constraint to decentralization in those countries.³ In 1998 an amendment to the Constitution, followed by enabling legislation, established the legal basis for local public property as distinct from State or national property. The Law on Municipal Property Ownership adopted in 2002 consolidated this reform.

The President of the Kyrgyz Republic adopted the “National strategy for further decentralization and local self-government development in the Kyrgyz Republic until 2010” by decree on December 17, 2002. Based on the strategy, the Government approved by resolution an action plan for implementation of the strategy. Three important laws followed – the Law on Local Self-government and Local State Administration in 2001, the Law on Financial and Economic Basis of Local Self-government in 2003 and the Law on Basic Principles of the Budget, as amended in 2004.

² The election of local officials does not necessarily imply that both the executive (mayor) and legislative (council) are elected. The Charter of Local Self Government of the Council of Europe requires only the latter. This reflects a common practice of having the council designate the mayor. Among others the Czech Republic and France follow this practice.

³ In the Ukraine, for example, local self-government exists only in cities and towns. Rural areas are still subject to oversight by the rayons and oblasts. Georgia adopted a law in 2007 that would consolidate the smaller villages to form larger territorial administrative units. The law has not yet been implemented and effective local self-government exists only in cities and towns.

The 2004 amendments to the Law on Basic Principles of the Budget authorize local councils to impose taxes from a list and within the limits established by code:

- o Tax on paid services to population and retail sales (4% of service cost)
- o Health resort tax (3% of cost or 10% of monthly income)
- o Tax on advertisements (up to 3% of advertisement cost)
- o Fee for vehicle parking (up to 3% of maximum implied parking rate of 100 soms)
- o Fee for garbage removal (up to 25% of maximum implied garbage removal rate)
- o Hotel tax (up to 2% of daily accommodation at a hotel)
- o Tax on vehicle owners (from 0.09 Som to 0.9 Som for a cubic meter of engine volume, given a vehicle type)
- o Tax on real property

A viable system of local self-government

Present legislation, including pending amendments, achieves each of the four building blocks sufficiently. Coupled with the democratic election of local council members this means that local self-governments in Kyrgyzstan are viable. They have sufficient fiscal authority by law to begin to improve the quality of life in cities, towns and villages through independent actions adopted in their budget. Citizens are not yet seeing these benefits in most localities, but the potential is there for improved performance.

The assignment of local functions in the 2001 Law on Local Self-government and Local State Administration is task- versus function-oriented and includes significant overlaps with the functions assigned to rayons and oblasts. As it now stands it does not provide clear and specific functional authority. Parliament adopted an amendment to that law in 2008 that assigns clear functions exclusively to local self-governments, including roads, water, sewer, and drainage. Once signed by the President it will provide an adequate legal basis for local authority over key services.

Implementation of an independent local budget process was delayed until 2007, first because of conflicts between the 2003 local budget legislation and the 1998 Law on Basic Principles of the Budget. When the latter was amended in 2004, the reform was scheduled for the 2006 budget cycle, but then the Ministry of Finance requested to postpone the reform because “local self-government is not ready.” Through 2006 local self-government budgets effectively flowed down through the oblast and rayon budget. In 2007 for the first time Parliament adopted a two-tier budget – one for the entire State level, including oblasts and rayons, the other for local self-governments.

Under the new budget system in 2007, local budgets include only the budgets of cities and villages, while oblast and rayon levels are financed from the Republican budget. Local self-governments are assigned 100% of local taxes. Shares of the state taxes for local budgets are established in the annual law on Republican budget and according to the Budget Principles Law they cannot be changed for three years. Amounts of targeted and equalization grants are determined by the Ministry of Finance with the breakdown of the

amount allocated to individual local self-governments included as an annex to the Law on the Republican Budget. Negative transfers from LSG budgets are prohibited. This budgetary system, carried into 2008 provides for an independent local budget.⁴

The legislation on local taxes and fees has had only a partial effect. Since the regulation to implement the real property tax has not been adopted local governments have not been able to assess this tax. Most other taxes yield limited revenues and/or are relevant only in a few parts of the country. However, the effect is sufficient to provide some basis for own local revenues, largely because of the paid services to population and retail sales that yields important revenues in most communities

Implementation of the 2002 local property law has been mixed with continuing ambiguity over the legal status of many communal service providers in Kyrgyzstan. Notwithstanding, local self-governments today control significant, although not all, assets related to delivery of public services. They also control large vacant areas that they can manage and allocate to support and guide urban and economic growth at the local level.

An imperfect system of local self-government

The system of local self-government is not without serious flaws. It also faces serious threats that could undermine the viability of the system. The most serious continuing threat is that laws are not always applied in practice. The mixed progress in the implementation of the 1998 property reforms and the four-year lapse between the adoption of an independent local budget process in 2003 and its full implementation in 2007 are good examples of this.

The most immediate fiscal threat is the possibility that an amended Tax Code might exclude local taxes altogether and/or curtail local tax authority. This is not yet final. The Ministry of Finance has objected to such changes, as has the donor community.

The most serious flaw in the current system of local self-government is the provision in the current Constitution that provides for local councils to appoint the mayor based on one or more candidates nominated by the head of the local state administration or the President, depending on the status of the local self-government. All observers interpret this provision to mean that the mayor is accountable to the central government rather than to the local community.

Standing in stark contrast to this provision is the clear authority by law of the locally elected councils to adopt the local budget, to confirm property transactions, to levy local taxes and fees and eventually to appoint and dismiss the mayor.

⁴ In the 2008 budget, rayon budgets were re-introduced as local budgets, but they were assigned discrete revenue sources separate from revenue sources of cities and villages. All other provisions of the intergovernmental fiscal reform introduced in 2007 remain in place.

III. POSSIBLE SHIFT IN FOCUS FOR USAID LOCAL GOVERNMENT PROGRAM

USAID has been a major source of support for the decentralization process in Kyrgyzstan through a succession of local government programs going back to 1998. The current program is engaged actively in strengthening the policy and legal framework for local self-government, while working directly in and with local self-governments to enhance their ability to make good use of the authority and resources they have. USAID rightfully can claim a share of the success of the process to date.

The question at the heart of this assessment is whether and, if so, to what extent there is a need to shift the focus of ongoing activities under the current program. This report recommends that USAID maintain the current structure of the workplan, while introducing a gradual shift in the emphasis in certain of the activities. This includes:

- o Emphasizing the consolidation and preservation of progress made to date in decentralization over additional reforms to expand the scope of local self-government
- o Providing greater emphasis to direct assistance to the local councils to develop their role in achieving responsive and accountable local governance

Consolidate and protect progress achieved in decentralization to date

The change in the Constitution to provide for the nomination by heads of local state administration and/or the President of candidates to become the mayor of local self-governments and the possible reduction of local tax and fee authority through an amendment to the Tax Code show clearly that the progress to date in decentralization is fragile and definitely not immune to sudden steps backward.

The examples illustrate two different sources of concern. The first is the ambivalent attitude of the Government toward local democracy and autonomy. On the one hand, the present Government implemented for the first time the dual budget structure that established an autonomous local budget process in Kyrgyzstan. Parliament adopted an amended Law on Local Self-government and Local State Administration that clarifies and strengthens local functional authority. On the other hand, having taken the rayon and oblast out of the budget process, the same Government inserted key central government officials in the vital process of determining who will be the mayor of all local self-governments.

The second source of concern is the lack of a broad consensus that the process of decentralization in Kyrgyzstan has reached an important threshold in the form of a viable system of autonomous, responsive and accountable local self-government. The system currently in place is not nearly perfect and provisions regarding the selection of the mayor in the current Constitution represent a step backward. There is still considerable room for improvement. Notwithstanding, the laws in place today in Kyrgyzstan still meet the minimum requirements of the four building blocks of fiscal decentralization in that they provide for:

- o Clear assignment of authority to perform specific functions⁵
- o Some degree of tax and fee authority
- o Ownership of the assets used to deliver public services
- o A local budget process that is independent of the central budget process

There is a clear legal basis for local self-governments in Kyrgyzstan to begin to address the needs and expectations of residents in their communities and to generate tangible benefits valued by those same residents. Resources are scarce relative to needs and expectations. The benefits in the short and medium term will be modest but though modest still represent real improvement in the quality of life in cities, towns and villages.

The decentralization community – those persons that participate actively and continuously in the national debates over decentralization – are more likely to identify failures, problems and short-comings in the process than they are to recognize progress, especially when it is partial and fragile. This tendency is useful as a source of pressure for further improvement. It can become counterproductive when it downplays partial success. The proposed reforms to the Tax Code currently under review show the risks of downplaying the benefits of existing decentralization reforms. It is reasonably clear that the proposal to eliminate all local taxes from the code was not aimed at local autonomy. Rather, it appears to have been one of several measures to simplify the system of taxes from a business perspective. The working group responsible for the recommendation did not focus on what this might mean for the system of local self-government because those interested in decentralization had not made a strong case that the current provisions, while imperfect, still provide all-important taxing powers to local self-government.

The USAID local government program should take the lead in reshaping the way that national and international decentralization stakeholders view the current status of local self-government in Kyrgyzstan. The program should identify the key reforms that have created a viable system of local self-government and discuss their potential benefits. The program should seek to establish a broad consensus among key national and international players in support of the gains achieved to date and in opposition to current and future measures that might threaten to undo them. The memorandum prepared by the USAID program and endorsed by several other donor projects opposing the changes to the Tax Code is a good example of the type of actions required.

This recommendation relates primarily to Task 1 in the current workplan of the Decentralization/ Local Government Program (DLGP). While it does not require any changes to the current activities under Task 1, it does imply the need to craft a thoughtful message that summarizes what is good about the decentralization process to date and about the importance of consolidating those gains. That message should guide all activities under this first task. For example, it should be the basic message shared with Parliament during legislative review and discussions. It should be at the heart of the training programs for judges provided through the Judicial Training Center.

The DLGP also should expand its support to the Ministry of Finance that seems to be an ally in preserving and expanding local fiscal autonomy. The Ministry currently is

⁵ Assuming that the President signs the amendments to the Law on Local Self-government and Local State Administration adopted by Parliament in 2008.

embarked in the definition of minimum national standards regarding local self-government functions. This can lead to high standards that are not viable under existing resource constraints and effectively constrain local discretion. It also can lead to minimum standards that protect health, safety and the environment if they are accompanied by specific state budget support to meet the standards. The Urban Institute has ample international experience in this area that could prove useful to the Ministry of Finance.

Emphasize and reinforce the role of the local council

As noted earlier, many countries with highly successful systems of local government do not provide for the direct election of mayors. The Czech Republic is a clear example of such a system. So, while the abrogation of the direct election of mayors in Kyrgyzstan and the role now played by the State in the selection of mayors by local councils clearly are steps backward, the fact remains that local councils exercise considerable authority over all major decisions at the local level.

By tradition, and perhaps by lack of capacity, local councils generally play a passive role. The DLGP already is engaged in trying to change that. How it might do more:

- o Task 2.1 Implement inter-governmental fiscal reforms

- Activity – Provide training and assistance on budget procedures for newly elected local council members

- Discussion: The training should emphasize the concept of “budget choices,” that is, the importance of including in the budget those services that are the highest priority in each community, noting that this implies necessarily that other important but lesser priority needs may go unattended. This will reinforce the key role of local government in adapting the use of scarce resources to local needs and expectations.

- Activity – Promote enforcement of the statutory requirement for budget hearings

- Discussion: This should go hand in hand with the prior activity. Budget hearings serve to identify community priorities and to make explicit the choice this implies that other needs may not be addressed

- o Task 2.2 Assistance in implementation of strategic plans

- Activity – Build capacity of local councils to review and revise strategic LED plans

- Discussion: As part of the training on monitoring the implementation of the plans, provide a simple, short list of data that the council should ask the local government to present and of key questions they should ask it to address in the council meeting that approves the strategic LED plans and in subsequent meetings to review progress in implementing the plan. This will enhance the oversight provided by the council.

- o Task 2.3 Asset management assistance

- Activity – Provide training and technical assistance to local councils on the basics of municipal property management

Example: As part of the training on monitoring the management of municipal property, provide a simple, short list of data that the council should ask the local government to present and of key questions they should ask it to address in the council meeting that approves the local property management ordinance and plan and in subsequent meetings to review progress in implementing the plan. This will enhance the oversight provided by the council.

- o Task 2.4 Strengthen local elected councils

Activity – Provide intensive assistance to selected local councils in developing policies and procedures for regulatory acts

Discussion: This activity can focus on two aspects of the policy role of local councils. One is the regulation of internal procedures of the local self-government, such as property management. The second is the regulation of business activities in the local community. In both cases, the training and assistance should emphasize sound regulatory practice – written rules publicly available, applied uniformly, with clear channels of appeal and periodic oversight by the council.

New Activity – Leadership and management training for local council members

Discussion: Council members do not necessarily know how to conduct an effective meeting or public hearing; how to manage conflict among themselves, with the mayor or in the course of a public hearing; and, especially how to distinguish between leading and directing – put more simply, how to avoid micromanaging. This should be an additional focus under Task 2.4.

- o Task 3 Citizen Participation and Information

Activity – Introduce special citizen feedback and monitoring mechanisms

Discussion: This one activity is the key counterpart to all the others that seek to strengthen the decision-making and oversight roles of the local council. When the council is working in tandem with citizens it becomes difficult to ignore or bypass the council.

This activity has another positive aspect. It leads to tangible benefits valued by the local community. As such, it needs to become far more central to the overall workplan. When local self-government produces tangible benefits valued by citizens the “demand” for such practices becomes anchored firmly in local communities. Once that has occurred, the “supply” from the local governments will be more likely to follow.

These adjustments in the message and in emphasis cannot be implemented all at once. It will take time to develop the materials and for the DLGP staff to become familiar with the adjusted focus and message. It should be feasible to have the adjusted approach in place fully for the third and final year of the DLGP.

Potential role for an association representing local self-governments

At the moment there is no independent organization that represents local self-governments in Kyrgyzstan. The previous USAID local government project invested

extensive resources in the Association of Cities (AoC), created with USAID support in 2000. The USAID program supported general assembly meetings chaired by a board of mayors elected by the general assembly; helped formulate strategic and business plans; and developed an organizational development plan for staff. The AoC lost its way after the last general assembly in September 2006 failed to approve its organizational charter. It is no longer a meaningful representative of the interests of local self-governments in cities. The Agency for Local Self-Government Affairs founded the Association of Municipalities (AoM) in 2006. All local self-governments must belong to the association. The AoM has not yet established its independence from its founder. In the meantime, the existence of the AoM has stymied and complicated efforts to organize an association representing village local self-governments. As a result, the Association of Villages (AoV) is structurally and organizationally weak. It is not an effective representative of the interests of its members.

Under these circumstances, USAID agreed to set aside the task in the terms of reference for the DLGP that calls for continued support for local self-government associations, with emphasis on the AoV. USAID requested a review of that decision as part of this assessment.

The current Director of the Agency indicated recently an interest in pursuing greater internal democracy in the Association of Municipalities. Is this sufficient to warrant renewed support for the AoM by the DLGP?

Mayors are the key players in all three associations representing local self-governments in Kyrgyzstan. This is typical of most local governments around the world. At this moment, mayors in Kyrgyzstan are not elected directly. The local councils appoint them from among candidates nominated by higher government authorities. The question is whether mayors selected in this fashion can or would represent the interests of local self-governments in the country. “Democratization” of the AoM by allowing free election of mayors to run the organization might not be what it seems. In addition, USAID support for the association under these conditions might have the unintended consequence of reinforcing the role of the mayors in the current system of local self-government.

There are three options. One option would be to condition any USAID support to the AoM on having an equal number of mayors and council members on the board of the association and in the general assembly and that the board be freely elected by the respective constituencies. This would elevate the profile of the council members by giving them a national platform. It also would be consistent with the approach proposed in this assessment that emphasizes assistance to the local councils and council members. This option builds on the work done in the past to support the associations.

A second option is to promote the creation of an association in which only elected local officials represent the local self-governments – the council members in the case of Kyrgyzstan. In the Philippines, Thailand, Indonesia and the United States there are such associations. The local governments legally are the members, but only elected local officials are participants. Their main focus is on advocating for new or improved legislation. The major disadvantage of this option is that it involves starting from scratch without much information on the demand for or interest in such an association among local council members.

The third option is to shift the focus to an association representing local professional staff. Macedonia has had for many years a strong association of local finance officers that has lobbied successfully for effective fiscal decentralization. The Government Finance Officers Association of the U.S. and Canada (GFOA) is another example of a large, long-standing professional organization. The advantage of this option in Kyrgyzstan today is that it targets a group that has been the beneficiary of much of the assistance provided by USAID currently and in the past. Such a professional organization might provide a locus for future training activities after USAID assistance has ended. This option has the same disadvantage as option two, as it implies starting from scratch.

For practical reasons USAID would want to pursue either option one or two. USAID could decide to pursue option three by itself or in combination with either option one or two.