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STRENGTHENING THE RULE OF LAW IN KAZAKHSTAN

**KAZAKHSTAN JUDICIAL ASSISTANCE PROJECT
PHASE I FINAL REPORT**

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EXECUTIVE SUMMARY

Kazakhstan is a country in transition. Since its independence from the Soviet Union in 1991, Kazakhstan has grappled with immense economic, political, and social changes caused by the sudden shift from a command economy to a market economy, and from communism to democracy. President Nazarbayev has pledged — through his Kazakhstan 2030 strategy — to transform Kazakhstan into a developed and prosperous country by that date, and has embarked on an array of modernization efforts to accomplish that goal. Central to these efforts is the modernization of Kazakhstan’s judiciary and the strengthening of the rule of law.

The rule of law is a central element of the good governance necessary for participation in international society and for the achievement of economic development. The rule of law requires an effective judicial system composed of independent, competent, and ethical judicial officers. Although the Kazakhstani judiciary labors under a negative Soviet legacy, the support for reform within the rank and file of the judiciary is notable in Central Asia. All too often, Central Asia is viewed as a monolith. But in recent years especially, the five Central Asian republics have each moved in separate directions. What happens in one country is no longer a bell-weather for change in another. Though Kazakhstan is by most measures developing faster and more successfully than its neighbors, it continues to struggle with the challenge of how best to develop judicial capacity that meets the needs of its citizenry and those of the increasing number of foreign investors. The needs of these two constituencies should not be viewed as contrary to one another. Rather, they are typically mutually reinforcing.

To support Kazakhstan’s ongoing democratization and integration into the global community, USAID launched the Kazakhstan Judicial Assistance Project (KJAP), which lasted from October 1, 2005 to September 1, 2007. KJAP was designed to build and sustain a more democratic culture among citizens and target institutions by supporting the Kazakhstani judiciary’s modernization efforts and building public demand for a fair and transparent judiciary. Recognizing that such a mission cannot be fully completed in a short timeframe — it requires long-term systemic change — KJAP’s activities were designed to build from previous judicial reform assistance, complement ongoing efforts, and generate sustainable momentum to continue the judiciary’s modernization efforts.

KJAP’s interventions were divided into four areas:

- Video Court Recording
- Judicial Independence, Transparency, and Accountability
- Judicial Training
- Public Education and Media Training

These program areas were mutually reinforcing and contributed to the realization of USAID/CAR Strategic Objective (SO) 2.1 “Strengthened Democratic Culture among Citizens and Target Institutions.”

Working closely with its Kazakhstani counterparts — particularly the Supreme Court, the Institute of Justice, and the Union of Judges — KJAP sought to accomplish its objectives through targeted activities in several areas. KJAP capitalized on a window of opportunity made possible by the political will for judicial reform within the Government of Kazakhstan and its judicial institutions. Through a collaborative process, KJAP worked with its Kazakhstani counterparts to design and implement activities focused on strengthening these institutions, improving their performance, and expanding citizen participation. This emphasis on a consultative process that complemented indigenous reform efforts will help make KJAP’s activities sustainable.

Key Project Results

- Helped the judiciary successfully prepare for the introduction of jury trials
- Expanded the judicial mentorship program from two to ten oblasts
- Implemented a successful video court recording pilot project and mobilized support for a national expansion
- Helped the judiciary build a sustainable capacity for the design and delivery of judicial training country-wide
- Implemented a national public education campaign that reached nearly 18 million people and educated them about the judicial system
- Helped Kazakhstan begin to develop a system for the private enforcement of judgments
- Improved the quality and clarity of judicial decisions
- Created a permanent structure to improve judicial-media cooperation and collaboration
- Provided training to 447 Kazakhstani current and future judges, court staff, and journalists
- Strengthened the capacity of the Union of Judges
- Strengthened the capacity of the Institute of Justice
- Spearheaded an effort to prepare a “roadmap” for the revision of the Code of Judicial Ethics, to be based on the universally accepted Bangalore Principles
- Prepared a draft national judicial education strategy to improve and rationalize judicial education

The favorable judicial reform climate provided an uncommon amount of domestic support for KJAP. This support exists in part because there is a domestic constituency for reform driven by (i) international attention focused on the country and (ii) the close and productive relationships KJAP developed with the judiciary. Recognizing that donor funding has a limited duration, KJAP took care to ensure the sustainability of its activities by working not just to deliver trainings, but to build the capacity of its counterparts and create systems and frameworks to serve the judiciary and country in the future.

Resources to expand the scale of these changes remain limited, but KJAP’s successes demonstrate that true reforms are possible. Indeed, recognizing these possibilities, USAID launched an initiative in September 2007 to expand KJAP’s video court recording project nationwide. This two-year Phase II program includes a considerable cost-share from the Supreme Court toward the purchase of video recording systems. The cost-share is a testament to the political will for reform in Kazakhstan and the partnerships that USAID has developed with the Kazakhstani judiciary. This report covers KJAP’s Phase I: October 2005–September 2007.

SECTION I

Country and Project Context

It is important to understand Kazakhstan's history to accurately assess the current climate for judicial reform. Kazakhstan's legal system is based largely on the Soviet legal tradition. The Soviet Union knew no "rule of law" as we conceive of it today. The judiciary knew little independence. Judges were reliant on local Communist Party officials, and decisions concerning politically sensitive cases were dictated by party officials to the courts through a system known as "telephone justice." When Kazakhstan became a sovereign state in 1991, unlike the transitioning countries in Central Europe, it had no experience with democracy or the modern rule of law.

Unfortunately, throughout its short history, the Kazakhstani judiciary has remained largely within the control of the executive. In some important respects, the legal system has not changed significantly since the Soviet era, and the strong influence of both the executive branch and the prosecutors (procuracy) remain serious impediments to true judicial reform. Corruption is believed to be widespread among judges and prosecutors, as well as advocates.

Nevertheless, Kazakhstan has taken some important steps away from its Soviet past. In terms of the judiciary, Kazakhstan stands in notable contrast to its neighbors in allocating significant amounts of resources to improve working conditions for judges. Most importantly, the judiciary's institutions are keenly interested in building their capacity.

The Kazakhstani judicial system has three levels. The Supreme Court is the highest court in the country. The next level is the regional (oblast) court, which serves as an appellate instance court and a court of first instance for some severe crimes. These courts, with approximately 600 judges, sit in each of the country's 14 oblasts and in the cities of Almaty and Astana. The lowest courts are the district (rayon) level, which, in most circumstances, serve as the court of first instance. There are about 319 rayon courts and courts of equal status around the country, with approximately 1,800 judges.

Apart from the traditional court structure, the judiciary recently created specialized inter-district economic and administrative courts. These courts (one of each is located in every oblast and in the cities of Almaty and Astana) are analogous to the rayon courts and adjudicate, respectively, commercial disputes among entrepreneurs and enterprises and administrative issues between citizens and the state. Cases considered in the specialized courts are appealed to the oblast courts. The military also maintains a system of courts.

As noted previously, Kazakhstan's judicial system gives enormous power to the prosecutor. This situation is well summarized in the report of the UN's Special Rapporteur on the Independence of Judges and Lawyers, published in January 2005:

[T]he prosecutor can intervene in either criminal or civil cases; plays a crucial role with regard to pre-trial detention; can, as opposed to the defence lawyer, appellate a court

decision even when the case is already closed; and is even able to suspend the execution of a court decision or sentence for up to two months. All of this demonstrates that the prosecutor exerts crucial influence on the outcome of the judicial process.

Concerning the functioning of the judiciary, nothing can better express this situation [of improper outside influence] than the dominant role the Procurator continues to play in the entire judicial process, precisely at a time when the whole system should move towards enhanced consistency with relevant international principles. There is no doubt that this represents a major hindrance for democratic evolution and is the origin of the main distortions that the judiciary continues to show in general.

The pivotal role played by the president in the appointment and removal of judges is also a serious impediment, and there is concern that both the judicial selection and disciplinary systems are subject to abuse.

SECTION II

Video Court Recording

Despite recent judicial reform, public distrust in the Kazakhstani judicial system is still prevalent. Court procedures are still perceived as corrupt, and the judicial staff are frequently viewed as incompetent. Cases are frequently appealed, and without detailed and accurate records, judicial independence is compromised, and judges fear being accused of (and disciplined for) bias or corruption.

While a verbatim court record is typical in many Western countries, in Kazakhstan the court secretary typically writes the court records by hand. These records are not verbatim transcripts but essentially only summaries of the case. Some courts also use audio recording, but this system produces transcripts of imperfect quality, and is itself easily subject to manipulation, leaving room for incorrect allegations or complaints.

During a 12-month pilot project at the Bostandyk District Court of Almaty, KJAP introduced into Kazakhstan’s judicial procedure the novel concept of digital video court recording — a system that was proven to increase judicial transparency and accountability and provided an accurate case record to be used on appeal. Increased transparency and accountability was accomplished through many fronts during the trial: limiting the enormous and improper influence of the prosecutor (the procuracy); limiting or removing opportunities for blatant legal and procedural violations; improving the behavior of all trial participants, including the prosecutor and judge; and increasing the preparation of the trial participants, resulting in a more efficient and professional trial.

Key Results

- Completed pilot project with technical, training, procedural, and legislative recommendations provided to the Supreme Court
- Support mobilized within the Kazakhstani judiciary to expand the use of video recording to more courts, and commitment received for a co-funded expansion
- Accurate and complete records of each recorded case provided to trial parties
- 73 percent of citizens who participated in a recorded case and completed a survey would have more trust in courts that use videorecording than those that do not, and 80 percent support the use of videorecording in all courts of Kazakhstan. 93 percent of pilot court staff support the use of video recording in all courts of Kazakhstan.

Feedback for the Videorecording Pilot Project

“The introduction of court recording ensures the transparency and openness of a trial. People would be fully confident in the court as forgery of the evidence would not be possible.” *Judge B. Yelchibayev, Chair of the Bostandyk District Court*

“[The videorecording equipment] positively affected the culture of behavior of the trial participants and me; also the quality of the protocol [trial record] improved significantly.” *Judge N.A. Rusakova, Bostandyk District Court.*

“Participants behave correctly in the courtroom. It becomes impossible to make unreasonable complaints about a judge.” *Judge T.V. Chernysh, Bostandyk District Court.*

“The pilot project on court recording improves the culture of all participants of the process and the quality of the protocols [trial records].” *A.T. Dulambayeva, Court Secretary, Bostandyk District Court.*

“Implementation of videorecording in court hearings helps defense lawyers prepare for appeals by providing useful evidence of the prior court hearings.” *Almaty defense lawyer.*

“I would like to see this system implemented in all courts of Kazakhstan.” *Almaty civil claims plaintiff’s representative.*

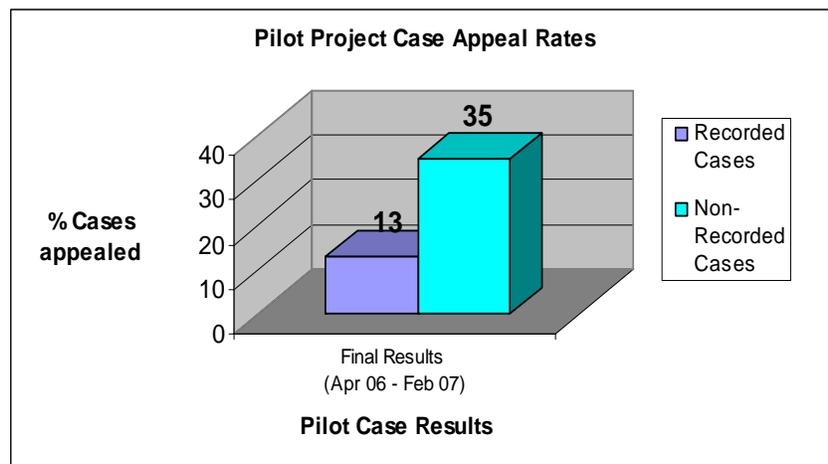
KJAP utilized a high-tech digital recording system that used a combination of four cameras and up to six microphones to thoroughly and accurately capture all aspects of a court case and provide a verbatim record. A vital feature was the system’s use of separate channels for each microphone, which produced a clear, high-quality audio record and enabled the system to clearly distinguish between different speakers during a trial. Other systems in use in Kazakhstan use one combined channel for multiple microphones and often produce garbled audio recordings due to overlapping speakers, which makes differentiating between speakers challenging. Four courtrooms — two criminal and two civil — at the pilot court were equipped with the video recording equipment, and four were not. This setup enabled KJAP to monitor and objectively compare case statistics.



93 percent of pilot court staff support the use of video recording in all courts of Kazakhstan.

The pilot project demonstrated that the video recording equipment had a significant

positive impact on the judicial process. Non-recorded cases were nearly *three times more likely* to be appealed than recorded cases. Trial participants were also significantly less likely to file complaints on the protocol [trial record] if the case was recorded. Judges and lawyers attribute these results to the fact that



when the video recording system is used, the trial progresses according to the procedural legislation, resulting in fewer, if any, violations. Judges and lawyers also reported that all trial participants were generally better prepared for trial — and acted more appropriately during trial — when they knew the video recording system would be used.

The lower appeal rates also showed that trial participants had more confidence that their trials were conducted properly and impartially. There is strong support among the general

public, the court staff themselves, and the Kazakhstani government for installing and using a court video recording system in all Kazakhstani courts to promote transparency of the judicial system, protect judges against false accusations in cases of unfavorable judgments, and fight corruption in the judiciary. Surveys of citizens who participated in a recorded trial indicate that 73 percent would have more trust in courts that use videorecording than those that do not, and 80 percent support the use of videorecording in all courts of Kazakhstan. Surveys given to pilot court staff (judges, court secretaries, court specialists, and bailiffs) indicated that 93 percent of them support the use of videorecording in all courts of Kazakhstan.

An added benefit of decreased appeal rates is a reduction of the court backlog, especially at the appellate level. Significant backlogs lead to delays in the case processing time, further eroding public support for the judiciary. Reduced backlogs thus lead to a more efficient administration of justice.

The pilot project generated substantial positive media coverage across Kazakhstan. This coverage served to educate Kazakhstani citizens on their judicial system and the many ways the judiciary is striving to better serve the public. For instance, a weekly Kazakhstani television program devoted almost an entire program to the pilot (see ‘No Third Option’ video in the Annex CD). News of the videorecording success even reached other countries. In June 2007, a delegation of Ukrainian Supreme Court judges visited Kazakhstan to learn more about videorecording and received a personal demonstration at KJAP’s pilot court. As a testament to the sustainability of the pilot project, pilot court staff led the demonstration for the Ukrainian delegation.

At the conclusion of the pilot project on February 2, 2007, USAID officially transferred ownership of the video recording equipment to the Kazakhstani judiciary.

As Kazakhstan seeks to reduce public corruption and increase public confidence in the administration of justice, rigorous internal recordkeeping, which places constraints on the opportunities to manipulate the judicial system, will remain central to government efforts. And as Kazakhstan prepares for its further integration into the global legal community, concrete improvements in judicial system operations — such as KJAP’s pilot project — will provide a crucial foundation for local courts to embrace the larger challenges of operating in compliance with the full range of international legal obligations.

KJAP’s pilot project produced valuable technical, training, procedural, and legislative “lessons-learned” to support an expanded use of court video recording technology. Recognizing the potential of the technology to support increased transparency, accountability, and independence, USAID subsequently launched an initiative in September 2007 to expand KJAP’s video court recording project nationwide. This Phase II program, which is expected to last two years, includes a considerable cost-share from the Supreme Court toward the purchase of additional video recording systems. The cost-share is a testament to the political will for reform in Kazakhstan and the partnerships that USAID has developed with the Kazakhstani judiciary.

Final Recommendations from the Pilot Project

Technical

- Evaluate, and if necessary improve, the electrical system in any court where the installation and use of a recording system is contemplated
- Appoint an on-site system administrator at every court equipped with recording equipment to address first-level technical issues
- Install anti-virus software on the recording system computers to protect them from malicious programs

Training

- Ensure court secretaries have sufficient computer and technical competence to successfully learn and use the recording equipment
- Incorporate a Training of Trainers element into any in-court training program so that future trainings of court staff can be done in-house by current staff

Procedural

- Determine the procedure and duration for retaining video records on the court server
- Provide sufficient and recurring funding to every court where the installation and use of a recording system is contemplated to enable the efficient operation of the recording system, for instance, to purchase CDs on which to save cases, and the envelopes to attach them to the hard-copy case files

Legislative

- Determine which cases, or categories of cases, will be recorded
- Determine the protocols for the preservation and long-term storage of CDs containing video records
- Determine the questions regarding the right(s) of parties to obtain a copy of a recorded case at the conclusion of the case
- Give the electronically created protocol official legal status

SECTION III

Judicial Independence, Transparency, and Accountability

For democracy and the rule of law to flourish in Kazakhstan, judges must be free of outside influence and secure in their independence. Through a diverse set of activities, KJAP promoted and increased judicial independence, transparency, and accountability.

Jury Trials

In January 2006, the president of Kazakhstan signed the new law on juries, paving the way for the introduction of jury trials. The law, which entered force on January 1, 2007, represents perhaps the most significant development in Kazakhstan's legal and judicial systems since independence.

Key Results

- Improved knowledge of Kazakhstani judges regarding jury trials
- Improved ability of the Kazakhstani judiciary to implement jury trials

The Kazakhstani jury trial system differs from the Anglo-American and Russian models in that the jurors deliberate with the judges on case verdicts and have a right to preview the case materials before the trial. Though international organizations such as the Organization for Security and Cooperation in Europe expressed skepticism about this arrangement (fearing that citizens would defer to the professional judges during deliberations), this development promises to promote greater citizen involvement in and understanding of the judicial system along with increased transparency and fairness of cases.

KJAP jury trial assistance focused on helping the judiciary prepare for the implementation of jury trials. In April 2006, KJAP organized an educational program with the U.S. Federal Judicial Center (FJC) in Washington, D.C., for a three-person delegation of Kazakhstani Supreme Court officials. The purpose of this two-day program was to provide the delegation with information and consultations on jury trials and their implementation. At the FJC, the delegation received information on the U.S. experience in instructing jurors on how to weigh evidence; juror behavior and confidentiality; administration of the housing, feeding, security, and compensation of jurors; preventing jury tampering; and avoiding discrimination in the selection of jurors. This intensive seminar provided the delegation with useful and timely information with which to understand the implementation process and anticipate some of the possible problems.

Leveraging its close relationships with the Kazakhstani Supreme Court, KJAP also organized a week-long study tour to Moscow in September 2006 for a delegation of 18 Kazakhstani judges. The delegation was composed of the chairman of the Criminal Collegium of the Supreme Court and a representative from the criminal collegia of each oblast court in Kazakhstan — the very courts tasked with implementing jury trials. The trip was financed through a cost-sharing agreement with the Supreme Court. When organizing the trip, KJAP benefited from the assistance of the Russian Judicial Reform

and Partnership (RJRP) Project, also implemented by Chemonics. RJRP and its two predecessor projects have been assisting the Russian judiciary for 10 years, and in that time Chemonics has established close relationships with all levels of the Russian judiciary. These relationships helped KJAP design a comprehensive and effective program.

In Moscow, the judges received hands-on training at Russia's premier judicial training centers and spent a full day watching jury trials in Moscow courts. The trip gave the judges a first-hand look at how jury trials work and better prepared them to implement this important new law. As evidence that the study tour reached the right people, one of the participants subsequently served as the presiding judge for one of the first jury trials in Kazakhstan, in the city of Aktau.



With support from KJAP, the Kazakhstani judiciary was able to begin successfully implementing jury trials in January 2007. Here, Kazakhstani judges get a first-hand look at a jury trial box during a study tour to Moscow in September 2006.

KJAP secured the Supreme Court's agreement to have the study tour judges lead trainings for their colleagues in their individual courts, thereby multiplying the impact of the initial study tour. KJAP supported this training by supplying each oblast court with a comprehensive jury trial training package, which included a useful compilation of Kazakhstani and international materials designed to serve as resources and educational tools for the judges, including case studies, practical articles, and academic pieces. One of the central training tools in the packages was a 55-minute mock jury trial (described in more detail in Section V, Public Education and Media Training), which KJAP produced in partnership with the American Bar Association's Rule of Law Initiative.

Judges Praise the Jury Trial Study Tour

"I'm extremely appreciative to USAID for receiving a deep understanding of the subject. You've done what we were not able to do by our own efforts." — *Study tour participant*

"[It was] a very useful study tour that will definitely facilitate Kazakhstani courts' jury trial implementation." — *Study tour participant*

"The materials and photos brought by our judge from the Moscow trip were very handy when designing the jury trial court room." — *Chairman of the Pavlodar Oblast Court*

Judicial Mentorship

Judicial mentorship was introduced in Kazakhstan in 2004 within the framework of a wider program of training young judges, and is a proven means of giving new judges continuing education on important

professional and personal topics relevant to serving as a judge. Most training programs for new judges are designed to develop their knowledge of law and trials, as well as their skills in applying legislative standards and conducting trials, but judicial mentorship recognizes that the judicial examination of a case is not only a professional skill but also an art. Therefore, mentorship for judges solves issues connected with judges' culture, values, and ethics, and the development of the judicial personality.

Key Results

- Mentorship program expanded to eight new oblasts
- More young judges able to take advantage of judicial mentorship

The mentorship program is a voluntary but structured program designed to promote contact between experienced and young judges on issues such as the transition into the new position, the judicial culture, judicial ethics, development of the individual, and the art and craft of judging. At the time KJAP started in 2005, only 2 of Kazakhstan's 14 oblasts had functioning mentorship programs. Working closely with the Union of Judges of Kazakhstan (UJK), which has responsibility for managing the program, KJAP sought to strengthen and expand the program so that newly appointed judges in more oblasts could benefit from it. Nearly half of all Kazakhstani judges have only a few years of on-the-job experience, and judicial mentorship is a useful way to provide them additional skills during the crucial early years.

Judicial Mentorship Program Expansion Map

- * Oblasts with functioning mentorship programs at the start of KJAP.
- Oblasts with new mentorship programs as result of KJAP support.
- Oblasts without mentorship programs.



Before beginning this roll-out though, KJAP had to educate judges about the difference between mentorship and “apprenticeship,” a mandatory program in which new judges are paired with senior judges in a strict and subservient relationship designed to monitor the judge’s performance. To do this, KJAP led a training session in March 2006 for the UJK Central Council and representatives from its regional branches, which generated significant enthusiasm for expanding the mentorship program.

FIRST PERSON

A Mentorship Gives Judges Confidence

Judicial mentorship helps both new and experienced judges alike



In addition to serving as a mentor herself, Judge Kuanova trains other senior judges on how to serve as mentors for new judges — a mutually beneficial relationship that helps the new judges adapt to their challenging new roles and exposes the senior judges to new ideas and thinking. Mentorship improves the functioning of the judicial system in Kazakhstan.

Inessa Kuanova has served as a judge in the North-Kazakhstan Oblast since 1998. As a new judge, she soon became familiar with the Soviet-era system of “apprenticeship,” in which new judges are paired with senior judges in a strict and subservient relationship designed to monitor the judge’s performance. However, a new model has developed in Kazakhstan.

Started with support from USAID, the judicial mentorship program stresses collegiality, openness, and information-sharing. Senior judges (mentors) are still paired with new judges (protégés), but the mentality and approach is different. The objective is to give new judges a genuine mentor during the challenging early years on the bench, during which they will have to make difficult legal and moral decisions on a daily basis. And due to the open nature of the relationship, new judges pass along fresh ideas and ways of thinking to their mentors, ensuring that the judiciary as a whole is constantly infused with new thinking.

After participating in a USAID training in early 2006 which exposed her to the mentorship program, Judge Kuanova quickly established the program in her Oblast. “I returned back to work full of new ideas and started to promote this program to our newly appointed and experienced judges.” She also became a mentor herself, and is proud of her impact. “My protégé became more confident, he feels comfortable communicating with elder colleagues and his court Chair, and he is proud of decisions he makes in the courtroom.”

“Mentoring for me means a way to utilize my own good qualities and share my experience. It’s a perfect opportunity to keep one’s mind open - I get tons of ideas from my young colleague which I never thought of.”

In September 2006, Judge Kuanova participated in another USAID training to enable her to train senior judges on how to be mentors. She now travels to other regions of Kazakhstan to expand the mentorship program. “Teaching is a complex thing, especially for the judiciary. Judges are conservative in learning new things and it is hard to make them practice new skills. USAID gave us the ability to do this though, by teaching us to train new mentors.”



After KJAP reinvigorated support for the mentorship program and trained judges from their court, the North Kazakhstan Oblast Court embraced the mentorship program as a training tool for young judges. The court organized a mentor-protégé ski race to strengthen the relationship between the mentor pairs.

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KJAP launched a two-part plan to strengthen and expand the program to new oblasts. The first part involved training a pool of judges to serve as “mentor-trainers” who would travel to the regions to train their colleagues in how to serve as effective mentors for newly appointed judges. This initial training, led in September 2006, produced a pool of enthusiastic judges eager to spread their knowledge of the mentorship program. The focus on enabling Kazakhstani judges to train new mentors — as opposed to relying on expatriate trainers — contributes to the sustainability of the mentorship program by providing the judiciary with the capacity to design and deliver mentorship trainings without external support.

KJAP and its newly trained judicial trainers led two regional trainings that together reached 36 judges from eight oblasts — Aktobe, Atyrau, Mangystau, West-Kazakhstan, Akmola, Kostanai, North-Kazakhstan, and Pavlodar. The trainings empowered the judges to serve as effective mentors for newly appointed judges. KJAP produced and shared with the judges a practical Mentor Guidebook (contained in the Annex CD) to support them in their new roles.

KJAP’s support has increased the number of oblasts with judicial mentorship programs from 2 to 10. The 36 newly trained mentors, in addition to the pool of new trainers, the training materials, and the invigorated support from the UJK, have strengthened the entire mentorship program.

Judicial Ethics and the Judicial Disciplinary Process

All judicial systems must be prepared to deal with breakdowns in discipline. To maintain high professional standards, judges must inspire public confidence by complying with a set of enforceable rules. For the judiciary to be worthy of the respect of the citizens of the nation and the world community, a consistent legal framework is necessary to regulate conduct. Such regulations should be comprehensive and clear, so that judges understand the standards to which they will be held accountable. Another aspect of maintaining high standards of judicial professionalism is the presence of an effective process and a body responsible for holding judges to these standards.

Key Results

- Progress made toward revising the current Code of Ethics to better reflect the Bangalore Principles
- Roadmap produced for revising the current Code

Present provisions of the Constitution, the Constitutional Law on the Judicial System and Status of Judges (one of the main legislative acts governing the judiciary), and other laws and regulations that establish the criteria for discipline and the bodies to investigate complaints and apply sanctions are somewhat inconsistent because they were developed at different times and in different contexts. On one hand, there exists a statutory set of government machinery for handling disciplinary inquiries, and on the other hand, the UJK has a set of ethical obligations and procedures for policing their enforcement. Ideally, the two could work in harmony, demonstrating that the judiciary can police itself and, when necessary, is able to subject itself to scrutiny at a higher level.

Furthermore, it should be noted that judicial ethics is a priority for the Kazakhstani judiciary and the international donor community. While ideally the judiciary should take the lead in this area, the current Kazakhstani Code of Judicial Ethics (Code) does not go beyond general statements of principle that provide little practical guidance. The entire Code is less than two pages in length. There is no commentary or analysis. Many issues are not covered. Fortunately, the UJK agrees that the document is outdated and does not reflect core ethical issues that arise in modern court systems (resulting from new court administration practices and information technology, for instance). That said, there is no current mechanism for making this a living or topical tool that influences the daily work of judges. In effect, the current Code is viewed simply as a background document that judges do not read or cite with any regularity.

KJAP therefore sought to improve both the judicial disciplinary process and the Code of Ethics, and prepared two comprehensive reports to support these goals. The first, produced in September 2006, included a detailed analysis of the current Code and judicial disciplinary process, a comparative analysis of both against international standards, and specific recommendations for improving both. A major component of the report was a proposed Code of Conduct, based on the internationally accepted Bangalore Principles of Judicial Conduct, and modified specifically for Kazakhstan. The report also included specific recommendations to the disciplinary process to improve judicial independence (the report is contained in the Annex CD).

Recommendations from KJAP's Report on Judicial Ethics and the Disciplinary Process

1. Replace the present Code of Judicial Ethics with one based on the universally accepted Bangalore Principles of Judicial Conduct, with the addition of language regarding *ex parte* communications to Application 4.3 of that Code. Additional recommendations for additions to, subtraction from, or clarifications of the applications in that Code may be considered by the Central Council of the UJK. It must be clear that the Code is applicable to all judges in the Republic of Kazakhstan, not only to UJK members.
2. The Central Council of the UJK should exercise its power under Article 2.2 of its Charter to review the suggested changes to Articles 33-46 of the Law provided in KJAP's report and to propose and advocate necessary legislative changes to the government and the Parliament. This should include consideration of whether the Judicial Ethics Commissions (JECs) and Disciplinary Qualification Collegiums (DQCs) should remain separate bodies or be consolidated into one Judicial Conduct Commission.
3. The Central Council of the UJK should exercise its power under Article 2.2 of its Charter to consider and advocate changes to regulations of the JECs and DQCs as recommended in KJAP's report for enactment by the relevant body or bodies.

KJAP shared this report with the UJK and the Supreme Court, and sent additional copies to each of the UJK's 16 regional branches, along with a survey to identify whether the proposed revised Code meets the contemporary needs of Kazakhstani judges. KJAP received nearly 500 surveys from judges across Kazakhstan, with the majority of respondents reporting that the current Code could and should be revised, and that the Bangalore Principles represent a useful model on which to base revisions of the Code.

KJAP organized a one-day roundtable with the UJK to discuss in greater detail the current Code and disciplinary process and KJAP's recommendations for each. The roundtable brought together representatives of the UJK Central Council and the head of each of the 16 regional branches. The roundtable participants unanimously agreed that the current Code "does not meet contemporary needs and requires significant improvements." They produced a roadmap for revising the current Code in anticipation of its adoption at the next Congress of Judges in 2009:

- Create a dedicated working group
- Develop a new draft Code by September 1, 2008, which takes into account existing legislative norms, KJAP's proposals, and international standards such as the Bangalore Principles
- Disseminate the proposed Code to the judiciary and international experts, and solicit and incorporate their feedback
- Adopt the new Code at the Congress of Judges in 2009

While much of this work will continue after KJAP's Phase I has ended, these developments represent tangible steps toward improving judicial ethics and the judicial disciplinary process in Kazakhstan.

The second report, also submitted in September 2006, dealt with a set of proposed amendments to the Constitutional Law on the Judicial System and Status of Judges (Constitutional Law). The report is contained in the Annex CD. Throughout much of

2006, senior government and judicial officials drafted a series of proposed amendments and changes to the Constitutional Law designed to clarify and strengthen the guarantees and roles of judges, including the following:

- The power to dismiss or refer requests made on cases contrary to proper legal procedure
- Strengthening anti-corruption and ethics provisions
- Changing the criteria necessary to become a judge
- Requiring a proof of physical fitness
- Enhancing social benefits.

Given its mandate to assist the Government of Kazakhstan with its ongoing judicial modernization efforts and the potential impact of the proposed amendments on the structure and operation of the judicial system, KJAP agreed to the Supreme Court's request to analyze the proposed amendments and provide an assessment of, and recommendations on, the amendments.

KJAP's assessment found that the proposed changes were, with only a few exceptions, logical and acceptable, and the project offered recommendation on a few areas. KJAP also made recommendations on several areas not contemplated in the proposed amendments. KJAP's analysis revealed several areas where the amendment process represented an opportunity to support the Government of Kazakhstan's ongoing judicial modernization efforts, and the report suggested other considerations that could be addressed through the proposed amendments package. These considerations addressed four main topics:

- The judicial selection process
- The legal and regulatory framework for judicial disciplinary procedures
- Judicial immunity
- Judicial transparency

It was KJAP's belief that the report's recommendations would, if enacted, allow the judiciary to (i) accelerate the modernization process and (ii) address certain issues that have been raised as concerns by international authorities, such as the UN Special Rapporteur on the Independence of Judges and Lawyers. Amendments of this nature could demonstrate visibly Kazakhstan's commitment to reduce the judiciary's potential to be susceptible to the influence of other branches of government and make an internationally recognized statement of Kazakhstan's commitment to increasing judicial independence and the fair administration of justice.

After submitting the report to Parliament and the Supreme Court in September 2006, KJAP held several meetings with members of the joint Senate-Mazhili working group established to finalize the legislation, and also with the Supreme Court. After several months of intra-Parliamentary debate however, the draft law was submitted unchanged to the president in December 2006, and the president promptly signed it. KJAP found that the judiciary's focus was weighted toward those amendments designed to enhance social

benefits (increasing severance and pension benefits, increasing life insurance benefits in the event of death during official duties, and increasing disability insurance benefits in the event of injury during official duties) to the exclusion of other substantive areas. While KJAP views this as a lost opportunity for the judiciary to accelerate its modernization efforts and address certain issues of international concern, KJAP did succeed in elevating these issues to a high level within Parliament and judiciary. This attention contributed to the UJK's enthusiasm to embrace the changes to the ethics process described above.

Strengthening the Union of Judges of Kazakhstan (UJK)

The rule of law depends on the strength and capacity of several institutions that play a key role in the functioning of the judicial system and the work of judges. These institutions

are at the heart of structures and processes that ensure democracy, free markets, transparency, and the rights of citizens. Many are governmental in nature, such as bodies that select/nominate/approve judges or oversee administration of the courts. Others, while officially sanctioned, are more along the lines of professional societies. Associations of judges and the bar fall into this latter category. Often, these institutions have a significant role to play in the elaboration and enforcement of ethical standards. The ethical standards of legal professionals are key to a fair judicial system that efficiently renders decisions on the basis of laws and facts and enjoys the confidence of citizens.

Key Results

- A strengthened Union of Judges, with members better able to advocate for judicial independence and improve member services

In many countries, associations of judges perform important and valuable functions by furthering the interests of judges, professionalizing and enhancing their work, and promoting ethical conduct. These activities serve the interests of the judiciary by promoting equity, fairness, and transparency, and by enhancing the reputation of judges. In addition, when the judiciary is unable to play a leading role in the enhancement of its own standards of conduct, this function falls into the hands of the executive branch and/or prosecutorial institutions. This can leave judges more vulnerable to outside/improper influence, undermine the independence of the judiciary, and compromise the separation of powers. Thus, the ability of a judicial association to police its own members is vital to judicial independence and establishing a reputation for integrity.

Unfortunately, the traditional Soviet format for associations of judges has tended to persevere in many of the Newly Independent States that emerged from the Soviet Union. The result is often a more hierarchical organization of a formalistic nature that is not highly oriented toward member services or rigorous professional standards. Under these circumstances, associations of judges may have a less significant and less clearly defined role in the functioning of the judicial system. Further, despite high levels of membership, individual members may take a more passive and less participatory approach. Finally, the executive branch of government or prosecutorial institutions might exert undue influence. In some countries, the disciplinary system is used as a tool to influence the work of judges and to “supervise” their decisions in specific cases. In such cases, it is essential to

provide institutional strengthening to enable the judges' associations to promote and achieve independence and effectively serve the interests of their members.

The UJK is a voluntary judicial association of which the majority of Kazakhstan's judges are members. The UJK exists to protect and advance the interests of Kazakhstan's judges. Since its founding in 1996, the UJK has established a nationwide presence through its 16 branch offices and a reputation among judges as a useful and effective organization.

At the same time, the UJK has enormous unrealized potential to strengthen and improve the services it provides its members. A concerted effort of institutional strengthening would enable the UJK to more proactively and effectively advocate for the rights and independence of judges, police its members, and provide valuable training and educational opportunities to judges across Kazakhstan. This was the belief that guided KJAP's institutional strengthening activities with the UJK.

In September 2006, KJAP submitted to the UJK an official report containing the project's recommended institutional strengthening areas for the UJK. The report — which was a product of a thorough assessment of the UJK performed by a KJAP judicial expert, and several subsequent months of consultations between KJAP and UJK staff — produced seven recommendations, or priority areas, for action:

- Strengthening its identity
- Enhancing its institutional strength and capacity
- Performing work planning
- Expanding its advocacy and outreach
- Solidifying its work to promote professional qualifications
- Intensifying its international relationships
- Creating systems to ensure appropriate information management



KJAP's institutional strengthening training for the UJK helped it define its goals and objectives for the future, such as preparing a list of possible future activities to benefit Kazakhstani judges.

To support the achievement of these goals, KJAP delivered a two-day training session for the UJK Central Council and the head of each of the 16 regional branches. Led by highly regarded association development experts, the training was the first of its kind to help the UJK strengthen and improve its operations. The content was in many ways novel for the participants, as they were somewhat unaware of what a judicial association could do for them and the judiciary. By and large, the UJK participants were enthusiastic about the prospects of further developing their organization and produced several distinct recommendations for future action:

- Create a website for the UJK to serve as a resource for judges and as an educational tool for the public
- Develop a list of priority activities and identify possible sponsors, such as international donor organizations
- Improve information flows from the regional branches to the Central Council
- Research the possibility of creating service quality standards for the UJK
- Organize more frequent events to discuss the UJK's activities and plans, with the participation of the Central Council and regional branches

Key Results

- A strengthened Institute of Justice, better able to prepare judges to properly administer justice

While the UJK has further improvements to make to become a forceful and effective advocate for the rights and independence of judges, KJAP's support has strengthened it as an organization and set it on a path on which it can realize its goals.

Strengthening the Institute of Justice

The Institute of Justice is the primary judicial training center in Kazakhstan and currently provides an intensive two-year training course for approximately 45 new judges every year (the Magistrature Program) and continuing legal education to several hundred sitting judges annually. KJAP strengthened the Institute's administrative, technical, and academic capacities, thereby helping it prepare judges to properly administer justice.

The Institute was founded in 2001 and began work in 2002. Throughout most of the Soviet period, judicial training was provided by the Ministry of Justice, and, in the mid-1990s, by Kazakh State University, which had a special faculty to train the judiciary. The development of the Institute was welcome and necessary, as it established a permanent institution to provide judicial training.

In its early years the Institute developed quickly and benefited from technical assistance provided by the European Union. In May 2005, a presidential decree combined the Institute, the Academy of Civil Servants, and the Diplomatic Academy together under a new structure, the Academy of Public Administration, under the president of the Republic of Kazakhstan. Accordingly, jurisdiction over the Institute was transferred from the Supreme Court to the executive branch. The Institute also relocated from Almaty to Astana in August 2006, a move which resulted in the departure of its entire staff.

The transferal underneath the umbrella of the Academy of Public Administration, and the staff departure, posed serious challenges for the Institute. While KJAP supported the Institute by recommending potential staff and assisting with interviews of potential candidates to ameliorate the loss of valuable knowledge and skills, the placement of the Institute within the executive branch raised concerns about the independence of judicial training. KJAP initially sought to address these concerns by undertaking a comprehensive analysis of the legal and budgetary consequences resulting from the transferal. KJAP also completed reviews of the Institute’s teaching methodologies and other academic and administrative documents.

With this analysis completed, KJAP provided the Institute with nearly two dozen written recommendations and conclusions aimed at strengthening and improving the Institute’s internal operations. These documents included organizational charts, new job descriptions, Magistrature Program Admission Rules and Regulations, and Recommendations on Increasing the Status of the Institute of Justice.

Collectively, these written recommendations and conclusions, coupled with the often on-site support provided by KJAP, strengthened the Institute’s internal operations, thereby improving its ability to deliver quality judicial education to future and sitting judges. As a result of the Institute’s move to Astana in August 2006 and the subsequent departure of its entire staff, this support was instrumental as the Institute worked to quickly resume its normal judicial training functions. New staff arrived to find existing policies, procedures, regulations, and other operational documents — many created with KJAP support — that allowed them to quickly start performing their new functions.

KJAP also designed and delivered two trainings specifically for Institute faculty and staff — one on distance learning and one on improving the teaching skills of the Institute’s faculty. KJAP also shared with the Institute a project-produced training module on legal reasoning and the drafting of judicial decisions for inclusion in the Institute’s regular curriculum. These trainings, described in more detail in Section IV Training, improved the Institute’s technical and academic capacities, thereby contributing to its ability to prepare judges to properly administer justice.

National Judicial Education Strategy

Over the past 15 years, Kazakhstan has made considerable progress in the quality and breadth of its judicial education capacities. To continue to improve these capacities, the judiciary set out to create a complete, thorough, and holistic five-year strategy to guide Kazakhstan’s efforts and improve results. The Supreme Court requested that KJAP prepare a draft of this strategy. In doing so, KJAP identified 10 themes that will contribute to the improvement of judicial education in Kazakhstan:

Key Results
<ul style="list-style-type: none">• Helped the Supreme Court develop a national judicial education strategy to improve and rationalize judicial education

- Improve and standardize legal education provided at law faculties
- Attract and retain the most qualified persons for service on the bench
- Develop a standardized program of initial training for judicial candidates
- Develop advanced and specialized training opportunities for sitting judges
- Develop an effective training program for non-judicial court personnel
- Support the development of the Institute of Justice
- Expand the judicial mentorship program
- Develop the use of distance education technology
- Develop systematic distribution of laws, regulations, and other relevant reference materials to judges and non-judicial court personnel
- Support international judicial relations

KJAP’s strategy subsequently formed the basis of the Supreme Court’s draft national strategy, which the Court vetted with other government and private sector stakeholders. As of the production of this report, the Supreme Court was still finalizing this strategy.

Private Enforcement of Judgments

The public’s trust and confidence in the judiciary is a significant measurement of a well-functioning judiciary. When the courts are unable to, or incapable of, enforcing the judgments they render, the public’s perception of the institutions’ utility diminishes. Unfortunately, Kazakhstan is grappling with the enforcement of judgments. Enforcement bailiffs currently struggle with caseloads averaging between 300 and 400 cases a month, and some estimates indicate that 50 percent of civil judgments are never enforced. This not only diminishes citizen respect and trust in the courts but jeopardizes Kazakhstan’s full integration into the larger global marketplace because foreign investors may choose to await a point when they consider the local court system fully capable of bringing commercial disputes to a final resolution. This issue thus represents a more general threat to the viability of the judicial system.

Key Results
<ul style="list-style-type: none"> • Improved prospects for the development of a private enforcement model in Kazakhstan • Linkages developed to leading international practitioners of private enforcement

In 2006, Kazakhstan signed into law changes designed to improve the state enforcement of judgments. They simultaneously began to explore the development of a private enforcement mechanism. Such a development would have the ability to revolutionize judicial enforcement in civil cases and dramatically increase the efficacy of the judicial process. At the request of the Supreme Court, KJAP supported the judiciary with this task.

In April 2006, KJAP sponsored three officials from the Kazakhstani Supreme Court to attend the 19th International Conference of the International Association of Judicial Officers (UIHJ), the leading body in the world working on the private enforcement of judgments. KJAP sponsored these officials to attend the conference, held in Washington,

D.C., so that they could partake in discussions concerning the private enforcement of judgments at one of the foremost events in this field.

Following the conference, the judiciary presented a draft law on the private enforcement of judgments to the Legal Policy Council under the president's Administration. The presentation was favorably received and the Council requested that the judiciary prepare a concept paper supporting the draft law. To bolster this effort, KJAP provided technical expertise on the following issues: the draft law's goals and objectives; the current judicial and legal areas in need of improvement vis-à-vis the private enforcement of judgments; measures to protect the rights of parties to the enforcement proceedings and balance the interests of the recoverer and the debtor; the enforcement of judicial and other court acts on a private basis through the recoverer's free will in civil cases; the list of court orders, the enforcement of which shall be done only by state bodies; the elimination of the possibility for private judicial officers to use coercive measures; the mechanism enabling the private enforcement institution to function; and areas of expanding the procedural judicial control over judicial and other legal acts of enforcement.

The judiciary continued to lobby Parliament to include the draft law into the legislative calendar, but while it has received positive verbal assurances, no official hearing has occurred.

As a result of the connections made in the Washington conference, a European Union (EU) project working to help Azerbaijan develop a private enforcement model invited a senior Kazakhstani judicial representative to participate in a conference in Azerbaijan (all expenses paid by the EU project) and deliver a presentation to the conference participants on Kazakhstan's development of the private enforcement mechanism. KJAP provided logistical support to enable this official's participation. At the Azeri conference, the Kazakhstani official was able to hold substantive discussions with counterparts from several countries with experience in the enforcement of judgments. The Kazakhstani official also renewed contact with counterparts from the UIHJ and made plans with them to hold a joint international conference on the private enforcement of judgments in Kazakhstan in June 2007. This event, which occurred over two days in June 2007, was completely organized by the Kazakhstani judiciary and the UIHJ and included delegations from France, Holland, Latvia, Russia, Belarus, and Tajikistan. The conference helped Kazakhstan cement relations with other countries with active or planned private enforcement systems and bolstered Kazakhstan's international stature regarding the private enforcement mechanism.

To continue to support its enforcement of judgments efforts, Kazakhstan created the Union of Judicial Officers, which is the first of its kind in the Commonwealth of Independent States. In Kazakhstan, the term judicial officer refers to those members of the judiciary tasked with enforcing judgments. The Union is a voluntary association whose primary mission will be to advocate on behalf of judicial officers. Within weeks of its creation the Union opened branch offices in each of the 14 oblast courts, and in the cities of Almaty and Astana.

Although many factors contribute to recent developments of the private enforcement of judgments, KJAP's support of the judiciary — exposing members to international best practices, providing them with tailored reference materials, linking them to practitioners from all over the world, and leveraging external funds for enforcement-related activities — bolstered Kazakhstan's efforts to develop a private enforcement mechanism.

SECTION IV

Judicial Training

Increasing the knowledge of Kazakhstan’s judges will enable them to administer justice more effectively, ethically, and transparently. To further this goal KJAP designed and delivered a variety of judicial trainings. The trainings described below are in addition to the numerous trainings mentioned previously, which were designed to support a particular program objective (for instance, the regional trainings to expand the mentorship program). In total, KJAP trained 447 (225 men and 222 women) judges, court staff, and journalists.

Training for Regional Training Coordinators

In the spring of 2006, the judiciary created the position of regional training coordinator to support the identification and delivery of judicial training in Kazakhstan. The training coordinators (one per region) are judges who voluntarily gather information in their region about the specific training and educational needs of local judges, work with the Supreme Court to oversee the delivery of the necessary training, and then monitor and evaluate the impact of the training.

Key Results

- A sustainable capacity created within Kazakhstan for the design and delivery of judicial training country-wide, managed by the Supreme Court

However, several months after the positions were created, regional training coordinators still hadn’t received any training on how to complete their important new jobs. To support the improvement of judicial preparation and the continuing education of judges on a long-term basis, KJAP designed and delivered a training course for the 17 judges who had recently assumed the training coordinator position. The training taught the judges how to accurately determine their region’s judicial training needs, deliver the trainings, and monitor their impact. Topics covered included how to conduct a needs assessment, identify the appropriate trainers, use adult and interactive teaching methodologies, and use monitoring and evaluation tools. The content was ideal for the judges as it exposed them to international best practices in judicial education.

The training provided judges across Kazakhstan with the ability to determine and deliver much-needed training to their colleagues and contributed to the building of a sustainable capacity within Kazakhstan for the design and delivery of judicial training country-wide.

Legal Reasoning and Decision Drafting

The quality and clarity of court decisions is a key element of judicial transparency and accountability, particularly when judges provide a

Key Results

- Improved judicial transparency and accountability through the improved quality and clarity of court decisions

clear and reasoned basis for the decision. To increase judicial transparency and accountability, KJAP led a training course on decision drafting and legal reasoning for a diverse group of approximately 90 participants, including 45 students in the Magistrature Program of the Institute of Justice, 25 sitting judges from rayon courts across Kazakhstan, justices of the Supreme Court of Kazakhstan, and faculty of the Institute of Justice. The course exposed the participants to the international norms of decision drafting and legal reasoning and presented a combination of the best Kazakhstani and international practices. By including the Institute’s own faculty, the course also strengthened the Institute’s training capacity.

KJAP produced a version of the course materials to be submitted to the Institute of Justice for inclusion in its normal curriculum. The Supreme Court also requested the materials so they could be distributed to the regional training coordinators. This

Increasing Judicial Capacity through Value-Added Materials
 “[The training package] will be very useful for the regional judges; they need to become familiar with the international experience of legal reasoning and decision drafting. We also plan to place the entire training package on the Supreme Court’s website.”
 — Justice Suleimenova of the Kazakhstan Supreme Court, training coordinator for the Supreme Court and overseer of the 17 regional training coordinators

training package included an introductory exercise on legal reasoning and logic, 22 examples from the United States and Europe of well-reasoned and well-written decisions from a variety of legal areas (contracts, tax, theft, succession, etc.), as well as an edited version of the PowerPoint presentation originally presented at the November training. The decisions in the package were carefully selected to be of the most value to readers. The chosen decisions varied in length, type, and jurisdiction, and spanned more than 130 years of jurisprudence. The training package is contained in the Annex CD.

Through the regional training coordinators and the Institute’s regular training, the course will become a sustainable training tool for many more judges.

Training-of-Trainers (TOT) for the Institute of Justice

One of the goals of KJAP’s support of the Institute of Justice was to increase the Institute’s internal training capacity, thereby creating a sustainable capacity within the

Key Results

- Improved training capacity of the Institute of Justice
- Increased number of judges able to train others

Institute to provide recurring, professional-level training for judges and other judicial staff. This training-of-trainers (TOT) support was designed to directly contribute to the Institute’s effectiveness in preparing judicial officers to properly administer justice. The Institute’s loss of its entire staff during its relocation to Astana and the hiring of new faculty necessitated the TOT activity — providing new instructors with interactive and adult-specific teaching skills — to improve the Institute’s teaching quality and capacity.



KJAP’s training-of-trainers support to the Institute of Justice gave its faculty new skills in modern and interactive teaching techniques.

At the training, the Institute faculty — composed of full-time trainers and also current Supreme Court justices who serve as adjunct professors at the Institute — were taught the fundamentals of adult-specific teaching and trained on modern and interactive teaching skills. Specific topics included research needs for training, resource support for the curriculum, presentation techniques, teamwork methods, brainstorming, technologies for idea generation, technical aspects for conducting interactive games, how to organize activities, and strategies for situation management.

By increasing the Institute’s training capacity, KJAP helped to create a sustainable capacity within the Institute to provide recurring, professional-level training for judges and other judicial staff. A follow-up survey completed several months after the training indicated that more than 80 percent of the participants were applying techniques they learned in the training in their current positions.

Distance Learning

Given the vast size of Kazakhstan and the challenges of continually training judges and non-judicial personnel across the country, distance learning technologies hold enormous potential for supporting the judiciary’s training goals. In June 2007, KJAP delivered a two-day training session for faculty and staff of the Institute of Justice and six Supreme Court justices on the use and development of distance learning. KJAP used a team of two experts to provide training in distinct, yet complementary, areas of distance learning: 1) adult learning skills and subject matter-related teaching methodologies and 2) technology tools and solutions to target a wide audience.

Key Results
<ul style="list-style-type: none">• Progress made toward the development of a distance learning program

The training invigorated the participants and helped the Institute and Supreme Court identify the specific steps and resources necessary to launch an effective distance learning program. As a result of the training, the Supreme Court announced its intention to install the distance-learning software in all the courts of Kazakhstan. As of the production of this report, this process was commencing.

Benchbook

A benchbook is a compilation of useful materials intended to help a judge perform his/her duties.

Previously judges in Kazakhstan only

had access to a Russian-language benchbook. To assist judges who are more comfortable with — and who hear cases in — the Kazakh language, KJAP translated the Russian language benchbook into Kazakh and delivered copies to each of the 17 oblast courts, the Supreme Court, and the Institute of Justice. The new benchbooks were produced in a loose-leaf format to enable easy updates in the future. KJAP also provided the recipients with electronic copies of the benchbook on CD-ROM. A copy of the benchbook is contained on the Annex CD.

Key Results

- Improved resources provided to judges

SECTION V

Public Education and Media Training

USAID/CAR’s strategy recognizes that the public must be made aware of the possibilities available, and popular demand for reform must be increased in order for change to occur. To inform and educate Kazakhstan’s citizens on judicial issues and increase their demand for a fair, independent, and ethical judiciary that responds to their needs, KJAP implemented a public awareness campaign using a variety of tools. KJAP also worked to improve coordination and the flow of information between the media and judiciary on topics such as case decisions, legal issues, and other matters of interest to the public. Better coordination between the media and judiciary will increase judicial transparency and improve the media’s coverage of the judiciary and the public’s knowledge and perception of it.

National Public Education Campaign

A judicial system is the least understood branch of government in many countries. The structure, intent, and inner workings of the courts are often confusing to average citizens, a condition exacerbated in countries of the Former Soviet Union in which the judiciary was in many ways a “closed” system not predisposed to transparency and customer service. As such, Kazakhstani citizens have little knowledge of the judiciary and the vital influence it has on their lives. They are likewise uninformed about efforts to overcome corruption in the judiciary, the trial process, and the effect the introduction of jury trials will have in Kazakhstan. Cumulatively, these perceptions and the negative Soviet legacy have produced a populace with little confidence in its judiciary.

KJAP designed and implemented a national public education campaign to inform and educate Kazakhstan’s citizens on judicial issues and increase their demand for a fair, independent, and ethical judiciary that responds to their needs. The core of the campaign focused on 13 informative articles, which were written to be interesting and easily understandable to the average reader. KJAP distributed 50,000 copies of a 71-page brochure containing the entire collection of articles in both Russian and Kazakh. The brochures were placed in every

Key Results

- Citizens exposed to, and educated on, a broad range of judicial issues

Topics of KJAP’s Public Education Articles (see Annex CD)

1. General Organization of the Judicial System of the Republic of Kazakhstan
2. Jury Trials
3. Jurors
4. Parties to a Trial
5. Rights and Responsibilities as a Plaintiff in Court
6. A Defendant in Court
7. Rights and Responsibilities as a Victim in Court
8. Rights of an Accused in Court
9. Judicial Ethics
10. Proceedings of Civil Cases
11. Civil Suits on Criminal Cases
12. A Chance to Appeal: Appellate and Supervisory Proceedings
13. New Courts in Kazakhstan: Economic and Administrative Courts

court in Kazakhstan to be readily available to court visitors. KJAP also formed an alliance with 9 Kazakhstani nongovernmental organizations located around the country to distribute the brochures to their clients. The nongovernmental organizations include media, legal, human rights, and youth organizations, which collectively work with journalists, courts, high school students, universities, libraries, and citizens. The involvement of civil society increased the campaign's exposure and made it locally owned and sustainable.



KJAP's educational brochures are helping educate Kazakhstani citizens about their judicial system.

To coincide with the launch of the brochures, KJAP broadcasted five separate public service announcements (PSAs) on national radio, and published a selection of the articles in newspapers across the country. The radio PSAs reached 1.7 million listeners and the newspaper articles reached 160,000 readers each week. Both the PSAs and newspaper articles referred people to the Supreme Court's website, where the entire collection of articles was placed. The articles and radio PSAs can be found on the Annex CD.

As an additional public education tool, KJAP partnered with the American Bar Association's Rule of Law Initiative (ABA/ROLI) to produce a mock jury trial to educate Kazakhstani citizens about the recent introduction of jury trials in Kazakhstan. The program was broadcasted on a leading national television channel. USAID media contractor Internews also broadcasted the mock trial five times on its Central Asian satellite channel, reaching 15 million viewers. KJAP and ABA/ROLI recorded the mock trial in the Almaty City Court and secured the participation of two professional judges to preside over the trial. A full complement of 25 prospective jurors (as required by Kazakhstani law), witnesses, and a defense lawyer and prosecutor were also recruited to participate. The mock trial video can be found on the Annex CD.

Training for Judges, Journalists, and Court Press Secretaries

Many members of the media are unfamiliar with the judiciary and view it with suspicion. This condition is exacerbated by a judiciary that is selective in releasing information and likewise views the media with suspicion. Many members of the

judiciary are openly critical of the media and do not take advantage of the opportunity — and their responsibility — to inform the public of the judicial process. This condition leads to an inappropriately small amount of press coverage of the judiciary — coverage which is often negative, biased, and of poor quality. This situation prevents Kazakhstani citizens from learning about their judicial system and the efforts underway to reform it.

Key Results

- Improved ability of judges and court press secretaries to engage and cooperate with the media
- Improved ability of journalists to effectively report on judicial issues

KJAP participated in a one-day roundtable jointly organized by the UJK and the Union of Journalists, focused on improving collaboration and cooperation between the media and the judiciary. Participants included judges, journalists, and court press secretaries from across Kazakhstan. KJAP was invited to participate as the roundtable’s objectives coincided with one of KJAP’s main goals: to facilitate a more open exchange of information and develop an ongoing dialogue that will increase transparency and accountability in the judicial system. KJAP agreed to participate and enlisted the services of a U.S. court-media expert to deliver several presentations at the roundtable.

KJAP’s expert delivered presentations at the roundtable focusing on the importance of judicial openness, the U.S. experience in court-media relations, and tools for formalizing and improving judicial-media relations. KJAP’s participation was valuable for the judges, journalists, and court press secretaries in attendance as it contributed useful lessons learned about ways to improve judicial-media relations, and ways for the courts to educate the media on judicial issues, particularly through the use of printed informational materials.

KJAP also trained Kazakhstan’s 17 court press secretaries on topics including how to prepare for and handle a media interview, prepare press releases and media advisories, and create useful court education publications. One of the most useful tools was the KJAP-produced Media Relations and Public Outreach Handbook for Judges and Court Personnel. This 45-page handbook is a practical tool filled with tips, checklists, and other valuable information to enable court staff to improve their dealings with the media and the quantity and quality of their public education efforts (see the Annex CD).

“The [Media Relations and Public Outreach] Handbook helps me build a constructive dialogue between courts and media, and resolve problems.” — *A Kazakhstani Court Press Secretary*

KJAP’s support of judges, journalists, and press secretaries facilitated a more open exchange of information and developed an ongoing dialogue that will increase transparency and accountability in the judicial system. By giving the press secretaries the tools to proactively engage the media and educate the public, a greater amount of

information will flow to the public, thereby increasing judicial transparency and the public’s knowledge of its judicial system.

Bench-Media Forum

A Bench-Media Forum (the Forum) is a tool used successfully in many countries to improve collaboration and cooperation between the media and judiciary. Typically composed of equal numbers of judiciary and media members, Forums are designed to meet regularly to discuss issues of cooperation and information sharing. KJAP supported the creation of the Bench-Media Forum of Kazakhstan, whose first meeting occurred in Almaty in April 2007.

Key Results
<ul style="list-style-type: none">• New forums created to improve judicial-media relations

Nearly 20 members of the judiciary and media attended the initial meeting of the Forum. At the initial meeting, KJAP briefed participants on the importance of judicial-media cooperation, the fundamentals of the Forum, possible issues for the Forum to focus on (media access to courtrooms, constraints on judges in talking about pending cases, etc), and possible activities the Forum could implement (“law school” for journalists, a handbook for journalists on the court system, etc).

The Forum participants pledged to support this new body and create one Forum in Almaty and one in Astana. These two groups will meet individually several times per year and participate in at least one joint session annually. The UJK and Union of Journalists subsequently held the first meeting of the Astana Forum in June 2007.

If the Forum is successful, it can enable better and more frequent exchanges of information, which ideally will lead to fairer reporting, an increase in judicial transparency, and an improvement in the media’s coverage of the judiciary and the public’s knowledge and perception of its judicial system.

Court Customer Satisfaction Surveys

While donor assistance has been provided to improve the capacity of the judiciary itself, public perception of judges remains negative and citizens’ trust and confidence in the judicial system is still low. Thus, measuring and improving the public opinion of the judicial systems remains a crucial issue. As there has been no concerted effort to solicit and measure the general public’s opinions on their interactions with courts, KJAP implemented a pilot project to place Court Customer Satisfaction Surveys in four Kazakhstani courts — two oblast courts and two rayon courts.

Key Results
<ul style="list-style-type: none">• Detailed information gathered from the public about their impressions of court operations in the pilot courts• Public provided an avenue to share their opinions of court operations• UJK provided with recommendations on how to improve court operations

The purpose of the surveys was to gather opinions and comments from court users to help measure the quality, performance, and effectiveness of the courts and their

services. The surveys were also intended to give citizens a voice and create a more active and concerned populace that will have higher expectations of its judicial system to be fair, responsive, and accurate. KJAP implemented this activity in cooperation with the UJK to ensure that the initiative was locally owned and driven, and thereby contributed to the enhancement of the UJK's capabilities and prestige.

Over two weeks in February 2007, KJAP placed surveys and secure collection boxes in two oblast courts, the Akmola and the Zhambul courts, and in one rayon court in each oblast, the Kokshetau City Court in the Akmola Oblast and the Taraz City Court #2 in the Zhambul Oblast. These locations provided coverage of the southern and northern regions of Kazakhstan. Shortly after the survey boxes and blank forms were placed in the four courts, citizens were completing surveys. KJAP also worked with the oblast court press secretaries to generate media coverage of the pilot project. Several local newspapers subsequently carried positive stories about the project in both oblasts. The survey boxes were conveniently placed in the lobbies of the respective courts where they were easily accessible to court visitors. Court staff regularly collected the surveys and forwarded them to KJAP for analysis.

More than 40 surveys were submitted during the three-month pilot. While this number is lower than expected, we attribute it to the novelty of the pilot project to the average Kazakhstani citizen who is unaccustomed to providing feedback to their government; nor do individuals have an expectation that their government is open to such feedback.

An analysis of the surveys indicated that citizens' primary concerns dealt with long delays, a lack of customer service and professionalism on the part of court staff, and questions concerning the fairness of trial processes. For instance, as regards service delays, surveys from the Zhambul Oblast Court indicate that the court might find it useful to review its systems and staffing resources because 67 percent of respondents experienced long delays and only 40 percent believed that the court was adequately staffed. Similarly, 67 percent of respondents at the Taraz City Court #2 reported long waits for service and only 33 percent believed the court was adequately staffed. On the other hand, surveys from the Akmola Oblast Court and Kokshetau City Court indicated less customer dissatisfaction with the time required for service with 39 percent and 43 percent of respondents, respectively, reporting long waits for service. With respect to the adequacy of court staffing, the respondents from these last two courts believed the courts were adequately staffed, 69 percent and 57 percent, respectively.

This analysis formed the basis of a report KJAP submitted to the UJK, which contained several recommendations, including the following:

- Explore more and better signage in the Russian language
- Provide training to court staff on customer service
- Include customer service in court staff yearly evaluations
- Conduct an analysis of reasons for long waits, e.g., backlogs, insufficient court staff, excessive processes and documents
- Notify customers in a timely and polite fashion of scheduling delays and changes

- Identify what processes take the most time and determine whether more staff and what kind of staff will resolve long wait time or if procedures could be simplified to decrease processing time
- Expand the customer survey process throughout all courts in Kazakhstan and ensure appropriate resources and knowledge of staff
- Post survey results in UJK publications or on the Supreme Court’s website to allow the public and other judicial personnel to monitor court performance

As of the writing of this report, the UJK was still reviewing these recommendations. The report is contained in the Annex CD.



KJAP’s Court Customer Satisfaction Survey project gave citizens a voice in their judiciary.

SECTION VI

Best Practices and Lessons Learned

Programmatic

Reach the regional judges

Given that more training — delivered by the judiciary and the donor community — are hosted in Almaty and Astana, it is not unexpected that often the same judges from these cities are present at these trainings. They are also the judges who have the most exposure to the international community. However, Almaty and Astana represent a fraction of the judiciary and the greatest need for trainings is in the regions. As such, it is in the donor community's interest to reach out to and include the regional judges to the extent possible. This can be done by holding trainings in the regions. KJAP had great success in delivering trainings in various regions of Kazakhstan and inviting judges from the surrounding regions. This approach was far more cost effective than bringing all participants to Almaty or Astana, and allowed the project to reach more judges than would have been possible if trainings were only delivered in Almaty or Astana.

Use current or former judges for short-term assignments when situations warrant

Judges around the world view their judicial counterparts from other countries very highly. However, KJAP noted that on occasion project counterparts had a tendency to discount information delivered from trainers who were not judges. Their rationale can be summarized as follows: "If you are not a judge, how can you teach me about being a judge?" While in certain instances this may be valid, there are instances in which non-judges can and should deliver trainings. However, KJAP recognized this bias and used current or former judges for certain activities.

Be flexible: Take advantage of timely developments

Projects must always develop and adhere to their work plans. However, opportunities for new project work often emerge, particularly within a judicial system that is still developing. For example, new positions or institutions may be created or legislation may change. When applicable, a project should seize these opportunities to advance related project work. For instance, KJAP recognized that the creation of the new regional training coordinator position in the spring of 2006 could conceivably be of great benefit to the quality and quantity of national judicial education. The project therefore designed and delivered a successful training for the new coordinators. KJAP's technical assistance in the private enforcement of judgments and with the national judicial education strategy was provided at the specific request of the judiciary and after recognizing the relationship these activities would have to the project's objectives.

Identify and empower local champions

Democratization, efforts to increase transparency and accountability, and steps to reduce corruption often face vested interests opposed to change. For implementers, it is important to not only identify these potential obstacles and work around them if possible, but to most importantly identify, work through, and empower the reformers. The Kazakhstani judiciary is full of energetic and progressive reformers who quickly embraced KJAP's mission, and KJAP was well served by identifying and supporting these local champions.

Seek out partnerships with other donors/implementers

While several donor organizations are active in judicial reform in Kazakhstan, resources are finite. A project should actively explore opportunities to collaborate, share resources, and avoid duplications. For instance, KJAP and the American Bar Association's Rule of Law Initiative, recognizing similarities in both organizations' work to educate the public on jury trials, partnered to produce a successful mock jury trial video, thereby benefiting by sharing experience and costs.

KJAP also linked the Court Administration Committee with the UIHJ and a European Union project working on the private enforcement of judgments. These relationships leveraged external funds to bolster Kazakhstan's development of a private enforcement model, for instance through the UIHJ's private enforcement conference in Astana in June 2007.

Client and Counterpart Relations

Buy-in from Supreme Court is mandatory — Cultivate judicial partnerships

The Kazakhstani judiciary is hierarchical in organization and practice. The Supreme Court is typically the first stop in any plan to work with the judiciary, regardless of whether the proposed activity is with the Supreme Court or a small rayon court. Little collaboration will occur if the Supreme Court is not supportive. KJAP benefited greatly from the positive, collegial, and close working relationships it enjoyed with the Supreme Court. Seeking and obtaining its buy-in early paved the way for KJAP's successes.

Balance the needs of multiple beneficiaries

KJAP had several beneficiaries, particularly the Supreme Court, the Institute of Justice, the Union of Judges, and the Court Administration Committee. Each had a tendency to seek to monopolize KJAP's resources for its individual needs. KJAP worked hard to balance these sometimes competing interests, accommodate each beneficiary's request if the decision was made to do so, and if not, to thoroughly explain why KJAP could not assist them (whether due to funding, staff resources, or divergence with KJAP's work plan). Early and frequent communication helped deal with this issue.

Keep all beneficiaries updated: Provide a schedule of activities well in advance

KJAP's commitment to partnering with its beneficiaries was an important factor in the successful implementation of the project's activities and achievement of its goals. KJAP applied a policy of open communication and dialogue with its Kazakhstani counterparts. Open communication ensured that parties operated with the same store of information and that KJAP managed expectations and engaged its partners in cooperative dialogue.

To achieve this objective, KJAP staff routinely met with the chief justice of the Supreme Court, the Supreme Court's training coordinator (who oversees the development of training programs and learning tools for Supreme Court justices and lower court judges across Kazakhstan), the chairman of the UJK, the Supreme Court's press secretary (for any media issues), and numerous other members of the judiciary who were likewise regularly consulted for their views on technical assistance needs. This level of close collaboration fostered a true partnership, and the Government of Kazakhstan gained a sense of ownership for the results of KJAP's work.

SECTION VII

Recommendations and Conclusion

The process of transforming a judiciary into an independent, transparent, and equal branch of government is a long-term undertaking. Laws have to be passed, judges and court staff have to be trained, and equipment has to be purchased. Most importantly perhaps, mindsets have to be changed. This takes time.

USAID's support to the Kazakhstani judiciary since its independence has been instrumental in its rapid development. KJAP is proud to have contributed to this vital effort. To support this work, KJAP's activities were built from previous judicial reform assistance, complemented ongoing efforts, and generated sustainable momentum to continue the vital modernization efforts within the judiciary. KJAP built close and productive working relationships with each of its local counterparts, relationships that contributed to the project's success and helped generate energy for further reforms. Through the project's activities, KJAP strengthened judicial independence, transparency, and accountability. The project also exposed Kazakhstani citizens to new information about their judiciary, and helped build their demand for a fair and transparent judiciary that responds to their needs.

Political will for further judicial reforms exists in Kazakhstan, and there is a window of opportunity for the international community to support these ongoing efforts. Resources to do so remain limited, but KJAP's successes demonstrate that true reforms are possible. This report does not purport to provide a detailed design for future judicial reform assistance. However, based on KJAP's successes, and with knowledge of the challenges Kazakhstan still faces, we propose some areas for future work that could support the strengthening of Kazakhstan's judiciary and help Kazakhstan ensure it will have a society firmly based on the rule of law.

- *Support the Union of Judges with revising the Code of Ethics.* By helping the UJK devise a roadmap for revising the current Code of Ethics based on the Bangalore Principles, KJAP set them on a path to realize this important step. But the process of drafting, vetting, and finalizing the new Code will take two years. The UJK will need assistance during this time and the international community can help produce a high-quality document that provides the necessary guidance and rigor to enable Kazakhstani judges to conform with international standards and truly embody the ideals of an independent and ethical judiciary.
- *Support the Union of Judges with improving the judicial disciplinary process.* KJAP provided support to the UJK by proposing recommended changes to the current judicial disciplinary process and building support within the judiciary for these changes. This work needs to be continued though. There is a general consensus that the disciplinary process is currently prone to abuse and that it is used to keep judges from making “improper” decisions. An improved disciplinary

process will enable judges to be more independent and confident that they will not be disciplined for their decisions.

- *Expand the judicial mentorship program to the remaining four oblasts.* KJAP expanded the current judicial mentorship program from two to ten oblasts. Four oblasts are still without a functioning mentorship program though. Given the benefits that newly appointed judges derive from the program, it should be expanded to these additional oblasts so that more judges can take part in it.
- *Assist the Institute of Justice and Supreme Court in developing a functioning distance learning program.* Providing Kazakhstan's judges with continued training and technical assistance will help them become more skilled and qualified in their positions. The vast size of Kazakhstan poses challenges with the delivery of training though. KJAP has supported the Institute and Supreme Court in developing the beginnings of a distance learning program but they will require additional support to launch a fully functional national distance learning program.
- *Support efforts to develop a system to publish all case decisions.* By exposing judicial decisions to public view, publishing case decisions can have a dramatic effect on judicial transparency and accountability. The Supreme Court already publishes its decisions on its website, along with a selection of lower court rulings. But it is not complete. The technology to publish all decisions exists and could be easily applied in Kazakhstan.
- *Support efforts to reduce the influence of the executive branch and the procuracy.* As noted previously in this report, both the executive and the procuracy (the prosecutors) continue to exert undue influence on the Kazakhstani judiciary. To the extent these facts can be addressed by the donor community, KJAP recommends that they be pursued.
- *Continued institutional development support to the Institute of Justice and the Union of Judges.* Judicial independence is driven by and relies on the strength of its smaller parts. Support for legal and judicial education is vital to ensure that existing and future members of the judiciary possess the necessary skills and knowledge to sustain the institution in a manner that gains the public's confidence and trust. During the course of KJAP's implementation, the Institute of Justice faced multiple challenges, and it can still benefit from focused attention to developing its curriculum and increasing the capacity of its staff. Likewise, the UJK will continue to need support to help it truly realize its potential to be a forceful and effective advocate for the rights and independence of judges.

LIST OF ANNEXES FOUND ON CD-ROM

I. General

1. KJAP Phase I Year 1 Annual Report
2. KJAP Phase I Final Report
3. Report on the Proposed Amendments to the Constitutional Law on the Judicial System and Status of Judges (in English and Russian)
4. Report on Gender and the Judiciary in Kazakhstan

II. Judicial Independence, Transparency, and Accountability

1. Mentor Guidebook (in English and Russian)
2. Report on Judicial Ethics and the Judicial Disciplinary Process (in English and Russian)
3. Judicial Ethics Process Memo
4. Judicial Ethics Questionnaire Analysis
5. Institutional Strengthening Recommendations for the Union of Judges of Kazakhstan (in English and Russian)
6. KJAP Draft Judicial Education Strategy for the Republic of Kazakhstan: 2007-2011 (in English and Russian)
7. Private Enforcement of Judgments Memo

III. Judicial Training

1. PowerPoint Presentation from the Training for Regional Training Coordinators (in Russian only)
2. Materials on Legal Reasoning and Decision Drafting (in English and Russian)
3. Judges' Benchbook (in Kazakh only)

IV. Public Education and Media Training

1. Public Education Articles (in English and Russian)
2. Radio Public Service Announcements
3. Mock Jury Trial Video (in Russian only)
4. Media Relations and Public Outreach Handbook (in English and Russian)
5. Court Customer Satisfaction Survey (in English and Russian)

V. Video Court Recording

1. Videorecording Pilot Project Final Report (in English and Russian)
2. Court Recording Video ("No Third Option" Television Broadcast)