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The Political Economy of Central Asian Law

A Law and Society Analysis

Edited by Rustamjon Urinboyev

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Rustamjon Urinboyev
Editor

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Editor
Rustamjon Urinboyev
Department of Sociology of Law
Lund University
Lund, Sweden

Department of International Law
and Human Rights
Tashkent State University of Law
Tashkent, Uzbekistan

Department of Social Sciences
Tashkent State University of Economics
Tashkent, Uzbekistan

ISSN 2662-2483 ISSN 2662-2491 (electronic)
International Political Economy Series
ISBN 978-3-031-55340-0 ISBN 978-3-031-55341-7 (eBook)
https://doi.org/10.1007/978-3-031-55341-7

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Acknowledgements

First, I would like to express my gratitude to our contributors for their hard work, understanding, and patience as we developed this edited volume over a two-year period. Nearly all of the papers included in this volume were produced within the framework of two international projects funded by the European Commission: (1) Central Asian Law: Legal Cultures and Business Environments in Central Asia (project number 870647, MSCA Horizon 2020–RISE) and (2) MOCCA: Multi-level Orders of Corruption in Central Asia (project number 101085855, Horizon Europe MSCA–SE). Lund University coordinates both projects, and the project consortium consists of European universities and Central Asian partner organisations. The European universities include the University of Zurich, Charles University Prague, Vilnius University, the University of Latvia, Riga Graduate School of Law, Marmara University, the University of Manchester, Istanbul Medipol University, Aarhus University, and the University of Helsinki. Our Central Asian partner organisations include the General Prosecutor's Office of Uzbekistan, the Law Enforcement Academy of Uzbekistan, Westminster International University in Tashkent, the OSCE Academy in Bishkek, Kurultai Research and Consulting, the Anti-Corruption Business Council under the President of the Kyrgyz Republic, Khujand Polytechnic Institute, the Tajik State University of Commerce, Zhetysu University, SIAR Research and Consulting, Tebigy Kuwwat Public Association, and the Business Ombudsman.

In the frame of the Central Asian Law and MOCCA projects, we organised several workshops and conferences in Lund and Istanbul, allowing us to explore and conceptualise the interconnections between law, society, and governance in Central Asia. These events enabled us to build a conducive environment for critically reflecting on how we might develop and combine diverse papers from scholars and practitioners in dialogue with one another for a joint eventual publication. The papers that emerged from these project events benefited from careful, insightful, and enthusiastic readings by project-specific research stream leaders, discussants, and chairs. Thus, the completion of this volume marks a significant milestone from a very collaborative effort amongst scholars and practitioners.

I would like to acknowledge the support and encouragement of many people and institutions, whose support and encouragement proved enormously helpful in putting this volume together. Specifically, I extend my thanks to Erhan Dogan, Peter Finke, Slavomir Horak, Berdymyrat Ovezmyradov, Sherzod Eraliev, Chris Thornhill, Matthias Baier, Patrik Olsson, Meltem Sancak, Rano Turaeva, Aksana Ismailbekova, Assel Tutumlu, and Irna Hofman for their insightful comments. My special thanks go to our tireless project assistants, Chekhros Kilichova and Elmurod Sobirov, who skilfully coordinated all project events. This volume would not have been possible without their daily administrative support. I am indebted to Vanessa Fuller, English-language reviser in Language Services at the University of Helsinki, for editing and proofreading all of the chapters in this book. In addition to the European Commission, I would also like to acknowledge several funding agencies, which provided further financial and administrative support, namely, Lund University's Sociology of Law Department, Lund University Library (for providing an open-access publishing grant), the Swedish Research Council (grant numbers dnr 2018-01425 and dnr 2020-01734), and Riksbankens Jubileumsfond (grant numbers MHI19-1428:1 and SAB22-0006). I also express my sincere gratitude to the Swedish Research Institute in Istanbul for hosting me as a guest researcher, which enabled me to benefit from their unique Gunnar Jarring Central Eurasia Collection.

The primary idea behind publishing this volume centred around providing a platform for Central Asian researchers and practitioners to publish the research projects they completed during their involvement in the Central Asian Law and MOCCA projects, thereby enabling them

to share their findings with the broader academic and policy audiences. Another equally important aim lay in contributing to growing calls for decolonising Central Asian studies, given that many Central Asian–based researchers find it difficult to publish their academic work in Western scholarly venues given various academic, economic, and ideological factors. These concerns have become particularly pressing considering the ongoing geopolitical shifts in Central Asia and the full-scale Russian invasion of Ukraine in February 2022.

Lund, Sweden Rustamjon Urinboyev
December 2023

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Notes on Contributors

Nasimbek Azizov is the head of the Department of State-Legal Sciences of the Law Enforcement Academy of the Republic of Uzbekistan. He holds the scientific degree of Ph.D. and the scientific title of associate professor. He has about 15 years of experience in the legal field. He defended his dissertation on "Improvement of proceedings in the economic court of the first instance". His main research interests are business law, dispute resolution, prosecutorial activity, and higher education.

Muzaffar Dostqoriev is the head of the Legal Council of the Law Enforcement Academy of the Republic of Uzbekistan. Prior to that, for the past 8 years, he worked as a lecturer, senior lecturer, and head of the department at the High Training Courses and the Law Enforcement Academy of Uzbekistan. Currently, as a Ph.D. candidate at the Supreme School of Judges, he is conducting his research on actual problems of civil procedure. Muzaffar Dostqoriev has over 20 years of practical work experience in the prosecutor's office. Before teaching, he worked as a senior investigator, assistant prosecutor, and prosecutor in the different levels of the prosecutor's office.

H. Deniz Genç earned her Ph.D. at Marmara University in 2013, focusing on a comparative analysis of bordering processes in Spain and Turkey concerning the mobility of non-nationals. She holds master's

degrees in EU Politics and International Relations from Lund University and Marmara University. Her research interests encompass international migration, with a primary focus on irregular migration, migrants' health, transnationalism, and norm diffusion. Currently, she holds the position of Associate Professor at Istanbul Medipol University.

Aksana Ismailbekova is a senior research fellow at Leibniz-Zentrum-Moderner Orient (ZMO). Aksana Ismailbekova completed her dissertation at the Max Planck Institute for Social Anthropology, Halle, Germany. Based on her Ph.D. dissertation, she wrote her monograph Blood Ties and the Native Son: Poetics of Patronage in Kyrgyzstan, which was published by Indiana University Press in 2017. Her research work focuses on kinship, migration, patronage, corruption and gender in Kyrgyzstan.

Dildora Karimova has been working as a Lecturer at Westminster International University in Tashkent (WIUT) for 7 years. Prior to joining the WIUT, she was a lecturer at the University of World Economy and Diplomacy. She obtained her Master's degree after graduating from a Programme in Law and Economics from Bilkent University in Turkey. She completed her Bachelor's degree in Public International Law from the University of World Economy and Diplomacy in 2010 (Tashkent/Uzbekistan). For the last 7 years, she has taught various modules like International Banking and Finance Law, Law of International Organizations, and Dissertation in Law, and currently, she is teaching two modules, Public International Law and Corporate Crime. Her Research Interests include Public International Law, Human Rights, Women Empowerment, and Corporate Criminal Liability.

Dilaver Khamzaev has defended his Ph.D. in Law at the Law Enforcement Academy of the Republic of Uzbekistan. Currently, he is an independent researcher at the Law Enforcement Academy of the Republic of Uzbekistan and a visiting researcher at Lund University. His research focuses on the formation of national systems for combating money laundering and terrorist financing and the influence of international organisations in this process.

Evgeniy Kolenko is the first deputy head of the Law Enforcement Academy of the Republic of Uzbekistan. He holds the scientific degree of Ph.D. and the scientific title of associate professor. He has about 25 years of work experience in the legal field, in particular, he worked for

many years in the General Prosecutor's Office of the Republic of Uzbekistan. He was head of the Academy of the General Prosecutor's Office in 2018–2022. He defended his PhD thesis on "Liability for taking a bribe: prospects for improving the criminal legislation of the Republic of Uzbekistan, taking into account international standards". His main areas of research interest are anti-corruption, investigative activities, prosecutor's activities, and higher education.

Adham Khudaykulov is an Associate Professor of Development Economics at the Tashkent State University of Economics (TSUE), where he also serves as a Vice-rector for Internationalization. At the same time, he is a Research Affiliate at the Cambridge Central Asian Forum, University of Cambridge. His research interest focuses on the regulatory environment and economic development in transition economies.

Tolibjon Mustafoev is a Ph.D. candidate in Sociology of Law at Lund University. His research focuses on interdisciplinary studies of law and state-society relations in non-western countries.

Uygun Nigmadjanov is a Deputy Head of the Law Enforcement Academy in Uzbekistan. He leads the Scientifical-Educational Center on Anticorruption at the Academy. His Ph.D. research examines asset recovery and financial crimes. His research and teaching focus on international criminal law, criminal procedure, and international cooperation in criminal matters.

Daniya Nurmukhankyzy Ph.D. in Law, is an Associate Professor at the Faculty of Law and Economics at Zhetysu University in Kazakhstan. Her research interests focus on environmental law, investment law, and anticorruption studies in the context of Central Asia.

Alisher Pulatov is a Senior Law lecturer at Westminster International University in Tashkent (WIUT). His current administrative responsibilities are Dean of SOLTE (School of Law, Technology and Education) and Director of the Centre for Professional and Lifelong Learning in WIUT. For the last 10 years, Dr. Pulatov has been an employee of WIUT and taught in fields like Contract Law, Public Law, International Trade Law, and Law of International Organizations. Currently, he is a Ph.D. candidate at the University of Law, has an LLB and European Relation degree from Surrey University, did postgraduate studies in Groningen University and an LLM in International Commercial Law degree from Westminster

University. Research interest areas are Multinational Corporations, International Trade, Digital Economy and Taxation. Prior to the academic experience, Alisher Pulatov worked in different law firms, international and local private companies as an in-house lawyer.

Kobil Ruziev is an Associate Professor in Economics at the University of the West of England, Bristol (UWE Bristol). Dr. Ruziev is also affiliated with the Kurultai Research and Consulting in Uzbekistan. His main research interests include financial development and reform in emerging economies, institutional economics, higher education reforms and economic transformation in the former Soviet Union.

Khasan Sayfutdinov has a Ph.D. and LLM from the School of Law, Xiamen University, China. The topic of his doctoral dissertation was "A study on the role of bilateral investment treaties in attracting foreign direct investment to China". He has been teaching International Economic Law to undergraduate and graduate students since 2017 and has supervised a number of students who undertook their dissertations in international investment and trade law. His latest research focuses on the areas of law of the World Trade Organisation and bilateral investment treaties.

Rustamjon Urinboyev is Associate Professor in the Department of Sociology of Law at Lund University, Sweden, Professor in the Department of International Law and Human Rights at Tashkent State University of Law, Uzbekistan, and Adjunct Professor in the Department of Social Sciences, Tashkent State University of Economics, Uzbekistan. He is an interdisciplinary socio-legal scholar, studying migration, corruption, governance and penal institutions in the context of Russia, Central Asia and Turkey. He is the author of Migration and Hybrid Political Regimes: Navigating the Legal Landscape in Russia (2020), published by the University of California Press.

Binazirbonu Yusupova is a Ph.D. candidate at Dublin City University (Horizon 2020 Marie-Curie Early Career Researcher "MARKETS"). Her research focuses on the interplay of gender and informality in Central Asia.

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CHAPTER 1

The Political Economy of Central Asian Law: A Law and Society Analysis

Rustamjon Urinboyev

Introduction: Law, Society, and Governance in Central Asia

The collapse of the Soviet Union in 1991 paved the way for the rapid proliferation of Western-backed good governance, rule of law, and democratisation initiatives in the newly independent states of Eastern Europe, South Caucasus, and Central Asia (Ajani, 1995; Carothers, 1998; Daniels & Trebilcock, 2004; Frasheri, 2011; Gupta et al., 2002). In the 1990s, a widespread viewpoint held that the dismantling of socialist (Soviet) law and the introduction of Western-style legal traditions and governance institutions would play a pivotal role in promoting the rule

R. Urinboyev (✉)
Department of Sociology of Law, Lund University, Lund, Sweden
e-mail: rustamjon.urinboyev@soclaw.lu.se

Department of International Law and Human Rights, Tashkent State University of Law, Tashkent, Uzbekistan

Department of Social Sciences, Tashkent State University of Economics, Tashkent, Uzbekistan

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*, International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_1

of law and democratisation in the post-socialist societies (Alkon, 2002; Axyonova, 2016; Frasheri, 2011; Gleason, 2001; Paggi, 2009; White, 2010). Reflecting this understanding over the last three decades, international development agencies, policymakers, law enforcement authorities, civil society organisations, academic researchers, advocacy groups, and individual activists have all produced countless strategies and approaches to modernise (i.e., Westernise) the legal and governance systems of post-socialist societies. Such strategies rest upon the assumption that legal and governance reforms were technical, managerial, and financial matters (Carothers, 1998; Otto, 2008), in turn, implying that the export of laws and the transplantation of legal and administrative structures would produce the rule of law and good governance in post-socialist societies.

However, despite the unrelenting efforts of international development organisations, the building of Western-style legal and governance systems in non-Western societies is proving to be a dauntingly difficult and complex task (Carothers, 1998, 2002; Ikejiaku, 2014; Otto, 2008; White, 2010). An analysis of global political developments over the last three decades indicates that the number of nondemocratic regimes has increased significantly, a global trend referred to as the 'third wave of autocratisation' (Lührmann & Lindberg, 2019) or 'authoritarianism goes global' (Diamond et al., 2016). The initial euphoria accompanying the spread of democratic ideals in the 1990s has been tempered by the rise of authoritarian governments across various parts of the world (Freedom House, 2022). Notwithstanding the failure of such efforts, legal reforms and development initiatives continue to rely on Western-centric, 'one-size-fits-all' approaches which fail to consider the uniqueness of individual countries and the contextual factors and indigenous institutions and traditions that determine the nitty-gritty of everyday life in non-Western societies. Consequently, there has been a growing call to rethink existing approaches, maintaining that legal and governance reform processes in non-Western contexts should be 'country-owned', fitting the local social fabric in order to succeed (Ahmed, 2007; Drechsler & Chafik, 2022; Grajzl & Dimitrova-Grajzl, 2009; Newton, 2006; Tamanaha, 2011; Yilmaz, 2002). This call relies on the view that externally imposed laws and institutions do not enjoy local legitimacy and authority in non-Western societies and are often manipulated, reconstructed, or rejected by local actors on the ground.

This volume, situating itself within these 'law and development' debates, explores the interconnections between law, society, and governance in Central Asia, a post-socialist region embodying an amalgamation of Soviet, Western, and Islamic legal cultures. After gaining independence in 1991, all five Central Asian countries—Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan—have become 'laboratories' for testing various global (Western) good governance and rule of law initiatives. The political leadership of all Central Asian countries proclaimed, at least on a rhetorical level, their strong commitment to democracy, the rule of law, and market economy ideals, as well as their intention to introduce Western-style political and legal institutions. As such, these official proclamations were reflected in institutional and legal reconfigurations, which, amongst many other legislative changes, included the establishment of Western-style constitutions, parliaments, judiciary systems, human rights ombudsmen, and anticorruption agencies.

More than three decades have passed since the Central Asian states embarked on their nation-building journeys. Yet, many commentators now argue that all five Central Asian countries have made precious little progress in building Western-style legal and governance structures and that many formal institutions of government have achieved a mere showcase quality (Adams & Rustemova, 2009; Anceschi, 2019; Engvall, 2015; Ismailbekova, 2021; Lemon & Antonov, 2020; Polese & Horák, 2015). International indicators of the rule of law and a state's capacity, such as the World Justice Project's *Rule of Law Index* (WJP, 2022), Freedom House's *Democracy Index* (Freedom House, 2023), and Transparency International's *Corruption Perceptions Index* (TI, 2022), consistently portray Central Asian states as some of the most corrupt and authoritarian states in the world.

The above tendencies become acutely visible when we analyse Central Asia's business environments and legal cultures. In 2012, *Uppdrag Granskning*, one of Sweden's leading investigative journalism television shows, presented some highly contentious revelations about the involvement of Telia[1] in unethical business practices in Central Asia (*Uppdrag* granskning, 2012). Telia, the Swedish telecom giant, has been conducting business in Central Asia since 2007, with a large portion of its operations situated in Uzbekistan and Kazakhstan. These revelations illustrated

[1] Telia is the Swedish telecommunications giant whose principal shareholder is the Swedish government, which holds almost 40% of the company's shares.

how Telia intentionally or unintentionally contributed to the attempts of authoritarian regimes in Central Asia to intercept the communications of human rights activists and opposition figures (Schoultz & Flyghed, 2020). The culmination of these revelations was the so-called 'Uzbekistan affair'—the 3G-licencing process in Uzbekistan, which provided solid evidence of how Telia, in an attempt to acquire a 3G license in Uzbekistan, made extensive monetary transfers (over €200 million) to an offshore company, Takilant, which was nominally owned by an assistant to Gulnara Karimova,[2] daughter of the late Uzbek President Islam Karimov (Lasslett et al., 2017). This high-level corruption scandal sent shockwaves across Sweden, the EU, the United States, and Uzbekistan, eventually leading to criminal charges against the former Telia CEO and two other senior officials for their involvement in a bribery scheme. As a result of legal proceedings against the company, Telia paid a US$965 million fine to resolve charges relating to violations of the Foreign Corrupt Practices Act (Schoultz & Flyghed, 2021).

Telia's 'Uzbekistan affair' was not the only case in which EU-based business actors were involved in corruption scandals in Central Asia. Similarly, VimpelCom, the Amsterdam-based telecom company, also faced criminal charges for paying massive bribes to Gulnara Karimova in order to enter the Uzbek telecommunications market; as a result, the company agreed to pay US$835 million to settle US and Dutch charges (*The Guardian*, 2016). More recently, the Pandora Papers—the largest corruption investigation on record, released by the International Consortium of Investigative Journalists—revealed that, whilst corruption is ubiquitous globally, political elites in Eastern Europe, Central Asia, and the Caucasus appear surrounded by particularly leaky circles of friends and brokers (Heathershaw & Cooley, 2015; RFE/RL, 2021).

The abovementioned corruption scandals appear indicative of two parallel and contradictory tendencies regarding the legal cultures and business environments in Central Asia:

First, the Central Asian region is a key prospective market for EU-based economic actors given its rich natural resources, growing middle-class population, and progressive opening up to the outside world. Over the

[2] It has now been establisehd in the Swiss courts that Gulnara Karimova is the ultimate beneficial owner of Takilant. Indeed, Karimova has argued in Switzerland that she is the owner of Takilant in order to have standing in asset recovery efforts.

last two decades, political and economic relationships and interdependence between EU and Central Asian countries have expanded, and the presence of the EU's development aid programmes and educational and business initiatives in the region has grown significantly (Axyonova & Bossuyt, 2016; Bossuyt & Davletova, 2022; Dzhuraev, 2022; Korneev & Kluczewska, 2022; Schuster, 2011; Yildiz, 2022). Diplomatic and political relations have rapidly evolved, including in the fields of development, cooperation, and research, with a desire to further business relations.[3] However, apart from political declarations and official statistics,[4] little knowledge or few strategic documents have been produced on dealing with Central Asian markets in terms of access, business development, cultural adaptation, business ethics, and corporate responsibility. Recent events and developments following the Russian invasion of Ukraine (e.g., EU–Central Asia: 19th Ministerial Meeting, held in Luxembourg on 23 October 2023)[5] clearly indicate that exchanges will intensify rapidly and likely expand. The waiving of visas for EU citizens travelling to Kazakhstan, Kyrgyzstan, and Uzbekistan represents only one item in a long list of measures taken after local leaders realised the potential benefits of intensifying relations with the EU (Boonstra & Panella, 2018). These measures represent important steps for opening up such recently unexploited markets, characterised by a growing middle class. Uzbekistan is of particular interest, a country with a heavily closed authoritarian regime which remained nearly inaccessible until 2016 and only recently opened up to the outside world, offering the largest market in the region thanks to a population of 36 million people.

Second, the Central Asian region remains a challenging environment when it comes to navigating and understanding its legal cultures and business and economic contexts. Little is known about how the environment can be navigated. On the one hand, the region's state of relative economic underdevelopment (when compared to the EU or US) offers very high rates of return compared with other regions. On the other hand, inconsistent business ethics standards—and the peculiar and arbitrary way in which the rule of law is interpreted and applied in the region, also called

[3] https://ec.europa.eu/research/iscp/index.cfm?pg=eeca.

[4] http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-asia/.

[5] https://international-partnerships.ec.europa.eu/news-and-events/news/eu-central-asia-19th-ministerial-meeting-held-luxembourg-23-october-2023-2023-10-23_en.

'the local way of doing business'—have hindered and limited the role of foreign companies in the region. Companies operating in the region have adopted a trial-and-error approach, often keeping the results of their experiences to themselves and making it difficult for newcomers to gather information quickly on how to operate. Hence, potential investors are faced with at least two challenges: First, the risks associated with entering Central Asian markets and running business activities are much higher and involve informal and semi-legal relations with state officials as well as fierce competition with local business elites already connected to the higher echelons of the government. A series of investigative reports by Kristian Lasslett published on the Open Democracy website serve as good examples of how the state and private sectors intertwine in Uzbekistan (Lasslett, 2019, 2020). Second, a difference in legal cultures, often resulting in a different understanding of business ethics, leads to a conflict between (a) what is considered moral, socially acceptable, or even legal in the region; and (b) what is considered good practice and in line with international law and standards.

Accordingly, the analysis of the above processes indicates that understanding the role and the rule of law in fluid and uncertain legal contexts such as Central Asia entails not only an analysis of 'law-in-books' (Pound, 1910)—that is, formal, written laws, regulations, and policies—but also an examination of 'living law' (Ehrlich, 1912)—that is, informal rules and extra-legal practices that permeate everyday life in both state-level and nonstate arenas. Hence, there is a need for a sociolegal analysis of how the state law and nonstate forms of normative ordering engage in mutually transforming interactions, thereby, shaping the legal landscape in the region. Based on these considerations, we position this volume as an attempt to examine interconnections between law, society, and governance in the Central Asian region from a law and society perspective, an approach allowing us to look under the hood of Central Asian law.

The Volume and Structure

The twelve chapters included in this volume focus on various legal and governance challenges in the region. Contributors, drawing from rich empirical data and in-depth analysis of legal developments, present intriguing narratives of how national and international laws, norms, and (written and unwritten) rules ultimately shape the legal and business environments and governance in five Central Asian countries. In doing so,

they discuss why some rules and laws are complied with, whilst ignoring or avoiding others, and why some rules are bent or violated in support of personal objectives and benefits. They also compare visible and 'invisible' practices, both official and unofficial, explaining why and how a law is adopted and written on paper, how it is interpreted, applied in practice, and translated into practical recommendations, and how a target group responds to new provisions generated by a new law. In doing so, the volume brings together twelve chapters that cover diverse sociolegal topics in the context of Central Asia, examining the nexus between international norms and the domestic legal environment, as well as meso-level actors and 'informal legal orders' operating at the bottom of society. Reflecting these themes, this volume is organised into three sections, each of which focuses on one of three interlinked levels or orders of legal and social relations: (a) international norms and actors, (b) domestic institutions and legal environments, and (c) meso- and micro-level business actors, informal institutions, and norms. The three sections overlap in terms of their contents; however, we emphasize the multi-level orders of law and society relations in Central Asia, which cut across the chapters included in this volume.

Part I: International Norms and Actors

In the first part of this volume, we examine the role and influence of international and regional actors on institutional, legal, and business environments in the Central Asian region. To do so, we explore and compare the ways in which international organisations and regional actors interested in the region have attempted to influence the legal and institutional frameworks currently used to regulate business and economic relations in the region.

Tolibjon Mustafoev begins this examination by focusing on the role of the international anticorruption agenda, particularly Transparency International's (TI) *Corruption Perceptions Index* (CPI), in shaping the business climate and legal developments in Uzbekistan. In undertaking this task, Mustafoev reviews Uzbekistan's anticorruption legal framework and explores how domestic institutions and actors perceive, interpret, negotiate, and challenge global anticorruption norms. The zeal to improve Uzbekistan's position vis-à-vis global indicators can be explained by the Uzbek authorities' attempts to attract foreign direct investment into the country. TI's CPI seems extremely popular amongst investors

when considering investment choices and destinations. Although since 2017 Uzbekistan has progressively opened up to the outside world and proclaimed its strong commitment to providing favourable conditions to foreign investors, numerous obstacles persist. One poignant example lies in the persistence of 'legal corruption'—that is, exclusions and provisions to legal acts benefiting only certain groups of people or businesses, exemplified by recent reports showing the close links several high-level state officials had to corrupt schemes or businesses owned which engaged in such schemes (Lasslett, 2019, 2020).

The prevalence of 'legal corruption' in post-socialist economies such as Uzbekistan indicates that we cannot confine corruption merely to the public sector. In post-socialist economies with partial market reforms and weak rule-of-law systems, the boundaries between public and private sectors are often blurred (Ledeneva, 2013; Morris, 2016; Polese, 2008; Urinboyev & Svensson, 2013). At the level of international law, extensive legal efforts aim to criminalise corruption and bribery in the private sector, namely efforts imposed by the United Nations Convention Against Corruption (UNCAC, 2004, Article 26), the OECD Anti-Bribery Convention (OECD, 2020), and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 1997, Article 2). However, in the context of Central Asia, these international legal provisions are subject to controversy given vested interests and widespread kleptocratic practices amongst high-level state officials. Reflecting on these global legal developments, Dildora Karimova and Uygun Nigmadjanov explore the possibilities of introducing corporate criminal liability (CCL) for bribery in Uzbekistan, where criminal liability has largely been levied against individuals. This is a timely question given the increasing number of businesses, the cultural specificities of excessive gratitude and hospitality, and the rapid growth in various industries that call for more sophisticated anticorruption legislation, specifically those combating bribery. Karimova and Nigmadjanov conclude that, by addressing corruption and promoting a culture of integrity, Uzbekistan can create a level playing field for all market participants, attract investments, and build a robust and transparent business environment.

Next, Deniz Genç focuses on the role of international organisations in shaping the legal landscape of Central Asian countries, known as the 'norm diffusion process'. The legal landscape of Central Asia has undergone significant transformations following the collapse of the

Soviet Union. While the Soviet legacy and centuries-old pre-Soviet cultural patterns persist, since 1991 international and regional organisations, multinational companies, and nongovernmental organisations have emerged as norm entrepreneurs. In exploring these norm diffusion processes, Genç focuses on the role of the United Nations Office on Drugs and Crime (UNODC) in facilitating Central Asian countries' compliance with UN conventions and protocols. However, as Genç states in her chapter, UNODC's efforts in promoting (Western-centric) liberal norms are challenged and contested by regional organisations such as the China-led Shanghai Cooperation Organisation (SCO), which promotes alternative norms, akin to authoritarian legal harmonisation efforts observed in other studies (Lemon & Antonov, 2020; Russo & Gawrich, 2017).

Dilaver Khamzaev continues the discussion on the role of regional organisations by focusing on the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), a regional body of the Financial Action Task Force (FATF) acting as an intermediary between the FATF and its member-states. EAG's primary role is to harmonise national legislations across Central Asia to combat money laundering and the financing of terrorism, aligning them with international standards (that is, FATF standards). In this regard, compliance with FATF standards remains crucial to attracting foreign direct investment. As Khamzaev notes, the inclusion of Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan in FATF's scrutiny and their subsequent listing as uncooperative and/or high-risk jurisdictions have directly impacted the countries' investment potential. Furthermore, membership in the FATF or similar regional groups is considered a criterion for exclusion from such lists. The existing FATF mechanism motivates states to join these groups. This implies that joining EAG as a regional group similar to FATF, was a logical step for Central Asian countries seeking to avoid FATF sanctions. However, membership in EAG has also been a double-edged sword, compromising the sovereignty of Central Asian republics. This stems from the imbalance of power relations within EAG, particularly the dominance of Russian citizens in EAG's governance structure and mutual evaluation practices, resulting in the imposition of minority interests onto the majority. EAG is thus instrumentally used by the Russian Federation to exert and maintain its geopolitical influence on Central Asia.

Part II: Domestic Institutions and Legal Environments

The second part of this volume explores the interplay between the legal environment, domestic regulatory institutions, and actual governance practices. This exploration entails examining the synergies between external influences and domestic institutions as well as the actual regulatory practices ('living law') to understand the degree to which the approaches, ideas, and principles (i.e., international investment law provisions, good governance principles, and business ethics) proposed by international and transnational actors are received, understood, and possibly applied at the domestic level in the region.

In international investment law, the obligation to provide 'fair and equitable treatment' is often viewed, along with other standards, as essential to protecting foreign investors' rights in host countries. Implementing these international investment legal provisions is rather timely and significant, given the efforts of Central Asian governments to attract foreign direct investment. More specifically, given that the Russian invasion of Ukraine forced many Western companies to withdraw from the Russian market, Central Asian countries may now serve as an alternative destination for foreign investments. However, foreign investors seeking to enter Central Asian markets must deal with a weak rule of law, an unfavourable legal environment, and widespread informality. The chapter by Khasan Sayfutdinov examines the reception, interpretation, and implementation of international investment legal standards concerning fair and equitable treatment (FET) in the domestic legal context of Uzbekistan. In undertaking this examination, Sayfutdinov analyses the FET provisions in Uzbek bilateral investment treaties (BITs) and assesses the strength of local investment law and regulations in establishing legitimate expectations. The findings indicate that Uzbekistan's current FET clauses remain rather outdated, and only provide unqualified FET provisions. Moreover, domestic FET provisions are thus insufficiently linked to customary international law in the new BIT model. Foreign investors rely heavily on a country's direct assurance and representations before investing. However, a gap persists between the assurance policy and regulations in practice. This implies that a state's commitments must be written into law, largely because investors and other business participants prefer written agreements to oral promises made during fora or official meetings.

Accordingly, the absence of clearly formulated FET provisions deters foreign investors from investing in the host country. We can also observe the discrepancy between 'law-in-books' and 'law-in-action' when analysing the mechanisms of domestic regulatory institutions in Central Asia. Adham Khudaykulov examines the nexus of state regulation and economic performance in Central Asian countries since gaining independence in the early 1990s. In all five Central Asian republics, many regulatory initiatives, institutions, and tools have already been put into place to facilitate the transition from centrally planned to market economies. However, due to ineffective regulatory compliance and enforcement regimes, established regulatory frameworks have not proved effective in boosting the immunity of the economies. Based on a review of policy documents and interviews with current and former policymakers, business leaders, experts, and scholars, Khudaykulov shows that the top–down decision-making approach is one of the primary factors driving poor regulatory implementation in Central Asian countries. Specifically, decision-making remains heavily concentrated in the hands of those officials at the very top. Another factor contributing to poor compliance is a non-independent and biased judiciary and an unrestrained law enforcement system. Prosecutor's offices (*prokuratura*) enjoy unprecedented power in exercising the highest level of supervision in terms of observing and applying laws at the national level by all institutions, irrespective of forms of ownership. Furthermore, the existence of wide discretionary power and supervisory functions often leads to prosecutorial dominance, carrying significant repercussions for the general business climate and governance mode in the region.

Notwithstanding these tendencies, legal mobilisation patterns and the legal culture of ordinary citizens are shifting in the region. These processes are described by Evgeniy Kolenko, Muzaffar Dostqoriev, and Nasimbek Azizov in their sociolegal study of the legal consciousness (legal culture) of legal practitioners, entrepreneurs, and ordinary citizens in Uzbekistan, based on an analysis of court cases regarding economic disputes among business actors. On average, more than one million economic agreements are concluded in Uzbekistan annually, indicative of ever-increasing business activities in the country. From a legal standpoint, these developments may lead to numerous business disputes, since one of the parties may refuse or be unable to fulfil contractual obligations. Given the prevalence of informal law in Uzbekistan, it is highly likely that parties will attempt to resolve their disputes through informal, extra-legal

means. However, since Uzbekistan launched legal reforms in 2018, specifically emphasising increasing access to courts, recent reforms in economic law, public law, and legal procedures have had measurable effects on legal consciousness in Uzbekistan. Such effects are visible, primarily in the patterns of legal mobilisation and the legal culture, reflected in changing attitudes toward the courts and in changing patterns of dispute resolution. This demonstrates the broader process of legal formalisation in Uzbekistan, which gained momentum through recent reforms. Based on their findings, Kolenko et al. argue that a considerable shift is taking place within society toward the use of formal law, showing that patterns of legal culture and mobilisation are changing in Uzbekistan.

The rapid proliferation of digital businesses and transactions is a huge challenge for regulatory and tax authorities in Central Asia. Recognising this, Alisher Pulatov's chapter explores the interplay between digitalisation and regulatory challenges in Uzbekistan, asking to what extent Uzbekistan's legal and regulatory framework can accommodate digital economy taxation. This issue has important repercussions for Uzbekistan's legal system, business environment, investment climate, societal change, and governance. Currently, IT businesses and local startups may be at risk of insolvency, given the presence of large multinational IT enterprises operating on local markets. Multinational IT enterprises avoid paying local taxes because of the permanent establishment (PE) rule in tax law. Pulatov's findings demonstrate that the current legal framework cannot accurately determine who is subject to taxation and which digital services should be taxed. This limitation arises due to a lack of expertise and IT capacity within specific countries. Insufficient technical knowledge and resources hinder the effective identification and classification of digital transactions for tax purposes. Furthermore, a notable shortcoming identified in this research is the absence of an enforcement mechanism for digital economy taxation. Thus, even if suitable legislation is in place, without proper enforcement, it becomes challenging to ensure compliance and collect the appropriate taxes from digital service providers.

Part III: Meso- and Micro-Level Business Actors, Informal Institutions, and Norms

The last part of this volume investigates business actors' and micro-level entrepreneurs' everyday experiences with state law and informal norms and practices enforced by nonstate actors. Investigating these processes entails considering the following questions: What kinds of social control are offered or enforced informally? And, how are morality and business ethics shaped, lived, and developed by citizens in their daily lives and transactions?

Doing business in uncertain and fluid legal contexts such as Central Asia requires business actors to adapt to or manoeuvre around both state law and informal norms and practices. Daniya Nurmukhankyzy's chapter focuses on the everyday experiences of entrepreneurs operating in the food service industry in the city of Taldykorgan, Kazakhstan. As Nurmukhankyzy shows, while the state encourages small and medium businesses (SMEs) to operate by offering various grants, subsidies, and tax exemptions as well as a moratorium on inspections of SMEs, entrepreneurs must still navigate complex and cumbersome legal and bureaucratic procedures, an endeavour which often requires the use of informal and extra-legal methods and solutions. Through interviews with gastronomic entrepreneurs in Taldykorgan, Nurmukhankyzy found that no single entrepreneur received a grant or a preferential loan specifically for a restaurant business. Based on her findings, she argues that many businesses fail due to bureaucratic and legal uncertainties, whereby only those businesses with informal connections and networks have a better chance of succeeding.

A similar pattern can also be observed in Uzbekistan, where business actors with limited political connections and networks struggle to gain access to bank credits. Kobil Ruziev investigates the impact of interpersonal connections on the inequitable distribution of formal financing in Uzbekistan. He argues that, in countries like Uzbekistan, where market mechanisms remain weak and the institutions responsible for upholding the rule of law lack credibility, political connectedness—interpersonal and exclusive in nature—plays a crucial role in matters concerning resource allocation, including the allocation of bank financing. This system, in turn, enables a small number of strategically well-connected entrepreneurs to seize a disproportionately large share of scarce resources and opportunities, resulting in the inequitable distribution of formal financing. As a

result, entrepreneurs with limited political connections face challenges in gaining access to formal financing.

In addition to legal, bureaucratic, and financial challenges, business actors must also cope with political uncertainty and various criminal groups often linked to high-level state officials. In her chapter, Aksana Ismailbekova investigates the multifaceted landscape of Kyrgyzstan's business environment under a precarious political situation, exploring the strategies, ethics, and morality employed by businessmen in both the Kyrgyz and Uzbek communities. In exploring how business actors adapt to changing political circumstances, Ismailbekova examines the state of business affairs in the pre-Japarov era and the period following Japarov's ascent to power. Her findings show that, before the advent of the Japarov era, small businessmen found it advantageous to establish co-optation with criminal networks due to their distrust of the state. Conversely, with the onset of Japarov's rule in Kyrgyzstan, 'the state was being brought back in' through the government's aggressive anticorruption policy under the umbrella of '*kusturizatsia*' (vomiting), which primarily targets corrupt state officials and businessmen. Under this practice, corrupt individuals can repay a fraction of stolen proceeds to the state and, then, go about their business. However, as Ismailbekova concludes, this informal anticorruption policy has a two-pronged approach. On the one hand, it aims to force corrupt individuals to provide some of their ill-begotten gains back to the state, theoretically benefiting the public. However, the implementation of this policy remains rather opaque, leading to secretive negotiations behind closed doors, of which the public is unaware.

Gender norms and identity are also salient factors in everyday business life in Central Asia. In the last chapter in this volume, Binazirbonu Yusupova explores the lived experiences of women traders in bazaars in Uzbekistan, revealing the complex and multifaceted ways in which they challenge, renegotiate, and reconstruct prevailing patriarchal norms and gender roles. Women traders often face a dual burden as they endeavour to secure both their economic survival and personal autonomy within the confines of bazaars. This dual struggle underscores the resilience and determination exhibited by these women as they navigate the challenging terrain of economic sustenance and personal emancipation. Through an analysis of the rich tapestry of narratives and experiences of women traders, Yusupova argues that entering bazaars is not merely a transactional act, but can also be viewed as an act of resistance countering

dominant patriarchal norms and social hierarchies. She, thus, concludes that bazaars may act as catalysts for broader social change in Uzbekistan.

As can be seen from the short chapter outlines above, this book examines the political economy of Central Asian law from a law and society perspective. Rather than employing a standard legal positivistic approach that provides an internal perspective on law, the twelve chapters included in this book explore the social life of law and legal institutions in Central Asia in broader terms that encompass not only the (state) legal system and traditional legal institutions but also various informal (non-legal) forms of normative ordering. By combining internal and external perspectives in the analysis of Central Asian law, our ambition is to show that the legal landscape of Central Asian countries should not be viewed from a "black-and-white" perspective. Rather, there is a need for a comprehensive account of how the state law and non-state forms of normative ordering engage in mutually transforming interactions.

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PART I

International Norms and Actors

CHAPTER 2

The International Anticorruption Agenda, Legal Culture, and Business Environment in Uzbekistan

Tolibjon Mustafoev

Introduction

The collapse of the Soviet Union paved the way for many newly independent post-Soviet countries to introduce market economies and adopt laws on private ownership and market-oriented principles. In turn, these developments were accompanied by the introduction of Western values in business and economic life in many post-Soviet societies (Berkowitz & DeJong, 2003; Bova, 1991; Hendley, 1997). New economic and legal realities resulting from the Western neoliberal agenda motivated many people living in the post-Soviet region to shift from the public sector and seek income-earning opportunities in the private sector. The motives for such a mass increase in the number of people engaged in informal private enterprise resulted not only from the opportunities arising from the newly introduced reforms in the early 1990s (Berkowitz & DeJong,

T. Mustafoev (✉)
Department of Sociology of Law, Lund University, Lund, Sweden
e-mail: tolibjon.mustafoev@soclaw.lu.se

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_2

2003), but also from the challenges associated with the retrenchment of the social protection system, low salaries, weak development, and the lack of managerial strategies in the public sector (Fajth, 1999; Woolfson, 2007). Another factor contributing to the proliferation of informal (or the so-called semi-formal or 'grey') private sector was the high rate of unemployment in the post-Soviet space, especially in Georgia, Latvia, Russia, Tajikistan, and Uzbekistan (Silagadze et al., 2020). Since the state was no longer able to preserve the Soviet-era type of 'stability' mechanisms, people's trust in the state significantly eroded. As a result, people began to rely only on themselves to secure their own well-being. The most feasible way to do so was by gaining employment in a private company or starting a small-scale business—that is, the small-scale trading of clothes, gold, and other items popular amongst the public. Consequently, teachers, engineers, politicians, lawyers, and doctors began investing in the private sector, leaving their previous positions in the public sector.

These developments marked a significant shift from the Soviet-era work organisation principles towards new forms to state–society relationships, ways of thinking, the legal culture, and the labour market in the post-Soviet period. This stems from the fact that the economic distribution of capital, state–society relationships, and the economy in the Soviet Union were all different from those in Western societies. Specifically, the economy of the Soviet Union was more labour-oriented than profit-concentrated. In contrast to the Western capitalist world, the Soviet government pursued a goal of involving more people in production and keeping a large portion of the population busy with work. As a result, per capita income rapidly grew, which was an irrational approach to labour productivity in the Soviet Union (Arnot & Arnot, 1988). These strategies largely reflected the Marxist–Leninist ideology, which saw the rise of the working class as a precondition in the transitional period of moving from the socialist stage of development to full Communism, where the Soviet working class was supposed to become the Soviet Union's ruling class (Lansford, 2008). In addition to these strategies, the Soviet government pursued all-encompassing social policies, such as free healthcare, up to three years of paid maternity leave, free childcare, and free education for all citizens (Fajth, 1999). These social policy strategies enabled the Soviet government to build a working class–oriented economy, a form of social contract that closely tied citizens to the state through social welfare arrangements. A typical Soviet worker had access to resources not only through a monetary wage, but also through the position they held within

the official government hierarchy. As a member of the working class, especially in a higher position within the hierarchy, a Soviet worker could secure a '*dlinnaya ruka*' ('long arm'), which guaranteed access to additional resources such as foreign currency, social influence, and the black market.

In addition, the flipside of Soviet governance was the rapid proliferation of informal practices in the everyday life of society. Most informal practices arose from the shortage of goods available in markets. The scarcity of goods and obtaining access to them shaped the emergence of informal connections. Those connections existed within the frame of the business, economic, social, and political interests of participating parties. Such informal connections were not necessarily based on a patronage system, which relies on client–patron relationships, but rather on the *blat* system (Shalin, 1999). *Blat* is the Russian term explaining the distinctive system of social exchange in the Communist society of the Soviet Union, in which human needs were articulated regardless of the rigid state control (Ledeneva, 1997). If the patron–client relationship represents the unequal positioning of the parties within the social or political hierarchy, the *blat* system was built around transactions between equals (Shalin, 1999). Money was not the central focus of the *blat* system. According to *blat*, one could gain access to goods and services in exchange for ensuring access to some other goods and services for the other party. However, informality took many other forms, representing the centrality and importance of money, especially cash, in the Soviet Union. One of those informal practices was the *pod prilavka* system or the so-called *torgovlya iz pod prilavka*, meaning 'trade under the table' (Dadabaev, 2021). *Pod prilavka* was an alternative way of purchasing in-shortage goods for informal cash payments. This informal practice became part-and-parcel of everyday life and was widely applied not only in Soviet Russia, but across all of the Soviet states, and later in post-Soviet societies as well (Dadabaev, 2021). Thus, even though the market economy was forbidden in the Soviet era, in practice, it existed in daily life through informal practices. This was the form the business climate assumed during the Soviet era and which continues to have ramifications for the contemporary business environment in post-Soviet countries.

Therefore, historically, in Uzbekistan, people's understandings of and attitudes toward corruption are closely interlinked with prevailing social norms, informality, and the legal culture, which reflects the amalgamation of the Soviet and post-Soviet political atmosphere (Dadabaev,

2021; Urinboyev & Svensson, 2016). These processes become especially visible when we explore the current governance trajectories in Uzbekistan, particularly when observing Uzbek authorities' zeal to improve its ranking amongst global indicators in the field of anticorruption, on the one hand, and everyday business realities and informalities, on the other. Currently, Uzbekistan is striving to improve its international image by revising domestic legislation and institutions in order to create a favourable business environment in the country, thereby attracting more foreign direct investment. However, corruption within the higher echelons of the government remains active, especially patterns of 'legal corruption'—that is, exclusions and provisions in legal acts benefiting only certain groups of people or businesses. Legal corruption is a recent understanding within law scholarship that describes the legal framework built by the elite to protect the financial interests of individuals by providing exclusive rights in business dealings (Domadenik et al., 2014; Kaufmann & Vicente, 2011). A high risk surrounds the loss of transparency when initiating any exclusions in legal acts vis-à-vis coordinating business, public procurement, or investment dealings. Exclusions in legal acts are mostly viewed as a negative factor benefitting a limited number of individuals by creating unfair business conditions, monopolies, and ineffective governance (Arnáiz, 2006; Gilmore et al., 2007; Warren, 2006).

The practice of legal corruption is widely observed in post-Soviet countries, especially in Uzbekistan, and permeates decision-making and business activities. Recent investigations indicate that some high-level state officials were closely linked to corrupt schemes or owned businesses which engaged in such schemes (Lasslett, 2020). Furthermore, international corruption scandals related to Uzbekistan have had a negative impact on the country's position in international rankings. For instance, Uzbekistan has experienced international corruption scandals involving foreign private and public enterprises. All of these corruption cases directly or indirectly affected the position of Uzbekistan on the Corruption Perceptions Index (CPI) and other international indices. Most of the infamous corruption scandals were related to Gulnara Karimova, daughter of former president Islam Karimov, who is currently serving a thirteen-year prison sentence due to her involvement in corrupt activities (OCCRP, 2020). The Sarajevo-based Organised Crime and Corruption Reporting Project (OCCRP) previously estimated that five telecommunications companies might have paid Karimova more than US$1 billion in bribes during the 2000s (Roque, 2016). In addition,

recent conflict-of-interest accusations in a Tashkent City project and the Sardoba dam failure in the Syrdarya region demonstrate the prevalence of legal corruption in Uzbekistan (Markowitz, 2017; Open Democracy, 2023; *The Economist*, 2020), where political elites and economic actors use legal channels to gain access to resources. Therefore, the main hurdles impeding ongoing reforms in Uzbekistan remain high-level corruption and a challenging legal atmosphere.

The above considerations thus lead to the primary aim in this chapter, which is intended to investigate the interconnections between the legal culture, informality, and international anticorruption agenda. Specifically, I attempt to determine how these processes shape the business and investment climates in Uzbekistan. In undertaking this task, I explore the following three processes. First, I describe the current situation vis-à-vis the international anticorruption agenda and its actuality in policymaking processes in Uzbekistan. Whilst focusing on this, I discuss the reflection of international anticorruption indices in local anticorruption policymaking within the specific example of Transparency International's (TI) Corruption Perceptions Index (CPI). Second, I explore the nexus between the anticorruption agenda, (mis-)trust in the government, and the changing legal culture in Uzbekistan. In this respect, analysing the reactions of both local and foreign businesses to the state anticorruption policy agenda in Uzbekistan provides intriguing insights into trust and the changing legal culture in Uzbek society. This analysis relies on examining ongoing anticorruption initiatives and their implementation in real-life situations. This chapter considers the concept of trust from both social and political perspectives. Despite current positive changes, anticorruption reforms are hampered by informal practices and recalcitrant social norms, which have a pernicious effect on the business and investment climates in Uzbekistan. Thus, in this section, I examine the business representatives' perceptions of and experiences with corruption, their legal cultures, and the level of trust in Uzbekistan's political and legal institutions. Third, and finally, I analyse the forms and causes of legal corruption in Uzbekistan by examining the practice of exclusion provisions in normative legal acts. Here, I describe the importance of the anticorruption review of legal acts as a practical preventive tool to remove the practice of legal corruption from modern lawmaking in Uzbekistan. Both the legal aspects and the social perception toward a lack of a solid anticorruption screening for legal normative documents are analysed in the last section of this chapter. In

this analysis, I refer to the relevant literature and the personal experiences of interviewees who participated in my research.

As such, the remainder of this chapter is organised as follows. The next section, part two, presents the research methodology, where I describe my methods, fieldwork, and data collection strategies. Part three provides the theoretical framework constructed, which draws upon the multilevel governance framework and collective action approach. This framework provides a lens via which to study people's perceptions of laws and the everyday informality shaping petty corruption within the business climate in Uzbekistan. In part four, I present the empirical material and analysis, as well as discuss the implications of this study on broader socio-legal and sociopolitical debates. Finally, part five summarises the primary findings and offers concluding remarks from my analysis.

Methodological Considerations

This research employs a qualitative approach to data collection and analysis, representing an interdisciplinary study covering elements of both legal science and the sociology of law. Moreover, I applied general and specific scientific methods of cognition to achieve the goals and objectives within this socio-legal study to understand the interconnections between the legal cultural, societal, and anticorruption legal frameworks and their implications for the business climate in Uzbekistan. I have conducted more than thirty semi-structured interviews with various actors, namely, civil servants working in the field of anticorruption, legal practitioners, experts, analysts, and academic researchers who understand the anticorruption and business environments in Uzbekistan. I also interviewed representatives of foreign companies operating or considering investing in various sectors of Uzbekistan's markets. More specifically, I also interviewed the general manager of a company responsible for implementing the massive 'Tashkent City' state construction project. Interviews (face-to-face) were conducted in Tashkent, with the exception of one interview with an anticorruption scholar based in Copenhagen. Several interviews were conducted online using modern remote conferencing platforms due to the COVID-19 pandemic. I also conducted one group interview involving experts from different fields in order to understand the causes of corruption and the conflicts of interest within the public sector. In addition to interview data, I present some relevant examples from my daily observations.

Most interviewees who wished to remain anonymous stated they felt uncomfortable discussing a sensitive topic like corruption in a digital format. However, after long negotiations and becoming acquainted with anonymisation procedures, most interviewees agreed to answer all of my questions. Representatives of foreign enterprises and local businesses requested the interview questions beforehand, including the aim and the financial sources of the research. Public sector representatives and individual experts, by contrast, asked for general information about the interview topic in order to clarify the exact area of the anticorruption reforms and business climate to be discussed. All respondents, excluding some public officials from Uzbekistan, asked to be cited as anonymous interviewees or that I use fictional pseudonyms when referring to their responses in this chapter.

Theoretical Framework

Multilevel Governance Framework

I draw upon the multilevel governance framework to analyse the different levels and components of governance in Uzbekistan and how they interact with each other to support or hinder the implementation of the anticorruption agenda. Multilevel governance is a recent concept in political science and public administration developed for the study of European integration and decision-making on different levels of governance (Bache, 2008; Piattoni, 2009). This framework vertically studies interactions between different levels of governance (international, regional, and local) and horizontally examines the synergies amongst actors with the same political authority (Cairney et al., 2019). I use this framework as a lens to study vertical and horizontal governance aimed at tackling corruption in the business sector in Uzbekistan. Firstly, from an international perspective, I analyse the external environment of the political system, including global trends, international organisations, and cooperation with foreign countries that impact the design and implementation of the anticorruption agenda in Uzbekistan. Uzbekistan has been working closely with international organisations such as the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), and the World Bank to implement its anticorruption agenda (UNDP Uzbekistan, 2018). The government has also established relationships with neighbouring countries, such as Kazakhstan, to share

best practices and experiences in combating corruption and dealing with transnational crimes. Secondly, this research covers the formal institutions of the political system, such as the constitution, laws, and courts, which play a critical role in implementing the anticorruption agenda. The Uzbek government has taken several steps to strengthen these institutions, such as enacting new laws and increasing the independence of the judiciary. For example, in 2019, the government established a new anticorruption agency and reformed the State Security Service to investigate corruption cases better. Thirdly, this research addresses the actors in the political system, including political parties, interest groups, and civil society organisations which also play a critical role in implementing the anticorruption agenda. The government has been working with business groups to encourage them to adopt more transparent business practices. However, the recalcitrant social norms and informal practices underpinning corruption have made it a challenging task to disperse anticorruption norms within society. Nonetheless, the government has been working to change these attitudes by launching public awareness campaigns and encouraging citizens to report corruption. Simply put, a multilevel governance network facilitates scrutinising the realities of the anticorruption agenda in Uzbekistan from global, regional, and local perspectives.

Collective Action Approach

Corruption undermines economic development, hampers social progress, and erodes public trust in government institutions. Addressing corruption requires a multifaceted approach; one useful framework for understanding the dynamics of (anti-)corruption is the collective action approach. The collective action approach emphasises the importance of understanding the incentives and behaviours of different actors within a specific context. This theory suggests that corruption can be seen as a collective action problem, whereby individual actors are inclined to engage in corrupt behaviour because they believe that 'everybody is doing it'. Similarly, anticorruption efforts can also be viewed as a collective action problem, in which different actors must coordinate their actions to combat corruption effectively (Peiffer & Walton, 2019; Persson et al., 2013). At the same time, the theoretical underpinnings of the collective action approach also highlight the importance of collective action and coordination amongst different actors in order to effectively combat corruption (Persson et al., 2013). This requires various strategies, including legal and regulatory

frameworks that discourage corruption, independent oversight institutions that can monitor and investigate corruption, and civil society organisations that can raise public awareness and advocate for change.

In Uzbekistan, there have been a number of recent initiatives aimed at combating corruption, including the establishment of the Anticorruption Agency, the adoption of a new anticorruption law, and the implementation of measures to increase transparency and accountability in government institutions. These efforts are all examples of anticorruption reforms aimed at addressing the problem of corruption. However, challenges to collective action remain in Uzbekistan, including a lack of trust between different actors, the persistence of informal networks of power and influence, and limited resources to support anticorruption efforts. Overcoming these challenges will require a sustained effort and collaboration from various actors, including government officials, civil society organisations, and the private sector. Quite simply, the collective action approach provides a useful framework for understanding the dynamics of corruption and anticorruption efforts in Uzbekistan. By identifying the actors involved in corrupt practices and the norms and beliefs driving their behaviour, we can better understand the root causes of corruption in Uzbekistan. Simultaneously, by emphasising the importance of coordination amongst different actors, it is possible to identify strategies to effectively combat corruption and promote greater transparency and accountability in government institutions. Whilst significant challenges remain, the collective action approach provides a valuable tool for analysing corruption and anticorruption efforts in Uzbekistan and for identifying strategies to address this persistent challenge.

Transparency International's Corruption Perceptions Index and Its Implications for the Business and Investment Climates in Uzbekistan

In recent years, Uzbekistan has undergone significant legal, political, economic, and social transformations, particularly in its anticorruption agenda. The country has taken notable steps to combat systematic corruption and enhance transparency in everyday governance. Understanding the dynamics of this process requires examining changing anticorruption

policies in Uzbekistan by applying the multilevel governance framework. Multilevel governance refers to a system whereby authority and decision-making powers are shared amongst various levels of government, including central, regional, and local bodies (Cairney et al., 2019). In examining the anticorruption agenda in Uzbekistan, this framework allows for the analysis of collaboration, coordination, and cooperation amongst international organisations, governmental institutions, and civil society organisations. To undertake this task, in this section, I analyse the role of international actors such as international anticorruption organisations, bilateral partners (foreign states), and donor agencies which facilitate Uzbekistan's anticorruption agenda by providing technical assistance, capacity building, and financial support. They also facilitate knowledge exchange and best practices.

With these considerations in mind, in this section, I specifically examine the role of international actors, such as Transparency International (TI), an international nongovernmental organisation (NGO) operating in the field of anticorruption, and its influence on the domestic anticorruption environment in Uzbekistan. More specifically, I analyse the impact of international indices on local anticorruption legislation and initiatives, and how international business actors and investors rely on the data provided by TI and the World Bank in assessing whether to invest in Uzbekistan. Respondents representing foreign enterprises within my research shared their step-by-step experiences in investing and starting their business operations in Uzbekistan. One of their first steps was reading and analysing reports on transparency and governance in Uzbekistan from internationally recognised sources, including TI and World Bank reports. The Corruption Perceptions Index (CPI) was the most common document upon which the majority of my respondents relied. Complex area coverage and comprehensive methodologies make the CPI one of the most important sources foreign enterprises consider before investing in Central Asian markets. Thus, the next step in my analysis is focusing on understanding the nature, philosophy, and methodological background of the CPI to provide a better understanding of its popularity amongst businesses and the critical perspectives of legal scholars upon it.

TI's Corruption Perceptions Index (CPI) is recognised as a 'first-generation index' that applies diverse instrumental and statistical techniques to measure corruption through its perceptions within society (Johnston, 2000). These diverse statistical and data analysis techniques guarantee that the CPI occupies a leading position amongst the world's

corruption evaluation and analytical observation indices. The international ratings by TI, Freedom House, the World Bank, the Bertelsmann Foundation, and the World Economic Forum measure the level of perceptions of corruption, governance, democracy, and transparency in various public and private sectors by standardising the data collected. The standardisation method applied by TI recalculates the original scores from such sources as the *Bertelsmann Foundation Transformation Index, Economist Intelligence Unit Country Rating, Freedom House Nations in Transit Rating, the Country Risk Rating—Global Insight, CPIA—World Bank, Rule of Law Index—World Justice Project, Annual Report on Democracy—'Diversity of Democracy'-V-Demand Project* (Mustafoev, 2020), and standardises them on a scale, ranging from 0 as the most corrupt to 100 as the least. The aforementioned sources analyse almost all of the political and social aspects, reforms, challenges, rule of law, and economic stability of a state. The methodologies used by all sources vary when compared with one another, but the assessment process remains comprehensive and 'large scale'. According to TI experts, the standardisation method allows for the identification of the most corrupt areas of public administration and institutions.

The first data for Uzbekistan in the CPI was published in 1999, based on surveys from four sources. For some years, the country led the Central Asian region in the index by showing better performance in the CPI than its neighbouring countries. But, Uzbekistan began receiving lower scores and occupying a correspondingly lower position on the CPI due to the enlargement of the number of surveys and sources. In 2016, during the last year of Islam Karimov's presidency, Uzbekistan scored 21 of 100 on the scaled computing system. This score ensured Uzbekistan ranked 156th amongst 175 countries, meaning it became the Central Asian country with the highest corruption perception level and corrupt public sector followed by Turkmenistan, which received 22 points and was ranked 154th in 2016 (Transparency International, 2017). The most important data TI relied upon to measure the level of corruption perception in Uzbekistan are primarily provided by the World Bank Worldwide Governance Indicators, which assessed Uzbekistan on the following trends for the 2022 report: control of corruption, government effectiveness, political stability and absence of violence or terrorism, regulatory quality, rule of law, and voice and accountability. The illustration below represents the data for all six indicators in the same order (lines from top to down) as in the previous sentence.

According to Fig. 2.1, which illustrates the World Bank Worldwide Governance Indicators (World Bank Group, 2023) data for Uzbekistan from 1996 to 2022, Uzbekistan has shown positive shifts across all six World Bank indicators. This rapid growth in all indicators is visible for the period from 2016 onwards. Correspondingly, these data influenced the positioning of Uzbekistan in the CPI. Currently, Uzbekistan, with its 31 points, represents the 126th least corrupt nation out of 180 countries, according to TI's 2022 Corruption Perceptions Index (Transparency International, 2023). In comparison with 2016, Uzbekistan has improved its position by twenty-eight places. Since 2016, during the new government, Uzbekistan has significantly improved its position on the CPI compared with the other former Soviet states. Currently, Turkmenistan (score: 19), Azerbaijan (23), and Tajikistan (24) are ranked lowest in the region, whilst Armenia (46), Moldova (39), and Uzbekistan (31) have all significantly improved their CPI scores (Transparency International, 2023). However, internationally, the Eastern European and Central Asian region remains amongst the lowest-performing regions in the CPI for 2022. According to Altynai Myrzabekova, the Eastern European and Central Asian Regional Advisor to TI, the international community, especially Eastern Europe and Central Asia, experienced unchecked corruption and kleptocracy in 2022.

The improvement to the position of Uzbekistan in TI's CPI might result from the large-scale legal and administrative reforms carried out

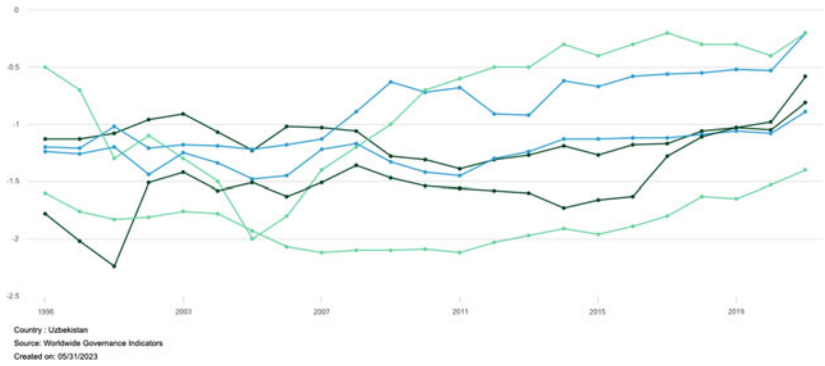

Fig. 2.1 Worldwide governance indicator for Uzbekistan, 1996–2022

by the new government. More specifically, President Shavkat Mirziyoyev signed Decree № DP-6003, 'On Improving the Position of the Republic of Uzbekistan in International Ratings and Indices' (dated 2 June 2020). This decree covers nineteen indices, including the CPI, Worldwide Governance Indicators, and the Rule of Law Index amongst others. Motivated by international rankings, the government of Uzbekistan established its own domestic indicators programme to address corruption, which is mentioned in Resolution of the President № RP-81, 'On Measures for the Implementation of an Effective Rating System for Fighting Corruption' (dated 12 January 2022). This resolution outlines the necessity of ensuring transparency and accountability in the public sector of Uzbekistan. These changes and legislative initiatives clearly illustrate how international norms and actors influence domestic developments in Uzbekistan. This results from the fact that Uzbek authorities understand that the flow of foreign investment heavily depends upon the country's ranking on global indicators concerning governance, the rule of law, and corruption.

Another area where the influence of international norms is quite visible concerns citizens' access to information related to the public sector. According to the nineteenth recommendation of the Organization for Economic Cooperation and Development's (OECD) country progress report, Uzbekistan needs to ensure free access to information and carry out campaigns to raise citizens' awareness about their rights and responsibilities vis-à-vis access to information regulations (OECD, 2015). In line with these recommendations, Uzbek authorities actively encourage citizens and people living in the country to participate in discussions of state programmes and amendments to existing normative legal acts. For example, before conducting a general review of legal acts, the Ministry of Justice of Uzbekistan takes into consideration people's comments on those acts and policy initiatives published via the regulations.go.uz portal. Even with the existence of a legal framework that guarantees people's right to access information related to the public sector, it remains impractical in cases with low public awareness about such rights. Therefore, providing official and accountable information to the public leads to an increase in trust in the government. The accuracy, appropriateness, and *au fait* of the published information are rather important in grabbing people's interest and ensuring transparent business dealings in the public sector. Furthermore, publicly available information holds officials and businesses accountable. In addition, access to information allows

people to trace business transactions and ensure that illegal schemes such as money laundering do not happen. Publicly available documents concerning monetary issues assure business actors' compliance with laws, allow for more efficient audits, and, as a result, leave people more likely to trust businesses and public officials when data can be used as proof.

> For example, citizens warmly welcomed the recent reforms in the tax system of Uzbekistan because the government introduced new blockchain technology-based taxation that can ensure transparency in this sector. The database in the blockchain system duplicates in different organisations, so this system has introduced decentralised control over public funds and taxes. This case can be viewed as a positive experience for establishing transparency in the public sector. (Khusnora,[1] female, legal expert from Uzbekistan)

Article 8 of the Law of the Republic of Uzbekistan, 'On Public Procurement' (2018), pertaining to the 'principles of openness and transparency', states that openness and transparency in public procurement are ensured by providing open access data on public procurement. The current law was adopted to ensure effective management and transparency in Uzbekistan's public procurement, and primarily focuses on defining the exact procedures for that sector. This law highlights the importance of announcements providing information related to public procurement on relevant online platforms by relying on the principles of transparency and openness. However, there are quite a few exceptions granted to conduct direct contracting in public procurement. For instance, thirty-six types of state purchases have been approved for direct contracting by the respective state departments and suppliers by decree of the President of Uzbekistan (Decree of the President of Uzbekistan, 'On Measures to Implement the Law of the Republic of Uzbekistan "On Public Procurement"', 2018). However, as one respondent noted, such exceptions may lead to 'legal corruption', as noted in the previous sections of the chapter:

> Yes, I understand that the decision regarding direct contracting was made considering state security matters. But, the experience of the European Union legislation on public procurement strongly recommends avoiding direct contracting because of the risks of possible practical challenges

[1] Personal data of all respondents in this research are anonymized by following the research ethics of Lund University. Names are replaced with pseudonyms.

> and conflicts of interest. (Bekzod, male, investment manager in a foreign consulate based in Uzbekistan)

In fact, direct contracting in public procurement might motivate lobbying models and challenge the anticipated tax compliance of service providers (Gehlbach, 2006). However, when direct contracting is viewed through the lens of the collective action approach to corruption, in societies like Uzbekistan permeated by informality, it is highly likely that direct contracting may lead to corruption and conflicts of interest. Indeed, the possibilities of direct contracting in public procurement might motivate the emergence of collective informal social behaviour amongst businessmen interested in making a profit by engaging in corrupt network groups. Such an attractive possibility for an easy profit provides an incentive for individuals to use corrupt schemes, thereby facilitating large-scale corruption. Eventually, informal practices such as lobbying become social norms and penetrate state institutions. According to local business representatives I interviewed from the construction sector, Uzbekistan would benefit from implementing a blockchain-based e-procurement system. Thus, the expansion of electronic procurement forms is essential for the creation of a safe and transparent platform for public procurement in Uzbekistan (World Bank, 2017).

> Improvements to the existing electronic procurement platforms in terms of simplifying the registration process, integrating them with verified clearing and settlement platforms, and introducing document exchange and payment options directly through the system would make Uzbekistan's procurement system more transparent and reliable so that private companies would feel more confident when procuring supplies for the public sector. In addition, the interaction and unification of the electronic databases from different state departments, ministries, and public organisations can increase interest amongst both suppliers and purchasers in applying an electronic version for procurement in most cases. (Anvar, male, businessman in the construction sector in Uzbekistan)

Indeed, South Korea, as a strategic partner of Uzbekistan in various fields, has merged the databases of the Ministry of Economy and Finance, the 'Single Window' state service centre, the customs and tax authorities, banks, and different insurance organisations into a single electronic portal for procurement. Such a merger helped South Korean businesses by speeding up the registration processes and creating easier and safer

payment and payout systems. Such a practice attracted entities from both the public and private sectors to shift to online operations and ensure transparency in procurement processes. This has prompted the imposition of various disciplines and many jurisdictions around the world to encourage the better use of resources, promote greater efficiency, and reduce the risk of favouritism or corruption in public purchasing (European Commission Internal Market & Services, 2020).

Influenced by these international best practices and tendencies, Uzbekistan has also digitalised state services with financial support from the South Korean government. More specifically, the State Customs Committee of Uzbekistan launched the unified customs Single Window system for US$5.5 million in cooperation with the Korea International Cooperation Agency (KOICA) in 2017. Based on the Presidential Decree 'On Measures to Further Improve the Business Environment and Improve the System of Supporting Entrepreneurship in the Country' supporting the abovementioned reform, since 1 February 2020, procedures such as processing permits and certificates for export–import operations have been conducted online through the Single-Window customs information system in Uzbekistan. Uzbekistan's 'Single Window' system was developed by adhering to the criteria and guidelines developed by the United Nations Centre for Trade Facilitation and Electronic Business Operations (State Customs Committee of the Republic of Uzbekistan, 2020).

Therefore, the current economic and business development strategies of Uzbekistan focus on establishing a more open and transparent public sector, less corruption, and higher public accountability. However, the country continues to face the challenges of systematic corruption, especially in public procurement. Regardless of the high level of informality in society, the government of Uzbekistan is actively working on improving its international image to attract new investments in the local economy. Thus, Uzbekistan is attempting to improve its position on the CPI by developing and modernising its domestic anticorruption legislation and policies.

Trust and the Changing Legal Culture

Following the collapse of the Soviet Union, many newly independent countries emerging from the fall of Communism struggled to fulfil the basic functions of the state in terms of providing jobs and social

protections to their citizens (Woolfson, 2007). These post-Soviet transformations led to a high level of unemployment, which caused high levels of suicide, depression, and alcoholism in society. The political tendencies of the early 1990s diminished people's trust in the government and forced them to rely on their own skills for survival. Correspondingly, many citizens of the newly sovereign states preferred to work for themselves, but not for the state. Thus, these rapid sociopolitical changes lead to questions such as: What were the social, legal, and economic consequences of moving from a state-centric economy to a market-oriented one? How did these changes affect people's trust in the state and its laws and policies? How did people secure their wellbeing living under politically and economically unstable systems? More importantly, how have these changes affected the local legal cultures and the legal landscape in general? And, finally, what are the roles of ethics and morality in everyday business transactions in the post-Soviet region?

Trust in the political and economic stability of the host country is a quite important factor for any business when determining that a country is a viable investment destination. Trust in the market starts with analysing the relevant reports to ensure the further security of investments and business efforts. In my interviews, most respondents representing foreign enterprises operating in Uzbekistan highlighted the importance of international indices and rankings as major factors for any pre-investment consideration in the region. According to the interview data, representatives of Finnish companies operating in oil and gas production in Uzbekistan also mentioned the importance of TI's CPI as one of the essential documents they relied on before investing in new destinations. The CPI primarily reflects the opinions of regular citizens and national and international experts' reports on the level of tolerance of corruption. The results of my observations and group discussions demonstrate that trust is the first step in stemming the flow of corrupt practices. Trust is essential, but it requires a departure from the 'normative' culture and attitudes surrounding corruption in Uzbek society towards international moral values and ethical standards. Interview data show that ordinary citizens, business workers, and even government officials in Uzbekistan view corruption as a normal means to an end, or 'standard operating procedure', when viewed from the collective action approach to corruption. Corruption allows tasks to be completed more efficiently in the short term; in the long term, however, it is more damaging to efficiency, especially for those members of society who do not have the means to

engage in such practices. This becomes a vicious cycle (Gleave et al., 2011; Urinboyev, 2019; Urinboyev & Svensson, 2016).

Uzbekistan has recently established a new anticorruption agency indicating its intention to prevent and combat corruption. However, this remains unsystematised and lacks the trust of citizens since the Anticorruption Agency of Uzbekistan is considered a preventive legal body rather than an independent law enforcement agency. One of the primary reasons for the inefficient anticorruption legal framework is a lack of trust amongst people, businesses, and state institutions. If people do not have access to correct and clear information, they cannot make adequate decisions at critical moments. Manipulating or essentially fabricating data without reliable sources creates uncertainty for people and businesses by allowing corruption to persist. The current situation regarding transparency and efficiency in governance in Uzbekistan was discussed during an online group discussion involving representatives from the Ministry of Justice of Uzbekistan, independent lawyers, and researchers in February 2020. All research participants asked to remain anonymous because of the sensitivity of the topics discussed, topics which touched upon corruption, governance, and state policies. During these discussions, one participant noted the connections between transparency and trust:

> Transparency leads people to have more trust in the government, which can help to overcome corruption-related problems in the public sector. (Khusnora, female, legal expert from Uzbekistan)

However, a second participant in the same group discussion responded to Khusnora's thoughts by stating a need to keep certain public areas less than transparent for the sake of the political and economic stability of Uzbekistan.

> Ensuring full transparency in the public sector may lead to other political and social challenges within the state. It is impossible and not profitable, either economically or socially, to ensure full transparency in the public sector by disclosing every single operation to the public because the state has a responsibility not just to ensure a good life, but also to protect borders, security, and citizens' interests in the world where all resources are limited. Everyone has their own interests. (Alisher, male, public servant from Uzbekistan)

According to the interviewees, some people are less likely to engage in transparent practices when doing business and will instead rely on corrupt practices because of a simple lack of resources in Uzbekistan. When people receive low salaries, they must still meet their daily needs. Therefore, people must find informal and illegal ways of meeting these daily needs. The means to do so is through daily 'good' or 'bad' bribery. In addition, the state's inadequate provision of social services and high unemployment rate have led to the creation of an unwritten set of rules and ways of engaging in social behaviour, which clash with the principles of the rule of law (Urinboyev & Svensson, 2013). The reasons why corruption became a social norm or a survival strategy were explained by one of my respondents:

> If people have the means to meet their daily needs, then they are less likely to be inclined to participate in informal and illegal practices because they do not need to do so. As countries become more developed and people achieve better living standards, the situation regarding the social perception of informal practices and corruption may become better on their own. However, it still requires a system built upon transparency. To build this sort of transparent system, it is necessary to build trust and change the cultural mindset of the people of Uzbekistan. (Nariman, male, businessman from Uzbekistan)

To gain the trust of the international business community, the government of Uzbekistan strives to identify its 'vulnerable' public sectors and implement enhanced international practices towards anticorruption policies by initiating reforms and international collaboration. For instance, since 2018, the Prosecutor General's Office and the Ministry of Justice of the Republic of Uzbekistan, together with the Republican Interdepartmental Commission on Combating Corruption, have been implementing the UNDP project 'Countering Corruption through Effective, Accountable, and Transparent Governance Institutions in Uzbekistan' (UNDP Uzbekistan, 2023) and the programme to support anticorruption policies and activities in the Republic of Uzbekistan within the framework of the UNDP Global Project on Anticorruption for Peaceful and Inclusive Societies (ACPIS) for 2017–2020. These joint projects reflect attempts by the Uzbek government to improve its image and fulfil national obligations under the UN Convention Against Corruption (UNCAC) and the Istanbul Action Plan to combat corruption in the public sector. As

such, implementing international norms and standards in local policymaking practices has led to better state profile reports, meaning that the likelihood of international businesses considering the Uzbek market a viable investment destination could significantly increase. According to my fieldwork results, international companies interested in Uzbekistan's market primarily consider expert opinions and reports documenting recent updates in policymaking and changes in the social and political sectors.

> The changing legal culture of citizens is extremely important because it represents the establishment of solid policy, which guarantees and secures transparency, human rights, and the social welfare of the people. An upgrade in the people's welfare and the political stability of the country mostly reverberates in country reports, which we constantly read and take into consideration before considering future investments. (Anna, female, deputy manager of a Finnish company operating in Uzbekistan)

Accordingly, new laws introduced to shape the legal culture of society should be properly monitored by state authorities and civil society, respectively. For instance, the new, systematised anticorruption reforms of Uzbekistan began with the adoption of the law 'On Combating Corruption', dated 3 January 2017. This law initiated the establishment of the Republican Interdepartmental Commission for Combating Corruption, which coordinates work prioritising international rankings and indices, indicative of the government's interest in improving its position within these spheres. In addition, the Interdepartmental Commission was empowered to monitor the activities of state bodies and organisations implementing and participating in anticorruption activities. The Prosecutor General chairs the Interdepartmental Commission, and the commission consists of the heads of various ministries and state agencies. The basic tasks of the commission are to ensure interaction across different organisations within Uzbekistan that participate in anticorruption activities as well as to initiate proposals for enhancing current legislation on combating corruption and its eradication ('On Combating Corruption' 2017). The Interdepartmental Commission represented a first step in Uzbekistan's attempts to reform its anticorruption legal framework and related policies within the country. According to President Mirziyoyev's address to the Uzbek Parliament in January 2020 and to pursue the legal framework further, the president created a new

independent anticorruption body accountable only to the Senate and the president (Permanent Mission of the Republic of Uzbekistan to the United Nations, 2020). This government decision could have served as a positive backdrop for adhering to the requirements in Article 6 of the UNCAC.[2] Still, upon establishment, the Anticorruption Agency was not provided with the necessary independence and flexibility: it was not granted law enforcement powers and remains a research and observation-based public body within the government of Uzbekistan. However, according to my interviewees, both local and foreign enterprises warmly welcomed the new anticorruption body and hope for further progress on corruption eradication in the public–private partnership sector.

Anticorruption Reviews of Legal Acts as a Preventive Measure against Legal Corruption

In theory and practice, it is generally agreed that all measures aimed at fighting corruption are primarily divided into two main categories. The first direction focuses on taking measures to counteract external manifestations of corruption. This direction aims to fight existing corruption through punitive measures. These can include, for example, instituting disciplinary responsibility and initiating criminal cases amongst others. The second direction includes measures to prevent corruption by eliminating the legislative and institutional prerequisites for corruption. One of these measures includes conducting accurate anticorruption reviews. Many corruption threats arise when developing or drafting legal acts. These threats contribute to the emergence of corrupt practices. Minimising corruption risks serves as an effective measure to combat corruption. Eliminating possible corruption risks in legal acts can be achieved through clear and strict compliance with the principles and mechanisms of an anticorruption expert review, as stated by one of my respondents:

> A proper level of anticorruption review at the national level has not found wide application, and there are still problems with this issue on the ground. Thus, analyses of the current state of anticorruption reviews practised in

[2] For more information on the United Nations Convention against Corruption (UNCAC), see https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

> Uzbekistan clarify that the main reasons and prerequisites for the appearance of corruption-related factors in legal documents result from violations of the methodological foundations, principles, and traditions of lawmaking techniques. (Ozodbek, male, leading research analyst of the '*Oliy Majlis*' Senate in the Parliament of Uzbekistan)

The Ministry of Justice and its territorial divisions are responsible for conducting anticorruption reviews in accordance with the law 'On Normative Legal Acts' (2012) and by Order of the Minister of Justice 'On the Approval of the Methodology of the Anticorruption Review of Normative Legal Acts' (No. 2745, 25 December 2015). Civil society institutions have the right to conduct independent anticorruption expert reviews in Uzbekistan. However, results from the examination of civil society representatives serve as recommendations, which means that state bodies primarily carry out anticorruption reviews with no legal obligation to include the opinion of civil society.

> Anticorruption reviews of legal acts are conducted within the framework of legal reviews in Uzbekistan. Based on current legislation, anticorruption reviews are carried out by state bodies with the appropriate authority to adopt legal acts. In the case of Uzbekistan, this rests upon the Ministry of Justice. (Ozodbek, male, leading research analyst of the '*Oliy Majlis*' Senate in the Parliament of Uzbekistan)

According to my respondents who are independent lawyers, eliminating these problems could minimise the risks of corruption and significantly improve the quality of legal acts in Uzbekistan. The institutional and legal framework for anticorruption reviews was established in Uzbekistan in 2012, but the existing potential is not applied as effectively as it could be. However, the 2015 Istanbul Action Plan monitoring meeting recognised Uzbekistan's progress in establishing new visions and policies in the anticorruption screening of legal and administrative acts at all levels by stating that the measures taken by the government on this matter constitute progress towards the implementation of recommendations from the Istanbul Action Plan (OECD, 2015).

Moreover, the existing high risk of conflicts of interest in the area of screening legal documents at the regional and local levels creates obstacles to full transparency in the lawmaking processes. Furthermore, the lack of qualified anticorruption screening specialists and de facto anticorruption reviews that are not independent of general legal reviews hinder

Uzbekistan's progress in gaining recognition for fully satisfying the legal framework according to the criteria laid out in Article 5 of UNCAC (2003). The impact of the lack of solid anticorruption reviews within legal acts is notable given the everyday challenges faced by local businesses. One of the respondents working in the private sector in Uzbekistan expressed his concerns about the high level of corruption and conflicts of interest in land distribution processes:

> Until 2020, in order to secure land for construction or other purposes people had to approach the *khokimiyat* (local government) for a specific document granting rights to the land. *Khokim* (head of the local government) usually involves nepotism during land distribution on some level. Negligent and criminal behaviours amongst regional governments are motivated by the absence of anticorruption or any other type of legal screening of their orders and signing documents. (Anvar, male, businessman in the construction sector in Uzbekistan)

Anticorruption reviews of draft legal acts and official documents with land registers at the regional and district levels could reveal a number of problematic points in the legislation at the local level. Problems with land distribution have been on the agenda for a long time, and, currently, according to the newly adopted state policy, citizens or other businesspeople can secure a title for land use by participating in online tenders within a few hours or days. Whilst the power to independently distribute land has been taken away from the *khokimlar* (heads of local government) by a decree from the central government, the question of anticorruption screening of the *khokimiyat*'s decisions and orders remains unresolved. General legal screening and specific anticorruption reviews of normative legal acts and city- or district-level official documents issued by a *khokimiyat* in Uzbekistan are rather important factors for preventing widespread corruption schemes. Moreover, granting anticorruption review power to the newly established Anticorruption Agency can produce better outcomes in the fight against corruption. Thus, a separate and thorough anticorruption review could eliminate or minimise corruption risks and significantly improve the quality of adopted legal acts by ensuring equal treatment and transparency for proper business operations in Uzbekistan.

Conclusions

In this chapter, I argued that the attractiveness of Uzbekistan's business climate to both local business actors and foreign investors heavily depends upon the level of trust, transparency, and a comprehensive legal framework. Transparency International's CPI seems extremely popular amongst foreign enterprises when they consider investment destinations. Here, I employed two theories to analyse the nature of anticorruption policies and how they are perceived and experienced by local and foreign businesses in Uzbekistan. More specifically, the multilevel governance framework is applied to understand the vertical and horizontal influences of different norms and actors on each other in making decisions concerning anticorruption; the collective action approach was applied to the discussion of the social dimensions of corruption and informal practices in Uzbek society.

Firstly, this chapter provided a detailed analysis of the CPI as one of the leading indices shaping the business and investment attractiveness of Uzbekistan. More importantly for Uzbekistan, transparency allows the economy to function more efficiently. If people, particularly international enterprises, can easily access direct and accurate information, the business climate within the country may greatly improve. With access to information, businesses can better assess markets and make better decisions about their business. Additionally, being more transparency would improve Uzbekistan's international image and ranking, something President Mirziyoyev perceives as important. Adding transparency within legal sectors, such as limiting 'closed' trials, would allow Uzbekistan to garner an improved and more 'democratic' image in the international arena.

Secondly, according to fieldwork conducted within this research, the current situation regarding public awareness in Uzbekistan demonstrates how websites and other sources of information are unavailable or inaccurate. If businesses and public agencies do not provide the necessary or accurate data to the general public, people are less likely to trust formal institutions. In turn, the perception of corruption amongst these individuals and businesses is higher. The lack of access to reliable and official information makes it difficult to contact public officials and question them about certain topics. Thus, trust in political and economic sustainability increases following the introduction of modern and comprehensive policies that prioritise transparency, openness, and equality in all matters.

Thirdly, as local and foreign business representatives mentioned, the cases of *khokims* (regional governors) who continue participating

in corrupt schemes demonstrate how anticorruption policies from the capital, Tashkent, take a significant amount of time to be effectively implemented in the regions. However, from the perspective of many different international anticorruption actors, Uzbekistan's domestic policies have significantly improved since 2017. This is particularly true for the business sector, which has witnessed massive growth in international investment. Corruption reforms take longer than most other reforms to succeed because they require behavioural and societal changes and not just changes to the formal system.

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CHAPTER 3

Perspectives on Introducing Corporate Criminal Liability for the Crime of Bribery in Uzbekistan

Dildora Karimova and Uygun Nigmadjanov

Introduction

In March 2019, the US Securities and Exchange Commission (SEC) issued millions of dollars in fines resulting from the scandalous revelations regarding MTS (VimpelCom) and Ucell (Telia Sonera) bribing Uzbek government officials for billions of dollars in an effort to remain on the market (USAO SDNY, 2019). As a consequence, we can ponder how a foreign authority exercises its jurisdiction on another continent, if companies must comply with its orders, and why these companies could not be fined by Uzbekistan.

D. Karimova (✉)
Westminster International University in Tashkent, Tashkent, Uzbekistan
e-mail: dildorakarimova.i@gmail.com

U. Nigmadjanov
The Law Enforcement, Academy of the Republic of Uzbekistan, Tashkent, Uzbekistan
e-mail: uyni2021@list.ru

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_3

The answers to these questions are twofold. First, VimpelCom was trading its shares on the New York Stock Exchange (NYSE), which was sufficient for the SEC to establish its jurisdiction and begin investigating the crimes committed by a Russian-owned Dutch-domiciled multinational company operating within the territory of Uzbekistan. Second, Uzbekistan lacked any legal mechanism to investigate and prosecute a corporate crime, since it had not yet introduced corporate criminal liability (CCL) for any crimes. This leads to the realisation that the existing anti-corruption laws in Uzbekistan fell short of actually combating corporate crime or at a minimum establishing mechanisms for seeking compensation for damages resulting from the corrupt actions of foreign companies, a realisation that hit hard. Had Uzbekistan had CCL for bribery in place, the case would have been tried in Uzbekistan according to Uzbek laws, and the damage done to Uzbekistan would have resulted in compensation paid into the Uzbek budget. Former Minister of Justice Ruslanbek Davletov was quite vocal about this shortcoming, emphasising the need to begin developing legal mechanisms to hold corporations criminally liable for their violations instead of relying only on an individual's criminal responsibility (Gazeta.uz, 2020).

It must be said that the 'insufficient implementation of internationally recognised criminal law institutions, including the lack of criminal liability of legal entities', was also noted in the Presidential Resolution No. PP-3723, dated 14 May 2018, 'On measures to radically improve the criminal justice system and criminal procedure legislation' (Preamble). However, the legal regulation and lawmaking spheres in Uzbekistan, a post-Soviet state, even after 30 years of independence, remain under Soviet influence, an influence which serves as a stringent example of a civil legal system. Criminal liability has always been perceived as exclusively individual, whereby introducing CCL is met with scepticism and a sense of impossibility.

Limitations to the traditional approach of incriminating corruption solely in the public sphere are increasingly acknowledged. Extensive international efforts exist to criminalise corruption and bribery in the private sector, namely, through the United Nations Convention Against Corruption (UNCAC, 2004, Article 26), OECD Anti-Bribery Convention (OECD, 2020), and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 1997, Article 2). There are also numerous national-level legal initiatives in many countries that render corporations criminally liable for

corruption-related crimes. These international and domestic legal initiatives introduced corporate criminal liability (CCL) for the offence of bribery, thereby making clear the importance of recognising the grand scale of such offences that stretch far beyond a public office. Billion-dollar fines and penalties for corporate crimes have become a regular occurrence in countries where corporate business is booming. But how will this legal experiment develop further in a developing country where businesses are only beginning to grow and struggling to survive despite the bureaucracy and overregulation? Which factors should be taken into account when introducing legal measures against corruption? Will CCL not impose even more regulations over businesses?

This chapter attempts to answer these questions, analysing the introduction of CCL for bribery. In doing so, we test the hypothesis that introducing CCL will serve as an effective tool to combat high-level corruption and kleptocratic practices in Uzbekistan (GAN Integrity, 2020).

This chapter consists of three parts. Part I introduces the main theories applicable to this topic, along with methodological considerations and definitions, placing bribery under the umbrella concept of corruption. We also outline several existing approaches to CCL mechanisms and critically evaluate them. Part II discusses current regulations related to corruption and bribery in Uzbekistan, including socio-legal perspectives, which we used to analyse relevant cases, which we also supplement with interviews amongst retail business, construction, and marketing company representatives. Part III considers the introduction of CCL to combat bribery in Uzbekistan, analysing the inadequacy of administrative liability and the challenges that might arise along the way.

Part I: Bribery in the Private Sector

Causes and Effects

Bribery, one of the most common forms of corruption, refers to a '*quid pro quo*' agreement where one person offers, gives, or promises another person who accepts, agrees to receive, or requests an undue advantage in exchange for the latter improperly performing their duties or even when acceptance of this advantage itself is improper (Bribery Act, 2010, Sections 1 and 2). In this chapter when discussing bribery, we rely on this definition since it covers not only the payer and the recipient of

the bribe, but also the mere offer or agreement to accept a bribe. Thus, even an attempt to bribe is a crime, instead of the common practice of a *post-factum* offence.

Several definitional dilemmas and complexities surrounding corruption and bribery require clarification. Since corruption is an umbrella term used to allude to any abuse of power for a private gain, it can include not only bribery, but also nepotism, high-level kleptocracy, fraud, conflicts of interest, and embezzlement amongst others. Here, we focus only on the separate crime of bribery, although discussions of bribery may spillover into other corrupt activities.

Firstly, corruption is typically defined as an abuse of entrusted power for a private gain.[1] However, corruption is often perceived as a matter of the abuse of public power, whilst the private sector is also an active participant in corrupt activities, including bribery. Along with the rise of privatisation and the outsourcing of public services, the risk of bribery and state-sponsored corruption is significantly increasing, since it expands the number of points of contact between the public and private sectors (by businesses to secure contracts and advantages). Moreover, this process creates a paradox. Such paradoxes occur when private sector actors are involved in activities aimed at detecting bribery, and in doing so create even more room for bribery and corruption. Such instances may occur, for example, when private auditing companies carry out a sloppy audit of a privatised public service, and the resulting relationship leads to a sophisticated corruption scheme.[2] These considerations imply that limiting the fight against corruption only to the public sector would render it one-sided. Instead, the private sector may very well be considered one of the key contributors to corruption.

Secondly, corruption—in particular bribery—is often considered a 'private deal' between the immediate parties to a deal (House of Lords, 2019). However, a duty improperly performed by an office holder for a financial or other gain was entrusted to them by someone else. For example, a public official gains their power from a government agency, which gains its own power from the law. Similarly, an employee in the private sector owes a fiduciary duty to their employer, shareholders (if

[1] We rely on definitions offered by Transparency International. See, for example, https://www.transparency.org/en/what-is-corruption, retrieved 25 May 2023.

[2] For further details, refer to U4 Anti-Corruption Resource Centre, from https://www.u4.no/topics/private-sector, retrieved 22 July 2022.

any), and its clients (e.g., banks), and this power is granted by virtue of their employment. In other words, bribery is never a private deal. By committing the offence of bribery, a person violates the trust bestowed upon them either by law or by their employer. As a result, a corrupt act is not attributed to a single person, but to an entire institution which granted power to that person.

Thirdly, bribery, as a white-collar crime, has the false perception of being a non-violent or victimless crime (Croall, 2016). However, the outcomes of corruption extend far beyond a deal itself, and affect society as a whole (Friedrichs, 2009). Corruption can result in consequences as severe as a lack of access to basic public services like education, healthcare, decent infrastructure, adequate standards of living, justice, security, and human rights (Mauro, 1997). Private sector corruption creates adverse effects such as inflated prices, unfair competition, violations of consumer rights, low-quality products and services, and barriers barring entry to markets, which in the long term can damage the economy of an entire country (Özşahin & Üçler, 2017). Corruption can happen anywhere, and the entire society is a victim of each episode of corruption, including private-sector corruption.

Another recognised impact of bribery is the deterioration of the investment climate in the country due to low levels of infrastructure development, which in turn results from the inefficient allocation of funds (Beekman et al., 2014). Businesses prefer to avoid investing, especially in cases involving foreign direct investment, in countries with a high risk of bribery. Doing business in such contexts carries the risk of prosecution, higher costs of doing business due to bribes associated with various expenses, and, as mentioned above, low levels of infrastructure which can also increase the costs of doing business (Mathur & Singh, 2013).

It is worth noting that one theory argues that corruption in the business environment and generally business ethics have roots in the cultural context (Pena López & Sánchez Santos, 2013). We can contrast two extreme models of society, using Tönnies' classic sociological terminology: a cold society (*gesellschaft*) and a warm society (*gemeinschaft*) (Shluchter, 2011). Individuals falling within the first category have no relationships with one another; therefore, interpersonal knowledge is minimal, even within families. A warm society, by contrast, is characterised by the existence of a large network of personal contacts and mutual knowledge of others.

Conceptualising Bribery and Corruption in the Uzbek Socio-Legal Context

In order to understand the Uzbek social context informing the meaning of corruption and bribery in Uzbekistan, in this chapter, we draw from the work of Ferdinand Tönnies on community and society (Shluchter, 2011). According to Tönnies, purely economic relationships are more common in a cold society, whereas social distance may be deemed inappropriate in a warm society. As such, treating those closest to one in the same way strangers are treated would seem wrong. In warm communities, a government plays a particularly high corrective function in the realm of economic interactions with the private sector (Shluchter, 2011).

Uzbek society serves as an example of a warm society—that is, expressions of gratitude, demonstrations of the utmost respect, informal relations, and excessive hospitality are its main features. Thus, we may conclude that in the Uzbek context of a business or public office, the line between common hospitality and bribery remains rather vague and cannot be easily demarcated. In most cases, the giving or receiving of a 'gratitude' gift or favour is not viewed as an illegal act. In fact, such gratuities are expected. This sort of mindset creates a network effect. Through years of practicing 'gratitude' gifts and favours, the practice becomes intrinsic to society, becoming a social norm, a set of normative expectations which individuals follow, whereby such informal, unwritten norms, and practices often contradict state law. This leads us to argue that the legal instrument adopted intended to regulate bribery should precisely determine the limit of hospitality that companies and public offices can show or accept.

Methodological Considerations

Bribery is relevant in light of the commitments undertaken by Uzbekistan in the field of combating corruption. Although the issue of CCL seems well-studied at the international level, with numerous publications dedicated to it, the majority of them focus on countries belonging to the Anglo-Saxon legal family. In Uzbekistan, as a country with a continental legal system, the concept of corporate criminal responsibility remains rather ambiguous. A previously developed draft law on the introduction of such responsibility did not garner much support.

At the same time, recommendations regarding corporate liability related to bribery, including those provided to Uzbekistan within the

framework of its participation in the United Nations Convention Against Corruption (UNCAC) and the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, remain relevant.

In this regard, this chapter attempts to justify the necessity of introducing CCL through an analysis of the causes and effects of bribery from a socio-legal research perspective. Thus, we discussed how models of 'cold' and 'warm' societies and the traditional expression of gratitude through gifts influence the nature of corrupt relationships. The concept of corporate responsibility is considered in light of new trends in the ethical standards of the business community and its potential role in strengthening a broad anti-corruption consciousness.

Based on an analysis of current legislation, we identify the gaps in Uzbekistan's anti-corruption law, focusing on norms aimed at protecting businesses from corruption and norms intended to promote corporate sector integrity, as well as in the context of companies managed by 'puppet' directors and the task of attracting foreign investments. Through a comparative analysis, the shortcomings of the administrative responsibility system are examined in contrast to CCL, considering acceptable models for the country based on foreign experiences.

To understand the corruption risks in business-to-business and business-to-government relationships, as well as the perception of the business community regarding the introduction of CCL, we conducted interviews with representatives of the business sector. Field research was conducted among representatives of retail trade (chain supermarkets), construction companies, and the advertising sector in the last quarter of 2022 and the first quarter of 2023. Within the retail industry, interviews were also conducted with suppliers. Interviewees were selected based on our contacts and social connections within various sectors. Respondents were guaranteed anonymity, and we asked semi-structured questions in order to facilitate the sharing of objective information. In total, we conducted eight interviews, each lasting from 45 minutes to 1 hour and 30 minutes. Considering the sensitivity of the subject matter and the questions we asked, interviews were not audio recorded. We only made verbatim notes during the conversations, noting our primary observations afterwards.

From the three sectors represented in our respondents, 'grey' practices in business-to-business relationships were more characteristic of the retail

sector, whilst the corrupt component in business-to-government relationships was more prevalent in the advertising sector and the construction industry.

Concept of Corporate Criminal Liability

It has long been established and is now undeniable that companies have individual legal personalities just like natural persons—that is, companies have their own rights and duties separate from their directors and managers.[3] Individuals in their activities are responsible not only for their duties arising from contracts or agreements, but also via non-contractual obligations, which include not committing a tort and more imperative obligations such as being prohibited from committing a crime. However, this concept is not equally applicable to corporations, since corporations have long been perceived as capable of having only contractual and tortious obligations and lack any responsibilities under criminal law (Choudhury & Petrin, 2018). This provides an interesting perception because many criminal justice systems offer protection against crimes to any subject of the law, natural or corporate, such that companies enjoy protection against crimes but cannot be prosecuted for such crimes if they commit them (Diskant, 2008). Yet, companies were found to engage in criminal activities, such that a separate social phenomenon called corporate crime was identified. Consequently, it seems unjust to allow a company that engages in criminal behaviour to go unpunished just because there is no available legal tool to do so.

Edelman's Trust Barometer (2023) established that business has become the most trusted institution replacing nongovernmental organisations (NGOs) and governments, a trend that has been holding for the last three years since 2020. That is, according to Edelman's Trust Barometer annual report, people around the world consider businesses to be more ethical and competent when compared with governments, NGOs, and the media (Edelman, 2023). Business is now the sole institution viewed as competent and ethical; the government is viewed as unethical and incompetent, with businesses under pressure to step into that void left by governments. This indicates that people view businesses as social

[3] See *Black's Law Dictionary*, from https://thelawdictionary.org/legal-entity/, retrieved 10 July 2023.

actors that should shape new values and be more active in solving the problems that governments fail to.

Accordingly, this represents a crucial moment for Uzbekistan vis-à-vis ensuring that businesses operating within its territory do so ethically and competently. This can also serve lawmakers by extending the scope of laws to cover not only individuals, but also legal entities initially not included. As such, CCL will not only deter companies from committing certain crimes, but also lead to an increase in trust towards businesses amongst Uzbek people. In turn, such actions will also greatly influence the social fabric by helping bring about the necessary changes to the mindsets of people and prevent corruption becoming a social norm.

The criminal liability of corporations is a long-standing practice in countries such as the US, the UK, and the Netherlands; other countries following the lead also introduced CCL into their systems, such as Israel and South Africa (1977), UAE (1987), France (1994), China (1997), Korea (1998), Belgium (1999), Italy (2001), Poland (2003), Qatar (2004), Romania (2006), Luxemburg, Slovak Republic, and Spain (2010), and the Czech Republic (2012) amongst others. Several of these countries have introduced CCL for bribery (including bribing foreign public officials) in the hopes of reducing the levels of corruption.

How Does Corporate Criminal Liability Work?

The main difficulty confronting a legislator in developing a mechanism for attributing criminal liability to corporations lies in how to establish the mental component of a crime attributed to an abstract entity.

Jurisdictions that have introduced CCL have used different legal mechanisms. These mechanisms can be divided into three main categories: (1) attribution through identifying the mental element of the crime within the senior management of a corporation, also called the identification principle; (2) through vicarious liability, where the company is liable for the actions of their employee; and (3) by breach of a statutory duty, when the behaviour deemed criminal and the means to attribute it to the company are clearly stated in the statute (Khanna, 1996).

The first formulation, the identification principle, was developed in the UK and is used in most of the Commonwealth countries. According to this approach, the mental element of a crime is established through a company's 'governing will and mind', which can be determined from the senior manager of the company. That is, a crime must be committed by

the most senior manager of a company with necessary intent (Lennard's Carrying Co v Asiatic Petroleum Co 1915; DPP v Kent and Sussex Contractors Ltd 1944; ICR Haulage Ltd 1944; Moore v I Bresler Ltd 1944). The primary criticism of this approach is that it is ineffective against big corporations with multiple management levels, in which no one person is considered the governing agent or mind of the company, and decision-making is divided across smaller management units. Thus, large companies tend to get away with an otherwise prosecutable crime just because this legal tool fails against the size of an organisation (Tesco Supermarkets Ltd v Nattrass 1972). As a result, for a large company, the chance of being criminally liable under this formula is quite small.

The second mechanism, vicarious liability, takes place when the criminal actions of the employee are attributable to the company. In other words, a company is liable for a crime committed by its employee when fulfilling their duties and for the benefit of a company (but not solely). Vicarious liability does not give any weight to attempts by the employer to prevent the crime from being committed. This type of mechanism is deemed unfair because in order for a company to be vicariously liable for a crime committed by its employee little proof is required. This creates a nefarious incentive to conceal a crime since the employer fears punishment alongside their employee. However, vicarious liability is quite simple in its application and, therefore, practical.

The third approach can also be viewed as an expanded identification principle or even a fusion between the identification principle and vicarious liability, viewing corporate culture as the central subject—a breach of statutory duty. Corporate culture can be defined as a combination of fundamental values, beliefs, moral principles, and behaviours that define an organisation and direct its operations (Tarver, 2023). This new formula, a 'failure to prevent', has been used by UK legislators in the Bribery Act, 2010 for bribery offences and the Criminal Finances Act of 2017 for prosecuting tax evasion. Through this approach, the emphasis is placed on the prevention of a crime, raising awareness, education, and persuasion rather than prosecution and punishment (UK Ministry of Justice, 2012).

In this chapter, reckoning with findings from previous research, we argue that corporate culture should be the primary basis for CCL. It should work alongside the elements of a crime (acting with intent for a company's benefits).

Part II: The Current State of Regulation for Corruption and Bribery in Uzbekistan

Current regulations related to corruption in Uzbekistan are primarily enshrined in the 'Act on Combating Corruption' (2016) and Articles 192^{9}–192^{10} and 210–214 of the 'Criminal Code of Uzbekistan' (1994), which criminalise bribery offences in the private and public sectors.

The 'Act on Combating Corruption' has rather broad provisions. For example, Article 20 refers to measures directed at preventing corruption in the sphere of social and economic development and entrepreneurship, whilst the Act itself summarises reforms needed in order for businesses to operate freely and minimise their exposure to corruption. More specifically, the Act recommends the following measures:

- Eliminating administrative and bureaucratic barriers, alongside simplifying and speeding up the processes related to registration, permissions, and licensing procedures.
- Creating equal conditions for conducting business activities and preventing unfair competition.
- Maintaining a competitive environment in the distribution of public procurement and other actions.

Here, businesses are only perceived as a 'risk group' needing protection against exposure to corruption, but the Act does not stipulate that businesses can also engage in corrupt behaviour. Furthermore, corruption and bribery are heavily regulated, although only within the public sector. Specifically, this Act sheds light on the fact that a legislator intends to only punish a public official as a bribe-taker and a person (not a business) as a bribe-giver. Thus, this represents a one-sided fight.

The Criminal Code of Uzbekistan defines cases of bribery as something that occur in the public sector, whilst corrupt practices and transactions that take place in the private sector are called a 'graft' ('*podkup*'), the definition of which mirrors that for bribery. The punishment for bribery in the private sector ranges fines of from US$3000 to three years imprisonment (if certain aggravating circumstances are present, fines up to US$18,000 or eight-years imprisonment may be levied; Criminal Code 1994*)*. None of the abovementioned rules and norms include gift-giving or excess hospitality as components of bribery. However, we argue that the current increase in the number of businesses and their growth in

number and in size call for more sophisticated measures and regulations. The norms directed at combating bribery should be more detailed and leave no loopholes in order to achieve their aims. These needs are recognised on various levels. As mentioned above, the Minister of Justice in his speech strongly argued that Uzbekistan needs CCL related to corruption since it is now not limited to instances regulated by current laws. In addition, the private sector recognises this need, since about 100 Uzbek entrepreneurs and other representatives of the corporate sector gathered at a business forum in Tashkent on 30 November 2021, to further discuss actions necessary to create a culture of zero tolerance towards corruption and to foster business ethics in Uzbekistan.

Kristian Lasslett (2020) suggested the following: 'As Uzbekistan opens up its capital markets, deregulates industries, and primes privatisation initiatives, economic transactions will increasingly be mediated through the corporate sector. There is a serious need to modernise corporate law in Uzbekistan in order to strengthen corporate governance and corporate transparency.'

Empirical Findings: Cases and Interviews with Representatives from the Retail and Constructions Sectors

According to a survey of entrepreneurs in Uzbekistan conducted by the Centre for Economic Research and Reforms, 53% of respondents often encounter corruption. In addition, 48% of the entrepreneurs surveyed refrain from making new investments for this reason (Centre for Economic Research and Reforms, 2021).

The case involving VimpelCom and Telia Sonera mentioned at the beginning of this chapter represents just one example of foreign companies taking advantage of a country's corrupt system. Had there been no US SEC involvement, these companies most likely could have gotten away with their crimes. As the exposure to international markets increases, one can already assume that, in the absence of rigid regulations of corporate liabilities, companies are given the wrong incentives which lower their prudential standards and allow them to employ unconventional business methods; thus, frequently they become victims of their own actions. However, healthy regulations based on an ethical corporate culture could not only prevent such occurrences, but also serve as protective to companies and serve as a guarantee that corruption is regulated on both ends.

Another example that made international headlines centred around an International Centre for the Settlement of Investment Disputes (ICSID) case, *Metal-Tech v. Uzbekistan*, where Metal-Tech (claimant) argued that Uzbekistan (respondent) unlawfully expropriated its investments. The respondent used the fact that the claimant had successfully bribed Uzbek officials during its operations involving millions of dollars. Thus, the tribunal dismissed its jurisdiction over the case since the claimant's business was established through corrupt acts. This case represents a paradox. Uzbek officials received bribes from a foreign investor reaching in excess of US$4 million, subsequently expropriated the investor's business, and then used this against the investor in the international tribunal to dismiss the case, all whilst having no local regulations against corporate bribery. This approach was highly criticised as incentivising host states to perpetrate a corruption scheme in order to lay the foundation for the future invocation of corruption defences against investors operating within their territory (Torres-Fowler, 2012). Hence, not only will CCL for bribery locally punish acts of bribery, but most importantly it will provide companies with a roadmap for how to act and what kinds of procedures to establish in their structures to protect themselves from being framed through such schemes.

On a smaller scale and as a part of a qualitative study, we conducted semi-structured interviews with representatives of the retail (chain supermarkets) and construction industries. In doing so, we aimed to understand the risks in the private sector. These interviews revealed a recurring pattern of 'kickbacks' between the producers/dealers and the procurement office (warehouse) of chain supermarkets. In order to ensure their product has a spot on the shelves of a supermarket or to make their product more 'visible' to customers than competitors' products, dealers and producers refer to different 'award' schemes or even ways of inducing employees to a physical branch of a supermarket for improper performance. Our informants described several versions of such schemes.

The most common approach was to offer money to the employees of chain supermarkets to ensure their products appeared on the shelf. In this instance, two outcomes were possible: either the employee accepts the offer, and they strike a deal to sell the producer's product throughout the chain, or the employee refuses the bribe and reports this incident to management. In the latter scenario, big chains would involve their security department, and the reporting employee must recount the incident to the security office. However, the security department does not even

record or take any measures regarding such incidents. There is no obligation imposed upon corporate bodies by a regulator to report incidents of bribery, or there are no compliance checks by the regulator. Big chains also have their own gifts and bribe policies despite the absence of such a requirement by law. But, according to employees, such policies are not enforced properly or do not contain specific sanctions. Each company has its own internal procedures for dealing with incidents of corruption. In fact, a company may choose not to deal with it at all, and the legal effect is the same because the regulator does not impose any duties, policies, or sanctions for non-compliance with such rules on companies.

Another practice involves giving valuable gifts to procurement department employees. Sometimes, the gift-giving process is disguised to look like a lottery wherein there are no losers. For example, a producer organises a gala night to which a company invites the representatives from all of the big chains. Then, each guest at the gala is given a numbered ticket. These tickets are drawn at random, and different valuable prizes are distributed. However, the organisers know in advance who receives which number and what kind of prize will be awarded to that number. Prizes range in value depending on the size of the chain. Our interviewees named gifts such as smartphones, watches, all-inclusive resort trips, and even cars. All of our interviewees opined that such gifts influence the decision-making process in favour of that particular producer.

Apart from procurement, the marketing departments of retail supermarkets also operate on contracts secured through bribery. According to one interviewee, the founder of a marketing agency that has been operating on the market for fifteen years, marketing contracts which include services such as the promotion of a company, branding, marketing strategies, and so on should be gained through tenders. But, this is often not the case in practice. Instead, tenders are symbolic and contracts are awarded to the company that first bribed the marketing department of the retail supermarket or company which offered more. Our interviewee also disclosed that, in order to renew a contract with the same company, during the operation of the current contract the head of the marketing department often receives gifts on various occasions, such as holidays or birthdays. Gifts vary, but usually include a gift basket featuring expensive imported goods. When asked about the price of an average basket, our interviewee mentioned a value of US$500. By comparison, the average income in Uzbekistan is around US$297 (UZStat, 2022).

No legal regulation exists on the provision of tenders between private persons in Uzbekistan.

The above empirical examples allow us to argue that the absence of clear regulations regarding gift giving and receiving creates a potential for corrupt actions. Gifts are not regarded as bribes, and excess hospitality in any business area or public service is almost a norm.

Different schemes are used in the procurement sphere, but across schemes virtually no risk of being caught or reported or even being prosecuted exists. Despite this minimal risk of being caught, most dealers and producers would prefer not to pay an additional price to chain supermarkets and would rather avoid such costs, which are not only monetary, but also reputational. Foreign businesses, which are also increasing (including Asian Development Bank and European Bank for Reconstruction and Development–sponsored ventures) particularly in the retail sector, would also enter the market without hesitation and risk being scrutinised by their own authorities on matters related to bribing foreign officials.

We asked our interviewees their opinions regarding introducing CCL for the crime of bribery. All welcomed the idea, emphasising that it would in fact lighten business and create safe and fair conditions for businesses in which to grow and interact. They also emphasised that, in terms of punishment, monetary fines alone are insufficient; reputational punishment (e.g., publicity and making the company's criminal records accessible to all via official databases) should also be introduced alongside fines.

Part III: The Relevancy of Corporate Criminal Liability in Uzbekistan

Uzbekistan is a relatively new economy which, following the collapse of the Soviet Union, for a long time maintained the values of the USSR related to state-owned major production sectors, over-regulation of the economy, and subjecting businesses to stringent bureaucratic conditions. Most experts pinpoint 2016 as the year when business liberalisation began, which resulted in the creation of favourable conditions for private business entities (World Bank, 2019). The key reforms launched by the governmental strategy included the liberalisation of the foreign currency exchange market and the unification of several exchange rates, tax and customs reforms, administrative reforms that also included financial decentralisation and the development of public–private partnership,

and the privatisation of state-owned enterprises (SOEs) amongst others. Most bureaucratic steps for businesses to register and operate were eliminated. This resulted in a significant increase in the number of registered businesses. According to 2021 statistics, a total of 80,914 small and medium-sized enterprises (SMEs) registered in one year, a 122.3% increase compared with 2020. In 2016, for instance, the annual increase in the number of businesses was only 23,616.[4]

Referring again to Edelman's Trust Barometer, for the last three years, businesses were looked up to and perceived as more ethical, with individuals expecting them to step in to resolve societal problems when governments could not (Edelman, 2023). Legal instruments should encourage that as well. Reasonably, it would be dangerous to ignore the moving force behind businesses and their role in shaping current society and values. The United Nations Global Compact (UNGC)[5] encourages businesses to act ethically through its ten principles against corruption in all its forms, including extortion and bribery. Enforcing CCL, along with enacting individual criminal responsibility, has brought more stability to the business environment (OECD, 2020). CCL deters companies from placing their profits ahead of existing laws or even public safety, especially in cases related to responsibility for corporate manslaughter or breach of anti-trust laws. Even if companies consider fines a 'cost to doing business', the stigma of criminal liability can 'do magic' in reducing the incentives of committing a crime for the sake of business.

In line with this tendency, the Uzbek government has begun drafting new regulations requiring the private sector to introduce corruption prevention mechanisms. Several events were organised to discuss the importance of a zero-tolerance culture towards corruption in business and to enhance business integrity (UNODC, 2021). As a result, seven institutions from Uzbekistan recently became members of the UNGC, a global initiative established in 2000 aimed at guiding and teaching businesses to engage in more sustainable and responsible activities. Their membership includes some large retail companies, such as Anglesey Food LLC (*Korzinka*).

[4] For further details, see World Bank's Entrepreneurship Database 2020, via https://www.worldbank.org/en/programs/entrepreneurship, retrieved 4 August 2022.

[5] For further details, see https://unglobalcompact.org/, retrieved 15 July 2022.

Another reason to bring CCL to Uzbekistan is that within most companies' practices exist whereby companies are managed by 'puppet' directors and the real governing minds and wills of the companies are hidden from the eyes of the law. In the case of individual criminal liability, the director and usually the accountant of a company are held liable even though they might be innocent in terms of specific conduct (Zamon Yangiliklar, 2022). Thus, CCL would 'reach' the pockets of the real culprits in Uzbekistan.

All of these problems stem from cultural ethics, which are also reflected in doing business. That is, the attempt to introduce criminal liability to corporate bodies in Uzbekistan should first aim to enable compliance with appropriate corporate culture.

Introducing more comprehensive legislation against bribery offences will also likely increase the number of foreign investments. At least thirty-seven countries (including the US, the UK, Russia, Argentina, Austria, Australia, Denmark, Sweden, and Turkey amongst others) are members of the OECD convention on bribing foreign public officials which criminalises this type of bribery. Thus, regardless of the fact that a business contract was signed and executed on foreign soil, the company can be charged in the country in which it is headquartered with the offence of bribery. Consequently, companies from jurisdictions which signed on to the convention refrain from doing business in countries with a high level of bribery and corruption since they will face additional scrutiny of their accounting books from their authorities. In cases resulting in charges, this will lead to a rather large body of material and reputational damage, the effects of which can last for years.

Why Administrative Liability Is Insufficient

Currently, companies in Uzbekistan can be liable for public wrongdoing only through administrative liability (so called quasi-criminal liability). However, is administrative justice such a good idea? To answer this question, we should analyse the purpose of administrative liability and only then reach a conclusion regarding whether it serves the purpose for which it was initially designed.

In Uzbekistan, a separate system of administrative justice was established through the 1995 'Code on Administrative Liability' (currently under review) and the 2018 'Code on Administrative Proceedings'.

Under this legal framework, administrative punishment, unlike the criminal code, is not perceived as severe or serving to deter further misconduct. On the contrary, the sanctions prescribed in the Code are rather inadequate for addressing the misconduct of companies. There is a growing tendency internationally towards developing more stringent legislation around CCL. Even in countries with administrative liability (like Germany or Italy), the intention to move towards a criminal liability model is growing (Lauterwein & Steinert, 2023).

In procedures addressing administrative liability, fewer possibilities allow for investigations of corporate misconduct since the necessary tools exist within criminal procedural law. The rather short statute of limitations (the period when corporations may be held liable) and investigation period alongside the limited avenues for international legal cooperation represent shortcomings of the administrative model.

Moreover, the administrative liability of natural persons relies on a construction in which an individual who committed a certain offence after being administratively liable for the same offence within a one-year period may be criminal liable and tried according to the rules within the criminal law (Criminal Code 1994). However, for companies, there is no such rule. That is, there is no measurement for the severity of their conduct such that everything falls under the umbrella of administrative liability, regardless of the number of repeated violations. This shortcoming acts as an anti-deterrent for a company to comply with regulations.

Administrative liability does not create a record. Thus, following the payment of a fine, future investors, ordinary people, or anyone else cannot access information related to how many times a company has violated a law since such records are not kept. That is, an administrative punishment does not create any stigma akin to a criminal record which sticks with a company for some time. Furthermore, a criminal record could actually create a 'biting' punishment, not merely a 'barking' punishment.

Which Mode of Corporate Criminal Liability Could Work in the Context of Uzbekistan?

As discussed above, there are three main mechanisms via which to attribute criminal behaviour to a corporate body: the identification principle (where it is necessary to determine the 'mental state' of a company), vicarious liability (an employee's actions lead to an employer's criminal liability), and a breach of statutory duty.

We established that the identification principle works well when applied to SMEs since it relies on finding a person considered the governing will and mind of a company, which is not easy to accomplish in large companies with multiple management levels. This principle has a rather high chance of working in the current market of Uzbekistan, which primarily consists of SMEs. However, adopting a doctrine of identification knowing that in future, when some of these SMEs become large corporations, enforcement will be problematic is not far-sighted.

By contrast, vicarious liability may lead to unfair decisions and create over-deterrence. Specifically, in vicarious liability, attempts by a company to prevent a crime are not taken into account. Moreover, neither of the abovementioned modes of liability influences corporate culture, which is the actual basis of the problem in Uzbekistan. A common phrase can be heard amongst the people: 'Being corrupt or engaging in bribery is already part of the culture and people's mindset.' This perception must be taken as the basis upon which a legislator acts.

However, a breach of statutory duty through the 'failure to prevent' formula might address all of the abovementioned challenges. This formula was successfully used in the UK's Bribery Act, 2010. In fact, after introducing the new act on CCL to include bribery, the UK, before ranked seventeenth in Transparency International's Corruption Perception Index in 2009 (Transparency International, 2009), climbed to eleventh (Transparency International, 2021) and is continuing to improve its ranking.

In the UK's Bribery Act, 2010, a British legislator pushed corporate culture as the primary feature needing regulation. In other words, a company can be criminally liable for a failure to prevent bribery if one of its employees commits bribery on behalf of the company if certain adequate procedures are not in place. By adequate procedures, guidance within the Bribery Act establishes six principles that a corporate entity should demonstrate to defend itself from being charged for bribery committed on its behalf: (1) proportionate procedures, (2) top-level commitment, (3) risk assessment, (4) due diligence, (5) communication (including training), and (6) monitoring and review (UK Ministry of Justice, 2012). Every corporation is legally obligated to demonstrate that the relevant principles are in place in its activities. Moreover, the Act contains provisions about gift giving and hospitality. In other words, the crime of bribery is regulated in a rather detailed and comprehensive manner in the UK Act and covers as many areas as possible with detailed definitions of terms.

When a battle ensues related to a crime involving bribery, which is likened to a 'cancer', a tool like radiation should exist with which to combat it leaving no cell within the body untreated. It might sound like an aggressive and radical measure; however, in a system where corruption has spread its roots rather deeply and affecting every sphere, like in Uzbekistan, there is no use from half-measures or rather general regulations. Instead, a 'catch-it-all' measure appears to serve such a purpose. Hence, either the new Criminal Code or a separate act dedicated only to the crime of bribery should contain provisions with a more detailed and comprehensive regulation of bribery, including CCL, gift giving, and hospitality limits.

What Kinds of Challenges Might Arise?

It is worth mentioning that in Uzbek criminal law each crime consists of four elements that must be proven in the eyes of the law: (1) the object of the crime, against whom or what the crime was committed, including against a human life, dignity, health, or property amongst others; (2) objective side—or everything related to the process of committing the crime, similar to *actus reus*; (3) subject—the person who allegedly committed the crime; and, (4) lastly, the subjective side, which relates to the mental element of the crime, such as the intention or knowledge of it as in *mens rea*.

The primary difficulty in introducing the legal mechanism for CCL in Uzbekistan might arise from the last element. That is, how does one determine the mental component of an abstract entity with no mind of its own. It would be more practical to introduce CCL through the 'failure to prevent' formula described above. The identification principle would not be effective, since businesses will quickly outgrow it, and the 'failure to prevent' formula requires similar mechanisms of enforcement as those used to identify basic negligence, where due diligence is central. Uzbekistan already has these mechanisms in place, whereby building upon the existing platform of negligence would be much easier.

One concern was raised by some of our interviewees (from the retail sector). Specifically, the police and investigators are not sufficiently qualified to enforce such a novel regulation. However, this problem can be resolved by bestowing the Anti-Corruption Agency with the authority to review company compliance with anti-corruption norms, which would include norms based on maintaining a high ethos and corporate culture.

In cases involving non-compliance, the agency could transfer the case to the relevant authority for investigation and proceed to court.

Conclusions

To conclude, as Uzbekistan undergoes the transition to a market economy and expands business activities through privatisation, it is essential to prioritise integrity and transparency within the market. Whilst the government encourages and protects business activities, it is crucial to address corruption in both the public and private sectors. Despite public corruption already being well-regulated and constantly reviewed, private sector corruption has received less attention.

Introducing corporate criminal liability for bribery and focusing on enhancing corporate culture can represent a ground-breaking tool for the Uzbek criminal justice system. This approach aims to prevent bribery within companies and foster fair market practices that safeguard public interests. However, it is important to acknowledge the challenges associated with implementing such advanced reforms.

Furthermore, it is crucial to recognise that the cultural roots of corruption in Uzbek society must be considered when combating corruption. Cultural factors play a central role and need to be taken into account alongside legal and institutional measures.

By addressing corruption and promoting a culture of integrity, Uzbekistan can create a level playing field for all market participants, attract investments, and build a robust and transparent business environment. It is essential for policymakers and stakeholders to collaborate effectively to ensure the success of these anti-corruption efforts and contribute to the long-term sustainable development of the country.

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CHAPTER 4

International Organisations and Norm Diffusion: The Case of UNODC in Central Asia

H. Deniz Genç

Introduction

The political landscape of Central Asia underwent a complete and irreversible transformation in December 1991 with the disintegration of the Soviet Union. The region, located between Russia and Afghanistan and which shares borders with China and Iran, is home to more than 72 million people living in five independent countries: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan (CIA Factbook, 2023). During the 1990s, the newly independent Central Asian states faced a multitude of pressing issues that required action. These included questions revolving around state formation, national identity, economic transformation, political institutions, institutionalism, the role of religion in society, territorial and border disputes, and ethnic minorities, particularly involving ethnic Russians. Such challenges posed significant

H. D. Genç (✉)
Istanbul Medipol University, Istanbul, Turkey
e-mail: hdgenc@medipol.edu.tr

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_4

obstacles to the development and stability of the region and required careful attention and thoughtful solutions (Menon, 2015). Political, economic, and legal transition began in the Central Asian states under these circumstances.

According to Wooden and Stefes (2009, p. 5), scholars who study the changes happening in Central Asia remain cautious when using the term 'transition' in a closed-ended way. Whilst still in transition since the disintegration of the Soviet Union, Central Asian states have not moved in a linear fashion from Communism to a pre-determined endpoint, presumably towards a Western-style political and economic regime. Despite specific common trends, such as the shift from planned to market economies or attempts toward some degree of democratisation, the unique context of each Central Asian state has played a vital role in shaping their transitions. These states have been rebuilding their disintegrated state, legal, and market structures in a peculiar combination of pre-Soviet, Soviet, and entirely new institutions and norms (Luong, 2004; Morozova, 2004) within a political and legal landscape where Soviet, Islamic, and Western systems coexist and occasionally clash. This complex interplay of different systems further contributes to the nuanced nature of the ongoing transitions in the region (Cooley, 2023).

Whilst several political, economic, and legal systems operate together, the adoption of international law and standards has quickened pace since the early 2000s as various actors—states, multinational companies, nongovernmental organisations (NGOs), and international organisations—have entered the region, increased their activities, and expanded their influence on politics, economics, law, culture, and security (Kavalski, 2010; Menon, 2003; Morozova, 2004). As in other post-Socialist states (Grabbe, 2006; Schimmelfennig & Sedelmeier, 2005), the generation, reproduction, and diffusion of norms have become a powerful force impacting policies, laws, and institutions, prompting political, legal, and economic changes in the region. As noted in the literature, international organisations have acted as norm entrepreneurs and played significant roles in norm diffusion processes in Central Asia, with a keen focus on democratisation, economic liberalisation, environmental protection, security, and, more recently, migration (Kluczewska, 2019; Korneev, 2017, 2018; Tskhay, 2021; Genç forthcoming). As a part of their activities, Western countries and international organisations have actively encouraged Central Asian states to embrace international liberal norms, providing both financial and institutional support to do so (Tskhay,

2021). Conversely, regional organisations such as the Commonwealth of Independent States (CIS), the Eurasian Economic Union (EAEU), and the Shanghai Cooperation Organisation (SCO) have been instrumental in promoting norms that reinforce authoritarian regimes in the region (Ambrosio, 2008; Cooley, 2015; Karabayeva, 2021). Thus, different actors, Western countries, regional organisations founded by China and Russia, and international organisations all strive to promote various norms in the region (Korneev, 2018; Lewis, 2012).

In relation to the activities of regional and international organisations, most studies focus on the actions of the Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU), the United States Agency for International Development (USAID), the International Labour Organisation (ILO), the International Organisation for Migration (IOM), the World Bank, and the SCO (Kluczewska, 2019; Korneev, 2017, 2018; Omelicheva, 2015). As I lay out in the sections to follow, the United Nations Office on Drugs and Crime (UNODC) has also engaged with Central Asian states actively since the early 1990s. Its activities and interactions have provided venues for socialisation and diffusion of norms, standards, and shared understandings on issue areas within its mandate. Although it has been actively involved in the region, UNODC's specific activities, projects, and the mechanisms by which it disseminates norms in Central Asia remain unexplored. To address this knowledge gap and enhance the existing literature on norm diffusion and the role of international organisations both globally and in Central Asia, this study attempts to explore and answer the following questions: How does the UNODC promote international norms and standards in response to transnational challenges? And why is its involvement significant in facilitating norm diffusion in the Central Asian region? Furthermore, this study delves into the question of whether the norm diffusion process of UNODC encounters contestation from the SCO in the region. With a focused examination of UNODC's work, the first question seeks to unveil the mechanisms through which the organisation diffuses norms and standards in tackling transnational issues within its mandate. Conversely, the second question aims to explore the importance of UNODC's proactive involvement in promoting international norms and standards, particularly within the context of Central Asia. Lastly, with a focused examination of the interactions between UNODC and the SCO, this study aims to reflect upon the changing dynamics of global governance and the limits of norm diffusion processes in Central Asia.

Understanding Norm Diffusion and the Role of International Organisations

International norms are 'the shared expectations or standards of appropriate behaviour accepted by states and intergovernmental organisations that can be applied to states, intergovernmental organisations, and/or non-state actors' (Khagram et al., 2002, p. 14). They act as a powerful force that impacts the policies, laws, and institutions of states. According to the literature, states are influenced by and adopt certain norms and behaviours common in the international system through socialisation and norm diffusion processes. Barnes et al., (1980, p. 35) define socialisation as 'the induction of new members […] into the ways of behaviour that are preferred in a society.' Alderson (2001, p. 417) explains socialisation as 'the process by which states adopt norms that originate elsewhere in the international system.' The concept plays a crucial role in comprehending how norms are transmitted within international society. Through socialisation, actors internalise collective understandings of appropriate behaviours, adopting the norms and values of the community as their own. As a result, these norms bring about changes in their identities, interests, and behaviour (Risse & Sikkink, 1999, p. 11). When a state aligns itself with the accepted norms and values of the international community, it actively seeks to comply with and promote these norms in its interactions with other states and international actors, whereby a shift in the state's behaviour and identity, leading to changes in its policies, practices, and attitudes, occurs. States undergo socialisation through diplomatic relations, membership in international organisations, and participation in international regimes and institutions.

Norm diffusion, on the other hand, refers to 'the transfer of objects, processes, ideas, and information from one population or region to another' (Checkel, 1999, p. 85). This transfer happens voluntarily or unintentionally when an attractive innovation is noticed and transferred to another country, resulting in a noticeable effect (Lauth and Pickel 2009 [quoted in Rother, 2019, p. 1260]). Norm diffusion has been extensively studied in various fields, such as human rights, democratisation, and Europeanisation studies (Gilardi, 2012; Radaelli, 2000, 2003; Risse, 2016; Risse & Sikkink, 1999; Risse et al., 2001; Zimmermann, 2016; Zwingel, 2012). The literature questions various aspects of the process, such as 'how norms emerge on the international level, how they become meaningful in domestic contexts, and which actors promote and translate

them (Zwingel, 2012, p. 118). Whilst some studies focus on a top–down approach where state actors, regional and international organisations, or transnational actors act as norm entrepreneurs promoting norm diffusion processes, others refer to a process of norm localisation, highlighting the role of local actors such as activists and civil society groups in actively constructing foreign ideas (Acharya, 2004, pp. 243–245; Zimmermann, 2016).

With this in mind, scholars who study the process of socialisation and norm diffusion have proposed several models to understand how states adopt existing norms and socialise into international communities. 'The norm life-cycle', outlined by Finnemore and Sikkink (1998), continues to significantly impact research in this field. Their model proposes three stages of a norm's life-cycle, consisting of norm emergence, norm cascade, and norm internalisation (Finnemore & Sikkink, 1998). In the norm emergence stage, norm entrepreneurs play a critical role; they actively build norms by 'drawing attention to', 'interpreting', and 'framing' issues. Norm entrepreneurs can be individuals, international organisations, or NGOs who seek to change social or legal norms or call attention to a new issue or norm. This stage is essential for the initial development of a norm (Loen & Gloppen, 2021, pp. 3–4). During this first stage, the primary mechanism is persuasion. As such, norm entrepreneurs persuade a critical mass of states to adopt new norms, leading to a tipping point. This tipping point is followed by the second stage, norm cascades, wherein more and more countries follow the norm leaders and quickly adopt the norms, even without domestic pressure for such changes (Finnemore & Sikkink, 1998, p. 902).

According to the model, norm diffusion occurs during the norm cascade stage through an active process of international socialisation. Many states are influenced and become norm followers through this process. Networks of norm entrepreneurs, international organisations, and NGOs act as agents of socialisation, exerting pressure on state actors to become parties to international conventions, adopt new policies and laws, and monitor their compliance performance. Finnemore and Sikkink (1998) suggest that states' responses to international socialisation and norm cascades result from material sanctions and incentives, as well as states' identities, which can shape their decisions. The influence of norm adoption by multiple states within a region may lead to 'peer pressure' on those who have not yet adopted the norm, motivated by a desire for legitimacy, conformity, and esteem. The institutionalisation of the norm,

through clear definitions of its parameters and associated procedures for sanctions against norm violations, also contributes to the likelihood of a norm cascade (Finnemore & Sikkink, 1998). This is achieved through the use of international conventions. At some point during the norm cascade, norms may become so widely accepted that they are internalised by actors who take the norms for granted and habitualise them to behave in conformity with them. Finnemore and Sikkink (1998, p. 905) underline the importance of professional training at this stage. Training does more than simply transfer technical or legal knowledge, serving to socialise professionals to value certain things above others.

Prominent models of norm diffusion, including 'the norm life-cycle', have traditionally placed primary focus on states. However, norm diffusion scholars have expanded their analysis beyond states and their governments, examining the involvement of various other actors such as voters, cities, local governments, NGOs, transnational networks, and international organisations (Sommerer, 2020; Sommerer & Tallberg, 2019). The literature has specifically emphasised the role played by international organisations, which employ various strategies and mechanisms to diffuse norms and promote their adoption.

Finnemore (1993) portrays international organisations as 'teachers of norms', which persuade states to adopt changes. Through advocacy and promotion, they actively advocate for specific norms by highlighting their importance, benefits, and relevance. International organisations achieve this through various means, including public awareness campaigns, the dissemination of information via reports, publications, and media outlets, as well as organising conferences, workshops, and events aimed at promoting norm adoption (Finnemore, 1993; Keck & Sikkink, 1998; Risse et al., 1999). Others have noted that international organisations, along with international law, play a crucial role in the institutionalisation of emerging norms (Finnemore & Sikkink, 1998). They participate in the development of legal instruments such as standards, guidelines, conventions, and treaties embodying these norms. In turn, these instruments serve as reference points and frameworks for states to adopt and implement those norms in their national policies, laws, and practices (Keck & Sikkink, 1998; Risse et al., 1999).

International organisations are also referred to as 'norm entrepreneurs,' 'facilitators' of knowledge exchange between governments, or promoters of norms in different issue areas (Finnemore, 2017; Goodman & Jinks, 2004; Holzinger et al., 2008; Khagram et al., 2002; Zimmermann,

2016). They create platforms in which states can interact, exchange experiences, and learn from one another. Through peer pressure and networking, international organisations foster a sense of collective responsibility and encourage states to align their policies and practices with prevailing norms. Moreover, they provide technical assistance, training programmes, and capacity-building initiatives to support states in implementing and complying with norms. In addition, they offer expertise, knowledge transfer, and resources to enhance institutional capacities and facilitate the adoption of best practices. Monitoring and reporting represent other essential mechanisms. International organisations monitor the implementation of norms by states and produce periodic reports on their progress and compliance. Such reports can exert pressure on states to conform to norms and encourage states to take corrective measures if necessary (OECD, 2019).

In cases where they are delegated authority, international organisations can induce changes in domestic policies and rules through conditions for financial assistance or accession to regional bodies such as the EU (Radaelli, 2003; Schimmelfennig & Sedelmeier, 2005; Sommerer, 2020). In other words, financial incentives and conditionality may also be used by international organisations to promote states' compliance with specific norms. Lastly, international organisations may collaborate with civil society organisations, advocacy groups, and individuals who act as norm entrepreneurs. This collaboration helps promote and advance specific norms, influencing state behaviour and societal attitudes. All in all, as presented in the literature, international organisations act as agents of socialisation, as well facilitators and catalysts in the norm diffusion process. However, it is important to underscore that the diffusion of norms is a complex and gradual process influenced by multiple factors, including political will, cultural context, power dynamics, and the agency of local actors. Ultimately, the adoption and internalisation of norms depend upon the willingness and commitment of states to change their policies and practices.

A growing body of literature delves into the norm generation, diffusion, and contestation processes to examine the intricate relationship between Central Asian governments and norms (Kluczewska, 2019; Korneev, 2017, 2018; Tskhay, 2021). Whilst norm contestation and the promotion of authoritarian counter-norms have also been reported (Ambrosio, 2008; Cooley, 2015; Isaacs, 2018; Karabayeva,

2021; Lewis, 2012; Sharshenova & Crawford, 2017), norm diffusion processes contribute to the transition in Central Asia (Crawford, 2008; Insebayeva, 2020; Isaacs, 2018; Karabayeva, 2021; Kluczewska, 2019; Tskhay, 2021). Research findings show that international organisations have acted as norm entrepreneurs and promoted norm diffusion processes, with a particular focus on democratisation, economic liberalisation, environmental protection, security, and, more recently, migration (Kluczewska, 2019; Korneev, 2017, 2018; Tskhay, 2021; Genç, forthcoming).

UNODC, Its Mandate, and Activities

The United Nations Office on Drugs and Crime (UNODC) was established in 1997[1] as a response to the growing threat of transnational challenges. A few international agreements and protocols already existed, and the creation of UNODC was followed by the adoption of new universal instruments such as the UN Convention against Transnational Organised Crime (UNTOC) in 2000 and the UN Convention Against Corruption (UNCAC) in 2003, along with various protocols and many other international legal instruments on terrorism and drug trafficking. These documents serve as the legal framework that underpins UNODC's operational work in more than 80 countries, facilitated through an extensive network of 115 field offices and supported by a dedicated team of 2400 staff members (UNODC, 2019). Through its various programmes and initiatives, UNODC supports member-states in implementing the provisions of these universal legal instruments and in strengthening their capacity to combat transnational challenges. Its work focuses on the following five areas: strengthening member-states' capacities to confront threats from transnational organised crime,[2] tackling corruption,[3] supporting member-states to implement a comprehensive

[1] UNODC was established in 1997 to implement two programmes in an integrated manner: the Organisation's International Drug Control Programme (established in 1990) and the Crime Prevention and Criminal Justice Programme (established in 1991).

[2] UNODC helps member-states ratify and implement the UNTOC and its protocols on human trafficking, migrant smuggling, and arms trafficking.

[3] The UN Convention against Corruption stands as the only universally binding anticorruption instrument.

approach to the global drugs problem,[4] countering terrorism,[5] and strengthening crime prevention and effective criminal justice systems[6] (UNODC, 2023b).

In each of these areas, UNODC facilitates the development of international standards, guidelines, and best practices. To do so, it collaborates closely with governments, law enforcement agencies, and other stakeholders to assist in the effective implementation of the relevant conventions and UN resolutions (UNODC, 2023a). Through its programmes, initiatives, technical assistance, trainings, and capacity-building efforts, it raises awareness about these phenomena, and it actively promotes and disseminates standards and norms related to their governance. The assistance provided to member-states in their endeavours to ratify and implement relevant UN conventions, protocols, and legal instruments includes support in formulating and implementing effective crime prevention strategies, relevant policies and legislation, and criminal justice systems, as well as enhancing law enforcement practices. The agency collects and disseminates data, which are crucial in promoting evidence-based policies in member-states to counter these phenomena.

UNODC bolsters the rule of law, safeguarding human rights and reinforcing key institutions such as the police, judiciary, and correctional services. Notably, it prioritises capacity-building initiatives for criminal justice officers, enabling them to effectively investigate and prosecute serious crimes such as money laundering, trafficking in persons, and drug-related offences. To foster a culture of lawfulness and prevent crime, the agency also engages in educational efforts and awareness-raising campaigns. Finally, it is important to highlight that the UNODC

[4] UNODC supports member-states in implementing major international drug control treaties, including the Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

[5] UNODC provides support in implementing the international legal framework aimed at combating terrorism, which encompasses 19 international legal instruments and relevant United Nations Security Council resolutions.

[6] Crime prevention encompasses a wide range of approaches, strategies, and measures with the aim of reducing the likelihood of crimes occurring and mitigating their negative impact on individuals and society. To achieve this, UNODC conducts comprehensive research and analysis to gain insights into global crime trends, patterns, and underlying causes. Additionally, UNODC collaborates with countries to promote fair and effective criminal justice systems (UNODC, 2023b).

plays a crucial role in facilitating international cooperation and collaboration amongst member-states. By promoting the exchange of best practices, facilitating information sharing, and supporting joint operations, UNODC actively contributes to the global prevention of and combating crime. Whilst enhancing states' anti-crime capacities through these mechanisms, UNODC actively promotes the standards and norms outlined in relevant UN conventions, protocols, and legal instruments, encouraging member-states to adopt and adhere to them (UNODC, 2023a, 2023b).

UNODC's work centres around crime prevention and the enhancement of criminal justice systems, given that they are essential for combating transnational organised crime, drugs trafficking, corruption, and terrorism. Thus, in recent decades, in addition to the conventions, protocols, and legal instruments, member-states have agreed to standards and norms in crime prevention and criminal justice covering a range of issues, including access to justice, the treatment of offenders, justice for children, victim protection, and preventing violence against women. The agency is the guardian of these UN standards and norms, which represent benchmarks for achieving crime prevention and criminal justice policies and strategies, whilst also providing a solid basis for programming in these areas (UNODC, 2016, p. 3).

UNODC and the Diffusion of Norms and Standards in Central Asia

UNODC has been present in Central Asia since 1993, with the establishment of its Regional Office for Central Asia (ROCA) in Tashkent, Uzbekistan. ROCA's support extends to all Central Asian states. Its work in the region moves beyond traditional crime-related outcomes to encompass a broader range of activities in support of UNTOC and its protocols, UNCAC, and various UN legal instruments against drugs and terrorism. These instruments serve as reference points and frameworks for Central Asian states to adopt and implement international standards and norms in their national policies, laws, and practices (Keck & Sikkink, 1998; Risse et al., 1999). In line with the norm diffusion literature, UNODC acts as '*a teacher of norms*', and, by using various instruments and strategies, it plays a significant role in the facilitation of norm diffusion processes in these fields (Finnemore, 1993). As I outline in what follows, UNODC disseminates information and promotes norm adoption in the Central Asian states via different instruments under technical assistance, including

the review of national legislations, recommendations for judicial reform, trainings, reports, gaps analyses, and organising conferences, workshops, and networks (Keck & Sikkink, 1998; Risse et al., 1999). Mirroring the literature (Zwingel, 2012), its technical assistance makes international norms and standards meaningful, comprehensible, and applicable within the domestic contexts of the Central Asian states, thereby facilitating the seamless transfer and adoption of norms and standards (Checkel, 1999).

The agency's presence in Central Asia primarily focuses on *providing technical assistance* to law enforcement agencies, healthcare services, and the criminal justice system in the region. Technical assistance to the region is provided through comprehensive multiyear programmes,[7] encompassing a wide range of activities aimed at fostering the development, implementation, and improvement of certain processes, systems, and legislation. Such programmes involve sharing expertise, transferring knowledge, offering practical support, providing advice, allocating resources, and implementing capacity-building initiatives. These efforts are directed at enhancing the effectiveness and efficiency of law enforcement agencies, legal systems, criminal justice institutions, and other relevant entities. Additionally, UNODC conducts training programmes, offers advisory services, contributes to policy development, and shares best practices, actively facilitating the transfer of skills and knowledge. Furthermore, UNODC has made considerable efforts to promote adherence to UN conventions and protocols on transnational organised crime, corruption, drugs, and terrorism, whilst assisting states in aligning their domestic laws with these international frameworks. Table 4.1 provides an overview of the status of relevant UN conventions and protocols in Central Asia.

[7] The programmes were written 'with Member States, with the assistance of the donor community, regional actors, and other UN agencies via a deliberate consultation process' (UNODC 2015, p. 10). Thus, they represent what the Central Asian States view as their own challenges and provides them with resources to support what they consider to be their requirements for technical assistance. Programmes are coordinated by ROCA. Key areas for UNODC technical assistance in the region include transnational organised crime, drugs treatment and prevention, criminal justice and crime prevention, corruption, and terrorism (UNODC, 2021).

Table 4.1 UN conventions and protocols underpinning the operational work of UNODC and their status in Central Asia

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
United Nations Convention against Transnational Organized Crime (2000)	Crime related	s (2000) r (2008)	s (2000) r (2003)	s (2000) r (2002)	a (2005)	s (2000) r (2003)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)	Crime related	a (2008)	s (2000) r (2003)	a (2002)	a (2005)	s (2001) r (2008)
Protocol against the Smuggling of Migrants by Land, Sea, and Air (2000)	Crime related	a (2008)	s (2000) r (2003)	a (2002)	a (2005)	s (2001)
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (2001)	Crime related	a (2008)	–	–	a (2005)	–
UN Convention against Corruption (2003)	Crime related	a (2008)	s (2003) r (2005)	a (2006)	a (2005)	a (2008)

(continued)

Table 4.1 (continued)

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
International Convention for the Suppression of Terrorist Bombings (1997)	Terrorism related	a (2002)	a (2001)	a (2002)	s (1999) r (1999)	s (1998) r (1998)
International Convention for the Suppression of the Financing of Terrorism (1999)	Terrorism related	a (2003)	a (2003)	s (2001) r (2004)	a (2005)	a (2000) r (2001)
International Convention for the Suppression of Acts of Nuclear Terrorism (2005)	Terrorism related	s (2005) r (2008)	s (2006) r (2007)	s (2005) r (2022)	a (2008)	a (2008)
Amendment to the Convention on the Physical Protection of Nuclear Material (2005)	Terrorism related	a (2011)	r (2016)	a (2014)	a (2005)	a (2013)
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)	Terrorism related	a (2003)	–	a (2005)	a (1999)	a (2000)

(continued)

Table 4.1 (continued)

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005)	Terrorism related	a (2019)	–	–	–	–
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988)	Terrorism related	a (2003)	–	a (2005)	a (1999)	a (2000)
Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005)	Terrorism related	a (2019)	–	–	–	–
Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (2010)	Terrorism related	a (2019)	–	–	a (2019)	–

(continued)

Table 4.1 (continued)

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010)	Terrorism related	a (2019)	–	–	a (2019)	–
Protocol to the Convention on Offences and Certain Other Acts Committed on Board Aircraft (2014)	Terrorism related	a (2019)	–	–	–	–
Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)	Terrorism related	a (1995)	a (2000)	a (2006)	a (2005)	a (1999)
International Convention against the Taking of Hostages (1979)	Terrorism related	a (1996)	a (2003)	a (2002)	a (1999)	a (1998)
Convention on the Physical Protection of Nuclear Material (1980)	Terrorism related	a (2005)	a (2015)	a (1996)	a (2005)	a (1998)

(continued)

Table 4.1 (continued)

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)	Terrorism related	a (1995)	a (2000)	a (1996)	a (1999)	a (1994)
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)	Terrorism related	a (1996)	a (2003)	a (2001)	a (1999)	a (1998)
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)	Terrorism related	a (1995)	a (2000)	a (1996)	a (1999)	a (1994)
Convention for the Suppression of the Unlawful Seizure of Aircraft (1970)	Terrorism related	a (1995)	a (2000)	a (1996)	a (1999)	a (1994)

(continued)

Table 4.1 (continued)

		Kazakhstan	*Kyrgyzstan*	*Tajikistan*	*Turkmenistan*	*Uzbekistan*
Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963)	Terrorism related	a (1995)	a (2000)	a (1996)	a (1999)	a (1995)
Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1972 (1975)	Drugs related	s (1997)	s (1994)	a (1997)	s (1996)	a (1995)
Convention on Psychotropic Substances (1971)	Drugs related	a (1997)	a (1994)	a (1997)	a (1996)	a (1995)
United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (1988)	Drugs related	a (1997)	a (1994)	a (1996)	a (1996)	a (1995)

s: signed; r: ratified; a: accession
Source Author's compilation from UNODC (2023c)

UNODC's role in encouraging compliance with these UN conventions and protocols has been crucial, providing support to Central Asian states toward harmonising their national legislation with global

frameworks. ROCA's annual reports from 2015 to 2021 provide comprehensive information on these endeavours. UNODC's guidance, a thorough *review of national legislation*, and *recommendations for legal reform* have shaped Central Asian states' legislation on transnational organised crime, terrorism, corruption, and drugs prevention. To illustrate this, the 2018 annual report highlights that, in Uzbekistan, expert assistance was extended to assess the legislation on the trafficking of persons, leading to the development of comprehensive recommendations aimed at aligning Uzbekistan's laws with international standards and norms (ROCA, 2018, p. 37). Similarly, the 2020 annual report underscores that UNODC provided legal advisory services to Kazakhstan concerning the regulations governing the rehabilitation and reintegration of children repatriated from conflict zones. That report emphasises that, as a result of UNODC's legal advisory services, a new policy document was adopted, 'successfully incorporating 50 percent of the recommendations provided by UNODC' (ROCA, 2020, pp. 53–54). Another example is highlighted in the 2021 annual report, which documents the development of national legislative analysis reports with gap analyses and policy and/or legislative recommendations for action to each member-state in Central Asia. In addition to national legislative analysis reports, three legislative workshops were organised in Kazakhstan, Kyrgyzstan, and Tajikistan, respectively. The report continues, noting that:

> Individuals who benefited from this work included representatives from national ministries of foreign affairs, general prosecutors' offices, supreme courts, ministries of finance, customs offices, ministries of defence, ministries of internal affairs, and academia. During these workshops, national experts had an opportunity to discuss findings of national consultations, as well as conclusions and recommendations of legislative analysis. Participants received advice on how to update their national legislation and procedures in line with international frameworks on firearms and terrorism. National representatives had the opportunity to meet with representatives of the project implementation team, discuss success stories of similar legislative changes in other countries, and explore various possibilities of updating national legislation, especially in ways identified in legislative analysis reports. Overall, the experts agreed with recommendations and amendments discussed in several cases, to ensure proposals are adapted to the national context. Participants welcomed the contributions of UNODC and [the] UN Office on Counter Terrorism to the project

> and expressed their willingness to continue this collaboration in the future. (ROCA, 2021, pp. 63–64)

Another significant role played by UNODC toward strengthening criminal justice institutions in Central Asia is the provision of *training and resources* to national governments for effective law enforcement and adjudication. As part of these efforts, various regional and national training programmes have been implemented for investigators, lawyers, prosecutors, and judges. ROCA annual reports from 2015 through 2021 reveal that thousands of experts in different fields received training in the region, including crime intelligence analysts, customs service officers, drugs law enforcement agencies, forensic experts, investigators from cyber and/or organised crime units, officers in risk analysis, specialists from law enforcement analytical departments in data collection, analysis, and statistics, and judges and prosecutors (ROCA, 2015, 2016, 2017, 2018, 2019, 2020, 2021). The UNODC training 'Challenges and Threats of DARKNET: Use of Analytical Software in Law Enforcement Practice' from 2018 serves as a good example, demonstrating that participants improved their understanding of the Darknet and enhanced their knowledge and skills in using analytical tools for the analysis of the drugs crime situation. Similarly, UNODC signed a memorandum of understanding with the General Prosecutor's Office of the Republic of Uzbekistan to create a cooperative framework to combat transnational organised crime, drugs trafficking, human trafficking, cybercrime, and corruption through the training of prosecutors, as well as providing expert advice and technical support (ROCA, 2018). Another example involves training programmes, both online and offline, which focus on enhancing knowledge and skills related to border control. Throughout 2021, a series of four regional trainings took place, utilising a combination of online, offline, and hybrid formats. Furthermore, 25 national and regional training courses were organised addressing a range of subjects related to cross-border operations and search techniques. These courses benefited a total of 271 law enforcement officers from Central Asian countries (ROCA, 2021).

Consistent with Sustainable Development Goal 5, gender equality and the empowerment of women have been integral parts of all UNODC ROCA initiatives (ROCA, 2018, 2021). To ensure that 'the gender equality perspective is mainstreamed into the legislation and policies of the governments in the region, and special measures to promote gender equality and the empowerment of women are adopted, UNODC

provided *advisory services and capacity development* on a range of issues' (ROCA, 2018, p. 13). In this respect, law enforcement officers were trained on the gender dimensions of organised crime, and UNODC supported the training of police officers, along with municipal, social protection, health, and education workers, and community activists on the implementation of legislation to prevent violence against women in the region (ROCA, 2018, 2019).

UNODC has not only organised, provided, and funded these trainings, but also developed *train-the-trainer programmes* (training of trainers) and *training materials* (training manuals). In this way, UNODC has contributed to developing a pool of competent trainers with a deeper knowledge of subject matters, international norms, and standards arising out of relevant UN conventions and protocols, as well as operations. Training of trainers (TOT) programmes bring together trainers and create a network of professionals who share experiences, resources, and best practices. This network also promotes collaboration, continuous learning, and support amongst trainers. In line with these, the 2016 annual report notes that ToTs were organised for analysts from the relevant law enforcement agencies of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan aimed at introducing a new training methodology and enhancing the instructors' teaching capacity to pass the knowledge they gained on to their colleagues as a self-sustainability and self-efficiency approach (ROCA, 2016, p. 45). Similarly, the 2017 annual report explains that 'a training of trainers (ToT) was conducted at the Drug Control Agency raining Centre for over 20 senior officers of the agency. Future instructors improved their skills in effective and interactive teaching methods aimed at an adult audience, identifying and/or planning training needs, group facilitation, brainstorming, training evaluation, reporting, etc.' (ROCA, 2017, p. 36).

Notably, the content of UNODC's training programmes has been incorporated into the *curricula of law enforcement academies* across the region. The reports indicate that ROCA has played a significant role in assisting Central Asian law enforcement academies, such as police academies and prosecutors' academies, in developing their curricula. Working in collaboration with national experts, UNODC experts actively contribute to and shape the content of courses. As such, the 2018 annual report explains that UNODC facilitated the introduction of an educational course on crime prevention into the curriculum of the Management Academy under the President of the Kyrgyz Republic and the Police

Academy, and 'this will ensure that municipal workers and frontline police officers are equipped with [the] relevant knowledge and skills to work on crime prevention in line with the UN Guidelines on Crime Prevention (ROCA, 2018).'

Consistent with the norm diffusion literature (Finnemore, 2017; Goodman & Jinks, 2004; Holzinger et al., 2008; Khagram et al., 2002; Zimmermann, 2016), UNODC's initiatives demonstrate its role as a facilitator of knowledge exchange between governments and norm promoters in its field of expertise. As evidenced by the ROCA annual reports, UNODC establishes platforms that enable experts from Central Asian states to interact, exchange experiences, and mutually benefit from one another's expertise. This includes organising *workshops and mentorship programmes, study visits, and regional meetings*, all aimed at fostering collaboration and facilitating knowledge exchange amongst participants (ROCA, 2017, 2018). Examples of activities include regional and national workshops focused on the production, collection, and reporting of data related to drugs, crime, and terrorism in Central Asia (ROCA, 2018, 2019). The objective of these workshops was to enhance the knowledge and capabilities of government officials regarding international standards for crime and drugs statistics and to improve their ability to report on these issues effectively. The regional workshop 'Good Practices for the Prosecution and Judiciary in Cases Involving Terrorism Offences' in Tashkent in 2018 serves as another example where participants representing the general prosecutor's offices, supreme courts, ministries of internal affairs, and security services, as well as legal practitioners from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, representatives from the embassies of Germany, Sweden, the US, and the Regional Anti-Terrorist Structure of SCO met and shared best practices on the management of cases involving terrorism offences (ROCA, 2018). Another UNODC-organised workshop held in Kyrgyzstan brought together officials representing the Kazakh, Kyrgyz, Tajik, and Uzbek national parliaments, ministries of interior, ministries of religious affairs, ministries of finance, ministries of foreign affairs, the general prosecutor's offices, and national security agencies as well as local NGOs and experts to discuss evolving terrorist threats (ROCA, 2019).

International conferences hosted or co-hosted by UNODC again enhance knowledge and provide platforms for the dissemination of expertise, experience, and best practices, as well as norms and standards. UNODC is active in the region in organising or co-hosting international

conferences together with Central Asian governments. One instance of such collaboration is the international conference on security and sustainable development, titled 'Central Asia: Shared Past and Common Future, Cooperation for Sustainable Development and Mutual Prosperity.' This conference, held in November 2017, was jointly organised by the government of Uzbekistan, UNODC, and the UN Regional Centre for Preventive Diplomacy for Central Asia. It served as an interactive platform bringing together high-level representatives from various international organisations, including the UN, EU, OSCE, SCO, and CIS, as well as Central Asian states, Afghanistan, the USA, Russia, China, Turkey, Iran, India, Pakistan, Japan, and South Korea amongst others, along with experts, public figures, and the media. With over 500 participants, the conference focused on exploring avenues to establish a robust regional cooperative mechanism to effectively combat terrorism, extremism, transnational organised crime, and drugs trafficking (ROCA, 2017). Another international conference was held in July 2022, titled 'Strengthening National and International Partnerships in Combating Trafficking in Persons.' This conference was co-organised in partnership with UNODC, Uzbekistan's National Commission for Combating Trafficking in Persons and Forced Labour, and Winrock International. It contributed to the exchange and promotion of best practices in the field of combating human trafficking, to the development of referral mechanisms for victims of trafficking, and regional partnerships in the investigation and prosecution of trafficking in persons crimes (UNODC, 2023d).

Another such UNODC initiative aimed at promoting knowledge sharing between Central Asian governments, officials, and norm promoters in its field of expertise is *facilitating the establishment, enhancement, and maintenance of networks* in the region. These networks provide platforms for international cooperation, legal and operational coordination, and sharing knowledge, information, experience, practices, and expertise. One of these UNODC initiatives is the 'Establishing/Reinforcing the Network of Prosecutors and Central Authorities from Source, Transit, and Destination Countries in Response to Transnational Organised Crime in Central Asia and Southern Caucasus' (the Judicial Cooperation Network for Central Asia and Southern Caucasus, or the CASC networking initiative). This network was launched in 2014, and its secretariat is situated within UNODC. CASC brings criminal justice practitioners together, and supports inter-regional cooperation

by facilitating informal consultations through its contact points and by promoting more efficient international cooperation in criminal matters (ROCA, 2015). Another such initiative is the creation of the Regional Preventing and Countering Violent Extremism Network in 2016 with the aim of strengthening regional cooperation and capacities. This network facilitates communication, ensures networking, and shares information and best practices on a regional level in an effective and sustainable way (ROCA, 2016, 2018). These networks organise workshops, meetings, and trainings with guidance from UNODC. In addition to these single network initiatives, the agency has a 'network of networks' initiative that has provided a new paradigm for a regional and international cooperation architecture promoting links with other law enforcement international bodies and organisations (ROCA, 2017).

In addition to initiating several networks, UNODC has also facilitated the creation of and support to maintain the Central Asian Regional Information and Coordination Centre (CARICC), which serves as the *information and coordination platform* for combating illicit drugs trafficking at the regional level. CARICC was established within a memorandum of understanding on sub-regional drugs control cooperation dated 4 May 1996, between UNODC, Central Asian states, the Republic of Azerbaijan, and the Russian Federation (UNODC, 2023d). ROCA works with CARICC, compiling a comprehensive catalogue of the various methods by which narcotics are circulated within Central Asia. This compilation aims to provide law enforcement agencies with a broader understanding of preventive strategies to combat this serious issue.

UNODC is involved in many other activities, such as *public awareness-raising* campaigns, *providing equipment,* or conducting *operational coordination* meetings at different levels (ROCA, 2015, 2016, 2017, 2018, 2019, 2020, 2021). *Monitoring* Central Asian states' performances in adhering to the UN conventions and protocols and producing ROCA annual reports on their progress and compliance are additional UNODC endeavours that contribute to the diffusion of norms on combating transnational organised crime, drugs trafficking, corruption, and preventing terrorism in the region. *Reporting progress* documents the efforts of Central Asian governments, facilitates comparisons between them, and ultimately exerts pressure on them to conform to international norms and standards. It also serves to encourage countries to take steps toward compliance and internalisation.

As the above reveals, UNODC has a highly institutionalised programme and structure, along with mechanisms and instruments through which it facilitates socialisation and norm diffusion processes in Central Asia. Similar to the activities of other international organisations in the region, it diffuses norms, standards, and ways of doing things on the issue areas that fall under its mandate. Furthermore, UNODC facilitates Central Asian states' compliance with international law in the fields under its responsibility, shapes the contents of relevant legislation, and develops a *modus operandi* of responses to translational challenges. However, as is discussed in the next section, UNODC is not alone in this race.

Is 'the Shanghai Spirit' Contesting UNODC Norm Diffusion?

As noted in the previous section, a significant number of regional and international organisations operate in Central Asia, all striving to promote various norms. Some regional organisations founded by China and Russia have been noted for promoting norms that often challenge or contradict the norms advocated by Western international organisations. In particular, SCO has been documented as spreading authoritarian regime-strengthening norms (Ambrosio, 2008; Cooley, 2015; Karabayeva, 2021). At first glance, this contestation may seem irrelevant to UNODC's objectives, areas of responsibility, and activities. However, given the overlapping areas of work between the two organisations in the region, as well as geopolitical dynamics alongside global and regional tensions, a closer examination of their relationship provides food for thought in reflecting upon the norm diffusion process in the region.

Since its establishment, SCO has undergone significant development and expanded its horizons in terms of membership, tasks, and responsibilities. The organisation has evolved to address various regional and global challenges. Initially, it had a clear regional focus: Central Asia. However, as new members joined and other states became observers and/or dialogue partners, this regional focus has become somewhat blurred. Despite this blur, its core activities and initiatives are still centred on the specific issues and needs of its member-states in Central Asia. That said, its main objective is to address regional security issues, combat regional terrorism, ethnic separatism and religious extremism, organised crime, and irregular migration (MFA Turkey, 2023). Thus, UNODC and SCO have overlapping areas of work in the region.

As a UN organisation, UNODC has a global mandate, whereas SCO primarily operates at the regional level. To build closer ties, in 2011, they signed a Memorandum of Understanding (MoU), which would initially 'look at several core areas including illicit trafficking, drugs use, organised crime, international terrorism, human trafficking, and other forms of transnational organised crime' (UNODC, 2011, p. 1). ROCA annual reports only make a couple of rather insignificant references to SCO. Whilst the 2018 annual report notes that UNODC and ROCA 'closely collaborated with different international organisations, NGOs, and other bilateral partner organisations, such as the OSCE, Regional Dialogue, SCO, and [Collective Security Treaty Organisation (CSTO)] amongst others' (ROCA, 2018, p. 47), the reports in 2019 and 2020 only briefly mentioned that UNODC and SCO collaborated on narcotic drugs use and trafficking prevention. The UNODC's website, on the one hand, is full of news about side events, co-hosting, and practical cooperative activities on the prevention of drugs trafficking, countering terrorism, anticorruption, border management, and other areas falling within their mandate. Consistent with these joint endeavours, speeches given by the executives of both organisations emphasised the importance of collaboration. As such, UNODC executives spoke of a 'strong partnership' between the two organisations and how their joint efforts contributed to the SCO objectives (UNODC, 2017, p. 1). SCO Secretary General Zhang Ming, on the other hand, expressed the willingness of SCO members to enhance cooperation and consolidate their efforts, whilst also affirming their 'commitment to combating drugs trafficking based on the norms and principles of international law', which falls under the responsibility of UNODC (UNODC, 2023e, p. 1). These news items and positive interactions between organisations, with mutual recognition of expertise and an emphasis on collaboration and cooperation, provide the impression that there is no contestation or friction between them whilst they operate in Central Asia, act as norm entrepreneurs, and diffuse norms and shape the policies and legislations of Central Asian states. However, these two organisations are products of different normative frameworks, and contestation between them in terms of norm diffusion processes seems inevitable.

Through its operations and work focused on its mandate, UNODC promotes the UN's norms and standards. As a product of the liberal international order, the norms recognised and committed by the UN for global governance are liberal norms, such as democracy, the rule

of law, pluralism, gender equality, and human security (Tallberg et al., 2020). The UN, its agencies, their mandates, and operations have been highly institutionalised and shaped by these norms and standards. SCO, by contrast, is 'a new set of values and norms governing the future development of Central Asia'—'the Shanghai Spirit'—and 'the content of these values and norms sets the contours of what is appropriate and legitimate within the region' (Ambrosio, 2008, p. 1322). Studies argue that these norms promote authoritarianism since they strengthen conservatism and autocratic regimes in Central Asia (Ambrosio, 2016; Cooley, 2015; Lewis, 2012; Pantucci & Petersen, 2022). Thus, 'the Shanghai Spirit' represents a challenge to Western international organisations, their work, and their influence in the region. As Lewis (2012) observes, OSCE has already experienced this contestation with SCO. According to Lewis, a new set of norms promoted by the organisation has displaced the liberal-democratic principles promoted by OSCE.

When it comes to UNODC, however, the issue areas it focuses on, and its primary focus on technical assistance, capacity building, and promoting international cooperation to address drugs-related challenges and crime, may bring collaboration and cooperation to the fore and postpone a contestation between the two organisations. However, the combination of limited transparency, reduced accountability, centralised power, favouritism, and the stifling of criticism within authoritarian regimes renders them susceptible to corruption (UNODC, 2020). This environment also offers avenues for various transnational organised crime activities addressed by UNODC. As a result, whilst evident contestation or friction may not yet be visible between UNODC and SCO, there is reason to anticipate such issues emerging in future.

Conclusions

Since independence, the Central Asian states have undergone continuous processes of transition. The region's unique context, featuring a blend of pre-Soviet, Soviet, and new institutions and norms, has influenced the transition trajectory in each Central Asian state. As such, each state has been significantly influenced by the diffusion of international norms, facilitated by a range of actors, including international organisations. International organisations have been operating in the region, and promoted norms and standards, advocating for specific regulatory measures, and disseminating information on best practices.

Understanding state socialisation, norm diffusion processes, and the role of international organisations in these processes are crucial for comprehending the changes in policies, laws, and institutions within and across Central Asian states.

As a UN agency, UNODC has actively operated in Central Asia. Within its work, it engages with Central Asian states, provides socialisation venues for them, and supports their adherence and compliance to the UN Convention on Transnational Organised Crime, the UN Convention against Corruption, and various UN protocols, thus facilitating and shaping their transition in its areas of expertise. As I outlined here, UNODC's work primarily focuses on providing technical assistance and capacity-building initiatives to law enforcement agencies and the criminal justice system. This includes supporting the development, implementation, and improvement of legislation and providing training, but also monitoring, reporting, raising awareness, and organising conferences, workshops, and study visits. UNODC has provided expert guidance, reviewed national legislation, and made valuable recommendations for legal reform, thereby shaping the legislation of Central Asian states to align with international frameworks. Through its well-structured multi-year programmes, strategies, and instruments, UNODC has acted as 'a teacher of norms', 'an agent of socialisation', and a 'facilitator of norm diffusion' in Central Asia in combating transnational organised crime, drugs trafficking, addressing corruption, and preventing terrorism. By influencing compliance with international law, shaping legislation, and forming responses to transnational challenges, UNODC plays a vital role in the Central Asian context.

However, this analysis also underlines the fact that UNODC does not operate in isolation. SCO's presence and activities introduce an additional layer of complexity. Whilst UNODC and SCO appear to harmoniously co-exist, their differing normative frameworks, geopolitical dynamics, and overlapping operational domains necessitate a closer examination of their relationship. As UNODC promotes the liberal norms underpinned by the UN's values, SCO advances 'the Shanghai Spirit', which is notably aligned with authoritarian norms. Although no obvious or immediate conflict may currently exist, the potential for contestation and/or friction arises from the distinct normative frameworks of these organisations. This indicates that further examination is necessary in order to understand how these organisations' interactions impact the norm diffusion process in the region.

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CHAPTER 5

Regionalisation of International Initiatives: Case Study of the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG)

Dilaver Khamzaev

Introduction

> Globalisation has been replaced by an era of regionalisation with all its virtues and inherent flaws.
>
> —Kassym-Jomart Tokayev, President of Kazakhstan
> 19 June 2022, St. Petersburg International Economic Forum

Following the formation of the United Nations (UN), international peace and security were maintained through legally binding commitments such as customary laws, self-executing treaties, and binding international agreements, also known as hard law (Vienna Convention on the Law

D. Khamzaev (✉)
Law Enforcement Academy of the Republic of Uzbekistan, Tashkent, Uzbekistan
e-mail: dilaver_hamzaev@yahoo.com

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*, International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_5

of Treaties, 1969). However, hard law has proven ineffective in the twenty-first century (Shaffer & Pollack, 2009). Globalisation, digitalisation, and the anonymity of the internet have led to an increase in transnational financial crimes (German, 2015) and their diversification into more complex subgroups (Jung, 2017). These crimes, especially money laundering and the financing of terrorism, pose external stressors to economies that rely on transparency and integration into the global financial system (Alexander et al., 2005; Schinasi, 2005). In addition, money laundering and terrorism financing pose long-term systemic risks to the global financial system, and it is imperative for the international community to take the necessary measures to protect against these crimes and to maintain stability (FATF, 2010).

The existing rules-based system for ensuring security at the international level does not mitigate all risks, particularly given the shifting threat scenarios that may fall outside predetermined scenarios (Bester et al., 2008; FATF, 2014). To address this, the Financial Action Task Force (FATF) has proposed a risk-based approach, which involves a flexible and adaptable anti-money laundering and combating the financing of terrorism (AML/CFT) regulatory framework that can offer multiple responses to evolving scenarios (FATF, 2013b, 2017). This framework employs a soft regulatory approach to adapt to jurisdictional characteristics, allowing it to spread unimpeded at the international level through the identification and assessment of countries' AML/CFT risks and the application of commensurate measures to address those risks whilst also having a hardening impact on the law (FATF, 2012).

However, some scholars have criticised the practice of organising FATF activities for imposing the interests of the minority on the majority and not considering the interests and needs of other members in the global community (Ghoshray, 2014). To address this, the compliance assessment of individual national AML/CFT systems within the FATF regulatory framework has been delegated to various international, regional, and supranational bodies which follow the FATF principle (FATF, 2009, 2013a). However, the practice of implementing a soft regulatory approach to the activities of regional organisations at the regional level, to which part of the FATF functions is delegated, remains unexamined.

There are currently nine FATF-style regional bodies (FSRBs), covering over 200 jurisdictions worldwide and disseminating the FATF's AML/

CFT regulatory framework across all regions.[1] The Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) is one such group in the Central Asian region, of which the Russian Federation (or, simply, Russia) is an active member. Following a mutual evaluation in 2019, FATF recognised the Russian Federation's AML/CFT system as one of the world's leading systems (FATF, 2019). However, following the full Russian invasion of Ukraine in 2022 and the United Nations General Assembly Resolution ES-11/1, Russia's membership in the FATF was suspended in 2023 (FATF, 2023). Notwithstanding these developments, the FATF's decision emphasises the need for Russia to continue fulfilling its obligations in order to ensure financial security, leaving it an active EAG member. Therefore, there is a need to study Russia's role in the EAG and assess its influence on the organisation's activities.

In this context, this chapter aims to examine the implementation of the FATF's soft regulatory approach to EAG's activities and assess any imposition of the interests from strong economies in the region. Specifically, I attempt to determine how the Russian Federation exerts and maintains its geopolitical influence on Central Asia by capitalising on its dominance in EAG activities. Exploring these processes allows me to generate insights into how and to what extent the Russian Federation impacts EAG activities and thereby shape the business and investment climate in Central Asia.

According to Ofoeda et al. (2022), the level of foreign direct investment (FDI) is directly correlated with the efficiency of the AML/CFT regime. The inclusion of Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan in FATF's scrutiny and their subsequent listing as non-cooperative and/or high-risk jurisdictions have directly impacted their investment potential. Furthermore, membership in the FATF or similar regional groups is considered a criterion for exclusion from such lists.[2] The existing FATF mechanism motivates states to join these groups. Therefore, joining EAG, as one of the regional groups similar to FATF, was a logical step for Central Asian countries seeking to avoid FATF sanctions.

[1] See Countries, via FATF. Retrieved 23 June 2023, from https://www.fatf-gafi.org/en/countries.html.

[2] See High-Risk and Other Monitored Jurisdictions, via FATF. Retrieved 23 June 2023, from https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html.

EAG, acting as an intermediary between FATF and its member-states, aims to harmonise the national AML/CFT systems across the region and align them with international standards. To enhance the effectiveness of this process, an agreement has been signed between EAG and the Commonwealth of Independent States' (CIS) Anti-Terrorism Centre, which includes 'the interaction of states in the development of projects and model legislative acts and the exchange of comprehensive information' (EAG, 2010). This implies that countries participating in these organisations must engage in consultations with EAG when preparing proposals and recommendations intended for consideration by their respective parliaments and other higher authorities.

In turn, the Russian Federation, as a country with one of the leading AML/CFT systems and actively serving as a mediator between EAG member-states and the FATF to prevent FATF sanctions, positions itself as a leader within EAG and views the collective potential of EAG as an opportunity to promote Russian interests in relevant FATF activities (Muradyan, 2011). Consequently, EAG serves as a mechanism to influence the process of shaping the national legislations of participating countries.

For this more detailed analysis of the role of member-states in EAG, this chapter is organised as follows. The next section provides a brief overview of the existing scientific literature on the organisation of FATF's activities, established management practices, and how the existing soft law approach hardens through various mechanisms of relationship building, mutual assessments, and listing of countries as 'black' or 'grey'. Then, I apply a theoretical lens to the study, employing a classical understanding of hegemony—that is, the Gramscian approach. Next, I discuss the methodological considerations for analysing the presence of dominant representation by any of the member-states in EAG's activities, utilising a 'critical realist' analytical approach. Subsequently, the fifth and sixth sections present information on EAG's structure and the results from the analysis of information and statistical data obtained from the organisation's official website and other open sources of data, focusing on its legal and organisational activities. In the final section, I discuss the implications of this research within existing debates, and emphasise important conclusions we may draw from this analysis.

Background and Literature Review

Dr. Marcus Pleyer, President of FATF, emphasised that eliminating the harm caused by criminal activity, such as money laundering and financing terrorism, is a priority for all governments worldwide (Pleyer, 2020). The primary focus on combating such threats lies in targeting their sources of activity by disrupting financial flows and preventing the early-stage commissioning of crimes (Takeuchi, 2020). Responding to and combating these transnational crimes requires all states synchronise their efforts. Thus, FATF attempts to synchronise national legislation related to transnational legislation through soft law, enabling it to influence domestic legislation (Ghoshray, 2014).

FATF was established in July 1989 during the Paris G7 Meeting with the objective of developing an international framework for AML/CFT, evaluating national systems' compliance with these standards, examining trends in money laundering and terrorism financing (ML/TF), and drafting recommendations.[3] Despite operating for over 30 years, limited attention has been given to analysing the FATF's activities and even less to those of individual FSRBs. The primary discourse on the organisation of FATF's activities in forming an international AML/CFT framework revolves around defining FATF's legal status and the peculiarities of organising international financial regulations to harmonise national legislations. Therefore, this literature review aims to analyse existing research on (a) defining FATF's legal status and (b) organising international financial regulations.

The Legal Status of FATF

The legal status of FATF is the subject of much discussion. Murrar and Barakat (2020, p. 77) consider FATF 'the first intergovernmental organisation that operates at an international level to sanction and promote the effective implementation of standards related to AML/CFT'. Similarly, Yurieva (2018) categorises FATF as an intergovernmental organisational, considering its history, composition, and relationships with other organisations. However, despite being regarded as a universal organisation, FATF is not formally recognised as an organisation under contract law,

[3] See History of the FATF, via FATF. Retrieved 23 June 2023, from https://www.fatf-gafi.org/en/the-fatf/history-of-the-fatf.html.

given its limited membership and permanent staff. As a result, discourse suggests that FATF is the 'standard-setter' in the fight against money laundering and terrorism financing (Ghoshray, 2014, p. 526; Koker, 2022, p. 265), an expert network, or a 'forum for major powers to shape global governance' (Jakobi, 2018, p. 174). Although such claims are common, it is important to consider the formal legal status of FATF according to international legal norms, which suggests that it should be regarded as a transnational network. Nicholas W. Turner (2014) supports this idea, drawing upon the inclusive theory of international law and the work of Anne-Marie Slaughter (2004) to demonstrate that the FATF's structural core and rule-making practices align more closely with a transnational network. It ultimately boils down to the fact that, formally, FATF is classified as a transgovernmental network (Takeuchi, 2020). The absence of an internal constitution or constituent charter is precisely what renders its recommendations non-binding to its member jurisdictions (Gathii, 2010). Yet, such a status liberates FATF from the bureaucratic shackles of international relations, enabling it to function unrestrictedly 'both between high-level officials directly responsive to the national political process — the ministerial level — as well as between lower level national regulators', making it 'spontaneous — informal, flexible' (Slaughter, 2004, p. 19).

Consequently, recommendations and proposals offered by FATF are directly discussed with lower-level national regulators, and the corresponding legislative changes in countries are initiated by these national subjects, then presented to the legislative body as an initiative from lower level national subjects. Thus, FATF recommendations are integrated into the national legislation of countries without adhering to the formal process of ratifying international acts, and FATF successfully implements its provisions by evading national ratification systems, rendering it an invisible rule-maker (Takeuchi, 2020).

Given this particular characteristic, I next examine the practice of organising international financial regulation under FATF.

International Financial Regulation Under FATF

The legal status of FATF, the nature of its recommendations, and the way such recommendations are imposed have all been subject to significant debate. Some scholars have questioned the legitimacy of the current regime in shaping FATF standards (Rider, 2015). Others have emphasised

the importance of the organisation's freedom from bureaucratic processes in forming non-binding norms combined with its ability to exert real economic pressure on countries as the keys to FATF's success. This approach is considered a replacement to the outdated hard law approach to global governance (Ghoshray, 2014; Takeuchi, 2020). However, given the limited evidence regarding any positive impact from the current framework on controlling ML/TF, FATF's practice is likely to continue evolving (Koker, 2022). As such, it is necessary to undertake a critical analysis of the existing regime in regulating the international financial system.

On the one hand, FATF develops non-binding standards as a transnational network (Takeuchi, 2020). On the other hand, its influence in the global arena is expanding. Existing literature describes this phenomenon as the 'hardening of soft law', resulting from two specific causes.

First, FATF's informal status allows it to establish cooperation with any organisation or state without the bureaucratic procedures typical of international organisations. For instance, unlike most international organisations with a constituent charter, FATF cannot issue legally binding rules. However, 'its mandate to combat money laundering is tied to several very powerful international financial institutions' and 'it has the backing of powerful governments and international organizations' (Gathii, 2010, pp. 2–3). It could be argued that FATF recommendations duplicate provisions from existing international conventions in the field of AML/CFT and do not require additional legal consolidation in a separate act. Nevertheless, FATF recommendations also expand their scope (Takeuchi, 2020). Therefore, FATF can broaden its influence by interacting with several rather powerful international organisations. For instance, UN Security Council Resolution No. 1617 of 2005 called for the recognition of the recommendations developed by FATF, which helped to eliminate the limitations to FATF, affecting its legitimacy and ability to develop and implement policies (Cogan et al., 2016).

Second, the mere existence of established cooperation is insufficient. Thus in the literature, the publication of a list of states that do not comply with FATF standards, also known as the 'naming and shaming' ritual, is considered another aspect facilitating the widening of FATF's influence and the mechanism of using established connections (Clunan, 2006). Publishing a list of non-compliant states is considered a mechanism for implementing soft law in FATF's activities (Ghoshray,

2014). As such, Ghoshray identified four ways to implement this mechanism: (1) a variety of interpretive notes for member-states, (2) an evaluative and feedback-oriented assessment process, (3) surveillance of potential destabilising triggers on the global financial system by FATF, and (4) categorising jurisdictions by measuring their proscribed actions with prescribed benchmarks and periodically publishing blacklists of non-compliant jurisdictions. This mechanism received criticism for imposing the interests of the minority on the majority due to the power dynamics of major actors. Such criticism stems from a reflection of the priorities and interests of Western market economies in the formulation of FATF standards and their coercive imposition through FATF mechanisms. The fact that the 'overwhelming presence of Western market-oriented economies' exists amongst the 35 members of the organisation serves as an indicator of Western countries' influence (Gathii, 2010). Furthermore, the majority of recommendations have been developed by only a few Western countries (CUBE Global, 2021). The lack of participation from majority jurisdictions during the rule-making process means that the standards fail to reflect the individual nuances and norms of developing countries. This is often seen as the internationalisation of the internal orders of minority countries within the FATF regime (Ghoshray, 2014). Whilst FSRBs are designed to accommodate regional peculiarities by delegating the functions of conducting mutual evaluations and addressing compliance differentials to them, the existing literature has been limited to examining the AML/CFT systems of specific regions for their compliance with FATF recommendations (Murrar & Barakat, 2020; Yurieva, 2018).

Accordingly, an analysis of the activities of FSRBs in order to identify the presence of a democratic deficit in governance, which may lead to the imposition of the interests of dominant economies in shaping the legislation of developing states, remains unexplored. From this perspective, this chapter aims to address this lacuna by evaluating the role of individual countries in the activities of the organisation. More specifically, I conduct a quantitative study of the role played by an individual state (the Russian Federation) in moulding the activities of FSRBs, specifically focusing on EAG.

The Theoretical Framework

In analysing the processes described above, we need to draw from theories dealing with the issue of hegemony in international relations. However, given that Gramsci did not systematise a clear vision of this theory, there are currently multiple views on understanding it (Bates, 1975). I will not discuss all of these existing views on understanding Gramsci's theory, but instead simply note that there are four approaches to explaining the manifestation of hegemony in international relations (Antoniades, 2008; Robinson, 2005).

The conventional approach to hegemony can be viewed as state-centric, where the dominant country imposes its interests on the world. In this capitalist system, various characteristics reflecting the superiority of the hegemon are used, such as geography, natural resources, industry, finances, economic characteristics, its military capacity, the population, and technological innovation amongst others.

The neoliberal approach shifts the focus of study from the subject of hegemony, the hegemon, to the conditions and mechanisms of hegemonic formation. This approach argues that the established international order can outlast the hegemon. Thus, the conditions and mechanisms of hegemonic formation are more important in establishing the hegemony than the subject, the hegemon. Therefore, the object of study in this approach is the source of power.

The radical approach assumes that the establishment of hegemony is part of a specific historical project. Therefore, the object of study within this approach is not the state or a group of states or any specific state factors, but rather leadership within the historical block that contributes to the establishment of hegemony.

The Gramscian approach is a classic approach to understanding hegemony. According to this approach, the ruling class exerts control over society indirectly through the introduction of their dominant ideology, which is perceived as 'common sense' by society (Antoniades, 2008).

Gramsci contends that governance can be carried out indirectly without needing direct violence by propagating its ideology. The dominant ideology can be disseminated through two spheres (Bates, 1975): (1) political society (public institutions) and (2) civil society (private organisations such as schools, churches, clubs, journals, and parties). Both spheres serve as a means of domination for the ruling

class, although they employ different methods. The first sphere is a mechanism of direct domination, associated with the term 'state'. The second sphere encompasses the intellectual layer, which acts as a conduit for the ruling class's vision of the governed. If the second sphere functions effectively, the primary objective of political society is to suppress those who express dissent from the worldview of the ruling class.

This prism provides insight into how FATF promotes its vision of harmonising national legislations in the field of AML/CFT through the use of soft law, since it lacks direct mechanisms via which to influence states. FATF operates through two dimensions: within the political society of FATF, it establishes collaboration with politically influential organisations and encourages the establishment of FATF-style regional bodies (FSRBs) to coordinate the process of legislative harmonisation at the regional level. In this dimension, organisations and countries cooperating with FATF have the capacity to exert economic and political influence on other countries through the imposition of sanctions. Moreover, membership in a regional body, such as EAG, entails obligations for states under the framework of the concluded agreement. Failure to fulfil these obligations may lead to the imposition of sanctions by the other member-states in the regional body. Concurrently, the monitoring of progress and the facilitation of the harmonisation of national legislations with established international standards occurs within FATF's second dimension (civil society)—that is, through expert assessment. The expert assessment of national legislations takes place through mutual evaluations of states by experts selected during FATF or regional body meetings. From the perspective of hegemonic theory, experts assume the role of civil society, representing the intellectual layer responsible for evaluating the current situation, which guides states in implementing FATF standards and provides FATF with the results of an assessment (compliance or non-compliance with established standards) during mutual evaluations of national legislations. If the results from an assessment of national legislations fail to meet experts' expectations, the political society is informed in order to initiate appropriate measures. Thus, the process of indirectly imposing the FATF vision occurs within the majority.

The presence of hegemony by a specific country or group of countries in the management of activities within the political or social dimensions of FATF and/or regional bodies depends upon their level of engagement

in these organisations' activities. Therefore, to understand the presence of hegemony in the activities of FATF or regional bodies, a structural analysis of the political and social dimensions must be conducted using a 'critical realist' analytical approach (Antoniades, 2008).

Methodology

This chapter provides an analysis of the superstructure of the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) to identify the presence of a dominant representation by any of the member-states.

To analyse the classical understanding of hegemony in the activities of FATF as a mechanism of imposing a world order to ensure international financial security, I adopt a 'critical realist' analytical approach (Antoniades, 2008) to conduct a structural analysis of the management practices of FSRBs. This analysis can be conducted from the perspective of three domains of reality: the empirical, the actual, and the real. Here, I conduct an analysis of the empirical domain, completing a structural analysis of the object under study.

This study employs a quantitative analysis of the level of member-states' participation in FATF's activities and a qualitative (legal doctrinal) analysis of EAG's regulatory framework and decision-making process. I aim to identify the patterns of dominant representation by any member-states and provide insights into the influence of economically powerful countries within EAG.

Methodologically, this research is based on the information and statistical data obtained from the official website of EAG and other open sources of data regarding the organisation's legal and organisational activities. These data include founding documents and memoranda concluded on behalf of EAG, as well as secondary data on member-states' economic potential, management personnel, experts, and mutual evaluation reports.

To create an economic profile of EAG member-states, I also used secondary data from open sources regarding their economic condition. A doctrinal analysis of the regulatory framework was conducted to identify, analyse, and synthesise the content of EAG's regulatory acts, as well as to understand the organisation's practices, hierarchy, and the role of each representative in decision-making. This analysis enabled the compilation of a list of positions that directly shape the organisation's policies, including the chair, vice-chair, and executive secretary.

Derived data were developed using information published on the EAG website regarding representatives of states elected to these positions and experts who participated in mutual evaluations of member-states. Specifically, I created the political influence index of individual states and the civil influence index in EAG's activities based on the data on the aforementioned representatives and experts.

To calculate the political influence index of EAG member-states involves determining the proportion of each state's involvement in the management activities of EAG throughout its entire operational period. This is calculated based on the indicators provided, as described by the following equations:

$$\%\mathrm{Quan(Ch)} = \frac{\mathrm{ANCh}}{\mathrm{TNCh}} * 100\%, \tag{5.1}$$

$$\%\mathrm{Term(Ch)} = \frac{\mathrm{ATCh}}{\mathrm{TTCh}} * 100\%, \tag{5.2}$$

$$\Delta\mathrm{Index(Ch)} = \mathrm{Average}\big[\%\mathrm{Quan(Ch)} + \%\mathrm{Term(Ch)}\big] \tag{5.3}$$

The share of chairs from the studied state [%Quan(Ch)] was calculated in a Eq. (5.1) based on the actual number of chairs from that state (ANCh) and the total number of chairs in the organisation's history (TNCh). Equation (5.2) was then used to determine the share of the chairmanship of the studied state during a specific time period [%Term(Ch)] by taking into account the actual term of office of one state's chair (ATCh) and the total possible term of office of chairs in the organisation's history (TTCh).

The index of one state's chairmanship in the organisation's activities [ΔIndex(Ch)] was calculated by averaging the share of chairs from one state [%Quan(Ch)] and the share of chairmanship in the organisation's activities [%Term(Ch)].

$$\%\mathrm{Quan(D)} = \frac{\mathrm{AND}}{\mathrm{TND}} * 100\%, \tag{5.4}$$

$$\%\mathrm{Term(D)} = \frac{\mathrm{ATD}}{\mathrm{TTD}} * 100\%, \tag{5.5}$$

$$\Delta\mathrm{Index(D)} = \mathrm{Average}\big[\%\mathrm{Quan(D)} + \%\mathrm{Term(D)}\big]. \tag{5.6}$$

In a similar manner, the index of one state's deputy chairmanship in the organisation's activities was calculated by determining the share of the number of deputy chairs from the state studied [%Quan(D)] in Eq. (5.4), and the share of chairmanship in the organisation's activities [%Term(D)] in Eq. (5.5). The index of one state's deputy chairmanship in the organisation's activities [ΔIndex(D)] was then calculated using the averaged values of the indicators [%Quan(D)] and [%Term(D)].

$$\%\mathrm{Quan(S)} = \frac{\mathrm{ANS}}{\mathrm{TNS}} * 100\%, \tag{5.7}$$

$$\%\mathrm{Term(S)} = \frac{\mathrm{ATS}}{\mathrm{TTS}} * 100\%, \tag{5.8}$$

$$\Delta\mathrm{Index(S)} = \mathrm{Average}\big[\%\mathrm{Quan(S)} + \%\mathrm{Term(S)}\big]. \tag{5.9}$$

The index of one state's secretariat [ΔIndex(S)] was calculated in Eqs. (5.7), (5.8), and (5.9) based on the number of executive secretaries and their terms of office in the organisation.

$$\Delta\mathrm{Index(I)} = \mathrm{Average}\big[\Delta\mathrm{Index(Ch)} + \Delta\mathrm{Index(D)} + \Delta\mathrm{Index(S)}\big]. \tag{5.10}$$

The influence index [ΔIndex(I)] of the state studied in the organisation's activities was derived by averaging the chairmanship index [ΔIndex(Ch)], the deputy chairmanship index [ΔIndex(D)], and the secretariat index [ΔIndex(S)]. Analysing this indicator allows us to assess the extent of each state's contribution and influence on the activities of international organisations. This understanding will help us predict the political course and developmental prospects of the organisation.

To calculate the index of civil influence of EAG member-states, I determined the share of each state's participation in EAG's expert activities throughout its history using the indicators provided. This indicator was calculated based on the actual number of experts representing the state and the total number of experts participating in the mutual evaluations of the EAG.

The Eurasian Group

The Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) is a regional FATF-type group established in 2004. As an associate member of FATF, EAG comprises nine states—namely,

Belarus, China, India, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan, and Uzbekistan.

EAG includes three member-states with a significant share in the total global gross domestic product (GDP). However, despite one-third of the EAG member-states being economically developed, their average globalisation index (59.6) is lower than the world average (61.59) according to the KOF Globalisation Index[4] (Table 5.1). Although no index can account for all possible factors of globalisation, this index has been positively assessed based on comparisons with other indices and can be used for academic purposes to assess the state of globalisation worldwide, in individual regions, and even in specific countries (Potrafke, 2015).

EAG was established to serve those countries in the Eurasian region which are not part of existing FATF-type regional groups. Its mission is to play a critical role in reducing the threat of international terrorism and ensuring the transparency, reliability, and security of states' financial

Table 5.1 The economic potential of EAG the member-states

State	*GDP level*[a]		*KOF Globalisation Index*[b]	
	Rating	*Volume (USD, in millions)*	*Rating*	*Index*
Belarus	78	60,258.24	72	67.59
China	2	14,722,730.70	82	64.28
India	6	2,660,245.25	90	62.23
Kazakhstan	53	171,082.38	83	64.14
Kyrgyzstan	153	7,735.98	89	62.32
Russian Federation	11	1,483,497.78	49	71.94
Tajikistan	151	8,194.15	144	50.84
Turkmenistan	88	45,231.43	188	40.72
Uzbekistan	79	59,929.95	132	52.40

[a]Data taken from https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true

[b]Data taken from https://gtmarket.ru/ratings/kof-globalization-index

EAG: Eurasian Group on Combating Money Laundering and Financing of Terrorism; GDP: Gross domestic product; KOF: Konjunkturforschungsstelle; USD: United States dollar

[4] See Reyting Stran Mira Po Indeksu Globalizatsii KOF, via Gtmarket. Retrieved 10 April 2023, from https://gtmarket.ru/ratings/kof-globalization-index.

Table 5.2 Schedule of mutual assessments of EAG

State	*Assessment structure*	*Date of field mission*	*Discussion at the EAG plenary session*
Kyrgyzstan	EAG	March 2017	November 2017
Tajikistan	EAG	March 2018	November 2018
China	FATF/EAG/APG	July–August 2018	August 2019
Belarus	EAG	March 2019	November 2019
Russian Federation	FATF/EAG/ MONEYVAL	March 2019	October–December 2019
Turkmenistan	EAG	March 2021	November 2021
Uzbekistan	EAG	March 2021	November 2021
India	FATF/EAG/APG	October 2021	November 2022
Kazakhstan	EAG	April 2022	November 2022

Note For further details, refer to https://eurasiangroup.org/ru/general-information
EAG: Eurasian Group on Combating Money Laundering and Financing of Terrorism; FATF: Financial Action Task Force; APG: Asia/Pacific Group on Money Laundering; MONEYVAL: Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism

systems, as well as their integration into the international infrastructure for combating ML/TF.

The Russian Federation first proposed the idea of creating EAG at the FATF plenary meeting in October 2003. In February 2004, the issue was again discussed at an international meeting on cooperation amongst CIS member-states in combating ML/TF, which involved the CIS countries, China, and several international organisations.

An analysis of the schedule of mutual assessments within EAG (Table 5.2) reveals that the procedure for evaluating national AML/CFT systems in economically strong member-states (China, India, and the Russian Federation; see Table 5.1) relies not only on EAG experts, but also FATF and other FATF-type regional groups. This suggests that these states have a certain influence on EAG policy, although this is primarily due to their membership in multiple AML/CFT organisations, including EAG alongside 39 other FATF member-states.

Structure

The structure of EAG was designed to achieve the organisation's objectives. It consists of the Plenary Meeting, the Working Group on Mutual Evaluations and Legal Issues (WGMELI), the Working Group

on Typologies and Countering the Financing of Terrorism and Crime (WGTCFTC), and the Technical Assistance Working Group (TAWG). Additionally, the positions of chairperson, deputy chairperson(s), and executive secretary of EAG were created.

The Plenary Meeting is the highest body of EAG and is composed of authorised member-states. Its primary function focuses on addressing fundamental issues related to the common interests of EAG member-states, determining strategies, setting directions, and providing advisory decisions aimed at achieving the goals and objectives of the organisation. The Plenary Meeting also decides upon the formation procedures and powers of the EAG working groups. Consensus amongst EAG member-states is necessary in order to take decisions during the Plenary Meeting (Agreement on the Eurasian Group on Combating Money Laundering and Financing of Terrorism, 2011).

The chairperson of the Plenary Meeting serves as the leader and is responsible for the meeting's overall direction. The chairperson is appointed to a two-year term based on nominations from the member-state delegations, and their appointment is approved at the EAG Plenary Meeting (Agreement on the Eurasian Group on Combating Money Laundering and Financing of Terrorism, 2011).

The EAG secretariat is responsible for carrying out administrative and technical functions aimed at implementing the decisions taken by the EAG Plenary Meeting and the chairperson. This includes performing administrative and technical functions, supporting the EAG Plenary Meeting and EAG working groups, organising events held within the framework of EAG, and ensuring interaction with EAG member-states, observers, other countries, and international organisations (Agreement on the Eurasian Group on Combating Money Laundering and Financing of Terrorism, 2011).

In addition, the secretariat coordinates the preparation of the EAG's annual report and sends it to the chairperson for submission to the EAG Plenary Meeting. The secretariat also prepares the draft budget of EAG and overseas execution of that budget. In accordance with the decisions of the EAG Plenary Session and the instructions of the chairperson, the secretariat participates and represents the interests of EAG during Plenary Meetings, working group meetings, and other events held within the framework of FATF, FSRBs, as well as with other international organisations and groups.

Additionally, the secretariat interacts with the media on covering the activities of EAG. The management of the secretariat, including personnel, financial, and economic activities, is carried out by the executive secretary, who is appointed by decision from the EAG Plenary Meeting.

The EAG secretariat comprises senior administrators as well as administrative and technical staff. The staffing table and structure of the secretariat are approved by the EAG Plenary Meeting on the recommendation of the executive secretary. Administrative and technical personnel are selected through an open competitive process from amongst citizens of the Russian Federation, the host country of the secretariat. However, there is no requirement that Russian citizens are elected or appointed to other positions within the organisation.

The Working Group on Mutual Evaluations and Legal Issues (WGMELI) oversees the mutual evaluations and subsequent monitoring of EAG. This working group coordinates with other organisations, such as FATF, FSRBs, the International Monetary Fund (IMF), and the World Bank, on matters related to mutual evaluations.[5] WGMELI prioritises and prepares recommendations on reports related to mutual evaluations and the progress of EAG member-states. WGMELI also reviews best practices related to risk assessment and ensures the quality and compliance of mutual evaluation reports. Additionally, the working group examines legal issues related to the organisation's operations, including the voluntary compliance programmes of tax legislation in EAG member-states.

The Working Group on Typologies and Countering the Financing of Terrorism and Crime (WGTCFTC) focuses on combating money laundering and the financing of terrorism.[6] In undertaking this task, the working group (a) studies and summarises the practices for combating money laundering, (b) analyses risks in the Eurasian region, (c) develops recommendations for improving counteraction mechanisms, (d) coordinates with international organisations, and (e) conducts research and seminars.

[5] See Organisational chart, via EAG. Retrieved 23 June 2023, from https://eurasiangroup.org/en/organizational-chart.

[6] See Organisational chart, via EAG. Retrieved 23 June 2023, from https://eurasiangroup.org/en/organizational-chart.

The Technical Assistance Working Group (TAWG) coordinates technical assistance to the EAG member-states and assesses their needs.[7] TAWG works with other EAG working groups and international organisations to develop training programmes based on the needs assessments and coordinates technical assistance. The group also analyses the annual reports from EAG observers, exchanges best practices with member-states and private sector organisations to improve awareness and understanding of AML/CFT measures, and reviews the EAG budget and documents related to its financial management.

Considering the functions and tasks of the aforementioned components of the EAG structure, we can divide it into the following tiers through the prism of Gramsci's superstructure. The first tier encompasses the parts that determine the development strategy, hold a managerial function, and apply appropriate sanctions in the case of any deviation from their development course. This tier should include the Plenary Meeting, as well as the positions of the chairperson, deputy chairperson, and the executive secretary of EAG. The second tier takes on the responsibility of disseminating the vision of the first tier through education, control, and monitoring functions. The working groups and expert groups of EAG fall within this tier. Next, I consider the EAG member-states' level of participation in each of these tiers.

Governance Structure (Political Society in EAG)

Based on an analysis of the indicators of state participation in the management activities of EAG presented in Fig. 5.1, we see that one country plays a significantly dominant role in the organisation's management activities—the Russian Federation. This raises concerns about the potential influence of this state on the decision-making processes and activities of the organisation.

The results indicate that only representatives of India, China, and the Russian Federation have been appointed as chairpersons of the organisation, with the latter having a significant advantage in both the number of appointed representatives and the duration of their governance. Additionally, the position of the executive secretary has been only held by one

[7] See Organisational chart, via EAG. Retrieved 23 June 2023, from https://eurasiangroup.org/en/organizational-chart.

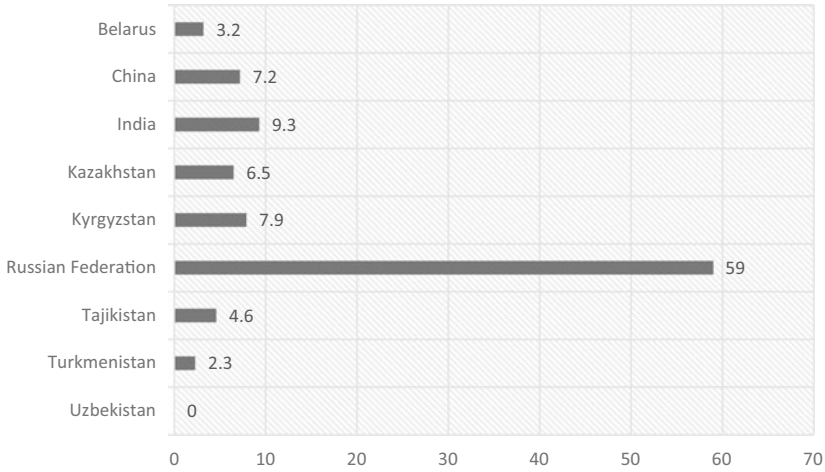

Fig. 5.1 Share of participation of member-state representatives in the management activities of the EAG1 (Data extracted from https://eurasiangroup.org/ru/mr-yury-chikhanchin-russia)

state—namely, the Russian Federation—despite no requirement stipulating that only citizens of the host country should be elected as executive secretary. Moreover, the role of the executive secretary in the EAG's activities is crucial to ensuring the organisation's functioning, since this person manages the process of providing informational, legal, organisational, and logistical support, as well as interacts with member-states, observers, other countries, and international organisations. In other words, the executive secretary formally manages the entire process within the organisation.

The practice of appointing representatives from only one state to individual bodies of an organisation emerges in other FATF-type groups as well. For instance, the Asia–Pacific Group on Money Laundering (APG; an FATF-style regional body for the Asia–Pacific region) states that since the secretariat is located in Australia, one of the permanent co-heads (co-chairpersons) of the organisation must be a citizen of Australia.[8] However, a joint management style (co-chairpersons) is practiced within APG, where both managers hold the same authority. In contrast in the

[8] About APG/Co-Chairs, via APG. Retrieved 23 June 2023, from https://apgml.org/about-us/page.aspx?p=6e984e5c-5293-4d25-ba71-0099edb28954.

EAG case, rotation between member-states only occurs for the position of deputy chairperson, which is mandatory in accordance with an Agreement on the Eurasian Group on Combating Money Laundering and Financing of Terrorism (2011). Nevertheless, the deputy chairperson is appointed only to replace the chairperson during their absence or to perform other duties assigned by the chairperson. Therefore, in contrast to APG's practice, in EAG's case, there is a subordinate relationship between the chairperson and the deputy chairperson of EAG. This could lead to the assumption of influence by a separate state on the organisation's activities due to the permanent appointment of representatives from the same state to the positions of chairperson and executive secretary of the organisation.

Naturally, it is reasonable that the organisation can be represented primarily by citizens of one state in order to ensure the organisation's continued activity. However, in such a situation, the principle of checks and balances is not ensured. Instead, the continued appointment of a chairperson and executive secretary from the same state (i.e., the Russian Federation) may have a pernicious effect on power relations within EAG, contributing to the dominance and imposition of the interests of one state over other member-states. Ensuring the principle of checks and balances is particularly important given Russia's ever-increasing zeal to increase its geopolitical influence on post-Soviet states.

To address the possible influence of individual states on the activities of EAG, in addition to the documented requirements (Article 6), observers also operate within the organisation (Agreement, 2011). Any state or organisation that wishes to become an observer to EAG can act as one. Observers have the right to participate in the meetings of the working groups and the Plenary Session of EAG, to distribute written statements on issues of interest to them within the framework of EAG activities, as well as to receive as necessary public documents and decisions taken by EAG. However, the entire role of observers in the work of EAG is limited to their participation in meetings of the organisation, as well as any other actions (e.g., submitting an application to obtain or renounce observer status, intending to participate in the meetings of the organisation, distributing statements to the members of the organisation, providing assistance to member-states in the field of capacity building, exchanging experiences and specialists, and providing technical assistance on issues covered via EAG mandate) are carried out by notifying the

EAG secretariat. This reality once again confirms the key role of the EAG secretariat within the framework of EAG activities.

In order to prevent the possible influence of the executive secretary of EAG on its activities, it is stipulated in Article 6 of an EAG agreement dated 16 June 2011, whereby states must refrain from exerting influence on the staff of the EAG secretariat. However, ensuring the implementation of such immunity requires additional qualitative analysis.

It is important to note that, when checking EAG's regulatory framework, the organisation operates transparently and in accordance with all statutory documents. Legally, representation from all EAG member-states in senior positions is possible; but, in practice, the lack of the proper implementation, such as the rotation of senior positions across representatives from different states, raises questions. Possible reasons for this may result from (a) influence from the economic or political authorities of a single country on the organisation's activities or (b) the lack of a desire for or the necessary funds from other member-states to actively participate in the activities and maintain the organisation's operation at a proper level.

Civil Society (Civil Society in EAG)

Unlike the governance structure, civil society's task within EAG lies in monitoring the AML/CFT systems of participating states and to provide advisory services to improve their systems. This structure consists of experts specifically hired for these purposes, without imposing any direct sanctions on participating states. Its primary role is to disseminate information and educate others on the organisation's vision for securing national financial systems.

An analysis of mutual evaluation reports of EAG member-states reveals that representatives from all member-states were involved as legal, financial, and/or law enforcement experts in evaluating national AML/CFT systems. However, the frequency of participation in each monitoring activity by individual member-states varies. Figure 5.2 provides the proportion of representatives from member-states involved in EAG's expert activities. Here, we see that the average participation rate of the Russian Federation in the expert activities of EAG exceeds 40%. This indicates that nearly every other expert engaged in the monitoring activities of EAG represents the Russian Federation.

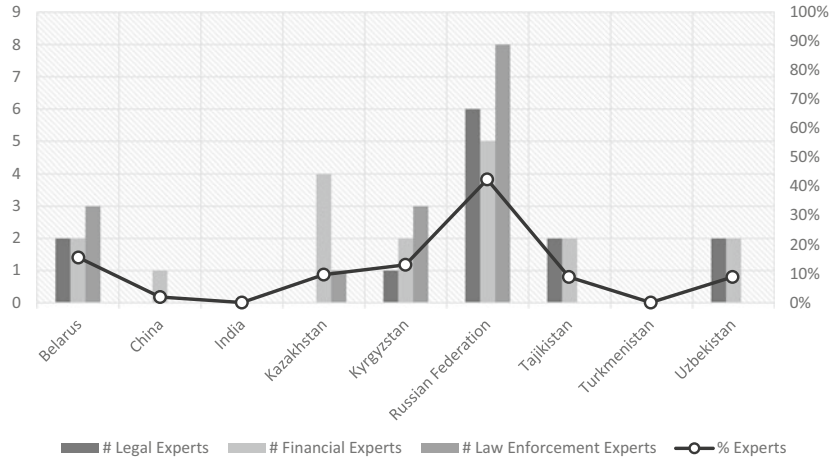

Fig. 5.2 Share of participation by representatives of member-states in EAG expert activities

The data indicate that some states (i.e., Russian Federation) are more active in the organisation, likely due to factors such as the intellectual capacity or individual group members' membership in FATF. Nevertheless, equal representation of all members in the organisation's activities fosters participation and discourages the politicisation of decision-making. In fact, this analysis reveals a lack of democratic mechanisms in EAG's operations, leading to an overrepresentation of the Russian Federation in the organisation's expert activities.

Notably, no consistency exists in establishing the number of legal, financial, and law enforcement experts involved in each individual mutual evaluation. During mutual evaluations of the Russian Federation and China, political analysts from FATF are involved, and their role should be clarified in future qualitative studies of this issue.

Despite the presence of three major economies amongst EAG's member-states, the participation of one state—the Russian Federation, considered a leading economy—prevails in both dimensions of the EAG superstructure. It is important to note that the FATF's soft law approach allows experts to interact directly with national government agencies and directly provide recommendations for improving legislation, bypassing

established procedures for implementing international acts. This suggests an attempt to impose Russia's interests in the region within this organisation.

Discussion and Conclusions

In the literature, researchers have found that the Financial Action Task Force (FATF) reflects the interests of economically strong states, especially those in Eastern Europe and the United States, given the lack of democratic management mechanisms (Ghoshray, 2014). However, unlike FATF, regional agencies such as the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) are organised in such a way that does not result in the hegemony of Eastern European states and the US in their management. Nevertheless, criticism regarding the lack of proper democratic management methods in the activities of FATF is also applicable to EAG, a regional group similar to FATF. The harmonisation of regional legislation through EAG, with Russia's predominant participation, appears to further promote Russia's interests, leveraging the collective potential of EAG (Muradyan, 2011).

The primary difference between FATF and EAG lies in the definition of hegemony. The existing understanding of hegemony in FATF is not 'statism', referring to a 'form of social domination exercised not by states, but by social groups and classes operating through states and other institutions' (Robinson, 2005, p. 561). By contrast, in EAG, one country's hegemony is apparent, with representatives from the Russian Federation serving as the predominant participants in the organisation's activities. Thus, despite its formal democratic management mechanisms, the reality is that hegemony of an economically strong state exists within EAG's activities.

In the Central Asian region, the FATF's global initiative is distributed through EAG, where we observe the hegemony of an economically strong state in the region—namely, the Russian Federation. The literature suggests that Russia's initiative, aimed at dictating regional education and the presence of an effective AML/CFT system in the region, supports this hegemony.

According to an analysis of statements made by FATF officials and experts, an effective AML/CFT system can be used to finance illegal activities. For instance, in March 2021, the Egmont Group criticised

existing jurisdictions for misusing their financial intelligence units, established in compliance with FATF requirements, and for acting against civil society and government opponents by violating their operational autonomy and independence (Vedrenne, 2021). However, that statement did not specify the countries involved in such activities. Two months later, Marshall Billingslea, the former FATF president from 2017 to 2019, accused Russia of utilising the powers of the Federal Financial Monitoring Service (*Rosfinmonitoring*) to organise state-protected money laundering schemes to fund illegal activities related to the acquisition of weapons, establish and maintain relationships with other authoritarian regimes, and eliminate political opposition (Couvée, 2021). The disclosure of such accusations highlights that the opportunities afforded by organisations established in compliance with FATF requirements may be misused by states.

Following Russia's full invasion of Ukraine in 2022, its membership in FATF was suspended. Importantly and notably, that decision does not impact Russia's status in EAG, where it holds a dominant position in both management and expert activities. Nonetheless, a question arises regarding how this suspension will influence the future of other FSRBs.

In regions with below-average levels of globalisation, global initiatives may risk becoming regionalised. As Kazakh President Tokayev stated during his address to the Economic Forum in Russia, 'Globalisation has given way to an era of regionalisation with all its benefits and shortcomings', resulting in rapid transformations to the global economic order (Satubaldina, 2022). In order to safeguard the global economy and financial system, this transformation is pursued through international organisations like FATF and EAG, which are tasked with harmonising national legislations. The presence of Russia's hegemony in the activities of EAG indicates that legislation in Central Asian countries should be moulded considering the interests of the dominant country. Consequently, this influence can potentially impact their investment conditions and potential from other regions.

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PART II

Domestic Institutions and Legal Environment

CHAPTER 6

Mapping Institutional Resilience: Locating Regulatory and Growth Frameworks in Central Asia

Adham Khudaykulov

Introduction

Central Asia is a geographic region consisting of five countries—Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan—which emerged as independent nation-states following the dissolution of the former Soviet Union (FSU) in the early 1990s. This region spans from the Caspian Sea in the west to China in the east, and from Afghanistan in the south to the Russian Federation (or Russia) in the north. The Central Asian region is rich in natural resources, which play a vital role in the regional economy. Over seventy years of membership in the USSR, the Central Asian republics had been integrated into the centralised Communist economic system. Due to the Soviet policy of economic concentration, the regional economy assumed a primarily agrarian–industrial form, which spiralled with the breakup of the FSU,

A. Khudaykulov (✉)
Tashkent State University of Economics, Tashkent, Uzbekistan
e-mail: a.khudaykulov@tsue.uz

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_6

leading to early post-independence recession and a resulting financial crisis triggered by the paralysis of the Soviet era monetary and credit systems. A deficit of money coupled with very high inflation strongly disrupted domestic demand, which further escalated the decline of other sectors of the economies. In the period between 1990 and 1995, gross domestic product (GDP) declined on the order of 58% in Tajikistan, 49% in the Kyrgyz Republic, 39% in Turkmenistan and Kazakhstan, respectively, and 19% in Uzbekistan (Zhukov & Reznikova, 2001, pp. 47–48).

The major challenge lay in transforming the entirety of economic relations and management from a centrally planned system into an open-market economy. All regional countries generally adopted *de jure* trajectories towards an open-market economy, although de facto economic transformations took different shapes. More radical steps were taken by the Kyrgyz Republic and, to some extent, Kazakhstan in order to liberalise their economies and reduce the states' roles, whilst Tajikistan, Turkmenistan and Uzbekistan chose more cautious and gradual approaches to economic reforms.

More generally, the Central Asian economic landscape has undergone significant structural changes in the years since independence. Economic reforms have focused on the restructuring of production and reorganising enterprises, expanding export potential and investment sources, as well as upgrading institutional systems and improving market infrastructures amongst other reforms. At the same time, most Central Asian countries maintained a strong role of the state in economic affairs.

Since independence, the Central Asian countries have demonstrated a rather similar trajectory in terms of economic performance: a sharp downfall during the first half of the 1990s followed by steady economic growth from the mid-1990s onwards (Fig. 6.1). By the second half of the 1990s, regional countries recovered from a deep recession by suppressing inflation and expanding industrial and agricultural outputs.

The period between 2000 and 2010 was probably the most dynamic and sustained period of economic growth in the region. During this period, the regional economy grew on average by around 7%. The regional countries intensified their economic integration with the global economy and implemented trade and economic relationships with more than 190 countries worldwide (Sultanov, 2009, p. 108). Even during the global financial crisis of 2007–2009, the regional economy demonstrated stable economic growth of around 5–7% on average. Overall, between

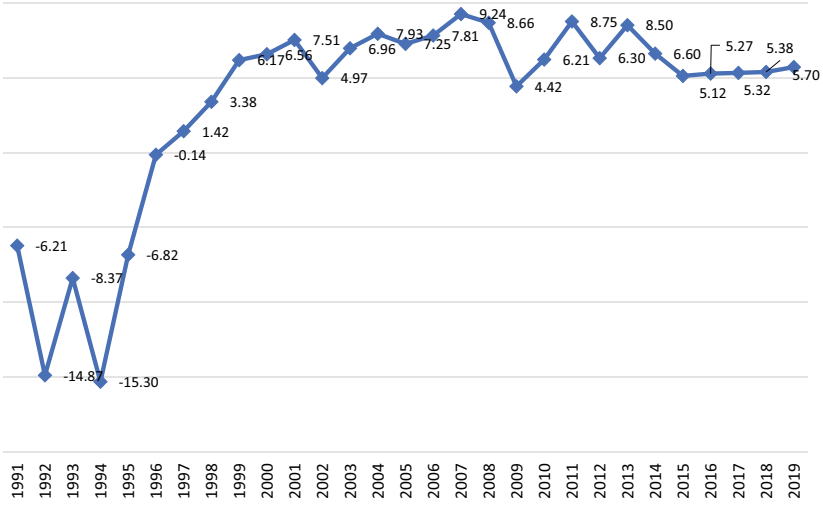

Fig. 6.1 Real gross domestic product growth in Central Asia (annual regional average %), 1991–2020 (*Source* World Bank National Accounts Database)

1996 and 2020, the regional economy has shown an impressive growth rate of around 6%.

Economic growth has contributed to improving people's living standards by increasing per capita incomes and improving social well-being across the region. Although significant gaps exist between individual countries in terms of gross incomes and the size of individual economies, they have increased per capita incomes multiple times during the post-independence period. For instance, GDP per capita has nearly quadrupled in Turkmenistan, almost tripled in Kazakhstan, Uzbekistan, and Tajikistan, and nearly doubled in the Kyrgyz Republic (Fig. 6.2). The economic status of countries in the region has also changed over time. Specifically, Kazakhstan and Turkmenistan joined the upper middle–income category, Uzbekistan and the Kyrgyz Republic shifted from low income to lower–middle income countries, whilst Tajikistan remains in the low-income category.

The macroeconomic indicators of regional growth, as seen above, are remarkable indeed. However, more often than not, the region's economic revival resulted from rents obtained from natural resource extraction, and thus remains vulnerable to shocks and stagnation dictated

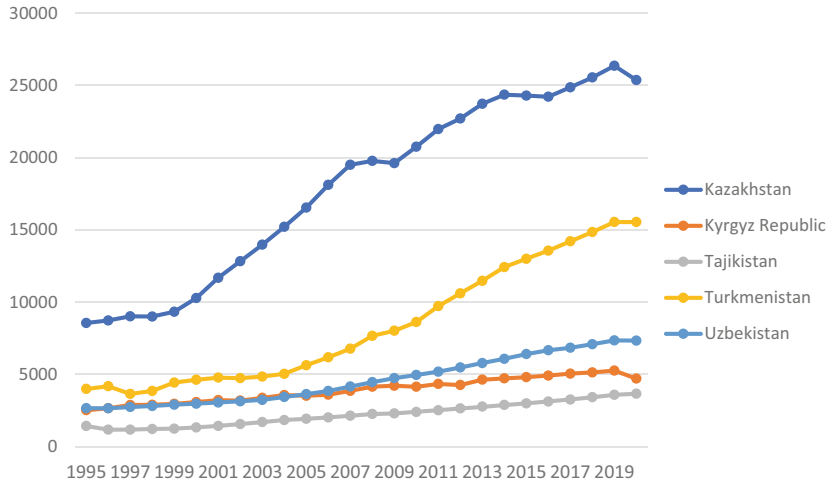

Fig. 6.2 Gross Domestic Product (GDP) per capita at Purchasing Power Parity (PPP), 1995–2020 (*Note* Gross domestic product converted to 2017 international dollars using purchasing power parity (PPP) rates. An international dollar has the same purchasing power over GDP as the US$ has in the USA. *Source* World Bank National Accounts Database)

by external commodity markets. In 2018, the Organisation for Economic Co-operation and Development's (OECD) report stated that 'a disquieting set of evidence suggests that the relationship between a country's natural resource endowment and its long-term economic development is negative' (Kakanov et al., 2018). Thus, sustainable economic growth can only be maintained through deep structural reforms, institutional upgrading, and changes to regulatory policymaking.

Based on this understanding, this chapter examines sustainable economic development as observed in Central Asian states through the exploration of regulatory systems capable of withstanding both internal and external challenges. In doing so, I aim to contribute to resilience studies in economics by examining the robustness of the established regulatory systems of the region's countries in responding and adjusting to

disruptions caused by external and internal factors and ensuring sustainable economic growth. By examining the regulatory systems and their ability to cope with internal and external challenges, this analysis also engages with and offers new insights in scholarly debates regarding the role and rule of law in Central Asian societies.

Premise

The unprecedented economic perturbation caused by the collapse of the Soviet Union in the early '90s required immediate actions from the former republics to transform the entire structure of their economies and create new economic systems that would be resilient. Ideally, these new systems could withstand and effectively overcome future shocks and disruptions by ensuring long-term sustainable development. This is critically important to note in terms of institutional resilience since it comes with a drastic change and rewiring of the economic circuit to withstand external shocks. The Soviet era's protected economic ecosystem required recasting in terms of an emergent complex adaptive system (Holling, 2001), ready to navigate decisions made by bodies and the international community where countries in the region had minimal negotiating capital or even a voice. Creating an economic system based on open-market principles and accelerating integration into the global economy were the foremost priorities of the reform agendas. These were accepted as an essential prerequisite of the open-market economy practically, placing the main emphasis on the promotion of private-sector development by reforming the system of economic regulation and management.

As I will show in the subsequent sections, in the case of five Central Asian economies, many regulatory initiatives, institutions, and tools have already been put into place. The regional governments have taken important steps to create market-oriented regulatory frameworks compatible with open-market principles and, in short, emphasising key elements of resilience thinking from the Western perspective. However, established regulatory frameworks have not proved effective in boosting the immunity of the economies due to ineffective regulatory compliance and enforcement regimes.

The Concept of Resilience in the Economics of Development

With its origins in ecology and psychology, the notion of 'resilience' recently gained popularity in many social science disciplines, including economics, with its relevance to economic thinking recognised by many scholars in the field (see Briguglio et al., 2006; Hill et al., 2012; Martin & Sunley, 2015; Pendall et al., 2010; Rose & Liao, 2005; Simmie & Martin, 2010). However, there is no universally agreed upon definition for this term. The literature on resilience offers two different interpretations: one focusing on the speed of return to equilibrium following some sort of shock or disruption (Pimm, 1984), the other looking at the size of a disruption needed to displace a system from its stable state (Holling, 1973). The first interpretation captures the ability of a system to absorb and accommodate disruptions without experiencing a major structural transformation or collapse with the aim of retaining the pre-shock equilibrium (McGlade et al., 2006). The second interpretation captures the ability of a system to make a rapid transition from one socio-economic structure to another following major shocks or shifts. This latter interpretation appears relevant to the study of economies in transition, where societies must adapt to a new socio-economic environment following an abrupt collapse of the old system.

Any economy is subject to various perturbations: slow or periodic economic recessions or fast unexpected shocks and turbulences, hard (material) or soft (nonmaterial) damages, and challenges arising from technological changes amongst others (Aligica & Tarko, 2014). However, creating a resilient economy capable of preventing and/or effectively addressing those perturbations is not an easy task for any state. Some scholars suggest that resilience analysis in economics should focus on the assessment of the state's ability to respond and adjust to all sorts of disturbances and disruptions caused by both endogenous and exogenous factors (Levin et al., 1998). Another approach argues for the relevancy of the role of the state in creating good institutions to boost the immunity of the economic system (North 1990; Woolcock, 1998). Adger (2006) argued that the resilience of an economic system and its capacity for adaptive action, to a great extent, depends on the quality of political and economic institutions. One volume of literature documented the strong

relationship between the quality of economic institutions and the sustainable economic performance of a state (Acemoglu & Robinson, 2012; Acemoglu et al., 2005; Dollar & Kraay, 2003).

Others suggest that the free-market economy is resilient in nature and that any state intervention would hinder a market's ability to withstand economic shocks (Peltzman et al., 1989; Stigler, 1971). Due to the price system and competition, disruptions caused by external and internal shocks dissipate as people re-qualify and businesses attempt to innovate to reduce their costs and improve production and management (Williamson, 2011). The response to perturbations, thus, occurs within existing informal market settings rather than requiring a significant change to institutions, norms, and rules.

Resilience analysis has important implications for the ways in which we define and assess the design and performance of state economic institutions. Therefore, it is exceptionally critical for Central Asia and the wider post-Soviet space to determine if the various economies created a sound institutional base resilient to all sorts of economic challenges posed by internal and external perturbations, thereby ensuring long-term sustainable (resilient) economic development.

Economic Resilience Through Regulation

Economic regulation is generally referred to the application of laws or other instruments by the state or affiliated public bodies in an attempt to promote markets by facilitating fair and transparent competition and by managing externalities, shocks, and disturbances. Many believe that regulation is a vital state instrument used to correct inefficient or inequitable market practices that may cause economic imbalances (Djankov et al., 2002; Schleifer, 2010). This is because such externalities are driven and brought about by global or international events. However, it is also widely recognised that, in order for the regulatory policy to succeed in attaining its stated objectives, it should meet two essential criteria: a well-thought-out, comprehensive, and coherent regulatory framework, on the one hand, and regulatory institutions with clear and objective responsibilities, sufficient power, resources, and opportunities to properly perform duties and functions, on the other. Necessarily, the more these institutions are globally benchmarked, the more sophisticated the rebound and growth pathways.

Regulatory interventions do not always bring about desirable outcomes, and the adverse effects of particular interventions are well documented (Becker, 1983; Peltzman et al., 1989; Stigler, 1971). For example, Stigler (1971) views regulation as a biased instrument of the state, often exercised in a way that serves the interests of some industries whilst harming others. According to him, the net effects of regulations upon certain regulated industries could be unquestionably burdensome, whilst remaining much lighter and more beneficial to others. Regulation always creates this bias. For Becker (1983), regulation is economically inefficient because it serves the interests of specific interest groups. Interest groups tend to shape regulatory initiatives in a way that maximises their personal or institutional welfare. For instance, politicians and bureaucrats tend to shape regulations based on their personal interests or the interests of those who support them.

Thus, the traditional notion of economic resilience is enshrined in a Eurocentric model of the so-called 'natural order of things' (or 'invisible hand' as defined by Adam Smith), which lies at the heart of free-market principles, representing the main driver of the market and capable of handling economic interactions without external assistance. For free marketers, the price stands as the key regulator of market interactions, capable of efficiently distributing goods and resources throughout an economy. Price serves as a means of communication between sellers and buyers, representing an incentive for producers and a signal for economic interactions. Regulation is said to bring more harm than good since it discourages private initiatives, which eventually lead to a reduced total economic and social surplus. In this case, we have a complicated, inflexible system in contrast to a complex adaptive system, advocated by resilience thinking (Holling, 2001).

Numerous studies have demonstrated a positive relationship between solid regulations and economic growth. For example, Gørgens et al. (2004) found that economies with more cumbersome regulations grow on average 2–3% less than those with moderate yet effective regulations. Similarly, using quantitative empirical analysis, Loayza et al. (2005) concluded that burdensome regulations negatively impact economic growth and often lead to increased macroeconomic volatility. Drawing from the aggregate index of business regulations based on the seven components of the doing business index developed by the World Bank (i.e., starting a business, hiring and firing, registering property, getting

credit, protecting investors, enforcing contracts, and closing a business) for 135 countries between 1993 and 2002, Djankov et al. (2006) determined that moving from a 'bad' regulatory regime to a 'good' one carries a 2.3-point increase in average GDP. Furthermore, estimating the composite regulatory policy variable borrowed from the World Governance Indicators of the World Bank Group, Jalilian et al. (2007) demonstrated that a unit change in the quality of regulation, on average, associates with about an 0.6–0.9% increase in economic growth.

In fact, the drivers of economic growth are fairly diverse, and singling out a particular determinant as an ultimate cause would be overly simplistic. In the case of Central Asia, regional growth is often linked to the rents obtained from natural resources. The region is indeed exceptionally rich in natural resources. It supplies the world market with oil, gas, uranium, gold, and other precious metals, as well as high-value agricultural products such as wheat, cotton, and vegetables amongst others (Yuldashev, 2011). Along with the commodity factor, however, some scholars have emphasised the role of policy reforms and institutional improvements in regional economic progress (Pomfret, 2010, 2012; Stark & Ahrens, 2012). Yet the link between regulatory changes and economic growth in the region has not yet been thoroughly explored. Thus, this study aims to investigate to what extent the state regulatory policies, *ceteris paribus*, have contributed to the economic development of Central Asian countries. In doing so, I primarily attempt to provide evidence for alternative resilience thinking that takes into account the region's local strategies, which have helped it absorb shocks and continue to enjoy economic growth even in the face of significant external challenges.

Methodology

This study is based on qualitative research conducted largely through semi-structured and unstructured interviews and an analysis of relevant policy documents related to regulatory policymaking in Central Asian countries. Semi-structured interviews were conducted amongst current and former policymakers, business leaders, experts, and scholars in the respective countries, which took place primarily in the capital cities. Unstructured informal conversations were conducted with random, qualified individuals on various occasions in cafes and government as well as at receptions and dinners amongst others.

The selection of interviewees primarily relied on their overall understanding of regulatory policymaking regionally and in their respective jurisdictions. Preference was given to individuals with extensive experience in regulatory policymaking and advocacy as well as in academia. Special attention was paid to the balanced use of former and current public officials in order to avoid possible biases and subjectivity in evaluating the situation. Additionally, a number of people from the private sector were interviewed in order to assess the situation from the perspective of the so-called consumers of regulations. All interviewees, irrespective of their background and profession, were asked similar questions.

I assigned pseudonyms to formal respondents using the country abbreviation and a number to identify individuals (e.g., 'KAZ' for Kazakhstan, 'KGZ' for Kyrgyzstan, 'TJK' for Tajikistan, 'TKM' for Turkmenistan, and 'UZB' for Uzbekistan). Informal respondents are not cited nor were they given pseudonyms, but their viewpoints have been incorporated into the analyses captured here. Not all interviewees directly addressed the questions posed nor did they cover the same categories of people included in the semi-structured interviews. However, all interviewees helped to inform the underlying understanding along with secondary considerations in this research, crucial to the regulatory policymaking in their respective countries and in the broader region.

The Nexus Between Regulatory Framework and Regulatory Implementation

As mentioned above, a sound regulatory system is an important precondition for enhancing the competitiveness of an economy, meeting a society's goals, protecting the environment, and ensuring a sustainable future. These are all relevant to creating resilience thinking and appear in the economic literature referencing resilience. The quality of the regulatory system is determined by a state's commitment to and promotion of reforms toward developing and implementing high-quality regulations. Regulatory reforms are particularly vital for resource-rich economies, which have the potential to channel revenues received from natural resource rents towards productive investments and pave the way for a sustainable future. Since acquiring independence, the Central Asian countries have carried out wide-scale reforms to enhance their resilience through the quality of regulatory designs and practices. Although formal

legal frameworks and institutional arrangements of regulatory policy-making are relatively well-established across the region, given problems with regulatory compliance and enforcement, regulatory changes have not always produced desirable outcomes on the ground.

Research across the region has demonstrated that already many regulatory management initiatives, institutions, and tools have been put into place in the Central Asian countries. Governments have taken important steps towards improving public access to regulations and legal information, known as essential first steps in regulatory implementation. The introduction of digital solutions to regulatory governance—that is, e-government platforms—has also been actively promoted. Moreover, the region's rather high literacy rate and educated population serve as an important human resource base for the public sector. However, a formal regulatory framework and institutional arrangements cannot create an ecosystem that would enhance resilience and bring about the desirable policy outcomes unless an effective system of implementation and compliance regimes are also in place. Bridging the gap between making good laws and regulations ('law-in-books') and their effective realisation ('law-in-action') is a major challenge to any regulatory (legal) system. This is especially true for transition economies, such as those in Central Asia, with immature public sector institutions.

The success of regulatory implementation depends upon the ability of the government to deliver policies effectively to attain the stated objectives (O'Toole, 1995; Pressman & Aaron, 1973). Given the socio-cultural, political, and economic variations across countries' contexts, policy implementation can take different shapes and forms in specific countries (Paudel, 2009). Similarly, challenges and obstacles that countries face in terms of policy implementation also vary significantly. Research revealed that, in the case of Central Asia, regulatory implementation linked to various problems. Whilst recognising certain variations in individual countries in the region, this research focuses on some of the major issues highlighted by most respondents thought to have seriously hindered economies' abilities to remain resilient. These issues include the following: excessive concentrations of power and a 'top-down' decision-making approach; poor interagency communication and coordination of regulatory implementation; a shortage of financial and technical resources allocated for implementation purposes; poor adherence to the regulations; and a biased justice system. In the subsequent sections, I elaborate each of these issues more fully.

Concentration of Power and a 'Top-Down' Decision-Making Approach

The centrality of decision-making in public policy and administration remains a long-standing argument and is well-documented in the literature (Bozeman & Pandey, 2004; Sabatier & Mazmanian, 1979; Simon, 1997). Making the right decisions is particularly essential to the success of implementing any policy (Sabatier, 1986). The public administration literature employs 'top–down' and 'bottom–up' approaches to describe how decisions are made and how policy changes are implemented.

Despite some claims regarding the positive effect of a 'top–down' decision-making approach in specific contexts (Mazmanian & Sabatier, 1981; Sabatier & Mazmanian, 1979), a 'bottom–up' approach is generally recognised as better for developing good and informed policies and for effectively implementing them (Bresser-Pereira & Przeworski, 1993; Hjern, 1982; Hjern & Porter, 1983; Stewart et al., 2015). A bottom-up approach is 'an incremental change approach that represents an emergent process cultivated and upheld primarily by frontline workers' (Stewart et al., 2015, p. 241). Specifically, this approach allows for more experimentation and a better sense of what is actually needed at the grassroots level (*ibid.*). When policies are accepted by the majority of people at lower levels, their implementation tends to be much more effective and efficient. Yet, if policy proposals are perceived as being imposed 'from above'—that is, via a 'top–down' approach—it can be difficult for lower-level professionals to accept them, possibly further hindering the realisation of those changes (Bresser-Pereira & Przeworski, 1993).

The majority, if not all, of the respondents are convinced that the 'top–down' decision-making approach is one of the main causes of poor regulatory implementation in the Central Asian countries. Decision-making is heavily concentrated in the hands of those officials at the very top. Whilst national constitutions clearly institute the principle of checks and balances between branches of power, the executive branch tends to exert unprecedented authority over the legislative and judicial branches. The vast majority of important policy decisions come from the heads of state—that is, presidents. Such decisions either stem from annual presidential addresses or from other direct instructions given to executive and legislative bodies. According to some local experts, around 95–97% of all important political and economic reforms have been initiated by presidents and implemented under their direct supervision and guidance.

These concerns were voiced by many of my respondents. For instance, UZB6 noted the following:

> Positive changes in Central Asia haven't been possible due to a 'top–down' decision-making approach. Once these policies are adopted and enacted, it is barely possible to make further modifications or changes should something go wrong during the implementation process. A feedback mechanism is almost non-existent. Executive authorities are expected to implement policies without questioning their plausibility. And, more often than not, policy failures fall on middle management.

Along a similar line, TJK5 stated:

> Over many years of working with high-level decision-makers across Central Asia, I have understood that everything is based on the top–down approach. Everybody in public administration is afraid of taking the initiative; everything must come from the top. It has become an administrative norm. They always wait for instructions from the hierarchy. Middle management never sabotages the orders of top management. They seek clearance for every course of action they take.

In addition, KAZ3 contended:

> The notion that 'the leader is always right' is deeply embedded in the mindset of the people in the region. All constitutional provisions regarding the balance of power and that the people are the main source of power are effectively 'dead principles'. Reality is entirely different—the leader decides everything. Many democratic institutions and norms stipulated in the basic laws have been openly disrespected.

Interagency Communications and the Coordination of Regulatory Implementation

Collaborative policymaking and establishing common ground for public problem-solving through the constructive management of differences are crucial to the successful implementation of policies (Gazley, 2017). Regulatory implementation should be an integrated process rather than simply a series of discrete and distinct stages. Effective implementation requires continuous vertical and horizontal collaboration with a range of stakeholders at multiple political, policymaking, managerial, and administrative

levels as well as the engagement of local implementation actors such as end users, frontline staff, and a range of local service agencies (Ansell et al., 2017).

Despite growing interest in developing ideas and tools for promoting effective inter-agency collaborations in public sectors of Central Asian states, respondents suggested that improvements have been rather patchy and limited. The lack of effective inter-agency collaborations has remained one of the key impediments to effective regulatory implementation. As Kazakh respondent KAZ4 observed:

> …[P]oor regulatory implementation can be partly explained by the constant failures in policy coordination. Unless it is strictly monitored or guided by the top authority, line ministries and public agencies tend to be less keen on collaborating with each other in order to reach desirable policy outcomes. Occasionally, one can even observe an explicit adversarial relationship between state bodies.

Similarly, an expert from Uzbekistan, UZB2, argued as follows:

> Existing unhealthy relationships between public institutions obviously prevent many important regulatory changes from happening. In the public sector, competition prevails over cooperation. Because of miscommunication and poor collaboration between agencies, the implementation of regulatory changes often misses the deadline or simply fails. Successful regulatory policymaking surely requires sound inter-agency collaboration.

Elaborating on the state of policy coordination in the Kyrgyz government, KGZ3 stated:

> Coordination failure begins at the level of the highest government bodies. For instance, a regulatory proposal initiated by the executive branch of government following thorough studies and research and submitted to the parliament for consideration, sometimes gets entirely changed by parliamentarians and submitted to the president for promulgation. And, the president, in turn, signs the regulation without consulting with the executive branch. As a final product, you have a legal document that does not correspond with the initial draft prepared by the executive branch.

> At the end of the day, the government finds itself in a complete deadlock when it comes to the implementation of that regulation because it has been entirely altered and already lost its initial intent. This problem is a clear consequence of miscommunication and miscoordination between state agencies.

Unlike other countries in the region, policy implementation in the Kyrgyz Republic also suffers further from instabilities in the central government, where constant political changes exacerbate policymaking processes. The Kyrgyz political system has also witnessed multiple revolutions and endless changes to the top of the hierarchy, which often result in the suspension of policy initiatives put forward by previous administrations. KGZ2 noted:

> Since its independence, the country has had thirty different governments with thirty prime ministers and thirty different policy agendas and development strategies. These frequent changes to the political system made it impossible to adopt long-term development strategies and deliver positive and sustainable changes. As a result, a totally ineffective public administration system has emerged.

Similarly, KGZ1 pointed out that:

> [N]one of the governments in Kyrgyzstan's post-independence history has been able to deliver its development agenda to its logical end. This is primarily due to the constant changes and chaos in the political system and the lack of a clear political commitment. We failed to create an effective public management system.

Resource Constraints in the Public Sector

From the literature, it appears that the financial resource capacity of a government has a significant impact on successful policy implementation (Edwards, 1980; McLaughlin, 1998). Policymakers are also acutely aware of the impact financial allocations have on implementation efforts. However, many developing countries struggle to support state policies and programmes with adequate financial resources, often leading to implementation failures. Similarly, a scarcity of financial resources in some Central Asian economies tends to cause delays or sometimes even the termination of programmes and policies. The insufficiency of budgetary resources is particularly evident in lower-income countries such

as the Kyrgyz Republic and Tajikistan, where governments heavily rely on financial aid and assistance from donor countries and international institutions.

The persistent shortage of financial resources allocated for policy provision was mentioned by many officials and experts in the region. According to one Kyrgyz respondent, KGZ2:

> Around 50–60% of the failures of reform programmes and initiatives are caused by a lack of the financial resources needed for their full-fledged implementation.

A Tajik expert, TJK3, went even further, stating:

> Financial resource scarcity not only hinders the government's ability to effectively implement policies, but also to develop sound policy proposals in the first place. Good proposals require in-depth research and analyses by way of inviting leading experts, scholars, and research institutions, organising various workshops, conferences, and training programmes, etc. These all inevitably require sufficient financial provisions that the government of Tajikistan often lacks.

In addition, foreign businesses operating in the Kyrgyz Republic and Tajikistan also associated the problem of policy implementation with the shortage of financial resources. As one foreign expatriate working in Tajikistan, TJK6, observed:

> We regularly witness policy initiatives being delayed, postponed, or suspended entirely. This is partly due to the shortage of necessary financial resources for the realisation of government projects. More often than not, a local decision-maker fails to forecast potential expenditures related to project realisation simply due to miscalculations and incoherent project proposals.

Poor Compliance and Adherence to Regulations

A well-functioning regulatory regime, to a significant degree, rests on the ability of law-enforcement and judicial bodies to ensure the universal application and observance of adopted regulations. However, in Central Asia, compliance with and adherence to adopted rules is largely distorted

due largely to the exceedingly biased justice system and unrestrained law enforcement system. The lack of an independent judiciary, a strong accusatorial bias and procedural unfairness, and the prohibitively powerful role of prosecutors represent the key defining features of the justice systems of Central Asia inherited from the Soviet system.

Often, discourse on the rule of law and justice tends to devote scant attention to the role of prosecutors in comparison to judges, defence attorneys, and court administrators (Schäfer, 2005). This stems from the fact that the prosecutor's role in Western societies is confined solely to the decision to prosecute and represent the prosecution in courts. However, in some societies, prosecutors play an instrumental role in ensuring the principle of equality before the law and before the court. The rule of law cannot be upheld, nor can human rights be protected, without effective prosecution services acting independently, with integrity and impartiality in the administration of justice (UNODC, 2014). This is especially true in the case of Central Asia, where prosecutors' offices enjoy unprecedented power to exercise the highest supervision over observing and applying laws at a national level by all institutions, irrespective of their form of ownership.

Prosecutorial dominance in the regional justice system is one of the adverse legacies that remain from the Soviet Union. The position of prosecutors within law enforcement agencies rather than the judiciary has been more ominous given the diminished status of judges and their dependent relationship on prosecutors (Solomon, 1987). Soviet prosecutors' key purpose was to secure the conviction of the accused, whilst judges, in turn, were expected to help prosecutors fight against crime on behalf of the state. Courts did not have sufficient legal authority to acquit individuals accused by prosecutors. The dominance of prosecutors was also determined by their supervisory power over the judiciary (Foglesong, 2017). Thus, judges were constrained from holding prosecutors to account by rejecting their accusations. The role of defence attorneys, however, was relegated even further than those of judges (Solomon, 2015). The only thing expected from defence attorneys was to cooperate with the prosecutor without challenging the charges and, instead, focus only on mitigating a plea (Huskey, 1986).

No fundamental shift has occurred regarding what is understood as the proper role of a prosecutor in the Central Asian countries following independence from the Soviet Union. Basic laws in all regional countries stipulate that the prosecutor's office, on behalf of the state, supervises

the strict and uniform observance and application of laws on a national level by both persons and entities irrespective of the form of ownership, including private enterprises. The prosecutor's office represents the interest of the state in court and protects the rights and freedoms of citizens and the legitimate interests of the private sector. In addition, the prosecutor's office coordinates the activities of all law enforcement and other state agencies in ensuring the rule of law and order in society.

Despite some legal reforms to enhance the status of judges and defence attorneys in specific countries in the region, the prosecutor's office still enjoys a dominant position, a position unknown anywhere else in the world (Solomon, 2015). Given the strong role of the state and that the prosecutor's office is a central state apparatus which ensures the rule of law and order, it has been key to deciding what is just and what is unjust in society (Galushko, 2018). According to the majority of my respondents, judges often take the prosecutor's side and find the accused guilty without a thorough examination of the evidence or facts. Thus, evidence provided by prosecutors is often deemed true and consistent, whilst testimony from defence attorneys is dismissed as untrustworthy.

Prosecutorial intervention in private business has been quite systematic in the region. Prosecutors routinely unlawfully inspect businesses and chase after successful entrepreneurs. Only Kazakhstan and the Kyrgyz Republic have recently formally discharged the prosecutor's office from the right to intervene in the affairs of private entities, to authorise and appoint inspections, and request information or documents on grounds not provided for by law. However, according to KAZ1:

> Despite legislative changes, the prosecutor's power to inspect private sector entities has not been entirely eliminated. In fact, it was just renamed. It can still initiate inspections of businesses, but now it does so under different pretexts. The prosecutor's office still retains the power to sanction inspections of businesses by other regulatory agencies.

Similarly, KAZ4 admitted:

> In Kazakhstan, prosecutors exert a considerable amount of influence on the judiciary's work. Although some judges try to ensure a balance between fulfilling the state's interests and protecting the rights of private entities, prosecutors still always have the final say. However, judges are still limited in their capacity to act entirely independently.

In the Kyrgyz Republic, according to KGZ8:

> The prosecutor's office can interfere in business affairs through multiple channels and under various pretexts. This is particularly obvious in the process of dispute resolution between the state and private sector entities, where persecutors quite often resolve the case in favour of the state, and judges, in turn, often collaborate with prosecutors.

Moreover, KGZ3 pointed out:

> The prosecutor's office remains one of the most influential state bodies. It can submit a protest against the decisions of courts, appeal to the Supreme Court on any inconsistency with the Constitution in laws and regulatory acts, submit proposals to the legislative bodies to amend, cancel, or adopt specific laws, initiate criminal cases against parliamentarians and judges, and issue statements on the wrongdoings of the president and charge them with a crime.

In Tajikistan, according to TJK4:

> Although prosecutors do not openly and directly intervene in judicial affairs, no one can deny judges' dependent relationship with prosecutors.

TJK1 also stressed that the following:

> There is a huge disparity between the accusing and the defending sides in court trials. Throughout my professional experience, I have never encountered a single case when the prosecutor issued a decision in defence of the person or legal entity against the state. Defence attorneys have never enjoyed the same level of authority as prosecutors.

Similarly, TJK3 argued as follows:

> The prosecutor's office does not react to obvious violations of the constitutional rights and interests of citizens and private enterprises. Instead of putting the fraudster behind bars, they harbour crimes. Investigations

> against corrupt officials are carried out formally, selectively, and again to the detriment of the interests of citizens.

Prosecutorial power is probably nowhere as omnipotent as it is in Uzbekistan. According to UZB2:

> Limiting the power of the prosecutor in Uzbekistan has been an impossible task. The prosecutor's office not only enjoys constitutional power as a central watchdog of law and order in the country, but also possesses the right of the legislative initiative in terms equal to the main power branches. Many lawyers, including me, opposed giving so much power to the prosecutor's office at the beginning of the '90s, believing that this would jeopardise the rule of law in society. However, the lack of political will from the highest authority to limit the power of such an important state apparatus that serves the interests of the central government rendered it possible for the prosecutor's office to continue its Soviet legacy of deciding the fate of justice in society.

Non-independent and Biased Judiciary

An independent and impartial judiciary is vital to the success of any rule-of-law endeavour. Since the collapse of the Soviet Union, the Central Asian countries have undertaken reforms in the justice system in an effort to transition from a state-controlled biased system into a democratic and impartial system. For instance, new constitutional frameworks, revised civil and criminal procedure codes, local versions of *habeas corpus* (judicial review of arrests), consolidated laws on the status and work of the judiciary and advocacy, and the ratification of the most important justice-related international conventions, treaties, and protocols amongst others—this list is by no means complete—all reflect progress thus far (Golovko, 2011). Some global measurements of the quality of the justice system also indicate that judicial work in the region has noticeably improved. According to the 'quality of judicial processes' index of the World Bank Group (2020), the countries in the region have enacted a series of reforms, implementing some good practices to promote an effective and efficient court system to deal with business disputes. According to the World Justice Project's 'quality of the civil justice' indicator for 2020, which measures whether the judiciary is free from discrimination, corruption, unreasonable interruptions, and improper outside influences, the region has made some level of progress.

However, based on observations from field research, existing studies appear to have overlooked many fundamental deficiencies of and obstacles to achieving justice on the ground. Specifically, countries in the region have not yet established a completely independent, impartial, and effective judiciary, and the majority of judicial reforms and initiatives remain on paper alone. Thus, citizens and businesses in the region face persistent problems in resolving their grievances in courts. Discrimination, biases, corruption, and frequent interference from senior public officials and other law enforcement structures undermine the judiciary's work and often impede justice. Judicial reforms and global-standard institutional arrangements could be characterised as either a way to respond to pressures from the international community or merely local political leaders showing off to legitimise their remaining in power rather than a product of real internal institutional normalisation (Golovko, 2011).

Many local experts in the region considered the judiciary the weakest branch of the power triangle, and completely dependent on the executive branch of government. Indeed, when the system of checks and balances is ruined, and the executive branch exerts unconstrained power over judicial authority, no prospect exists for justice and the rule of law (Lemke, 2018). In addition, in all Central Asian countries, the new generation of judges is still committed to the old rules, placing state interests' first and collaborating with prosecutors. As Trochev (2017, p. 50) rightly observed, 'even as a new generation of judges and prosecutors that never worked in the Soviet-era enter the scene, old habits of mutual agreements and cover-ups among them persist.'

According to KAZ2, courts simply function as an extension of the executive branch. Unfortunately, he said:

> The Soviet-era corrupt practice of 'a telephone law' is still deeply embedded in the mentality of our judges.

Here, he defined 'telephone law' as an unlawful abuse of power, whereby senior government officials give subordinates informal orders on how to decide cases. A 'telephone law' is, indeed, a widespread mechanism via which many hierarchical communications are sorted out in Central Asia.

UZB4 also contended:

> The judiciary has always been under the influence of the executive branch and other law enforcement agencies. For instance, any middle-ranking

> officer in the prosecutor's office could simply ask judges to come to his office and provide an explanation on a particular court decision if that decision does not comply with the prosecutor's investigative results and accusations.

Similarly, TJK9 noted:

> A vast majority of court decisions are predetermined—made by government officials or prosecutors in their offices rather than by judges in court hearings. Judges rarely care about the rights, freedoms, and interests of the citizens or private entities. They are primarily concerned with what their 'bosses' in the state hierarchy expect them to do.

Furthermore, KGZ6 argued:

> The private sector of the Kyrgyz Republic has not benefited from any judicial sector reforms. We have not established fully independent and impartial courts—they still remain dependent on the government. Unfortunately, without exaggeration, over 90% of disputes between government bodies and private sector entities end up in favour of the former. If the judiciary were truly independent and transparent, we would not lose so many court cases against government agencies. For the success of entrepreneurship and businesses, we must abolish the system of 'puppet courts'. Most of the clashes between businesses and law enforcement and regulatory agencies occur due to discriminatory and biased court decisions.

Thus, judges continue to follow the Soviet justice legacy of nearly universal approval of the pre-trial detention of the accused and avoiding acquittals, often due to pressure from state prosecutors. Notably, acquittals remain extremely rare in the Central Asian region. According to a rough estimate based on conversations with local experts, I surmise that only about 3–4% of all court cases in the region result in acquittals. Only in Kazakhstan, following the introduction of trials by mixed juries (ten lay judges and one professional judge), has the proportion of acquittals in the past decade gradually increased.

Another reason for the low rate of acquittals relates to career promotions amongst judges, which to a large extent depend on the number of reversals. Similar to the Soviet era, judges are still expected to achieve

low rates of decision reversals and attempt to avoid acquittals. This structure of incentives based on quantitative indicators remains the key tool for assessing the performance of judges in the majority of the post-Soviet republics, including in Central Asia (Foglesong, 2017). Whilst measuring the performance of judges, judicial disciplinary committees primarily focus on the rate of acquittals; the highest scores are given to judges with the lowest number of acquittals. Some local judges argued that this Soviet method of assessing performance is, in fact, counterproductive. According to KGZ5:

> It is not acceptable when the disciplinary committee sanctions or dispels judges from their positions based on the rate of acquittals. The committee implicitly relates acquittals to corruption. For instance, if a judge has a high acquittal rate, they are suspected of being involved in corrupt activities. This is simply not true!

Almost all of the individuals I interviewed mentioned corruption as the primary impediment to justice. For example, TJK3 argued:

> Corruption in the judicial sector is endemic. The majority of the court decisions are predetermined; court hearings are held for the sake of mere formality. While the fate of disputes between state agencies and private entities is obvious, cases between private sector entities are often resolved in favour of the party that offers a bribe or has a connection to senior management in the government.

According to KGZ1, corruption in the judicial sector begins during the nomination and appointment stage of judges, which is often opaque, arbitrary, and corrupt. He argued:

> It is utter nonsense to expect fair decisions from judges who have acquired their posts through corrupt means.

Commenting on corruption within the judiciary, KGZ4 also admitted that the judiciary is not free from corruption. However, as she stressed:

> I can confidently say that the scale of corruption within the judicial system is by no means more than that in the executive and legislative branches.

Nothing is more important than the judiciary in maintaining the rule of law and order within society. The courts are the last, highest instance of justice. Unfortunately, the courts in Central Asia have not been able to deliver true justice on the ground. This is likely the primary cause of deficiencies in the entire legal system in the region. As UZB4 stated:

> If the courts had been free and impartial, we would have resolved many issues: police officers would never initiate unlawful cases, mayors would never issue discriminatory and arbitrary decisions, tax offices would not conduct illegal inspections, customs would refrain from breaching fundamental principles of trade, and so forth.

Conclusions

This research has assessed if the regulatory policy in post-Soviet Central Asian countries has thus far been able to create an ecosystem capable of enhancing resilience through effective regulatory implementation. In doing so, I suggest that, although regional governments have already put in place many regulatory initiatives, institutions, and tools and taken important steps towards improving economic regulations, there are various underlying factors that have impeded resiliency via effective regulatory systems.

The importance of institutional variables for economic development is well-established in the literature. A voluminous literature has documented the significance of institutional resilience in cross-country differences in regulatory policymaking, with a strong correlation between the quality of regulations and economic performance. This study investigated this nexus in the transition economies of Central Asia since their independence from the Soviet Union in the early 1990s.

Contrary to expectations from mainstream economics and largely ignoring the recommendations of international development organisations, Central Asia has achieved remarkable economic growth rates since the dissolution of the USSR. Such economic achievements have been possible under non-democratic political and quasi-liberal economic settings. Stark and Ahrens (2012) described the unique feature of the regional political economy as ‘market-developing autocracies’. Whilst regional economies have greatly benefitted from the export of natural

resources, many believe that the Central Asian governments have pursued distinct country-specific reform policies and built-up necessary institutional structures that have contributed to bringing about not only political stability, but also economic and social progress (Pomfret, 2010, 2012; Stark & Ahrens, 2012).

Acknowledgements I would like to acknowledge support from the Global Challenges Research Fund of the UK government (GCRF COMPASS).

Funding The author received some financial support from the Global Challenges Research Fund of the UK government (GCRF COMPASS) for this research.

Declarations

Ethics Approval All procedures in this research involving human participants were conducted in accordance with the ethical standards of the institutional research committee and with the 1964 Helsinki Declaration and its later amendments or comparable ethical standards.

Informed Consent Informed consent was obtained from all individual participants included in this study. All participants provided their written informed consent. The institution's ethics committee also granted permission to conduct this research.

Competing Interests The author declares no competing interests.

Data Availability Data can be shared upon appropriate and reasonable request.

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CHAPTER 7

Understanding the Legal Culture in Uzbekistan Through an Analysis of Business Disputes in Economic Courts

Evgeniy Kolenko, Muzaffar Dostqoriev, and Nasimbek Azizov

Introduction

Policies to improve the legal culture and legal consciousness of people as well as developing their participation in legal reforms in Uzbekistan have become quite important in recent years. Many studies have addressed the legal consciousness of citizens and presented their theoretical conclusions. In particular, Susan Silbey (2008), Lawrence Meir Friedman (1994),

E. Kolenko (✉) · M. Dostqoriev · N. Azizov
Law Enforcement Academy of the Republic of Uzbekistan, Tashken, Uzbekistan
e-mail: e.kolenko@proacademy.uz

M. Dostqoriev
e-mail: muzaffar79htc@inbox.ru

N. Azizov
e-mail: nasimbekazizov7@gmail.com

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*, International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_7

Fernanda Pirie (2013), and others have examined the sociological aspects of legal consciousness and legal culture, as well as the impact of law on relations in society. However, scant research exists on examining legal consciousness and the legal culture in Central Asia or assessing their importance in society and their influence on the rule of law.

An analysis of the legal culture is particularly important for studying the essence, content, and interrelation of law and society in the field of legal education and research in Uzbekistan. The importance of the legal culture is especially visible in the field of economic law. In this field, it is imperative not only to analyse legal norms, but also to conduct sociological research on how the law operates in society and to obtain information regarding resolving disputes between entrepreneurs and their impact on the business environment. This requires a study of economic court decisions and examining the views of legal practitioners and business representatives involved in court cases. The successful development of businesses depends on their legal protection. At the same time, the emergence of disputes between entrepreneurs and their resolution are closely tied to the legal culture. The state of the legal environment and the level of the legal culture alongside other factors directly affect and determine the degree of protection of a business and its interests.

Estimates suggest that more than one million different economic contracts are concluded in Uzbekistan each year. With such a high volume of economic activity, it is important that business disputes are resolved as rapidly as possible. According to data provided by the Statistics Agency of Uzbekistan (UZSTAT), as of May 2022, the number of registered business entities stood at 517,501 with 484,935 of them operating at that time (UZSTAT, 2022). Today, we see that most economic disputes between entrepreneurs arise from contracts concluded between them, creating a strong likelihood for conflicts. In Uzbekistan, the range of mechanisms regulating such conflicts has expanded substantially in recent years. Indicatively, measures have been taken to develop the dispute resolution methods widely used in other countries: pre-trial (claim) settlement procedures and the judicial settlement of disputes through negotiations (mediation) and amicable (settlement) agreements, as well as alternative means of resolving conflicts through arbitration.

The fulfilment or non-fulfilment of contractual obligations by entrepreneurs is closely connected to the legal culture. A contract is clearly not a normative legal document. Yet, a contract creates obligations for the parties that have concluded it, whereby a failure to fulfil these obligations

carries legal consequences. Therefore, it is correct to say that a contract is an act of applying the law. The legal culture is the level of legal knowledge and awareness of current laws, a conscious attitude toward the law, respect for the law, and compliance with it. Many developed countries, such as the USA and Japan, use alternative dispute resolution (ADR) methods as a conflict resolution tool. In Uzbekistan, business disputes are primarily resolved by the courts. Conflicts can arise between business owners due to various misunderstandings. Moreover, it is not always possible to settle disputes peacefully. The parties have several alternative options to solve problems, which may include an appeal to the court or to a third party, based on all available information and would help parties reach an agreement. So-called 'resolutions', 'settlements', or 'terminations' are frequently not the end of the story in a particular dispute or case, especially in a situation of continuing relationships (Twining, 1993, p. 392).

In each of these processes, distinctive patterns of the legal culture play a substantial role in shaping the efficacy of new dispute settlement policies. Given that more than one million economic agreements are concluded in Uzbekistan annually, the analysis of legal relations in the field of business disputes and entrepreneurship activities may produce nuanced insights into the legal culture and legal consciousness in Uzbekistan. Given the prevalence of informal law in Uzbekistan, parties may be inclined to resolve their disputes through informal, extra-legal means. However, given that Uzbekistan launched legal reforms in 2018 with a particular emphasis on increasing access to the courts, citizens might be more inclined to resolve their disputes through formal legal channels. In this regard, analysing business disputes allows us to shed light on the legal consciousness (legal culture) of different members of society, such as legal practitioners, entrepreneurs, and ordinary citizens. Thus, the analysis of business disputes allows us to understand the role of law in everyday life, showing, specifically how the legal consciousness of people and the legal culture can impact social life and the formation of a rule-of-law culture in Uzbekistan.

Based on these considerations, this chapter provides a socio-legal investigation of the legal consciousness (legal culture) of legal practitioners, entrepreneurs, and ordinary citizens in Uzbekistan by analysing economic disputes amongst business actors. More specifically, in exploring these processes, we emphasise various adjudication levels: pre-trial (claim) settlement procedures and the judicial settlement of disputes through

negotiations (mediation) and amicable (settlement) agreements, as well as alternative means of resolving conflicts through arbitration. In undertaking this task, we analyse issues related to using the ADR process in commercial contracts, focusing on mediation and pre-trial (claim) settlement procedures. We explore the following questions in our study:

- How have the legal consciousness of citizens and the legal culture in Uzbekistan developed in recent years, as demonstrated by changing attitudes and practices concerning economic dispute settlement?
- To what degree are entrepreneurs aware of how to resolve a dispute before a court, through an economic court, or through an arbitration court which is not a state court? What does this tell us about the legal consciousness of entrepreneurs in Uzbekistan?
- To what extent is the increase in the number of entrepreneurs' claims for the non-fulfilment of contractual obligations by regions related to the level of the legal culture of entrepreneurs? Is this a positive or negative indicator?
- How do new legal mechanisms affect the process of considering entrepreneurs' appeals to economic courts and their appeals? What does this tell us regarding how the government considers the importance of raising awareness of the legal culture of citizens, and what kinds of measures have been taken in this field?
- What is the importance of involving ordinary citizens in the process of lawmaking, and how may it influence the sociopolitical life of the country?

Methodology

This study primarily relies on an analytical legal method. It originates from the dogmatic method (Kleineman, 2018), which seeks to establish 'current law'. The analytical method, however, develops the concept further by systematising relevant legal sources and studying them in light of accompanying argumentation. In this case, sources on the legal consciousness and the legal culture are applied through a discussion of the behaviour of state institutions and ordinary people, focusing on how they could be improved. We analyse the latter factors using questionnaires, conducting official and unofficial interviews, and in meetings. Select economic court decisions are also used as case studies. In addition

to the analysis of select court cases, we also rely on survey data collected by the second author, which aimed to study the views of legal professionals—namely, judges and prosecutors—on the nature of economic court cases and the legal culture of entrepreneurs. We surveyed 137 respondents, amongst whom 84 were judges from economic courts and 22 were employees of the prosecutor's office. A more detailed overview of the survey results appear in the sections below.

Socio-Legal Approaches to the Legal Culture and Legal Consciousness

Every person has a 'legal culture', just as every person has a general culture and a social culture; every person has individual, unique traits as distinctive as their own fingerprints, but each person is at the same time part of a collective, a group, a social entity, and shares in the ideas and habits of that group (Friedman, 1994).

Legal culture stands between the law and culture, with unclear borders in both directions. According to a widespread understanding, the legal culture represents the cultural background of the law, which both creates the law and is necessary to give meaning to the law (Michaels, 2012). The legal culture often merely describes an extended understanding of the law and is, thus, synonymous with 'living law' (Ehrlich, 1912) or 'law-in-action' (Pound, 1910). Legal sociologists in particular understand legal culture as the values, ideas, and attitudes that society has with respect to its law (Friedman, 1994). Moreover, the term 'legal culture' is closely connected with legal consciousness. Legal consciousness is a collection of understood and/or imagined ideas, views, feelings, and traditions embedded in a society, reflecting a legal culture amongst individuals, a group, or a given society at large. The legal consciousness evaluates the existing law and also considers an image of the desired or ideal law (Brisman, 2010). Consciousness is not an individual trait nor solely ideational; legal consciousness is a type of social practice reflecting and forming social structures (Silbey, 2008).

A legal culture can be described as the general level of legal knowledge of a society, society's objective attitude toward laws, or an aggregate of legal knowledge. Forms of legal culture are also different, including society's legal culture, a group's legal culture, and an individual's legal culture. Legal consciousness, as a form of social consciousness, is a factor associated with improving and developing law. Legal consciousness arises

under the influence of people's perceptions, feelings, and practical experiences of the law and legislation and expresses their attitudes toward the law (Brisman, 2010). Low levels of legal culture may lead to the proliferation of legal nihilism within a society; the formation and persistence of 'separate' (street) rules and informal norms in communities beyond official laws; high levels of crime and corruption; a lack of understanding in communications between individuals and a government; and high levels of victimisation due to a low level of legal knowledge. Legal awareness, the legal culture, and legal activism practiced by citizens ensure the rule of law. The rule of law is a key feature of a democratic political system, and raising the level of legal awareness and the legal culture of citizens represent the most important factors for a state.

Legal Culture and Consciousness in Uzbekistan

Examining recent history, we know that, in the early 1990s, the collapse of the USSR meant that almost all former Soviet republics suffered a period of so-called 'difficult transition'. This was a period when Soviet laws remained in force, but new legislation had not yet been drafted or enacted. According to World Bank (2002) statistics (see Fig. 7.1), in the 1990s (after the collapse of the Soviet Union), all post-Soviet countries, including Uzbekistan, experienced exceptionally high rates of crime.

Often, ordinary people were encouraged to breach the law, a legal culture visible in the use of folk expressions such as, 'Do not have a hundred roubles, have a hundred friends' and 'Normal heroes always take the roundabout way' (cf. Humphrey, 2002, 2012). On the one hand, this phenomenon was caused by the collapse of the Soviet system, which had long been recognised as strong and indivisible. There was a widespread perception in Uzbekistan and other post-Soviet societies that all values—including law and order—associated with the Soviet system had to be eliminated. On the other hand, there was no perception of the form any new model of statehood ought to take and how it should survive given the difficult economic climate of the time (Kandiyoti, 2007). Furthermore, the economic downturn that prevailed at that time manifested in several economic consequences, such as the low living standards of the population, as well as the significant decrease in the salaries of citizens working in the public sector (Ilkhamov, 2001). Monetary devaluation and a decline in purchasing power also affected the situation. As a result, legal nihilism intensified through the behaviour of citizens living in the former

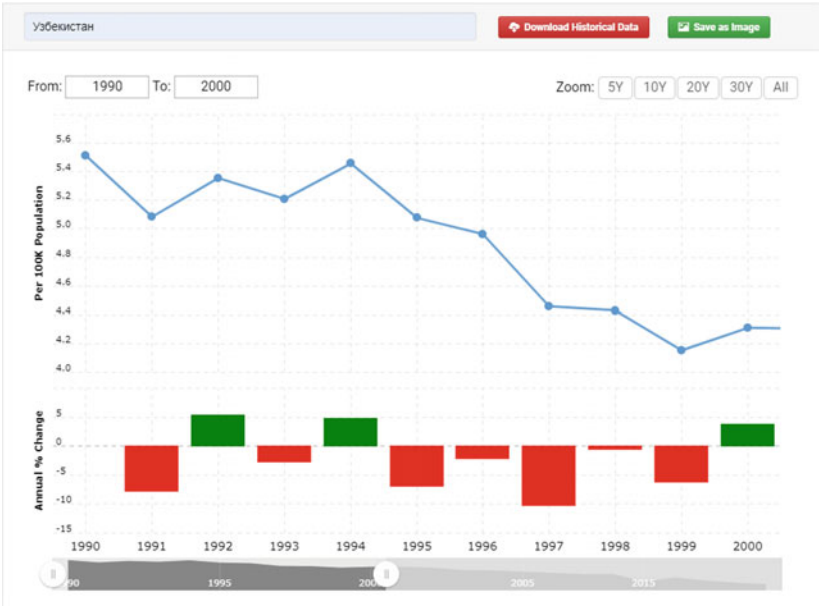

Fig. 7.1 Dynamic crime statistics in Uzbekistan, 1990–2000 (Macrotrends, 2023)

Soviet republics (Hendley, 2012). Crimes such as theft, hooliganism, assault, and other misdemeanours became frequent amongst unemployed, homeless, or economically disadvantaged citizens (Humphrey, 1999), and the frequency of large-scale offences began to increase significantly. Those who committed such violations were often recognised as 'respected people' in society (Volkov, 2002). As a result, the number of serious crimes such as kidnapping, racketeering, and robbery increased in these countries. Furthermore, victims were commonly forced to seek help from so-called '*avtoritets*' ('thieves in law'). These included people with great power and respect in society based on 'street' norms, which included criminal businessmen leading illegal businesses and leaders of the underworld, or, individuals in prisons, representing the highest level in the informal hierarchy of prisoners (Volkov, 2000).

These conditions had an exceptionally negative impact on the image of the state, creating conditions for legal disorder and contributing to

economic and political collapse (Humphrey, 1999, 2002). Accordingly, governments in post-Soviet states made it a priority to take various measures to ensure the rule of law. Compared with other post-Soviet countries, Uzbekistan demonstrated an understanding of the importance of establishing law and order in society, and the government-initiated reforms to build a state with a strong legal system and law enforcement institutions immediately following independence. During this process, legal acts were initially adopted, which could serve as the basis of legal reforms, and, subsequently, work to improve the level of legal culture continued and remained a matter of ongoing importance. As part of this larger and longer process, in the last five years, the Uzbek government has introduced significant measures to expand legal awareness and the legal culture of the population. This became a priority in national legal policy, a fact reflected in numerous legal reforms and mechanisms to promote the rule of law.

In recent years, several laws and decrees regulating this sphere have been adopted. In particular, 9 January 2019 witnessed the adoption of the Presidential Decree of the Republic of Uzbekistan 'On the Significant Improvement of the System of Radical Improvement of the System of Raising Legal Awareness and Legal Culture in Society'. This decree states that raising legal awareness and the legal culture in society are the most important conditions for ensuring and strengthening the rule of law. The decree notes that the lack of legal knowledge amongst the population leads to abuses to the rights of citizens. Therefore, according to this document, the following objectives were outlined:

- The formation of a system that informs ordinary citizens of the content and essence of ongoing socioeconomic reforms in the country, as well as new legislation and state programmes;
- The declaration of the concept of 'deciding the spirit of respect for the law in the society—the key tool in building a democratic state';
- Raising legal awareness and the legal culture in society by first paying attention to the systematic and integral conduct of legal education;
- Inculcating the legal consciousness and legal culture in all segments of the population, beginning from preschool education;
- Inculcating in the minds of the younger generation the concepts of law and duty, honesty and purity, as well as moral norms to teach them important aspects of the Constitution from early childhood;

- The organisation of legal and educational events for the formation of the legal culture amongst the population in accordance with the historical, religious, and national values of the Uzbek people;
- Strengthening the sense of belonging and patriotism by forming in every citizen a sense of pride in state symbols;
- Raising the legal awareness and legal culture of civil servants, and establishing an intolerance to corruption and other offences;
- Strengthening cooperation between public authorities and administration, including law enforcement agencies and civil society institutions, in the implementation of targeted legal advocacy;
- Establishing on a systematic basis the broad and effective use of the principles of social partnership in the organisation of activities to improve legal awareness and the legal culture in society;
- Increasing the role of the media in providing legal information and the widespread use of innovative methods of legal advocacy, including the expansion of the use of web-based technologies;
- Improving legal education, as well as developing a system of training, retraining, and advanced training for legal personnel; and
- The in-depth study of the scientific basis for raising legal awareness and legal culture in society.

The need to improve the legal culture in society is a defining feature of this decree, and lists the measures aimed at improving the legal culture of the population.

The Current Status of Legal Literacy in Uzbekistan

This section analyses those factors that play an important role in shaping the legal consciousness and legal culture of citizens. In recent years, information technology has rapidly penetrated almost all spheres of public and government action in Uzbekistan, with the use of new technologies creating new complexities (e.g., a mobile phone is used not only to communicate but also to take photos and videos, serve as a computer, scanner, flashlight, metre, and perform other functions). The convenience of these technologies for ordinary people, increases in the number of purchases of equipment (falling prices, rising wages, etc.), and other factors have made mobile phones (smartphones) an integral part of

people's daily lives. In urban settings specifically, people actively use mobile phones in their daily lives almost every day and everywhere (at home, at work, in transport, in restaurants, and in leisure facilities). This situation is becoming transboundary—that is, similar situations can be observed in almost any country.

As a result of this, people are more likely to use mobile phones, for example, to meet on social networks, communicate with friends, acquire up-to-date information, watch videos, play games, make payments through mobile applications, and participate in training sessions (including through the Zoom platform). It should be noted that citizens tend to obtain information through social networks on their mobile phones rather than using television or radio to read the news, or by reading traditional print newspapers and magazines. This is basically done in three ways: through networks (channels on the social media site Telegram) officially established by state bodies and institutions, through informal Telegram channels, and through channels for legal information.

Currently, one outcome of this is that the demand for legal information amongst the population is growing. This may be explained through the following. First, certain categories of the population find it convenient and inexpensive to obtain legal information through informal sources, including via social networks (free legal aid provided by government agencies is not sufficiently available, and not everyone has equal access to legal services). Second, certain groups of people, such as car drivers, have obtained a certain level of legal knowledge through social media. Drivers, as users of roads, are not fully acquainted with the general traffic rules, but they know they have certain rights, such as not being obliged to provide documents to a traffic police officer who is serving without a body camera. Drivers learn from social media that traffic police officers who demand documents are required to show drivers the 'dislocation map' (the document arranging the route of their service, which must be shown to drivers upon demand). Drivers have also learned that they are allowed to present documents to police officers without leaving their vehicle. In such ways, citizens have developed and learnt to use their own 'knowledge' in certain situations. In cases where such knowledge leads to a positive outcome, they derive a kind of 'satisfaction' from doing so. Third, it is increasingly recognised that the 'effective application of the law' is an expedient way of resolving disputes, such that formal law supplants 'street laws', 'acquaintanceship', or 'hard power' as a medium of dispute settlement. For example, citizens who come to a government agency to use a

specific service requiring state servants to comply with the rules set out in the law, including norms of ethical conduct (for example, to introduce themselves, to be polite, not to make them wait for long periods of time, to provide relevant information, to explain how to complain, etc.). This shows that the legal literacy of citizens who do not have legal knowledge at a professional level is increasing, and that the need for legal knowledge continues to grow.

In addition, the legal culture and legal consciousness are affected by measures to increase the participation of ordinary people in lawmaking processes. In fact, citizens may submit draft laws or proposals for the adoption of a new law, amendments, or additions to the law. Citizens may also petition to declare an existing law or a part of it invalid. Draft laws or proposals submitted by state bodies, nongovernmental organisations, or citizens who do not have a right granted by a legislative initiative may be accepted by on the basis of draft laws developed by specific groups. Currently in Uzbekistan, according to the newly adopted Constitution, once 100,000 citizens of the Republic of Uzbekistan with the right to vote have signed a petition, in the form of a legislative initiative, they can then submit proposals to the Legislative Chamber of the *Oliy Majlis* (Parliament) of the Republic of Uzbekistan.

The subject of a right in a legislative initiative has the right to organise a study of public opinion, including, if required, participation from representatives of civil society institutions and research institutions, prior to submitting the law to the Legislative Chamber. This represents a great opportunity for citizens to participate directly in the development of the law. As a part of efforts aimed at the democratisation of public administration and the further development of civil society in the Republic of Uzbekistan, a system of 'e-government' is being established. A single state portal of interactive services[1] was launched on 1 July 2013, in order to provide the population with access to interactive public services. At the same time, a portal for the discussion of regulatory legal acts[2] was developed, the purpose of which is to (1) identify possible (existing) positive and negative consequences of the adoption of a normative legal act by analysing the problem, the purpose of its regulation, and the existing solution; (2) to identify norms and rules in the draft normative legal act and

[1] See www.my.gov.uz, retrieved 15 March 2022.

[2] See https://regulation.gov.uz/oz, retrieved 15 March 2022.

the adopted normative legal act that create the conditions for corruption and other offences in the system of public authorities, impose or create the conditions for the introduction of excessive administrative and other restrictions for business entities; and (3) to identify norms and rules that lead to unreasonable costs to business entities. The portal contains draft laws and regulations related to business activities developed by government agencies, and all registered users have the opportunity to submit proposals on these documents. The proposals are reviewed and accepted by the state body that posted the draft law and the adopted regulations, or a justified refusal is issued. Users can not only submit their proposals item by item on the posted normative legal acts, but also fill out a special questionnaire with their comments on these documents.[3] Individuals and legal entities can also exercise their political rights by submitting proposals to government agencies. For this purpose, there are several virtual reception portals in the country. The most popular portal allows citizens to submit their applications, complaints, and suggestions directly to the President.[4]

Current Status of Economic Dispute Settlement: Mediation, Alternative Dispute Resolution, and Court Procedures

Attempts have aimed to popularise alternative dispute resolution (ADR) amongst entrepreneurs in order to ensure the smooth functioning of markets and businesses. The main prerequisites for the use of ADR are the following three conditions: (1) the parties to the conflict should have the desire to preserve the existing relationship between them, and they should be willing to resolve disputes through negotiations; (2) the parties should be prepared to resolve the conflicts via informal means; and (3) the parties should wish to resolve the conflict expeditiously. Until 2019, the only way to reduce the number of cases considered by the economic court was to seek a pre-trial settlement of disputes—that is, claims proceedings, which is normal for Uzbek law. (In 2023, amendments were made to the Economic Procedural Code regarding mediation.) Recent amendments to the law affect various aspects of legal activities, including the organisation and working conditions of the courts. These amendments are

[3] See http://old.regulation.gov.uz/uz/pages/about, retrieved 10 March 2023.

[4] See https://pm.gov.uz/uz, retrieved 15 March 2023.

designed to ensure the accelerated implementation of the requirements stipulated in the indicators of the World Bank's annual *Doing Business* report (World Bank, 2020). In the *Doing Business* report (2020), it was stated that one of the highlights of Uzbekistan's reforms is ensuring an easier contract enforcement process by introducing a consolidated law on voluntary mediation, establishing financial incentives for the parties to attempt mediation, and publishing performance measurement reports on local commercial courts.

Most of the contracts concluded by business entities today stipulate that, when a dispute arises, the parties must resolve the dispute amicably through negotiations; if the dispute is not resolved through this method, they must go to court. In most cases, the settlement of disputes through negotiations (amicable resolution) is specified in the contracts as a separate item, article, or chapter. If the parties fail to reach an agreement during such negotiations, the disputes shall be settled in court. If the contract provides for the peaceful settlement of disputes between the parties, but does not specify the procedure for resolving the dispute, then the procedure for resolving the dispute through a pre-trial (claim) settlement procedure is not mandatory. According to the general theory, the use of ADR methods cannot be an obstacle to bringing a dispute to court. The mandatory provision of the mediation procedure may violate the disputants' right to access justice, but the mediation procedure should not become a barrier to litigation (Karaketov, 2014).

The use of the pre-trial (claim) settlement procedure to resolve a dispute aims at a prompt resolution to a dispute, and serves as an additional guarantee of the protection of rights. This is the preeminent mode of dispute resolution in Uzbekistan. The pre-trial (claim) settlement procedure of disputes works through the exchange of letters (a claim and a response to a claim) stating the views and proposals of the parties to resolve the dispute. The business entity that claims that its rights and legitimate interests have been violated shall have the right to lodge a claim against the business entity that violated these rights and interests. This claim is made, as per the law or regulation, in writing and includes the following: the name of the business entity making the claim and the business entity subject to the claim; the filing date and claim number; the circumstances forming the basis of the claim; evidence confirming the circumstances of the claim; the applicant's requirements; the amount of the claim and its calculation, payment, and the postal details of the applicant; and the list of documents attached to the claim. The business entity

receiving a claim must reply to it within 15 days from the date of receipt of the claim.

In cases involving a full or partial recognition of the claim, the claimant has the right, within 20 days upon receipt of the response, to submit to the bank an order to write off the amount recognised by the debtor. The debtor's response shall be attached to the order. A party may file a court claim and an application for a court ruling to be issued to the economic court in cases of a refusal (partial refusal) or a failure to receive a response to the claim within the prescribed period from the other party. According to the Economic Procedural Code, if the law establishes a pre-trial (claim) settlement procedure for a certain category of disputes or if it is requested by a contract, the case may be initiated in court only after the parties have taken measures to voluntarily settle their dispute. But, in the law, 'On the Contracting and Legal Basis of the Activity of Business Entities', it is defined as a right. This law also states that business contracts shall be checked for compliance with the law by the legal service of business entities or by the lawyers involved in the preparation Process. The conclusion of contracts without their approval is not permitted.

The outcomes of these processes for legal consciousness are visible in the following data.

According to statistical information provided by the Supreme Court of the Republic of Uzbekistan on economic cases heard in courts for the first time in 2022, a total of 175,443 such cases were resolved by the courts in 2021, growing to 277,862 in 2022; this shows that the number of appeals to the court is increasing.[5] However, 156,873 of these cases (56.5%) were related to the suspension of operations of the bank accounts of entrepreneurs. The primary reason for the increase in the number of cases related to the suspension of operations of bank accounts stems from entrepreneurs not submitting timely reports to the tax authorities. This suggests that improving the tax culture of entrepreneurs is an urgent issue.

Court cases related to the suspension of bank account operations are published on the Supreme Courts website (e.g., No. 4-1701-2301/6303, 4-1505-2301/1364, and others).[6] If we examine the content of most of the court decisions on this issue, we find the following sentences:

[5] See https://stat.sud.uz/iib.html, retrieved 31 August 2023.

[6] See www.public.sud.uz, retrieved 31 August 2023.

> Although the defendant was notified about the court session electronically in their personal cabinet, they did not participate in the court session and did not express an objection. In the case files, there is electronic information confirming that the defendant received the information from the court about the exact time and place of the court hearing.

Legislation allows for the resolution of the dispute if the respondent has been notified of the time and place of the court session, but does not show up. It would be interesting to know why a defendant did not participate in the court session in some cases. In our research, we assumed that the reason was related to the fact that the respondents did not always monitor their electronic cabinets (i.e., work email accounts), which are normally used for communication with state institutions. Ideally, efforts would focus on increasing the Internet literacy of state institutions and their employees.

Most of the cases considered in economic courts—that is, 68,575—were resolved in the inter-district economic court of Tashkent, the capital of Uzbekistan. This illustrates the high skill of resolving disputes through the economic court amongst entrepreneurs in the capital. We see that 88.2% of these cases were resolved in favour of the plaintiff. We also identified 8770 cases in 2022 in the Khorezm region, one of the remotest regions of Uzbekistan. We can assume that the number of economic disputes in a specific area is specifically related to the number of entrepreneurs.

To provide evidence of the efficiency of these measures, the third author conducted a survey in 2022 on these processes, in which 137 respondents took part. Amongst respondents, 84 (61.3%) were judges and 22 (16.1%) were employees of the prosecutor's office. The respondents were asked to what extent the increase in the number of lawsuits by entrepreneurs in the regions related to the level of the legal culture amongst entrepreneurs and whether this was a positive or negative indicator. According to the survey results, 38% of respondents classified this situation as a negative indicator, and 62% rated it as a positive indicator, demonstrating that entrepreneurs' knowledge of laws is increasing and they are more inclined to use formal legal channels to resolve disputes.

Disputes should be made available on the website where court decisions are published (that is, the Supreme Court's website), including the name of any business entity with their consent. This allows parties wishing to sign a contract to obtain information about their future partner based

on previous contractual disputes. When I talked with entrepreneurs, they told me how to evaluate the counterparty before signing a contract. In the first instance, they described how it is possible to obtain information through open sources[7] about the founder and director of any registered organisation and other related organisations. Some entrepreneurs emphasised that they get information about this from the counterparty itself or from UZSTAT.[8] Another website via which to obtain information is considered an official government channel.[9] Many entrepreneurs are also interested in the question of whether there was a dispute in court with the organisation with which they want to conclude a contract. There is a solution for this as well, whereby several technical options have been created, which require some knowledge of laws, internet literacy, and professionalism. For example, to determine whether a company or organisation with which they want to conclude a contract had a court dispute, an entrepreneur needs to know the taxpayer identification number (TIN) or legal name of their future contractual partner. If an entrepreneur knows the official name of the organisation, they can find the TIN via orginfo.uz website. Then, if the TIN is entered on the Supreme Courts website (see Fig. 7.2), it is possible to view the court cases related to that organisation. For example, we can enter any random TIN (such as 310038xxx) on this site, and a court case number beginning with 4-1901-2302/2695 will come up. The case number displayed on the screen can be found in the economic court's section of the report page with the decision of the court related to this organisation.

These technical tools allow entrepreneurs to search for legal proceedings and court decisions involving a counterparty. In addition, the entrepreneur can obtain information about the tax and other debts of a future contractual partner via other portals.[10]

Our analysis of economic court cases shows that, in some cases, court practices revealed that entrepreneurs did not know the law or violated the law even if they knew it. In particular, buildings belonging to the state were used without concluding a tripartite lease agreement, meaning

[7] See, for instance, orginfo.uz, retrieved 15 July 2023.

[8] See https://registr.stat.uz/, retrieved 10 June 2023.

[9] See https://my.gov.uz/ru/info-by-tin/passport, retrieved 12 May 2023.

[10] See https://mib.uz and https://my.soliq.uz/nds/home?lang=ru, retrieved 15 July 2023.

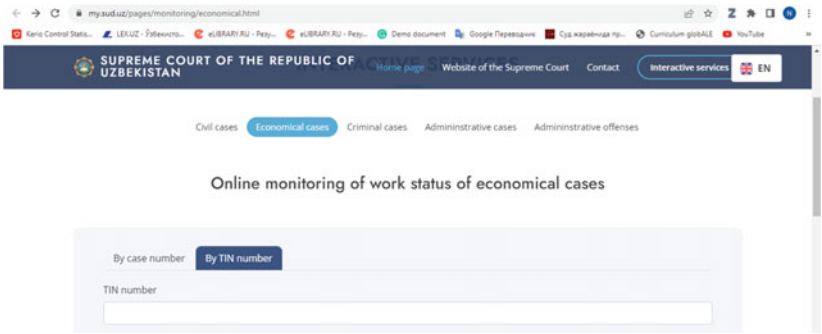

Fig. 7.2 The current status and online monitoring of ongoing court cases published on the website of the Supreme Court of the Republic of Uzbekistan (*Source* https://my.sud.uz/pages/monitoring/economical.html)

that the state budget did not receive the rental payments. For example, in economic court case No. 4-2001-2104/3692, as a claimant, one of the regional departments filed a claim to the court for 172,768,874 *sou'm* in order to collect the rental payment. In this case, several entrepreneurs had used a state-owned buildings in this area without a lease agreement. The plaintiff wrote to the defendant several times, demanding to lease the buildings owned by the state, acquired through an auction. According to legislation, renting out state property without signing a lease agreement results in a double rent calculation. It can be concluded from this case that the legal culture of entrepreneurs is still influenced by informal norms and ways of thinking rather than state law.

ADR is a less formal procedure in comparison with the procedure for considering cases in court, and was designed specifically to relieve the burden on the judicial system whilst resolving any conflict that arises (Rustambekov, 2020). Mediation differs from other alternative methods of dispute resolution (arbitration or pre-trial [claim] settlement procedure) in its informal nature. Mediation can be used even during the court session, for example, when a dispute is being considered (before the judge leaves the session for a separate [advisory] chamber to make a decision), as well as during the process of executing judicial acts and acts of other bodies. If a mediation procedure is initiated, the economic court is obliged to suspend the proceedings for a maximum period of 60 days.

The court shall leave a statement of claim without consideration in the following circumstances:

- If the plaintiff has failed to observe an order settling the dispute with the respondent through mediation;
- If it has been established by legislation for the given category of disputes or by a contract;
- If the parties who have petitioned for mediation after the expiry of its term have failed to appear, without a valid excuse, at the court session; or
- If the parties have concluded a mediation agreement.

If the mediation agreement is not fulfilled, the parties are entitled to apply to the court for protection of their rights. Thus, the plaintiff shall have the right to petition the court again.

Mediation has many advantages over litigation. For example, it is time- and cost-efficient. During mediation, there are no winners or losers since it provides for the consolidation of agreements between parties. The mediation process consists of several stages (the choice of a mediator, the conclusion of an agreement on the use of mediation, the mediation and conclusion of a mediation agreement, and the execution of a mediation agreement). When a dispute is resolved through a mediation agreement, the state fee paid is returned, except in cases where a mediation agreement is reached during the process of executing judicial acts and acts of other bodies (Article 17 of the Law 'On Mediation', 2018). In this respect, a pertinent example is the ruling of the Gulistan interdistrict economic court, dated 23 March 2023 (case No. 4-1201-2301/852). As a result of the ruling, the following was determined: According to a contract, company 'X' renovated a building, which belonged to a government institution. However, the other party to the contract did not pay the company for the renovation work. A settlement agreement was reached during the trial, and the proceedings were terminated. At the end of the trial, a state fee of 5,043,893,197 *sou'ms* was collected. If the parties had entered into a mediation agreement instead of a settlement agreement, the state fee would not have been paid. Therefore, it is necessary to consider the issue of explaining the possibility of using the opportunities and privileges created by legislation to the people by the courts.

Currently, the Chamber of Commerce and Industry has achieved important results in dispute resolution and mediation. According to the Chamber of Commerce and Industry of Uzbekistan, in the first half of 2019, 793 disputes between business entities were resolved during the process of pre-trial dispute resolution (mediation). For example, in *Sh.M. LLC*, the Namangan Regional Department of the Chamber of Commerce and Industry filed a lawsuit against the Namangan regional administration for 3,414,000,000 *sou'ms*, but the lawsuit was dismissed due to a mediation agreement between the parties (case No. 4-16-2105/27, dated 12 November 2021). According to the Law 'On the Chamber of Commerce and Industry of the Republic of Uzbekistan', the Chamber of Commerce has the right to conduct a pre-trial settlement of disputes between parties. In addition, the Chamber of Commerce can examine all primary documents before filing a lawsuit in the interests of its members, and the responsible officer of the Chamber of Commerce holds a meeting between the parties to resolve the dispute through a pre-trial settlement procedure (mediation).

In addition, economic courts assist parties in resolving disputes by recommending that the parties enter into a mediation agreement, explaining the consequences and giving them appropriate time to do so. This is a sign that the conflicting parties realise that the new institution is effective. This institution is similar in many respects to the procedure for the pre-trial settlement of economic disputes (submission of applications) and the procedure for concluding a settlement agreement. Yet, it also differs. The difference is that mediation is carried out with the participation of a mediator, the proceedings are not terminated when the mediation agreement is concluded, but the claim is left without consideration. Then, the parties have the right to petition the court to protect their rights in cases of non-compliance with the terms of a mediation agreement. When a mediation agreement is concluded, the state fee paid to the court is refunded, but not in a settlement agreement.

Conclusions

As shown in previous sections, we find that recent reforms in economic law, public law, and legal procedure have had measurable effects on legal consciousness in Uzbekistan. These effects are visible, primarily in the changing legal culture, reflected in changing attitudes toward the courts and in changing patterns of dispute resolution. This demonstrates a

broader process of legal formalisation, which gained momentum through recent reforms. Overall, we can conclude that the reforms have obtained some success in strengthening lines of accountability between the government and citizens and in promoting the adequate settlement of economic disputes. Our findings indicate that a considerable shift is taking place within society toward the use of formal law, a tendency showing that patterns of legal culture and legal mobilisation are changing in Uzbek society.

Some desiderata, of course, remain in these reforms. As such, some measures could be introduced to increase citizens' and entrepreneurs' use of the formal legal system, thereby improving the legal culture. Notably, it is necessary to improve the current national legislation on the pre-trial (claim) settlement procedure of economic disputes and mediation in the following ways:

- Business contracts should include a mediation clause to allow for alternative or out-of-court dispute resolution if the parties want it. Currently, the Law 'On Contracting and the Legal Basis of the Activity of Business Entities' does not require parties to specify and follow the mediation procedure in contracts.
- Disputes should be made available on the website where court decisions are published (Supreme Court of the Republic of Uzbekistan), including, with their consent, the name of any business entity. This allows parties wishing to sign a contract to obtain information about their future partner related to any previous contractual disputes.
- The procedure for conducting 'negotiations' as a pre-trial settlement of disputes should be established at the legislative level, and the consequences of non-compliance should be established in the Code of Economic Procedures.
- The Code of Economic Procedures of the Republic of Uzbekistan should be amended to allow businesses to not only apply the procedure for filing an application for a pre-trial (claim) procedure, but also the procedure of 'negotiation' and 'mediation' as other methods of pre-trial settlement.
- When a dispute is resolved through a mediation agreement, the state fee paid shall be returned. Therefore, the state should provide some privileges for the state fee of the parties who settle a dispute through amicable (settlement) agreements as well.

- Entrepreneurs should be informed about the existence and possibilities of a pre-trial (claim) settlement procedure for economic disputes and mediation; in addition, judges, lawyers, and business entities should be involved in any interviews, conferences, and roundtable discussions devoted to these topics.
- Entrepreneurial entities are legal entities as well as individuals who have completed state registration procedures and can engage in entrepreneurial activities. At the same time, there are several types of organisational and legal forms to economic entities (e.g., joint stock company, limited liability company, private enterprise, etc.). In general, the introduction of mechanisms in the education system aimed at developing the necessary skills in the field of entrepreneurship amongst the population should be strengthened.
- From 30 April 2023, the new Labour Code of the Republic of Uzbekistan entered into force; in this regard, it should be strongly promoted amongst entrepreneurs and amongst their employees. Specifically, the new labour regulations are currently imposing strict requirements, and ignorance of this or the incorrect application of legal norms could lead to negative consequences. In the activities of some small business entities, there may be violations such as not concluding an employment contract with employees. This issue may lead to other social problems.
- The basis of the legal culture in terms of ensuring entrepreneurship and the business environment is the law and legal regulations adopted in the field of entrepreneurship. However, currently the number of such normative legal documents is rather large. Therefore, the adoption of the new Entrepreneurship Code in Uzbekistan for entrepreneurs and people who want to become entrepreneurs needs to be accelerated.

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CHAPTER 8

Promises and Commitments: The Role of Fair and Equitable Provisions and Local Foreign Direct Investment Law and Regulations in Generating Legitimate Expectations

Khasan Sayfutdinov

Introduction

The doctrine of legitimate expectations provides individuals with a legal remedy in certain circumstances when the conduct of a public authority generates promises, which, in turn, creates an assurance that an investor will receive (or continue to receive) a substantive benefit or commodity of some kind; after some time, the public authority subsequently acts inconsistently with this prior conduct (Craig, 2012). In international investment arbitration, the term 'legitimate expectation' appeared in the decision of *Tecmed v. Mexico*. This was the first case in which a tribunal

K. Sayfutdinov (✉)
Westminster International University in Tashkent, Tashkent, Uzbekistan
e-mail: ksayfutdinov@wiut.uz

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_8

linked fair and equitable treatment provisions with the protection of legitimate expectations. Alongside bilateral investment treaties (BITs), a domestic legal system may also protect the legitimate expectations of a foreign investor. The legitimate expectations of investors can include both procedural and substantive law. Historically, the common law legal system covered only procedural protections of expectations in the past, providing the opportunity to individuals to refile their case by allowing a hearing or giving them adequate notice (Mairal, 2010). Later, a case decided by the English Court of Appeal recognised that legitimate expectations also include substantive legal protections.[1]

Considering the aforementioned case law and based on the premise that legitimate expectation cases directly stemmed from fair and equitable treatment (FET) provisions, the question arises whether and how FET provisions can protect foreign investors' rights in post-Soviet countries like Uzbekistan. With this in mind, in this chapter I aim to analyse the current model of FET provisions in Uzbekistan's investment treaties, specifically exploring whether FET provisions can serve as the source of legitimate expectations in future investment arbitration cases.

The chapter proceeds as follows. In the first part, I present a literature review and summary of case law focusing on protecting legitimate expectations under the FET provisions of BITs where the interpretation (and scope) of legal expectations may vary. The FET standard has usually been drafted rather vaguely, which does not explicitly describe the relationship between investment protection and the host state's regulatory right. After analysing the cases in international investment arbitration institutions, I then provide an overview of legitimate expectations in domestic law and regulations in order to show how the post-establishment phase of investment heavily depends upon the stability of the regulatory legal framework. In exploring legitimate expectations, I also rely on a qualitative study in Uzbekistan consisting of interviews and focus group discussions. These qualitative data focus on the role of local investment law and regulations in building legal expectations vis-à-vis the perceptions of investment market participants. In this chapter, I attempt to contribute to scholarly debates within business and investment law by analysing the role of legal expectations within international and domestic investment instruments. The final section of this chapter outlines practical suggestions and

[1] R. v. North and East Devon HA Ex p. Coughlan (2001) Q.B. 213.

policy recommendations to the host state—in this case, Uzbekistan—on building trust between foreign investors and the host country by increasing awareness of legitimate expectations which lie at both ends of the divide.

Literature Review

In the last ten years, leading international investment and trade law scholars have widely discussed the term 'legitimate expectations'. One of the first scholars interested in the origin and limits of legitimate expectations in investment arbitration was Michele Potestà (2013). Potestà's research included cases primarily from investment arbitration, in which he criticised the inconsistency in the interpretation and application of legitimate expectations as the component of fair and equitable treatment (FET) provisions in investment treaties (Potestà, 2013). He also included an analysis of national administrative law systems and the European Union (EU) framework, intending to capture the shared features of the protection of expectations under those systems. A recent publication by Wongkaew (2019) challenged the theory of legitimate expectations and outlined an alternative approach, called reliance theory, suggesting that promissory obligations lead to a different understanding of legitimate expectations. The proposed analytical framework is based on three conceptions. First, a promise as a wilful act to undertake an obligation leads to a restrictive, state-centric view of legitimate expectations. Second, a promise is employed as an intention to create expectations allowing the non-binding, voluntary conduct of the state to serve as the basis of an obligation. Third, a promise is conduct which induces reliance and offers a flexible framework for balancing the investor's conduct and the investor's expectations. In addition, several other scholars examined legitimate expectations as part of the rule of law (Henckels, 2019). The latest publication on this topic also discussed the disadvantages of legitimate expectations to host states and how they might limit the application of legitimate expectations, comparing host state's citizens to the expectations of investors (Laryea, 2021). In most cases, citizen's expectations from their own state extend beyond those of investors' (Laryea, 2021). In addition, some researchers focused on legitimate expectations in a specific sector of investment (Krzykowski et al., 2020). One study provided an overview of the evolution of the concept of legitimate expectations in renewable energy cases and analysed both types of legitimate expectations,

comparing specific commitments to domestic regulatory frameworks (Ilie, 2021). Thus, this analysis of the latest publications in the field reveals that legitimate expectations work differently from one country to the next, where legal institutions are at different stages of development. The scope of this research, however, does not extend beyond the practice of legitimate expectations in different cases, and instead aims to identify what forms of legitimate expectations might suit the chosen host country, in this case, Uzbekistan.

More specifically, an analysis of recent publications on investment law and policy in Central Asia indicates that little attention has been placed on the legitimate expectations of investors (Gore et al., 2022). For example, one prominent scholar of international investment law in the Central Asian context, Sattorova (2018), analysed the domestic investment legal framework in the region. In her work, Sattorova analysed the responses of government officials who experienced investment arbitration as the respondent country. In her book, Sattorova (2018) also examined the impact of investment treaties on good governance. She highlighted how treaty rules and remedies could have a transformative effect on the behaviour of governmental agencies and officials in host states. However, Sattorova's work does not directly address the question of legitimate expectations, instead providing adequate background information on the domestic investment legal framework for subsequent studies.

Legitimate expectations can also be understood as a 'culture of promise' from a socio-legal perspective. For example, a study by Hogg (2011) highlights the following main elements of a promise: (a) a promise is more than a mere internal mental process; promises as speech acts represent (b) a commitment to the performance of the promissor; (c) a promise must manifest more than an illusory commitment or one which the promissor is patently unable to fulfil; (d) a promise must relate to the future; and (e) a promise must state a commitment that favours another party.

Interestingly, a review of decisions from investment tribunals shows that tribunals used the term 'promise' or other similar terms without defining the constitutive conditions for liability. Wongkaew (2019) suggested three conceptions of legitimate expectations. According to his research, the voluntarist's conception of a promise attributes liability to the promissor's will to undertake an obligation. Furthermore, the voluntarist conception differs from the assurance conception, whereby the state requires the promissor's intention to create an expectation. In the third

understanding, the reliance conception grounds a promissory obligation in the promisee's act of reliance. These three conceptions of legitimate expectations are perceived differently in the domestic legal system given cultural differences across host states. For example, any voluntary action of a host state in Central Asia could be understood as an assurance promise or an action of the host with the intention to create expectations. However, as a literature review indicates, there is limited research on legitimate expectations in the Central Asian context, particularly those which explore the interconnections between legitimate expectations and the host state's business culture and the specific legal environment. In this chapter, I specifically focus on the case of Uzbekistan to examine the role of fair and equitable provisions in local foreign direct investment (FDI) law and regulations in generating legitimate expectations.

Research Questions

The literature review revealed that expectations are only legitimate and legally protected if they arise from a legal commitment. This commitment or promise may be embedded in the investment laws of the host country or in investment contracts. The central aim of this chapter is to analyse the fair and equitable treatment (FET) provisions in Uzbek bilateral investment treaties (BITs) and assess the strength of local investment law and regulations in establishing legitimate expectations. From this perspective, this chapter aims to address the following questions:

- What are the possibilities for increasing awareness of the reasonable, legitimate expectations of investors in the host country's legal system, namely, in the specific case of Uzbekistan?
- What form of legitimate expectations suits Uzbekistan?
- How are legitimate expectations perceived by participants in the investment environment of the host country?

Building an analytical framework begins with providing an overview of the current interpretation of legitimate expectations in investment arbitration cases since there is no substantive source of law in which the doctrine of legitimate expectations is defined. Then, I focus on incorporating investment arbitration practice into new BIT models and the host country's regulatory framework. I also assess the country's—that is,

Uzbekistan's—investment framework through interviews and focus group discussions.

Methodology

The methodological approach in this chapter relies on triangulation, which includes (1) case law research, (2) qualitative data collection through interviews, and (3) an analysis of relevant secondary data. I employed the legal positivistic/doctrinal method, which presents a review of case precedent in investment arbitration in order to understand the rationale underlying the issue in question and to provide appropriate answers. I also conducted an analysis of secondary materials, such as reports, journals, articles, and books, to obtain a more holistic understanding of the topic. Online databases such as Jus Mundi and Kluwer Arbitration were also used. Here, I used investment arbitration cases as a lens via which to analyse interviews. The investment case law also served as a methodological guideline for designing questions for a qualitative study (in-depth interviews and focus group discussions). The main objective of the interview and focus group discussions was to understand how legitimate expectations are perceived by participants, what forms those expectations they had took and how they built their expectations, and, finally, whether their expectations were met in real-life experiences. The interview questions were formulated based on the analysis of previous investment arbitration cases in which legitimate expectations were divided into two categories: direct and legitimate indirect expectations. Focus group discussions and semi-structured in-depth interviews were conducted with two groups of key informants—namely, public sector authorities and lawyers who typically advise foreign investors and businessmen in the Uzbek investment market. Focus group discussions enabled me to access informal practices, real-life and experience-based knowledge, and opinions that would lead to the recognition of previously ignored factors and informal norms in assessing expectations. All of the focus group participants were selected through a researcher-driven method (Peek & Fothergill, 2009). I recruited research participants through telephone calls, emails, letters, study leaflets, or personal contacts and scheduled the group discussion time and location based on the preferences of the research participants.

In the second stage of the qualitative fieldwork, I conducted in-depth, semi-structured interviews. Participants provided their informed

consent before I conducted the interviews, and questions were shared with participants in advance. Interview questions primarily focused on the expectations of investors, the types of expectations, and the expectations of the public sector towards foreign investors. Questions were iterative, but framed more broadly. The rationale behind this approach was once again to allow interviewees space to express their views freely, in this instance on an individual level.

On average, interviews lasted 30 minutes and were not tape-recorded due to informants' concerns regarding confidentiality and in order to encourage them to speak freely. Concise notes were taken during the interview. Participants' identities were anonymised, such that no specific individual participant is identifiable from the details provided in this chapter.

Legitimate Expectations

Legitimate Expectations in Recent Investment Arbitration

In this section, I analyse the contemporary practice of legitimate expectations in arbitration. Most tribunals linked legitimate expectations with the violation of FET provisions in BITs. The FET standard defines the nature of the relationship between the host state and the investment, both of which are under the protection of investment treaties. This standard also establishes a set of norms applicable to every instance of the host state's treatment of investments covered under BITs. Moreover, the FET standard is the most common general absolute standard of treatment in BITs and energy charter treaties (ECTs). The most typical formulation requires that the host state accord covers investments as fair and equitable. Sometimes, the standard appears alone in a sentence, and sometimes it appears in the same sentence as one or both of two other general absolute standards of protection: as full protection and a security standard, and as the prohibition of unreasonable or discriminatory measures. These other standards explicitly articulate principles of security, reasonableness, and non-discrimination which lie at the core of the FET standard. Some BITs refer to FET in conjunction with national or most-favoured nation (MFN) treatment. The most common formulation requires FET, which in no case shall be less than national or MFN treatment. That is, national and MFN treatment establishes a minimum standard, below which FET may not fall. However, FET may require more than national or MFN

treatment. Thus, some BITs explicitly link FET with the principle of non-discrimination, although this also suggests that FET requires more than non-discrimination. Alternatively, some BITs refer to FET in conjunction with customary international law. This formulation requires each party to provide a covered investment with FET that, in no case, shall be less than that required by customary international law. Thus, in this formulation, international law establishes a minimum standard below which FET may not fall. However, FET may require more than customary law. The scope of this chapter does not extend to debates about where legitimate expectations should stand in the text of substantive international investment law or foreign direct investment (FDI) law and regulations. Instead, the research focuses on the interpretation of legitimate expectations in recent investment arbitration in order to drawing distinct boundaries. The latest case, *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, distinguished between two different types of legitimate expectations. In the first distinction, the state makes specific representations by generating assurances or commitments directly to the investor (or to a narrow class of investors or potential investors, as direct legitimate expectations). In the second distinction, legal expectations can also be created in some cases by the state's general legislative and regulatory framework. In this case, an investor may make an investment with a reasonable reliance upon the stability of that framework, such that in certain circumstances a reform of the framework may breach the investor's regulatory legitimate expectations. Both types of legitimate expectations linked the violation of expectations to FET provisions in international investment agreements. In the sections that follow, both forms of legitimate expectations are analysed separately.

Direct Legitimate Expectations

The latest case, *Infracapital Solar B.V. v. Kingdom of Spain*, summarises the criteria for identifying direct legitimate expectations in which competent representatives of a state made clear promises to a group of investors. Here, the tribunal uses several cases[2] to assess the direct legitimate expectations of a host state. As such, the tribunal stated that the commitments

[2] *Stadtwerke München GmbH and others v. Kingdom of Spain*, *Cavalum SGPS, S.A. v. Kingdom of Spain, SolEs Badajoz GmbH v. Kingdom of Spain*, and *Electrabel S.A. v. The Republic of Hungary*.

promised must be written in the law. Promotional activities conducted to attract investors are not part of an assurance or inducement. To rely on representatives of an authority, the person should have the competency to assure or to generate legitimate expectations to a particular investor. When a competent authority provides assurance, it should be clear and specific. The presentation of an authority can be different from country to country, and the circumstances in the host market should be taken into account. In every state's representation, state policy should be taken into account. Furthermore, the tribunal stated:

> …[T]he tribunal is required to conduct an objective examination of the legislation and the facts surrounding the making of the investment to assess whether a prudent and experienced investor could have reasonably formed a legitimate and justifiable expectation of the immutability of such legislation. For such an expectation to be reasonable, it must also arise from a rigorous due diligence process carried out by the investor. (*Stadtwerke München GmbH and others v Kingdom of Spain*, para 264)

Practice shows that different members of the relevant ministry provide presentations to investors in order to attract them to a market. Importantly, such presentations carry no legal or regulatory power within the legal regime in the host state.

Around twenty cases mentioned direct legal legitimate expectations and situations where it can be generated by a competent authority and an investor relied on an assurance at the time an investment was made. Thus, the tribunal in *Infracapital F1 S.à r.l. and Infracapital Solar B.V. v. Kingdom of Spain* listed the following criteria based on other cases:

- a commitment must be grounded in the law;
- a specific commitment must be made by a competent authority;
- any assurance or representation must be clear;
- other circumstances must be taken into account; and
- the state's policy interests must also be considered.

After discussing legitimate expectations with reference to the other cases, the tribunal further stated that specific commitments creating legitimate expectations cannot be ambiguous or simply implied. As already noted, for expectations to be reasonable and legitimate, the undertaking

by the state to an investor must be clear and specific. Given that the provision is unclear, it also cannot give rise to a stabilisation commitment. At a later stage, the tribunal concluded that the host state's actions did not generate legitimate expectations.

The recent application of direct legitimate expectations test reveals that tribunals have already formulated the analytical framework necessary for distinguishing between the specific commitments (assurances) of the host country's government and the general investment climate. The distinction between the two must be clearly communicated to investors when enticing investors to make investments. That is, the general investment climate cannot generate direct commitments to investors.

The Regulatory Framework for Indirect Legitimate Expectation and the General Application of the Law

This section analyses indirect legitimate expectations, which can be based on the host state's regulatory framework. The general legal and regulatory framework typically includes investment policies, market access, tariffs, and quota restrictions, all of which might impact the investment climate at the time an investment is made or play a major role in the decision-making related to investment in a host state. In *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, the tribunal summarised the criteria for assessing indirect legitimate expectations which can arise from the law and regulations when an investment was made. In this case, the tribunal relied on several cases to define each criterion. In the assessment framework, the tribunal in *EDF (Services Limited v. Republic of Romania* focused on the state's right to regulate, mentioning its sovereign authority to legislate and adapt its legal system to changing circumstances, indicating that states cannot in essence freeze the legal regulation of economic activities. More specifically, investors cannot rely on such a freeze. Furthermore, the tribunal stated that investment treaties and general laws cannot function as an insurance policy or promise against the risk of any change in the host state's legislative and economic frameworks. Third, the central premise of the analyses stated that FET does not bind states to change laws and regulations according to public need. Such changes do not exceed the acceptable margin of change when the host state exercises its normal regulatory power in pursuance of the public interest. The indirect legitimate exception framework in the *Hydro* case

has relied on several cases[3] to establish the boundaries of indirect legitimate expectations, which can be based on the legal framework of the host state.

In contrast to the abovementioned cases, legitimate expectations based on a general legal framework have been successfully employed in several instances.[4] In such cases, the tribunal paid special attention to only drastic (sudden) and unreasonable modifications to the legal framework. In the *Mamidoil v. Republic of Albania* case, the tribunal stated that, in this sense even when legislative changes seem legitimate, they must not have the character of continuous oscillation and unpredictability. According to this case, the state should not suddenly change the regulatory framework. If a state wants to amend its law and regulations, the state should meet the goal intended through changes to the law according to *Eco Oro Minerals Corp v. Republic of Columbia*. The resulting discussion also recalls the application of general exceptions in international trade law. As such, the state should prove it is necessary to show the correlation between the goal or legitimate objectives of the state (for example, necessary to protect the health and environment and ensure compliance with other laws and regulations in the country) and changes to the laws and regulations.

To summarise, recent cases indicate that states have the power to change their laws and regulations, but such changes should comply with specific criteria concerning the investment regulatory framework.

Legitimate Expectations in Uzbekistan

Current Foreign Direct Investment law and Regulations in Uzbekistan

Since 2017, Uzbekistan has actively engaged in modifying laws and regulations in order to attract foreign direct investment (FDI) in the country. As such, the government opened new agencies and ministries to support

[3] *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, *EDF (Services) Limited v. Republic of Romania*, *El Paso Energy International Company v. Argentine Republic*, *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, and *Electrabel S.A. v. The Republic of Hungary*.

[4] *Eco Oro Minerals Corp. v. Republic of Colombia*, *BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v. Kingdom of Spain*, and *InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain*.

FDI inflows to the country. On 25 December 2019, the President of Uzbekistan signed into law 'On Investments and Investment Activities' (or the Investment Law, LRU 598). The enactment of the law was envisaged by Presidential decree no. UP-5495, 'On Measures for Improving the Investment Climate in the Republic of Uzbekistan', dated 1 August 2018. The Ministry of Investment and Foreign Trade of the Republic of Uzbekistan also launched the Investment Promotion Agency. The key responsibility of this agency consists of providing information, legal help, and aid to international investors for organising relations between government entities and organisations.

Another innovation established within the investment law is the so-called 'one-stop shop', which allows investors to communicate with fewer state agencies. The Ministry of Investment and Foreign Trade and its territorial entities serve as the one-stop shop for investors under the Investment Law. The ministry provides consultation services and support for document preparation and filing.

Moreover, the Investment Law outlines in detail the functions of the business ombudsman, who is accountable only to the President of the Republic of Uzbekistan. In addition, one of the main roles of the business ombudsman revolves around coordinating inspections related to the activities of business entities and to control the legality of such inspections.

Finally, the Investment Law establishes a new multi-tiered dispute settlement framework for investor–state conflicts stemming from investments. During the first stage, both parties must attempt to resolve the problem via negotiation. If the parties cannot reach an amicable agreement, mediation is the next step. Moreover, the local investment framework and international investment agreements play an important role in generating legitimate expectations and encouraging FDI to the host country.

Legitimate Expectations in Bilateral Investment Treaties (BITs)

Since 1991, Uzbekistan has signed fifty-four bilateral investment treaties (BITs). An overview of the standard provisions within Uzbek BITs reveals a gradual policy change towards stronger and more comprehensive substantive and procedural investment protections in the treaties. This indicates that the country is increasingly adhering to international standards surrounding the legal protection of FDI. On balance, BITs with

developed countries provide slightly higher, more substantive investment protection levels than BITs with developing countries. From the perspective of a host country, in most cases, Uzbekistan as the host state accepts the proposed model agreements put forward by developed countries.

Like other developing countries, Uzbekistan has signed BITs since the early 1990s. In most cases, the primary motivation for entering into a BIT is to attract FDI from developed countries. In theory, a BIT should offer a secure investment legal framework for investors and their investments, encouraging foreign investors. As mentioned above, many countries enacted economic liberalisation policies within their economies and believed that concluding such investment treaties could create an attractive investment environment for investors from developed countries. Developed countries compete for markets and natural resources, whilst developing countries compete to receive a large amount of FDI by signing BITs. In this respect, Uzbekistan announced its second 'open door' policy in 2017 and signed numerous BITs, thereby signalling its willingness to grant guarantees of investment protection.

The FET standard is one BIT clause lying at the core of today's debate on BIT reform. This standard is designed to protect foreign investors from government misconduct not covered by other protection standards. At times, the FET standard may also serve to foster good governance in host states. In actual practice, owing to its open-ended and largely undefined nature, the FET standard, especially as drafted in traditional BITs, has become an all-encompassing provision investors have used to challenge any type of governmental conduct they deem unfair (Gallagher & Shan, 2019). According to research by the United Nations Conference on Trade and Development (UNCTD, 2012), FET provisions fall into four main types:

1 FET without any reference to international law or any further criteria (referred to as an unqualified, autonomous, or self-standing FET standard);
2 FET linked to international law;
3 FET linked to the minimum standard of treatment of aliens under customary international law; and
4 FET with additional substantive content (denial of justice, unreasonable/discriminatory measures, breach of other treaty obligations, and accounting for the level of development) (UNCTD, 2012).

When we examine the latest FET provisions in the Uzbekistan–Turkey BIT, the text of Article 2 is a free-standing standard without reference to international law, and combines with other substantive provisions of the BIT. Specifically, Article 3.2 of the Uzbekistan–Turkey BIT (2017) includes the following provision:

> Each Contracting Party shall accord, in accordance with its laws and regulations, full protection and security, and fair and equitable treatment on its territory, to investments made by investors of the other Contracting Party.

When we compare this text to the older BIT model signed in 1993 with the UK, the FET clauses were not updated (UK–Uzbekistan 1993).Most Uzbek BITs provide only unqualified FET provisions in the first paragraph of Article 3, with another group of BITs included in the same line with full protection and security appearing in Articles 2 and 3 (Uzbekistan–China BIT 1993).The primary issue with a freestanding FET provision is that a great deal of uncertainty concerns the precise meaning of FET. This results from the fact that the notions of 'fairness' and 'equity' do not provide a clear set of legal prescriptions and, thus, are open to subjective interpretations. A case study shows that most of the claimants link the alleged violation of legitimate expectations to the substantive provisions of FET, indicative that a clear line in an FET clause only helps respondents to define the application of legitimate expectations. The simple clause 'shall ensure fair and equitable treatment of the investments of nationals of the other Contracting Party' cannot elaborate upon the use of legitimate expectations. Thus, an analysis of current FET clauses in Uzbek BITs indicates that updating FET provisions in the current BIT model is critical.

Uzbekistan Cases in Investment Arbitration

In this section, I discuss cases in which Uzbekistan was the primary respondent in investment arbitration. These cases are analysed in chronological order. Not all of Uzbekistan's investment cases moving towards investment arbitration touched upon the issue of legitimate expectations, although an analysis of case law helps us shed light on the application of Uzbekistan's BITs in investment arbitration. The first case, *Romak S.A. v. The Republic of Uzbekistan*, involves a company with several businesses specialised in the trading of grain. According to this case,

the company initiated arbitration proceedings against its Uzbek counterpart pursuant to contracts under the auspices of the Grain and Feed Trade Association, unsuccessfully attempting to enforce the resulting award in several countries, including Uzbekistan. Arbitration relied on the Salini test to define investment, concluding that Romak did not own an 'investment' according to the meaning outlined in Article 1 of the BIT. Romak's rights were embodied in and arise out of a sales contract, a one-off commercial transaction, pursuant to which Romak undertook the delivery of wheat against a price to be paid by Uzbek parties.

In the next case, *Metal-Tech Ltd. v. The Republic of Uzbekistan*, the tribunal concluded that corruption was established to such an extent that local law was violated in connection with the establishment of the claimant's investment in the host country, which was inconsistent with Article 1 (1) of the BIT. Yet, the tribunal concluded that it lacked jurisdiction over the claim and the counterclaim. In *Vladislav Kim and others v. The Republic of Uzbekistan*, a dispute arose involving two cement plants in Uzbekistan, based on the Uzbekistan–Kazakhstan BIT (1997). In this case, the tribunal denied four preliminary objections regarding the jurisdiction and admissibility of the claimants. The dispute relates to the claimants' interest in two cement plants located in Uzbekistan.

The details of other cases[5] have not yet been made public. The majority, however, did not reach the award stage. In addition, in the *Güneş* case related to the Uzbekistan–Turkey BIT (1992), the award was not released to the public. As a claimant, Uzbekistan has only one case (*JSC Tashkent Mechanical Plant and others v. Kyrgyz Republic)*in which an investor invested in the accommodation and food service sector. This dispute is based on a BIT signed in 1996 (Kyrgyzstan–Uzbekistan BIT 1996).

The only Uzbek case in which legitimate expectations are mentioned i*s Oxus Gold plc v. The Republic of Uzbekistan*. First, the tribunal stated:

[5] *Güneş Tekstil Konfeksiyon Sanayi ve Ticaret Limited Şirketi and others v. The Republic of Uzbekistan*, *Federal Elektrik Yatırım ve Ticaret A.Ş. and others v. The Republic of Uzbekistan*, *Bursel Tekstil Sanayi Ve Diş Ticaret A.Ş., Burhan Enuştekin and Selim Kaptanoğlu v. The Republic of Uzbekistan*, *Newmont USA Limited and Newmont (Uzbekistan) Limited v. The Republic of Uzbekistan*, and *Mehmet Zeki Obuz, Sevde Yilmaz, Huriye Obuz, Tasfiye Halinde Obuzlar Gida, Temizlik Maddeleri, Züccaciye ve Tekstil Sanayi Ticaret Limited Sirketi v. The Republic of Uzbekistan*.

> Considering the lack of a specific definition in the relevant BIT, the FET standard as contemplated by Article 2(2), must be understood as a means to guarantee justice to foreign investors, and when doing so, for the states' actions to give due regard to an investor's legitimate expectations by refraining from taking measures which are not justified under the circumstances, that is, unreasonable, disproportionate, or discriminatory. (*Oxus Gold plc v. The Republic of Uzbekistan*)

Moreover, the tribunal argued that states should refrain from taking unreasonable and disproportionate measures in the application of national regulations and standards (*Oxus Gold plc,* para 819). When we examine those cases involving Kazakhstan, only a few consisted of legitimate expectations. In the *Rumeli Telekom* case, the tribunal stated that:

> …[T]he Investment Committee terminated the Investment Contract with the utmost lack of good faith and in clear violation of the international obligations of the Respondent contained in the Bilateral Investment Treaty. The termination was unreasonable, arbitrary, grossly unfair, unjust, idiosyncratic, and violated the legitimate expectation of the Claimants. (*Rumeli Telekom A. S. and others v. The Republic of Kazakhstan*)

In *Ascom, Stati and others*, the tribunal began its analysis with the context of the FET, subsequently stating that the decision of the export commission carried the power only to make a recommendation and that the translation was misunderstood by the investor. Thus, the decision only carried a recommendatory character.

Uzbekistan has limited the arbitral practice of legitimate expectations as the respondent in international investment arbitration. This does not mean that the state should not consider legitimate expectation arbitral experience from other countries. In fact, sufficient case studies exist in order to form clear and detailed FET provisions and to establish direct and indirect expectations, primarily based on reliance theory. The investment arbitration practice always serves as a compass for future possible cases against the host country. Those who draft Uzbek BITs and investment-related laws must consider the results found in investment case law.

Socio-Legal Analysis of Legitimate Expectations

From March to September 2022, I conducted twenty in-depth interviews with key informants from both the public and private sectors who are

directly and indirectly involved in investment activities in Uzbekistan. These interviews aimed at gaining an understanding of the legitimate expectations of foreign investors and public regulators involved in international trade and investment commitments in the field. At the same time, I aimed to understand how expectations were established before and after making an investment in the country. Another equally important purpose to the interviews revolved around identifying the shared legitimate expectations of reasonable investors in Uzbekistan before and after investing in the country. As stated in the previous section, in-depth interviews and focus group discussions were conducted to understand what forms of expectations (direct or indirect) were formed and communicated to investors. This analysis reflects the findings from those interviews, which I present in two parts. The first part focuses on categorised expectations, whilst the second focuses on three conceptions of legitimate expectations and the perceptions of investors and public officials. According to arbitration cases and a literature review, we can identify the most widely shared legitimate expectations, which I have categorised as falling into seven primary expectations. I present the interview data and analysis based on this categorisation, showing how legitimate expectations are practiced by investors and the public in the country.

Expectation 1: Fair competition and treatment provided according to investment treaties[6]

Based on this first category, the majority of public officials know the context of FET and investment treatment provisions in investment treaties. However, in regions of Uzbekistan, it is difficult to find lawyers and public officials who have practical experience in and a command of investment treaties. The majority of investors did not previously experience discrimination when accessing a market. But, some have experienced various obstacles following an investment. During the operation and management related to an investment, investors have also experienced pressure from local and regional regulators.

[6] All expectation groupings are based on ICSID cases.

Expectation 2: Transparency (all laws and regulations published and accessible to investors)

The interview results also show that laws and regulations are published in the local languages in a timely manner, but the English-language version of the updated law or new decree is difficult to obtain within the first three months of its publication. Investors with large capacities have lawyers and translators in their offices. Investors rely on country reports from international organisations and accounts from other foreign investors in the region before investing in the country. The updated statistical data are not available or are not immediately accessible when needed.

Expectation 3: Specific commitment (the specific commitment stated in regulations are kept)

Specific commitments are normally provided in special economic zones (SEZs) in the form of tax and tariff reductions. In most cases, such commitments are outlined in the regulations. A customs duty reduction is also applicable to selected sectors in the economy. Normally, low or zero custom duties allow for new technology to be brought to the production line. Some investors prefer to have a company (production line) situated near the capital due to the logistics and infrastructure level in the city of Tashkent and the Tashkent region. By 'infrastructure', they refer to access to electricity, water, and roads. Companies with production lines in the regions find it difficult to employ highly qualified locals because many qualified locals prefer to work and live in the capitol and capitol region. Generally, specific commitments granted to a group of investors are kept and followed after making an investment.

Expectation 4: Local dispute settlement system (the state provides a compelling local dispute settlement system)

The interviews revealed that some of the disputes resulted from a partnership with a local partner, with cases submitted to a local economic court. Economic courts deal with foreign investors (founders), although at times the expected results are difficult to obtain within a short time period. Many foreign companies have local lawyers who have both local

and international experience. Investors in the property business normally encounter disputes with residents who live in the same neighbourhood in which a building will be erected. Such cases normally end up in court, and if the construction permit was secured lawfully, the dispute is normally decided in the investor's favour. We must not forget that the state can take land for public purposes after adequately compensating an owner. Furthermore, economic courts usually take some time before settling an issue. Such decisions also depend upon the region in which a dispute takes place. For instance, economic courts in the capitol region work more efficiently for many reasons. Investors who invested in a small- or medium-sized enterprise (SME) prefer to have an effective local dispute settlement system since submitting a case for international arbitration can cost millions of dollars.

Expectation 5: Sector regulator (stable and predictable regulations within the sector)

Based on the interview data, it appears that investors and foreign entrepreneurs are familiar with regulations, but at times such familiarity can become complicated given the hierarchy of regulations and laws in practice. Thus, investors expect regulations to remain stable when assurance was provided in written form to investors and when investors took detrimental actions based on the state's conduct. In practice, investors also remain cautious in terms of not violating the requirements of the primary operating licence granted by the regulator. In the past, this has led to the licence revocation of some private banks and mobile operators in Uzbekistan. Regulators also consider a substantial and unpredictable change to the legal and business framework akin to a violation of the agreement between investors and the state.

Expectation 6: Contractual commitments of both parties respected

Interestingly, many investors consider a violation of contractual rights akin to a violation of legitimate expectations in investment treaties as well. As case law shows, a tribunal must consider investors' expectations arising from contractual arrangements within the framework of FET standards. The interviews revealed that when investors have power purchase

agreements (PPAs) or other contractual arrangements with the state, both parties expect that it will be followed and executed as stipulated in the contract. Thus, the non-fulfilment of a contractual obligation also equates with a violation to investment treaties. In most cases involving investors, contractual obligations within projects in the energy sector are respected given the importance of the project to the host state.

Expectations 7: Remedy and compensation

When it comes to compensation for the property of SMEs, the interview data vary. In most cases, they received compensation, albeit following delays. Some preferred to sell their shares to a local partner in order to avoid lengthy legal proceedings. Lawyers who usually provide advice on investment contracts stated that investors in large-scale projects in the renewable energy and road construction sectors want investment contracts with investment arbitration clauses.

Expectations of the state

The interviews also focused on the expectations of the state, namely, the views of public officers, and their perceptions of reasonable foreign investors. The interview data reveal that the views of state officials align with the findings from the investment arbitration cases in which we find the most important attributes of reasonable investors (Wongkaew, 2019). Reasonable investors should recognise the power of the state when the state uses its power at times of financial crises for the public interest, and investors should assess the financial risk. The primary expectation of the state toward foreign investors normally revolves around new technologies and creating new job opportunities in a market. Foreign investors are also expected to follow all dimensions of corporate social responsibility in the host state.

To summarise, we can conclude that investors in Uzbekistan rely on both direct and indirect legitimate expectations and take the necessary precautionary measures to mitigate the consequences of any unforeseen non-fulfilment of the conduct promised by regulators.

Three Conceptions from the Focus Groups Discussions

The literature from the investment field has already provided three conceptions (voluntary commitment, assurance of state, and reliance) of legitimate expectations. The focus group discussions and interviews also revealed how three conceptions of legitimate expectations work in the business environment in the host country. The primary aim of the focus group discussions was to identify what types of expectations were provided to investors and how they understood the expectations communicated to them. In some examples, representatives from public bodies did not intend to entice investors to do so, but investors embarked on a detrimental action based on the presentation of investment opportunities in some regions. Before presenting the participants' stories, I tactfully revisit the principles of the three conceptions and indicate how they differ from each other. First, in the voluntarist approach, the state voluntarily undertakes an obligation or demonstrates an intention to perform an act, an intention communicated to the investor. Second, the assurance approach is based on a promise made to investors, which involves an intentional creation of assurance expectations in that promise. The expectations promised involve the future conduct of the state in that specific field. Third, the reliance concept refers to the state intentionally enticing an investor to invest in a host country, whereby investors engage in detrimental acts based on a promised action from the state (Wongkaew, 2019).

In what follows, I provide some expectation stories provided from investors and state representatives (that is, public officers).

Story 1: Voluntarist conception

During the interview and focus group discussions, public officials shared some experiences during which state authorities expressed their intention to undertake an obligation (e.g., providing land and buildings), thereby creating expectations. These intentions were clearly communicated to specific investors. In most cases, investors did not encounter any issues obtaining the land or buildings promised to them, but they did experience problems with contracts with local suppliers. In particular, the contracts were not renewed. This recalls the case of *Alpha v. Ukraine*, in which a tribunal rejected the initial expectations of the claimant to continue working with a hotel following a contract termination because the state did not

promise to renew the contract, as shown by the absence of a stipulation to that effect in the contract. But, that tribunal supported the claimant's argument that the investor had an expectation that the government would not interfere with the contractual relationship between the claimant and the hotel, which was not part of the investment agreement. This then resulted in a violation of legal obligations, which were stated in the contract between two parties and could amount to a violation of investment treaty obligations. Similar experiences emerged as rather common amongst participants of the focus groups and in a review of arbitration cases.

Story 2: Assurance conception

A legitimate expectations claim arises from the general legislative framework because it is unlikely to meet various criteria. For example, one investor cannot rely on the general framework of an investment treatment unless it is assured to him by the state. As such, specific assurances should be clearly indicated, specifically that the state will or will not undertake some actions. As one participant stated:

> I have been working in Uzbekistan since 2002. My main business is in the transportation and logistics service now. I had different experiences before 2016 compared with now in operating my business. When I came to Uzbekistan for the first time, I collected information about the informal practices and norms in the market from my compatriots who operated in a similar sector. But, such treatment was not extended to my business because the specific assurance was given only to them. (Kevin, founder of a Logistics Company)

In this story, we see that, at the beginning of his investment project, the investor relied on the experience of other investors in the country in order to establish reasonable, legitimate expectations. Moreover, other investors engaged in business in other sectors, not transportation. Thus, an assurance from the state was not extended to his business.

Story 3: Reliance on the actions of investors based on promises

Interview and focus group discussions revealed that some new incentives from the state can induce them to invest in a particular project. The primary question is the duration of a specific preference for any particular

sector. Investors do not want to face substantial changes in state preferences in the middle of a project. Discussions revealed that participants have similar expectations in arbitration cases. In one case, *National Grid v. Argentina,* a tribunal held that there was a breach to the FET standard because 'it fundamentally changed the legal framework on the basis of which the Respondent itself had solicited investments and the Claimant had made them' (para 179). Thus, the claimant relied on key elements of the regulatory framework in its decision to invest in Argentina.

Story 4: Representation of investment opportunities

The common element in the three conceptions above is representation. Commitments and communication should be delivered to investors by a competent member with state authority. Over the last six years, Uzbek authorities have made many efforts to attract foreign investment by organising investment forums. One of the participants of the forums stated, 'It was interesting to see the will of the state, that they are open to investors. But, again it depends on which sector you want to invest in and how all these promises will be translated to the investment contract between the state-owned enterprise and investors.' The focus group discussion also revealed that statements from the speeches of public officials function as signals to investors. But, they expect these statements to serve as a beginning to a new law or regulation in future. Thus, investors will not take any detrimental actions based purely on the representation of investment opportunities in a country.

To summarise, the focus group discussions revealed that all three types of legitimate expectations are practiced in the business environment. The expectations of investors and business operators in the country align with recent arbitration cases. Investors want to trust the promises made when all preferences are outlined in the law alongside any stability clauses. When it comes to compensation or the execution of court decisions, they have already considered the level of development of the legal and financial institutions in a host country.

Recommendations

Recommendations for Generating Legitimate Indirect Expectations

Based on the case studies on legitimate expectations presented in the previous sections, here I provide recommendations for improving the generation of indirect legitimate expectations based on the investment regulatory framework at the time an investment is made.

First, FET provisions play a crucial role in both direct and indirect legitimate expectations since each arbitration case begins with an analysis of the text of the FET clauses. Uzbekistan's current FET clauses are outdated, and only provide unqualified FET provisions. FET provisions should be linked to customary international law in the new BIT model. In order to clarify the application of FET provisions and the boundaries of expectations, my research suggests that the host country should include reference to international law in its future BITs, even if the other contracting party is a developing country. Research on the history of negotiations demonstrates that developed countries normally provide their model BIT for signing. It is also important to include clauses such as 'for greater certainty'. It is sufficient to assume that an FET references international law or, in another way, we can state that a qualified FET provision can improve the commitment resulting from BITs. Previous studies on FETs also recommended several options to amend FET clauses in BITs (Gallagher & Shan, 2009). Improving FET provisions will generate reasonable, legitimate expectations for potential investors and can provide directions for subsequent arbitration when it comes to explaining the scope of legitimate expectations based on a violation of FET provisions. Interviews with stakeholders who actively participate in drafting the text of BITs also revealed that Uzbek authorities are currently working on improving the substantive provisions included in the current BIT model.

The next section focuses on recommendations for generating direct legitimate expectations.

Recommendations for Generating Direct Legitimate Expectations

Direct legitimate expectations play a crucial role in attracting investors. Uzbekistan should generate direct and clear legitimate expectations for potential foreign investors and take concrete actions within the local investment legal framework. From the case studies summarised above, we

can see that foreign investors heavily rely on a country's direct assurance and representations before deciding to invest. The interview data also demonstrate that a gap exists between the assurance policy and regulations in practice.

Government representatives should be aware of the outcome of legitimate expectation cases in international investment arbitration fora. Thus, a state's commitments must be written into the law, and specific commitments must be made by the competent authority. Interview and focus group discussions also indicated that investors and other business participants prefer written promises rather than oral promises made during fora or official meetings. There is no one-size-fits-all approach for all sectors of the economy. Thus, the state should grant preference to certain sectors, a preference clearly presented and assured to a potential investor before signing on to a project. The host state policy should also be considered.

This analysis also suggests that the relevant authorities should develop guidelines for representing the investment climate in the country and for generating direct legal expectations when presenting investment opportunities in various sectors based on the case studies presented here and intended for multiple governmental departments and agencies. The competent state authority which makes direct promises to an investor or group of investors in a specific sector should also be familiar with the gravity of their direct promises.

Conclusions

In this chapter, I show that legitimate expectations based on local foreign direct investment legal frameworks and investment treaties can be clearly constructed in FET provisions. The current Uzbek investment law remains dynamic and cannot be frozen to attract foreign direct investment. Therefore, the results from arbitration cases should guide the generation of direct legitimate expectations. Yet, reasonable state goals aimed at solving environmental and social issues should also be considered by investors. A socio-legal analysis of expectations also revealed that both public authorities and investors are unaware of the type of legitimate expectations (direct or indirect) represented or the consequences of their inducement to future investment arbitration.

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CHAPTER 9

Taxation in the Digital Economy in Uzbekistan

Alisher Pulatov

Introduction

The digital economy in Central Asian countries has steadily grown in recent years. Regionally, Uzbekistan has emerged as a leader in the digital economy, significantly investing in developing its digital infrastructure and promoting digital technologies. For instance, in 2019, the Cabinet of Ministers of the Republic of Uzbekistan (Resolution, 2019) adopted a framework for the implementation of 'Smart City' technology in Uzbekistan (Dentons, 2019). This framework included initiatives such as e-government services, digital payment systems, and the integration of technology into various sectors such as healthcare and education. The country also has a vibrant startup ecosystem, and initiatives like IT Park (a technology park) have been launched to support information technology (IT) education, entrepreneurship, and innovation. Several pieces of legislation have also been adopted in Uzbekistan to expedite the process of the digitalisation of the economy, with the goal of achieving

A. Pulatov (✉)
Westminster International University in Tashkent, Tashkent, Uzbekistan
e-mail: a_pulatov@wiut.uz

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_9

a significant transformation of the economy, industry, and society using digital technology (Presidential Decree, 2017, 2020). Key policy initiatives and documents in this respect include the 'Digital Uzbekistan–2030' strategy, the 'Strategy of Action for the Further Development of the Republic of Uzbekistan', and the 'New Development Strategy of Uzbekistan for 2022–2026'. Significant results have been achieved following the implementation of the measures outlined in these documents. In particular, the number of information and communications services grew more than 1.5-fold between 2020 and 2022, from 13.9 trillion *so'm* to 22.9 trillion (Ismailov, 2023). In addition, the share of the digital economy in Uzbekistan's gross domestic product (GDP) rose from 1.99% in 2020 to 2.77% in 2022. From 2020 to 2022, information and communication technology (ICT) service exports increased from US$169.3 million to US$306 million (Ismailov, 2023). In 2022, the export of computer programming services increased to US$123 million from US$15 million in 2020, indicating the sector's potential. Currently, 1122 companies operate in IT Park, of which 30% are exporters (Ismailov, 2023). Furthermore, the number of foreign companies registered has increased from 18 in 2020 to 165 in 2022 (Ismailov, 2023). This serves as a sign that business conditions are improving in this sector.

As shown above, in recent years, the digital economy has grown at an unprecedented rate. This primarily stems from the ever-improving digital technologies available, with increasing numbers of businesses and people using them. Such a rise results from a number of conditions, such as the creation of a new digital infrastructure, the availability of digital devices and services, and the growing popularity of online activities. But, for digitalisation to continue growing, it is important to continue putting advanced information technologies into many parts of the economy, further develop digital infrastructure, and expand the national market for digital technologies and services. Most importantly, laws governing information technology (IT) businesses also require updates to meet international standards. Currently, IT businesses and local startups may be at risk of insolvency given the presence of large multinational IT enterprises operating in local markets. Multinational IT enterprises avoid paying local taxes because of the permanent establishment (PE) rule in tax law. After introducing the research aims and questions addressed in this chapter, I then discuss the significance of multinational IT enterprise taxation to provide the reader with essential background information.

Research Aim

This chapter aims to examine to what extent Uzbekistan's legal and regulatory framework can accommodate taxation of the digital economy. More specifically, I aim to investigate whether Uzbekistan's legal framework can detect PE in an economy which relies heavily on intangible assets and a business model based on data, network effects, and user-generated content, and which generates enormous quantities of revenue without a physical presence.

Hypothesis

This research hypothesises that Uzbekistan does not have the necessary legislative and regulatory structures in place to regulate taxation of the digital economy.

Research Questions

Given the above research aim and hypothesis, I address the following research questions in this chapter:

- Is the digital economy taxable in Uzbekistan given the current legal framework?
- What is the legal framework for taxing the digital economy in Uzbekistan?
- Can current tax law legislation effectively levy taxes on the digital economy?
- What practical long-term measures should be implemented to improve the taxation of the digital economy?

Methodology

The research methodology employed in this chapter relies on a systematic approach to examining the effectiveness and suitability of tax laws for their intended purpose. The process begins with a comprehensive review of international tax law and standards, ensuring a solid understanding of the

broader context and global practices. This initial phase establishes a foundation for evaluating local tax laws within specific Central Asian countries' jurisdictions, and specifically within Uzbekistan.

Building upon the international framework, the next stage focuses on an in-depth analysis of Uzbekistan's tax legislation. This involves a meticulous examination of relevant statutes, regulations, and case law to gain insights into the existing legal landscape and its alignment with international norms and standards.

To further assess the practical implementation and efficacy of local tax laws, I also conducted a qualitative study, consisting of interviews with key informants such as tax scholars, professionals, and officials involved in tax administration. These interviews provided valuable first-hand perspectives and enabled the measurement of how well the existing tax laws fulfil their intended purpose in real-life situations.

By combining a thorough review of international tax law and standards, an in-depth analysis of local tax legislation, and interviews with key informants, this research methodology aims to provide a comprehensive assessment of the compatibility and effectiveness of tax laws in achieving their intended objectives.

In addition to the aforementioned research methodology, this study drew upon a diverse range of sources to ensure a comprehensive analysis. Academic articles from reputable scholarly journals were reviewed in order to understand key theoretical debates and empirical findings related to international tax law, standards, and their application. In addition, news articles from trusted sources were incorporated into the analysis to provide real-world context and up-to-date information on relevant developments and the practical implications of tax laws. These news articles contributed to a comprehensive understanding of the challenges, debates, and emerging trends within the field of international taxation. By combining academic publications with news articles, I aimed to capture both the theoretical underpinnings and the practical realities of international tax law and its implementation at the local level. This multidimensional approach enhanced the depth and breadth of my findings, providing a well-rounded analysis of the fit and effectiveness of tax laws for their intended purpose.

Literature Review

An extensive scholarly body of literature has focused on taxation issues in the digital economy. However, a preliminary search revealed that the vast majority of the existing literature focuses on taxation in the digital economy in a global (predominantly, Western countries) context, with limited academic literature focusing on Central Asia or Uzbekistan specifically.

Falcao and Michel (2014) argue that a digital service provider can offer services to different jurisdictions without meeting the Organisation for Economic Co-operation and Development's (OECD's) substantial presence tests. In doing so, they offer a case study to illustrate how a digital service provider could offer multiple services to different countries without paying taxes in the country where revenue accrues.

Schoen (2017) argues that international organisations, tax scholars, and business experts have been working on future taxation in the digitalised economy. Challenges surround developing a framework for corporate income tax to capture profits derived from cross-border digital transactions. General concepts like 'economic allegiance', 'benefits principle', and 'digital presence' are unhelpful in sharing profits in production and destination countries. Schoen suggests that empowering market countries can follow two trajectories: digital presence rules focusing on market demand or digital investment rules serving as a proxy for productive income. He also states that a quick fix may be distortive and inefficient, and temporary measures may become permanent.

On the one hand, Brauner and Baez Moreno (2015) suggest that the introduction of a withholding tax mechanism anchored on the base erosion principle is the best solution. By contrast, Avi-Yonah (2015) maintains that a destination-based corporate income tax is the best solution, treating multinational enterprises as unitary businesses and taxing them based on where they sell their goods or services. On the other hand, Hongler and Pistone (2015) put forth a new approach to PE status based on digital presence supported by reconstructing benefit theory. Helpfully, the OECD's (2015) final report for Action Plan 1 summarised broader tax challenges faced by policymakers in the digitalisation era, including the concept of a new nexus, the massive use of data, and characterisations for direct tax purposes.

For Olbert and Spengel (2017), understanding the digital economy and reform proposals is premature. They highlight that the OECD missed

opportunities to define the paradigm for value creation and for analysing digital business models accordingly. The key pressure area for taxing digital businesses in the near future lies in transfer pricing. They, therefore, put forth a framework for refining the transfer of pricing guidance, aligning profit taxation with value creation.

Hazpaz (2021) discussed tax challenges arising from digitalisation and the OECD's Pillar One[1] against unilateral tax reforms. This pillar suggests a multilateral approach which avoids global revenue thresholds targeting U.S.-based companies. Hazpaz (2021) recommends applying a new tax nexus through market thresholds, subject to a global *de minimis* amount. However, the OECD faces a challenge in achieving a consensus-based solution within an inclusive framework of 137 member-states, particularly during the COVID-19 pandemic.

As shown above, the digital economy also creates challenges for value-added tax (VAT) collection, particularly where goods, services, and intangibles are acquired by private consumers from suppliers abroad. Understanding and exploring these challenges are particularly intriguing in the legal contexts of developing countries where the legal infrastructure remains in its infancy, and the prevalence of a weak rule of law further exacerbates the taxation problem. With these considerations in mind, in this chapter using the case of Uzbekistan, I attempt to address gaps in knowledge on the taxation of the digital economy in the context of a developing country—namely, Uzbekistan—through an analysis of its historical background, and the challenges faced by the state in tax administration given an ever-increasing digitalisation of the economy and society.

Central Asia: Digital service tax obligations of non-residents in Central Asia (VAT and DST)

When considering taxation in the digital economy in Uzbekistan, it is crucial to evaluate and compare other Central Asian countries. Central Asian countries share various historical, cultural, and economic similarities. Analysing taxation in the digital economy in Uzbekistan within the broader Central Asian context provides a deeper understanding of the

[1] For more information on the Base Erosion Profit Shifting (BEPS) 2.0 Pillars, see https://kpmg.com/xx/en/home/insights/2020/10/beps-2-0-pillar-one-and-pillar-two.html.

region's overall trends and methods. In addition, this analysis identifies the similarities and differences in Uzbekistan's tax policies compared with those of its neighbours. Moreover, a comparison with other Central Asian countries is better for several other reasons.

First, such comparisons allow us to identify policy convergence or divergence. It is possible to discover similar patterns, best practises, or places where policies deviate by comparing the taxation policies in various Central Asian countries. This comparative analysis can offer insight into the efficacy of various approaches and suggest possible areas for regional policy harmonisation or collaboration.

Second, such an analysis can foster investment and competitiveness. Tax laws in neighbouring countries might impact investment decisions. When determining where to locate their activities in the digital economy, businesses may consider geographic characteristics. Understanding how Uzbekistan's tax policies compare to those in other Central Asian countries can help investors understand the country's competitiveness and attractiveness as an investment destination.

Third, and finally, it is important to examine regional levels of cooperation and integration. Central Asian countries are becoming more involved in regional cooperation and increasing levels of integrated activities. Harmonising regional taxation rules can help to facilitate trade, economic cooperation, and the creation of a regional digital economy. Discussions on taxation in the digital economy in Uzbekistan might explore possible areas for regional collaboration and policy coordination by taking other Central Asian countries into account. Effective taxation in the digital economy is impossible without regional cooperation.

Whilst the focus here lies primarily on Uzbek legislation, background information and comparisons with other Central Asian countries enrich the analysis and provide a more comprehensive understanding. Rather notably, however, the degree and usefulness of these comparisons may differ based on the specific subject discussed as well as the availability of data or information on other nations' taxation laws.

Nearly all Central Asian countries introduced a value-added tax (VAT) on digital services. The first to do so was Uzbekistan, which levied a 15% VAT on digital services beginning in 2020 (Asquith, 2021b). Tajikistan followed in 2021 with an 18% VAT (Asquith, 2021a), with both Kazakhstan and Kyrgyzstan adopting a 12% VAT (Caragher, 2022) for digital services the following year. The introduction of this new VAT

resulted in some competition amongst Central Asian countries. Uzbekistan announced a decrease to its VAT for digital services from 15% to 12%, reaching parity with other Central Asian countries. Tajikistan currently levies the highest VAT for digital services; however, Tajikistan is planning to gradually decrease its VAT from 18% to 13% by 2027. A distinct feature of the VAT legislation in Tajikistan compared with other Central Asia is its threshold of Tajik *somoni (*TSM) 1 million (approx €76 000 or US$90 000) subject to VAT. With the exception of Turkmenistan, all of the countries in Central Asia have implemented similar legislation, including registration, reporting, and defining what constitutes digital services. Registration occurs through an online portal. Interestingly, there is no threshold requirement to register for VAT, enabling non-residents to immediately apply. In accordance with the new regulation, non-resident service providers and intermediaries for business-to-consumer (B2C) (Baker McKenzie, 2021) digital or electronic services are required to pay VAT. Transactions between businesses (business-to-business, or B2B) are not VAT liable, and instead apply a reverse-charge approach.

Kyrgyzstan was also the first country in Central Asia to place a 2% digital services tax (DST) (Caragher, 2022) on digital service providers with a Kyrgyz IP address, replacing the VAT liability. However, foreign companies that offer digital services in Kyrgyzstan must still pay VAT. A turnover tax applies to both B2B and B2C sales of goods, digital or electronic services, and intellectual property rights. Other Central Asian countries—namely, Kazakhstan, Tajikistan, and Uzbekistan—have chosen to charge VAT instead. Once DST is established, taxpayers must complete and submit quarterly tax returns to report and pay the 2% tax. This must be completed by the twentieth of the month following the end of the quarter.

Several countries began using DSTs two years ago to tax the sales of foreign digital companies that did not pay enough corporate income tax. Most, however, have been put on hold because of the 2021 OECD agreement on the right to tax foreign companies and the global minimum tax rate.

In the next section, I focus on analysing Uzbekistan's digital taxation legislation in relation to the aims and questions addressed in this chapter. Specifically, I examine the location of digital services and the identification of non-resident businesses subject to VAT. Additionally, I explore the definition of digital services and the challenges associated with their

application in the context of Uzbekistan. By delving into these topics, I aim to gain insights into the effectiveness and suitability of Uzbekistan's tax laws for regulating the digital economy.

Law-in-Books: Uzbekistan's Digital Taxation Legislation

Location of Digital Services

Companies not resident in the Republic of Uzbekistan are required to collect and remit VAT if Uzbek residents acquire electronic services from them. Under Article 241, Clause 10 of the Tax Code, the territory of the Republic of Uzbekistan is understood as the place where a physical person purchases services in electronic format if one or more of the following conditions are met:

1. The buyer's place of residence is the Republic of Uzbekistan (permanent resident and address).
2. A bank account or payment service provider used by the buyer to make a payment for the services is opened in a bank located within the territory of the Republic of Uzbekistan (payment via an Uzbek bank account).
3. The network address of the buyer used during the acquisition of the services is registered in the Republic of Uzbekistan (the IP address of the device used to access the services). Or
4. The international code of the country for the telephone number used to acquire or pay for the services is conferred in the Republic of Uzbekistan (Uzbek international telephone code).

Other Central Asian countries use the same destination test procedure to determine whether a consumer is a resident. If the consumer is a resident, the company may be required to pay VAT for providing digital services.

Defining Digital Services

According to Article 282 of the Tax Code of the Republic of Uzbekistan, services provided automatically via the Internet are subject to VAT, with 14 different types of activities fall under VAT liability. These include the following:

1. granting rights to use software (including games delivered via the Internet), as well as databases, their updates, and additional functionalities available via the Internet, including remote access to them;
2. the provision through the Internet of rights to use electronic books (publications) and other electronic publications, informational and educational materials, graphic images, musical works with or without text, and audiovisual works, including remote access to such items for viewing or listening through the Internet;
3. the provision of advertising services on the Internet, including the use of programs for electronic computers and databases operating on the Internet, as well as the provision of an advertising platform (realm) and time for advertising on the Internet;
4. the provision of services for the placement of proposals for the acquisition (sale) of goods (services) and property rights on the Internet;
5. the provision through the Internet of services related to technical, organisational, informational, and other opportunities, carried out using IT and systems, to establish contacts and enter into transactions between sellers and buyers. In particular, such services include the provision of a trading platform operating on the Internet in real-time, upon which potential buyers offer their price through an automated procedure, and parties are notified of the sale by automatically creating a message;
6. ensuring and (or) maintaining the presence on the Internet for personal purposes or for economic activities, supporting electronic resources for users (sites and [or] pages of sites on the Internet), providing access for other Internet users to them, and providing users the opportunity to modify them;
7. the automatic maintenance of programs at a distance and online; the provision of services for the administration of information systems, sites, and (or) pages of websites;

8. the storage and processing of information provided that the person who submitted this information has access to it via the Internet;
9. the provision in real-time of computing power for placing information in a system;
10. the provision of domain names and hosting services;
11. the supply of information generated automatically when the buyer enters data through the Internet, the provision of automated services for finding data, their selection and sorting by request, and the provision of these data to users through information and telecommunications networks. In particular, such information deliveries include stock exchanges in real-time, and the real-time automated translation of texts;
12. the provision of services for searching and (or) providing the customer with information about potential buyers;
13. providing access to search engines on the Internet; and
14. collecting statistics on sites on the Internet.

Uzbekistan's list is more extensive than other Central Asian countries, which are limited to seven or eight areas.

Collecting VAT Through Digital Services

Taxing digital services with VAT is a smart move for Central Asian countries. The collection of VAT may not be straightforward, but it is currently a more realistic objective than the collection of other taxes. At the moment, no international community or nation has devised an efficient method for taxing the income of non-resident corporations. The situation in developing nations may be even more difficult.

Central Asian countries appear to follow the OECD's recommendations for collecting VAT. According to the OECD, the ideal way to collect VAT on digital products and services is through a simplified registration and collection framework. To make it easier for non-resident companies that do not have representation in market nations, VAT registration, collection, and reporting should be completed online (OECD, 2017). As a result, using technology in these processes is essential. Furthermore, the government must lay out a clear and simple process. Implementing this process and regime is likely to boost non-resident companies' compliance through a simplified administration and with low compliance costs.

All Central Asia countries considered the above recommendations and created online platforms with a simple registration process explaining each step (Tax.uz, 2023). Whilst websites for tax registration are simple to use, it is sometimes challenging to find these websites via search engines. In most search engines, the correct page does not appear as the first option or the website's name might not be similar to other analogical websites.

Given the preceding discussion, the next section examines the practical implementation of tax collection for digital services in Uzbekistan, as well as the challenges involved in identifying taxpayers and determining VAT liabilities. This analysis provides a deeper understanding of the discrepancy between written tax law and its actual implementation. In addition, I cast light on the efficacy of existing mechanisms and potential areas for improvement in the taxation of digital businesses in Uzbekistan.

Law-in-Action: Regulation of Digital Businesses and Taxation in Uzbekistan

Identification of Non-resident Businesses Subject to VAT

Identifying taxpayers is one of the first and most crucial steps to ensuring businesses pay taxes. The current Tax code of the Republic of Uzbekistan stipulates who is liable to pay tax in fairly vague terms. Business entities must pay VAT if residents of the Republic of Uzbekistan acquire electronic services from them. Under Article 241, Clause 10 of the Tax Code, the territory of the Republic of Uzbekistan is understood as the place where a physical person purchases services in an electronic format. Thus, tax authorities must prove that a digital service is provided and that the digital service is provided to residents of Uzbekistan when they are physically in Uzbekistan.

During interviews with Uzbekistan's Tax Committee representatives, informants voiced concerns that Uzbekistan does not have the technical capacity to establish and prove the two nexuses mentioned above:

> We do not have the technical capacity or expertise to identify who pays taxes. We received the list of companies registered in Russia from Russian authorities who are paying. We decided to send them all a letter to pay VAT in Uzbekistan. The list included more than 300 companies. We sent them a [letter a] couple of times with instructions on how to register for VAT.

> Did it work?
>
> Yes, in particular, big companies registered for VAT. Amazon decided not to register.
>
> What can you do if Amazon decides not to pay VAT?
> Legally? Nothing. Most companies do register from more moral, social, and reputation standpoints.

Currently, forty-one international companies are registered as VAT taxpayers for digital services. They agree that there is no one good method for identifying companies subjected to VAT. Moreover, there is no technical method to calculate how much VAT a company should pay because Uzbekistan does not have access to companies' financial data. In addition, there is no means to verify the accuracy of the financial information submitted by a registered company; reports are accepted based on mutual trust.

One method that was used by the Uzbek Tax Committee but highly criticised was accessing bank transfer reports through the Central Bank. The senior officer of the international department of the Tax Committee stated:

> In Uzbekistan, banks must submit a report of their activities to the Central Bank, and international transfers are included in this report. The Tax Committee analysed these international transfer reports to determine where residents of Uzbekistan are transferring money. The Tax Committee was able to make a list of websites where payments were made. We wrote a letter to the owners of a website, asking them to register and pay VAT. However, this method was later criticised on the grounds that it infringed upon the bank secrecy rule and misused the Tax Committee's power. We (the Tax Committee) have been informed that banks should not provide all transfers, but only those that might be subject to the tax authority, only in selected situations.

Currently, the Tax Committee is looking for other means to identify those liable for VAT on digital services. It became clear from the interviews that even though a law was introduced, there is no system in place for how to implement it. The current methods are not sustainable and do not

rely upon the proper methods. Uzbekistan is also examining the practices in developed countries regarding how to implement digital taxation, but developed countries' systems may not be suitable because they may require substantial investment.

Identification of Digital Services Subject to VAT

The definition of 'digital services' is the second issue related to the tax law. Uzbekistan identified fourteen activities that may be subjected to VAT, twice the number of those in other Central Asian countries. One of the reasons Uzbekistan identified those fourteen activities is that they borrowed the definition from Russia's tax law.

During an interview with a Tax Committee expert, he explained why such a broad definition is applied:

> We wanted to cover as many activities as possible, to allow for the opportunity for a bigger pool of companies to pay VAT if they wish to pay. In addition, the IT industry is consistently changing, and broad definitions make the law relevant, and it will not require frequent amendments.
>
> Will broad definitions decrease the legal certainty?
>
> In the digital industry, 'what is a digital service' is always under question because of the variety of business models and services they provide. Currently, we are dealing with Wildberries, a Russian online retail company that is refusing to pay VAT. 'Wildberries Uzbekistan' claims they have registered as warehouse providers in Uzbekistan and are not a shop, and the shop is located in Russia and registered in Russia. Another issue is 'Telegram shop groups'. Many individuals establish Telegram groups where they sell almost everything from cosmetics to clothing to and vitamins, including pharmaceutical drugs, some of which require a prescription. This is not only causing breaches to tax regulations, but many other laws as well. Currently, we are working on developing strategies to address these issues.

Broad definitions might be good in some sense and provide more expansive coverage. However, such an expansive, broad definition might result in some social issues. For example, consider the case of charging VAT for software use licenses. Software used for hospital medical equipment, state banks, and public education institutions are owned by non-resident companies that might become subject to VAT; such companies might stop operating in Uzbekistan, and the software might not work properly

without updates. Furthermore, even if the company decides to work in Uzbekistan, VAT might financially affect these public institutions (Baker McKenzie, 2021).

Whilst the meaning of 'digital services' remains broad, it only applies to a certain kind of digital business. The way 'big tech' companies work and make money is not limited to the traditional methods encompassed in this definition. In this definition, we find four different kinds of digital services (Kennedy, 2019):

1. showing ads to users of a digital interface based on their data profiles;
2. providing a multisided digital platform that allows users on one side of a transaction interact with users on the other side, including for the purchase of goods and services;
3. selling users' data; and
4. information search engines.

VAT cannot be charged for the value created on a platform by users. Users can add value to a site by creating content, such as in the case of youtube.com. If a new singer posts a video on YouTube, they might make money based on how many people watch it, and they might have to pay taxes on that money. But, even if all users are from Uzbekistan, as an example, that video cannot be subject to VAT. One thing is clear when applying the Tax Code as created by the Tax Committee: they will try to fit the business model of entities to reflect the current definition of digital services. Considering the rather diverse business models of IT companies, such a process is not a simple task.

Another issue related to determining how to apply VAT revolves around the sharing economy, which provides products and services through a digital platform. Tourism, transportation, professional services, and financial services are all impacted by the sharing economy. These platforms can be divided into two categories (Mullins, 2022, p. 22):

1. an electronic marketplace, in which goods or services are ordered and supplied through an electronic intermediary that plays a direct role in the transaction (e.g., Amazon, Alibaba, etc.); and

2. an electronic platform that connects buyers and sellers, but is not directly involved in the supply of goods or services (e.g., Airbnb, Yandex Taxi, etc.).

For the first category, VAT may be levied on an electronic marketplace's supply of products, which could be the actual marketplace or the original supplier. For the latter, VAT may be levied on the supplier as well as any fees paid to the platform in the event of an electronic platform. However, Mullins (2022) states that the second category is simpler if the platform imposes VAT, which ensures VAT collection from transactions and less of an administrative burden to tax authorities.

Is VAT the Best Way to Tax Digital Services in Uzbekistan?

Under international rules, the state cannot apply preferential tax to domestic goods. Specifically, states refrain from levying preferential taxation to domestic goods since this would discourage foreign investment and provoke retaliatory measures amongst trading partners. Thus, VAT should apply to all similar goods whether domestic or not. That means the higher the levy, the higher the burden will be for domestic producers as well. Domestic startup companies may be particularly impacted, rendering competition with giant tech companies even more difficult. It is possible to place a threshold on such taxation, similar to Tajikistan's practice (Asquith, 2021a). A threshold system for VAT might help startups or small companies develop and ease the tax burden placed on them; however, some states may argue that this threshold was deliberately set to impose a discriminatory VAT on foreign businesses. Thus, such a threshold might create inter-state conflict, similar to that which occurred between Turkey and the USA. Specifically, the US claimed that Turkey set a threshold so high that only US tech giants and not local tech companies were tax liable (Agencies, 2021).

Moreover, VAT is not a good method to use to tax non-resident tech companies simply because most of the tax burden will be placed on resident consumers. How much of the burden will be placed on the consumer depends on the type of company as well as on the demand and supply curve. It is possible that for some tech services no alternative exists on the

market. Even if a tech company places the full VAT burden on consumers, consumers do not have any choice. In other words, the VAT system will tax consumers, but not companies.

Currently, Uzbekistan is considering taxing the income of non-resident companies. The biggest challenges for the Tax Committee revolve around the operation of companies without permanent establishment (PE). The Yandex Taxi company serves as one intriguing example, whereby Uzbekistan faces challenges to taxing and establishing anti-competition laws (Gazeta.uz, 2023b). Furthermore, Yandex Taxi is under an anti-monopoly committee investigation in Kazakhstan as well (Tengrinews.kz, 2023). Yandex's representative in Uzbekistan, whom I interviewed, stated the following:

> Yandex Go is an online information service. We provide services remotely, giving partners access to the platform. Within the territory of Uzbekistan, these services are provided by the legal entity Ridetech International B.V., registered in the Netherlands. This is not contrary to the laws of the country.

Comments from the prominent Uzbek blogger Bakiroo (2023) on Yandex Taxi are illuminating:

> Since the Republic of Uzbekistan and the Kingdom of the Netherlands have signed a convention to avoid double taxation, Yandex Go pays taxes in country in which the company is registered. Our local partners, in turn, are fully responsible for paying their taxes for transportation services in accordance with the tax legislation of Uzbekistan. Other international online services work in the same way: Google, Instagram, and AliExpress.

On 27 March 2023, the Minister of the Economy and Finance Mr Kutbidinov stated:

> Uzbekistan has signed agreements with fifty-four countries to prevent double taxation. And we must abide by these agreements. Now, are these in our best interest or not? In this regard, the Ministry of the Economy and Finance is developing its position, policy, and proposals. I think that soon, within a month, we will submit our proposals to the government (Gazeta.uz, 2023a)

According to Mr Kutbidinov, Uzbekistan must create a legal base on tax 'from the point of view of observing the interests of entrepreneurs and creating equal opportunities for everyone in the market'. According to a 2021–2022 report, the annual income of Ridetech International in Uzbekistan was 116.5 billion *so'm*, which paid 15% VAT or 17.5 billion *so'ms*. Furthermore, Ridetech International claims its remaining tax, such as income tax, is paid in the Netherlands. Tax and anti-monopoly agencies stated several times that, with this unfair environment, it will be difficult for local companies to compete with giants like Yandex.

The current tax system does not fully address this issue, although Uzbekistan has begun tackling it. There may be few VAT-registered companies, but for eleven months in 2022, forty foreign companies paid 44.8 billion *so'm*s in taxes (US$1 = 11,300 *som's* [Cbu.uz, 2023], or around US$4 million), which is twice that paid in 2021. At the same time, 98% of the taxes paid stem from ten foreign companies providing electronic services(Kun.uz, 2022), as illustrated in Table 9.1.

However, if we consider the tax income of Uzbekistan and Kazakhstan, Kazakhstan collected six times that of Uzbekistan. According to the head of the Digital Assets Department of the State Revenue Committee of Kazakhstan, for the beginning of year, non-resident companies paid about US$6.3 million in taxes in 2022 (Bulatkulova, 2022). In 2022, the total tax paid by non-resident companies reached almost US$36 million (16 billion *tenge*) (State revenue committee of the Ministry of Finance of the Republic of Kazakhstan, 2023). Currently in Kazakhstan, forty-five non-resident companies are registered for VAT, with comparable company names and numbers to those in Uzbekistan. Similar to

Table 9.1 Taxes paid by top ten foreign companies providing electronic services in Uzbekistan, 2021

Company	*Tax paid in* so'ms	*Tax paid in US$*
Meta	18.6 billion	US$1.61 million
Google	14.8 billion	US$1.3 million
Apple	6.2 billion	US$548 672
Booking.com	1.4 billion	US$123 894
Netflix	867.7 million	US$76 787
Xsolla	798.1 million	US$70 628
Yandex	445.5 million	US$39 424
Paddle.com	404.2 million	US$35 767
LinkedIn	234.1 million	US$20 716
Adobe Systems	180.3 million	US$15 956

Uzbekistan, the top five companies pay the majority of taxes. The highest taxpayer in Kazakhstan is Meta, which pays US$6.4 million (2.9 billion *tenge*), followed by iHerb which pays US$4.9 million (2.2 billion *tenge*), Google which pays about US$4.9 million (2.24 billion *tenge*), and Apple which pays US$3.7 million (1.72 billion *tenge)* (QazMonitor, 2023).

No single explanation exists for why such a large gap exists between Kazakhstan and Uzbekistan. One reason may lie in the gap between the two states' purchasing power and GDP. How much VAT accumulates is linked to how many goods or services are purchased by residents of a country. Importantly here, Kazakhstan is more economically wealthy than its neighbours.

Another reason could be that many Uzbeks work abroad. Current estimates place the official number of Uzbeks working abroad at 1.7 million individuals, although the real number may be twice as high (Kun.uz, 2021). According to VAT regulations, for a non-resident company to be subject to VAT, the consumer or user must be physically present in Uzbekistan.

The gap may also be explained by the use of proxy servers or virtual private networks (VPNs) given poor internet connections in Uzbekistan. Currently, companies use IP addresses to identify a user's location. Using a proxy server or VPN creates challenges in identifying a user's true physical location. In some instances, international online retailers offer discounts based on the user's physical location. However, goods can be shipped anywhere. At times, Uzbek users use a VPN to take advantage of such discounts, although they list Uzbekistan as their shipping address. One prime example might be Amazon, for which the only evidence the Uzbek government has includes goods registered via customs. Amazon refused to pay any tax or consider itself virtually present in Uzbekistan. Uzbekistan currently imposes a limit on citizens that any good with a value that exceeds US$1000 during an annual quarter is subject to tax (Uznews.uz, 2022). This represents a paradox in some sense since the final consumption of the goods occurs in Uzbekistan, and according to tax practice, should be subject to VAT. But, because identifying the physical location of the user is challenging due to the use of a proxy server or VPN, a non-resident company might not include them in their tax calculations.

The above examples suggest that Central Asian countries can adopt a system for determining residence, such as the recipient's billing address or home address and the location of the purchaser's bank or credit

card account. Non-resident companies are located outside the country, and collecting data on transactions is not easily possible. Ultimately, the government should ensure that it can assess supplier compliance.

Going Forward Under the Ever-expanding Digitalisation of the Economy and Society

Whilst developing solutions to address digital taxation issues, it is vital to keep reform objectives in mind. Increasing revenue is an obvious goal, but other objectives should also be considered. Tax reforms should attempt to render the tax system more equitable and level the playing field so that non-resident businesses do not obtain a competitive advantage over domestic entities. This fairness should improve tax morale and attitudes towards paying taxes. Furthermore, any reform should aim to provide tax certainty for taxpayers and the tax administration, and should be cost-effective, efficient, and achievable.

Instead of pursuing income or turnover tax measures, Central Asian countries prioritised the VAT strategy to raise tax revenue from the digital sector. Central Asian countries have unchallenged VAT taxation rights on cross-border supplies under the destination principle, and VAT is a simpler measure than withholding taxes. In Central Asia's taxation experiences, tax collection problems were partially solved by making it easier for non-resident companies to register for VAT and to pay their taxes. Compliance and administrative costs have been significantly cut through the online filing process, which might also encourage non-resident companies to work with the tax authority. This method has been shown to work well in terms of compliance and bringing in additional tax income. Currently, forty to forty-five companies are registered in Kazakhstan and Uzbekistan, and the current measure depends upon the voluntary compliance of the non-residence company. One recommendation might be for Central Asian countries to formulate an enforcement mechanism. Current implementation relies on voluntary compliance because most registered companies are large, high-profile companies; for them, their reputation remains a priority. Voluntary compliance might not work with other types of companies (e.g., medium-sized companies or companies that do not experience moral pressure). In Central Asian countries, strict enforcement mechanisms may not currently work because the digital economy market share is insignificant compared with other Asian countries. Furthermore, the non-tax impact of reforms should be considered. Some non-resident

companies might be the only companies that provide unique services in the country. If taxation discourages their trade in the country, they might decide to cease providing services in that country, thereby negatively impacting all aspects of that country.

The second recommendation is that the government should assist non-resident companies in receiving information about users in order to calculate and fulfil their VAT obligation. For example, due to proxy servers and VPNs, it is not easy for non-resident companies to collect all of the necessary information. Information about users should also be provided to unregistered non-resident companies. This information might be an important factor for non-resident companies' decisions to register. Thus, the government should establish a system to exchange information with non-resident companies, and information should be available from both sides, thereby benefiting both parties.

The third recommendation is that tax authorities should utilise technology to implement tax reform. Technology might ease the administrative burden on the tax authorities. Tax authorities have a limited capacity. If the collection of taxes becomes costly, it will not work in the long term. Thus, technology can be used for collecting taxes, improving services, and effectively using existing data. Technology is the primary medium connecting all parties.

The fourth recommendation centres on thresholds. None of the Central Asian countries except Tajikistan placed a threshold for VAT liability. That threshold was placed in order to allow all companies to be treated the same and allow them all the opportunity to pay VAT. The threshold might be a legitimate mechanism to protect startups and small businesses, easing the administrative burden on tax authorities. However, the threshold should not be discriminatory against foreign businesses versus domestic businesses. This goes against fair tax rules and might result in conflicts between states.

Conclusions

Taxation of the digital economy holds significant importance, particularly for developing countries like those in Central Asia. However, the current tax system is struggling to effectively tax the digital economy, leading each country to attempt to devise its own solutions. In the Central Asian countries, similar tax laws have been enacted to address these challenges, but they often lack adequate implementation mechanisms. Thus, it appears

that certain parts of the legislation have been directly borrowed from Russian tax law without considering the specific needs and capabilities of the region.

My research findings indicate that the current legal framework is unable to accurately determine who is subject to taxation and what digital services should be taxed. This limitation arises due to a lack of expertise and IT capacity within specific countries. Insufficient technical knowledge and resources hinder the effective identification and classification of digital transactions for tax purposes.

Furthermore, a notable shortcoming identified in this research is the absence of an enforcement mechanism for digital economy taxation. Even if suitable legislation is in place, without proper enforcement, it becomes challenging to ensure compliance and collect the appropriate taxes from digital service providers.

To address these issues, it is crucial for policymakers in the Central Asian countries to not only tailor legislation to their specific contexts, but to also invest in building the necessary expertise and IT infrastructure. By strengthening their capacity, these countries can enhance their ability to identify taxable entities, classify digital services, and establish effective enforcement mechanisms.

Overall, this research highlights the limitations to the current taxation of the digital economy in the Central Asian countries, emphasising the need for comprehensive reforms that encompass both legal and implementation issues.

However, it would be incorrect to characterise Uzbek tax law as a complete failure. With over forty companies currently registered and paying VAT, we find a positive trend. Moreover, the increasing income from VAT suggests that the tax system is generating revenue and gaining traction over time. It is commendable that companies are voluntarily registering and fulfilling their tax obligations from a moral and reputation perspective.

However, it is essential to recognise that, in order to sustain growth in registrations, Uzbekistan should strive for a system that provides mutual benefits beyond moral and reputation considerations. My four recommendations aimed at improving registrations highlight a proactive approach to enhancing the effectiveness of the tax system. By implementing these recommendations, Uzbekistan can potentially incentivise additional companies to register for tax purposes. This could foster a

mutually beneficial environment, where businesses see tangible advantages to registering. Such measures can encourage greater participation and ensure the long-term success and growth of the tax system in the country.

Moreover, the rapid digitalisation of the economy has far-reaching implications for the legal systems in Central Asia. As the digital landscape continues to evolve, it significantly impacts the legal environment, business and investment climate, as well as social change and governance in the region.

Digitalisation poses new challenges to the legal environment in Central Asia. Traditional legal frameworks are often ill-equipped to address the complex issues arising from the digital economy. The lack of specific regulations and clear guidelines hinders the effective regulation of digital businesses and taxation. This gap creates uncertainty for businesses, consumers, and tax authorities, undermining trust and impeding the development of a robust digital ecosystem. To foster innovation and protect the rights of all stakeholders, the Central Asian countries must adapt their legal frameworks to accommodate the unique features of the digital economy.

Central Asia's business and investment climate is profoundly impacted by digitalisation, presenting new opportunities for entrepreneurship and economic development on the one hand. The digital economy enables businesses to access global markets, interact with consumers on digital platforms, and employ cutting-edge technologies. This could entice foreign direct investment and stimulate job creation. On the other hand, the rapidly changing digital landscape challenges traditional industries and small businesses by requiring them to adapt quickly. In order for businesses to flourish in the digital age, Central Asian nations must nurture digital innovation, encourage entrepreneurship, and provide the necessary infrastructure and resources.

Significant societal change is occurring through digitalisation in Central Asia, changing the manner in which individuals communicate, access information, and engage in economic activities. The digital revolution has the potential to reduce socioeconomic disparities, empower individuals, and promote social inclusion. Access to additional digital technologies can enhance education, healthcare, and public services, thereby promoting human development and well-being. However, it also contributes to existing inequalities by leaving behind those who lack access to digital tools and abilities. To prevent the marginalisation of

certain segments of society, Central Asian governments must prioritise digital literacy programmes, expand internet connectivity, and guarantee equal access to digital services.

Finally, digitalisation poses governance challenges in Central Asia. The borderless nature of the digital economy requires international cooperation and coordination to effectively address cross-border issues. Combating cyber security threats, data protection, intellectual property rights, and online fraud necessitate robust legal frameworks and international cooperation. Thus, the Central Asian countries must collaborate with international organisations, neighbouring states, and the private sector to establish effective governance mechanisms that protect digital rights, ensure privacy, and maintain cyber resilience. Enhancing digital governance will ultimately strengthen trust in digital systems and promote a safe and secure digital environment.

In conclusion, digitalisation carries far-reaching effects on the Central Asian legal systems. Adapting legal frameworks to the digital economy, nurturing a business- and investment-friendly climate, addressing societal change, and enhancing governance mechanisms are essential for maximising the benefits of digitalisation whilst mitigating its challenges. Central Asian nations can position themselves as dynamic and competitive participants in the global digital economy whilst protecting the interests of their citizens and businesses by embracing digital transformation and implementing the appropriate legal and regulatory measures.

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PART III

Meso-and Micro-Level Business Actors, Informal Institutions and Norms

CHAPTER 10

The Legal Issues of Opening and Running Gastronomic Entrepreneurships in Kazakhstan: A Case Study from the City of Taldykorgan

Daniya Nurmukhankyzy

Introduction

Following the collapse of the Soviet Union, Kazakhstan has emerged as a key regional business hub in Central Asia. This can largely be explained by the strong ambition and willingness of the Kazakhstan government to develop its business climate by facilitating domestic and foreign investments. According to 2020 World Bank rankings on the ease of doing business, Kazakhstan ranked twenty-fifth from 190 countries examined (World Bank, 2020), compared with its 2010 ranking of sixty-fifth (World Bank, 2010). This indicates good opportunities exist for entrepreneurs to open and run their own businesses. To calculate the rating, the World Bank takes into account the following characteristics of the business

D. Nurmukhankyzy (✉)
Zhetysu University, Taldykorgan, Kazakhstan
e-mail: daniyafmo@gmail.com

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_10

environment: the processes of incorporation, securing a building permit, obtaining an electricity connection, transferring property, accessing credit, protecting minority investors, paying taxes, engaging in international trade, enforcing contracts, and resolving insolvency (World Bank, 2020). In this chapter, whilst emphasising the importance these characteristics, I specifically examine how legal regulations in the food service industry (that is, gastronomic entrepreneurship) are designed, applied and enforced in daily life situations. In doing so, my aim is to explore the everyday social life of these global indicators by examining the lived experiences of gastronomic entrepreneurs and their daily encounters with the legal system. In other words, using Roscoe Pound's (1910) terms, this chapter primarily focuses on understanding the relationship or divergence between 'law-in-books' and 'law-in-action', as manifested in the everyday experiences of entrepreneurs operating in the food service industry in Taldykorgan.

For any country, the food service industry plays a key economic role given that such enterprises not only provide the population with food, but also create places of work, provide employment for the population, liberate more people from needing to cook, and improve the quality of life of the population, thereby freeing up time for individuals to spend on holiday with children and friends (Gvozdovskaya, 2018). The important function of food service is connected to assisting in developing small- and medium-sized enterprises (SMEs) in the country. Notably, most food service enterprises in the country take the form of small enterprises; only a small number of restaurant businesses can be classified as large enterprises. The restaurant business is attractive and promising: the right choice of location and concept, its atmosphere, and a highly qualified staff allows one to garner market attention and result in high profits and investments.

Accordingly, the restaurant business is one of the most dynamic areas of entrepreneurial activity in Kazakhstan, where changes are associated with reforming the methods and forms of organising food service enterprises. The sphere of food service is now of interest to many, ranging from ordinary citizens, government officials, and public organisations, as well as researchers from various scientific fields. In Taldykorgan, the administrative centre of the Zhetysu region, Kazakhstan), a city with a population of about 150,000 people (AZNations, 2023), there are a large number of food service facilities. More specifically, from 1 to 20 restaurants, cafes, canteens, and other gastronomy facilities exist per 1 km^2. Given the ever-increasing number of food service facilities in Kazakhstan,

in the specific example of the city of Taldykorgan, the following questions naturally arise:

> Is it easy to open a restaurant business in Kazakhstan?
> How are legal norms regulating entrepreneurship activities perceived and experienced by businesspersons operating in the food service industry?
> What legal and other issues and challenges do entrepreneurs and others face when running a food service business in the city?
> What empirical and policy implications can be drawn from the case study of Taldykorgan for global indicators such as the World Bank's doing business index?

Review of the Relevant Literature

Extensive research exists on the legal regulation of entrepreneurship. In Kazakhstan, a considerable number of scholarly works have been devoted to the development of business law. One of the first such works is Bitemirov's (1998) study, 'Legal foundations of small and medium-sized entrepreneurship in the Republic of Kazakhstan', which offers proposals aimed at improving entrepreneurship and business law, include the types of liability for violating laws on entrepreneurship. The concepts of normative legal acts on entrepreneurship in the legal system were scientifically substantiated in Bitemirov's study. Illustrating the role of the state in both the development and support of entrepreneurship, its economic and legal foundations are also developed (Bitemirov, 1998). Similarly, Romankova (1996), in her study, entitled 'Legal regulation of entrepreneurial activity of citizens in the Republic of Kazakhstan', offered solutions to problems related to the legal regulation of citizen entrepreneurship. Specifically, she provided justification for proposals intended to improve civil legislation alongside outlining the need for the independent legal regulation of relationships arising during the process of entrepreneurial activity amongst citizens. One key idea common to both of these studies is that they granted a huge leap in the codification of business law. In addition, the works of Moroz (2010b), which consider both complex problems in the development of entrepreneurial law and the development of entrepreneurial legislation, are of great importance for the development of entrepreneurial law as a part of rights more generally.

Beyond Kazakhstan itself, growing scholarly interest has turned towards analyses of the Kazakh business and legal environments. For instance, in their article, US-based scholars Tugut and Lee (2007) analysed the opportunities and challenges faced by foreign firms in Kazakhstan, putting forth active strategies to help multinational corporations succeed in this attractive emerging market. Their study also discusses the legal environment for doing business. Another relevant study appeared in a book by Barth et al. (2001), in which the authors discuss how to conduct legally and ethically appropriate business in the Kazakh context.

Notably, the aforementioned studies address issues of entrepreneurship in general without providing insights into their application to specific business sectors and fields. Identifying studies that specifically address the legal regulation of gastronomic entrepreneurship in Kazakhstan remains difficult. Addressing this research gap is particularly intriguing given the ever-increasing number of food service facilities in Kazakhstan, particularly from a socio-legal perspective. Doing so may allow us to understand the social life of global indicators and how they reflect or challenge the lived experiences of micro-level entrepreneurs.

This chapter is based on a study of public legal relationships in the field of entrepreneurship, namely, in the food service industry. The full-fledged economic development of a country depends on the existence of a free-market economy and a well-functioning legal environment. But, it should be noted that the existence of a good regulatory framework on paper does not automatically imply that laws work in practice and achieve their intended aims. In order to understand whether it is easy to open and run a business in the food service sector, it is necessary to consider the relationships developing between public authorities and entrepreneurs, to study the problems of implementing legislation in the field of gastronomic business, and to understand business implementation issues. Many new cafes, restaurants, and bars are opened every single month in most cities in Kazakhstan. Unfortunately, most of them close during their first weeks of operation, with more closing within a few months. Despite this, the restaurant business remains popular. Investments continue growing, and chain establishments operating under a franchise, including international franchises, continue to expand in Kazakhstan. Given the number of food service facilities, we can hypothesise that, in general, the opening of a gastronomic business does not cause any specific difficulties. However, even if legislation looks perfect on paper ('law-in-books'), its implementation might be shaped by various extra-legal and inf0rmal processes

('law-in-action'), such as through regulatory gaps, conflicts in legal rules, ambiguity in specific norms, and the risk of corruption in regulatory legal acts. One possible inference from the above observations is that there is a need to examine the relationship or divergence between 'law-in-books' and 'law-in-action' when studying the lived experiences of gastronomic entrepreneurs and their daily encounters with the legal system.

Materials and Methods

Traditionally, the study of legal issues within legal research has focused on developing doctrines and new concepts to aid in the comprehension of legal materials and problems, specifically aimed at filling gaps in both new and outdated laws and regulations. In particular, importance is placed on studying the implementation of law arising from practice. The adoption of a new law or any regulatory legal act entails the emergence of new rights and obligations for subjects to whom the new legal acts are intended. Therefore, even a newly adopted law may undergo frequent changes during the course of its practical application. In this chapter, I examine the legal basis, possibilities, and features of the development of gastronomic entrepreneurship in the Kazakh business environment, relying on the example of one city, Taldykorgan.

To conduct this study, I employ a method of analysis on normative legal acts. In my analysis, I examined both existing legal acts and acts subsequently deemed invalid. This made it possible to recreate the chronology of changes in legislation applicable to gastronomic entrepreneurship. The analysis of existing acts allowed me to identify gaps and conflicts in the legislation, making it possible to identify the shortcomings of and problems in current legislation. The information and empirical basis of this study is the Constitution of the Republic of Kazakhstan and other legislative acts (see Statutes Cited at the end of this chapter) regulating the sphere of gastronomic entrepreneurship, official data from statistical agencies, and national reports.

In addition to the legal review, I also relied on a socio-legal method to analyse how legal acts and regulations ('law-in-books') work and are applied and enforced in daily life situations ('law-in-action'). To complete this task, I employed qualitative research methods involving semi-structured interviews with entrepreneurs operating in the food service industry. These qualitative data collection methods provided valuable insights into the lived experiences, perspectives, and challenges faced

by gastronomic entrepreneurs. Interviews also enabled me to gather rich and detailed information about the legal issues gastronomic entrepreneurs encounter when opening and running their businesses. In addition to this qualitative study, I also conducted a review of secondary sources, including an analysis of previous research, to understand the information obtained through empirical studies conducted by Kazakhstan and foreign researchers alike.

Based on the methods employed in this study as well as on the data collected, this chapter is divided into two parts. The first part concerns the analysis of relevant normative legal acts and issues related to legal regulations from business law. The second part summarises the problems related to the implementation of these laws in the daily practices and lives of entrepreneurs operating in the food service industry. In the subsequent sections, I first present a review of the 'law-in-books', followed by the presentation and analysis of the interview data on the lived experiences of gastronomic entrepreneurs, illustrating the 'law-in-action' in the food service industry.

'Law-in-Books': Entrepreneurial legislation in the Republic of Kazakhstan

The first restaurants and cafes in Kazakhstan appeared long before the country gained independence, establishments primarily situated in Kazakhstan's larger cities. In general, restaurants and other food service facilities operated in accordance with the regime of the Soviet era (vlast.kz, n.d).

The development of private entrepreneurship began intensively in Kazakhstan following independence in 1991. This was the beginning of the first stage in the development of entrepreneurial legislation. Thus, in 1992, the Law of the Republic of Kazakhstan 'On the Protection and Support of Private Entrepreneurship' was adopted. This law defined private entrepreneurship as the activity of citizens and non-state legal entities aimed at generating income based on the property of citizens themselves (individual entrepreneurship) or non-state legal entities (private entrepreneurship of legal entities). In addition, the activities carried out on behalf of citizens or non-state legal entities were done so at their own risk and were their own responsibility.

The 1992 law greatly contributed to the development of the food service industry, defining the primary forms and ways of protecting private

entrepreneurship and consolidating support for private entrepreneurship. The main advantage of this law was that it directly provided freedom to entrepreneurs, namely, a policy for preventing direct intervention from the state in private entrepreneurial activities. The responsibility of state bodies and officials related to violating the rights of private entrepreneurs was outlined in this law.

The adoption of the 1991 law, 'On the Tax System in the Republic of Kazakhstan', identified and divided business entities into small, medium, and large businesses, and significantly contributed to the development of entrepreneurship.

Another important legislative development stemmed from the adoption of the Civil Code of the Republic of Kazakhstan on 27 December 1994. The codification of civil legislation occupies a large and rather important place in developing entrepreneurship and legislation. The adoption of a general level civil code can be attributed to the first stage of development of entrepreneurial legislation. The Civil Code is a special normative act in the regulation of private legal relationships, including entrepreneurship. Civil legislation regulates commodity–monetary and other property relations based on the principle of the equality of participants, as well as personal non-property relations related to property. Thus, participants in relationships regulated by civil legislation can be citizens, legal entities, the state, as well as administrative-territorial units.

The adoption of the aforementioned regulatory legal acts represents the formation of market-based relationships in post-independent Kazakhstan.

Following the consolidation of the primary regulatory legal acts in Kazakhstan, much attention was paid to the formation of a sense of independence amongst businesses. This resulted from the fact that, despite current legislation, representatives of private entrepreneurships were subjected to various restrictions as well as pressure from governmental agencies. The post-Soviet influence existed here as well, of course, because neither the state nor the citizens of Kazakhstan could yet see business as an independent and truly legal structure equated with the state (Abilkalamov, 2019).

The beginning of the second stage of development of entrepreneurial legislation accompanied the enactment of Kazakhstan law No. 131-I, 'On State Support for Small Entrepreneurship', dated 19 June 1997, and Kazakhstan law No. 135-I, 'On Individual Entrepreneurship', dated 19 June 1997.

The law on state support of small businesses introduced several key principles aimed at developing the business environment, namely: (1) the principle of priority for small business development in the Republic of Kazakhstan; (2) the principle of the complexity of state support for small businesses; (3) the principle of the accessibility of infrastructure to support small businesses and measures taken for all small businesses; and (4) the principle of international cooperation in the field of support and development for small businesses. The introduction of these principles aimed to increase the activity of small businesses, namely, with through state support (Kaldiyarov et al., 2021). In essence, the state chose the development of small businesses as its priority, since it was small businesses that stimulated growth in the economy. Moreover, the state placed importance on legislating the right of citizens to freely engage in entrepreneurial activity and to form a system of state guarantees for individual entrepreneurs.

Similarly, the law on individual entrepreneurship aimed to ensure the rights of citizens to freely engage in entrepreneurial activity established by the Constitution of the Republic of Kazakhstan, the formation of a system of state guarantees for individual entrepreneurship. This law established the concept, forms, and types of individual entrepreneurship recognised by the state.

As Moroz (2015) noted, the law 'On State Support for Direct Investment', dated 28 February 1997, positively impacted business relations. Specifically, this law defined crucial tasks such as the introduction of new technologies, advanced equipment, and know-how; the saturation of the domestic market with high-quality goods and services; state support and the stimulation of domestic producers; the development of export-oriented and import-substituting industries; the creation of new jobs; and improvement to the natural environment amongst others.

On 31 January 2006, the Kazakhstan law 'On Private Entrepreneurship' was adopted, marking the beginning of the third stage of the development of entrepreneurial legislation. This law represented the first step towards the codification of business legislation, and contained numerous regulatory legal acts that were in force before its adoption. In this way, it systematised legislation related to entrepreneurial activity. In addition, this law was intended to regulate public relations arising through the implementation of private entrepreneurship by individuals and non-state legal entities. In doing so, the law determined the basic legal,

economic, and social conditions and guarantees ensuring the freedom of private entrepreneurship in Kazakhstan.

On 29 October 2015, the 2006 law was annulled following the introduction of law No. 375-V, the 'Entrepreneurial Code of the Republic of Kazakhstan'.

The main rationale for adopting the Entrepreneurial Code was to systematise the legal norms governing entrepreneurial activities, unifying them through a single legislative act. This strategy allowed the Kazakhstan government to establish a single legislative act that outlined the general principles of entrepreneurial activities rather than requiring numerous acts to regulate entrepreneurial relationships. Interestingly, a total of 101 changes have been made to the Entrepreneurial Code since its adoption.[1] Entrepreneurs note that they spend a considerable amount of time attempting to understand the ever-changing regulations, leading to increasing explicit and implicit transaction costs. State regulations of entrepreneurial activities should consider the impact of collective actions, as well as informal institutional restrictions on the development of business structures (Dubrova & Sarbassov, 2017). On the one hand, this suggests that the Entrepreneurial Code was not adopted in its ideal form. On the other hand, the changes made indicate that some norms did not take root in practice and thus required improvements and adjustments.

In the Entrepreneurial Code, we see norms that have a clear semantic intersection with the Civil Code of the Republic of Kazakhstan. In the context of language and communication, this semantic intersection occurs when two or more terms, phrases, or sentences share a common meaning or convey similar information. Moreover, a large number of blanket norms[2] appear in the text of the Entrepreneurial Code, which largely indicates its declarative nature and raises doubts about the necessity of its adoption (Piptyuk, 2020). In 2019, the Government of the Republic of Kazakhstan adopted Resolution No. 1060, 'On Some Measures of State Support for Private Entrepreneurship', which contains ten different rules to support entrepreneurship, including subsidising, preferential lending,

[1] For a history of changes to the Entrepreneurial Code of the Republic of Kazakhstan, see https://adilet.zan.kz/rus/docs/K1500000375/history.

[2] A blanket norm in legislation is a legal norm that does not contain a specific rule of conduct, but grants authorised state bodies, public organisations, and officials the right to independently establish the rules of conduct and prohibitions in accordance with an established framework.

various types of guarantees, and issues of state grants to support new business ideas.

Based on the above, we can conclude that the development of business legislation has undergone multiple changes. These changes indicate a positive practice in running and opening any business, including in the food service industry. However, in spite of the fact that the business environment and conditions might look promising when examining the 'law-in-books', an analysis of 'law-in-action' may provide a different picture, as I show in the next section.

'Law-in-Action': Is It Easy to Open and Run a Gastronomic Business in Kazakhstan?

Currently, the food service industry in Kazakhstan is represented by a huge number of enterprises with different levels of service, product quality, and equipment used. Despite the fact that the population density of Kazakhstan is considered relatively low (7 people per 1 km^2), the number of public food service facilities is rather huge, and increasing daily.

In Kazakhstan, food service facilities fall into several types. First, a *toykhana* is a kind of large restaurant, but one used or reserved for special events such as weddings, anniversaries, or for a funeral dinner. Such restaurants can accommodate from 200 to 1000 guests. Second, we find restaurants representing an ordinary place suitable for a daily visit. The third category includes cafés, fast food restaurants, bars and pubs, and coffee shops. Table 10.1 summarises the types of food service facilities in the city of Taldykorgan (excluding canteens and street food).

Table 10.1 Catering facilities in Taldykorgan (excluding canteens and street food)

Restaurants for large celebrations and memorial dinners (toykhana)	*Restaurants for daily visits*	*Cafes*	*Fast food restaurants*	*Bars and pubs*	*Coffee houses*
27	35	36	38	13	10

Source Bureau of National Statistic Agencies for Strategic Planning and Reforms of the Republic of Kazakhstan (retrieved from https://new.stat.gov.kz/ru/juridical/oked/?parent=22818)

Interestingly, according to legislation, food service facilities are not divided into specific type. The types of food service facilities indicated in the table were identified solely by their name and concept. At the same time, there are two classifications for the general economic activity of these facilities[3]:

1. restaurant activities and the provision of food delivery services (561),
2. delivery of ready-made food-to-order and other catering activities (562).

When registering as an individual entrepreneur or a legal entity, it is necessary to specify the type of activity for the business according to the general classification for the type of economic activity. This is based on the classification and coding of all types of economic activities as stipulated in Decree No. 30 (2021).

To open a small cafe, one should register as an individual entrepreneur. When registering, they should choose a tax regime: on the basis of a patent, on the basis of a simplified declaration, a tax regime with a fixed deduction, or a generally established tax regime. Most are advised to focus either on the simplified tax regime or on the generally established regime. When applying a special tax regime on the basis of a simplified declaration, a tax liability arises—3% of income (sales turnover) excluding expenditures. If the sole proprietor applies a generally established regime, the tax liability is 10% of profits. This is a great help to a new entrepreneur whose financial turnover does not yet yield huge profits.

At first glance, the existence of the large number of restaurants, cafes, and bars tells us that these types of businesses are easy to start. However, is this the case? As mentioned above, well-designed legislation in Kazakhstan regulates entrepreneurship, which, in theory, should enable one to start a business easily and quickly in the food service industry. Thus, several options are available for those seeking to open their own restaurant or cafe: building one's own restaurant; buying a ready-made business; or renting a ready-made business.

[3] A list of general classifiers of economic activities can be found via https://statinfo.kz/oked-rk.html.

The first option is the most difficult. Primarily, the problem is not that construction takes a certain amount of time, money, and other resources, but that bureaucratic delays are common.

The construction of any structure is regulated by the 'Rules for the Organisation of the Development and the Passage of Licensing Procedures in the Field of Construction', approved by Order of the Minister of the National Economy of the Republic of Kazakhstan (2015). In general, the establishment of a new restaurant can take one of two forms: through the implementation of construction projects or through reconstructing (redeveloping or re-equipping) the premises (individual parts) of existing buildings and structures associated with changes in load-bearing and enclosing (external) structures, engineering systems, and equipment.

When building a restaurant, one needs a plot of land and to construct an entirely new building. However, when buying an established business, an existing building requires redevelopment. In general, according to the above order, the procedures for both construction and redevelopment are clear. Nevertheless, entrepreneurs who have opened food service facilities have encountered various bureaucratic delays. Specifically, entrepreneurs claim that state agencies authorised to issue a document may return the application several times, each time indicating a new reason for refusal. For example:

> It is much easier to buy a ready-made restaurant than to open your own. First, you need to change the purpose and intended use of the structure. To do this, you need to contact an architect who has a licence to prepare an architectural design for a future restaurant or bar. Then, you submit documents to the public service centre to obtain a permit for the conversion of your premises. At the same time, you need to grab the title documents for housing (a contract for privatisation, donation, or sales agreement) and a technical passport for an apartment or a design assignment. Next, it is necessary to conclude a contract with a licensed construction company and with a designer who will supervise the repair work.
>
> After that, it is necessary to notify the Department of Control and Quality of the Urban Environment about the start of construction and installation work. Only then can you return to the public service centre to replace the old technical passport with a new one. However, it all seems easy and simple. The state bodies authorised to issue a document may return your application to you several times, each time indicating a new reason in the reason for refusal. Despite compliance with all deadlines according to the legislation, a positive response can be expected several

> months later. In this case, you cannot do anything without circumventing the law and using your connections, which will help you obtain permits more quickly. Of course, there are a lot of advantages to owning a restaurant. First of all, you can choose the location of your structure yourself and build a concept from the ground up. For all of this, you should have enough money. If you have already built a restaurant and want to expand, make an extension, and so on, you will need to go through almost all of the same procedures again. (Amangeldi, male, 38-year-old businessman)

Many entrepreneurs are not in a hurry to buy a space, choosing to rent instead since this reduces the budgetary burden. However, if this space is not originally intended for food service provision, the entrepreneur will wait for approval at almost all of the same stages as those necessary for construction. Some norms even involve two-fold formulations leading to the risk of corruption. For instance, subparagraph 2 of Article 39 *of the Rules for the Organization of Development and the Passage of Licensing Procedures in the field of construction* (Order of the Minister of National Economy of the Republic of Kazakhstan, 30 November 2015), stipulates that a refusal by the provider of engineering and utility services to issue technical specifications is allowed in the absence of networks or other property necessary for the provision of the service. In this case, under 'other property', the service provider can refer to any items at its discretion, as well as turn a blind eye any shortcomings in favourable conditions for the service provider.

When it comes to renting a ready-made restaurant business, entrepreneurs conclude a lease agreement on the property and open an individual enterprise or a legal entity. In rare cases, they may take the business under management. It should be noted that large businesses are primarily taken under management.

> I had big plans to open my own cafe. However, buying a location costs a lot of money. Then, I decided to rent a ready-made premise, which used to be a supermarket. I opened a *halal* cafe. And, I didn't lose money. During the COVID-19 pandemic, my business colleagues—owners of restaurants and bars—paid heavy taxes, although restaurants did not work.[4] Many of

[4] Author's note: According to subparagraph 5, paragraph 3 of Article 9 in the Law of the Republic of Kazakhstan 'On the State Regulation of the Production and Turnover of Ethyl Alcohol and Alcoholic Beverages', No 429, dated 16 July 1999, without the payment of fees, the use of licences to engage in certain types of activities must adhere

> them had to close, especially those who owned big *toykhana*. Banquets, as well as catering work in general, were prohibited. And, delivery from large restaurants did not work. Taxes, loans, and utilities went on as usual, but the work stood still. But, I made a mistake in the fact that the cafe was rented. During the pandemic, the work of cafés was suspended, and the cafe did not bring in an income, but people reluctantly ordered delivery since they mainly used fast food delivery services. The rent had to be paid in full, however. In addition, now the rent can be raised at any time. But, after I received permission to open a cafe, everything returned to normal and my income increased. But, as I mentioned, the rent also increased and is increasing every year. (Karim, male, 45-year-old businessman, owner of *halal* cafe)

Despite the fact that the city of Taldykorgan is considered one of the smallest cities in Kazakhstan, well-known franchises both at the national and international levels are gradually beginning to spread across the city. However, one interviewee noted that state officials find various reasons to make entrepreneurs' lives difficult. In turn, legal and bureaucratic hurdles force entrepreneurs to look for informal channels and extra-legal methods to do business, as described here:

> In general, I consider the franchise a successful investment if, of course, you work correctly and choose the franchise that is suitable for the population. Why did I decide to open a franchise? Firstly, the concept—there is no need to come up with a restaurant concept, come up with a menu, and organise training for the staff. Secondly, you do not need to hire designers to develop the project. But, you should know that a franchise can be cheap, medium, and large. The advantages of a franchise are that if you open a tavern or a pizzeria there, for example, the franchise may already have a brand in the city, region, republic, or world. In global franchises, the amount is impressive; a local franchise will be cheaper.
>
> The cons of a franchise are that you have to be one-hundred-percent in line with the franchise. You need to take the franchise owner's licence, and a licence costs a lot of money.
>
> And, this is not about buying the document itself, but about investments. For example, it is necessary that the building and its size, the design of the restaurant, furniture, equipment, and kitchen—everything must be in full compliance with the franchise's requirements. The advantages are

to the terms and amounts established by the Code of the Republic of Kazakhstan 'On Taxes and Other Mandatory Payments to the Budget'.

that there is training for staff, and there are specific people who come and teach or pay for travel expenses if people go to another country or city to learn [about the franchise]. If you have opened a global brand or a Kazakh brand and spent a lot of money, there would be a return since people already know this restaurant, and there is no great need to promote it. Many people try to open cafes themselves, but they fail to manage restaurants, and they go bankrupt. So, those who do not have enough strength to develop an idea and concept do not. But, if they have money, they buy a franchise.

There are always difficulties and there always will be. For instance, construction and renovation in full accordance with the franchise—this is a big one. If they say that there should be light bulbs and such doors, such items should be exactly like that. Also, logistics and delivery—it is very expensive. The biggest difficulty is to approve a draft of the project from the city architect, which is generally difficult along with receiving approval for your draft architecture. Officials always turn down the first draft because they simply don't like your design. For example, they may not like the porch or facade of a building. They say, 'How will the city look in this colour?' Even the installation of a ramp takes a lot of time and is subject to inspection. You send a draft to the architect, and they consider it for two weeks. Then, after two weeks, they provide an answer with ten negative comments. In general, I know that my colleagues had great ideas for business projects, but almost 90% were refused, and they could not build because there was always something that did not comply with the law. Therefore, businessmen gave up and did not do anything. After the architect, city planners still have to grant approval, and there are also several refusals. You can walk like this for a very long time. However, a franchise has clear deadlines, and if you don't meet them, then your contract is terminated. So, you have to look for friends who will help speed up the approval process. (Aliya, female, 41-year-old businesswoman, franchise restaurant owner)

In theory, when reading legal regulations, the process of opening and running a restaurant in Kazakhstan seems quite straightforward. Administrative barriers seem low, whereby, in theory, it should be a fairly simple process. However, in practice, as shown above, it is much more difficult to open and then manage a restaurant. This represents the most common mistake—everyone fails at management. It is difficult to manage a restaurant because few personnel, concepts, and knowledge exist in Kazakhstan. Even investors do not really understand what they want (Korostelyeva, 2019).

Considering the new and more precise legislation, the state does not interfere in doing business if the entrepreneur adheres to the rules. Not satisfied with endless inspections that prevent them from focusing on work, the Kazakhstan government introduced a moratorium on any inspections. In order to improve the conditions for the development of small entrepreneurship, including micro-entrepreneurship, the Kazakhstan President adopted a decree (No. 229, 2019). According to this decree, centralised state and local executive bodies were instructed to halt inspections and preventive control and supervisory visits to small businesses, including micro-enterprises, from 1 January 2020 through 1 January 2023. This measure became an effective means through state law to protect the rights and legitimate interests of entrepreneurs. In 2022, the moratorium was extended until 1 January 2024. Moreover, according to the Entrepreneurial Code of the Republic of Kazakhstan, conducting state control and supervision over small businesses, including micro-enterprises, is prohibited for three years from the date of registration with the state (except for established legal entities which are reorganised and legal successors of reorganised legal entities), with the exception of unscheduled inspections (see paragraph 6, Article 131).

However, this does not mean that the business entity is completely exempt from any checks. Exceptions are outlined in the order itself. Despite the moratorium, there are a number of exceptions that allow public authorities to monitor the activities of entrepreneurs.

For example, the moratorium does not impose a ban on unscheduled inspections. An unscheduled inspection is assigned by the control and supervisory body. The appointment of an unscheduled inspection can relate to a specific subject (object) of control and supervision in an effort to prevent and (or) eliminate an immediate threat to human life and health, the environment, the legitimate interests of individuals and legal entities, or the state (paragraph 4 of Article 144, Entrepreneurial Code). Paragraph 5, Article 144 of the Entrepreneurial Code lists those instances when an unscheduled inspection may occur. Specifically, subparagraph 3 of this Article deserves special attention. It states: 'The grounds for an unscheduled inspection of subjects (objects) of control and supervision include appeals from individuals and legal entities related to violations of the requirements of Kazakhstan legislation in the presence of convincing grounds and supporting evidence.' It is not entirely clear how these appeals are registered, whether it is necessary to make an official statement by means of an electronic digital signature or to go to a specific

state body, or whether it is sufficient to call and report a violation. These uncertainties may lead to unfavourable consequences to an entrepreneur. Specifically, a state agency that must accept an appeal at its discretion will assess whether the grounds and evidence are convincing. Then, there can be a large number of such appeals, ranging from submissions from unfriendly customers to submissions from competitors.

Small businesses remain the riskiest businesses. Specifically, small business entities are rather vulnerable to all market changes and shocks because they have much fewer opportunities and resources compared with medium-sized and even larger businesses. But, small businesses perform stabilising functions in the economy, allowing for the creation and maintenance of a competitive environment and providing equal access to entrepreneurial activities for all participants (Moroz, 2010a). Kazakhstan's Basic Law recognises and equally protects state and private property (Constitution of the Republic of Kazakhstan, Article 6). According to paragraph 6, Article 38 of the Entrepreneurial Code, for small businesses that do not have unfulfilled obligations and are classified by state bodies as entities with minor and medium degrees of risk, Kazakh laws provide a simplified procedure for their reorganisation and voluntary liquidation. This applies to the types of state support available to SMEs. State support for SMEs is provided according to the types of state support for private entrepreneurship as stipulated in Article 93 of the Entrepreneurial Code.

My interviews with entrepreneurs indicate that, despite the fact that Kazakh legislation provides various support measures, most representatives of SMEs do not have sufficient information about the proposed measures. The National Chamber of Entrepreneurs of the Republic of Kazakhstan 'Atameken' is recognised as a provider of non-financial support, and the joint-stock company Entrepreneurship Development Fund 'Damu' as a financial agency issues grants and provides preferential lending. However, during interviews, I learned that few entrepreneurs knew about either agencies, and did not know that they can consult with either of these agencies on doing business, receive training, and share experiences. Thus, we can conclude that the institutions in charge of providing state support measures, such as 'Damu', 'Atameken', and regional business departments, are inadequately engaged in informing and providing public services, despite their mandate and extensive infrastructure.

Discussion and Concluding Remarks

In general, the legal regulation of entrepreneurship in the Republic of Kazakhstan is at a fairly high level, which contributes to the development of business in the country. Based on the findings in this chapter, it is clear that, in general, people who have the means to do so can open a business. The state provides various grants, subsidies for efficient sectors of the economy, and innovative and green projects. But, in order to receive funds, it is necessary to navigate complex and cumbersome legal and bureaucratic procedures, an endeavour which often requires the use of informal and extra-legal methods and solutions. In addition, the food service industry is not always innovative. The empirical data collected through interviews demonstrate that not a single entrepreneur managed to receive a grant or a preferential loan specifically for a restaurant business. My results, in this sense, reinforce the findings of Moroz (2010a, August), who points out that the dispersion of public funds for all kinds of training programmes and informational support to SMEs is not a highly justified business support mechanism. It is unlikely that various training seminars and internships will help an entrepreneur find working capital or secure loans. In general, legislation in Kazakhstan contains a sufficient number of norms to regulate the activities of entrepreneurs. Regular business closures are associated with a lack of funds due to competition, a lack of turnover, and a lack of knowledge in conducting business. More importantly, many businesses fail due to bureaucratic and legal uncertainties, whereby only those businesses with informal connections and networks have better chances of succeeding.

To conclude, this analysis of legislation in the Republic of Kazakhstan related to the legal regulation of gastronomic entrepreneurship has demonstrated that considerable discrepancy exists between the 'law-in-books' and 'law-in-action'. Although the government of Kazakhstan is taking steps to simplify business registration procedures and create a more favourable environment for entrepreneurship, my analysis suggests that both the legislation and its implementation mechanisms require improvement in order to create a more favourable business climate. In terms of doing business today, as indicated in this study, a moratorium on the inspections of SMEs was introduced. Only time will tell how business will be conducted once the moratorium is lifted. Past experience shows that endless checks by government agencies did not allow entrepreneurs

room to 'breathe'. All of this resulted in the introduction of the moratorium, which today shows positive results. Kazakhstan needs to continue improving the business climate to facilitate registration procedures, obtain permits, and reduce bureaucratic barriers. Thus, based on my analysis, I recommend increasing the availability of financial resources to businesses. It is necessary to increase the availability of credit and financial resources for entrepreneurs to help them implement their projects. It is also necessary to develop human capital, since most food service facilities closed due to a lack of knowledge in the field of business.

Acknowledgements This research was supported by Marie Curie Research and Innovation Staff Exchange scheme within the H2020 Programme (grant acronym: Central Asian Law, no 870647).

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CHAPTER 11

Connectedness and Inequitable Access to Formal Financing in Uzbekistan

Kobil Ruziev

Introduction

According to official statistics, Uzbekistan's aggregate economic growth rate has remained consistent at around 5–8% for most years since the early 2000s. At face value, the country's sustained aggregate growth figures appear to vindicate authorities' choice for slow and gradual market-oriented reforms, intended to prevent a drastic deterioration of living standards and aimed at strengthening social welfare whilst also building the country's industrial base. For a country with an abundant supply of well-educated and cheap labour, one would expect Uzbek authorities to build their industrial strategy around labour-intensive industries. However, the country's growth model was based on large investments in capital-intensive sectors of the economy instead. Constrained by limited investable resources, the government treated these industries, primarily in

K. Ruziev (✉)
University of the West of England, Bristol, UK
e-mail: Kobil.Ruziev@uwe.ac.uk

Tashkent State University of Economics, Tashkent, Uzbekistan

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_11

the natural resources sector, favourably by, for example, granting them direct credit from the banking sector. As a result, practically all of the improvements in per capita income levels from 1996 through 2016 stemmed from an increase in the capital-to-labour ratio; ironically, the employment rate actually fell from 71 to 63% during this period (Trushin, 2018).

The government's disregard for institutional reforms curtailed economic opportunities for a broader cross-section of society, also hindering the emerging private sector's growth prospects (which, by definition, is labour-intensive). This happened mainly because the government failed to promote the rule of law and protect the sanctity of private property, thereby impeding the allocation of important scarce resources to their most productive uses. Credibly committing to reforms in these areas facilitates greater private sector participation in wealth creation. This, in turn, will induce more sustainable capital accumulation, augment aggregate economic growth, and render it more inclusive.

This chapter focuses on demonstrating why fostering the equitable distribution of bank financing to enterprises is important to facilitating firm and, subsequently, aggregate-level economic growth. Herein, I also show why this may not be achieved without the government's credible commitment to improving the quality of institutions that promote market-based signals to access scarce resources such as formal financing.

The remainder of this chapter is organised as follows. The next section briefly synthesises relevant mainstream economic theories and empirical findings explaining why enterprise access to bank financing is important to promoting economic growth. The mainstream literature does recognise the unequal distribution of formal financing amongst enterprises of various sizes, but views market and information imperfections as major causes of this misallocation. I then provide a contrast, outlining a complementary explanation for this phenomenon, put forward by institutional economists who argue that social and political factors play equally important roles alongside information imperfections to explain the inequitable distribution of bank financing. The findings from the second and third sections then inform the focus of the discussion that follows, which analyses the links between institutions, informality, and the allocation of bank financing in Uzbekistan. Next, I move on to briefly discuss some additional factors that exacerbate the allocation of formal financing in the specific context of Uzbekistan. The final section summarises my conclusions from this chapter.

Why Enterprise Access to Bank Financing Matters for Growth

One need not be an economist or a finance expert to appreciate that banks constitute an integral part of modern market-based economies. Yet, whether and through what transmission channels banks may enhance economic activity and facilitate economic growth require a more nuanced discussion.

The emergence of private property and property rights and, thus, the development of money and monetary transactions greatly enhance opportunities for exchange and trade, which, in turn, translate into the division of labour and, hence, economic efficiency (Drake, 1980). However, in the absence of financial intermediaries such as banks, the opportunity to finance trade and investment projects is effectively limited to entrepreneurs' own funds, since collecting and assessing pertinent information on projects' viability and borrowers' creditworthiness can be prohibitively costly to savers. Individually, savers may not possess the time and the means to collect relevant information on projects and economic conditions; moreover, they may not have the necessary expertise to analyse this information and to monitor and enforce the terms of loan contracts. Thus, because of high information and transaction costs, not all available savings will be mobilised to finance trade and investment projects.

Banks, therefore, emerge as one of the first and most important financial intermediaries to tackle information and incentive problems (Heffernan, 2010). They accept short-term liquid deposits from savers, against which they advance long-term loans to businesses. By offering a return on deposits, banks encourage saving, thereby increasing the supply of external credit and reducing its cost to businesses. Borrowing short to provide liquidity to savers and lending long to finance firms' risky but profitable investment decisions—that is, maturity transformation—is one of the key functions of these institutions vis-à-vis facilitating growth. By pooling and diversifying risks, financial intermediaries also increase the savings rate, improve resource allocation, ameliorate capital accumulation, and, ultimately, affect long-run economic growth (Levine, 1997). By increasing the stock of financial assets, banks also encourage further financial development, opening a country up to international financial markets. Banks also manage the payment system in an economy. By processing

debits and credits associated with all exchange transactions, banks speed up transactions thereby facilitating trade.

Reflecting on the growth of trade and industry in eighteenth century Scotland, Adam Smith, the Scottish philosopher and father of modern economics, partly attributed that growth to the establishment of public banks in Edinburgh at that time. He asserted that 'the trade and industry of Scotland … have increased very considerably during this period, and the banks have contributed a good deal to this increase' (Smith, 1776, p. 358).

Coase's (1937) seminal work on the nature of the firm can also be applied to explain the rationale for the emergence of banks as firms specialising in financial intermediation—that is, as agents between savers and borrowers. A firm structure allows banks to assign tasks to bank officers and coordinate their efforts in gathering and assessing information on business projects, managers' behaviours, and economic conditions more efficiently and profitably, incentivising the emergence of financial intermediaries (Heffernan, 2010). Financial intermediaries help economise on aggregate information costs, since borrowers are assessed and monitored by intermediaries, not by individual savers (Diamond, 1984). By concentrating large amounts of deposits and loans in their books and having access to privileged information on current and potential borrowers, banks can achieve economies of scale and scope to reduce transaction costs as well as various other costs arising from information asymmetries. In market economies with perfect competition, banks can channel scarce financial resources to investments with the highest possible net present value. Since enterprises investing in the latest technologies tend to be more productive and offer higher investment returns, this can lead to increased investments in newer technologies and higher productivity and overall economic growth (Cameron, 1967; Gerschenkron, 1962).

In turn, a lack of access to formal finance hinders investment and growth because some profitable entrepreneurial initiatives may not be financed, and firms will operate at suboptimal levels despite having high capital productivity (Claessens & Perotti, 2007). Studies show that financial development helps enterprises overcome liquidity constraints and improve their growth potential (Levine, 2005; Love, 2003). Moreover, evidence also shows that financing from formal rather than informal sources of credit associates with faster firm growth (Ayyagari et al., 2008).

In short, the key channels through which financial intermediaries facilitate economic growth can be summarised as follows: generation and

expert evaluation of information; diversifying, pooling, and trading risks; mobilising savings; allocation of scarce financial resources to the most profitable uses; provision of liquidity; offering a return to both savers and borrowers; and managing the country's payment systems to facilitate the exchange of goods and services (Casu et al., 2022; Heffernan, 2010; Levine, 1997). Although some historic instances indicate that economic growth can occur without financial development (e.g., the former centrally planned economies reached a considerable degree of economic development without much financial development) and financial development may not always lead to economic development (e.g., although some offshore territories have sophisticated and internationally competitive financial systems, economically they are still underdeveloped [Beim & Calomiris, 2001, p. 71]), the broader theoretical underpinnings and empirical support for the argument 'financial development facilitates economic growth' remain relatively strong. As Levine (1997, p. 688) put it: 'the predominance of theoretical reasoning and empirical evidence suggests a first-order relationship between financial development and economic growth.'

Factors Affecting the Inequitable Distribution of Bank Financing

In their seminal works, (Modigliani & Miller, 1958; Miller & Modigliani, 1961) argued that, under perfectly functioning market conditions, enterprises should be indifferent to alternative sources of external financing, including when borrowing from banks or issuing their own shares on the stock market; furthermore, all projects with a positive net present value should be financed. However, in emerging economies where the financial system is less developed, out of all possible sources of external financing, businesses most often rely on bank loans (Cressy & Olofsson, 1997). Interestingly, the theoretical and empirical literature demonstrates that, in response to incomplete and partial information, financial intermediaries ration the supply of formal credit, the distribution of which is skewed towards larger enterprises and against younger and smaller firms (de la Torre et al., 2010; Demetriades & Andrianova, 2004). At the aggregate level, an unequal distribution of bank financing affects investments and growth since some profitable entrepreneurial initiatives may not receive external financing (Claessens & Perotti, 2007).

Conventional explanations of this phenomenon emphasise information imperfections as the major causes of the inequitable and suboptimal allocation of bank credit to businesses. The argument is that smaller and younger enterprises are less likely to possess acceptable collateral, are often informationally opaque, and face stiffer competition on product markets; these factors affect the predictability of cash-flow forecasting by banks (Mina et al., 2013). Despite smaller and younger firms accounting for a large share of enterprises, banks are unable to fully utilise the law of large numbers to exploit economies of scale and enjoy the associated diversification benefits when lending to them (Beck, 2013). Thus, lending to these enterprises is viewed as a higher risk, leading to a lower supply and a higher cost to bank loans for these businesses (Berger et al., 2001).

More recently, institutional economists put forward a complementary explanation. They argue that social and political factors play equally important roles alongside information imperfections in explaining the inequitable distribution of bank financing. According to this view, the business decisions of both enterprises and financial intermediaries respond not only to market prices but also to rules and regulations that shape and influence incentivising and constraining mechanisms. Impersonal public and private bureaucratic organisations, which operate under the rule of law, facilitate the process of exchange, production, and investment by enforcing rules, regulations, and contracts (Acemoglu et al., 2005; Goldsmith, 1995; North, 1990; Weber, 1968). The variations in business environments across countries primarily arise from the heterogeneity of country-specific constraints and incentive mechanisms, resulting from differences in the form, pace, and depth of institutional reforms (Acemoglu et al., 2005).

Modern market-based economies are composed of anonymous markets, impersonal bureaucratic organisations, and communitarian institutions that depend upon interpersonal networks (Bauernschuster et al., 2010; Dasgupta, 2005). The interrelationships between these layers of the economic structure are dynamic and change with the level of economic development (Stiglitz, 2001). Bureaucratic institutions in underdeveloped markets usually lack credibility, weakening market-based incentivising and constraining mechanisms, and causing inefficiencies in exchange transactions. As a result, the role of bureaucratic institutions can be partly replaced by webs of interpersonal networks capable of growing in importance in terms of production and exchange relations (Stiglitz, 2001).

Thus, a network of exclusive interpersonal and reputation-based relationships emerges to resolve allocative and redistributive questions, including the allocation of formal financing to enterprises. More specifically, the political elite with their vested interests affects economic outcomes formally through red tape and informally through individual connections.

Growing international evidence demonstrates that political connectedness plays an important role in gaining access to formal financing (Bartlett, 2023; Boubakri et al., 2013; Cull et al., 2015; Faccio, 2006; Faccio et al., 2006; La Porta et al., 2002; Li et al., 2008). Entrenched elites may influence business environments by adopting formal rules and regulations to protect their rent-seeking interests and create unfavourable operational constraints for enterprises. This can result in a culture of favouritism, corruption, and bribery, further suppressing market-based impersonal exchange and resource allocation (Fedderke et al., 1999).

The literature offers competing views on the potential influence and ultimate impact of corruption and rent-seeking behaviour on allocative efficiency and social welfare (Aidt et al., 2008). Some researchers (Blackburn et al., 2009; Duvanova, 2014; Li, 1998; Manion, 1996) argue that, at least in theory, more productive firms are also more successful in generating a greater surplus. They can, therefore, better afford to offer bribes and kickbacks to gain advantageous access to scarce resources, including access to bank credit, possibly resulting in socially beneficial outcomes at the aggregate level. However, the strength of this argument relies on several weighty assumptions. Such assumptions include the following: the relationship between bribe-giving and bribe-taking parties is purely transactional; soliciting bribes is costless; and entrepreneurs who can generate surplus from their normal business operations can transparently 'bid' for resources in open auctions. These assumptions, however, ignore the fact that the nature of relationships between corrupt public officials and entrepreneurs is often interpersonal and enduring, whilst their dealings are almost always murky and may not always require immediate and one-off pecuniary exchanges.

Furthermore, soliciting bribes is also not costless for corrupt bureaucrats, since there is a danger that they may be caught in the process. Relative to the risk of being caught, the pecuniary rewards of accepting bribes from unfamiliar entrepreneurs remain small. Thus, bureaucrats are more likely to cooperate with entrepreneurs whom they know and trust in order to minimise the risk of being caught (Bartlett, 2023; Becker, 1968;

Ryvkin & Serra, 2012). Such factors reinforce the rationale for collaboration between bureaucrats and entrepreneurs who know and trust each other. As such, having the right interpersonal connections, which can be repeatedly used intertemporally to gain access to resources, becomes more valuable than simply affording explicit monetary payments as bribes.

Notably, not all entrepreneurs have economically beneficial interpersonal networks, whilst the most valuable economic networks can also be the most exclusive. Moreover, belonging to a network may open access to other networks, given that some entrepreneurs will be members of multiple networks. For example, regardless of the competitiveness of their projects, some entrepreneurs may gain access to bank credit through their connections with government officials. More importantly, the interpersonal and exclusive nature of such networks indicates that a small number of strategically well-connected entrepreneurs may seize a disproportionately large share of scarce resources and opportunities, resulting in further allocative inefficiencies (McKean, 1992). This clearly compares unfavourably to anonymous market-based exchange systems, which are more efficient because 'the best' buyers or sellers may not be part of exclusive networks (Serageldin & Grootaert, 2001). Therefore, corruption and rent-seeking practices are not only economically costly, but are also morally repugnant since they rely on insider–outsider distinctions and suffocate the equality of opportunities (Bowles & Gintis, 2002).

Institutions, Informality, and the Allocation of Bank Financing in Uzbekistan

The collapse of the former Communist regimes in Eastern Europe and the former Soviet Union (FSU) in the late 1980s and early 1990s led to profound economic, political, and social changes in those countries. The transformation process, which became popularly known as 'transition', attempted to build a modern society in which political decisions and social norms would be forged by democratic values, and economic relations would be determined by market forces; the latter, in turn, would be shaped by the mixture of anonymous markets and impersonal bureaucratic organisations operating under the rule of law (Kornai, 2000; Rose, 2001). When Uzbekistan became independent in 1991, the government decided to transform its centrally planned economy to a market-based economy, as did other countries in transition in Eastern Europe and the FSU. However, unlike its transition economy counterparts, Uzbekistan

undertook partial economic reforms, which were implemented gradually and slowly (Ruziev, 2021).

Although the strength of market-based signalling and incentivising factors intensified whilst bureaucratic organisations have become more established since the 1990s, the latter still fail to operate impartially and according to the law in Uzbekistan. Resulting from a leadership change (following the sudden death of late President Islam Karimov), since 2016 socio-economic reforms have accelerated in the country (Ruziev, 2021). However, due to Uzbekistan's low starting point vis-à-vis reforms, the country remains one of the least-reformed economies amongst its transition economy counterparts. In this regard, the European Bank for Reconstruction and Development's (EBRD) assessment of transition quality (ATQ) indices can be particularly useful in describing Uzbekistan's progress, especially since 2016, towards building credible and impersonal bureaucratic institutions and a well-functioning economy which relies on market signals and healthy competition.

Figures 11.1 and 11.2 illustrate two relevant ATQ indices—namely, the 'well-governed' and 'competition' indices—comparing Uzbekistan's progress in relation to other countries in transition in the years 2016 and 2022. The values of the 'well-governed' and 'competition' ATQ indices employed in Figs. 11.1 and 11.2 range from 1 to 10, where 10 corresponds to the standards of an advanced market economy (EBRD, 2023). The 'well-governed' index measures the quality of institutions and the processes they support. More specifically, this index captures the quality of economic and political institutions, integrity standards, the rule of law, and control of corruption. The 'competitive' index, by contrast, captures countries' attempts to move from a state-driven decision-making mechanism to one guided by market signals, focussing on economic structures that promote competition, choice, and fair prices. The effective allocation of external financing to entrepreneurs based on the market principles of risk and return is also captured in this index.

In Figs. 11.1 and 11.2, the 2016 values of the 'well-governed' and 'competitive' indices, measured along the horizontal axis, are plotted against the 2022 values of the same indices measured along the vertical axis. The upward sloping solid line in both figures represents a 45-degree angle, which helps to visualise countries' relative progress. For example, if a country's 'well-governed' index was the same in 2016 and in 2022, the country would lie on that 45-degree line; if the index improved (or, alternatively, deteriorated) during this period, the country would be located

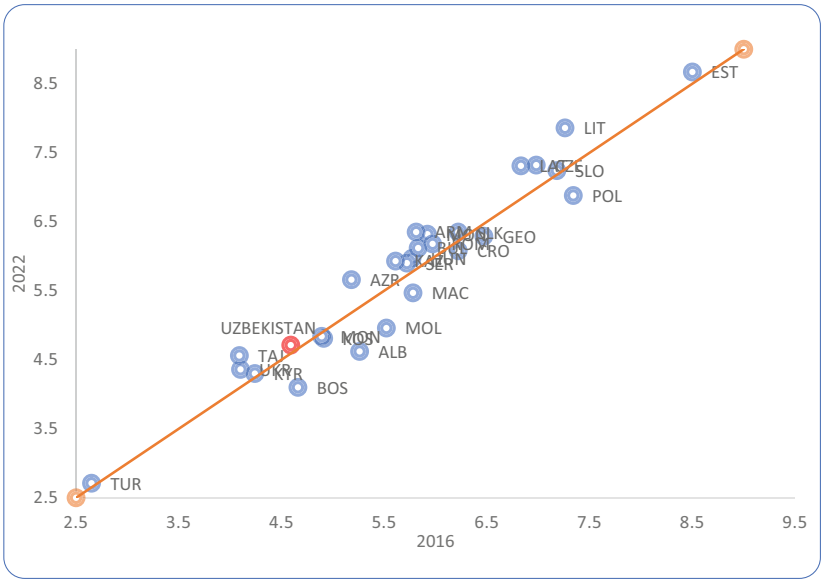

Fig. 11.1 The assessment of transition qualities: the well-governed index in selected transition economies, 2016 and 2022 *Source* EBRD (2023)

above (or below) the line. Figures 11.1 and 11.2 clearly show that, although Uzbekistan made some progress in both indicators between 2016 and 2022, the country's overall position compares poorly in relation to most transition economies in the sample.

The literature demonstrates that, under such conditions, entrepreneurs and bureaucrats rely more on their exclusive interpersonal networks to resolve allocative and redistributive questions relating to financing, investment, production, and exchange (Stiglitz, 2001). Individuals working in otherwise impersonal bureaucratic organisations personalise their positions by using the rigidity of rules and regulations as an excuse for rent-seeking. As a result, entrepreneurs are less incentivised to use prices, rules, and regulations as signals; instead, they resort to a variety of interpersonal networks to personalise relationships with impersonal bureaucrats, leading to the misallocation of resources. Rose (2001) describes economies with these characteristics as suffering from organisational failure.

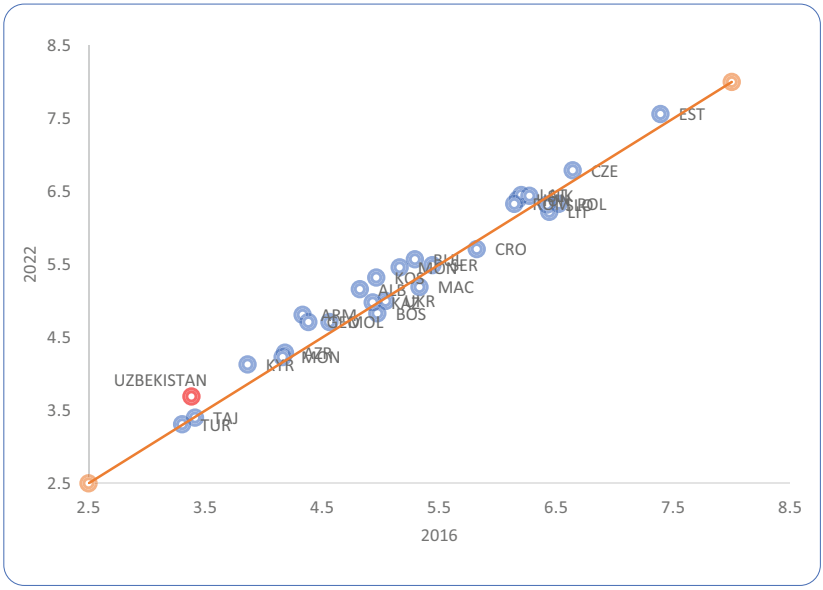

Fig. 11.2 The assessment of transition qualities: the competitive index in selected transition economies, 2016 and 2022 *Source* EBRD (2023)

A growing body of quantitative and qualitative empirical research investigating socio-economic changes in Uzbekistan provides a consensus view that Uzbekistan closely matches this description (Hornidge et al., 2011; Ilkhamov, 2007; Oberkircher, 2011; Rasanayagam, 2011; Ruziev & Midmore, 2015; Urinboyev & Eraliev, 2022; Urinboyev & Svensson, 2013; Urinboyev et al., 2018; Veldwisch & Bock, 2011).

For example, Hornidge et al. (2011) argue that Uzbekistan's top-down governance approach with its weak accountability and transparency encourages personalising public office and the arbitrary exercise of power as commands and directives pass through the hierarchical bureaucratic structures. The blurring of the boundaries between public office and private interests serves as a mechanism for private rent-seeking (Ilkhamov, 2007) and leads to the informalisation of both state and society (Rasanayagam, 2011). Some aspects of this informalisation manifest themselves in the use of informal patriarchal patronage networks as well as norms and values such as authority, obligation, and reciprocity

not only as tools of governance but also as means to gain access to scarce resources. Some scholars (e.g., Ilkhamov, 2007; Trevisani, 2011) rather convincingly demonstrate that interpersonal patronage networks, already played an important role in matters of resource allocation under central planning only to deepen during the transition, spreading from formal bureaucratic and enterprise structures to community-level informal institutions. Whether vertical (patron–client) or horizontal (client–client), these networks provide an opportunity for the redistribution of resources, including bank financing, in the interests of network members.

Veldwisch and Bock (2011) also show, through the example of water management for agricultural use in the Khorezm region, that along with the official water distribution managers, members of informal patronage networks, such as village or town mayors, neighbourhood leaders, and individuals with close connections to government officials, significantly influence the distribution of water resources. Since water is a vital input in irrigation-dependent farming in Uzbekistan, the ability to access this scarce resource associates with prestige and power (Oberkircher & Hornidge, 2011, p. 411). Whilst reverting to traditional norms of reciprocity can represent a natural response to the uncertainty created by transition, it also carries its own drawbacks. Due to their exclusive nature, interpersonal networks often serve to benefit members at the expense of the broader society. Turaeva-Hoehne (2007) argues that mutual reciprocity associated with interpersonal networks, which are governed by informal norms, also inhibits innovation and risk-proclivity, factors deemed important to promoting economic growth.

Studies analysing Uzbekistan's economic, social, and legal transformation from the perspective of the sociology of law (e.g., Urinboyev & Eraliev, 2022; Urinboyev & Svensson, 2013; Urinboyev et al., 2018) also show that informal transactions in Uzbek society are widespread. Such research demonstrates that some informal transactions, which can be labelled corrupt practices under the law, are morally accepted as gifts according to informal norms. For instance, Urinboyev and Svensson (2013, p. 387) described some of these informal practices as 'palliative' mechanisms, which arise to compensate for the state's failure to support the country's infrastructure and welfare systems. Thus, Urinboyev et al., (2018, p. 53) suggest that economies and societies in countries in transition like Uzbekistan can be regarded as a state where formal and informal institutions compete for power and resources, thereby creating alternative 'legal orders' and norms to regulate transactions. In addition, Urinboyev

et al. (2018) also make an important observation about the peculiarity of the Uzbek context: the state is a powerful actor in Uzbekistan in matters relating to maintaining security and preventing social and political instability, but it is weak vis-à-vis enforcing the rule of law and service delivery.

The detrimental impact of informality and corruption, which disrupt and distort market-based price signals, on firms' access to formal financing and, subsequently, their performance are also well established in the relevant empirical literature in economics (e.g., Frye & Shleifer, 1997; Hunt & Laszlo, 2012; Seker & Yang, 2014). For example, some empirical studies (Ruziev & Webber, 2019; see also Bartlett, 2023) based on large-scale enterprise survey data from transition economies show that a disproportionate share of formal financing is channelled to large enterprises, limiting the flow of formal bank credit to small- and medium-sized enterprises (SMEs). Although market and information imperfections are conventionally viewed as major causes of this misallocation, these studies empirically demonstrate that connectedness to exclusive interpersonal networks significantly improves the chances of receiving bank credit and that the benefits of these links are stronger for well-established and larger SMEs. A similar empirical case study for Uzbekistan (Ruziev & Midmore, 2015) also demonstrated that enterprises with access to exclusive interpersonal networks are a) less likely to express a need for bank financing, but b) more likely to apply for it, and c) enjoy a much higher loan application success rate. More importantly, econometric estimates show that, although being connected to strategic networks improves enterprises' access to bank financing, receiving bank financing does not associate with their growth.

Enterprise Access to Formal Financing: Some Additional Factors

In the previous sections, information imperfections and the quality of institutions were discussed as the primary factors contributing to the inequitable distribution of formal financing to enterprises. In what follows, I add additional factors associated with financial underdevelopment to this list. First, an important factor that exacerbates enterprise access to bank loans in countries with underdeveloped financial systems is credit rationing. When screening loan applications and making loans to businesses, banks often require collateral in order to reduce their

moral hazard and other risks associated with default. In principle, we can assume that banks always grant loans if acceptable collateral is available; any concerns about the character of borrowers or the feasibility of projects to be financed would be incorporated into the rate of interest as a risk premium. However, selling collateral in the event of default carries additional transaction costs to banks. More importantly, in their seminal work, Stiglitz and Weiss (1981) showed that, in markets with imperfect information, raising interest rates and/or collateral requirements would increase the riskiness of lenders' credit portfolios, either by discouraging safer borrowers (an adverse selection problem) or by inducing borrowers to invest in riskier projects (a moral hazard problem). As a result, rather than charging higher interest rates and/or requiring more collateral, it makes more economic sense for banks to ration the supply of loans to businesses.

The next factor requiring a more in-depth discussion is the level of financial development. Unfortunately, the level of financial sector development in emerging economies, where enterprises depend on bank loans more than any other source of external financing, is lower, which carries implications for enterprise access to bank financing. Poor access to financial services in developing countries may be due to high fixed costs associated with the provision of financial services and tight entry regulations (Claessens & Perotti, 2007). More importantly, emerging economies also lack a sufficiently large pool of domestic savings (which is attributed to the paucity of their income levels) that can be efficiently mobilised to meet the demands of external financing.

At the time of the collapse of the Communist regime in Eastern Europe and the FSU, both the levels of per capita income and the financial development in these countries were much lower than those in advanced economies. The situation in Uzbekistan was far worse since its per capita income was 62% of the USSR average in 1988 (second lowest in the USSR; Ruziev et al., 2007, p. 9). Whilst many post-Communist countries embraced market-oriented reforms in the early 1990s, the reform process was gradual and progress consistently slower in Uzbekistan until late 2016, when the pace of reforms accelerated. Although Uzbek authorities' cautious approach to transition prevented an economic collapse and averted major social upheavals in the country in the 1990s, economic growth remained weak in the 1990s, only picking up pace in the first half of the 2000s.

The banking sector remains one of the least reformed and underdeveloped sectors of the economy in Uzbekistan. The government often uses the banking sector to channel externally and internally generated loans to priority sectors in the economy. Bank loans are extended almost exclusively to state-owned enterprises and joint ventures at preferential rates, leaving a large proportion of enterprises credit-starved (Holzhacker, 2018). Because of the low income levels, the banking sector also does not have a sufficiently large pool of domestic savings to mobilise for enterprises, such that banks rely heavily on government deposits and loans, which constitute more than half of the banking sector's loanable funds (IMF, 2018, p. 33).

Another strong indicator of financial repression manifested itself in the foreign exchange market. A multitiered exchange rate regime was in place primarily from July 1994, when the national currency was launched, until September 2017, when the official exchange rate was finally liberalised after President Mirziyoyev came to power. Before the liberalisation of the foreign exchange market, three exchange rates existed: the official rate, the bourse rate, and the black-market rate. Just a few weeks before the liberalisation of the market in September 2017, the official exchange rate was around 4100 *so'ms* per US dollar, the bourse rate stood at around 8500 *so'ms* per US dollar, and the black-market rate was around 8400 *so'ms* per US dollar.

While the government managed to achieve an impressive 8% average economic growth rate in the period 2004–2016, which was two times higher than the comparable 1993–2003 figure, and accelerated structural reforms after Mirziyovev took over the presidency in 2016 including in the banking sector, Uzbekistan remains one of the least economically and financially developed countries in the post-Communist world. To illustrate this reality, Figs. 11.3 and 11.4 show the improvements made in Uzbekistan's levels of per capita income and financial development in 2011 and in 2021, when the latest relevant data were available, comparing them to those of other post-Communist economies. Specifically, per capita income data rely on purchasing power parity (PPP) based on current international dollars (Fig. 11.3), whilst financial development (Fig. 11.4) is measured by examining domestic credit in the private sector as a share of gross domestic product (GDP), an imperfect but popular measure of financial development. These figures show the relative progress made by Uzbekistan in these two measures between 2011 (horizontal axis) and 2021 (vertical axis), alongside other countries'

performance. When a country's position lies above the solid 45-degree line, this indicates that the country made progress in 2021 compared with 2011 and vice versa.

Figures 11.3 and 11.4 indicate that Uzbekistan improved its per capita and financial development levels between 2011 and 2021. More specifically, although Uzbekistan sustained one of the highest growth rates amongst the post-Communist economies since the mid-2000s, it only resulted in modest improvements in *per capita* income levels in the period 2011–2021 when compared with other countries in the sample. Figure 11.4 indicates that the ratio of domestic credit extended to the private sector relative to GDP increased from around 10% in 2011 to around 36% in 2021. This is a noticeable improvement, although one caveat is in order. This indicator does not provide sufficient information about the breadth and the quality of the financial depth, and neglects other important factors such as the sources of banks' loanable funds and the proportion of economically active entities responsible for utilising the available formal financing.

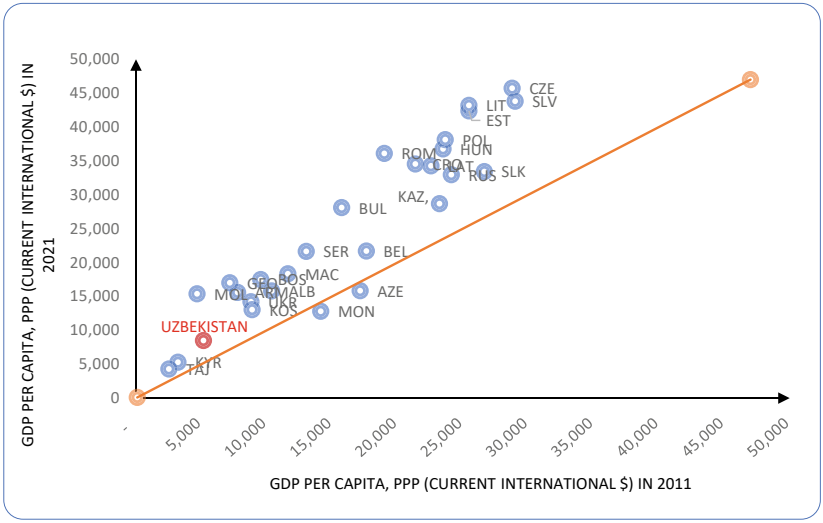

Fig. 11.3 Per capita income levels in selected countries, 2011 vs 2021 *Source* World development indicators (2023)

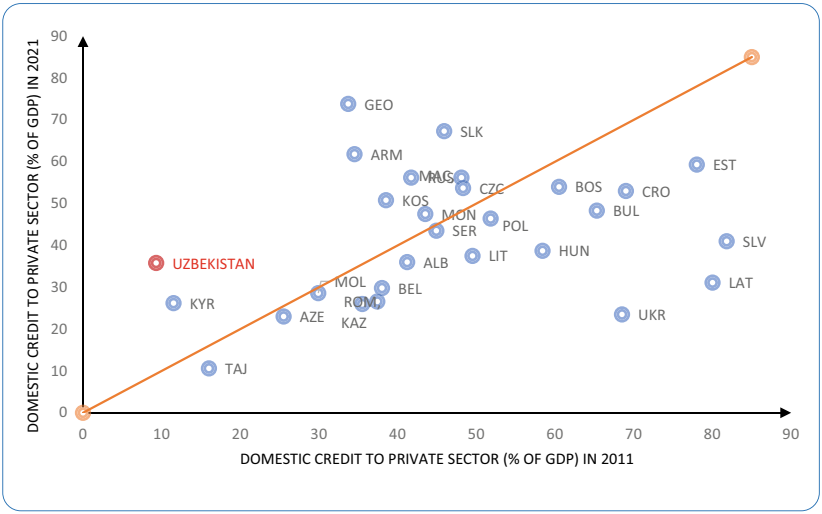

Fig. 11.4 Financial development over time in selected countries, 2011 vs 2021 *Source* World development indicators (2023)

Indeed, according to firm-level enterprise survey data by the World Bank (2023b), despite enterprises relying heavily on bank loans to finance their investments in Uzbekistan, only a small portion of them (about one-fifth) reported having access to bank credit. Furthermore, banks do not engage in the significant intermediation of private sector savings either, whereby 'financial intermediation is low, constraining access to financing' (IMF, 2022, p. 9). For example, in December 2021, domestic private sector deposits accounted for only 20% of banks' loanable funds (which were formed primarily from non-resident borrowing and deposits [27%], i.e., borrowing from international financial markets, followed by government borrowing and deposits [20%], i.e., borrowing from the government, banks' own capital [16%], interbank borrowing [7%], and other funds [10%]) (IMF, 2022, p. 12).

Whilst hard evidence on how financial underdevelopment can exacerbate the impact of interpersonal networks on the already skewed distribution of formal financing remains lacking for Uzbekistan, Ruziev and Webber (2019) found that, in post-Communist economies, the impact of interpersonal connectedness on resource misallocation is stronger when

the resources in question are in relatively short supply. This suggests that the supply of formal credit, limited in emerging economies like Uzbekistan, is distributed in favour of those capitalising on bureaucratic links, with consequences on resource misallocation.

Conclusions

The belief that a centrally planned system associated with wastefulness whilst a market-based system yields an efficient allocation of resources was central to post-Communist economies' decisions to transform from a centrally planned to a market-based system. Whilst this may well be true in principle, various forms of inefficiencies also occur in market-based systems, especially in the provision of financial services to businesses. Empirical research thus far clearly demonstrates that the distribution of formal financing skews towards larger enterprises and against younger and smaller firms in market-based economies.

Conventional explanations for this apparent inefficiency emphasise market and information imperfections as major causes of misallocations. However, more recent literature indicates that institutional and political factors also play a crucial role in matters concerning resource allocation, including the allocation of bank financing. In countries where market mechanisms remain weak and institutions responsible for upholding the rule of law lack credibility, a small number of strategically well-connected entrepreneurs may seize a disproportionately large share of scarce resources and opportunities, resulting in further allocative inefficiencies. This clearly compares unfavourably with anonymous market-based exchange systems, which are more efficient because 'the best' buyers or sellers may not be a part of exclusive networks. Corruption and rent-seeking practices are not only economically costly, but also morally repugnant given that they suffocate equality in opportunities.

Growing empirical evidence from transition economies suggests that well-connected enterprises, despite having low capital productivity, account for a disproportionately large share of formal financing. This clearly indicates resource misallocation. The situation in Uzbekistan is no exception. In fact, since the impact of interpersonal connectedness on resource misallocation is stronger when resources are in short supply, we can argue that enterprises in Uzbekistan face more challenging conditions due to credit rationing and the poor quality of financial intermediation in the country.

Looking ahead, it is essential that policymakers implement and credibly commit to fundamental reforms aimed at improving the quality of institutions that promote market-based incentive mechanisms. This would ensure a more equitable distribution of financing to its most productive uses, including in the labour-intensive sectors of the economy. This will ultimately help create jobs and drive economic growth in a more inclusive and sustainable way.

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CHAPTER 12

Kusturizatsia and Dolya: Business-makingscapes and Interethnic Patronage Networks in Kyrgyzstan

Aksana Ismailbekova

Introduction

The collapse of the Soviet Union sparked the creation of new informal practices across the former republics. Soviet-style corruption, in the form of *blat* (favours) and *reiderstvo* (corporate raiding), alongside newer informal practices, enabled the transition to independence (Ledeneva, 2018). Moreover, in the context of migration, Central Asian migrants produced new forms of informal governance and legal order in order to navigate the post-Soviet repressive legal system in Russia (Urinboyev, 2020).

Like other parts of the former Soviet periphery, in Kyrgyzstan Soviet-era practices and ideas were internalised even as independence bloomed. But, in response to a weak rule of law and the forces of capitalism, new forms of informal practices emerged in Kyrgyzstan given the country's

A. Ismailbekova (✉)
Leibniz-Zentrum Moderner Orient (ZMO), Berlin, Germany
e-mail: Aksana.Ismailbekova@zmo.de

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_12

own unique circumstances. A growing body of literature exists which documents the interconnections between the business environment, governance, legal system, and informality in Kyrgyzstan and the broader post-Soviet space (Ismailbekova, 2017; Kupatadze, 2017). Another interesting body of scholarship centres on the criminal and street world in post-Soviet Central Asia (Beissembayev, 2016; Slade & Azbel, 2022). These works importantly explore how informal and formal norms, visible and invisible practices, and official and unofficial rules work side by side. Depending upon the need, some practices and rules become more important than others, whereas some rules and practices remain less important and, thus, ignored.

In this article, I also investigate the multifaceted landscape of Kyrgyzstan's business environment, exploring the strategies, ethics, and morality employed by businessmen in both the Kyrgyz and Uzbek communities. This exploration is set against the backdrop of Kyrgyzstan's precarious political situation drawing from extensive long-term research conducted in the region. To achieve my objectives, I delve into two essential political periods in Kyrgyzstan. Firstly, I examine the state of business affairs in the pre-Japarov era and, secondly, I analyse the period following Japarov's ascent to power. These two distinct phases offer insights into how entrepreneurs adapt to changing circumstances.

Importantly, a comparative analysis of these two political periods allows for an assessment of the extent of business adaptation in response to their respective political challenges. The findings of my research show that, prior to the advent of the Japarov era, small businessmen found it advantageous to establish connections with criminal networks due to their distrust of the state. Conversely, during the Japarov period, we observed a concerted effort by businessmen to engage with the state because of the government's vague policy on combating corruption under the umbrella of *kusturizatsia* (or 'vomiting').

These securityscapes have developed in reaction to various 'imaginations of danger', experienced in reality as physical violence, harassment, and the seizure of Uzbek businesses (Ismailbekova, 2018). According to von Boemcken et al. (2016, p. 5), 'securityscapes can be understood as "imagined worlds" of security and insecurity that goad and structure the lives of people as they go about their daily business'. Thus, securityscapes are based on intersubjectively enacted social practices and emphasise the individual agency of actors in seeking security—which is particularly evident if these actors do not and cannot rely on state authorities.

In what follows, I discuss three types of securityscapes:

1. *Countering Suyun Omurzakov's 'mafia' network,* I explore the intricate web of inter-ethnic patronage networks involving Kyrgyz state authorities and Kyrgyz and Uzbek businessmen, whilst also examining their respective visions for the future.
2. *Countering corruption or dolya (*'share'*)*, I examine why Uzbek businessmen often choose to work with criminal groups. They do so because they think the criminal networks feature stricter rules compared to those supplied by the state, which they view as less dependable and insufficient to protect their rights as businesspeople and as individuals in general. Thus, it is not just about business rights, but about everyone's rights.
3. *In discussing kusturizatsia,* I shed light on the phenomenon of *kusturizatsia*, demonstrating its widespread acceptance despite numerous violations of legal norms that detrimentally impact the investment and business environment.

Before providing my detailed ethnographic findings, I first provide some background related to the political situation in Kyrgyzstan. Understanding the political context is important because it helps us make sense of the ever-changing, unpredictable, and dynamic political environment in Kyrgyzstan, which is heavily influenced by its competitive political culture.

Sociopolitical Background

Accounts from the series of revolutions (locally, *revolutsia*) experienced by Kyrgyzstan in 2005, 2010, and 2020 expand our understanding of the political dynamics of the country (see Aliiaskarov, 2023; Chekirova, 2023; Sheranova & Uraimov, 2023). Whilst the last twenty years of Kyrgyz politics have been characterised by political turmoil, initially, each of the now-former presidents enjoyed a high degree of support and trust. Key similarities characterise their loss of public trust and respective demands for regime changes. Specifically, each leader co-opted loyalists from a close network of family, friends, bodyguards, and other party members. They demonstratively punished their opponents, arresting or threatening them. Finally, all former presidents used the cover of 'anticorruption' initiatives to punish opposition (Ismailbekova, 2021a, 2021b).

Following the parliamentary elections on 4 October 2020, another *coup d'état* took place on 6 October due to popular discontent. As a result, Japarov's supporters came to power by force, with the new rulers comprising Kyrgyz patriots and ethnic minority nationalists. One day, S. Japarov was released from prison, and then within a short time was acquitted by the Supreme Court and became Prime Minister and acting President. During his forty days in government, he managed to place his supporters in key positions (State Committee for National Security [GKNB], Speaker of Parliament, Prosecutor General, and, later, acting President amongst others). Instead of holding new parliamentary elections, Japarov pushed for parliament to decide upon presidential elections and a referendum to form a government. He also initiated the drafting of a new constitution for the republic, and a council to draft the constitution was established. All this led to a division within society into two camps. But, in the discussion about the political situation in Kyrgyzstan, the ethnic minority was ignored.

There is a paradox in current Kyrgyz politics: Why is Japarov popular despite his complete ignorance of the rule of law and the constitution? As I argue elsewhere, the popularity of Japarov amongst the Kyrgyz is that he represents the 'native son' (*өz bala*), a 'simple man' who wears several hats. He offers authoritarian power in the country, but his right to rule the country as a legitimate ruler results primarily from his personal suffering and his successful use of kinship, native son symbolism, genealogy, and the fact that many ordinary people identify with him (Ismailbekova, 2021d).

Japarov's main contender was a southerner, Madumarov, known as a vocal nationalist because of his advocacy of nontitular groups and his actions during the June 2010 violence against Uzbeks. Yet, in September 2023, a prominent figure in the opposition, Madumarov was apprehended and detained due to his dissenting political views. He was supported by a majority of Kyrgyz from the south. However, he is also considered a nationalist by the nontitular segment of the population. His statement from 2007, when he was the state secretary of Kyrgyzstan—'The Kyrgyz are masters of Kyrgyzstan and other ethnic minorities are lodgers'—remains in the memories of many ethnic minority groups.

By contrast, most ethnic minorities often vote for a northern presidential candidate or for a party whose leader is a northerner. As such, every Kyrgyz politician tries to win votes from ethnic minorities, particularly from Uzbeks. During elections, Kyrgyz politicians formerly won the support of ethnic minorities by recruiting influential people of nontitular

ethnicities to their electoral teams. According to Ilias, Japarov has *duh (*'courage'*)* and is from the north of Kyrgyzstan. Since Soviet times, we have supported someone from the north, one of my informants stated. It is easy to deal with state authorities from the north. Northerners, unlike southerners, have very little nationalist thinking. They can also openly protest criminals. Because of this trust and sympathy, southern Uzbeks prefer northern Kyrgyz authorities.

A strategy was adopted to form a 'Kyrgyzstani' civil society in 2013. Later, on the basis of this strategy, a field in the national passport indicating a citizen's ethnicity was abolished. However, after Japarov came to power, he reintroduced this field by decree. The 'ethnicity' field will again appear in Kyrgyz citizens' passports. This began to worry ethnic minorities, particularly Uzbeks, who were particularly impacted by the June 2010 events. Yet, indicating one's ethnicity is voluntary, whereby those who want to may include it and those wishing not to are not obliged to do so (24.kg, 2020).

To understand why people support Japarov despite his propensity for violating the rule of law, it is important to examine the security strategies of Uzbek businessmen and their trust of a 'controversial' figure who personally experienced the injustice of law and can show his strength against other strong 'mafia' networks. People's personalities and difficulties coincide with the potential head of state power, and people begin to identify with that person given their shared experiences, *duh* ('courage'), and his identity as a 'northerner with low nationalist ideals'. All of these factors contribute to people's mobilisation. Simultaneously, businessmen describe their situation as a 'waiting game', claiming that they will see how things develop.

This backdrop illustrates two realities. On the one hand, people who support Japarov do not realise that the constitutional changes will return Kyrgyzstan to the Central Asian regional norm, establishing authoritarian rule. On the other hand, Japarov's opponents must understand that the existing authoritarianism and deep-rooted patriarchy will not disappear and will continue to return when needed. Yet, when the rule of law does not work and people tire of judiciary injustice and no longer trust the state, they begin supporting the 'controversial' Japarov, despite his violations to the rule of law in search of justice and hoping for change.

Ethnic minorities and business-making[1]

Ethnic Kyrgyz comprise 72% of the population in Kyrgyzstan. The largest minority group consists of Uzbeks, representing 14.6% of the population, concentrated primarily in southern Kyrgyzstan. More specifically, Uzbeks primarily live in and around the city of Osh and in the Osh and Zhalal-Abad oblasts in the Fergana Valley. In southern Kyrgyzstan, Kyrgyz and Uzbeks reside in roughly equal proportions. For example, in 2009, the population of the city of Osh (258 000 inhabitants) was almost equally divided amongst Uzbeks (48%) and Kyrgyz (43%), with the remaining 9% comprised of other ethnic groups (NSC, 2009).

However, importantly and historically, the two ethnic groups have lived side by side, in constant contact with each other through a state of 'symbiosis' (Liu, 2012; Megoran, 2013). More specifically, Uzbeks have occupied a niche position in the middle of the economy, typically trading in bazaars, working as shopkeepers, café owners, and drivers, whereas Kyrgyz traditionally occupied local government structures (Liu, 2012; Megoran, 2013). However, the 2010 conflict drastically changed and destroyed this symbiosis, threatening the Uzbek business sector.

For instance, the Osh conflict in summer 2010 was the worst the region had witnessed in years. This conflict between Uzbeks and Kyrgyz erupted in the city on 10 June 2010 in the form of intercommunal clashes resulting from the political crisis in the country. Nationalism intensified in the country following the summer's deadly clashes; a decade later, a common discourse promoting 'Kyrgyzstan as the land of the Kyrgyz and the rest, that is, ethnic minorities, are guests' (Abashin, 2011, p. 2) remains strong—not only among the youth, but also among the older generation as well. All these factors, such as nationalism, ethnic strife, and migration, in part reproduced or created a sense of ethnic minority.

Many Uzbeks face a number of challenges on a daily basis. Primarily, such difficulties affect the economically active who suffer constant pressure and intimidation from state authorities and criminals alike. As a result, businesspeople have resorted to developing different kinds of creative strategies to keep their business secure. Measures include moving trade from the bazaar to the *mahallas*, using mobile phones for passenger

[1] Parts of this section were adapted from my previous work, published by the Foreign Policy Centre (FPC) in 2021. See Ismailbekova (2021c) for further information and details.

bookings from the bus station and airport, and avoiding selling to or serving potentially 'suspicious' clients. Uzbeks do not openly avoid developing businesses within their economic niche; rather they attempt to turn their existing niche into a safer place employing practices that remain invisible to the Kyrgyz community. As such, they safeguard their businesses. Some businesses have been turned into 'safe' social projects, such as schools, hospitals, and mosques (Ismailbekova, 2018).

Searching for Security, Part I: Countering Suyun Ömürzakov's 'Mafia' Network

I start my analysis by first discussing Suyun Ömürzakov. Police Major General Suyun Ömürzakov, the First Deputy Minister of Interior of the Kyrgyz Republic, has low-level authority amongst local businessmen despite having a higher authority in law enforcement agencies. Suyun Ömürzakov is the owner of several sport clubs in Osh, where he trains local sportsmen.

On 12 September 2018, Azattyk's correspondents conducted a journalistic investigation into crimes of which sportsmen from this club were suspected of committing, and published the outcome of that story. An important investigation was conducted on Ömürzakov's family. As noted in the story, the Muhammed–Umar sports club is owned by the brother of the Deputy Minister of Internal Affairs of the Kyrgyz Republic, Suyun Ömürzakov, an employee of Osh's regional prosecutor's office, Uluk Ömürzakov (Isakov, 2018).

Another investigation, entitled 'Are Ömürzakov's sportsmen enjoying immunity in Osh?', examined complaints by local businessmen about Ömürzakov's raiding activities in Osh. Victims reported that, after these events, businessmen were threatened by Uluk Ömürzakov and attempted to force them to recant their statements; a criminal case was subsequently opened against businessmen in an attempt to silence them (Nurmatov, 2016).

In November 2020, Ulukbek Ömürzakov was detained in Osh by the State Committee for National Security officers. He is suspected of possibly organising a raid on a coal deposit (Zhol-Chirak and Co). Together with the prosecutor, law enforcement officers detained an additional four individuals from the Mukhammed–Umar sports club, 'seizing special equipment, they illegally mined and sold more than 82 million *soms* (~US$918 000) worth of coal without making the appropriate tax

and social payments' (Elgezit.kg, 2020). During a meeting with Japarov, local residents provided information that the Ömürzakov family mafia had taken over the entire southern capital (Today.kg, 2021).

According to Aftandil, shared during our Zoom meeting, 'Jeenbekov and Ömürzakov belong to the same mafia, because both come from the Kara–Kulja district. Ömürzakov is a millionaire, and he used to share his profit "*dolya*" with Jeenbekov's Kara–Kulja fund. So, they are related and Jeenbekov has protected Ömürzakov all these years.'

An owner of an Uzbek restaurant, Muhamed told me on the phone that, Suyun Ömürzakov has been robbing businessmen.

> I was threatened by sportsmen and the *militia* because they asked me to sell my restaurant in the centre. Sadyr has the "courage" and is not afraid of Ömürzakov (Uluk Ömürzakov was imprisoned). It is acceptable if Sadyr is illiterate, even if he does not know Russian, even if he is a bandit, but he had strong "courage" (*duh*). Entrepreneurs just need stability in the government. Criminals are being arrested. Order seems to be coming here. But, we have to see how things will develop further'. (Informant 1)

Many Uzbeks viewed the arrest of Suyun Ömürzakov's younger brother in particular as a sign of strength and Japarov's overconfidence. Locals argued that, for the safety of the restaurant owners, the arrest was a kind of sign. But, things became more complicated later because Suyun Ömürzakov worked so hard during the presidential elections to get more votes from the south by mobilising his people to save his younger brother from prison.

On 30 January 2021 immediately following Japarov's inauguration, Ulukbek Ömürzakov was released on his own recognizance. His lawyer, Ikramidin Aitkulov, told Azattyk that this decision was made by the Bishkek Pervomaiskiy District Court on 30 January. According to him, the suspect's defence asked the court to release him under house arrest by paying 20 million *som* (~US$224 000) to the state budget (Azattyk, 2021; Sputnik.kg, 2021).

Another Uzbek informant confirmed this, stating,

> See Jeenbekov was neither meat nor fish; he did not have '*duh*' (courage). He did not even say anything to Matraimov. Instead, Japarov said '*kusturam*' (vomit), and he did it by asking Matraimov to bring back 2 billion *som*. Now, Uluk paid 2 million *som* to the government.

Whether there has been some negotiation between Ömürzakov and Japarov's team, which remains unclear, may be the reason his younger brother was released, given that Ömürzakov demonstrated his loyalty to Japarov.

Searching for Security, Part II: Countering Corruption Through '*Dolya*' (Share)

Akbar, the owner of several cafés, supported and voted for Japarov because he stated that he would fight corruption, saying he would specifically eliminate the system of '*dolya*' (shares of business profits given to state authorities). Akbar also opined that Japarov was in prison and could experience injustice through his skin (*jon terisi menen otkorgon*) along with the difficulties of life. Considering the situation amongst Uzbek businessmen, Akbar further stated, 'We have to follow what the government says to protect our business. We would not go against the government.'

When I asked whether any changes had occurred since Japarov's presidency, Akbar responded positively. The younger brother of Ormonov Japar, chairman of the city council, had formerly been the chief of the police of Osh district. He collected '*dolya'*, beginning with 'seed' (*semechk*i) sellers, car washing services, oil change services, food services, catering, shops, and other small businesses. When Albek Ormonov visited for the first time, he invited each businessman to his office through the precinct officer and openly declared that they should share their profits (*dolya suragan*) as a way to 'congratulate him on his new position' (*kuttuktap*).

Akbar gave him about 2000 *som (US$25)*, stating that he only had that amount of money available. Every businessman also gave their telephone numbers. Depending upon a specific need, they would then be called. For example, at times Albek Ormonov would ask for 2 kg of meat, and once each month he would order pilaf (rice dish; in Uzbek, '*ash'*) for six to seven of his friends without paying for anything. In addition, other precinct officers would demand that café owners prepare some food (like *ash* pilaf or fried meat, potatoes, onions, vegetables or '*dymdama'*) for them. He not only threatened local businessmen, but also state officials, saying 'I heard you won the tender. Where is my share (*dolya*)?' Fortunately, this person was fired, and the new precinct officer seems to be a state official (*taza bala eken*).

Another businessman, Alisher, explained the electricity grid.

> I have an electrical capacity of 20 kilowatts for my restaurant, for which I paid 120 000 *som (*US$1343*)*. But, in winter, I exceed 20 kilowatts because I need heat and have other additional needs. In summer, I must keep the ice cream and other products cold. So, in winter or summer we always exceed 20 kilowatts. An electricity inspector would immediately come to me and ask for additional money as *dolya*. The electricity inspector gives me the option of either paying the full fine to the government or half the fine to him. Of course, I would choose paying half the fine to the electricity inspector.

Apparently, it is not possible to achieve 30 to 40 kilowatts. Otherwise, state authorities would lose their money (*kormushka*). Instead, they grant only 20 kilowatts, with inspectors taking any violations into their own hands. For anything above 30 kilowatts, the state requires a transformation, which would cost about 500 000 *som (*~US$*5600)*. Moreover, one should also get permission for the building inspector, a technical inspection, the village head, and, finally, the community's consent. Thus, obtaining a transformation is not easy, such that businessmen must remain within 20 kilowatts, paying for the remainder as *dolya*.

Another Uzbek informant explained that, compared to criminals, the *militia* is described using a local term cheeky (*nahalnyi*) and do not understand businesspeople's situations. The thieves' law is quite strict compared to the state law. You can buy the *militia*, but it is rather difficult to buy criminals. Yet, Uzbek businessmen also provide '*dolya'* to street boys (*köchö baldar*) and collect '*grev'* (a remittance or a package) for prisoners, particularly for the '*bratva'* (criminal leaders). Businessmen donate a small amount of money (for food, cigarettes, and soap) to prisoners. The state budget cannot cover the basic needs for schools and healthcare let alone prisoners. Apparently, the names of all cafés and restaurants in Otmetka are registered. Businessmen describe criminals more humanely and they're not cheeky (*oni ne naglye*), understanding that business is not good and they should wait a bit.

Three of my informants told me that the '*nahalyni*' *militia* is not coming to them thus far, already a indicating a positive shift. In 2020, when we began our research, much uncertainty surrounded the future direction of politics in Kyrgyzstan. During that time, many in the business community were unsure about what would come next (*sostoinia ojidanie*). Now, three years after Japarov took office, things have become clearer. Under his leadership, Kyrgyzstan has moved towards a more

stable and defined political path. This is quite different from previous years when criminal groups seemed more influential than the government itself. Japarov's administration established an authoritarian regime, reduced the power of these criminal networks, and decided to benefit from businessmen themselves under the umbrella of 'fighting corruption'. As a result, today's businesspeople must deal directly with Japarov and his team. If they do not, they could face new unofficial policies like *'kusturizatsia'*. This shift in how power and governance work represents a significant change from the earlier period of uncertainty when businesspeople often relied on criminal networks for support when the state was unable to deliver security. Japarov's rise to power has created a tricky situation for businessmen. On the one hand, he provides security; on the other hand, he can also be a source of insecurity to them. This has transformed the relationship between businessmen and Japarov's government into a complex negotiation. How businessmen navigate this delicate balance within the limited space they have can greatly impact their future success and opportunities.

Japarov's Governance: *Kusturizatsia* and Corruption

I begin this section by defining the term *kusturizatsia*, which literally means 'vomiting'. In practice, corrupt individuals can repay a fraction of stolen proceeds to the state and, then, go about their business. No one knows definitively where the money goes.

The Soviet imperial legacy comes into view, particularly in these locally developed informal practices. The recently emerged concept '*kusturizatsia'* in Kyrgyzstan is one such example. *Kusturizatsia*, in Kyrgyz meaning 'vomiting', refers to those who damage the state through corrupt practices and economic crimes (such as stealing from the state budget or not paying taxes), and are then forced to compensate the state when discovered.

When corrupt practices are detected, the perpetrators (primarily influential politicians and prominent businessmen) are granted time to voluntarily pay compensation for the damage to the stat; otherwise, they face possible detention. Thus, *kusturizatsia* is essentially the legalisation of corrupt activities by prominent businessmen and politicians representing the state. It occurs beyond the rule of law, although Japarov has referred to it as 'economic amnesty'.

The main bodies in charge of this process are the State Committee for National Security (SCNS) and the Office of the President. These sectors decide whether to legalise an individual's corruption. *Kusturizatsia* occurs between three parties: the businessman/politician (the thief), the president, and the security services. In simpler terms, a thief admits that he stole money and those who caught the thief (Head of the SCNS Kamchybek Tashiev and President Japarov) demand that he returns ('vomits') the stolen money back to the state.

Kusturizatsia as a term has become popular within Kyrgyz society, particularly in the mainstream media, and is frequently used by political analysts. The term has become widely understood because of its simple comprehensibility. *Kusturizatsia* carries negative connotations, with vomiting associated with dirt, disease, and indigestion. People do not want to witness a person vomiting because they find it disgusting. However, the term also implies that those who are caught vomiting are associated with the notion of shame, and publicly identified as corrupt. As a result, despite the negative connotations, the term is associated with the idea of justice and, therefore, popular. It is reminiscent of 'gaming the system', namely, that of 'winning some advantage by acting against the spirit of the formal' (Hanson, 2018, p. 181). The president plays the role of the 'saviour' and righteously forces the thieves to 'vomit' in front of the public. People seem content for the corrupt to be shamed and are happy to know that a billion *soms* have been reportedly paid in compensation, far more than in the years before this practice. But, in general, people are not that interested in the complex details, especially what goes on within the negotiations between the thieves and the state and what trades take place.[2]

Despite the popularity of the term and practice amongst average Kyrgyz, *kusturizatsia* is questioned and regarded with suspicion by many prominent lawyers and political scientists. There is a shared concern amongst critical observers regarding where the funds from the *kusturizatsia* process actually go.

As Nurbek Toktakunov, a Kyrgyz lawyer, remarked on social media in 2021, the compensation paid by thieves for their crimes under this scheme are not transferred to the state budget. 'The funds remain uncontrolled

[2] Parts of this section were adapted from my previous work, published in *Diplomat* in 2023. For further details, see Ismailbekova (2023).

and, as a rule, plundered,' he wrote. 'The "*kusturizatsia*" is stolen or used for the narrow political purposes of the ruling elite.'[3]

As Emilbek Joroev, a political scientist, wrote in a Facebook post earlier this year, '[I]n a country where due process supposedly applies, a country with judicial, procedural law enforcement as well as other checks and balances, the operation of *kusturizatsia* is more dirty, more shameful, more corrupt, and an act that goes against the law and the principles of justice.'[4]

Why do Kyrgyzstan's leaders prefer to use this method of fining corrupt individuals rather than using available legal means? *Kusturizatsia* simultaneously functions in conjunction with a variety of legal and administrative tools, particularly judicial rulings, whilst circumventing other rule of law structures that ought to apply to the corrupt.

As Joroev argued in his Facebook post, these excision operations occur in the shadows. Thus, *kusturizatsia* is a simple solution to a complex problem. None of the parties involved want to provide complete transparency to the public, such as that which would occur in a full-fledged trial.

'Are we to believe the rumours that the leaders "vomit twice as much as they eat" if not the slightest bit of information is provided?', he wrote. Furthermore, Joroev offers an interesting bit of analysis:

> Due to its secret and shadowy nature, on the one hand, it has become a way for the really serious thieves to bargain inside the system and get 'clean' by giving back a little. However, this practice has turned into another bait plate for the 'vomiting' parties.[5]

The *kusturizatsia* policy has also reportedly led to a flight of investors from Kyrgyzstan. This not only applies to foreign investors but domestic investors who are also leaving the country. In a December 2021 parliamentary budget hearing, MP Muradyl Mademinov criticised the policy,

[3] Nurbek Toktakunov zayavil, chto sredstva ot 'kusturizatsi' razvorovyvayutsya. GKNB yemu otvetil (kaktus.media) https://kaktus.media/doc/446520_nyrbek_toktakynov_zaiavil_chto_sredstva_ot_kystyrizacii_razvorovyvautsia._gknb_emy_otvetil.html

[4] Emilbek Juraev, Kusturisatzia. published 13 April 2023, https://www.facebook.com/emilbek.joroev

[5] Emilbek Juraev, Kusturisatzia. published 13 April 2023, https://www.facebook.com/emilbek.joroev

saying it had prompted even 'slightly self-respecting' investors to leave. 'Even citizens of Kyrgyzstan are leaving,' he said, claiming that 'they are leaving in droves' for Kazakhstan, Turkey, and Uzbekistan.[6]

As the above-mentioned analysts rightly argue, there are more questions than answers surrounding *kusturizatsia*. First of all, there is no transparent information about the funds, particularly regarding how much money has been placed in the budget or how it has been spent. There is no reason to believe that the funds returned via *kusturizatsia* are not themselves also plundered. Second, not everyone is offered this golden opportunity to reimburse the state; the eligibility criteria remain a mystery. Third, as noted above, the policy has arguably led to investors fleeing Kyrgyzstan *en masse* for more predictable markets abroad. However, we do not know the full extent of the impact on Kyrgyzstan's economy and reputation.

One source responded to my question about the impact of criminal groups on business activities by laughing, commenting, 'We have our own two bandits in our country,'—a reference to Tashiev and Japarov—and they are making trouble for businessmen. Rumours circulate that much money is flowing out of Kyrgyzstan on a daily basis, and many companies allegedly continue to pay the security services both formally and informally for a 'green light' to do business.

Based on my interviews with three businessmen who have engaged in *kusturizatsia*, I found that for each the process differed depending upon the willingness of the businessmen to negotiate with the authorities.

One entrepreneur from Osh, Arman, is a prominent businessman with many cafés, bars, and catering businesses. He was arrested and detained for several days over concerns about his previous tax filings. He was required to pay compensation of 3 million *soms* (~US$33 500) in lieu of taxes. After promptly paying the compensation, he was released fairly quickly following his arrest.

Another businessman explained that he attempts to maintain a low profile and avoid any conflict with the authorities. He tries to follow the new rules of the tax system, although he complained that 'business in Kyrgyzstan has become less profitable. I have to pay almost 1 million *soms* (~US$11 000) in taxes.' As a consequence, he has begun dividing his medium-sized business into smaller enterprises.

[6] Deputat: 'Kusturizatsiya' privela k ottoku investorov. Azattyk, 10 December 2021, https://rus.azattyk.org/a/31602666.html

In the worst-case scenario, a businessman can lose his entire business if forced to share it with individuals close to government agencies, as we find in the case of Timur. Timur owned a business distributing cement and bricks from Kyrgyzstan to other Central Asian countries. When he resisted, he lost his entire business. This took place rather creatively: the director of the supply company he had long engaged with suddenly refused to sell Timur goods, saying that he had found a new business partner. The company director asked Timur to understand that he was forced to sell goods to another unidentified person in the same industry. If the director refused, the state agencies would pressure him with fines for administrative violations. Thus, the director was compelled to cooperate with the new business partner, not necessarily one of his own choosing, in order to protect his own company from seizure.

The concept of *kusturisatsia* has become popular and widespread in Kyrgyzstan, forcing businessmen to share their profits with the president and the security services in an opaque manner. This has forced other businessmen to seek alternatives, either through negotiation or compromise. Some have chosen to split up or sell their businesses in an attempt to avoid confrontation with the state and choose to pay taxes legally, despite experiencing huge losses. The state, on the other hand, manipulates the formal rules and procedures (law enforcement agencies and the courts) to its own advantage, maintaining the existing system and making sure that it works only for state power and not necessarily as a rule of law for all.

Concluding remarks

The political landscape in Kyrgyzstan is characterised by a high degree of dynamism, largely stemming from its competitive political culture, which has led to a series of revolutions. Within this context, each successive president has introduced their own distinctive informal strategies aimed at combating corruption whilst concurrently consolidating power and resources under their purview. Along this vein, Japarov is no exception.

One notable informal practice introduced by Japarov is referred to as '*kusturisatsia*', which primarily targets corrupt state officials and businessmen. This policy has a two-pronged approach. On the one hand, it aims to force corrupt individuals to provide some of their ill-begotten gains back to the state, theoretically benefiting the public. However, the way this policy is implemented is not transparent, leading to secretive negotiations that take place behind closed doors of which the public is

unaware. This makes it challenging to fully understand by adding a layer of complexity to its assessment and impact.

Businessmen have exhibited a remarkable adaptability in their interactions with various governing regimes over time. In other words, they have established their own distinct securityscape strategies. In particular, businessmen have demonstrated an astute capacity to navigate the shifting political landscapes, effectively engaging with these regimes on their own terms whilst pursuing their own vested interests. When the government was unable to provide them with the support they needed, some businessmen turned to criminal networks for assistance. On the flip side, when the influence of criminal networks diminished and uncertain government authorities took charge, businessmen adapted to this new situation. This adaptation took various forms and shifted depending upon the situation. Some businesspeople went along with the government's rules, although not always happily. Others paid more than they had originally planned. Some even decided to leave and seek better opportunities elsewhere. This demonstrates that businesspeople have used a range of strategies to deal with the shifting political realities they face. Those who are successful know the rules of the game and play according to the rules.

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CHAPTER 13

Women and Bazaars: Gendering Entrepreneurship in Uzbekistan

Binazirbonu Yusupova

Introduction

Bazaars in Central Asia survived both Soviet socialism and the capitalist market economy. During the Soviet period, bazaars remained part of collective farm markets and, thus, were heavily regulated and controlled by the state (Castillo, 1997). During the transition period, bazaars mushroomed, becoming a central feature of the economy and culture of Central Asia (Alff, 2015; Karrar & Rudaz, 2022; Spector, 2017). They continue to thrive and provide employment to many families. For instance, in Tashkent alone approximately 33 000 officially recognised trading spots exist (UZStat, 2023). In the 1990s, most bazaars in Uzbekistan were reorganised as joint stock companies; despite numerous attempts to privatise them, between 51 and 99% of bazaars' stocks are owned by the state (State Assets Management Agency, 2023). Operating at the intersection of formal regulations and unwritten rules, bazaars in Uzbekistan comprise around 90% of the retail sector (Otajonova,

B. Yusupova (✉)
Dublin City University, Dublin, Ireland
e-mail: binazirbonu.yusupova@dcu.ie

R. Urinboyev (ed.), *The Political Economy of Central Asian Law*,
International Political Economy Series,
https://doi.org/10.1007/978-3-031-55341-7_13

2021). The predominantly informal nature of trade provides flexibility and opportunities, whilst also creating challenges associated with a lack of formal labour protections. As a result, precarity has become the everyday reality for bazaar workers.

Given that precarity is a gendered reality (Flores Garrido, 2020), so too are bazaars gendered spaces. Whilst in many Muslim-majority countries like Pakistan and Iran economic activities in public spaces including bazaars are restricted to men (Bahramitash, 2013; Gohar et al., 2022; Khan, 2020), Central Asian bazaars are occupied by both men and women despite a strict patriarchal culture prescribing women's role to the home (Ismailbekova, 2014; Peshkova & Thibault, 2022; Turaeva, 2018). There was even a period immediately following the dissolution of the USSR when women outnumbered men at bazaars (Mukhina, 2014; Pavlovskaya, 2020; Spector, 2017). Women continue to outnumber men in bazaars in less profitable sectors, including agricultural and textile markets, compared with male-dominated sectors, such as the construction and technology sectors. Thus, gender inequality, well-established within formal employment (Muradova & Seitz, 2021) sectors, is reproduced within informal markets. This reinforces the fact that bazaars are gendered spaces, where socially proscribed gender roles and expectations remain reinforced and reproduced. There are even anecdotes widely circulated in Uzbek society reflecting the gendering of bazaars, including the following from the conservative and religious Fergana Valley:

> One day, a man in the *mahalla* was carrying sacks of weekly produce from the bazaar. The other *mahalla* men saw him and started laughing. He then asked them, 'Why are you laughing at me?' They replied, 'Don't you have a wife at home? If not, we can raise money for you and get you married.' The man said that he already had a wife. Laughing, the men in the *mahalla* asked, 'Then, why did you come from the bazaar carrying the bags if you have a wife? It is now fashionable for men to sit at home; the bazaar is only for women. A man who has a wife does not struggle going to the bazaar, carrying the heavy bags. We have wives, so let them work instead of us.'

This anecdote both reflects and contradicts the fluid gender norms and attitudes toward women and men. On the one hand, the anecdote reflects traditional gender roles and stereotypes, where men are expected to serve as the providers and women are expected to assume domestic-related responsibilities. The anecdote also highlights how societal expectations

about what is considered 'appropriate' behaviour for men and women can lead to gender-based judgments and even ridicule. The men in the story find it amusing that the man is doing something typically associated with women (carrying bags), because it challenges their preconceived notions of gender-appropriate roles. On the other hand, the ending of the anecdote suggests a form of subversion or resistance to traditional gender roles. The men humorously suggest that men should remain at home whilst women enter the public space such as a bazaar, challenging the conventional power dynamics associated with gender. Thus, this anecdote raises questions about the division of labour and the assumptions society makes about what roles are 'appropriate' for men and women, implying that these norms should be challenged and re-evaluated. Consequently, the bazaar serves as an intriguing arena for understanding and studying this portrayal of gender norm contestation.

Despite the prevalence of women in traditionally 'masculine' bazaars, women's experiences of working in bazaars have rarely received attention, whilst the precarious position of women there remains invisible, silenced, and unarticulated. Women working in bazaars face additional challenges, such as discrimination and harassment, and their voices are often unheard. In public discourses, such women are rarely given credit for their uneasy labour and their contribution to the economy remains unacknowledged. By focusing on women traders in bazaars, I do not disregard male traders' experiences or homogenise experiences amongst women traders or male traders. Following the critique of gender researchers from and studying within the Central Asian region (Cleuziou & Direnberger, 2016; Peshkova & Thibault, 2022; Turaeva, 2018, 2022), I depart from simplistic and rigid gender binary categories of 'woman' and 'man' and, instead, focus on the diversity of experiences amongst traders in bazaars. I focus on women traders for two reasons. First, I attempt to address the paradox of how in patriarchal Uzbekistan women continue to occupy public spaces like bazaars. Second, in the vast literature on bazaars in the post-Soviet space, only a few have explicitly applied a gendered perspective to understanding informal practices that helped women navigate within the bazaar economy. The rare examples include studies focusing on phenomena such as the shuttle trade in the early transition period and its role in transitioning from the planned to a market economy (Cieślewska, 2013; Mukhina, 2014; Piart, 2013), on emotions and feelings behind trading (Eggart, 2023; Kamp, 2005), on the health implications of petty trade (Turaeva, 2010), on cultural values and social

norms behind the feminisation of trade and small-scale entrepreneurial activities amongst women (Heyat, 2002), as well as the evolving role of bazaars as entrepreneurial hubs for women (Özcan, 2006).

Existing research recognises the critical role that women and bazaars have played in restructuring the economies of the post-Soviet region during the transition period. Such research also sheds light on the ways in which gender relations were renegotiated both in private and public spaces (Cleuziou & Direnberger, 2016). However, these studies often viewed bazaars and the precarious position of women as a liminal phase in the transition away from state socialism towards capitalism. Primarily, previous research concentrated on the early transition period, expecting bazaars to evolve into modern formal markets alongside economic development, whilst anticipating that bazaar traders would develop into entrepreneurs with sustainable businesses. My ethnographic fieldwork conducted in Tashkent bazaars revealed that these assumptions do not fully capture the complex and ongoing dynamics within such spaces. Bazaars continue to serve as public arenas, where not only goods and services are exchanged, but also where gender norms and roles are continually contested, negotiated, and redefined. This highlights the need for a deeper understanding of women's roles in bazaars and their impact on Uzbekistan's broader socioeconomic landscape beyond the initial transition period.

Furthermore, the profile of traders has shifted from the accounts of the 1990s and 2000s when shuttle traders predominated. Former teachers, physicians, and other educated women are no longer the norm. The women I spoke with typically had only attended some or completed secondary education, with rarer individuals earning a university degree. The sociodemographic landscape of women navigating the bazaar environment has changed dramatically, yet the academic literature has not fully captured this transformation. Therefore, in this chapter, I aim to bridge this gap by situating my analysis beyond the 'post-Soviet' and 'post-socialist' framework, not merely discursively by abstaining from these terms, but analytically by acknowledging the informalisation of livelihoods as a survival strategy (Rasanayagam, 2011; Turaeva, 2022; Turaeva & Urinboyev, 2021). I also focus on the multitude of practices that constitute the lived reality of women working in bazaars in Tashkent. In addition, by centring women and their multifaceted practices that transcend the public–private divide, this study moves beyond the

capitalocentric and androcentric perspectives often found in the academic literature on informal economies (Chen & Carré, 2020).

In what follows, I first provide a brief overview of my ethnographic fieldwork experience and positionality, followed by the theoretical framework underpinning this research. The next section provides an overview of the existing literature on bazaars and the role of women within them. Then, I present the findings of my research, focusing on three key themes: the notion of bazaars as gendered spaces, the complex role of headscarves in navigating gender norms within bazaars, and the double burden faced by women traders. I conclude this chapter by summarising my key findings and their implications.

Notes on Methods, Fieldwork, and Positionality

The empirical data presented in this chapter are based on ethnographic fieldwork I conducted between September 2022 and May 2023 in Tashkent. After spending two months visiting different bazaars in Tashkent, I selected two as my field sites, where I spent another five months carrying out participant observation and conducting in-depth informal interviews with women traders. I spent several hours each day with women at the Chorsu bazaar (the oldest bazaar in the old city) and the Mirobod dehqon bazaar (colloquially referred to as *Gospitalka* and located in the 'European' part of Tashkent), talking with women, trading with them, and having lunch together at their stalls. I approached most of the women directly by initiating informal conversations without gatekeepers. The ice-breaker question I usually used to begin conservations was, 'When did you begin working in this bazaar?' This question proved successful in signalling to the women that I was invested in talking with them. My interactions with my participants were reciprocal in the sense that the women whom I interviewed were also equally interested in my life.

Since women's voices and lived experiences lie at the centre of my research, it was critical for me to remain reflexive (Hesse-Biber, 2013) at every stage of research by addressing issues of my positionality. First, I am a young Uzbek woman educated abroad, fluent in Russian, but only mastering conversational-level Uzbek. I am also a researcher affiliated with an Irish university working on her PhD studying women working in bazaars without ever working in a bazaar myself. Finally, as a researcher, I also have a family and caring responsibilities. All of these identities shaped

the methods I employed and my fieldwork in general, and affected the relationships I established with my participants.

A traditional masculine understanding of ethnography implies a strict separation of the field and home, with an implicit assumption of an always-available researcher who spends 24/7/365 with the community they study. Internalising these rigid assumptions, I thought of my interruptive fieldwork experience as failed. I juggled between the roles of a researcher, mother, wife, daughter-in-law, and many others, blaming myself for lacking sufficient expertise to pursue an academic career, until I came across 'A Manifesto for Patchwork Ethnography' by Günel et al. (2020). That piece helped validate my embodied fieldwork and finally academically vocalise the methods I employed. The overarching approach of patchwork ethnography implies working 'with rather than against the gaps, constraints, partial knowledge, and diverse commitments that characterize all knowledge production' (Alava & Robertson 2023; Günel et al., 2020;). In other words, my fieldwork began at home with my family and children, and extended out toward patches of visits to bazaars, conferences, and attending to other intersecting commitments.

During visits to the bazaars, I used active participant observation, spending several hours together with my participants. Some of my interactions extended across many hours and were more frequent, whereas others were shorter and did not develop into long-lasting relationships. Some were joyful and transformative, whilst other cases proved painful. For instance, I faced harassment and verbal abuse from some male traders, resulting in my inability to return to one of the bazaars upon which I initially hoped to focus. All of this impacted the number and profile of the traders with whom I became acquainted and the bazaars I chose for my research since establishing trust and prioritising my own safety were equally crucial. Having in-depth conversations and building sustainable relationships were choices requiring patience, reciprocity, and time. Following repeated interactions, I built close relationships, although at a price. I could no longer record the interactions as they became natural, resulting in it feeling like a betrayal if I asked to record our conversations.

Nevertheless, I documented all of the interactions by taking fieldwork notes. Moreover, most of the initial interviews were recorded after acquiring consent from the traders. The findings in this chapter are based on a preliminary analysis of these notes and interviews using thick descriptions (Geertz, 2008) in Gibson–Graham's (2014) reading, implying that

attention in interpreting social reality is granted not only to material practices, but to the culturally situated and gendered nuances as well. In other words, I paid sustained attention to the ways in which difference, power, and privilege are organised through gender (Hesse-Biber, 2013) when completing a preliminary analysis of the evidence collected.

In this chapter, I do not attempt to represent either all bazaar culture in Uzbekistan or Tashkent's urban bazaar culture nor to homogenise the experiences of all women working within all sectors of bazaars. Rather, here I attempt to make visible certain interconnections within the lives of bazaar dwellers who share the characteristics of gender and class and who participate in some form of small-scale commodity production. Moreover, herein bazaars are understood as physical spaces of traditional open-air markets referred to as *dehqon bozori* in Uzbekistan. In accordance with ethical considerations and to ensure the privacy and confidentiality of the individuals discussed in this study, I use pseudonyms throughout this article.

Theoretical Framework

As I show in the empirical section of this article, a prevailing opinion persists amongst individuals not involved in bazaar trade that the bazaar serves as an equalising force for men and women, driven by necessity. However, in-depth conversations with bazaar traders and spending a significant amount of time with traders unveiled various motives and experiences associated with bazaar trade. These variations were influenced by factors such as gender, age, and place of origin, which collectively shape an individual's social status (Turaeva, 2022).

One specifically potent social marker was the role of *kelin* (a young daughter-in-law), highlighted in Turaeva's (2017) research. In my interactions with women engaged in bazaar trade, a recurring theme emerged—the conceptualisation of bazaars as an *exit strategy* from domestic oppression. This concept draws upon the work of Hassani and Oren (2022), who analysed women's grassroots efforts to combat gender-based violence in Uzbekistan. Hassani & Oren (2022) identified three common strategies of exit and voice women in Uzbekistan resort to when facing a crisis: self-immolation, seeking refuge in shelters, and participating in digital self-help groups. I posit that this list should be expanded to include engagement in bazaar trade as another widely utilised exit

strategy and voice to fully capture the grassroots but atomised actions of women in the face of gender-based oppression.

From my perspective, the choice of entering the bazaar can be more comprehensively understood by bridging James C. Scott's concept of *infrapolitics* (Scott, 1976, 1985, 2017) to Deniz Kandiyoti's notion of the *patriarchal bargain* (Kandiyoti, 1988). I view women's decisions to engage in bazaar trade as an act of everyday informal resistance, drawing upon Scott's concept of *infrapolitics*. Despite public stigmatisation and the shame often associated with bazaar trade, women's decisions to participate challenges traditional gender roles that prescribe women should remain confined to domesticity in service to the family. By occupying public spaces such as bazaars, women assert their agency.

The concept of *infrapolitics* also offers a lens via which to understand how women's actions, such as leaving their homes to spend most of their day in the streets—a transgression, according to the patriarchal order—serves as resistance against patriarchal oppression. Whilst women engage in numerous smaller acts of defiance and subversion daily, these acts are often unrecognised as forms of resistance. However, whilst participation in bazaar trade is often primarily viewed as an economic act, such participation should not be overlooked as a form of political action.

Nevertheless, the concept of *infrapolitics* does not fully capture the ambivalent reality women must navigate in bazaars. By working in bazaars, women continue using all symbolic means at their disposal to highlight their subservient role as devout wives, mothers, and daughters-in-law. Although they work in a public space, they must also use any type of veil, thereby marking the distinction between an honest woman and a bad one—that is, *yomon hotin* in Uzbek (a bad woman in English). Although women work long hours in the bazaar, they still perform their assigned roles when they return home, thus taking on the double burden of both paid work and unpaid domestic labour (Hochschild & Machung, 2012). In addition, the place that women occupy within a bazaar is often subordinate to those places their male colleagues occupy. In other words, they complete any performative tasks to sustain the status quo of protective males and women as recipients of protection. Women continue treating male family members, at least discursively, as the household heads even in cases where they are the sole breadwinners or major contributors. Therefore, the concept of the patriarchal bargain coined by Kandiyoti (1988) is not merely helpful, but crucial to fully capture how bazaars empower women on the one hand, but do so 'within the parameters of

dominant gender ideologies' (p. 274), on the other. Thus, while Scott's *infrapolitics* helps make visible how entering the bazaar represents an act of resistance, Kandiyoti's patriarchal bargain helps reveal the gendered aspects as well as the limits of such acts.

Setting the Scene: Contextualising and Gendering the Bazaars in Uzbekistan

Any mention of the word *bazaar* evokes sentiments of both the East and the past. Nevertheless, bazaars are not only reminiscent artefacts of history, but an existing and ongoing part of the present. The bazaar economy has long been a dominant economic system in the history of civilisations. However, it was only theoretically defined and presented as a field of research in 1963, after Clifford Geertz formulated and defined it as a juxtaposition from the Western firm-type economy.

Analysing the role and function of the bazaar in the post-socialist world moved this discussion beyond the formal and informal divide towards diverse economies scholarship (Gibson-Graham, 2006). This demonstrated that bazaar economies have their own worth as 'alternative economic models that can also work to the advantage of the weak and the poor where profit becomes secondary to equality and justice' (Polese, 2021, p. 9). Indeed, the more contemporary body of academic work concerning bazaars has questioned the conventional division between culture and economy which often characterises discussions about bazaars (Humphrey & Skvirskaja, 2021; Kaul, 2011). This literature has underscored the hybrid nature of bazaars, depicting them as domains that encompass not only commercial exchanges, but also narratives and theories about nation-state, capitalism, colonialism, globalisation, governance, activism, and technological advancement (Kaul, 2011, p. 32).

In the realm of post-socialist literature, discussions involving bazaars have evolved beyond dualistic perspectives, offering diverse narratives on their significance (Spector, 2017). Whilst many narratives base their analysis on the Soviet Union's legacy, they differ in their interpretations of post-Soviet marketisation. Optimistic views see the transition to a market economy as empowering, with emerging traders as entrepreneurial agents. By contrast, a more pessimistic view considers bazaar trade a form of 'violent dispossession', resulting from swift neoliberal changes (Spector, 2017, p. 8). Bazaar trade is viewed as a survival strategy and an alternative to formal employment, especially following the decline in industrial

production and job losses during independence (Turaeva & Adambussinova, 2022). Some scholars view early traders as victims forced into this survival strategy due to a lack of formal employment opportunities. However, this deterministic perspective limits our understanding of bazaar trade by overlooking traders' agency over the last three decades.

Bazaars in Central Asia are not only sites of economic survival (Kamp, 2005; Spector, 2017), rent extraction (Karrar, 2020), or everyday politics (Spector, 2017), but also gendered spaces where socially proscribed gender roles and expectations are reinforced and reproduced. Deeply ingrained gender constructs determine who takes part in trading and in what manner (Heyat, 2002), dictate labour hierarchies (Shreeves, 2002), and determine the power distribution (Mandel & Humphrey, 2002). Whilst studies on bazaar trade in the Soviet successor states exist, few have explicitly applied a gender perspective and focused on women and their lived experiences. Exceptions include studies on gendered features of market trading in Azerbaijan (Heyat, 2002), Kazakhstan (Werner, 2003), Kyrgyzstan (Cieślewska, 2013; Kuehnast, 1998; Özcan, 2006), Russia (Eggart, 2023; Mukhina, 2014), and Uzbekistan (Turaeva, 2011). Viewing the bazaars through their accounts helps to capture the meanings of bazaars first from *kolkhozs* (collective farms) into livelihood spaces and then entrepreneurial hubs, where criminality and corruption thrived along with competition because of absent or limited regulatory frameworks.

Tirikchilik as a Survival Strategy: Transformations in Women's Identities and Gender Dynamics in Uzbekistan's Bazaars

More than 30 years have passed since Uzbekistan gained its independence, but bazaars continue to absorb the excess labour formal markets fail to employ (Karrar & Rudaz, 2022). As my fieldwork in Tashkent bazaars demonstrates, women continue to occupy bazaars, but their identities have transformed compared with findings from the early transition period (Kamp, 2005). Women working in bazaars no longer identify as shuttle traders, yet still do not recognise themselves as fully fledged entrepreneurs even though the literature on Uzbekistan claims shifting roles amongst women from workers to entrepreneurs (Turaeva, 2017). During my interactions with women working in bazaars, I noted how women recognised their economic activity in bazaars as laborious work,

yet simultaneously devalued themselves whenever they talked about their work. The Uzbek word *oddiy,* meaning ordinary, was an ever-present prefix to whatever identity they attached to themselves. They were never just a worker or a farmer; they were *oddiy ishchi* (an ordinary worker) or *oddiy dehqon (*an ordinary farmer). They also attached their identity to the products they sold, like *uzumchi* if they sold grapes or *zelenchi* when selling fresh greens, thus placing everything but themselves at the forefront.

It was remarkable how age along with other systems of social differentiation, such as class and education, intersected with gender (Peshkova & Thibault, 2022) and determined the terms women used to identify their work in bazaars. Older women who experienced the Soviet Union used the term *ishchi*, which in Uzbek translates as 'worker', thus using the Soviet terminology of *rabochiy* or *trujenik*. Younger women as well as more educated women, however, were more inclined to use the term *sotuvchi*, meaning 'seller' in Uzbek, although their work was not restricted to selling alone. Nevertheless, whatever identities my fieldwork heroes ascribed to, they all chose the bazaar for *tirikchilik*—that is, for survival.

Tirikchilik is an Uzbek term commonly used by women in casual conversations and daily interactions. This colloquial term is context-bound and multifaceted, generally revealing various sources of income that support their livelihoods. In the context of bazaar traders whose precarious labour puts them in a vulnerable position, *tirikchilik* can be understood as a survival strategy, translated as 'muddling through'. This dimension of the term has been extensively studied and conceptualised by Turaeva (2013, 2014, 2021) as a phenomenon that best describes economic activities and survival strategies which people resorted to in opposition to decaying protections offered by the state legal system. According to Turaeva (2013), *tirikchilik* also reflects and encompasses a shift in ordinary people's employment preferences, away from state employment towards kinship-based forms of economic activities (p. 274). The evidence presented in this chapter examines *tirikchilik* as a survival strategy, shedding light on the gendered elements of this phenomenon. As my fieldwork demonstrated, *tirikchilik* acquires different meanings depending upon who engages in it. For men involved in bazaar trade, *tirikchilik* becomes an alternative to migration as a survival strategy. For women working at bazaars, *tirikchilik* is also a survival strategy, but survival from subjugation. *Tirikchilik* in the form of bazaar trade helps women break the chains of economic dependency and immobility,

albeit at a price. This price can take the form of deteriorating health, a changed social status, and limited time spent with their children. For them, *tirikchilik* is both a blessing and a curse.

Despite the prevalence of women in 'masculine' public spaces such as bazaars, the precarious position of women working in bazaars remains invisible and silenced. If in the 1990s, the stigma women involved in trade had to deal with arose from a clash between the Soviet ideology of state socialism when profit-making and self-enrichment were socially proscribed (Eggart, 2023, p. 19), in the late 1990s and 2000s, ostracization shifted away from a moral to a social source. The clash between deeply ingrained moralities and the daily pressures, opportunities, and inequalities posed by market penetration continues, but the ingrained moralities have shifted (Mandel & Humphrey, 2002, p.1).

The stigma around traders in bazaars persists. During the last 30 years, however, its essence has shifted with the target becoming narrower. Women working in bazaars (unlike men) continue to face social stigma for being *bozorchi ayol* in Uzbek (that is, a bazaar woman), a label that colloquially carries a negative connotation, typically demarcating loud, stubborn, and demanding women with low levels of education and culture. In daily life, the term is normally used to insult women not involved in bazaar trade, but who actively and loudly engage in arguments and quarrels. In the social milieu, women employed in the bazaar frequently encounter stigmatisation, and are colloquially labelled *shallaqi hotin/ayol* (loud-mouthed, obstreperous, and hot-tempered) or *dama kozer* (from Russian, meaning a tramp queen). This latter label refers to a woman perceived as not subservient to her spouse and who, according to common parlance, exerts influence or pressure upon her husband. The existence of such colloquialisms encapsulates broader societal gender norms and expectations, shedding light on the complex dynamics underpinning such social perceptions and behaviours.

On the one hand, women are well represented in bazaars in Uzbekistan and, thus, visible, rather unusual for Muslim-majority countries (for example, see Khan, 2020; Lindvert et al., 2017; Al-Dajani & Marlow, 2010; Bahramitash, 2013). Thus, the emergence of specific colloquialisms to depict female workers specifically illustrates the critical role women play in bazaars. On the other hand, the negative connotations surrounding the colloquial phrase reflect traditional patriarchal structures ostracising women, which transgress patriarchal norms of submissive feminine women. Such colloquialisms aimed at shaming women

working in bazaars can be viewed as an instrument of social control that marks behaviour considered appropriate for men, but sanctioned for women. In this case, bazaar women are blamed for demonstrating traits primarily considered masculine and, thus, uncharacteristic for women. When applied to men, these same characteristics are not only tolerated, but highly appreciated and even expected.

According to the patriarchal order, women should occupy private spaces (Kamp, 2010), whereas bazaars are public spaces. Such a shift from the general stigma of all bazaar workers toward the selective stigmatisation of women only is worth attention. To understand such an ambivalent and ambiguous role of women in bazaars, it is important to examine how the dissolution of the Soviet Union affected women as a group by employing a feminist lens to grasp the differences not only between women and men, but also between different women. During the Soviet era, all able-bodied citizens were obliged to work in the social sector, in a state enterprise or cooperative integrated within the structures of central planning. Those who existed independently were positioned outside this vision and were officially termed parasites. For example, these included *speculators* who traded outside the official distribution networks or teachers who offered private lessons to children to pass entrance exams (Rasanayagam, 2011). Such discourse persisted even after the dissolution of the Soviet Union (Eggart, 2023; Mandel & Humphrey, 2002). The economic hardships of the post-Soviet period fell particularly harshly on women, leaving them with fewer economic opportunities than men. The transition from a planned to a market economy, with capitalism-driven values, a weak rule of law, and a collapsed welfare system, drove some women back to the home, whilst others entered bazaar trade (Kamp, 2005). Whereas some viewed entering the bazaar as a resumption and continuation of a tradition, others treated it as gender norms transgression (Kamp, 2005). Despite becoming sites of economic survival for women, bazaars remain hierarchical and gendered spaces with complex power dynamics not only between state actors and traders, but also between traders of a different gender, age, and other sociodemographic characteristics. In that context, bazaar traders had to survive, not only economically but also mentally. Stigmatisation and the low status of their activity, coupled with the decreasing role of women in society, render the act of women choosing bazaar trade as somewhat revolutionary.

Despite radically different economic systems operating in the past and present—namely, the planned economy and the capitalist market

economy—domination and exploitation are ideologues of labour that is naturalised, socialised, and reproduced by traders in bazaars, particularly the labour of women. This is reflected in the way the media portrays stories involving bazaar vendors when cases of police harassment, the arbitrary confiscation of merchandise, demands for bribes, and, most frequently, physical abuse are covered. Amongst the stories that resonated the most during my fieldwork in the winter and spring of 2023, one incident occurred in Chorsu, the oldest bazaar in Tashkent, when one bazaar woman bit the ear of another woman because of competition for the buyers. Both women were punished: one received an administrative fine, whilst the other was sentenced to three years in prison (UZNews, 2023). Another incident took place in one Tashkent district when the women started a fight for a spot to trade around the bazaar, resulting in a woman self-immolating herself in protest (Radio Ozodlik, 2023). Such stories are not only ubiquitous, but also telling of the lived experiences of women working in bazaars. Portraying women in bazaars as either victims or savages, such accounts contribute to the further stigmatisation of women in bazaar trade, whilst partially depicting the complex reality women must navigate.

Shifting Attitudes of and towards Women in Bazaars

The bazaar confronts people in diverse contexts, experienced not as a purely economic phenomenon. The social meaning of the bazaar lies in a return to roots forcibly abandoned during the Soviet rule, but which regained power and now serves as a source of pride amongst some traders, despite bazaars never ceasing to function during the Soviet Union. Early in the Soviet period, private trade was replaced by a state-controlled, cooperative trading system. However, this paradigm underwent a transformation in the post-Soviet era due to the state's incapacity to meet the demands of the growing population. Consequently, a shift occurred, culminating in the re-emergence of private trade as the state recognised its necessity. This transformation may represent a triumph for bazaar traders, who, even during the most challenging times, played a crucial role in ensuring the availability of goods in Uzbekistan.

Previous scholarly work on Uzbekistan revealed that working for the government (*davlat ishi*), as opposed to working for oneself, was believed to promote an unethical and immoral lifestyle (Trevisani, 2022). A similar

discourse emerged during my encounters with women, although the relationship was more complex for them. Their husbands or other male family members viewed male-dominated state employment as unsafe for women. As one woman at the bazaar explained to me, bazaars are open public spaces, and everyone is under everyone's gaze, whereas most government jobs are closed to outsiders, meaning it is more difficult for men to control their women. Moreover, state jobs do not provide a sufficient income, whilst requiring substantial resources—both social and financial—to access (Urinboyev et al., 2018). Last, but not least, to work for the government, they needed a university degree, which they often lacked.

> I used to earn 2 200 000 UZS (around US$200) each month… I could hardly afford to cover childcare costs, clothing, and other expenses. I then decided to opt for the bazaar. I had a friend working there, and I knew what profits she was making. Therefore, my husband supported me in my decision and even provided me with the initial capital. *(Halima, 27, Chorsu)*

Applying economics jargon to Halima's description, the opportunity cost of a woman working for the state is too high. A woman loses out not only on the potential income she could earn trading at the bazaar, but also her husband's and her own tranquillity. Whilst at the bazaar women are not only under public scrutiny but also earn a more substantial income, their participation beyond the domestic sphere in such cases becomes more tolerable.

> Although I do not live with my in-laws, my husband's siblings still live with us. They have never ever helped me with the household chores, even when I worked for the state. However, when I started working in the bazaar, it turned out they can cook and clean! Even my husband started engaging more with the kids, picking them up from the nursery! *(Halima, 27, Chorsu)*

Interestingly, if in the past working in the bazaar was shrouded by stigma and ostracisation as Eggart (2023) described, the income-generating opportunities the bazaar provides have erased feelings of shame and allowed women a certain freedom without compromising their reputation. This is illustrated by their family members' increased involvement in the domestic realm.

Another aspect of the diminished stigma attached to women involved in bazaar trade was succinctly captured by a 60-year-old guard formally employed by the bazaar administration:

> These women [pointing to the bazaar hall on the ground floor while we were standing on the first floor looking at the traders from above] are doing what they can to earn a living, earn *halal* (in Islam, meaning 'clean') money. They did not migrate abroad to sell their bodies like many prostitutes these days. They are here, next to their children, their families, working hard. *(Bahodir, 60s, Gispitalka)*

Thus, a lenient, respectable attitude towards women working in the bazaar illustrates the shifting attitudes, revealing how their labour in the bazaar accompanies an altogether different set of meanings accruing social benefits for them. This was not necessarily the case in the past. In order to harness the advantages of these socially defined benefits, a woman needs to imbue her labour with cultural significance within the patriarchal bargain. I discuss this in what follows.

Bazaars as Gendered Spaces

During the last ten months, I have visited many bazaars, and have met many women and men trading in them. Although I do not want to begin presenting my findings with essentialist comments, it would be a glaring omission to exclude the economic consideration of my interactions in the bazaars. None of the women with whom I spoke have ever sought remuneration in return for interviews with them, in contrast to men who have consistently anticipated and explicitly stipulated either financial compensation or a personal engagement. This divergence suggests that women's engagement in the bazaar might be driven by factors beyond mere economic incentives.

> You sit here in a dress costing US$100 and want to learn about what it is like to work in the bazaar, what problems we face? You give me the 100 bucks first and I will tell you everything you want to know! *(Bekzod, 50s, Chorsu)*

These comments were from a man who sat not far away during an interview with one of my female interlocutors. He suddenly interrupted our discussion and nearly shouted at me. Luckily, my female interlocutor

stopped him, telling him to mind his own business. Bekzod was trading gold and currency on the streets without having his own stall, but sitting at one of the entrances to the Chorsu bazaar. Buying gold and currency is an exclusively male endeavour, which is risky albeit profitable. When I explained to him that a woman has never demanded money from me, he said that they do not have as many wives as he does. It turned out that he had nine children and two wives. The breadwinner role he carries overwhelms him. As he explained, he is the main breadwinner whilst the women in bazaars 'help their husbands, so their income is extra income'. On the one hand, he interrupted me to demand money. On the other, he overheard my standpoint that women struggle more when working in the bazaar and interfered to register his disagreement. He interrupted to make his struggling male voice heard. This encounter helped me to critically rethink not only my focus on women, but also my own positionality. For Bekzod, I looked like a foreigner in the bazaar, a well-off foreigner who is extracting knowledge from others for free.

Another man I attempted to interview worked in the construction materials sector of the Qo'yliq bazaar on the outskirts of Tashkent, a 'bazaar that feeds the entirety of Uzbekistan', as one feminist activist called it. Doniyor volunteered to help me when he saw I was lost between construction stalls. We began an informal conversation during which I explained what brought me to Qo'yliq. He shared that he has 20 years of experience working in the bazaar and knows many women working there. We went to a café situated not far from the bazaar, something women traders never did since they were reluctant to leave their stall unattended and miss potential customers. After a few minutes, I realised that Doniyor did not want to talk about bazaars. Instead, he started insulting women in and beyond bazaars. He victim-blamed women, stating 'women themselves signal to men that they want to be approached'. Poor men just accept this signal and then the women turn out bad. He then began explaining that he understood and accepted 'my signal', offering to spend time together with me without telling my husband. In other words, he used speech patterns in Uzbek that are difficult to translate, but to a native speaker their message is clear: Doniyor was offering me the opportunity to become his mistress. At this point, I began fearing for my security, called for a taxi, and stated that I was ending the interview. Doniyor did not leave until the exact moment I sat in the taxi. I did not return to this bazaar, and from that moment decided to interview only

women. I had many other negative encounters with men, but these two experiences perfectly encapsulated what I experienced and felt.

This evidence, although anecdotal, also indicates that traditionally defined gender roles transcend the realm of family and persist in the distribution of power within bazaars, fundamentally public spaces. Bazaars are gendered spaces reflecting and reinforcing traditional gender roles and expectations. Women are primarily responsible for domestic work and childcare, whilst men are expected to serve as breadwinners. These gender roles are reflected in the types of goods sold at bazaars, the ways in which vendors interact with customers, and the social norms that govern behaviour. Men can easily leave their stalls and roam around the bazaar, talk to friends, and be absent for long periods of time, whereas the same does not apply to women. Rarely do women leave their stalls; when they do, it is usually for a valid reason, including praying and visiting a toilet. In addition, with men occupying the position of the primary breadwinners and women being responsible for domestic duties, more profitable sectors of bazaars are occupied by men, whereas predominantly female sectors remain the least profitable and the most competitive sectors. More generally, smaller-scale trade is dominated by women and undervalued, whilst the more prestigious sphere of large-scale business characterised by crony capitalism is dominated by men (Heyat, 2002).

Navigating Gender Norms: The Complex Role of Headscarves and Ties in Bazaars

Another significant factor underscoring the gendered nature of bazaars is the influence of social norms and religious beliefs shaping and reinforcing specific gender roles and expectations. For instance, a notable observation during my conversations with women traders related to their attire, specifically the headscarves they wore. Many women adorned their headscarves, either in the Turkish *hijab* style (with the scarf tied under their chin) or the Uzbek style (with the scarf tied at the back of the head). Many women with whom I talked wear a headscarf, in either the Turkish *hijab* or in the Uzbek style. Their reasons for adopting this attire were multifaceted. Some women, particularly older women and/or widows, adhered to this practice given its cultural expectation, signifying modesty and respect. In addition, religious motivations played a role, since some women wore the *hijab* as an expression of their faith and as pious Muslims. A headscarf also served as a safeguard during or to limit interactions with unfamiliar

individuals (serving as a safety mechanism) and as protection from the elements (shielding them from the sun in summer and the cold in winter). In this section, I delve into the intricate interplay between personal choice and societal pressures underlying the decision to wear a headscarf within bazaars. This practice, as I illustrate, serves as both a method to navigate their environment and as a form of resistance. Women who wear headscarves in this context make individual decisions influenced by both societal pressures and personal motivations. These choices, seemingly small when viewed from the outside, reflect a form of resistance that unites women and as a marker of solidarity within the patriarchal framework of Uzbekistan's bazaars—in other words, *infrapolitics* within a *patriarchal bargain*.

Rano, a 40-year-old bazaar trader selling fresh greens in Chorsu, wears the *hijab* in the Turkish style when in the bazaar. Because religion is a sensitive topic in Uzbekistan (Komil-Burley, 2021), I did not ask religion-related questions unless a participant herself mentioned it. When Rano showed me a picture of herself at a wedding, without a headscarf and wearing bright make-up, I asked her about this apparent incongruity. She explained that she was not in a *hijab,* and that she wears the headscarf only when in the bazaar to protect herself from the sun as well as to endear herself to buyers. Moreover, she wanted to avoid attracting attention from other men since she is married. The women with whom I talked share the opinion that sellers who come to the bazaar wearing bright make-up are there to attract men, referring to such women as *ersiraganlar* (desiring a man, a husband). Rano was extremely critical of such women, explaining to me that these women come to the bazaar not to work but to seduce other women's husbands. She even showed me one of the *ersiragan* woman who, according to Rano, had an eye on her husband. This *ersiragan* was a relatively young, good-looking woman who did not wear a headscarf and, indeed, wore make-up. However, to me, the make-up was relatively minimal, limited to mascara and lipstick. Rano told me that this woman was divorced and never missed the chance to chat with Rano's husband. The hierarchy of the bazaar placed women who worked together with their husbands on a higher, more respectable level, whereas single or divorced women had worse reputations and attitudes towards them were more negative. The appearance of women could affect this hierarchy or was contingent upon it.

Rano works alongside her husband, a practice increasingly common in bazaars. Rano primarily interacts with customers and handles financial transactions, whilst her husband assists with physically demanding tasks such as moving bags, carrying water, and setting up sun or rain protection. During my time with Rano, her husband often stepped away from the stall, leaving her to manage the trading alone. By contrast, Rano rarely left the stall except when she needed to use the toilet or for prayer. Her husband always emphasised that people liked dealing with Rano, and, without her, business significantly slowed down. The example of Rano and her husband working together in the bazaar illustrates the importance of kinship ties in organising and doing trade. It is difficult to sustain a successful business in the bazaar alone. For instance, originally Rano's mother-in-law began trading in the bazaar during the early years of independence, with her children subsequently following suit. Rano's mother-in-law continues to trade in the bazaar to this day, albeit not as intensively or frequently as Rano. According to Rano, they secured their spot in the bazaar thanks to her mother-in-law's connections. Finding a spot in a bazaar requires connections, and, without a decent location, success in trade remains challenging. Rano's stall, located right in front of the metro station entrance, makes it attractive for customers since it is the first and last stall they see. Thus, Rano enjoys a continual flow of customers daily. Moreover, Rano can work at the bazaar every day since her mother and brother take care of her two children back in her village.

In addition to kinship ties, ethnic ties based on geographic belonging appeared crucial to gaining access to the bazaar and surviving there. Lola, like many other traders in the Chorsu bazaar, hails from the Qashqadaryo region in southeast Uzbekistan. She explained that she chose Chorsu among all the bazaars in Tashkent because she feels safer there given that most of the traders either originate from her village or have acquaintances there. Lola even humorously referred to Chorsu as a small piece of Qashqadaryo in Tashkent. Lola, a 28-year-old woman, specialises in selling various headscarves, including the *hijab*, wearing her own headscarf in the Uzbek style (tied in the back). She clarified that whilst she is not prepared to wear a full *hijab*, she still needs to gain the trust of her customers and demonstrate her knowledge of the latest trends in modest fashion. Using the concept of the patriarchal bargain (Kandiyoti, 1988), Lola's decision to wear a headscarf appears to align with patriarchal norms to navigate and mitigate societal constraints and expectations.

Lola's husband works in Russia as a migrant; previously, he was primarily responsible for conducting business in the bazaar. However, given his migration, the responsibility for bazaar trade now falls on Lola's shoulders. Whilst she works alone, she relies on her ethnic connections for support in areas where her husband previously assisted her. Her days and evenings are spent in the bazaar, whilst her 4-year-old daughter and 7-month-old son remain at home with her parents-in-law. For Lola, covering her head is neither obligatory nor a religious observance; it is a complex personal choice within a diverse social fabric where women who wear the *hijab* receive preferential respect, particularly from men. It is also a matter of security for Lola and others who wear headscarves, since it conceals their beauty and helps them to avoid unnecessary attention from men in the bazaar. Despite Lola wearing a headscarf herself, she has mixed feelings towards the *hijab* and those who wear it. The increasing trend towards wearing the *hijab* worries her—she does not approve of it, yet she wears a headscarf herself when at work. She genuinely believes that a woman's wellbeing and safety depend on her own behaviour and actions. She relates the fact that her husband does not impose any restrictions on her to her perception of being a 'righteous' woman. In her words:

> In the past, we did not wear *hijabs*; we did not need them, it is only now that more and more women are starting to wear them. In the past, women dressed openly, they came to the bazaar, there was freedom here. For example, my husband allows me to work in the bazaar. There is no such thing as opposition or resistance to bazaars. If a woman works in a bazaar and does not engage in bad behaviour, but instead maintains proper relationships with everyone, then you succeed if you are a righteous woman. *(Lola, 28, Chorsu)*

The choice to cover one's head when in the bazaar, whilst providing a sense of protection or adherence to cultural and religious values, can also perpetuate and reinforce gender inequalities by upholding traditional gender roles and reinforcing the authority of male-dominated norms. Wearing a headscarf, particularly in certain cultural or religious contexts, is often viewed as a means of conforming to societal expectations and norms of modesty, often dictated by patriarchal structures (Nasritdinov & Esenamanova 2017). However, I argue that the act of wearing a headscarf amongst women in the bazaar should be viewed as a complex negotiation between individual agency and patriarchal pressures, wherein women may

feel compelled to conform to societal expectations as a way of navigating their social environment. As my interactions demonstrated, every woman who wore a headscarf only within the premises of the bazaar had her own social reasons for doing so, reasons which often conformed with patriarchal norms, namely, within the patriarchal bargain (Kandiyoti, 1988). Nonetheless, although their atomised decision to wear a headscarf might seem insignificant from the outside, in my view, it is an act of resistance, using the language of *infrapolitics* proposed by Scott (1985). This act unites women and serves as one of the markers of solidarity, thereby substantiating the ambivalent nature of women's agency in patriarchal settings.

Double Burden: An Ambivalent Struggle for Survival and Freedom

In my conversations with men, a common sentiment emerged: the challenges faced in the bazaar are formidable for all, regardless of gender. This perspective suggests that the bazaar functions as an equalising force, levelling the playing field in the collective endeavour to earn a livelihood. Certainly, bazaar trade serves as a survival strategy for everyone involved. However, daily interactions with traders have unveiled gender-specific dimensions intersecting with age and offering deeper insight into the motivations propelling individuals towards bazaar trade.

For younger women who find themselves in the transitional phase known as *kelin* (Turaeva, 2017)—a term used to describe daughters-in-law who typically reside with their husband's parents—these individuals occupy the lowest rung within the familial hierarchy. Their responsibilities predominantly revolve around domestic and servile duties. Thus, engaging in bazaar activities introduces an added dimension of liberation from their domestic confines. Their motivation for participating in bazaar work is not solely driven by the pursuit of financial independence; rather, it is rooted in the desire to escape the perpetual cycle of household chores and the associated constraints of *kelin* obligations.

> I felt so depressed at home. I had to ask my husband for money for even a tiny thing. He would always give it to me, but so reluctantly. It is so different when you have your own money. You spend it with such joy! *(Halima, 29, Chorsu)*

However, it is important to note that bazaars do not entirely emancipate women from their obligations. Even after enduring a taxing day at the bazaar, these women continue to shoulder a *second shift* of unpaid domestic labour (Hochschild & Machung, 2012), comprising cooking, washing, cleaning, and care-giving. As in the case of Rano, although she works together with her husband, after working in the bazaar, she cooks dinner and cleans her home whilst her husband rests. Similarly, after a long working day typically exceeding 12 hours, Lola returns home and takes care of her children, puts them to bed, and serves her parents-in-law in gratitude for taking care of her children, their grandchildren. Nevertheless, the women I interviewed knowingly choose to bear this dual burden, since it offers them a reprieve from the confines and oppression of domestic life. This oppression can originate from various sources, including their husbands, their in-laws, the ceaseless demands of household chores, and economic dependency.

> Working in the bazaar is far from easy; but for me, it is more difficult to stay at home. Since my husband left for Russia, I took over the bazaar trade. My in-laws now understand that I am earning money for the family. My mother-in-law started cooking, and my father-in-law started taking my daughter to and from nursery school. They do household chores now. Although I still perform my *kelin* duties, it is for 2–3 hours a day only. *(Lola, 27, Chorsu)*

Unfortunately, for younger female traders, such freedom comes at the cost of less time with their children at crucial times during their development. However, in their eyes, this is a painful trade-off which, in the long term, will produce better outcomes for their children. As one woman eloquently explained, she works in the bazaar so that her children never work there. Notably, the women with whom I talked frequently refrained from bringing their children to the bazaar in an effort to shield them from potential negative influences. From their perspective, the bazaar environment can foster an unhealthy fixation on material gains. Instead, they aspire to provide their children with a sound education, genuine professional prospects, and meaningful employment opportunities they themselves lacked. Paradoxically, despite these concerns, these same women acknowledge that the bazaar offers a unique advantage, enabling them to reconcile work and motherhood. The flexibility offered

by bazaar trade and the absence of red tape stand in contrast to the rigid schedules often associated with formal employment.

> During the Soviet period, I used to work at the sausage factory. But, during the 1990s, I lost my job. I left for Kazakhstan to work, but then returned. And, since then, I have worked in every bazaar in Tashkent… I raised my kids, they all work now, and are independent. *(Matluba, 56, Chorsu)*

In a comparable manner, the bazaar offers livelihood prospects for younger men who have families. However, their perspectives on the bazaar are characterised with less optimism. They perceive it as a secondary option, representing a step between migration and not working at all—a choice that remains elusive due to the prevailing patriarchal expectation placed on them to fulfil their role of the primary provider. Their perception of the bazaar is distinct from seeking liberation from domestic constraints; instead, it serves as a means to uphold their status as the family's primary breadwinner.

Thus, the bazaar emerges as a multifaceted arena where individuals, particularly younger women and men, navigate gendered webs of economic survival, cultural expectations, and aspirations for personal agency. Whilst bazaar trade serves as a dual-edged response for younger women—an avenue for economic autonomy and an opportunity to break free from domestic shackles, albeit with the accompanying burden of juggling multiple responsibilities—younger men, driven by societal pressures and gender roles, view the bazaar as a pragmatic choice that upholds their role as breadwinners, albeit within the constraints of patriarchal norms.

Conclusions

To conclude, this study has undertaken an in-depth exploration of the contemporary transformations observed in women's identities and the evolving gender dynamics within the context of Uzbekistan's bazaars. Whilst prior research primarily focused on the institutional roles and functions of post-Soviet bazaars, recent scholarship has shifted its focus to the lived experiences of bazaar dwellers. Regrettably, the voices of women have often remained marginalised in these accounts. Grounded in the insights garnered through ethnographic fieldwork, my research addressed this oversight by shedding light on the lived experiences of

women engaged in bazaar trading, illustrating how they navigate the ambivalent environment of bazaars.

My study commenced with an examination of the shifting attitudes towards women traders, revealing a dynamic landscape where traditional perceptions are undergoing adaptations to accommodate the evolving roles and agency of women within bazaars. Subsequently, I undertook a meticulous analysis of bazaars as gendered spaces, based on both anecdotal evidence and my personal experiences as a young woman navigating these vibrant marketplaces. A particularly intriguing facet of this study pertained to the intricate role of headscarves in negotiating and navigating prevailing gender norms within bazaars. Through a nuanced exploration, the multifaceted significance of this attire emerged, serving not only as a symbol of tradition, but also as a means through which women assert their identity and agency in these dynamic settings. Finally, my research examined the dual burden faced by women traders as they endeavour to secure both their economic survival and personal autonomy within the confines of the bazaars. This dual struggle underscores the resilience and determination exhibited by these women as they navigate the challenging terrain of economic sustenance and personal emancipation.

Bridging Scott's concept of *infrapolitics* and Kandiyoti's patriarchal bargain proved useful in understanding how women challenge, renegotiate, and reconstruct prevailing patriarchal norms and gender roles within bazaars and beyond. Specifically, employing James C. Scott's concept of *infrapolitics* (Scott, 1976, 1985, 2017) helped to elucidate how entering bazaars is not merely a transactional act, but also an act of resistance, whereas Deniz Kandiyoti's (1988) notion of the patriarchal bargain helped to uncover the nuanced gendered dimensions and limitations of these acts. Thus, the bazaar, as I argued herein, indeed serves as a locus of gender norm contestation and norm building. Through a rich tapestry of narratives and experiences, I demonstrated how bazaars act as catalysts for broader social change in Uzbekistan.

Disclaimer: This publication was produced within the Innovative Training Network 'Markets', funded by Marie Skłodowska-Curie Actions grant of the European Union in the context of Horizon 2020 (grant agreement no. 861034). Any views expressed are those of the author and do not reflect the official policy or position of any institution or funding body.

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