

**Judicial Reform Activities Evaluation
for Kazakhstan**

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I. EXECUTIVE SUMMARY

As stated in the Statement of Work, the primary purpose of this Assessment is to:

- 1) evaluate the effectiveness of USAID/CAR's Judicial Reform activities, as carried out under the IRIS Task Order in Kazakhstan; and
- 2) recommend future judicial strengthening activities that USAID/CAR should consider implementing in Kazakhstan following completion of the IRIS Task Order which ends in September 2005.¹

“Under Strategic Objective 2.1, Strengthened Democratic Culture Among Citizens and Targeted Institutions, USAID/CAR has designed and is implementing the Judicial Reform in Kazakhstan program. The primary objective of this activity is to promote judicial independence by empowering judges with the necessary skills, knowledge and information so that they will become better advocates for a fair and transparent legal system. Additionally, by providing training on improved court administration, implementation of laws should be facilitated; access to justice increased and the ability to influence the courts through corrupt practices should be decreased.”²

This Assessment interprets the judicial reform objective to be the creation of an independent judiciary and limit its corrupt practices, either by outside influences or by the will of the judiciary itself, in order that the public may receive fair and just treatment within the courts.

As pointed out in the Statement of Work, despite many years of USAID democracy programs in Central Asia, judicial reform is still in an early stage, and in some

¹ Judicial Reform in Kazakhstan, implemented by the University Research Corporation, International – The IRIS Center (IRIS) under IQC No. AEP-I-00-00-00012-00, Task Order No. 804 in Kazakhstan. The current task order became effective on June 13, 2003, and its completion date is June 13, 2005 (*extended into September 2005*).

² As set forth on the Statement of Work: Judicial Reform Activities Evaluation for Kazakhstan and Uzbekistan.

ways the judiciary is less inclined to accept reforms now than at the dissolution of the Soviet Union. “While during Soviet times the judiciary was basically powerless, at present it has gained enough power to warrant occasion for monetary corruption without the addition of ethical or professional responsibility.”³ This has never been more true than at the present time where it is clear that corruption is the primary cause for non-transparency and a general public distrust of the courts. This statement is based on several independent assessments conducted by international organizations⁴ as well as numerous interviews conducted with experienced litigators from the Republic of Kazakhstan.⁵

The pervasive existence of corruption within the courts of the Republic of Kazakhstan is well-known and a constant theme among the lawyers of the country and press. Even the President of the Republic of Kazakhstan, Nursultan Nazarbaev, publicly addressed this issue in a speech he delivered to the entire judiciary of the Republic in March of 2000 calling for an improved judiciary and citing to corruption as one of the main causes for the judiciary’s unreliability.⁶ It is well-known that the Republic

³ *Id.*

⁴ See Report on the Seventh Meeting of the Compliance Committee of the United Nations, March 11, 2005 & March 14, 2005, attached hereto as Annex III and Annex IV respectively. See also Judicial Reform Index for Kazakhstan, published by the American Bar Association CEELI, February 2004.

⁵ Interviews are summarized in content in Annex II at p.31.

⁶ Presidential address to the Judiciary in 2000. See also Annual Address of the President of the Republic of Kazakhstan, February 18, 2005, available at www.kazakhstanembassy.org.uk, in which President Nursultan Nazarbaev states, “A fitting salary and benefit package for judges should be considered not only a reward for difficult and honest work, but also one measure to prevent corruption. We must do what we can so that bribery in the judicial sphere is not only morally unacceptable, but economically disadvantageous as well. A judge should value his or her place on the bench and know that if he or she violates the law or professional ethics, they will lose not only the right to be part of the civil service, but also the entire benefits package.”

maintains a dismal rating on Transparency International's corruption index⁷ and that bribery is one of the main impediments to justice within the court system.⁸

In another example, the Compliance Committee of the United Nations Economic Commission has determined that the Republic of Kazakhstan is in non-compliance with the Aarhus Convention in terms of the country's failure of rule of law (two separate and unrelated public-interest environmental cases).⁹ In these two cases, a local environmental NGO, Green Salvation, brought lawsuits seeking legal public participation in two separate environmental matters. In both cases, the courts of the Republic failed to uphold the legal rights of the NGO for seemingly arbitrary or groundless reasoning. Yet another (third) case is currently under review by that same Compliance Committee whereby non-compliant judicial practices are being alleged. Although corruption was not directly cited as the precipitous of these court decisions, these decisions do substantiate public's well-founded distrust of the courts.

This Assessment answers two general questions: 1) what has been done, and 2) what can be done in the future to reach the goals as stated in the Statement of Work. The second question regarding potential future activities will be analyzed with the issue of corruption at the forefront as it ultimately and inextricably interrelates to an open and transparent judiciary and the public's confidence therein.

A. The Effectiveness of USAID/CAR's Judicial Reform Activities to Date

⁷ Transparency International Corruption Index 2004, available at www.transparency.org. The Republic of Kazakhstan ranked 122 out of 145 countries in terms of corrupt practices.

⁸ Kazakhstan – Country Reports on Human Rights Practices, 2003, released by the United States Department of State, available at www.state.gov.

⁹ Supra note 4.

The stated goal of the judicial reform activities to date has been to promote judicial independence by empowering judges with the necessary skills, knowledge and information so that they will become better advocates for a fair and transparent legal system.¹⁰ IRIS has pursued that stated goal by creating and increasing various forms of judicial training available to future and current judges. To date, more than 445 judges have participated in IRIS-related training programs which have been implemented through three main entities: 1) the Supreme Court; 2) the Judicial Academy; and the 3) Union of Judges.¹¹ Additionally, IRIS has directly assisted in the training of 34 new judicial trainers, so-called “ToT” for use in the respective judicial training centers.

IRIS has also initiated and implemented a judicial mentorship program on a limited basis and lent to the creation of two judicial bench books on civil and criminal law. All of the IRIS activity to date is summarized and analyzed in the subsequent section of this Assessment, Overview of Findings.

This Assessment concludes that the IRIS program has succeeded in attracting the attention of the judicial community, has been praised by the judiciary for being active and effective, and has obtained real results in increasing the knowledge and expertise of judges within the Republic of Kazakhstan. However, the Assessment further concludes that the programs initiated and executed by IRIS and supported by USAID/CAR do not yet fully address the underlying issue of corruption and citizen access to justice. These

¹⁰ IRIS/USAID Contract Number AEP-1-00-00-00012-00: “The program objectives are closely aligned with USAID/CAR Strategic Objective 2.1, Strengthened Democratic Culture Among Citizens and Target Institutions. The activities in both countries will directly contribute to the achievement of Intermediate Results (“IR”) 2.1.3, Enhanced opportunities for citizen participation in governance; IR 2.1.4, More Effective, Responsive and Accountable Public Institutions; IR 1.3.3, Increased Implementation of Laws and Regulations”.

¹¹ Ascertained initially by IRIS monthly and special event reports and later confirmed in meetings with the Supreme Court, Union of Judges and Judicial Academy.

programs do not directly or indirectly target the promotion of a transparent and fair judiciary that is less corrupt than in its current state.

When referring to assessments of the Republic's judiciary,¹² it seems that the approved workplans of IRIS and its implemented activities to date, with the exception of the court recording pilot project, have been mainly targeted at education and raising the judiciary's prestige among the general public. Although this may lend to a better perception of the judiciary and an increased faith in it, there many other facets that are relative to openness, transparency and fairness that remain unaddressed. These facets would include the potential publication of judicial decisions, issues of tenure and disciplinary action regarding improper or unethical actions by judges. There are additionally issues of public access to courts, press coverage of court proceedings, case filing and tracking systems as well as proper maintenance of trial records. All of these foregoing areas are specifically recognized as areas of concern by local and international observers.¹³ If USAID/CAR or one of its implementing organizations, such as IRIS, can effectively address at least a few of these foregoing issues, the current avenues that exist for judges to abuse their powers may be limited which in turn would promote a more open, transparent and fair judiciary that could be relied upon by the common man, general public and private sector.

B. Proposed Future Activity of USAI/CAR on Judicial Reform

USAID/CAR, by means of its support of the IRIS program, has obtained a real

¹² Judicial Reform Index for Kazakhstan, published by the American Bar Association CEELI, February 2004.

¹³ *Id.*

and positive result in improving the quality of the judiciary in the Republic of Kazakhstan and has elevated the prestige of it. If future activities are sought by USAID/CAR, those activities should first stem from those activities carried out to date. For instance, the number of trainings per year should be increased and become more specified for their respective audience.¹⁴ The bench books should be finalized and disseminated to all the courts of the Republic of Kazakhstan as well as the other self-study materials created under the sponsorship of IRIS and USAID/CAR. In addition, the court recording project needs to be implemented and analyzed to gauge its effectiveness in the pilot courts.

More importantly, to continue the progress made to date, new programs must be designed and implemented that will more accurately address the issue of court transparency and fairness. It is assumed that the judiciary may not openly embrace such projects as they may have a limiting effect on its discretionary abilities. Still, given the success of the IRIS projects to date and their importance to the judiciary, ancillary activities that address the transparency issue could be coat tailed on those current and ongoing activities which have been welcomed and encouraged by the highest levels of the judiciary. This will necessarily involve a 'give and take' approach that is strategic and thoroughly thought out by USAID/CAR and its executing agency or contractor. This Assessment stresses the following: failure to fully address the overriding issues of transparency, fairness and ultimately corruption will render those activities carried out to date useless as they only serve to elevate a judiciary that cannot be counted on by the public or commercial sector.

Additionally, it is noted that IRIS is currently behind schedule in terms of its proposed activity under the workplans. In particular, the court recording project has not

¹⁴ See Section III, Overview of Findings at p. 8.

been implemented as expected. However, this fact should not detract from the positive achievements to date. This may suggest that the initial workplans and objectives set forth by IRIS and approved by USAID/CAR were too ambitious, which in practical terms cannot be considered to be a condemning fault in any manner. In fact, this Assessment perceives the IRIS activity conducted to date to exceed what would be considered realistic expectations. One recommendation for future activities, as set forth in Section V, is to decrease the volume of proposed activities and focus more on content and execution of existing programs. Given the success of IRIS programming to date in terms of its utility and acceptance by the judiciary, a more long-term and calculated approach to the workplans can only maximize the effectiveness of future programmatic activity and result in measurable impacts fully consistent with its contract with USAID/CAR.

II. METHODOLOGY OF COLLECTION OF DATA

A combination of methods was used to collect data for this Assessment including a review of all the project materials including the initial project proposal, USAID acquisition documents, approved IRIS workplans, IRIS monthly reports, IRIS seminar and event summaries as well as articles from local legal journals and assessments and evaluations conducted by the American Bar Association, Organization for Security and Cooperation in Europe and the United Nations Economic Commission. A comprehensive list of these documents can be found in Annex I of this Assessment.

Furthermore, dozens of interviews were conducted with judges, practicing litigators, court administrators, trainers and representatives of international organizations carrying out reform activities within the Republic of Kazakhstan. A comprehensive list

of the interviewees can be found within Annex I of this Assessment. A summary of each of those interviews are given in Annex II of this Assessment.

III. OVERVIEW OF FINDINGS

The following is a summary of the findings as based on the documents reviewed and interviews conducted. This section is followed by a section listing the questions presented by the Statement of Work and their respective answers. Lastly, the final section of this Assessment contains further recommendations for judicial reform work in the Republic of Kazakhstan.

A. Seminars and Trainings of Judges and Judicial Candidates

From June 2004 to date, there have been dozens and dozens of trainings that range in nature from round tables, general seminars and highly-specialized training for both judicial candidates and for judges currently presiding over courts. The impression of those events as perceived from the 20 plus interviews with judges and participants seems to be positive. Many interviewees praised the events as interesting, relevant and helpful. The Chairman of the Union of Judges and Rector of the Judicial Academy requested outright that the number of trainings be increased over the next year. There were no interviewees that set forth any negative comments about these trainings or about the efforts of IRIS. Constructive comments about the trainings were as follows:

- 1. Foreign Experts Need to Have More Preparation on the Needs of the Local Legal Community*

One common comment from nearly all interviewees that took part in events that had the participation of foreign experts was directed at the foreign experts and their knowledge of local laws. Moreover, interviewees felt that the majority of the foreign experts presented over-simplified substance that was more appropriate for law students than practicing judges. The interviewees felt that the foreign experts sometimes underestimated the sophistication of the Kazakhstani legal community.

2. Trainings Should Be Highly-Specialized and Directed Towards the Relevant Target Groups

Although there was universal praise for trainings held to date, interviewees from the Supreme Court and Judicial Academy felt that the trainings could be divided by legal topic and provided to judges of the particular courts of jurisdiction of which there are three; administrative courts, criminal courts and commercial courts. For example, a highly-specified training could be held on the topic of detention rights for the accused in criminal cases. This training would be held specifically and exclusively for sitting criminal court judges. The Trainings Coordinator for the Judicial Academy further wanted to see trainings for judicial candidates and practicing judges separated. However, this opinion was not echoed by other interviewees who seemed to think the mixture of the two groups allowed judicial candidates to learn from the experiences of practicing judges.

Additionally, IRIS has conducted a training needs survey whereby 2,137 judges participated from around the country. This survey serves as a determining factor

in what trainings will be held and on what topics. Bearing that in mind, it cannot be said that any of the trainings held to date has been misguided or irrelevant.

B. Bench Books and Self-Study Materials

IRIS additionally has implemented a program to create and disseminate bench books for judges. These bench books have been the joint creation of IRIS and the Supreme Court and cover two primary areas: 1) civil law and procedure; and 2) criminal law and procedure. The bench books were reviewed and seem to be a quality product. However, the effectiveness of the project cannot be ascertained as the books still await nationwide dissemination to the judges of the Republic. The only criticism of this project came from Judge Suilimenova of the Supreme Court who is the primary author of the bench books from the side of the Supreme Court. She felt that the bench books were being rushed and that not enough time was given to the authors and judges for their thoughtful consideration. This is interesting in that according to the approved workplans, the project is on schedule. This means that the comments of Suilimenova and the workplans run in contradiction as to what can be expected. Thus, deferring to the perceptions of those charged with the creation of the bench books, one may again conclude that the project objectives of IRIS may have been very ambitious.

C. Mentorship Program

IRIS has also lent direct support to the creation and implementation of a judicial mentorship program whereby newly appointed judges are paired with experienced judges. So far, this program has only been implemented on a limited basis; 15 mentors

paired with 21 new appointees. The comments regarding this program by those judges, mentors and trainers can be divided by two opposing views on the project. One view holds the mentorship program in high regard and strongly feels that it should be implemented on a nation-wide basis. The other view is that the mentorship program fosters a reliance on Soviet judges and passes on their historical shortcomings. More specifically, the utilization of retired judges, as is the case with the current program, is not ideal for promoting a new generation of free thinking judges that have discarded the ways of the former judiciary. This Assessment was unable to measure any benefit related to the mentorship program in strict relation to Strategic Objective 2.1 or the relevant Intermediary Results.

D. Court Recording Pilot Project

IRIS intends to implement a court recording project to increase political support within the judiciary for concrete measures that improve transparency, accountability and quality of judicial review. However, this program remains unimplemented.

IRIS did conduct trainings of court administrators in ten-finger typing which was intended to apply to the ultimate use of the court recording equipment whereby the content of the recordings would be reduced to written form. These ten-finger typing trainings were criticized by judges¹⁵ as being more appropriate for high school or college students as opposed to qualified court administrators. They would rather that the time and resources placed on ten-finger typing training would have been guided towards the procurement of the audio-video equipment.

¹⁵ Both Chairman Kossaev of the Bostandyk District Court #2 and Chairman Alimbek of the Almaty City Court made comments regarding the typing training.

IV. SUMMARY OF FINDINGS IN RELATION TO QUESTIONS PRESENTED

1. What impact, if any, have USAID/CAR's activities had in establishing the legal and institutional framework necessary to advance judicial reform in the Republic of Kazakhstan?

USAID/CAR's activities as implemented by IRIS have been directed at judicial training at various levels and have raised the prestige of judges within the Republic. More importantly, these activities have laid the foundation for expanded future work with judges. Due to IRIS and USAID/CAR involvement in the evolution of judicial training in the Republic, more trainings teaching more specified topic have taken place with more regularity. Even if USAID/CAR were to cease its support of judicial reform activities, this Assessment concludes that USAID/CAR involvement to date will lend to a more professional and more experienced approach by the judicial community in carrying out future training activities.

Nonetheless, although the increase in the number and quality of trainings for judges may have a positive impact on the quality of judicial decision-making, that activity in and of itself cannot be seen to directly support, transparency, openness and fair decision-making by judges (see Question 7).

2. What could USAID/CAR have done differently to make the activities carried out under the IRIS project more effective?

Generally, those projects pursued by IRIS were effective as they influenced an increase in available judicial trainings and elevated the status of judges within the profession and to the public. There are no current suggestions as to how USAID/CAR could have made those activities more effective. We can only suggest in hindsight that USAID/CAR or IRIS could have applied the work of other assessors/organizations to the proposed workplans of IRIS so that IRIS objectives would have been clarified and more directed at the relevant Intermediary Results as stipulated by the USAID/CAR-IRIS contract.¹⁶

3. What major gaps, if any, exist in the Republic of Kazakhstan’s framework for the advancement of judicial reform?

One existing gap in the current framework of the Republic is the clear and unequivocal control of the executive branch over the selection and appointment of judges. This control hinders development of an independent judiciary free from executive control or bias. Additionally, the Presidential Administration is attempting to maintain control over all the legal training of judges. Thus, the President has direct control over the selection, appointing and training of judges as well as the prosecutors. The removal of judges is under the direct control of the Supreme Court and indirectly, the President.

Another institutional obstacle to transparency and openness is the closed nature of court proceedings and the system of case assignment, the recording and publishing of decisions as well as archaic court administration. These current forms are

¹⁶ See infra note 10.

outdated and lend themselves to the existence of potential avenues for abuse of power by the courts in the Republic (see Question 8).

4. What has been the impact, if any, of USAID/CAR's judicial training programs on the practical skills of judges?

There is no doubt that the increase in the number of trainings, the training of 34 new judicial trainers and the participation of 445 judges in IRIS trainings has resulted in a positive impact as to the practical skills of judges in the Republic. The trainings also resulted in the dissemination of training/self-study materials to more than 300 judges. All the foregoing and those interviews obtained during the course of this Assessment as summarized in Annex II indicate a real and lasting result in terms of ongoing judicial education and training.

5. What has been the contribution, if any, of USAID/CAR's programs in establishing a sustainable capacity to provide regular training seminars for all judges on both substantive and procedural aspects of civil and criminal law?

USAID/CAR has increased the sustainable capacity of the Judicial Academy and Supreme Court in providing regular trainings for judges as the IRIS program has trained, and will continue to train, new judicial trainers and finalize the publication and dissemination of bench books on the subjects of civil-procedural law and criminal-procedural law. To date, 34 new judicial trainers have been trained and are ready to carry out trainings in their respective forums. As stated in the answer to Question 1 herein, USAID/CAR and IRIS have solidified the groundwork and

institutional backbone to continue and expand on regular technical trainings for judges.

6. What has been the impact, if any, of USAID/CAR's programs on the quality of the judicial training centers in the Republic of Kazakhstan?

USAID/CAR has increased the number and quality of judicial trainings by lending its direct support to the training of trainers and creation of materials for the judicial training centers. Having interviewed persons from all of those who have participated in IRIS supported training programs at these centers, the overwhelming perception of the program is that it is needed, helpful and has rendered a positive effect on the quality of judicial training.

7. What has been the impact, if any, of USAID/CAR's judicial training programs in the Republic of Kazakhstan in ensuring that judges are trained so that (1) their actions are transparent and conform to the law; (2) justice is fairly administered and enforced; and (3) universally guaranteed rights and freedoms are protected.

This Assessment is founded on the evaluation of the IRIS workplans, monthly reports, special reports and the interviews obtained from judges and litigators practicing within the Republic. Based on the foregoing elements, this Assessment was unable to conclude that any measurable progress was made regarding the criteria set forth in the foregoing question. Although IRIS trainings are deemed to be effective, widely-accepted and necessary to the improvement in the quality of the judiciary, this

Assessment found no evidence to conclude that these trainings on specialized legal topics contributed to transparency, fairness or the protection of guaranteed freedoms.

In all fairness, this Assessment recognizes that a two-year program directed at this goal will almost invariably fail as two-years is simply not enough time to impact such a complicated issue. Logically, any foreign contractor working on this issue will have to approach it strategically and delicately. USAID/CAR and IRIS has developed sufficient standing over the last two-years to now more effectively and more openly address this issue of openness and transparency. This Assessment concludes that future programming more suited to address the criteria of the foregoing Question could have a real and long-lasting impact if properly thought out and effectively executed.

8. What future activities and strategy should USAID/CAR pursue in assisting the development of the legal and institutional framework necessary to advance judicial reform in the Republic of Kazakhstan?

Aside from continuing and expanding current activities that are aimed at judicial education and court administration, USAID/CAR should focus on the following reforms: 1) case management systems to promote unbiased and blind case assignment; 2) a project that would result in the publishing of court decisions; 3) a pilot project which would hopefully result in the maintenance of a nationwide database that would contain precise case information such as dates of disposition and the final judgments; 4) a program that addresses the discipline of judges in cases of misconduct; 5) develop highly-focused trainings on the implementation of the jury

trial system; 6) programs that would lend themselves to an evolution of the rules of evidence in courts cases; 7) reforms that would have an effect to limit the power of the prosecutor to unilaterally suspend the judgments of courts; and 8) programs or reforms that would have the effect of limiting the influence of the executive branch over the judiciary.

Of the foregoing proposals, the last, limiting the influence of the executive branch over the judiciary, may be the most problematic. It would seem that USAID/CAR cannot realistically promote a weakened executive branch without potential diplomatic consequences. However, USAID/CAR may be able to affect this status quo by supporting the development of an independent Union of Judges and a strong legal community (i.e., local bar associations). If the Union of Judges could become a self-financing institution that had control over judicial qualifications and the discipline of judges, as proposed by Dean Aitmukhambetov,¹⁷ this may loosen the grip of the executive branch over at least a few aspects of judicial life. USAID/CAR could also attempt to promote a self-regulating judiciary that left the selection, appointment and discipline of judges to the judicial community. An additional suggestion may be to promote the selection and appointment of judges by local elections as opposed to Presidential appointment.

9. Given the anticipated level of USAID/CAR resources, what should be the Mission's highest priorities and objectives in follow-on judicial reform activities in the Republic of Kazakhstan, and why?

¹⁷ See Annex II, Interview Summaries at p. 31.

USAID/CAR must focus its resources on the combined objective of continuing current training efforts and with a revitalized focus on the issue of transparency and fairness in the courts, with a specific goal of hindering the corruption therein. If continued reform efforts do not add the focus of fighting corruption in the judiciary, the reform efforts to date will be marginalized and inevitably become irrelevant. Furthermore, continued reform efforts, absent a focus on corruption, may serve to legitimate a judiciary that is void of accountability and unreliable to the general public.

10. Should follow-on activities focus primarily on working at the national level, or at the local level, or some combination of the two, and why?

By referring to the Statement of Work and IRIS activity to date, we can conclude that “follow-on activities” is believed to be activities of two general types; 1) judicial training to promote qualified judges and improved judicial decision-making abilities, and 2) activities that promote open and transparent judicial decision-making with an emphasis on limiting corruption.

The interviews conducted with members of the judiciary at all levels demonstrated that judicial training for future and current judges should be carried out at all levels of the judiciary: Supreme Court; oblast level courts; district level courts, rayon level courts; and municipal courts. It was stated by the judges and one mentor coordinator¹⁸ that certain courts or regions were being unintentionally excluded from

¹⁸Judge Aueznuur Kazhenov, Secretary of the Union of Judges of the Supreme Court of the Republic of Kazakhstan and Judge in the Supreme Court of the Republic of Kazakhstan and Retired Judge Kenes Dzhalmukhambetov, Member of the Coordination Committee for Mentoring and Judge in the Supreme Court of the Republic of Kazakhstan.

trainings and seminars, namely the district level courts. If true, it would be recommended to expand the breadth of current trainings to develop a fully encompassing participation from all levels of courts. Nonetheless, this Assessment cannot conclude that district courts were excluded as we met directly with participating judges from the district court level.

In regards to activities that are intended to limit corrupt practices or provide for an open and transparent judiciary, we can refer to the current court recording pilot projects that are yet to be implemented. We can also hypothesize other similar projects that may be designed for these purposes such as publishing court opinions or providing for an accessible database which would contain case history, dates and court decisions (see Question 8). These sorts of activities can only feasibly be implemented on a pilot project basis within a given court (i.e., the court recording project) due to the economic considerations. As such, it does not seem relevant that the given “test court” be that of the national, oblast or rayon level. More importantly, the pilot project needs to fully be implemented in the given court to fully test and evaluate its effectiveness. Then, if successful, the project could be presented as a success story to the national government so that it could be implemented on a nationwide basis and appropriately funded by the state budget of the Republic of Kazakhstan as opposed to the US government.

11. Taking into consideration the effect of the possible non-certification of the Republic of Kazakhstan, what types of activities should USAID/CAR consider to advance judicial reform without giving direct aid to the central government?

In the given scenario, it would be feasible to continue the current direction of IRIS activity pertaining to the ongoing training of sitting judges and judicial candidates. It is unlikely that that activity could be considered direct aid to the central government. One very important theme in trainings regards the forthcoming implementation of the jury trial system in the Republic. Other activities such as bench books and the court recording project however may be deemed to be direct aid as they seem to fill a hypothetical government budget line item.

Another activity that would not involve direct aid to the central government could involve intensifying the current work with the advocates and litigators of the Republic as they can be used as facilitators of change. As the advocates and litigators directly gain from an open and transparent judiciary, as well as the general public, they as a group can potentially advocate for judicial reform with the backing of USAID/CAR. While advocating for reforms in court administration such as case assignment or the publishing of judicial decisions, they can also initiate and promote legislative reforms that would have an affect on the transparency and fairness of the courts (see Question 8).

Other areas of reform that relate to the judiciary could be pursued, however, these themes are more distant than those previously suggested. One theme is prison reform as being targeted by the Kazakhstan Soros Foundation, or juvenile detention reform program as being initiated by the British Council.

12. What has been the impact, if any, of the Court Recording Pilot Project?

Based on interviews and on-site observations, it is clear that the Court Recording Project is behind schedule and has, at the date of this Assessment, not been implemented. The audio-visual equipment to be installed within the Bostandyk District Court #2 and the Almaty City Court has not yet been tendered.

V. FURTHER RECOMMENDATIONS

1. Decrease Volume of Proposed Activity and Focus on Quality of Execution of Existing Program Activity

It is apparent that the amount of activities planned by IRIS and approved by USAID/CAR may have been unrealistic in terms of the IRIS project's short duration. While programs are behind schedule while certain judges and the Director of the Department of International Relations of the Supreme Court of the Republic of Kazakhstan¹⁹ have stated that the programs being implemented by IRIS are coming and going too quickly. The combination of these two facts demonstrates that the programs currently being implemented and those potential programs of the future may be able to achieve even greater success if decreased in volume and given a fair timeline for completion. Please note that this recommendation could be withdrawn from the Assessment by an increased presence of IRIS in the Republic of Kazakhstan, including a presence in Astana, commensurate with an increase in expendable financial resources. In that case, IRIS could actually maintain the current volume of work and achieve measurable results.

¹⁹ See interviews in Annex II at p. 31.

2. Open and Maintain A Representative Office in Astana

While touring the Supreme Court of the Republic of Kazakhstan and discussing IRIS involvement with it, it became apparent that IRIS has developed fruitful openings with the Supreme Court and Union of Judges housed therein. There are many ongoing initiatives being carried out with the Supreme Court and various seminars and trainings have taken place in Astana, Akmola oblast and Karaganda. All these activities, although being promoted by IRIS, have been implemented with the direct assistance of the Department of International Affairs of the Supreme Court. In the interview with the Director of this Department, it was stated many times that the IRIS programs were excellent, effective and stood the possibility of gaining real institutional recognition, but that to do so, IRIS needed to open and maintain a permanent presence in Astana. This would strengthen contact with local partners, decrease the burden on the Department of International Affairs and intensify overall effectiveness of IRIS programming. As the capital city and home of the highest judicial bodies in the Republic, a presence in Astana almost seems obligatory.

3. Future Programmatic Activity Should Focus on Decreasing the Level of Corruption within the Judiciary

Although previously stated in the foregoing sections, this Assessment can only stress the importance of properly targeting the issue of open and transparent practices within the courts of the Republic. USAID/CAR via IRIS has succeeded in establishing stable groundwork for future programming that could address this issue. Simply put, two-years is not enough time to have an impact on the problems associated with an open,

transparent and fair judiciary which are firmly and deeply embedded in the current judiciary. However, over this two-year period, USAID/CAR via IRIS has established the necessary clout to now address it.

As set forth in the Answer to Question 8, new reform initiatives could target the following issues: 1) case management systems to promote unbiased and blind case assignment; 2) a project that would result in the publishing of court decisions; 3) a pilot project which would hopefully result in the maintenance of a nationwide database that would contain precise case information such as dates of disposition and the final judgments; 4) a program that addresses the discipline of judges in cases of misconduct; 5) develop highly-focused trainings on the implementation of the jury trial system; 6) programs that would lend themselves to an evolution of the rules of evidence in courts cases; 7) reforms that would have an effect to limit the power of the prosecutor to unilaterally suspend the judgments of courts; and 8) programs or reforms that would have the effect of limiting the influence of the executive branch over the judiciary (see Answer to Question 8).

4. Increase Programmatic Involvement with the Judicial Academy and with the Union of Judges

The Supreme Court of the Republic of Kazakhstan is a necessary partner to judicial reform activities, however, it can be argued that the Supreme Court that benefits from a dependent judiciary. The judges of the Supreme Court, as appointees of the President, may or may not have the actual qualifications that one would assume. Thus, seminars and trainings that feature these judges as the best and leading experts seem to be

somewhat of a self-legitimizing exercise on their part. Again, although the participation and support of the Supreme Court and its judges is obligatory to future activities, USAID/CAR should focus on creating, promoting or supporting an independent Union of Judges and likewise an independent Judicial Academy. These institutions, although under the indirect control of the executive branch, at least have the possibility of gaining autonomy. And unlike the Supreme Court, these entities have a natural interest that runs contrary to the present structure.

Additionally, the USAID/CAR programs that are being implemented with the Judicial Academy must be more closely coordinated with the EU programs. Although the programs of USAID/CAR and the EU began with a divided approach as to their respective target audiences, the programs of the EU may be duplicative. That is not to suggest that mingling the programmatic activity or splitting projects is necessary. If anything, the programs need more active cooperation to prevent unnecessary repetition. In comparing the two programs, this Assessment concludes that the USAID/CAR programs to date have been more active than the EU programs. In this way, the EU programs could be assisted by USAID/CAR in order that the overall work of both parties with the Judicial Academy become better focused and ultimately more effective. This is especially important now as the EU intends to focus on the independence of the Judicial Academy – something that this Assessment recommends as an important objective. At the time of this Assessment, the EU is formulating a workplan for future activities. Thus, an immediate concentrated attempt to coordinate or even divide activities between USAID/CAR and the EU seems to be imperative to avoid future contradictions or duplications.

5. Develop Programmatic Focus on the Jury Trial Initiative and Collaborate Efforts with other International Organizations

The government of the Republic of Kazakhstan intends to adopt a new law that will pave the way for the use of jury trials in criminal cases.²⁰ This is seen by international observers, such as the OSCE, as a step towards a more open and transparent judiciary in terms of criminal cases. As expressed by the OSCE, local judges and the Rector of the Judicial Academy,²¹ there is great fear and apprehension of the implementation of jury trials in the Republic. This is primarily based on the fear that, if improperly implemented by the courts of the Republic, jury trials could have a disastrous start which in turn would lead to its abolition. Thus, it is critical that very sophisticated and effective trainings take place in the near future to prepare the judiciary for the inevitable adoption of the new law. Failure to fully approach this issue now will negate all the successful efforts to date which led to the Republic's consideration of the jury trial system.

A coordinated or cooperative approach with the OSCE on this important issue can only further the objectives of both USAID/CAR and the OSCE. The local implementing institution should be the Judicial Academy along with the direct participation of the Union of Judges. Although the OSCE discontinued its activities with the Judicial Academy, the Regional Rule of Law Coordinator of the OSCE stated that they would consider renewed activity with the Judicial Academy if supported by USAID/CAR. Thus, this Assessment proposes that any activity regarding the implementation of jury trials in the Republic be closely coordinated or even jointly carried out between the entities.

²⁰ Draft law currently in Parliament and slated for approval sometime in 2005.

²¹ See interviews in Annex II at p. 31.