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**KAZAKHSTAN**

# JUDICIAL EDUCATION PROJECT (KJEP)

**YEAR 1 ANNUAL REPORT  
OCTOBER 1, 2009 – SEPTEMBER 30, 2010**

**A Task Order Under the Rule of Law IQC  
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## INTRODUCTION

### PROJECT SUMMARY

Chemonics signed the Kazakhstan Judicial Education Project (hereinafter referred to as KJEP or Judicial Education Project) contract on October 1, 2009 with an end date of October 1, 2011. This contract builds upon the existing successful partnership between the U.S. Government and the Supreme Court of the Republic of Kazakhstan and aims to provide targeted assistance to help Kazakhstan's judiciary enhance its understanding and treatment of commercial law issues and fuller participation in the global trading system. Key areas of focus improve judicial education and the judiciary of Kazakhstan's capacity to effectively administer commercial law cases in accordance with international standards, which creates an environment fostering investor confidence that Kazakhstan's judiciary will handle any disputes justly and fairly. KJEP's interventions focus on two areas: (i) judicial education; and (ii) court personnel capacity. These program areas are mutually reinforcing and contribute to the realization of Program Sub-Element 2.1.3.1: Justice System Actors which ultimately feeds into the U.S. Government Foreign Assistant Objective: Governing Justly and Democratically.

The reporting period covers October 1, 2009 – September 31, 2010. In Year 1 KJEP implemented the following with respect to the institutional training capacity of the judiciary: 1) a training needs assessment of 139 economic court judges from all *oblasts* identified judges' self-assessed priorities for closing knowledge and skill gaps, and informed the subject matter of KJEP-sponsored trainings; 2) project technical assistance to the Institute of Justice helped revise the 2010 curriculum, assess the revised curriculum, and recommend improvements for 2011 concerning delivery mechanisms, curriculum design, training methodology, and information management and dissemination; and 3) data gathered during a knowledge, skills, attitudes and abilities analysis suggests that the absence of professional court administration is one of the most pressing issues facing the economic courts' capacity for improving performance.

In Year 1 of the contract, KJEP delivered the following education programs: 1) a study tour to the Czech Republic exposed 20 judges of the economic courts, oblast courts, and the Supreme Court to subject matter in trademarks, copyright, author's rights and patents; 2) 16 peer trainings led by study tour participants expanded knowledge on intellectual property to an additional 276 judges and justice sector personnel, and enhanced practical application skills through case analysis; 3) a regional, two-day seminar on intellectual property engaged 27 judges from six regions and resulted in recommendations for unifying practice in applying trademark laws, for amending the Law on Trademarks for conformity with TRIPS regulations, and for developing methodological guidelines for judges on how to consider intellectual property disputes; 4) a seminar on the legal regulation of transactions conducted as part of the Institute of Justice's annual program benefited 27 economic court judges and five non-economic court judges, whose recommendations will be used as a basis for drafting the Supreme Court's regulation on judicial practice in transactions. Because some of KJEP's Year 1 participants attended more than one training, the total number of justice sector personnel KJEP has trained to date is 329. Of these, 16 are judge-trainers with enhanced interactive teaching skills. KJEP seminar materials for the

intellectual property study tour to Prague and the regional intellectual property seminar in Schuchinsk were compiled and have been posted on the Supreme Court's website. These and other KJEP training materials have also been distributed to economic courts, the Institute of Justice, and the Union of Judges.

## **ASSESSMENT OF ENABLING ENVIRONMENT FOR JUDICIAL REFORM AND AUTONOMY**

USAID designed KJEP's scope of work based on the Supreme Court's request for specific assistance to help Kazakhstan's judiciary enhance its adjudication in commercial law issues. USAID and the Supreme Court have a long history of cooperation in the judicial sector, and the judiciary has invested significantly in improving the performance of the courts. The Supreme Court met its 25% cost share obligation for KJEP programming in Year 1. This commitment reflects the active partnership that the Supreme Court and USAID have nurtured for more than a decade to deliver judicial training, enhance judges' practical resources, and introduce court administration reforms to increase the quality, quantity, and accessibility of information within the judicial system. Moreover, it indicates a healthy enabling environment for KJEP to promote judicial reform and increased judicial autonomy.

Additional contributors to this environment include Kazakhstan's political commitment to becoming one of the top 50 developed countries in the world, and the working relationship the project has established with the Supreme Court through joint planning and responsive programming in subjects such as: intellectual property, copyrights, patents, and international arbitration. The presence of the project's Deputy Chief of Party (DCOP) Sholpan Tashmukhambetova in Astana has proven extremely valuable for facilitating more frequent, personal, and effective communications with its judicial counterparts. The location of the main field office in Almaty, led by Chief of Party (COP) Julia Maliyeva, facilitates ease of communication with USAID.

## **PROGRAM IMPACT TO DATE**

KJEP's impact for the first year of implementation is detailed below by component and by task, as defined in the project's Year 1 Work Plan.

### **COMPONENT 1: JUDICIAL EDUCATION AND COMMERCIAL LAW TRAINING IMPROVED**

The Supreme Court of the Republic of Kazakhstan, through the Institute of Justice (hereafter referred as the "Institute"), is responsible for ensuring the comprehensiveness of judicial education for judge candidates and ongoing education for sitting judges. Building the Institute's capacity with respect to subject matter knowledge about commercial law issues is critical for providing initial and continuing education to economic court judges.

#### **Task 1: Coordination with Supreme Court and Institute of Justice**

Ensuring that KJEP's programming addresses the Supreme Court's needs and ultimately meets its overarching goal, it was necessary to establish a good understanding of the Supreme Court's

priority interest areas. During the reported period a memorandum of understanding (MOU) to govern USAID's assistance and the Supreme Court's contribution was approved and signed on March 18, 2010. KJEP worked with the Supreme Court throughout the MOU's development to establish priorities for substantive training courses and cost-share contributions for activities in KJEP's Year 1.

## **Task 2: Training Needs Identified**

The Project conducted a comprehensive training needs assessment in January 2010 for all judges of the economic courts. Methodology included telephone surveys, live focus groups, and a written survey collected from 139 judges in the economic courts of all 16 oblasts. KJEP reviewed the data collected from the survey and provided analysis that includes best practices with respect to assessing training needs and prioritizing training activities based on these findings. Such practices encourage more flexibility in the training approach, increasing cooperation between the Institute of Justice and the Supreme Court, and garnering stronger support for judicial education from more Supreme Court judges. Based on the findings from the training needs assessment, KJEP identified intellectual property as the topic for the March-April study tour to the CEELI Institute in Prague and for the two-day seminar in Schuchinsk in June 2010, while the "legal regulation of transactions" was the selected topic for the two-day seminar for economic court judges held at the Institute of Justice in May 2010. KJEP will incorporate assessment recommendations on distance, e-learning and blended learning solutions into Year 2 activities with *oblast* training coordinators, and provide counterparts with a Training Needs Assessment Toolkit for their future use.

## **Task 3: Judicial Education Capacity Increased**

KJEP participated as an observer during the Institute of Justice's December 2009 planning session to set its 2010 programs, and assisted in developing the economic court judges' curriculum. To assist the Institute improve commercial law training programs for economic judges, KJEP recruited international expert Mark Segal for a curriculum development activity in June 2010. Mr. Segal, with KJEP staff, met with the Institute of Justice, the Supreme Court, the Union of Judges, the Ministry of Justice, the General Prosecutor's Office, and the Kazakhstan International Arbitrage, as well as commercial lawyers and donor organizations involved in judicial education like the European Commission and the United Nations Development Programme. Mr. Segal's report made recommendations for strengthening training for economic court judges through: 1) delivery mechanisms (i.e., use of Web sites and CD ROM); 2) curriculum design; 3) training methodology; and 4) information management and dissemination. KJEP will incorporate these recommendations into the Institute's two-week program in Spring 2011 in particular.

Additionally, KJEP has provided the Institute with materials on teaching methodologies and distance learning to increase its capabilities for reaching all economic court judges with its programming. KJEP provided support for the Director of the Institute to participate in the intellectual property study tour to the CEELI Institute (Component 2, Task1) and facilitated meetings for the Director with the CEELI Institute leadership and representatives of the Academy of Justice in the Czech Republic, thus enabling the Institute to establish the contacts

for an international internship program for the magistrates of the Institute. In Year 2 the project will mentor Institute of Justice counterparts in conducting training needs assessments and incorporating modern learning approaches, as well as preparing and delivering tools and resources for meeting near-term and continuous training needs. These include CD resource packages for each joint training activity, and guidelines on the preparation of training materials and guidelines for presentations for instructors

## **COMPONENT 2: COURT PERSONNEL CAPACITY INCREASED**

### **Task 1: Regional Study Tour**

The Supreme Court is keenly interested in increasing judges' knowledge of commercial law issues in the context of challenges that are specific to European and former Soviet Union (FSU) countries. In response, from March 29 to April 2, 2010, KJEP organized a study tour to the Czech Republic where the Kazakhstani judges learned about the distinct challenges and solutions employed by foreign countries. The study tour was organized for 16 economic court judges, one Supreme Court Justice, three training coordinators, and the Director of the Institute of Justice. The training coordinators, who are tasked with meeting judges' training needs within a particular geography, participated in the study tour at the Supreme Court's request. The Director of the Institute of Justice independently financed his participation.

The Intellectual Property Rights Enforcement program was held at the CEELI Institute in Prague. The judge-participants were selected based on the criteria developed jointly with the Supreme Court, one of which was the participants' willingness to deliver one peer training in their home court. The study tour increased the knowledge of participants in areas of trademarks, copyright, author's rights and patents, as well as built their adult training capacity through a training of trainers (TOT) component. The program also offered practical exposure to courts' handling of commercial law issues through the observation of a trademarks trial in the Prague City Economic Court, and a subsequent question-and-answer session with the panel of judges who heard the case. Finally, the participants visited a regional court, observed a demonstration of operating audio recording technology, and met with the Dean of the Czech Academy of Justice to discuss judicial training in the Czech Republic.

### **Task 2: Judge-Trainers and Peer Trainings; Identification of Model Judge-Trainers**

Increasing the judiciary's knowledge and understanding of commercial law issues was achieved through subject matter trainings for all judges, but the project also built sustainability through the creation of trained judge-trainers who further trained their peers. During the March 2010 study tour, participants were trained in training-of-trainers (TOT) skills and techniques. The end goal is to build internal capacity within Kazakhstan's judiciary, specifically the country's economic courts and court personnel in other courts (*rayon* courts) which also review commercial law cases. With the support of KJEP staff, after returning from the study tour the participants delivered 16 peer-training sessions to court personnel from their home regions. From April to June 2010, study tour participants increased the understanding of intellectual property rights

issues for an additional 276 judges and justice sector personnel, as well as enhanced the participants' practical application skills through case analysis.

### **Task 3: Seminar for Economic Court Judges**

In May 2010 the Institute of Justice held its annual two-week continuing legal education program for judges. KJEP was allowed to present at the program, delivering a seminar for 30 judges of Kazakhstan's specialized economic courts entitled: "The Legal Regulation of Transactions." KJEP's seminar took place on May 17 and 18, 2010. The workshop reviewed key points of issue concerning transactions, including the grounds for declaring a transaction null and void and the procedure for invalidating a transaction. Outside consultants included Dr. Hans Schraam from the University of Bremen in Germany as well as Dr. Alexandra Louzhina, from the Russian Institute of Justice. Mrs. M.A. Baltabai and Mr. N.I. Mamonov, both Supreme Court Justices, were invited as the Kazakhstani experts. Additional topics of the seminar included restoration of the rights to void transactions, real estate transactions, and consequences of noncompliance with the real estate transaction form. All these points of issue occurring in judicial practice were reviewed and discussed at the workshop with due account for laws of Kazakhstan, Russia and Germany. A comparative analysis of legislation on legal regulation of a transaction was also delivered. The judges of the economic courts actively discussed the subject matter and participants offered their own transaction-related cases for review by the experts. They, in turn, provided their opinions concerning the specific judgments made in the cases. This event was co-sponsored by the donor organization German Society for Technical Cooperation (GTZ).

### **Task 4: Regional Intellectual Property Trainings for Economic Court Judges**

KJEP conducted a regional seminar on intellectual property and commercial law issues for judges representing six regions (Astana City, Akmola, Karaganda, Kostanai, Pavlodar, and Northern-Kazakhstan Oblasts). The seminar took place at the Schuchinsk Rayon Court on June 10 and 11, 2010. The seminar focused on practical content, information exchange, and discussion. Supreme Court Justices were actively engaged and addressed many of the judges' questions on the appropriate enforcement of intellectual property and commercial laws. In one exercise, participants presented examples of real-life cases. Groups then met to discuss the case and its implications, and in the end each group presented to the entire audience their vision of how the cases would be best resolved.

At the end of the seminar the group developed recommendations to be presented to the Supreme Court. In particular the recommendations included: to generalize judicial practice on the application of trademark laws and to issue a Normative Decree on unified practice; to organize national-level intellectual property seminars in consideration of the huge range of legal acts regulating the intellectual property issues; and to develop methodological recommendations for judges on how to consider intellectual property disputes. A recommendation is also addressed to the Ministry of Justice to amend the Law on Trademarks to bring it into conformity with TRIPS regulations.



## **Task 5: Conduct KSA of Economic Court Personnel**

In July KJEP conducted a knowledge, skills, and attitudes (KSA) analysis of the economic court staff. In addition to reviewing the KJEP Training Needs Assessment conducted in January 2010, 13 judges and 21 court staff from the specialized economic courts of Almaty, Taldykorgan, and Shymkent were surveyed via focus group sessions. International judicial education specialist Charles Ericksen analyzed the resulting data and created recommendations to address both the short- and long-range needs of the judicial education system. Recommendations ranged from establishing curriculum advisory committees to developing “asynchronous distance learning” opportunities, including CD ROMs, to allow judges to study during convenient times at their own pace. Also, to tackle human resource and other administrative challenges that will not be solved through educational programs, the KSA recommended increasing court management core competencies among existing court staff, which may help the economic courts respond to issues with staff turnover, low morale, and a generally lower level of professionalism among court staff. In Year 2, KJEP will leverage the assessment and Mr. Ericksen’s recommendations to bolster the administrative and technical capacities of judicial personnel. It is expected that such programming will help court administrative staff improve their performance in addressing commercial law issues.

## **IMPLEMENTATION CHALLENGES**

The Institute of Justice has primary responsibility for the continuing education of sitting judges in Kazakhstan. The Supreme Court operates a parallel system for continuing judicial education under its Judicial Education Department (part of the Human Resources Department), supervised by its Training Coordinator. During Year 1 KJEP was able to develop and utilize a very close working relationship with the Supreme Court’s Training Coordinator, as well as with other donor programs involved in judicial education. Unfortunately such close collaboration with other stakeholders has been slower to develop. As KJEP continues to build relationships with the Institute of Justice and the International Department within the Supreme Court, the project hopes these units will be receptive to some of the qualitative improvements planned within Year 2 activities.

A second implementation challenge lies with the direct collaboration between the Institute of Justice and the Supreme Court. As documented in KJEP’s Year 1 technical reports assessing judicial and court personnel capacity and training needs, economic court judges would benefit from strengthened and systematic linkages between the Supreme Court/Training Coordinators and the Institute of Justice. Improved sharing of resources and information could result in improved training needs assessments, curriculum design, and preparation and delivery of course materials. Collaboration in monitoring and evaluation could help both the Institute and the Supreme Court identify which topics are most important, how useful particular materials and teaching methodologies are, and build a more qualified and effective cadre of instructors. KJEP has made these recommendations to the Institute of Justice and the Supreme Court, and will work to ensure collaboration occurs throughout Year 2’s programming.

## PROPOSED PROGRAMMATIC OR TACTICAL CHANGES

During Year 2 KJEP will modify programming to add capacity building activities for the Supreme Court's training coordinators. The Supreme Court's Judicial Education Department delivers trainings to economic court judges through a nationwide network of 16 *oblast* training coordinators, working from their local training centers. Through the coordinators, the Judicial Education Department carries out training needs assessments, designs and helps deliver courses, and conducts monitoring and evaluation. The training coordinators in each *oblast* are responsible for organizing bi-monthly meetings for the judges, organizing annual courses, and providing training and information in a peer-to-peer format. Though responsibilities are in addition to regular duties of a sitting judge, the training coordinators are not paid for the additional work and receive no formal instructions as they begin the assignment. Due to their reach and important role overseeing the entire training process, from assessment to implementation, support for the *oblast* training coordinators is vitally important to improve judicial education in Kazakhstan. To that end, and in response to the National Judicial Education Strategy of 2007-2011, KJEP proposed a Year 2 Training of Trainers (TOT) event for the 16 coordinators, as well as the creation of a Training Needs Assessment (TNA) Toolkit. The TOT and TNA methodologies and materials used to support this core group will be handed over to the Supreme Court for future use. KJEP also will be partnering with the training coordinators throughout Year 2, joining one *oblast* coordinator with one expert economic judge, supporting the trainer unit as they create and deliver KJEP's subject-matter peer trainings. By increasing support to the *oblast* training coordinators KJEP hopes to shape the long-term model of judicial education.

Other changes proposed for Year 2, as outlined in the submitted Work Plan, relate to modifications to KJEP's approved Performance Monitoring and Evaluation Plan (PMEP).

1. The definition of indicator 1.3 was expanded to include the Supreme Court as well as the Institute of Justice in the data count. Since both entities have authority for judicial training in the Republic, it is appropriate to consider deliveries to both as institutional assistance. The proposed, revised indicator now reads, "Number of substantive training curricula on commercial law issues delivered to the Supreme Court and Institute of Justice."
2. The definition of indicator 1.4 was expanded to reflect a wider institutional presence involved in Kazakhstan's judicial training, including the Supreme Court and its 16 *oblast* training coordinators. The proposed, revised indicator now reads, "Percentage of GOK justice personnel satisfied with project developed training courses."
3. KJEP also proposed cancelling quarterly data collection for all indicators except indicator 2.2, "Number of commercial law cases filed," which will be collected annually. Reviewing data semi-annually coincides with semi-annual reporting to USAID.

The submitted Year 2 Work Plan also requests modifications for five of KJEP's indicators.

1. We have proposed raising the target for indicator 1.1, "Number of judges trained with U.S. government assistance," from 185 to 461. The previous indicator 1.1 target was for a

count of economic court judges only, whereas in Year 1 the project also trained *rayon* court, *oblast* court, and administrative court judges.

2. We have proposed decreasing the target for indicator 1.2, “Number of (non-judge) justice sector personnel who received U.S. government training” from 300 to 118, based on Year 1’s relatively low performance in training 18 non-judge justice sector personnel. To reach the new target, KJEP expects to reach non-judge justice sector personnel with peer trainings following the Year 2 study tour on international arbitration enforcement.
3. We have proposed increasing the target for indicator 1.3, “Number of substantive training curricula on commercial law issues delivered to the Supreme Court and Institute of Justice,” from four to six, based on Year 1’s performance of three training curricula delivered through KJEP-sponsored programs.
4. We have proposed increasing the target for indicator 2.1, “Number of trainings on commercial law issues funded or delivered by the judiciary of Kazakhstan,” from 22 to 39, based on Year 1’s performance of co-funding by the Supreme Court for each of KJEP’s sponsored activities. The project expects the same dynamic in Year 2.
5. We have proposed a target for indicator 2.3, “Percentage of justice sector personnel satisfied with project trainings,” based on Year 1 outcomes. The Year 1 outcome is 80%, and the life-of-project target is 90%.

Most notably, KJEP has proposed discontinuing indicator 2.4, “Change in time between case filing and disposition in economic courts.” This data cannot be collected through the courts’ EAIAS information system as originally understood. To substitute for this removal KJEP has proposed the addition of indicator 1.5, “Number of e-learning resources disseminated to the judiciary.” This indicator will count the number of training materials and resources distributed to judges, court staff, and justice sector institutions, like the Institute of Justice and the Supreme Court, in electronic format. Likewise, KJEP will track whether e-learning resources are posted online, such as through the Supreme Court’s website.

## **PROPOSED REVISIONS TO PROGRAM’S LONG-TERM GOALS OR IMPLEMENTATION STRATEGY**

There are no proposed revisions to the program’s long-term goals or implementation strategy.

## **PERFORMANCE DATA: BASELINE, TARGETS, AND ACTUAL RESULTS**

Please see the accompanying table for a summary of KJEP’s performance. Results and targets follow the revisions as proposed in KJEP’s Year 2 Work Plan.

Indicator/Milestone	Data Source/Collection Methodology, Disaggregation, and Frequency	Baseline/ Year One Outcome	Life-of-Project Targets/Outcomes
<b>US Government Foreign Assistance Objective: Governing Justly and Democratically</b>			
<b>Program Area 2.1: Rule of Law and Human Rights</b>			
<b>Program Element 2.1.3: Justice System</b>			
<b>Program Sub-Element 2.1.3.1: Justice System Actors</b>			
<b>Program Goal: Assist Supreme Court of the Republic of Kazakhstan increase the capacity of judges, lawyers, legal associations and court personnel for resolving commercial disputes.</b>			
<b>KRA 1: Judicial education and training on commercial-law-related areas improved.</b>			
1.1: Number of judges trained with U.S. government Assistance	<ul style="list-style-type: none"> <li>Supreme Court and SIEC records</li> <li>Gender, location (i.e., oblast court, rayon court), subject matter</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	311 (139 economic court judges and 172 other judges)	461 (former target 185)
1.2: Number of (non-judge) justice sector personnel who received U.S. government training	<ul style="list-style-type: none"> <li>Project training records</li> <li>Gender, geographic location, subject matter</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	18	118 (former target 300)
1.3: Number of substantive training curricula on commercial law issues delivered to the Supreme Court and Institute of Justice	<ul style="list-style-type: none"> <li>Project training records</li> <li>Subject matter, medium</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	3 (intellectual property, transaction law, study tour materials)	6 (former target 4)
1.4: Percentage of GOK justice personnel satisfied with project developed training courses	<ul style="list-style-type: none"> <li>Survey</li> <li>Position title, experience, subject matter expertise of respondent (if any), subject matter of training course, gender</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	Not applicable	90%
1.5 Number of e-learning resources disseminated to the judiciary	<ul style="list-style-type: none"> <li>Project records</li> <li>Format, medium, location (i.e., oblast court, rayon court), subject matter</li> <li>Continuous as resources are developed; Semi-annual review</li> </ul>	0	300

Indicator/Milestone	Data Source/Collection Methodology, Disaggregation, and Frequency	Baseline/ Year One Outcome	Life-of-Project Targets/Outcomes
<b>KRA 2: Capacity of court personnel addressing commercial-law-related issues increased.</b>			
2.1: Number of trainings on commercial law issues funded or delivered by the judiciary of Kazakhstan	<ul style="list-style-type: none"> <li>Monitoring forms; Court records</li> <li>Position title of trainer, geographic location, subject matter, gender</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	19 (study tour, peer trainings, Schuchinsk, Institute spring seminar)	39 (former target 22)
2.2: Number of commercial law cases filed	<ul style="list-style-type: none"> <li>Supreme Court records</li> <li>Court location, case type (subject matter), court</li> <li>Annual review</li> </ul>	77 (intellectual property cases filed; 39 considered)	None defined as this is a context indicator included to identify trends that will inform project activities.
2.3: Percentage of justice sector personnel satisfied with project trainings	<ul style="list-style-type: none"> <li>Pre- and post-training evaluations</li> <li>Position title, employer, geographic location, training subject matter, gender</li> <li>Continuous as training events occur; Semi-annual review</li> </ul>	80%	90%