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Rule of Law Assistance Impact Assessment

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EXECUTIVE SUMMARY

The demise of the Soviet Union in December 1991 was accompanied by high expectations for the rapid transition of the new independent states, including those in Central Asia, to free market economies and democratic governments based on the rule of law. While some progress has been made in Kazakhstan, Kyrgyzstan and Uzbekistan, the three countries examined by this ten-year retrospective assessment, those expectations generally have not been met. Although USAID has not had a formal rule of law strategy or program in place for any of these countries, developing the rule of law has been a component of both its economic and democratization portfolios, particularly in Kazakhstan and Kyrgyzstan.

Documentary and interview evidence collected by the Assessment Team shows that USAID was among the most significant rule of law donors in the CAR region. The World Bank, the Asian Development Bank and a number of bilateral donors were also active in this field and the Assessment makes it clear that some of the important results achieved in this field were a function of assistance provided by more than one donor.

USAID assistance to these three countries initially focused heavily, although not exclusively, on the creation of new legislative frameworks. The most extensive advice and assistance focused on Kazakhstan, which has more natural resources and greater commercial potential than either Uzbekistan or Kyrgyzstan. Institutional support to strengthen legislative drafting capacity in government in Kazakhstan paralleled the effort to put new laws in place, but not in the other two countries.

During the second half of the 1990s, USAID funded commercial law development activities and judicial training, including efforts to develop a cadre of local judge-trainers in Kazakhstan and Kyrgyzstan. In both countries efforts to improve the legislative drafting capacity of parliaments were also initiated. Association building activities for legal professionals, initiated in the first half of the decade, continued, with a focus at mid-decade on the development of judicial codes of ethics.

USAID's strategy for its democracy and governance program, in particular, shifted toward a greater reliance on civil society organizations to bring about improvements in the democratic culture in these three countries, and toward the end of the decade the role of youth in fostering change began to receive attention across the region as did anti-corruption activities, but only in Kazakhstan.

Looking broadly across the range of legal system outcomes and impacts funded by USAID/CAR and other donor rule of law activities, the assessment found solid evidence of improvement with respect to several legal system *outcomes*, most notably improvements in the legislative frameworks in the three countries visited. In all three countries there is also positive evidence of institutional change. Some steps towards increasing the independence of judges, such as increased salaries and managerial separation from the Ministry of Justice, have been taken. The roles of judges, prosecutors and lawyers are changing slowly (more slowly in Uzbekistan) – and doing so for the better. At the rule of law *impact* level, however, the picture is quite different.

The overall rule of law situation in Kazakhstan, Kyrgyzstan and Uzbekistan has at best improved marginally, and only then in some respects. The legislative frameworks developed over the decade are rated as being “adequate” by both international observers and local officials and legal professionals. Both identify persisted problems that stem from ambiguities in the laws that have been adopted and contradictions between them; the existence of laws for which implementing legislation has not been adopted; and gaps in the law, which are particularly noticeable with respect to means that would enable citizens to seek redress of grievances against government ministries.

More troublesome to both nationals of all three countries and foreign observers alike is the fact that laws that have been adopted by these countries are not consistently implemented, nor are judicial decisions enforced in a timely manner. Dispute resolution between firms, including disputes over property rights are particularly difficult for businesses operating in these environments. Both corruption in the judiciary and weak judicial training are considered to be causes of the “implementation gap”, despite the efforts USAID has made to improve judicial training and training capacity. Corruption, which is a central problem for improving rule of law, is so pervasive that each of these countries is listed as being among the 14 most corrupt nationals in the world. Both citizen and business confidence in the legal systems in these countries is low as survey research, investment climate surveys and rates of foreign direct investment, outside of Kazakhstan’s oil sector, all show.

Once viewed as emerging democracies, all three of these countries are openly labeled as autocracies today, after a decade in which no peaceful transition of power has taken place and restrictions on freedom of assembly and the media have remained exceptionally high in Uzbekistan and declined from their immediate post-independence levels in both Kazakhstan and Kyrgyzstan. Kyrgyzstan, once considered to be the most progressive country in Central Asia has recently been reclassified in international reports from “partially free” to “not free” putting in back on a par with the other two countries examined through this assessment. Also worthy of note is the fact that despite much lower levels of assistance, Uzbekistan has either improved slightly or not gotten worse on key rule of law indicators during a decade in which both Kazakhstan and Kyrgyzstan have both lost ground they initially gained.

The contrast between activity *outcomes* and rule of law, democracy and economic *impacts* in these three countries is striking. Central to an understanding of the difference in results at these two levels is the recognition that while specific activities and the outcomes they produce are *necessary* for bringing about rule of law improvements, taken alone or even as a cluster, they may not be *sufficient* to bring about those changes. In Kazakhstan, Kyrgyzstan and Uzbekistan, many things that are necessary to improve rule of law conditions have been initiated and some have been achieved, but the *sufficiency* criteria for a rule of law transformation in these countries have not yet all been met. A significant reduction in the level of corruption, a dramatic improvement in the extent to which laws that have been adopted are applied, and improvements in the rate and speed with which resulting decisions enforced may all be required for donor investments to make a difference in the degree to which society in Kazakhstan, Kyrgyzstan and Uzbekistan operates based on the rule of law.

This is not to say that donors have not put enough money into achieving broad rule of law improvements. Reforms fostered by foreign assistance programs, on whatever scale, invariably combine with local practices and initiatives and either succeed or fail largely as a function of whether those local practices enhance or impede them. As USAID/CAR’s own analysis of the situation in these countries acknowledges, the issue is broader than the term “political will” implies. Some of the practices that impede rule of law progress in these newly independent countries, including corruption, are broad-based and deeply imbedded in their cultures.

Recognizing that results at the impact level in particular have been a disappointment relative to early expectations, USAID has revised both its objective and the time horizon for program achievement, reflecting these decisions in its current assistance strategy. USAID/CAR has also begun to address corruption, on a limited basis, initially in Kazakhstan.

USAID programs, in terms of sequencing, targeting, and the use of modalities such as U.S. based training, training in country, equipment provision, etc., have been largely appropriate, and as noted some legal system outcomes have been quite positive. Large-scale success, however, has eluded the Mission, with the creation of new legislative frameworks in Kazakhstan and Kyrgyzstan being the primary exception, despite continuing problems with the quality of those frameworks. Given the political climate, it is difficult to say whether there have been missed opportunities or whether any other approaches would

have had greater success. It is possible, however, that rule of law programs that more directly address corruption or that focus more directly on the gap that now exists between laws adopted and laws enforced, including those that pertain to media independence, NGO development and human rights, would help to force more rapid change than can be expected from the Mission's current modest portfolio of rule of law programs.

I. INTRODUCTION

A. Goals, Scope, and Methodology

The following report, commissioned by the United States Agency for International Development (USAID), reviews the progress towards developing the rule of law in Kazakhstan, Kyrgyzstan and Uzbekistan. In particular, the report seeks to determine the effectiveness of rule of law assistance in promoting reform in the law and legal institutions in these three countries over the past ten years; to identify the various factors and conditions which have enhanced or limited the effectiveness of rule of law assistance; and to determine the relative effectiveness of various types of rule of law assistance in strengthening law and legal institutions. The scope of work for this assessment is provided in Annex A to this report.

The findings and conclusions generated as the result of this assessment are intended to assist rule of law strategists and USAID Democracy/Governance officers in missions to formulate more effective rule of law strategies, both regionally and on a country-specific basis, based on experience gained and lessons learned from past programming in the region. The principal aim of the assessment is to determine what has worked and what has not worked and why, and whether certain means of delivering assistance have been more effective than others in achieving change in participants and institutions in the legal system.

This report is one of a series on the impact of legal and judicial reform assistance in Eastern Europe and Eurasia. Reports have been completed covering rule of law programming in Armenia, Kazakhstan, Kyrgyzstan, and Uzbekistan, and additional country reports are planned. These reports will be consolidated into a final report that will summarize lessons learned from the 10 years of assistance in the region.

“Rule of law” is a broad term, subject to multiple definitions. For the purposes of this report, the team has investigated the following:

- **The legal framework:** What laws essential to the functioning of a free-market democracy have been passed, and which remain to be enacted? The team has also sought to determine, to the limited extent possible, how the legislative framework is working in practice: what do the lawyers and judges who are implementing it think? What are the gaps in practice? The team has also examined the process of law making, in effort to determine how transparent and effective it is, and what role the donor organizations have played in molding the legislative framework.
- **Legal sector institutions:** How has the role of the judiciary in Kazakhstan, Kyrgyzstan and Uzbekistan evolved since independence? Has it been given greater powers, and how is it exercising those powers? Is it both more independent and more accountable? What is the level of support that the government is providing to the judiciary? How has the profession of the lawyer changed? Finally, how has the donor community contributed to the process, if at all, of developing the judiciary as an independent branch of power in these countries?
- **Access to justice:** How has the citizen’s usage of the legal system changed? How and why are citizens attaining their right to justice? What are the avenues of access to justice, and what are the impediments? How has the donor community improved access to justice, and how has it helped to use the legal system as a means for bringing about societal change?
- **Legal education:** How and what is being taught in the law schools of Kazakhstan, Kyrgyzstan and Uzbekistan today? How does that differ from the past? What options exist for students to become exposed to the actual practice of law during their school years, outside the formal curriculum? Again, what, if any, have been the contributions of the donor community?

In its efforts to answer these questions, the team has sought to identify the causations of change, and to understand the reform process from the perspective of Central Asia's unique history.

Regarding methodology, the team followed a system developed by Management Systems International (MSI) through which key informants were asked open-ended, non-leading questions designed to determine where change had occurred in the legal framework and legal institutions over the period and the extent to which, for better or worse, donor assistance programs were associated with such changes. Interviewees were also asked whether there had been opportunities at any time throughout the period when donor rule of law assistance could have made a greater impact or been more effective in supporting change. Annex B expands on this methodology.

To a certain extent, the team also explored significant USAID supported assistance activities to determine their intended and actual results. The primary rule of law programs that USAID has supported are described in part (D) of this section. This report, however, is not, and was not intended to be, a full evaluation of those programs, but rather is intended to identify more broad lessons learned based on the experiences of those, and other programs. In addition, this report does not purport to be a full needs assessment, although it should obviously be useful to both planners and implementers as they design future rule of law programs in Central Asia.

The team spent six weeks in Kazakhstan, Kyrgyzstan and Uzbekistan (November 5 and December 19, 2001), visiting Almaty, Astana and Shymkent, in Kazakhstan; Bishkek, Osh and Jalalabad, in Kyrgyzstan, and Tashkent, Samarkand, Fergana City and Kokand in Uzbekistan, and interviewing approximately 200 judges, lawyers, law professors, NGO leaders, program implementers, and government officials and donor representatives. A summary of types of individuals interviewed in each country is provided in Annex C. The team sought to interview as diverse a group as possible. The persons to be interviewed were determined pursuant to consultations with the Mission and program implementers, but the team also used its own contacts, and added additional names during the course of the visit. In order to protect sources, the report does not include specific attributions. The team also sought to base its findings on statistics and on previous studies of the legal systems of these countries.

Drafts of this report were prepared in January and March 2002. This revised version of the assessment report reflects written and oral comments received at that meeting and on the draft report. Comments and corrections on the team's findings are encouraged, and should be submitted to Lynn Carter of MSI (lcarter@msi-inc.com)

B. Historical Overview

The countries of Central Asia had never before known any form of democratic rule or, for that matter, true independence, until the demise of the Soviet Union in 1991. The territory of the region had been settled by mostly nomadic tribes that were absorbed into the empire of Genghis Khan in the 13th century and ruled by his successors in territorial divisions known as khanates. The territory that today makes up Central Asia came under imperial Russian rule gradually, beginning in 1730 when it absorbed the closest territories, in what is now Kazakhstan. Over the next 100 years, Russian expansion in the region continued, culminating in the defeat of the remains of once strong khanates in Uzbekistan between 1865 and 1876 and the occupation of what is now Kyrgyzstan in 1876. The leadership of the Soviet Union in Moscow established the internal borders of the five republics that were subsumed into the USSR. Those borders are now the national boundaries of the five new independent states of Central Asia.

These five countries have differing histories. Kazakhstan and Kyrgyzstan, for example, developed nomadic cultures based on strong clan ties, whereas great urban and cultural centers, such as Samarkand and Bokhara, sprang up in the territory of Uzbekistan, through which the Silk Road passed. Russian occupation brought with it closer ties amongst the countries through improved communications and a

common language. It also brought with it European concepts and laws, which gradually displaced the Moslem and tribal laws and customs that had predominated for centuries. Russian imperial law, of course, was designed to serve the purposes of the czar rather than those of the people he ruled, and were largely dictated from Moscow.

The Moscow-centric approach to rule continued during the Soviet era, when all laws were written in Moscow and the best and brightest from the region were trained there. Moreover, Moscow's delineation of the borders of the republics did not pay particular attention to ethnic considerations, leading to ethnic tensions throughout the region, and Stalin suppressed and shifted minority groups as he saw fit in order to maintain his grip over the entire USSR.

In the courtroom, the prosecutor, not the judge, was the most powerful figure that, in all but the most mundane civil cases, in effect made the judicial rulings. The legislative framework of that era was both relatively uncluttered and constant, so that once judges and prosecutors learned the law it held them in good stead for a considerable period of time. Of course, that legislative framework provided for neither the protection of basic human rights nor of property rights, and important cases were ultimately decided by the party leadership in the regional capitals, if not in Moscow. Nevertheless, those in Central Asia who recall that period clearly describe it as one in which outcomes for certain areas of law, such as family law, were reasonably consistent and by and large viewed by the citizenry as being fair. Corruption was a problem, but for the most part what people recall is petty corruption in a society that shared a common level of education and a common standard of living. Underlying the legal system the Soviet Union imposed on the region there remained some structures for resolving disputes, which, while not strong, continued to be used, particularly in rural areas. The *aksakal* courts (literally, "courts of the white bearded men") that survive today in Kyrgyzstan are remnants of local governance through elders and a tribal council that dates from the eighteenth century, if not earlier.

With independence, the histories of the countries in Central Asia once again began to diverge, though sharing many common characteristics. Each country is finding that its fortunes depend in good measure on the resource base on which they can trade as they attempt to construct viable market-based or quasi market-based economies, and their differences in this regard are considerable. As discussed in Section II, B below, Kazakhstan, with roughly 14 million people and a vast land area, is rich in natural resources, including enormous reserves of oil and gas. Kyrgyzstan, with a population of a little over four million, has few natural resources other than the largest water supply in the region, and has struggled economically, despite being the first of the former Soviet states to accede to the WTO. Uzbekistan, with the largest population, at roughly 26 million and the worst land to person ratio by far, stands in the middle of the three with respect to resources, but has seen its political importance increase recently due to its shared border with Afghanistan.

All three of the countries included in the assessment have Presidents who were formerly communist party officials and who were elected to office during the early period following independence. All three of these leaders, Nursultan Nazarbayev in Kazakhstan, Askar Akayev in Kyrgyzstan and Islam Karimov in Uzbekistan, remain in office today, more than a decade after independence, and have taken extraordinary steps to retain political power. These steps include manipulating electoral processes, conducting "referenda" designed to extend their terms of office, controlling the media, and using judicial and extra-judicial means to limit the capacity of potential opponents. The term *autocracy*, accordingly, is frequently used to describe the *de facto* political situation in these countries.

Despite their common autocratic tendencies, the political reputations of the three countries under review have varied over time. In the early and mid 1990s, Kyrgyzstan was considered by Western observers to be by far the most democratic of the three, an impression that weakened when some of the machinations used by the President to retain power turned out to be quite similar to those employed by other leaders in the region. As described in more detail below, organizations that monitor these countries closely describe

corruption as being rampant throughout the region, and most extreme, particularly at the highest levels, in Kazakhstan, while human rights issues are considered to be most problematic in Uzbekistan. Again, however, the common denominator for these countries is strong presidential power. The other branches of power, the parliaments and the judiciaries, are weak, and in fact have – to varying extents – been complicit in the consolidation of presidential power. The challenge for reformists in these countries and for the donor organizations working in them has been how to design and implement rule of law programs in what is clearly a very difficult political environment.

As relevant to an understanding of the context for USAID and other donor assistance, additional background information on specific topics is provided in subsequent sections of this report.

C. Overview of Foreign Assistance in Central Asia

Assistance to the new republics of Central Asia was initiated as soon as the U.S. Government was able to organize and fund it. Diplomatic recognitions followed their declarations of independence in 1991 and U.S. embassies were opened in the region in 1992. During the 1992-93 period and on through 1994, U.S. assistance in Central Asia was directed primarily to Kazakhstan and Kyrgyzstan, opening up to the other three countries in the region toward the end of these first few years. Various agencies of the U.S. government, including USAID, moved quickly to prepare assistance strategies for countries in the region, under the Freedom Support Act, which were then integrated by the Department of State into an overall strategy, under the direction of a Coordinator for this assistance in the Department of State, with the rank of Ambassador.

As articulated in 1994, the U.S. strategy identified the program for Central Asia as a whole as having three phases. The first involved humanitarian assistance and was to be followed by a phase in which countries choosing to develop market economies and apply democratic principles would receive assistance in doing so. This strategy, intended to be a transitional one rather than of long duration, was intended to reach a third stage by the end of the decade, where trade and investment would supercede assistance as the basis for economic relations between countries. For a number of the years covered by this assessment, USAID/CAR expected that its assistance to Central Asia would end in around 2000.

In broad outline, this strategy has been sustained through two subsequent rounds of strategic planning, one in 1997 that produced separate strategic plans for each assisted country in Central Asia and a second, in 2000, which produced a single assistance plan covering the entire sub-region for the period 2001 – 2005. To say that the broad outlines of the U.S. strategy have remained constant is not to say that it did not evolve, it only suggests that that evolution took place within a broad and constant framework. As Annual Reports on the Freedom Support Act and USAID performance reports (R4s) make clear, USAID/CAR's strategy changed over time, more with respect to what entities the Mission and its contractor/grantees worked the two main thrusts of the program – fostering market-based economic reforms and growth on the one hand and democracy on the other. The strategy's third element, humanitarian assistance, was sustained through a thread in the assistance program for the region that focuses on health care and essential water and energy resources. The current strategy also differs from the 1994 conception of U.S. assistance in its estimation of the length of time the core tasks established by the strategy will take, as reflected in both the strategy's text and its narrower Strategic Objectives.

In 2000, when USAID/CAR prepared the Strategic Plan under which it currently operates, it had determined that *“early expectations about the pace of change possible in Central Asia were naïve and*

*unrealistic,*¹ particularly with respect to democratization which the Mission characterized as “*halting at best, and stillborn in some nations at worst,*”² and most elections have been considered problematic. Most obvious in this regard has been the use of referendum and other extraordinary means for extending the terms of national leaders. In contrast to the emerging democracies in Eastern Europe, and even Russia itself, there has been no peaceful transition of power at the top in the decade since independence in any of the Central Asian republics.

The only progress toward democratization to which the Mission’s current Strategic Plan points is the growth of citizen participation, notably the growth of the NGO community, which developed most independently in Kazakhstan and Kyrgyzstan, where NGOs have had greater apparent freedom of action than was the case in Uzbekistan.

*A different approach to democracy assistance is required in Central Asia than that provided to Eastern Europe and even other Eurasian newly independent states...More is required than providing tools to progressive reformers committed to change. Central Asia requires more fundamental attitudinal change. Democracy must make people aware of the possibilities available to them...The challenge is not merely to facilitate political transition but to strengthen democratic culture.*³

Consistent with both the lessons it had learned about the pace of change, and the essentially autocratic nature of the current leaders of Central Asia, USAID/CAR’s program on the democracy and governance side continues to focus on citizens, many of who do not believe that their participation in elections or other public processes makes a difference, and on the organizations that support and directly represent citizens, but are not, for the most part, fully self-reliant or sustainable. Citizen access to information, opportunities for dialogue between citizen organizations and government, and the involvement of youth in civil society organizations and processes are all priorities of USAID/CAR’s current strategy for democratic development.

As to the modifications the 2001 – 2005 strategy incorporates, one important feature is an increased emphasis on efforts at the local level -- non-governmental organizations (NGOs), ordinary citizen and small and medium size enterprises -- as well as at the macro-economic and policy levels to bring about change, first in knowledge and attitudes and subsequently in actions and performance. Shifts of this sort have occurred at several points during the decade as excerpts from State Department as well as USAID documents reveal:

- “Given the increased centralization of power in the executive branch of the Kazakhstani Government in FY 1995, USAID’s democracy-building efforts focused increasingly on local non-governmental organizations (NGOs), which the U.S. Government views as an essential building block for establishing and sustaining a civil society.”⁴
- “After the events of August 17 [regarding the Russian economy], a program review conducted by the Coordinator’s office suggested that we should accelerate movement away from assistance to central governments that have not been responsive to our emphasis on market mechanisms and the rule of law.”
- “Through our involvement with the NIS over the past six years, we have come to the realization that democratic reform is a generational process in these countries, and we

¹ USAID’s Assistance Strategic for Central Asia 2001-2005, op cit., p. 15.

² Ibid, p. 44

³ Ibid, p. 46.

⁴ Freedom Support Act Annual Report, 1996.

have focused our efforts on building a cadre of young leaders with an understanding of the day-to-day functioning of a market-based democratic system.”

Looking backward across the past decade at the U.S strategy for assistance to Central Asia, it is important to note, from the perspective of this Assessment, not only that USAID’s program evolved over time, but also that it does not now have, nor has it ever had, a rule of law focus in the structural sense, i.e. it does not include a distinct strategic objective for rule of law, as do some other USAID missions in the region. The option of establishing a rule of law strategic objective for Central Asia was discussed in the region and documented in several of its performance reports, but this option was not activated in either the country-by-country strategic plans USAID/CAR developed in 1997 nor the subsequent regional strategic plan the Mission developed for 2000-2005.

D. USAID/CAR Program Intent and Rule of Law Objectives in Kazakhstan, Uzbekistan and Kyrgyzstan

This section places investments USAID/CAR has made in rule of law activities over the years into a context that reflects both Agency intent with respect to these kinds of activities and the way USAID/CAR envisioned them as supporting its Strategic Objectives for private sector development and economic growth (SO 1.3), on the one hand, and citizen participation and a strengthened democratic culture (SO 2.1) on the other.

1. Agency Rule of Law Programming Intent

USAID views programming aimed at improving rule of law conditions in developing and transition countries as supporting broader agency goals for broad based economic growth and strengthening emerging democracies.

Generally speaking, the range of activities USAID funds fall into three broad categories identified in the Agency’s 1998 Democracy and Governance Concept Paper, including:

- *Improving outdated and otherwise inadequate legal frameworks and codifying human rights,*
- *Strengthening justice sector institutions, and*
- *Increasing citizens’ access to justice.*

When stated as results, these three areas characterize the legal system outcomes USAID expects will follow from its rule of law investments. Figure 1 illustrates graphically the intended relationship between rule of law activities, legal system outcomes, impacts on rule of law conditions in countries, and their relationship to broader economic development and democracy/governance goals.

USAID, Agency Objectives:
Rule of Law

The term "rule of law" embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights....A predictable legal system with fair, transparent, and effective judicial institutions is essential to the protection of citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals...Beyond the democracy and governance sector, the accomplishment of other USAID goals relies on effective rule of law. For example, civil and commercial codes that respect private property and contracts are key ingredients for the development of market-based economies.

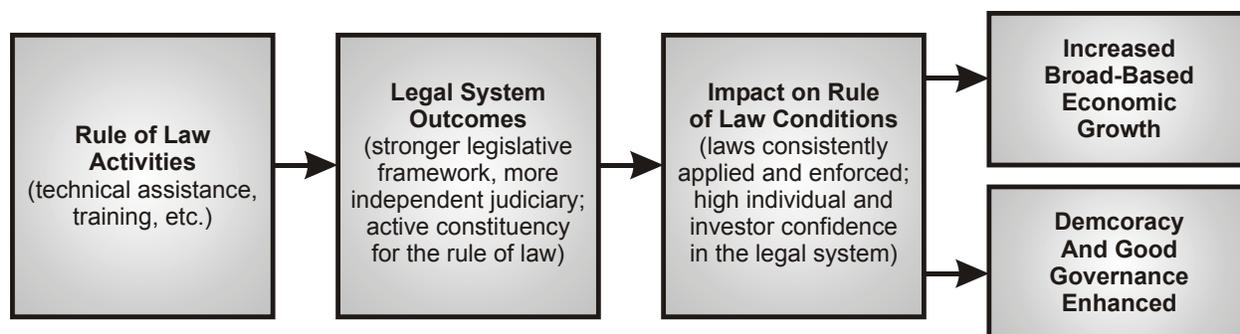


Figure 1. Expected Progression of Results from Rule of Law Activities

General ideas about the role of rule of law programming, and its expected outcomes and impact, are best understood not in the abstract but rather through the programs USAID Missions have developed for specific countries, taking into account the issues and opportunities that characterize these environments.

2. USAID/CAR's Rule of Law Investments

As indicated above, USAID Missions are free to choose whether they fund activities that support rule of law improvements under strategic objectives focused on economic growth or the expansion of democracy, or as separate rule of law strategic objectives. USAID/CAR used the first of these two approaches.

USAID/CAR began to fund rule of law activities shortly after it initiated programming in Central Asia. Early activities included:

- A multi-country technical assistance project, implemented by the American Legal Consortium (1994-96), which USAID anticipates would also provide grants to strengthen NGOs;
- A number of short term technical assistance contracts through which it provided advice and drafting assistance on specific pieces of legislation, e.g., bankruptcy, oil and gas laws, etc., and
- Grants, from 1993 onward, to the American Bar Association (ABA/CEELI) for a variety of activities, including association development.

The first two of these activities were precursors to a series of USAID contracts with a single organization, lasting from 1995 to 2001, that focused on commercial law development and the training of judges, attorneys and prosecutors which were implemented, in succession, by Center for Institutional Reform and the Informal Sector (IRIS) and ARD/Checchi. The relationship of rule of law activities to USAID/CAR Strategic Objectives (SOs), and to the Agency's three main clusters of rule of law activity, is depicted in Table 1.

As the foregoing indicates, the division of labor between USAID/CAR's two SOs with respect to the types of rule of law assistance provided was not rigid. Under both SOs, USAID focused on similar types of legal system outcomes and in some cases their contractors and grantees worked with the same client organizations. What differentiated the work of these implementing organizations was the purpose for which legal system reforms were being pursued, i.e., the economic growth purposes of SO 1.3 or the democratic culture and citizen participation purposes of SO 2.1.

a. Anticipated Results of Rule of Law Activities in Support of SO 1.3

On the economic side, USAID's early emphasis was on the transition to a market economy. In addition to sound macroeconomic policy, USAID/CAR focused on improving the investment climate in both Kazakhstan and Kyrgyzstan. The Mission's program for Uzbekistan did not include direct contractor support in this area.

In its 1997 Strategic Plan for Kazakhstan, USAID listed a broad array of legal and regulatory reforms that had already been achieved (including a law on foreign investment and a western-style tax code), but noted that much still remained to be done before USAID's assistance terminated, around 2000, as was anticipated at that time.

The lack of a strong response on the part of investors outside of the energy sector may be attributed in part to poor implementation of the existing legislation, a stifling bureaucracy, and corruption that is believed to exist at every level of government.⁵

Greater transparency is essential to counter corruption and ensure a level playing field for all the private sector actors...Offering judicial training to those involved in administering commercial laws ...[is an] important tool for addressing crime and corruption and corruption issues as they relate to private investment.⁶

⁵ *Strategic Plan for Kazakhstan*, USAID/CAR, Almaty, Kazakhstan, 1997, p. 8.

⁶ *Ibid*, p. 10.

Table 1. Legal System Outcomes Achieved by Rule of Law Activities Contribute to the Achievement of USAID/CAR Economic Growth and Democracy/Governance Strategic Objectives

Rule of Law Assistance Impacts



	SO 1.3 Accelerated Development and Growth of Private Enterprises (1997) ↑ Improved Environment for Growth of Small and Medium Enterprises (2000)	SO 2.1 Increased, Better Informed Citizen's Participation in Political and Economic Decision-Making (1997) ↑ Strengthened Democratic Culture Among Citizens and Target Institutions (2000)
Legislative Framework Improved	<ul style="list-style-type: none"> ▪ Laws drafted, technical advice or commentaries provided ▪ Legislative drafting capacity of government improved; legislative drafting units supported 	<ul style="list-style-type: none"> ▪ Laws drafted, technical advice or commentaries provided ▪ Legislative drafting capacity of parliaments improved; legislative drafting units created/supported
Justice Sector Institutions Strengthened	<ul style="list-style-type: none"> ▪ Judges and other legal professionals trained in new laws ▪ Judicial decisions codified ▪ Other judicial system reforms instituted 	<ul style="list-style-type: none"> ▪ Judges and other legal professionals trained in new laws ▪ Associations of legal professionals and law students active. ▪ Judicial ethics codes adopted by associations of judges ▪ Other judicial reforms instituted
Citizen Access to Justice Increased	<ul style="list-style-type: none"> ▪ Citizen education regarding new laws, e.g., land law in Kyrgyzstan 	<ul style="list-style-type: none"> ▪ Legal information centers established, open to public ▪ Law student education and practical exposure enhanced through law clinics, participation in civic education, e.g., <i>Street Law</i>, etc.
Primary Rule of Law Assistance Providers	<ul style="list-style-type: none"> ▪ ARD/Checchi (1995 to present) ▪ IRIS (1996-98) ▪ American Legal Consortium (1993-96) ▪ Plus other contractors on specific tasks, e.g., Booz-Allen & Hamilton (bankruptcy law, customs reform); Chemonics (land law reform); Hagler-Bailey (oil and gas law), etc. 	<ul style="list-style-type: none"> ▪ ABA/CEELI (1993 to present)

The impetus in Kyrgyzstan, in 1997, where USAID had also provided assistance with a new tax code and laws on property rights, and was then assisting with efforts to gain entrance for Kyrgyzstan into the World Trade Organization (WTO), was similar:

*Kyrgyzstan's political leadership actively seeks greater Western investment, but its dearth of profitable natural resources ... combined with heavy-handed bureaucracy and rampant corruption seriously constrain the prospects for a major increase in foreign investment in this small nation.*⁷

*Transparency and corruption are two key areas in the overall commercial law effort that will continue to require much attention. Although work in institutional-strengthening...will improve transparency, these measures alone cannot eradicate the rampant corruption at all levels of Kyrgyz government hierarchy. [Other USAID activities] will be complemented by a targeted training effort designed to build the investigative and legal skills of Kyrgyz public prosecutors in the area of economic crime.*⁸

Under SO 1.3, as Table 1 indicated, USAID/CAR funded technical assistance contracts that focused on commercial law and other elements of a basic legal framework, e.g., the civil code. Significant investments in training judges and other legal professionals were also undertaken in support of SO 1.3, in Kazakhstan and Kyrgyzstan, including assistance to executive branch units responsible for the drafting of legislation. Where civic education is closely linked to economic outcomes, i.e., as is the case with Kyrgyzstan's new land law, USAID has invested in efforts to make citizens aware of the law and their rights using SO 1.3 resources. USAID resources under this SO have also been used to make legal information more widely available to legal system personnel and the public, e.g., information on judicial decisions. USAID rule of law investments under this SO have not, for the most part, extend to Uzbekistan where USAID judged the level of "private commercial activity...so limited that the possibility for development and enforcement of modern business laws and regulations ...[is] minimal."⁹

USAID/CAR's objectives under its main commercial law development and judicial training contracts for Kazakhstan and Kyrgyzstan focused on drafting laws; commenting on drafts prepared by governments; strengthening local legislative drafting capacity and training that familiarized judges, attorneys and prosecutors with the evolving legislative framework. That focus expanded, however, to include *implementation* in contracts USAID negotiated for the 1998-2000 period, once it became clear to USAID/CAR and its contractor that improvements in the legislative framework and the training of judges were not, in and of themselves, resulting in the consistent application and enforcement of laws passed up to that point, as indicated below.

*The [1998-2002] project was designed to build directly on the foundation established...over the first 2 ½ years ...on assembling the new commercial legal framework – drafting new legislation and equipping legal professionals with a basic working knowledge of new laws. However, major issues emerged in implementing the laws. Many key commercial laws were not being properly interpreted or carried out...The[1998-2000] project was designed to shift from preparation in basic commercial law fields to specific problem-solving and practical issues in implementation and judicial practice.*¹⁰

In 2000, when USAID produced a regional Strategic Plan (for 2001 to 2005), the emphasis under SO 3 shifted from market transformation and improvements in the investment climate to improvements in the environment for the growth of small and medium size businesses (SMEs). USAID's shift under its new Strategic Plan did not mean that macroeconomic policies and legal system improvements would be abandoned, but rather that USAID would strengthen its focus on microeconomic level, specifically SMEs.

⁷ Strategic Plan for Kyrgyzstan, USAID/CAR, Almaty, Kazakhstan, 1997, p. 5

⁸ Ibid, p. 7.

⁹ USAID's Assistance Strategy for Central Asia 2001-2005, Almay, Kazakhstan, April, 2000, p.38.

¹⁰ ARD/Checchi, *Support for Economic Growth and Institutional Reform*, Final Report (Training), 2000.

USAID envisioned this mainly as a focus for its Kazakhstan and Kyrgyzstan efforts, but also intended to provide credit support for SMEs in parts of Uzbekistan.

As of the time of this assessment, USAID/CAR's commercial law and judicial training activities in Kazakhstan had terminated and they had all but wound down in Kyrgyzstan.

b. Anticipated Results of Rule of Law Activities in Support of SO 2.1.

On the democracy and governance side, USAID had decided, by the time it prepared country-specific Strategic Plans in 1997, that its best opportunities for strengthening democracy in Kazakhstan, Kyrgyzstan and Uzbekistan existed outside of government. With respect to Kazakhstan, the Mission noted that:

A December 1996 survey of public opinion [reported that] a growing plurality of Kazakstanis (44%...) believe that Kazakhstan is not a democracy, nor is it becoming one.

The USAID/Car strategy has been to promote the growth and effectiveness of NGOs as the most viable means of providing a channel for citizens' influence on public policy.¹¹

USAID's perspective on Uzbekistan was much the same, while in Kyrgyzstan, USAID judged government to be substantially more democratic than in other countries in the region. In addition to working extensively with NGOs in Kyrgyzstan, USAID viewed investments in improving parliament as having potential for strengthening democracy, as it did in Kazakhstan as well.

Under SO 2.1, USAID has supported efforts to strengthen parliaments and the electoral process; non-governmental organizations (NGOs); and independent media. Civic education programs were also viewed as supporting this SO. In addition, USAID has used SO 2.1 resources to support a range of grant-funded activities carried out by ABA/CEELI in all three countries. While the level of funding for Uzbekistan was lower than for the other two countries in some years, the range of activities pursued was quite similar.

ABA/CEELI's grants from USAID are linked to USAID/CAR's strategic plan through shared objectives and agreement on the areas in which those grants focus. The relationship, however, is not one where specific outcomes are required of the grantee, although objectives for these grants are specified. Over the years, the emphasis in ABA/CEELI grants shifted, however, to reflect USAID's evolving priorities. From 1993 onward the creation of associations of legal professionals has been a focus under these grants as has continuing legal education. ABA/CEELI's grant document for the period 2000 to 2002 describes additions to this emphasis that expanded its scope over time, i.e., in 1997 its emphasis on legal education and judicial reform increased and in 1999 a focus on youth, which subsumed the creation of student law associations and related activities was added as were activities that focus on gender and environmental law. The result is the grant under which the ABA/CEELI program operated at the time of this assessment. The primary objectives for this grant are provided shown in the text box below. Annex D provides a synopsis of ABA/CEELI activities since 1993 in each country.

¹¹ Strategic Plan for Kazakhstan, 1997, op. cit., p. 18

**ABA/CEELI Grant Program Objectives in Central Asia
(2000-2002 Grant Proposal)**

- *A legal profession that is capable of playing an appropriate and effective role in the development of a civil society and the rule of law;*
- *An independent, professional judiciary;*
- *Parliaments that are professional and co-equal branches of government;*
- *An institutionalized public hearing process in targeted parliaments;*
- *Information on the laws of Central Asia, international law, individual rights and legal research materials and technology available to the general public and legal professionals in Central Asia;*
- *Law students develop into legal professionals who are capable of being active, reform-oriented, professional members of legal communities in Central Asia, while serving as a positive agent of change while in law school;*
- *An environment fostered in Central Asia where gender legal rights are protected, and where individuals whose gender legal rights are violated are able to seek redress and correction of those violations, and*
- *A situation cultivated in Central Asia where individuals have a mechanism to effectively advocate on issues involving environmental concerns.¹*

c. USAID/CAR Cross-Cutting Program Initiative on Anti-Corruption

Although corruption was identified as an impediment early in the decade, anti-corruption is relatively new as a distinct element of USAID/CAR's portfolio. Warnings about the effects of corruption were included in U.S. reports from the region as early as 1994:

The [U.S.] assistance program, however, has run into a few problems. For example, the accelerated pace in implementation of privatization and other economic restructuring initiatives has been matched, if not outpaced, by the spread of corruption and organized crime. According to our Embassy, without a complimentary legal and regulatory framework, privatization is likely to reinforce the worst consequences of an uneven playing field. The Embassy suggests that we focus more on helping the government move more rapidly to establish comprehensive commercial and civil laws as well as openness and transparency in its activities. Endemic corruption can undermine efforts to move toward political transparency and effective markets.¹²

Whether as a function of other priorities or scarce resources, most of USAID's activities over the past ten years in Kazakhstan, Kyrgyzstan and Uzbekistan have only tangentially addressed this pervasive problem, e.g., some of the Mission's work on customs reform.

In 2000, the Mission initiated a new activity in Kazakhstan directly focused on the problem of corruption. With USAID funds, Transparency International opened an anti-corruption information center in 2000 and developed plans for independently reviewing the government's anti-corruption program. Other USAID funded activities have also begun to focus on corruption, albeit on a small scale. For example, the MSI Team met law students in Osh, Kyrgyzstan who reported that members of their USAID funded student law association had initiated a rally against corruption earlier in the year that, at the start, put them at odds with city officials, but subsequently received positive reviews. Discussions with USAID/CAR suggest that further programming in this field is likely.

¹² Annual Report, Freedom Support Act, 1994.

E. Donors Assistance with a Rule of Law Focus

While USAID/CAR worked primarily through two rule of law implementing organizations (one contractor and one grantee) after 1998, a much broader range of actors has been involved -- working under more specific rule of law activity terms of reference, or only indirectly on rule of law problems -- during the decade since these countries became independent. This section provides an overview of the range rule of law assistance providers working in Kazakhstan, Kyrgyzstan and Uzbekistan and the specific focus of their work.

1. USAID

USAID's program in Kazakhstan, Kyrgyzstan and Uzbekistan has been implemented by a wide array of contractors and grantees. From a rule of law perspective, some of the most important of these implementing partners have been:

- ABA/CEELI, a division of the American Bar Association, has been USAID's primary rule of law grantee under SO 2.1, since 1993, as described above.
- ARD/Checchi, which teams two U.S. consulting firms, was USAID's longest running partner for commercial law and regulation development and judicial training in Central Asia, working with USAID/CAR on rule of law activities since 1995.
- The Center for Institutional Reform and the Informal Sector (IRIS). This entity worked with USAID on the development of legal frameworks in Kazakhstan and Kyrgyzstan between 1996 and 1998 and held the contract that was the predecessor to USAID's commercial law contract with ARD/Checchi.
- American Legal Consortium – This entity which was led by Chemonics International, Inc., a U.S. consulting firm, was USAID's first institutional contract for rule of law activities which included, at the outset, assistance to parliaments and the judiciary in the region as well as program elements involving grants to NGOs and the development of legal information centers. Former ALC staff continues to work in the region.
- USAID has also worked with a number of contractors on the development of specific legislation. Booz-Allen & Hamilton and Hagler-Bailley are two examples of short-term legislative assistance contractors. USAID is currently working with Booz-Allen & Hamilton on customs simplification reform in Kazakhstan and Kyrgyzstan, which is expected to have a positive impact on business growth and could reduce opportunities for corruption as well.
- Counterpart Consortium – This entity is USAID's primary partner for NGO strengthening in the region, although it has also worked with other organizations over the years, including ISAR and the International Center for Not-for-Profit Law (ICNL), which works with USAID throughout the region to help strengthen the legislative and regulatory basis for NGO development..
- Internews helps to strengthen media organizations and works on media law in the region.
- On activities that are more focused on democratic processes than specifically on rule of law, USAID works with the National Democratic Institute (NDI), the International Foundation for Election System (IFES), which carried out a series of opinion polls referenced in this assessment, and the National Endowment for Democracy (NED) which, among other things, has provided grant funds for legal assistance to the poor and for civic education, both of which are discussed in this assessment.

- USAID's portfolio of rule of law activities over the years has been supplemented by training overseas provided under first the NIS Exchanges Training (NET) Project and subsequently through Global Training for Development (GTD), which replaced NET in 1997.
- Chemonics worked with USAID in Kyrgyzstan, starting in 2000, to help improve awareness of citizen rights under that country's new private land law.
- Since 2000, USAID has worked with Transparency International on the establishment of an anti-corruption center in Kazakhstan.

2. Other U.S. Government Programs

Rule of law assistance in Central Asia has not been limited to the assistance provided through USAID. Other U.S. Government programs have acted directly to support rule of law activities in the three countries covered by the Assessment. Some of the most important of these have been:

- The Embassy Democracy Fund Small Grants program that was established in 1995 and through which embassies in the region operate a small grants program, some of which have been used to fund rule of law activities, e.g., grant funding from this source was one of the types of assistance provided for the development of legal information centers and law libraries.
- USIA was, at the start of the last decade, an independent U.S. Government agency at the time foreign assistance to the NIS was initiated, and has since been folded into the State Department's Office of Public Diplomacy. In Central Asia, it continues to play a number of its long-term roles, one of which is the organization of international training programs, including the International Visitors Program and the Muskie Fellowships, which are specific to the NIS countries under the Freedom Support Act. USIA funded training has been the most extensive in the countries visited from a rule of law perspective.
- Department of Justice supports liaison personnel in some countries who engage in the provision of technical assistance to the prosecutor's office. In Kazakhstan and other countries in the region, a Department of Justice liaison is in the process of setting up precisely this kind of technical assistance relationship with government. In addition, DOJ's International Criminal Investigations Training Assistance Program (ICITAP) has provided forensics training aimed at the use of a more scientific basis for prosecution in Kazakhstan, Uzbekistan and Kyrgyzstan since 1996 and the Department of Justice also collaborated with USAID in 1998-2000 on training programs for prosecutors.
- State Department's Anti-Crime Training and Technical Assistance (ACTTA) Program has been active in the region, focusing on different countries in different years. For example, in 1996 this program trained 235 Kyrgyz law enforcement officers in the region and sent some of them to the United States. It also provided Kyrgyzstan with a grant of \$50,000 to purchase basic equipment. Laboratory and photographic equipment was also provided on a direct basis.

3. Other Donors

A number of other donors have sponsored rule of law improvement activities in Central Asia over the last decade. Some of the more visible donors in this field include:

- The World Bank, which is in evidence primarily in Kazakhstan where it was initially involved in rule of law through a 1994 loan which, among other things, funded a legislative development activity, managed by the U.S. firm, Pepper, Hamilton and Sheetz, which organized a group of

local legal professionals and set them up as a legal drafting unit in the Ministry of Justice. The World Bank initiated work in the development of a second loan, specifically focused on rule of law in 1997. This loan, which was signed in 1999 included components for judicial reform, legislative drafting assistance, focused on the harmonization and clarification of existing law, and legal information systems development. Kazakhstan terminated this loan at the end of 2001 stating that it would continue with the planned activities but instead fund them directly.

- The Asian Development Bank works closely with Kyrgyzstan and, at the time of the Assessment, just signed a second corporate governance loan with the Government. This new loan includes judicial reform as one of its elements.
- The Dutch Ministry of Foreign Affairs is another prominent rule of law donor in Kyrgyzstan, having worked with the Government on judicial reform since 1998 and provided study tours as well. This program is not as active today as it was a few years ago.
- The European Union's technical assistance arm, TACIS, works in the region and was most visible at the time of the Assessment in Uzbekistan where its advisory role to government at times connects with rule of law initiatives.
- The German bilateral technical assistance program, GTZ, also works on rule of law activities throughout the region. Its work on law development in Uzbekistan involved direct assistance on a long list of pieces of legislation, comparable in some ways to the kind of assistance Kazakhstan received early on under the first World Bank loan and which both Kazakhstan and Kyrgyzstan has received from USAID.
- United Nations Development Programme (UNDP) has been involved in various rule of law activities and is one of the first to have focused directly on corruption in the region.
- The Swiss bilateral development agency is a relatively new donor but its focus is very much on legal services. This agency funds, along with USAID, an innovative training and legal services program in Southern Kyrgyzstan.
- The British have provided a modest level of rule of law assistance through the British Know How Fund, including study tours for parliamentarians, transcription equipment for pilot courts in Uzbekistan and a pilot arbitration project in Kyrgyzstan.
- In Uzbekistan, a Japanese law school has initiated a faculty exchange with three local law schools and the Japanese Government's development agency, JICA, is providing scholarships at the masters degree level, including law school, for which Uzbek students are eligible.
- The Organization for Security and Cooperation in Europe (OSCE) which has offices in Kazakhstan and Kyrgyzstan, in addition to monitoring elections and supporting election reform, focuses its assistance on human rights, gender issues and media independence.

4. Foundations

Two foundations have been actively involved in rule of law improvement efforts in the region for a number of years.

- Eurasia Foundation provides small grants, largely in fields its staff selects. Rule of law is one focus of this organization's work and it has provided grants for work in this field. Eurasia receives some of its financial resources from USAID.

- The Soros Foundation, like Eurasia, funds numerous small grants, including book publishing grants, some of which are in the rule of law field.

II. PROGRAM OUTCOMES AND IMPACT

A. Overview

Looking broadly across the range of legal system outcomes and impacts that USAID/CAR and other donor rule of law activities might have been expected to affect, the MSI Assessment Team found solid evidence of improvement with respect to several legal system *outcomes*, most notably improvements in the legislative frameworks in the three countries visited. In all three countries there is also positive evidence of institutional change, including the separation of the judiciary from the Ministry of Justice and the emergence of associations of legal professionals. At the rule of law *impact* level, however, the picture is quite different. As discussed below in greater detail, the overall rule of law situation in Kazakhstan, Kyrgyzstan and Uzbekistan has at best improved marginally in some respects. In other respects initial progress in the years immediately following independence appears to be eroding.

The contrast between activity outcomes and rule of law impact in Kazakhstan, Kyrgyzstan and Uzbekistan makes it inappropriate to report solely on positive results at the outcome level. Questions about why improvements in the legal systems of these countries have not resulted in a better rule of law situation overall are unavoidable. Central to an understanding of this gap is the difference between tasks that are understood to be *necessary* for transforming a society from one driven by state power to one that operates based on the rule of law, applied equally to all citizens, and the totality of what is *sufficient* to bring about such a transformation. In Kazakhstan, Kyrgyzstan and Uzbekistan, many things that are necessary to improve rule of law conditions have been initiated and some have been achieved, but the sufficiency criteria for a rule of law transformation in these countries has not yet been met.

For the most part, the rule of law assistance that USAID and other donors have supported in Kazakhstan, Kyrgyzstan and Uzbekistan appears to have been necessary to achieve positive rule of law impacts. Legal framework improvements, for example, even in retrospect appear to have been necessary, so was, most would assert, training in new laws for judges, attorneys and prosecutors on new laws.

That these efforts have not yet proven *sufficient*, however, is evident in all three countries:

- While the legal frameworks of Kazakhstan, Kyrgyzstan and Uzbekistan have improved and are adequate for most purposes, weaknesses persist. More important, however, implementation of the law is so inconsistent that, in the eyes of citizens and businesses, it obviates the positive effects of improvements that have been made in the legislative frameworks of these countries.
- Institutional improvements, including greater judicial independence and better training for judges and other legal professionals have not yet produced positive rule of law impacts because these freedoms and capacities are not being applied -- judicial decisions do not consistently reflect the law, nor are they executed in a timely manner.
- Increased judicial independence, and improved knowledge of the law among legal professionals, has not yet translated into higher citizen and business confidence in the courts. Corruption, in the form of money and influence, is widely acknowledged to intervene, producing judicial outcomes that are neither independent nor consistent with the law.

- Lack of confidence in the judiciary, when combined with harassment of the NGO sector and independent media and unchecked human rights abuses documented for these countries, results, in turn, in declining confidence in the promises of democracy.

This is not to say that donors have not put enough money into achieving broad rule of law improvements. Reforms fostered by foreign assistance programs, on whatever scale, invariably combine with local practices and initiatives and either succeed or fail largely as a function of whether those local practices enhance or impede them. As USAID/CAR's own analysis of the situation in these countries acknowledges, the issue is broader than the term "political will" implies. Some of the practices that impede rule of law progress in these newly independent countries, including corruption, are broad-based and deeply imbedded in their cultures, not simply decisions made at the political level of these societies.

The following sections present a detailed review of the results of rule of law initiatives in Kazakhstan, Uzbekistan and Kyrgyzstan, at both the outcome and impact level. While it is more conventional to present the findings of an assessment in a sequence that moves from activities to outcomes to impact, the programming situation USAID faces in these countries is easier to understand by first looking the status of rule of law at the impact level. These broad conditions define the environment in which choices about future rule of law activities must be made.

Accordingly, the section below first presents a summary of the impact of rule of law activities in Kazakhstan, Kyrgyzstan and Uzbekistan at a level equivalent to USAID's Agency goals. Information acquired from the MSI Assessment Team's fieldwork and from secondary sources is presented. It then turns to the legal system outcomes to which USAID and other donor-funded activities have made direct and discernable contributions.

B. Trends in Rule of Law Assistance Impact

The lack of progress on some indicators of rule of law impact, economic growth results and democratic processes and freedoms described in this section, and slow progress on others, confirms rather than contradicts USAID/CAR's assessment of the problems it faces as it tries to foster market-oriented and democratic change in these countries.

1. Rule of Law and Economic Liberalization and Growth Trends

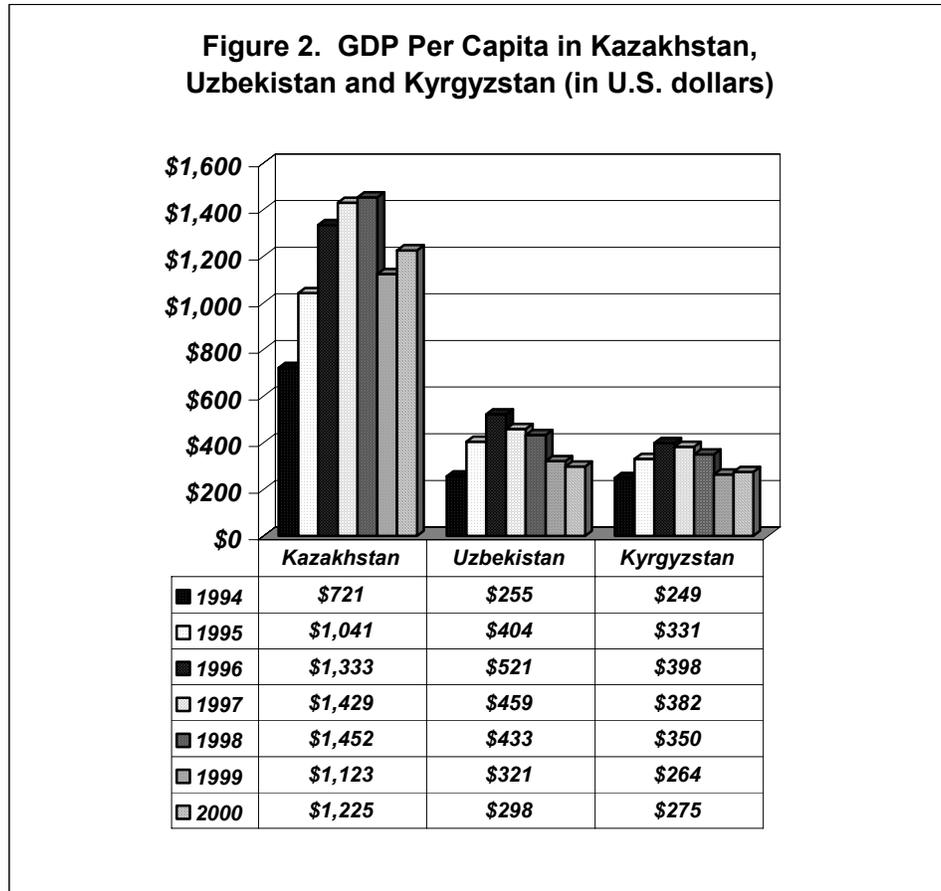
Improvements in the rule of law, as indicated above, are expected to have an indirect but substantial impact on the average citizen by virtue of a tendency for rule of law improvements to support economic liberalization, positively impact the investment climate in a country, result in business formation and higher rates of foreign and domestic investment, and lead to higher rates of economic growth.

Economic Performance

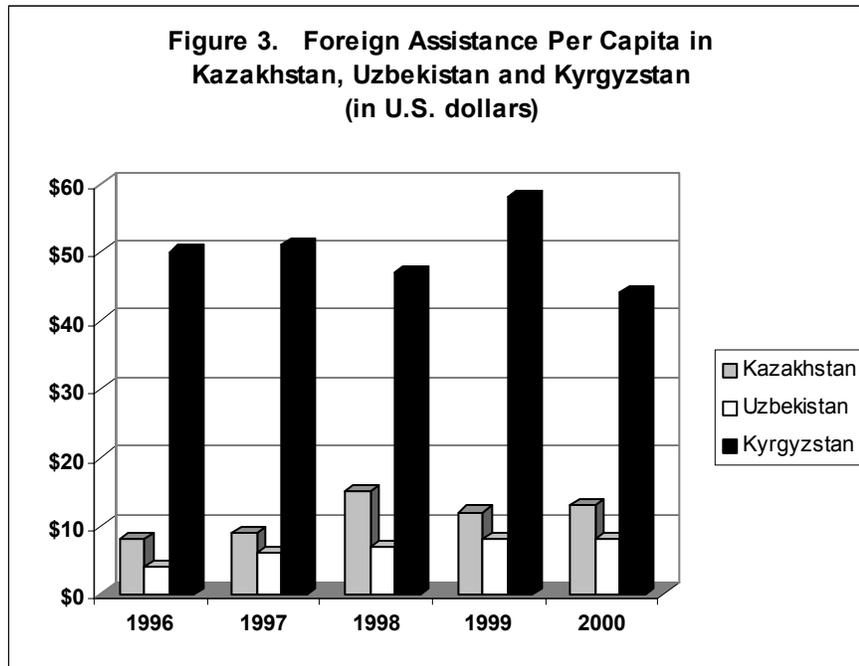
It is against this backdrop, and with the vulnerability of these countries to any dramatic economic change that takes place in Russia or the broader international economy in mind, that economic progress in this region has evolved. Following a pattern seen across the former Soviet Union, per capita income – a key USAID cross-country performance indicator -- fell in Kazakhstan, Uzbekistan and Kyrgyzstan in the first years after independence and then seemed to recover somewhat, particularly in Kazakhstan where oil plays a significant role. Those gains receded however in the wake of Russia's economic collapse in 1998 and the Asian economic crisis, as Figure 2 indicates, significantly affecting living standards.¹³ Per capita income in all of these countries is bolstered somewhat by foreign assistance, although only in Kyrgyzstan,

¹³ High average income levels in Kazakhstan mask the fact that roughly 14% of the population lives well below the poverty line with an annual income of less than \$365, as described in Asian Development Bank and other documents that focus on a poverty strategy for this country.

where the level of aid dependency – another USAID goal level performance indicator -- rose from 2.2% of GNP in 1993 to 13% in 1998, which is significant in per capita terms, as Figure 3 suggests. In Kazakhstan and Uzbekistan, foreign aid as a percent of GNP is 1% or less.



Source: World Bank development indicators.



Source: World Bank development indicators.

Other measures of change in the economic environment in these countries that USAID monitors on a cross-country basis include economic freedom and changes in foreign direct investment, which is often viewed as a barometer of market confidence – where perceptions of rule of law play a significant role – as they do in institutional investment ratings and business climate assessments.

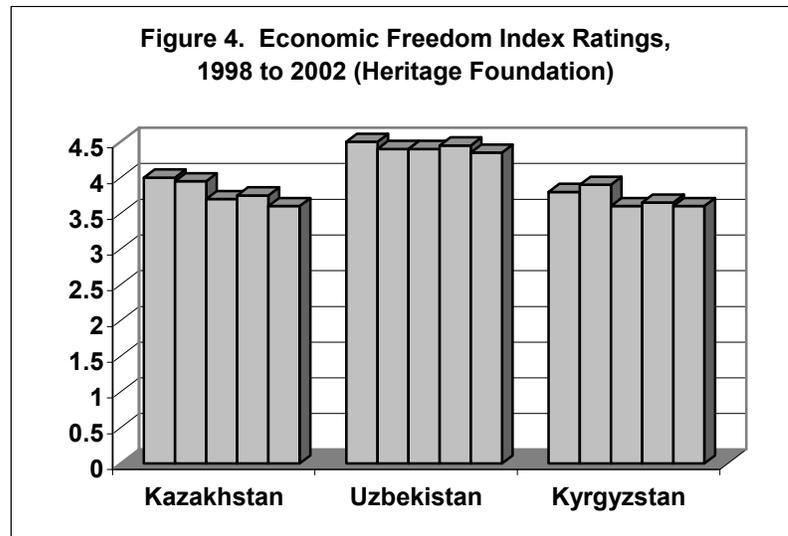
Economic Freedom

Kazakhstan, Uzbekistan and Kyrgyzstan each have distinct resource and policy profiles. Kazakhstan and Uzbekistan both have natural resources that Kyrgyzstan lacks. Kyrgyzstan and Kazakhstan, on the other hand, have both adopted policy frameworks that are more conducive to the development of a strong market economy than is the policy framework maintained by Uzbekistan over the decade. Population size and density in the three countries also varies greatly, from 48.5 per square kilometer in Uzbekistan, the most populous of the three, to 6.2 per square kilometer in Kazakhstan.¹⁴ Despite their differences, these three countries shared much by way of a common history during the Soviet era and all three approached their independence in the early 1990s with neither a legal framework of their own nor a first hand understanding and/or set of values that prepared them to trust and foster the workings of a market economy.

The extent of economic freedom contributes as directly if not more directly than external changes to income growth or its absence in these countries. Economic freedom, as measured by the Heritage Foundation, is one of the performance measures on which USAID compares countries. Progress on this indicator is reflected by trends toward a lower rating than in previous years, with a rating of 1 representing complete economic freedom. Figure 4 shows progress on this measure in Kazakhstan, Uzbekistan and Kyrgyzstan from 1998 onward. While Kazakhstan and Kyrgyzstan have performed better on this index than has Uzbekistan, none of these countries rates high on economic freedom. Moreover, there has been very little change in their status in this regard over the past five years, despite efforts by Kazakhstan and Kyrgyzstan, with USAID assistance, to put modern commercial laws in place, improve

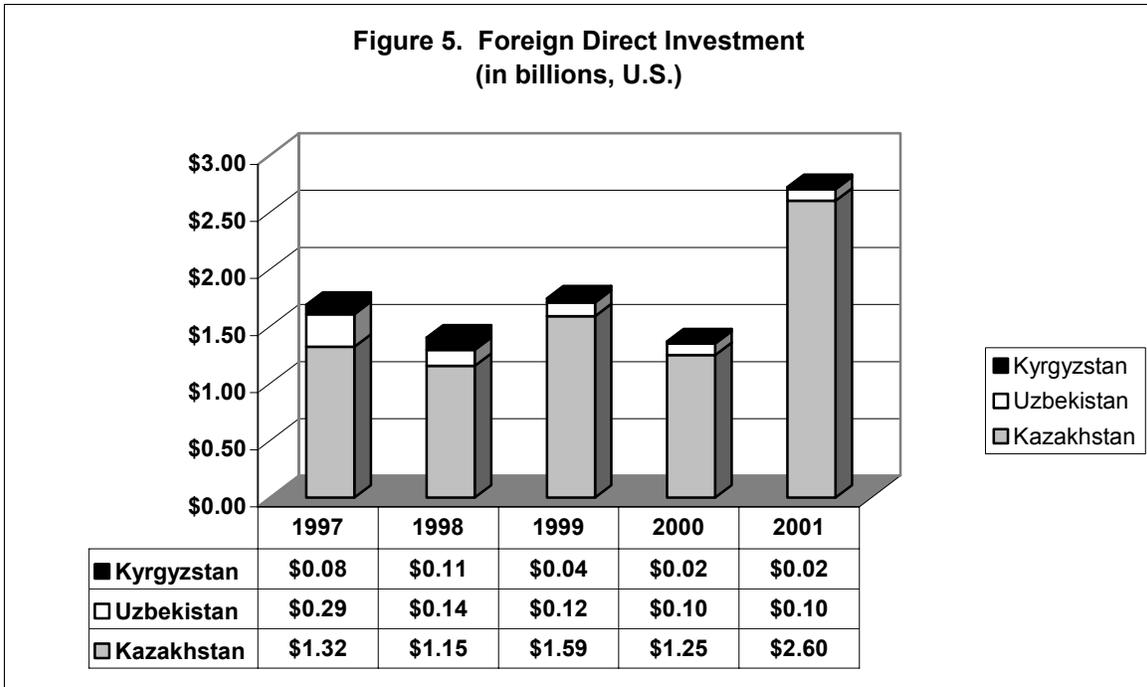
¹⁴ Population density figures are from the Library of Congress country handbook series.

their tax codes, adopt international accounting standards and accede to the World Trade Organization (WTO).



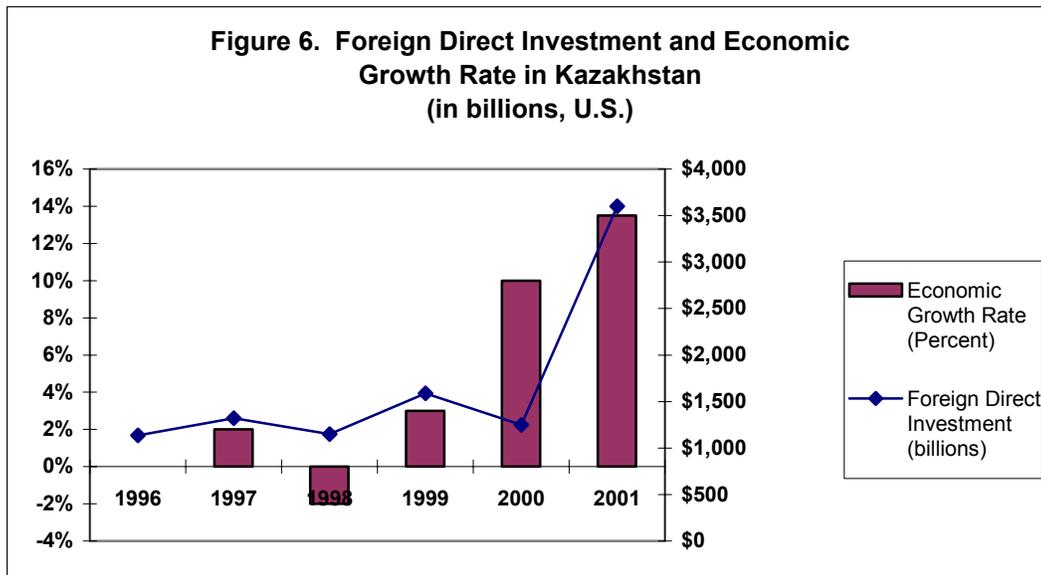
Foreign direct investment – a USAID goal level performance indicator – has been predictably higher in Kazakhstan than in the other two countries, rebounding after the Russian economic collapse, as a function of both natural resources and the convertibility of its currency, an economic feature that is lacking in Uzbekistan and is widely viewed as an impediment to investment in that country. Nevertheless, foreign investment in Kazakhstan has been erratic, rather than rising steadily, as Figure 5 shows.

The information that Figure 5 provides on Kyrgyzstan is perhaps more instructive in this regard. In the initial years following independence, Kyrgyzstan was viewed as being the most progressive of the Central Asian republics and was considered to have advanced the furthest with respect to rule of law. Foreign investment reflected early positive perceptions about Kyrgyzstan and its investment climate, but over the last five years, the Assessment Team was told, companies that thought they could work in Kyrgyzstan have pulled out and overall foreign investment in Kyrgyzstan has declined. In Kyrgyzstan, then, where the presence of oil does not trump other investment risk assessment considerations, one can more clearly see a relationship between investment levels and rule of law. The decline in foreign direct investment in Kyrgyzstan is particularly notable, since this is the only country of the three that is a member of the World Trade Organization. It is also one of the countries where USAID has made a serious investment in improving the commercial law framework and in training judges and other legal professionals.



Source: United Nations Conference on Trade and Development

Kazakhstan's experience on the other hand, is very suggestive of the relationship between foreign investment and economic growth on a per capita basis that USAID/CAR's strategy suggests might be realized in all three countries, if steady improvements are made in the investment climates in these countries. Figure 6 provides recent data on this relationship for Kazakhstan where investment in oil and other natural resource extraction accounts for the largest portion of foreign direct investment.



Sources: United Nations Conference on Trade and Development and World Bank

The overall picture painted by these indicators is one of economies that, if not held back, are at least not helped by the negative impact of rule of law weaknesses. In Kazakhstan, where foreign investment is relatively high, as well as in each of the other two countries, business representatives said to the

Assessment Team that it would be even higher if economic and legal reforms were perceived externally, as well as domestically, as having significantly improved the investment climate in these countries.

Regular investment climate assessments are prepared by a number of government and private organizations, including the U.S. Department of Commerce which publishes annual Country Commercial Guides and the European Bank for Reconstruction and Development which issues annual Investment Profiles for Kazakhstan, Kyrgyzstan, Uzbekistan and other countries in Central Asia and Eastern Europe. Current editions of the Country Commercial Guide indicate that the U.S. Department of Commerce views the investment climate in each of the countries included in this assessment as warranting improvement.

With reference to Kazakhstan, for example, the Guide notes that the “*vagueness in certain laws, contradictory legal provisions and poor implementation, especially at the local level of government...*” has resulted in “creative” interpretations of the tax code, despite the fact that it is considered to be among the most comprehensive and western-oriented in the former Soviet Union, and arbitrary interpretations of customs regulations. The report also notes that while all sectors are open to foreign investment there has been a “*growing trend to favor domestic investors over foreigners*” including increasing requirements for domestic content in investments. Dispute settlement, particularly disputes involving government enterprises are viewed as being difficult and the results of international arbitration are not necessarily accepted or enforced. The report also cites corruption as an obstacle to investment in Kazakhstan, but credits the government for its efforts to put anti-corruption legislation in place and to pursue anti-corruption initiatives, though it notes that very few prosecutions have resulted from these actions. Profiles developed for Kyrgyzstan and Uzbekistan are equally critical.

From a risk assessment standpoint, Kazakhstan’s institutional investor credit rating, at 29.7 in 1999, placed it on a par with Algeria, Bangladesh, Bosnia, Guatemala, Iran, Jamaica, Libya, Nepal, Romania and Vietnam, for that year. With an institutional investor rating of 18.9, Uzbekistan fares even worse as a potential investment opportunity, sharing its 1999 ranking with Benin, Burkina Faso, Honduras, Malawi, Nigeria, and Tanzania.

Rule of Law Situation

In its field visits, one of the central questions asked by the Assessment Team focused on the extent to which new laws are being implemented. In almost every interview, Assessment Team heard answers that are consistent with the ratings provided by other organizations that have examined the situation in Kazakhstan, Kyrgyzstan, and Uzbekistan. In interviews the Assessment Team conducted, the refrain: “*The law in our country is fine, but it isn’t being applied.*” was repeated many times, by people from different walks of life in each of these countries. Most respondents followed up on this assertion by offering their judgment of what it means for the people of their country, e.g.:

- *Things are becoming worse here, or*
- *People don’t trust the legal system, or*
- *The courts worked more predictably in Soviet times.*

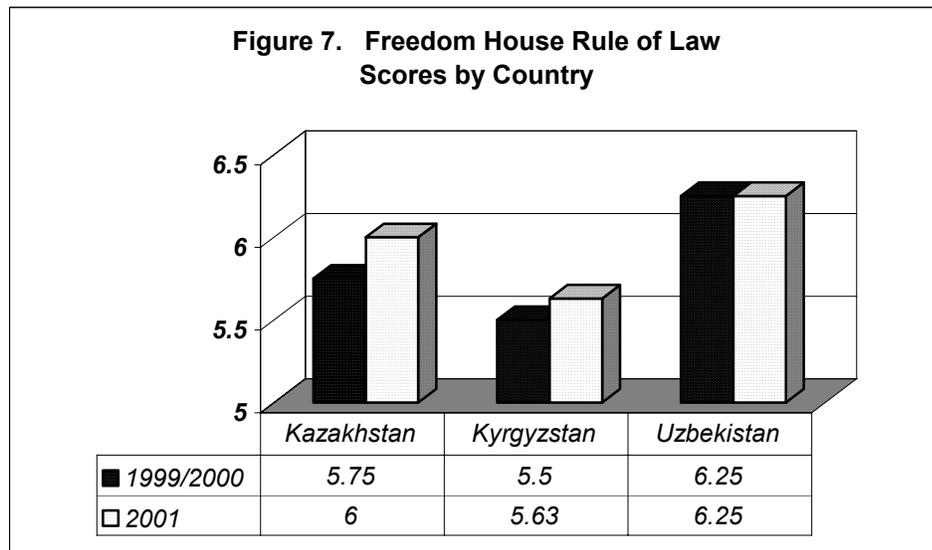
No matter how such statements to the team were couched, respondents consistently linked these judgments to their perception that the judiciary in their country cannot be relied upon to deliver impartial justice consistent with the law. The impression is strong among citizens of all three countries, as well as among foreign residents and donors, that at the level of “*justice delivered,*” these legal systems have not improved by much over the past decade.

Yet, not all respondents agreed that laws are not being implemented. Some respondents suggested that laws that have not changed dramatically, e.g., criminal law, family law, are being applied more consistently than are newer laws with which both legal system personnel and citizens are less familiar,

e.g., commercial law, new land laws, etc. Looked at another way, it could be said that laws that do not touch upon important political or financial interests are indeed being implemented, but that one cannot expect fair and impartial application of the law when high-level interests are at stake. In other words, the picture is very uneven. Some respondents who initially told the Assessment Team that laws are not being implemented or that it was hard to get a fair decision in court, reversed themselves and offered specific examples where a commercial law had been applied or where they or someone they knew had won a case apparently based solely on the judge's reading of the law. Local businessmen were more likely than expatriates to report that they could successfully take a case to court.

Ratings of overall progress with respect to rule of law in Kazakhstan, Kyrgyzstan and Uzbekistan prepared by other organizations indicate that it has been modest at best. Freedom House, to which USAID turns for many of its cross-country performance assessments, uses a 7 point scale to depict the status of countries on a variety of indicators, where 7 represents the worse possible situation with regard to a specific indicator and 1 represents the ideal situation. As Figure 7 shows, the three countries included in this assessment all received very poor rule of law index ratings at the end of their first decade of independence compared to NIS countries that are geographically and culturally closer to Europe, e.g., Slovenia (1.75), Poland (1.88), Hungary (2.50) or the Czech Republic (3.13).¹⁵

Of the three Central Asia republics Kyrgyzstan is viewed by this index as having made more progress with respect to rule of law than its neighbors, at least initially. Both Kyrgyzstan and Kazakhstan, as depicted by this index, and confirmed by interviews carried out during the MSI assessment and a variety of human rights monitoring reports, appear to be losing ground with respect to rule of law, largely as a function of enhanced restrictions of freedom of association and the press.



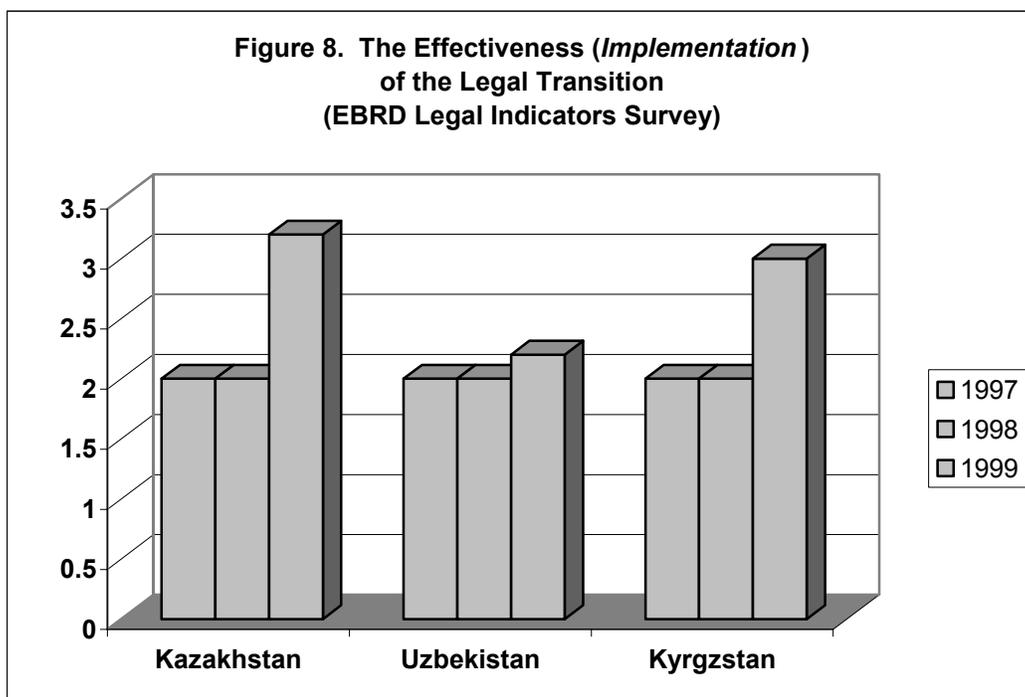
At the heart of this rating lies a gap between the laws these countries have passed and the extent to which those laws are enforced, as the Assessment Team was told during its field visits. Providing further insight on this point is an annual survey the Office of the General Counsel of the European Bank for Reconstruction and Development (EBRD) undertakes, called the Legal Indicators Survey, through which it scores both the *extensiveness* (scope and coverage) and the *effectiveness* (implementation) of the legal transition in countries that were formerly part of the Soviet Union. On both measures, the survey ratings follow a 5-point scale where “adequate” is the rating at the mid point. Ratings shown in the current EBRD

¹⁵ Freedom House rule of law ratings for these Eastern European nations are for 2001.

strategy papers for Kazakhstan, Kyrgyzstan and Uzbekistan display the 1999 ratings, all of which were deemed to be in the adequate range.

Figure 8 shows the ratings given to each country on effectiveness, i.e., implementation of existing laws, between 1997 and 1999. A second table based on these surveys which focuses on the completeness of the legal frameworks in Kazakhstan, Kyrgyzstan and Uzbekistan is provided in Section II, 1, B, below, where that outcome level result is discussed. As this figure shows, all three countries made progress in implementing laws on the books in 1999. But the progress they made only served to move them from the *inadequate* to *adequate* range on this rating, not above it.

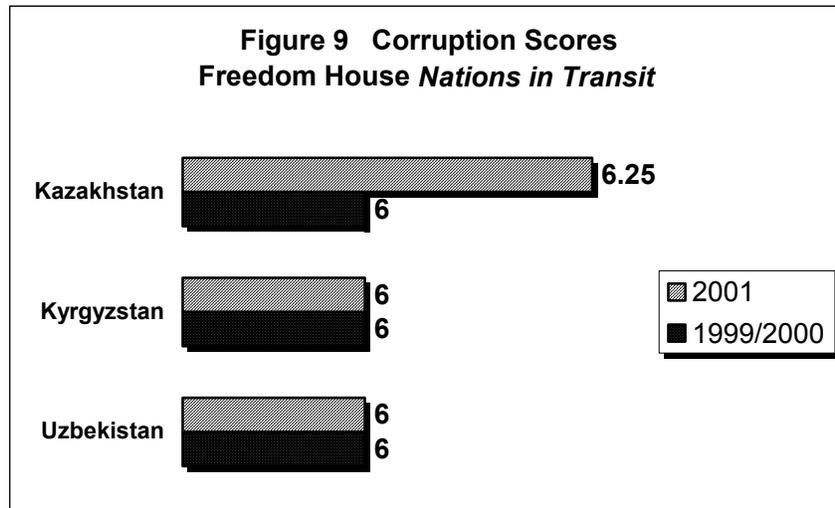
As indicated in the introduction to this report, corruption, particularly, but not exclusively, with respect to the judiciary, is a problem for both businesses and ordinary citizens. Businessmen, NGO and press representatives, attorneys, government officials and donors raised corruption as an issue in interviews the MSI assessment team conducted in Kazakhstan, Kyrgyzstan and Uzbekistan. What the MSI team heard in these interviews is consistent with the findings of other assessments, including observations recorded by USAID/CAR in its planning and performance reporting documents. Simply stated, people in these countries told the Assessment Team that everything from judicial decisions to a place in law school can and is being bought. Furthermore, judicial decisions, even without money changing hands, can be manipulated by those with sufficient political power or with other types of influence over a judge, e.g., family or clan ties.



While independent ratings disagree by small fractions, the overall conclusion is that corruption is extremely high in all three of these countries.

- Transparency International rates Kazakhstan and Uzbekistan as among the most the 14 most corrupt countries in the world, as USAID/CAR's Assistance Strategy for Central Asia 2000-2005 noted. Transparency International scores for Kazakhstan and Uzbekistan show both improving, and now tied with scores of 2.7 on a 10 point scale, compared to 2.3 and 1.8, respectively, in 1999.

- Freedom House, which also rates countries on their degree of corruption offered a slightly different view in its most recent. This index, depicted in Figure 9, shows corruption in Kyrgyzstan and Uzbekistan as roughly unequal and unchanged between 1999 and 2001, while, corruption increased in Kazakhstan.



Interview data from the Assessment indicated that not only is corruption pervasive, the judiciary in all three countries is tainted. This observation was offered frequently and by a wide range of interviewees. While there is little published data on judicial corruption for any of the three countries included in the assessment, two surveys carried out by UNDP in Kyrgyzstan included questions about citizen confidence in various institutions. The judiciary, as Figure 10 shows, was one of the least trusted institutions according to this survey.

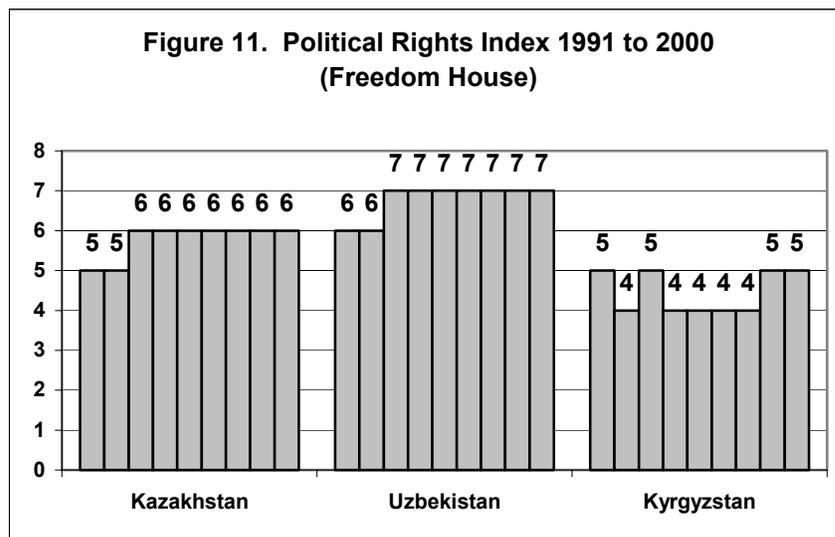
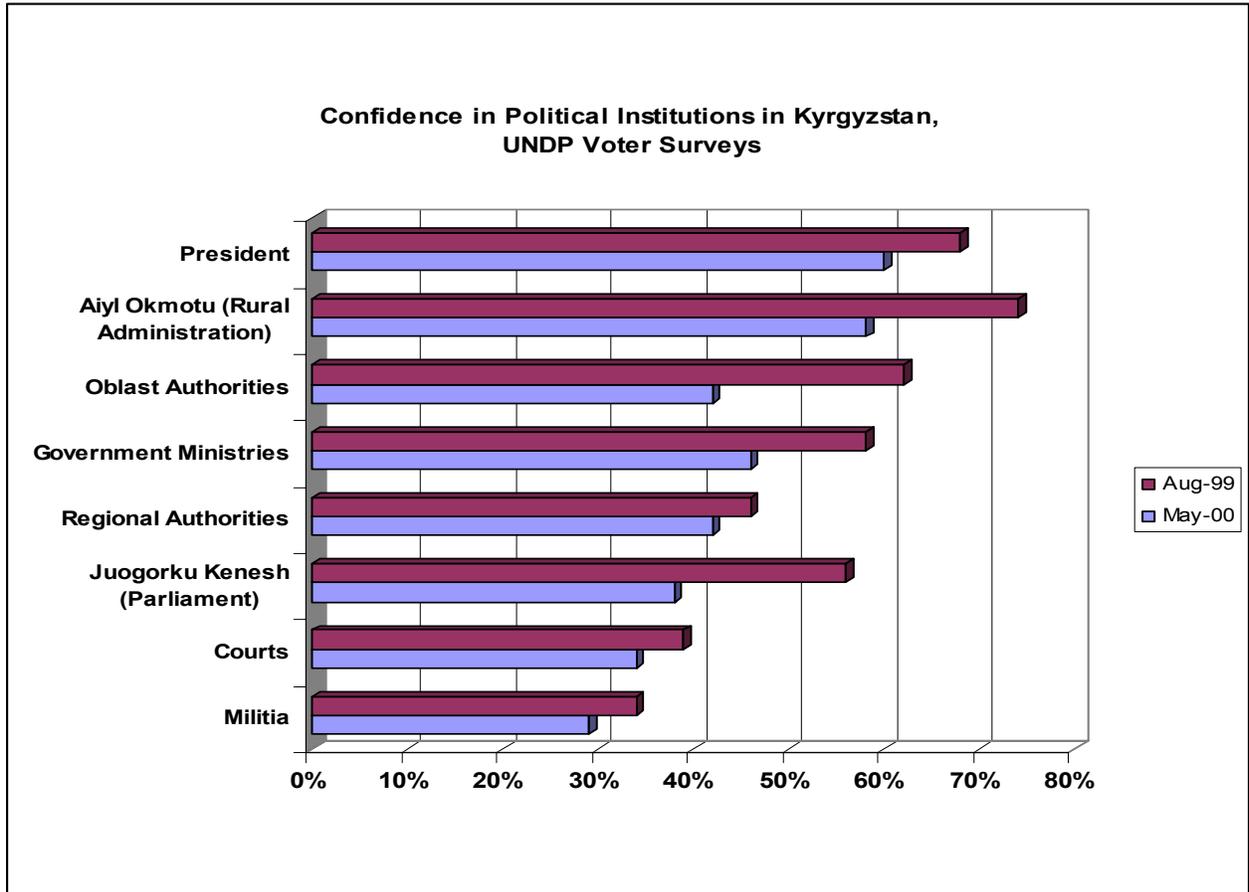
2. Rule of Law and Trends in Political and Civil Rights Trends

When constitutions provide for the selection of leaders by a nation’s citizens and guarantee those citizens basic rights and freedoms, adherence to the rule of law is what turns these promises into reality. When it is absent, neither elections nor press reports can be depended upon to reflect popular will. USAID monitors the status of political and civil rights across countries as a means of determining whether the nations it assists are becoming more or less free, and more or less democratic.

a. Political Rights

The Freedom House index USAID uses to monitor political rights focuses primarily on the characteristics of elections. As Figure 11 shows, these ratings indicate that political rights have eroded in Kazakhstan, Kyrgyzstan and Uzbekistan rather than increase in the decade since independence. Kyrgyzstan, which had improved in this regard has returned to the level of political rights evident at the beginning of the decade. Kazakhstan and Uzbekistan are both scored as losing ground on this index soon after independence and not improving since.

Figure 10. Citizen Confidence in the Courts and Other National Institutions in Kyrgyzstan as Reported in UNDP-funded Surveys



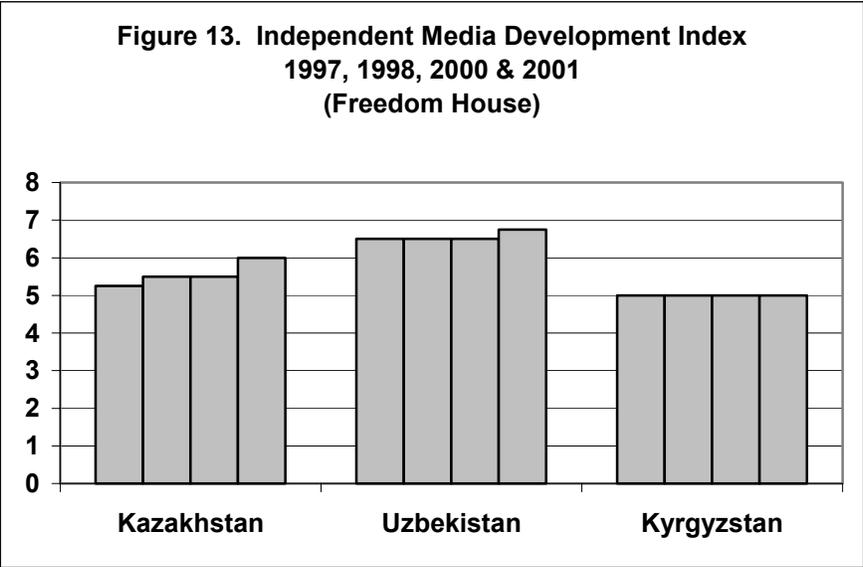
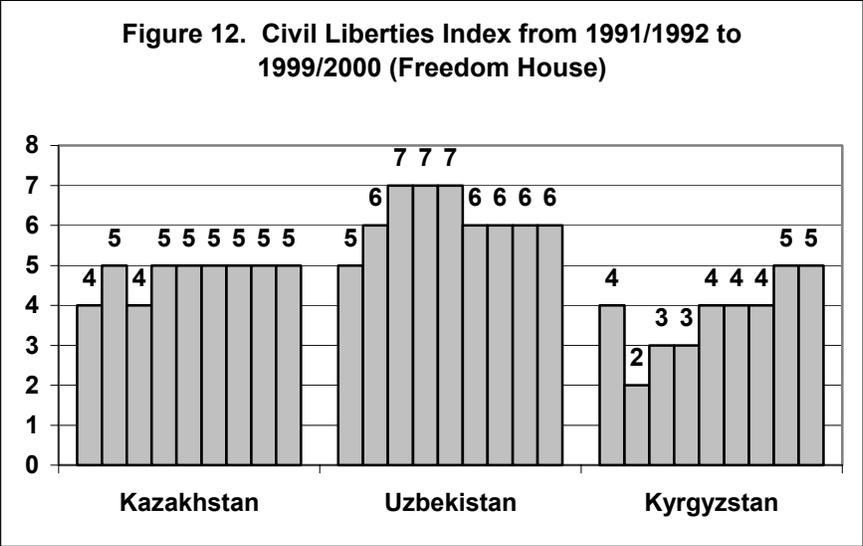
At the beginning of the last decade the countries of Central Asia were all initially described as emerging democracies. As indicated above, the more frequently used term today is autocracy. In an era where presidential power has changed hands three times in Russia, the men who assumed power in Kazakhstan, Uzbekistan and Kyrgyzstan at the time of independence all remain in power. Each one has manipulated either the constitution or the electoral system in order to maintain their position.

Public opinion polls carried out just before USAID prepared its current strategy indicated that many people in the region, i.e., from a high of 78% in Kazakhstan to a low of 40% in Uzbekistan, believe that their vote in elections does not affect policy. Yet these same voters turn out in large numbers to vote in presidential elections. When their votes were tallied, President Nazarbayev in Kazakhstan won his election in 1999 by 81% with an estimated 87% turnout. President Karimov did the same in Uzbekistan in 2000 with 92% of the vote an estimated 95% turnout. In Kyrgyzstan, President Akayev won in 2000 with 74% of the vote and an estimated 77% voter turnout. Election returns of this magnitude, rather than demonstrating voter apathy, suggest that some form of bloc voting is at work and is being used to ratify decisions these societies have already made. Were that not the case, significantly lower voter turnout rates might be expected, particularly given polling results USAID has amassed from these countries that indicate that citizens do not feel empowered politically.

3. Civil Liberties

The civil liberties index USAID uses on a cross country basis to monitor freedom of assembly and freedom of the press, provides rating information that reflects the complaints the MSI Assessment Team heard about the harassment of NGOs and media organizations in all three of the countries on which this assessment focused. Human rights abuses, which are also captured in this index, were described to the Assessment Team by human rights activists in Uzbekistan. Ratings on the Freedom House index USAID monitors depict a worsening situation in Kyrgyzstan, as Figure 12 shows. Human Rights Watch and other organizations that monitor these countries also describe the situation for media, in particular, as deteriorating in Kazakhstan, as the independent media index, in Figure 13, indicates. Interviews carried out by the Assessment Team indicate that in both Kazakhstan and Kyrgyzstan, the past two years have been difficult ones for NGOs and media. The issue of harassment in these countries received attention in the testimony, in July 2001, of the Deputy Assistance Secretary of State for Democracy, Human Rights and Labor before the House International Relations Committee.

In Kazakhstan, Kyrgyzstan and Uzbekistan, USAID's strategy for strengthening democratic culture is closely tied to the NGO and media communities. While the kinds of harassment that results in worsening international ratings and produces stories the MSI Assessment Team was told about media organizations that have been driven out of business does not affect all media organizations, or all NGOs, incidents of this sort send a signal through these communities about the boundaries that constrain their activity.



Considered together, these measures of impact across USAID’s economic development and democracy/governance goals, on an Agency-wide basis, show a disappointing performance. This overall situation factored prominently in USAID/CAR’s reassessment of progress and prospects as it prepared its current Strategic Plan, which postulates that expectations based on progress made in Eastern Europe is not applicable as a model for Central Asia, with its different history and culture.

While these measures suggest that investments that USAID and other donors have made in rule of law activity are not yet being felt at the impact level, the progress these assistance programs have fostered at the outcome level --- just below impact --- should not be ignored. Outcomes are the building blocks upon which impact depends. In Kazakhstan, Kyrgyzstan and Uzbekistan progress has been made in terms of legal system outcomes.

C. Program Outcomes

As indicated at the beginning of this section, USAID's conceptual framework for its democracy and governance work views work in four fields as important building blocks for improvements in the rule of law in developing and transition countries, as indicated in the introduction to this report:

- **The Legislative Framework** of the countries reviewed. For Kazakhstan, Kyrgyzstan and Uzbekistan this includes both core laws, i.e., criminal, civil and commercial law as well as other more specialized legislation and the implementing legislation and regulations needed to support them.
- **Legal Sector Institutions**, which for these countries includes not only judicial independence, but also the results of training for legal professionals and a wider range of support for transparent and impartial judicial proceedings, including alternative dispute resolution mechanisms, to the degree that they exist and enhance the capacity of the judicial system to carry out its functions.
- **Access to Justice**, which subsumes both knowledge of one's rights and the law and access to representation and its benefits.
- **Legal Education** for the "next generation" of legal professionals in the three countries examined mainly involves the kinds of exposure to practical applications of the law that students receive outside their law faculty setting.

In each of the sections below on program outcomes, the focus is on accomplishments at that level. As the preceding section demonstrates, progress on these outcomes has not been sufficient to result in significant changes in the rule of law status in Kazakhstan, Kyrgyzstan or Uzbekistan. Nor have donor and national investments in legal system outcomes prevented an erosion of early gains on important rule of law measures in some of the countries examined by this assessment. Whether the overall rule of law situation would be even worse than it is today in these countries is a matter of speculation rather than fact. Neither a positive nor a negative stance on that question can be validated.

1. The Legislative Framework

After declaring their independence, Kazakhstan, Uzbekistan and Kyrgyzstan embarked upon a process of exchanging the Soviet legislative framework they had inherited with constitutions and laws of their own creation. The essential goal was to draft constitutions and laws that would provide the framework for a democratic form of government, protect human rights, and establish the rules for the implementation of a free market economy. Transparent and fair processes for drafting clear and harmonized laws also had to be developed.

The first post-Soviet Constitutions in the region were drafted within a reasonably short period of time after independence in 1991. Of the three countries visited by the Assessment Team, Uzbekistan was the first to adopt a new constitution, in 1992, and that constitution continues in force today. Both Kazakhstan and Kyrgyzstan adopted their first post-Soviet constitutions in 1993. Kazakhstan has since revised its constitution twice, in 1995 and 1998. Kyrgyzstan's 1993 constitution was amended once, in 1996.

Individuals who recall this period in which national constitutions were drafted told the Assessment Team that the constitutions of a number of western democracies were considered in the drafting process. History predisposed all of these countries to prefer a civil law approach, following Franco-Russian traditions, to the common law system familiar in the United States and Britain. Following the adoption of their first post-independence constitutions, countries in the region began to focus on the formulation of new civil and criminal codes. At about this point in time, donors began to play a role in the development of legislative frameworks in countries in Central Asia and in the review of constitutions that were still being

developed. In Kazakhstan, Kyrgyzstan and Uzbekistan, USAID’s rule of law grantee reviewed these constitutions and provided comments to those involved in the drafting process.

This section examines the laws and regulations adopted by these countries over the roughly ten years following their independence and the adoption of their first national constitutions. It also examines the legislative process involved and the role of citizens in those processes. Finally it considers the quality of legislative drafting skills in these countries at the end of their first decade.

a. Laws Passed

Legal Professionals and others who commented from government and outside the government concur that a tremendous amount of new legislation has been created in the region since these countries became independent. They further agree that the legislation that is in place now in all three of the countries the Assessment Team visited is adequate for most needs. Table 2 summarizes the time frame during which major pieces of legislation were developed in each of these countries. While offering a quick overview, this table vastly understates the level of effort of donors and host countries made. During the past decade, literally hundreds of laws have been drafted, adopted, redrafted and amended again, in some instances several times.

Despite the work that has been completed and the range of civil, criminal and commercial laws now in place in each of these countries, legal system professionals in all three countries described weaknesses in their legislative frameworks to the Assessment Teams. Among the weaknesses they cited were ambiguities in existing laws, conflicts among them and in some instances the existence of laws for which implementing legislation was never drafted or approved. A number noted that the process of continually amending laws is itself a problem in these countries. Contradictions in the law can bring a case to a halt, one attorney told the Team, citing a case where the judge asked Government to clarify contradictions in the tax law and never received an answer. Confusing legislation is also a fundamental facilitator of corruption. In both Kazakhstan and Uzbekistan, government officials described their legislative frameworks as being at a mid-point in their development, and in both countries the Assessment Team was told that something by way of a plan or timeline for upgrading existing laws and addressing their inconsistencies exists.

Table 2. Timeline for Development of New Laws

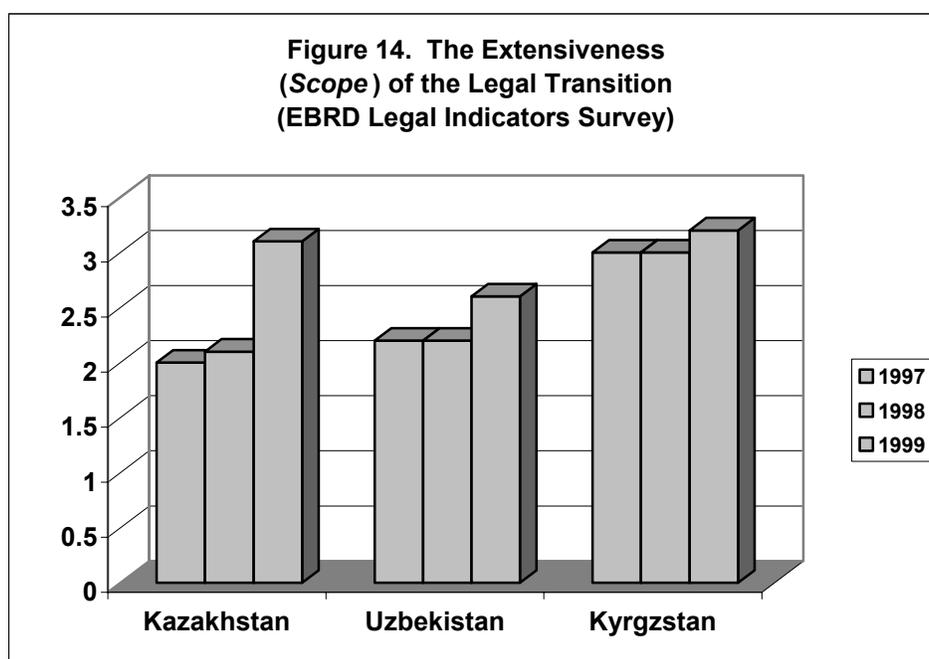
	Civil Code	Criminal Code¹⁶	Basic Commercial Laws	NGO and Mass Media Law
Kazakhstan	General Part (1995) Special Part (1999)	1998	1995-98	Media 1996 2001 NGOs 1999
Kyrgyzstan	1994	1998	1995-96	Media 1992 Amendments proposed 2001

¹⁶ All three of the countries visited consider some crimes to be a basis for capital punishment; nevertheless, there have been some improvements with respect to the death penalty. During the past decade, they have reduced the number of crimes for which this is the case. Kazakhstan reduced the list of such crimes from 18 in 1995 to three in 1998, but is today considering adding assassination attempts against the President as a new crime for which the death penalty would be warranted, according to press reports. Faced with a large prison population, Kazakhstan also reduced by 70 the number of crimes for which incarceration is required. Uzbekistan has systematically reduced the number of capital crimes over the decade. In 1994 thirteen crimes were listed in the Criminal Code of 1994 as capital offenses. In 1998, five of these were removed from the list, and, in October 2001, a law was passed that reduced the number of capital crimes in Uzbekistan to four. While the death penalty is used in Uzbekistan, it cannot be applied to women or to children under the age of 18. In Kyrgyzstan there are five crimes that, by law, are capital crimes. Since 1998, there has been a moratorium in place on capital punishment based on a Presidential decree. Those convicted of capital crimes since the 1998 moratorium was initiated remain incarcerated on death row.

	Civil Code	Criminal Code ¹⁶	Basic Commercial Laws	NGO and Mass Media Law
				NGOs 1999
Uzbekistan	1997	1994	1994-98	Media 1997 NGOs 1999

Independent assessments of the legal frameworks of these countries generally concur with the views expressed to the Assessment Team by local officials, attorneys and foreign and local businessmen.

As indicated in Section II, 1, A, above, the EBRD's annual Legal Indicators survey assesses the *extensiveness*, or scope, of legal transitions as well as their *effectiveness* (implementation), which was shown in Figure 8. In Figure 14 below, data from this survey on the extensiveness, or scope and quality, of the legal transform in Kazakhstan, Uzbekistan and Kyrgyzstan are shown for 1997 to 1999. As the figure shows, these countries all score in the mid- or adequate range on the survey's 5-point scale. Assessments of the legal frameworks in these countries provided in annual Country Commercial Guides prepared by the U.S. Foreign Commercial Service of the Department of Commerce offer similar assessments, in narrative form. They note that progress has been made in passing laws, but that in each country, work remains to be done to clarify the law, fill in gaps and eliminate contradictions.



Gaps in implementing legislation and regulations in these countries, gaps in administrative law and inadequate action to reduce corruption were all inadequacies that interviewees and other sources cited for attention.

Implementing legislation and regulations, frequently necessary to make the provisions of legislative frameworks practical, have reportedly received insufficient attention. Many laws are drafted (for example, one in Uzbekistan concerning the role of lawyers in court cases) but are never implemented because of a lack of the requisite regulations. Too many and poorly drafted regulations are related problems which contribute to the corruption so prevalent among the government agencies. USAID supports an effort in

Kyrgyzstan to help reduce the number of regulations that affect and constrain business development, but this appears to have been the only focused effort of this sort in which USAID has invested in Kazakhstan, Uzbekistan and Kyrgyzstan.

In all three of the countries visited there are laws on “administrative violations” – a category of law introduced in the Soviet era – that focus on the right of government to curtail citizen actions that are not consistent with administrative decisions, decrees and the like. These laws are different not only in intent but also in function from the kind of administrative law that exists in Western democracies, where administrative law is used as a means for appealing governmental decisions to the judiciary or for compelling administrative agencies to act when they have a duty to do so. Administrative law reform is particularly necessary in these countries where the NGOs noted the absence of a venue in which they could challenge agencies that were not acting in a way that was consistent with the law. Despite its importance, and unlike in some other former Soviet countries, administrative law reform appears not to have received serious attention either from governments or donors. The MSI team did not learn of any specific reason why administrative law might not have been addressed by donors. Most likely, however, is the fact that USAID contractors focused on commercial laws, and remedies under them, and USAID grantees functioned primarily in a reactive mode with respect to legislative drafts.

Of note also, in light of the degree to which corruption may be holding back progress on rule of law impacts in these countries are their anti-corruption laws and initiatives. During the decade, governments in the regions themselves have taken some actions aimed at stemming corruption, in part with some assistance from donors, including the UNDP in Kazakhstan and the ADB, under its corporate governance loans, in Kyrgyzstan. Because of the relevance of laws and initiatives in this area to overall rule of law progress, the text box below highlights progress in this area.

Team interviewed in all three countries indicated that foreign assistance played an important role in the progress these countries have made on the development of their legislative frameworks. Documentation on the assistance provided by USAID and other donors clarifies just how considerable that assistance was.

Anti-Corruption Laws and Initiatives

Kazakhstan passed an anti-corruption law and established a government anti-corruption commission. UNDP's anti-corruption program for Kazakhstan reportedly assisted the Government as it introduced these changes. In 1999 Kazakhstan's President is reported to have reorganized reporting lines in government so that all units involved in the anti-corruption initiative report directly to the his office. Kazakhstan's anti-corruption efforts have focused on judges as well as other government officials and several cases of judicial corruption were given a high profile treatment by government and in the press. USAID has been working with Kazakhstan to improve control over corruption in the Custom's Authority and progress has been reported in that arena and it worked with the Judges Union on the development of its first code of ethics. In addition USAID is supporting the establishment of an anti-corruption center in this country.

Kyrgyzstan's criminal code, adopted in late 1997 incorporates some anti-corruption features, including penalties for accepting or giving bribes. More comprehensive anti-corruption measures were included in Kyrgyzstan's equivalent of an anti-corruption law, a Presidential decree "On urgent measures to fight economic crime, corruption and contraband", issued in 1998, a year during which the Deputy Ministers for Finance, Environment and Industry were all charged with misappropriating government funds and taking bribes and the head of the Ministry of Agriculture was arrested for corruption. A number of government units share the responsibility for implementing this decree, including the Ministry of Internal Affairs, the National Security Services and the Prosecutor's Office. Of the organizations with a role in combating corruption, the Ministry of Internal Affairs is credited with having at least a visible effect, i.e., detecting almost 90% of the economic crimes that are identified and pursued through legal means in Kyrgyzstan. More than 40,000 criminal cases per year involve corruption of some sort according to government reports.

The Kyrgyz Government renewed its efforts to combat corruption in March 2001 when it announced a new anti-corruption initiative, shortly after the corruption surveys were completed. In the summer of 2001, the Prime Minister launched a second stage initiative, as it were, haranguing the head's key implementation organizations, including the Prosecutor's Office and the Ministry of Internal Affairs, in official and somewhat public arenas and receiving considerable press coverage. In August 2001, the Prime Minister, expressed Government's frustration with Kyrgyzstan's situation noting in an interview given in Bishkek that corruption "is assuming increasingly dangerous dimensions.

Uzbekistan's anti-corruption measures are less well documented and reported than is the case for Kazakhstan and Kyrgyzstan. During the Soviet era, Uzbekistan's President was associated with anti-corruption efforts. As to the current period, reports of actions taken to reduce corruption include the dismissal of the governors in two areas in 1998 on corruption grounds, and a major Presidential address to the nation denouncing corruption that was given around the same time.

- **Kazakhstan** received substantial assistance in the development of its legislative framework from both the World Bank and USAID. The World Bank, as noted above, provided Kazakhstan with a 1994 loan that included a component for legislative development that financed a team of expatriate and local attorneys working out of the Ministry of Justice. USAID through its rule of law grantee in the region began providing advice and commentary on draft laws as early as 1993, including the civil code and civil procedure code and, later, the criminal code and the criminal procedure code. When USAID's first institutional contractor for rule of law in the region began work in 1994, it too supplied personnel to help draft and review drafts not only of laws but also of revisions to the country's constitution.

In addition, USAID arranged contractor and grantee assistance that focused on specific laws, including oil and gas legislation, tax law, bankruptcy law, NGO legislation, media legislation and election laws. From 1998 through 2001, USAID provided support on the development of commercial legislation in Kazakhstan through a contractor team that worked in the Ministry of Justice. USAID's legislative assistance in Kazakhstan was sufficiently strong and diverse by 1995 as to reasonably suggest that for a period of at least several years, drafts of most laws, rather than simply all commercial laws, were either reviewed and commented on by a USAID contractor or

grantee, or drafted with their direct assistance. The U.S. was not, however, the only contributor to draft legislation in Kazakhstan. Examples of legislation, advice and comments, if not full-scale technical assistance was also sought, the Assessment Team as told, from sources in European countries or other donors working in Kazakhstan.

Across a number of interviews, the Assessment Team was told that assistance provided by USAID's commercial law contractor had been particularly useful, as had assistance from the team fielded under the 1994 World Bank loan. Appreciation of the assistance provided by these sources was based, first, on the fact that advice on commercial laws, as opposed to civil and criminal codes with which local attorneys were already familiar, made them aware of concepts and practices with which they had no experience prior to independence. Secondly, U.S. firms that were in charge of these projects hired and involved local attorneys who understood the existing legislative and regulatory frameworks and could help ensure that the initial drafts were not only technically correct but also framed in a manner that was usable in Kazakhstan or Kyrgyzstan. Respondents who had been the recipients of such drafts, or had been asked to redraft them offered these comments. The implied criticism of short term assistance provided by expatriates working alone was echoed by one senior advisor the U.S. had sent to Kazakhstan to assist with legislative development: "Whether consciously or not," he said, "we were all guilty of trying to graft Anglo-Saxon models" onto the legislative frameworks in the region.

- ***Kyrgyzstan*** USAID also played a significant role in the development of Kyrgyzstan's legislative framework, beginning in 1993 with assistance and commentary on the country's constitution and its civil code and by 1996, its criminal and labor codes, and commercial legislation, including laws pertaining to privatization. USAID has also taken a special interest, and worked with several contractors and grantees on aspects of Kyrgyzstan's land law that has brought privatization to the agricultural sector.
- USAID's main commercial law contractor for the region is based in Bishkek and its work in this field was still underway at the time of the Assessment. In contrast to the approach used in Kazakhstan, USAID's legislative development assistance was more concentrated under a few contractors. Another difference has been the locus of the commercial law assistance team, which in Kyrgyzstan is not housed in the Ministry of Justice making it less likely that the capacity for legal drafting created in Kyrgyzstan will be institutionalized. USAID, through its rule of law grantee, appears to have been more instrumental, early on, in fostering public hearings on draft legislation than was the case for U.S. assistance in Kazakhstan. As in Kazakhstan, the Assessment Team heard numerous positive comments about the contributions made through USAID's commercial law project.

USAID was not the only source of assistance and comment on draft legislation. European countries were consulted and the Dutch provided assistance in 1993 that focused on the civil code. In addition, GTZ assisted Kyrgyzstan with its arbitration laws. The Asian Development Bank also provided some assistance but not as specifically targeted on the legislative framework as the World Bank's early assistance to Kazakhstan had been.

- ***Uzbekistan*** USAID's institutional contract arrangements for assistance on commercial law aspects of national legislative frameworks did not extend to include assistance to Uzbekistan. Nevertheless, USAID's rule of law grantee, as noted above, made a considerable effort to comment upon draft legislation during its first two years in country. Legislative analysis provided in this manner focused on the country's constitution, its civil and criminal codes, election laws, law on advocates, commercial laws, the housing code and the law on non-governmental organization, as well as others. This effort continued for much of the decade. Other USAID grantees were also involved in efforts that focused on NGO, media and election legislation in

Uzbekistan. In addition to U.S. assistance, Uzbekistan received legislative framework development assistance from Germany's GTZ which participated in the development of a wide range of law including corporate law, the civil code, securities market law, bankruptcy, arbitration procedures, and others.

b. Overview of the Legislative Process

There is no single template for how legislation is drafted in a democracy. Western democracies have made a variety of choices in this regard. In the United States, for example, responsibility for the development of new legislation rests with Congress. In practice, of course, there are consultations between Congress and an Administration, and some of the bills that emerge from that process may have started out as proposals crafted in government agencies. In Britain, both members of parliament and cabinet ministers have the authority to introduce legislation. Most public bills in Britain, i.e., those that have broad national effects, however, are drafted by the executive branch rather than by parliament. In France, still a different model is used. There the responsibility for drafting legislation rests with the Council of State, established by Napoleon. This specialized institution functions as an independent body that retains its long-standing legislative drafting responsibilities as well as the responsibility to adjudicate disputes between government entities, or between citizens and government.

The legislative bodies and processes of Kazakhstan, Kyrgyzstan and Uzbekistan have made their own choices with respect to the process by which legislation is developed. While not identical to each other, all three systems are closer to a European model than to the American one. In each, the basic outlines of the legislative systems are articulated in national constitutions. Generally speaking, in all three countries, the executive branch has the mandate to draft new legislation, even in those cases where the power to introduce legislation lies with the legislative body.¹⁷ Constitutions in the region provide the presidency with the authority to issue decrees that have the force of law.¹⁸

Both Kyrgyzstan and Kazakhstan have full time legislatures. Interviews carried out by the Assessment Team indicate that these legislatures develop the initial draft of roughly 5-10% of the legislation they introduce. The degree of review and extent of debate on bills that government presents to the legislature has also increased in Kazakhstan and Kyrgyzstan, the Assessment Team was told. Uzbekistan's legislative body, on the other hand, is not yet a full time parliament. To date, it has not been as intensively involved in legislative drafting and review as have parliaments in the other two countries.¹⁹

c. Citizen Involvement in the Development of the Legislative Framework

Citizen involvement and transparency in legislative drafting are other limitations in all three countries included in the assessment. Citizen involvement is more frequent in Kyrgyzstan than elsewhere, based on information the Assessment Team gathered through its interviews. Further, it tends to be higher in all three countries when the laws in question focus on matters of direct interest to NGOs or the media.

Laws formulated by government in these three countries are typically drafted by expert commissions, which do not hold public hearings. Public hearings organized by parliaments are also rare in the statistical sense, i.e., only a small portion of the total number of laws considered in these countries are subject to hearings of any sort that are open to citizens or citizen groups. The ability of citizens or NGOs to have a meaningful opportunity to influence legislation is, accordingly, negligible. In Kazakhstan, for example, draft laws are published, but the period for comments is often short, e.g., a month. One attorney suggested

¹⁷ For example, Article 46, V, 1 of Kyrgyzstan's constitution.

¹⁸ For example, Article 45 of Kazakhstan's constitution.

¹⁹ The results of the January 27, 2002 referendum in Uzbekistan on the presidential term and a shift to bicameral and presumably full time parliament indicate that this situation may change over the next year or two.

that the problem has become worse since Parliament moved to Astana, which limits opportunities for direct interaction with constituents. Nevertheless, members of a Senate Committee with which the Assessment Team met could recall a number of instances in which they had received comments on draft legislation from constituents after the drafts were published in the newspaper. Among those on which Senators recalled receiving comments were draft laws on labor, the judiciary, and education, all of which generated comments from citizens.

Two approaches USAID has supported to increase citizen participation are public hearings organized by USAID implementing organizations, sometimes on behalf of parliaments or interest groups, e.g., NGOs. Advocacy initiatives are another means. In the course of its interviews, the Assessment Team was told about NGO advocacy efforts in all three countries that focused on NGO and media legislation. In Kazakhstan, the Assessment Team was also told about NGO advocacy efforts that contributed to important changes in the local governance law and a rape provision in the civil code. In Uzbekistan, a hazardous waste example of NGO involvement in the development of laws and regulations was described. Commenting on these examples USAID's regional rule of law grantee noted, with regard to Kazakhstan, that *"four or five years ago no one would have bothered to lobby Parliament because they thought it was powerless."*

What was most notable in the stories the Assessment Team was told were not the specific victories, but the articulation by NGOs themselves, in different parts of the region, of what they had learned about this process through participation in advocacy campaigns. According to NGO respondents in Kazakhstan, foreign assistance has played a significant role in the development of their capacity to formulate and advocate policy positions. Responses from NGOs in the region indicated that learning in this area is cumulative. As NGOs in Kazakhstan told their story they indicated that they had first learned how to organize themselves and work collaboratively to achieve an objective when they joined with IFES in an effort to promote a free and fair election process during the country's last presidential election. Many of these NGOs were later able to build on what they had learned from their experience with IFES when they worked together under grants from the Eurasia Foundation on a campaign to promote legislation on local self-governance.

d. Legislative Drafting Capacity

When Kazakhstan, Uzbekistan and Kyrgyzstan declared their independence, they already had a cadre of judges, prosecutors and attorneys and each had at least one law faculty. But not one of them had in place a team of experienced legal draftsmen. Because all legislation emanated out of Moscow, law drafting was not a skill someone normally needed in Bishkek or Tashkent.

During the past ten years, when these countries were developing new legislative frameworks, USAID and other donors also made some investments in developing legislative drafting capacity in these countries. This assistance included:

- Short-term training in legislative drafting, primarily for Members of Parliament and their staff, roughly every other year, from 1995-1996 onward. A joint seminar for both Kazakhstan and Kyrgyzstan, in 2000, that trained 40 legislative drafters from parliaments and ministries in these two countries was co-funded by USAID and the Dutch Center for International Legal Cooperation.
- Drafting assistance to the legislative drafting unit in the Ministry of Justice in Kazakhstan provided first, beginning in 1994, under a World Bank financed contract, by a team of expatriate and local lawyers who worked inside the Ministry, in effect creating its Legislative Drafting Institute, and subsequently by teams financed under USAID's commercial law assistance

program. While USAID initially provided advice to the MOJ from the outside, the approach shifted, under its current commercial law reform contractor, when Kazakhstan moved its government from Almaty to Astana, and lost key legislative drafting staff in the process. To help the MOJ address those losses and train new staff, USAID's contractor shifted to working, until 2001, inside the MOJ's Legislative Drafting Institute, thus combining its drafting and advisory roles with the mentoring of new MOJ staff.

- In both Kazakhstan and Kyrgyzstan, USAID provided technical assistance and start up funding for the creation of small legislative drafting units in Parliament, and UNDP provided additional funding for the Kazakhstan unit for a year two. In Uzbekistan, the EU's technical assistance program, TACIS, as well as the Soros Foundation have provided some assistance to the legislative monitoring unit in that country's parliament. USAID also funded training workshops in legislative drafting in which staff of these parliamentary units were included.

Despite positive comments about the support USAID had provided in this area, the Assessment Team found, through interviews with both government officials and representatives of parliaments in the region, that legislative research and drafting capacities are viewed as being weak in all three countries. In Kyrgyzstan, draft bills have been sent back to the executive branch because they were too poorly drafted to consider. Similar complaints were made about bills drafted in Kazakhstan and Uzbekistan. In its 1999 Project Appraisal for a planned loan to Kazakhstan, the World Bank concluded that the

“...process of legal drafting is fragmented, subject to ministerial and agency influence, in practice is poorly coordinated, and often takes place without the involvement of relevant constituencies.”²⁰

This is not to say that there are not a significant number of individuals with strong legislative drafting skills in these countries, particularly in Kazakhstan and Kyrgyzstan, only that their numbers appear to be inadequate in government ministries, where the bulk of all legislation is drafted.²¹

USAID's relatively more consistent efforts to develop legislative drafting skills and units in parliaments, than in government ministries, in the region are noteworthy from a targeting perspective. An explicit legislative drafting focus on parliaments, where only a small fraction of legislative drafting takes place in Kazakhstan and Kyrgyzstan, and even less in Uzbekistan, is consistent with the U.S. legislative development process, but not necessarily with a European one, which the processes used in these countries most resemble. On the other hand, because one long-term goal of USAID assistance is to enhance the capacity of the legislative branch, strengthening the legislative drafting skills of these parliaments is not wholly inappropriate.

2. Judicial System Reform

The application of rule of law depends not only upon the existence of an adequate framework of laws but also on the capacity of institutions and individuals to implement them. This section focuses on the scope and effectiveness of efforts that have been made to reform these institutions and to improve the

²⁰ IBRD, Kazakhstan Legal Reform Project Appraisal Document, 1999, p. 4.

²¹ Investments of the type USAID made to strengthening the capacity of the MOJ's Legislative Drafting Institute in Kazakhstan were not duplicated in Kyrgyzstan, the other country included in this assessment where USAID provided commercial law assistance using the same implementing organization. In Kyrgyzstan, where assistance was scheduled to terminate in 2002, drafting assistance is provided by a team that works in the contractor's office. The skilled legislative drafting team that has been mobilized under this contract is not part of any national structure and as of the time of the assessment there was no plan in place for transferring these staff into the government nor was there any other means in sight for sustaining their work or the integrity of this unit.

understanding and capacity to implement the law among judges, prosecutors, attorneys and other court personnel.

a. Court Structures, Systems and Management

Courts in Kazakhstan, Kyrgyzstan and Uzbekistan are considered to be weak institutions that lack funding and the kind of support needed not only to function efficiently but also to ensure that judicial decisions are enforced. An overview of those structures, provided in the text box below, is useful for understanding judicial reform in these countries.

(1) Judicial Independence

An independent, accountable, efficient, and trained judiciary is obviously a key component to the fair application of the law. The judiciary must be independent from both undue political influences, as well as corrupt private influences. It must be held accountable for violations of the public trust, and of ethical norms. Judges must also know the law and have the resources to provide decisions on a timely basis. These fundamental characteristics of a judiciary are vital both for the protection of human rights and for economic development. Accordingly, USAID and other donors have included efforts to promote improvement of the judiciaries in some countries in the region in their technical assistance programs.

Historically, in the Soviet Union, the judicial system as a whole was very much an instrument of the state. Rather than being an independent branch of government, as it is in the United States, the judiciary was part of the Ministry of Justice in the Soviet Union, borrowing from the French tradition, which persists today, and which was also the source of pre-Soviet Russia's original civil and criminal law codes.

As of the time of the assessment, basic judicial independence had been achieved by all three countries, but only recently in two of the three:

Overview Of Court Structures

- **Kazakhstan** Kazakhstan initially had both a Supreme Court and a Constitutional Court. The Constitutional Court, however, was abolished in 1995, a year after a confrontation between the Constitutional Court and the President, over elections, which resulted in, among other things, Parliament being dissolved in 1994 and the President declaring that, at least until new Parliamentary elections were held, he would rule by decree. The Constitutional Council, created in August 1995, is appointed partly by the President and partly by the Parliament, and makes recommendations that are subject to Presidential veto.

Under the Supreme Court, Kazakhstan's judicial system has three levels, the lowest of which is the town or rayon level, which is the normal court of first instance. Above this is the district or oblast level court, which may be the court of first instance for some types of cases, and beyond that lies the Supreme Court, the highest court in the country. Kazakhstan recently established a new type of specialized or inter-district court, under its Law on Judicial Systems that will hear economic cases, e.g., property rights. The first two such courts opened in Almaty and Karaganda in 2001. The new law also calls for the creation of specialized courts for juvenile offenders and small claims, the Assessment Team was told by Senate Committee members, but this has not yet been implemented.

- **Kyrgyzstan** Kyrgyzstan's judicial system has three major courts: a Constitutional Court that examines and rules on the constitutionality of laws and normative acts, a Supreme Arbitration Court that deals exclusively with disputes between economic entities, and a Supreme Court that rules on cases involving the country's civil, criminal and administrative offenses laws, through courts of first instance at the rayon level, as well as in oblast level courts.

Relations between these three courts were described to the Assessment Team as being somewhat acrimonious as a function of decisions taken by the Constitutional Court over the years that stripped other courts of some of their higher level chambers. Decisions were also made that required a large proportion of the judges in high level courts to participate in appeal cases. This ruling had the effect of making the Supreme Court, in particular, relatively inefficient, the Assessment Team was told.

- **Uzbekistan** Like Kyrgyzstan, Uzbekistan has several higher courts, including a Constitutional Court, Supreme Court and a Higher Economic Court. The responsibilities of these three courts are roughly the same as those in the equivalent courts in Kyrgyzstan.

Uzbekistan's initial Law on Courts, passed in 1993, like its Constitution, incorporated internationally accepted principles, e.g., presumption of innocence, and other legislation, including one that improved the position of attorneys within the legal system and another that established a Constitutional Court followed. The next major judicial initiative did not occur, however, until December 2000 when a revision of the Law on Courts was adopted. It is this latter law that initiated a separation of the judiciary from the Ministry of Justice, including administrative responsibilities. It also introduced the specialization of courts, which, in practice, is resulting in the creation of separate civil and criminal courts at the rayon and oblast level, as well as an appeal process that raises a case to a higher-level court.

- **Kyrgyzstan.** Among the new republics of Central Asia, Kyrgyzstan was the first to make its judiciary independent. In 1994, reportedly at the urging of the President, the judiciary was made self-governing under a Council for the Judiciary and in 1996 the Court Department was created within government as an administrative body for the courts that is accountable to the Council and the President. Kyrgyzstan's early decision on this matter was characterized by some legal professionals and donors as being consistent with other decisions the country made at that time. With benefit of hindsight, some suggested that this change was made with the conscious understanding that it would be viewed positively by the West and would result in the provision of additional assistance.

Although judicial independence was achieved early, USAID and other observers of subsequent developments in Kyrgyzstan describe the process as being incomplete. Doubts about the real independence of the judiciary in Kyrgyzstan appeared, the Assessment Team was told, when

donors perceived the judiciary to be playing an enabling role with respect changes in elections rules that were beneficial to the President. In this vein, the U.S. Ambassador to the OSCE, when describing problems the U.S. saw in the 2000 elections, included an assertion to the effect that the “ “Kyrgyz government used the judicial system to disqualify major political opponents.”²² U.S. officials also described for the Assessment Team a decision by the 1998 Supreme Court to permit the President to stand for a third term, overruling Article 42(2) of the constitution, on the basis that the President had run unopposed in 1991, as being indicative of a lack of judicial independence.

The Asian Development Bank, which initiated a second corporate governance loan to Kyrgyzstan in 2001 that includes assistance to the judiciary, concurs with U.S. views with respect to the independence of the Kyrgyz judiciary, calling it weak and specifically noting, in its loan recommendation that it views judges as “lacking independence and legal training.” This latter, despite the consistent investments USAID has made over a period of roughly five years in training judges in both Kazakhstan and Kyrgyzstan.

- **Kazakhstan.** While judicial independence was defined as the ideal by USAID and its contractor grantees in their work in Kazakhstan early on, interest in pursuing judicial independence lagged and no serious action was taken in either country until 2001, at which point both of these nations initiated processes that within roughly a year resulted in the removal of the judiciary from the Ministry of Justice and its establishment, in law, as a separate branch of government. In Kazakhstan, oral history suggests that one factor affecting the pace at which steps toward judicial independence proceeded was affected by a multi-lateral assistance activity that focused on this question and was carried out by a French consultant who advised that there was no need for this separation, since experience in Europe shows that the judiciary there functions independently while still being part of the Ministry of Justice.

By 2000, there was public evidence of Kazakhstan’s changed its position on this issue. President Nazarbayev’s speech to that effect, in November 2000 foreshadowed steps that would be taken in the following year to create the legal basis and operationally effect a withdrawal of the judiciary from the Ministry of Justice. The topic, as noted above, was not a new one, but neither was it under serious discussion until, it appear, around 1997 when discussions with the IBRD began concerning a possible legal reform loan which would help Kazakhstan to continue to improve its enforcement of judicial decision; improve judicial education as well as public awareness of the law; enhance legislative drafting capacity and increase the availability of information on the law and judicial processes and results.

While some with whom the Assessment Team met suggested that the movement toward judicial independence grew out of the work that led up to a 1999 World Bank loan, judicial independence was not an element of the conditionality of the IBRD Legal Reform loan into which Kazakhstan entered, and from which it subsequently withdrew. Conditionality in that loan was minimal. In order to activate funds for automation of the courts, Kazakhstan had to demonstrate that it had developed court management procedures and was beginning to tack the enforcement of judicial decisions in selected courts. While conditionality is the norm for World Bank and other multi-lateral

²² Statement on Kyrgyzstan, delivered by Ambassador David T. Johnson, to the Permanent Council, OSCE, Vienna, November 2, 2000.

development bank projects in other sectors, it is both unusual and politically sensitive in projects that seek to improve the quality of governance.

*Reforming systems of governance is a politically sensitive issue that has traditionally been treated outside the purview of Ibis. For instance, the World Bank's charter prohibits it from taking into account political considerations when designing aid programs.*²³

The World Bank's involvement in a range of "good governance" loans over the past several years has activated discussions of the role of conditionality in such loans within the multi-lateral banks, but those discussions had not reached fruition at the time the legal reform loan for Kazakhstan was approved.

Differences between Kazakhstan and Uzbekistan, on the one hand, and Kyrgyzstan on the other with respect to the pace of policy decisions and action relevant for judicial independence illustrates an important point that is under discussion in the multilateral banks concerning the use of conditionality in policy projects. To wit, conditionality did not play a critical role in any of these situations, nor does it in the majority of policy reform projects, according to what recent IBRD and other research studies on conditionality are showing. Unlike physical construction projects where conditionality tied to stages of the work has provided effective leverage for keeping projects on schedule, the funds involved in conditionality for policy reform projects are never sufficient to create an incentive system strong enough to make governments take policy actions they are unwilling to undertake, or are only willing to undertake at a slower pace.²⁴ Kyrgyzstan, Kazakhstan and Uzbekistan, as describe below, can be viewed as responding, at their own pace, to Western examples and to both international and locally based advocacy for judicial independence, and even to the expectation that foreign assistance resources would flow from a decision of this sort, but in none of these situations can loan conditionality be viewed as an important, let alone decisive factor.

Rather than resulting from pressure linked to its IBRD loan, Kazakhstan's decision, the Assessment Team was told in interviews with U.S. law firms, that it was driven by economic concerns and a desire on the part of the President to enhance the attractiveness of his country to foreign investors. Kazakhstan's Presidential advisory Council of Foreign Investors, which was established in 1998 and meets at least annually with President Nazarbayev, in which the U.S. business community is represented, was credited by these American lawyers as playing an important behind-the-scenes role on legal and judicial reform issues in Kazakhstan.

Serendipity and the skills of an exceptionally well-prepared and well-liked USAID funded attorney also played a role. Under USAID's commercial law project there was a small window for contractor action in support of judicial reform, linked to the contract language identifying a gap between the adoption of laws and their application statements that encouraged actions that would help to narrow that gap. Working inside the Legislative Drafting Institute of the Ministry of Justice, at the government's request, USAID's contract team, and more specifically its chief of party for this project was both trusted and perfectly positioned to play a technical and coordination role when discussions were underway, in 1998, between the government and the IBRD concerning new legal reform loan, according to the World Bank staff with whom the Assessment Team met. During this critical time period, USAID contractor reports document that this individual drafted scopes for a number of pre-loan assessments and represented the Ministry in both complex, multi-donor negotiations and on an interagency steering committee in the

²³ Carlos Santiso, *Governance Conditionality and the Reform of Multilateral Development Finance: The Role of the Group of Eight*, Paul H. Nitze School of Advance International Studies, Johns Hopkins University, 2002.

²⁴ *Ibid.*

government, focused on the judicial reform component of the new loan. Opportunities to provide technical advice are normal under technical assistance contracts, but as all those who were familiar with the role of USAID's contractor in the planning of reforms that influenced the choices made about how Kazakhstan would reorganize its judiciary on an independent basis, this opportunity and the way it was grasped were both exceptional.

- **Uzbekistan.** In Uzbekistan, an August 2001 speech by President Karimov, referencing improvements in the Law on Courts adopted in 2000 and the timeliness of taking additional actions to make the judiciary independent kicked off a round of consultations with the judiciary and other activities that has culminated in the removal of the judiciary from the Ministry of Justice and its transformation to an independent status. Speaking of the antecedents for changes in the Law on Courts, the President's reform initiative, the team was told in most interviews that the decision to make the judiciary in that country independent was initially made in 1999, when the President felt the time was right.

EU TACIS representatives interviewed by the Assessment Team indicated, that from their perspective, the decision had emerged as a result of pressure from citizens and interest groups that Uzbekistan plays an important behind-the-scenes role in Presidential decisions. Other noted, without suggesting that it was a major factor in this decision, that within the region, governments pay attention to what other countries are doing and may in some cases initiate actions that keep them on an equal footing. USAID and its grantee also point to workshops on judicial independence they funded in collaboration with the Association of Judges of the Republic of Uzbekistan (AJU) and to the role the head of this association played in the evolution of these concepts for Uzbekistan. Among other things, the AJU chairman functioned as a member of the 1999 Presidential Reform Commission that produced specific proposals for the country's judicial reform process.

The opportunity that emerged when the AJU chairman was selected to serve on this committee was important in the same way that the choice of USAID's contract representative as a central player, on behalf of the Ministry of Justice in Kazakhstan, in the planning of that country's legal reform loan was important. In both instances, chance played an important role in putting the right person with the right skills and a clear understanding of the value of independence for the judiciary in the right place at the right time. While donors can only rarely create such opportunities, these cases demonstrate, particularly in the Uzbekistan case, that investments aimed at building a constituency for reform can pay off handsomely when opportunities do arise. This is not to say that the reforms that followed turned solely on the individuals who had these opportunities, for they did not. They were however important contributors by virtue of what they were asked to do and how well prepared they were to do it.

Fiscal independence for the judiciary is another judicial independence issue of interest to USAID, but it is not one on which judiciary in these countries appears to be focused. In Kazakhstan, where this issue is somewhat topical, a Supreme Court representative of the newly independent judiciary described for the Assessment Team the budget preparation and defense process in which he had participated. The Ministry of Justice was present and had a voice in the process, since the budget of this branch of government is submitted to the legislature as part of the government budget, rather than as a separate presentation. While it was clear that the court in Kazakhstan viewed budgetary negotiations as constraining, and felt that in the absence of the IBRD loan its funding would be more limited than initially expected, there was no indication in the discussions that the budget process was perceived as substantively compromising Kazakhstan's newly mandated judicial independence.

The Assessment Team itself, in the course of its field visits, noted another judicial independence problem with representatives of lower courts. One of the mechanisms used in the West to help ensure the

impartiality of judges in the courtroom is the random assignment of cases. In all three countries, judicial representative told the MSI Assessment Team that the assignment of cases is at the discretion of the head of each court. Heads of courts, including oblast level courts, told the Assessment Team that their basis for such decisions was workload, i.e., the next case in line go to the judge with the backlog. While workload is one rational basis for making case assignments, taken by itself it does little to guarantee attorneys and clients, or supervising judges on their behalf, will find it difficult to compromise a judicial outcome using the case assignment process as a means.

A final issue in this regard is the pay that judges receive. In all three countries, judicial pay has been extremely low, so much so that judges reportedly live very modestly, lacking even the resources they need to pursue continuing education opportunities or access modern information systems. As part of the judicial reform initiative Kazakhstan began when it accepted a 1999 IBRD Legal Reform loan, this country raised salaries significantly at the turn of the century, increasing them by roughly 300%. In principle, adequate salaries for judges serve to limit their susceptibility to bribes. Sufficient time has not passed, however, nor has adequate data been collected to determine whether salary changes in Kazakhstan will have this result.

(2) Facilities, Equipment and the Flow of Legal Information to the Judiciary

Rayon (town) and oblast (district) level court buildings in Kazakhstan, Uzbekistan and Kyrgyzstan are generally old and have only the most basic equipment. Higher Courts have better facilities but the equipment they have is not all that different from what can be observed in lower courts. Most lower courts do all of their work by hand and basic administration has not changed significantly since the Soviet era. One result is that few judicial decisions end up being transcribed, limiting transparency and trust in court procedures. The absence of computers and other equipment limits the ability of court personnel to significantly improve upon this situation. Traditionally courts in all of the countries in the region have received information about new laws and changes in existing law from newspapers and from bulletins issued by the judiciary, or the Ministry of Justice, depending on the country. These two basic systems still provide most of the legal information judges receive.

Donor assistance has not focused heavily on facilities and equipment for the judiciary, nor has technical assistance aimed at improving court administration or direct court access to information. Beginning in 1997, however, USAID, in collaboration with the Dutch, funded training in modern court administration in Kazakhstan and Kyrgyzstan and followed that up in Kazakhstan with an effort that produced case management software. These were small elements of USAID's larger legal reform and judicial training efforts in these countries and were not dedicated court administration reform projects that included equipment or created a model court as USAID has elsewhere.²⁵ In the course of its visits to courts in all three countries, the Assessment Team neither saw nor was told about court administration reform efforts or new systems in use in this regard.

One innovative project in this field is a British Embassy activity that is bringing court reporter transcription equipment to Uzbekistan. These machines will reportedly enable courts to generate real transcripts of hearings, which will help to make proceedings more transparent. Embassy representatives told the Assessment Team that they anticipate that the presence of this equipment will increase the courts' professionalism. The British Embassy is sufficiently satisfied with the initial result of this investment to be initiating a second phase that will equip a much larger number of courts. According to Embassy representatives the most important impact of this program, albeit, on a pilot scale, is the degree to which it builds confidence in the process, by ensuring that the record of a case will exist.

²⁵ Investments of this sort were planned for the Supreme Court of Kazakhstan and three pilot oblast courts under the IBRD Legal Reform loan into which Kazakhstan initially entered but subsequently terminated.

New approaches to making legal information available have emerged in the region over the past decade, including legal information centers (discussed in II. 3.b., below) and searchable databases of local and international law, some of which were created by USAID's commercial law contractor and are available on CD ROMs or via the Internet. In some judicial training programs in the region, i.e., the Judicial Training Center in Kyrgyzstan, Internet and data base search skills are taught as a training module, as they are in some law schools. What is important to note, however, is that judges differ radically in their ability to take advantage of new resources. Access to any computer, let alone one with a CD Rom drive or an Internet connection, one USAID grantee estimated, exists in no more than 20% of the courts in the region, and few judges can afford a personal computer of their own. Visits made by the team to courts and judges offices tended to confirm that they were very similar from country to country and that most judges are still dependent upon bulletins for legal information, which many of them keep open and available in large stacks.

(3) Court Management and the Enforcement of Judicial Decisions

While USAID did not fund a separate, long-term investment in improving court administration in any of the countries included in this assessment as it has in some countries around the world, it did provide training and some technical assistance in this area.

- In **Kazakhstan**, training was provided on judicial administration in collaboration with the Administrative Office of the U.S. Courts and the Ministry of Justice of the Netherlands. Those who participated were later involved in designing the judicial administration component of the IBRD Legal Reform loan for Kazakhstan, according to USAID's contractor. When Kazakhstan removed its judiciary from the Ministry of Justice, it created a new entity, the Committee for Judicial Administration, and gave it the responsibility for administrative matters in the judicial system. The MSI Assessment Team met with the head of this new unit. Neither its plans nor its budget appeared to be fully developed at that time.
- In **Kyrgyzstan**, USAID's involvement in judicial administration training and technical assistance began early, i.e., around 1996. Building on that work, USAID included additional work on case management and court management functions, and court reporting in its 1998-2000 judicial training contract. Through this arrangement USAID's contractor organized workshops for judges and developed an automated case management software, which it pilot tested in one district court. USAID's intent was to provide a model that could be expanded upon under a the second ADB corporate governance loan, which was initiated during the same month as this assessment, i.e., too soon to determine whether USAID vision with respect to automated case management will be realized.

While the Assessment Team did not obtain statistical or other impact information on these USAID investments in technical assistance and training in the field of judicial administration, it did gather information on some aspects of the administrative side of courts in these countries. As indicated above, case assignment in the courts all three countries is made by the heads of specific courts, e.g., an oblast level court. Judges receive little support in preparing or hearing cases and they are required to write up their decisions and enter them into case files in all three countries. This process is reported to be a slow one, in part, as judges complain, because they lack staff and equipment.

Information on judicial decisions is aggregated to the oblast level, the MSI Assessment Team was told, but not necessarily to the national level. Such information is largely unavailable²⁶, a fact that obscures the question of what these judiciaries themselves have access to and can use to improve court management.

²⁶ Current reporting and documentation practices in these countries go a long way toward explaining the difficulties that the MSI Assessment Team and others (e.g., the World Bank unit that reports court statistics on the Bank's

(4) Enforcement of Judicial Decisions

Law enforcement personnel, including court executors, play an important role in ensuring that the legal system works as intended. The Assessment Team found that very little was being done by USAID or other donors to ensure that these elements of the overall system function effectively. One donor activity that would have focused directly on the enforcement issue was the aborted IBRD legal reform project in Kazakhstan, which included among its components an effort to ensure the enforcement of Supreme Court decisions and judicial decisions in three pilot oblasts.

From the perspective of putting new laws into action, the enforcement of judicial decisions is a second order reform. Judicial decisions consistent with new laws are a prerequisite. Looked at as a sequence, i.e., laws passed, judges trained, laws applied, judicial decisions enforced, limited attention to the last of these steps could seem rational. This is the kind of sequence that USAID and other donors, including the IBRD, may have considered when deciding to expend most of their effort on the development of improved legislation and, in USAID's case, the training of judges and other legal professionals.

From the perspective of businesses and the average citizen, the enforcement of judicial decisions is the point in this flow where court actions and results for parties involved come together. Decisions that are not enforced, as business representatives and other interviewees told the MSI Assessment Team, directly affect confidence in a country's legal system. Problems with the enforcement of judicial decisions, and with the results of international arbitration are consistently identified in investment climate surveys, including official U.S. government reports, as having a negative impact on foreign investment.²⁷

For the international investor, the focus on passing new laws that are not likely to be enforced does not resonate as a priority. For potential investors, it is thus possible that a slower pace of improvement in the legislative framework combined with a greater application of existing laws, and the timely enforcement of such decisions, might have seemed more desirable, and resulted in higher confidence and higher institutional investor ratings.

b. The Role, Selection, Appointment and Training of Judges

As indicated above, interviews carried out by the MSI assessment team and investment climate reviews and other analyses that touch on the rule of law situation in Kazakhstan, Kyrgyzstan and Uzbekistan all indicate that judges are viewed as being a weak link in the justice systems of Kazakhstan, Kyrgyzstan and Uzbekistan, as a function of their lack of knowledge and their perceived susceptibility to influence. This section provides an overview of the role of judges in the courtroom and of the judicial selection process as a prelude to a review of donor assistance. The role of judges and appointment processes, including the use of attestation procedures for certifying judicial knowledge, while not the immediate focus of USAID assistance are matters on which USAID's implementation contractor/grantees have provided advice in all three countries.

governance site does not have this type of information on any of these countries) had obtaining data on key indicators, e.g., number of cases per time period, percentage appealed, percentage overturned on appeal, etc. In addition to the dearth of such material, none of the governments in the countries examined were particularly transparent with respect to such statistics.

²⁷ Concern with the absence of reliable implementation of the laws and execution of judgments of these countries, has led some donors to examine alternatives to judicial decision-making, including alternative dispute resolution (ADR) and the role that traditional courts and other local institutions can play in dispute settlement. At the request of the U.S. Ambassador to Kyrgyzstan, the MSI Assessment Team included a limited effort to learn about these options in interviews in Kyrgyzstan and Uzbekistan. Of the alternatives the MSI Assessment Team was able to inquire about, none appear to offer a viable alternative to improvements the judiciary in these countries, the Team's findings in this area are provided in Annex F.

(1) Judges in the Courtroom

As indicated in the introduction to this report, the role of judges under the Soviet system was a secondary one. Prosecutors represented the State in both civil and criminal cases, and made the State's position with respect to the outcome of a case clear to both judges and lay assessors (people's representatives) where such individuals had a role in deciding the outcome of a case. Judicial decisions reflected the advice of prosecutors rather than a careful reading of the law. Even in civil cases where the state had no major interest, prosecutors could play a role that was close to that played in criminal cases. Attorneys existed as part of the Soviet judicial system, but their role was not a significant one in terms of process or outcomes. In addition to being in a position to influence the outcome of cases in which it took an immediate interest, procurator's offices throughout the Soviet Union could review and appeal both civil and criminal cases where it determined that the State would be better served by a different outcome.

In all three countries, the legal system and the role of the judge in the courtroom is beginning to change, slowly, in the direction of greater balance between judges and prosecutors, and toward a larger role for attorneys, with Uzbekistan, by all accounts, having made the least movement to date in this regard. Comparing his years as a judge in the Soviet era, when most judges were members of the Communist Party and could find themselves under intense political pressure to pronounce specific verdicts, the head of the Committee for Judicial Administration in Kazakhstan told the Assessment Team that the situation of judges was much improved today. In all three countries, at least some instances of judges ruling in a manner that was not consistent with the position taken by the prosecutor were cited. In addition, judges in all three countries, no matter how independent they may actually be at this point in time, advocate judicial independence and a reliance on the law, rather than government's position on a case, as a basis for their decision-making.

USAID and other donors view strengthening the role of judges in the courtroom as an important step toward making the judiciary an instrument of the law, rather than of those who have influence as a function of political power, or power based on clan or family affiliation. While greater independence from the Ministry of Justice and the authority of the Prosecutor is viewed as being important by judges locally, not all are convinced that judges, acting alone, will produce the best decisions. In Kyrgyzstan, in particular, the topic of lay assessors was under intense discussion and review at the time of this assessment, indicating, at minimum, that views of the importance and reliability of judges as the arbiters of justice may not be precisely the same for local judiciary as it is for their expatriate advisors.²⁸ Corruption, as discussed in Section II, 1, A, above in the form of political and other pressures on judges is also a sub-theme in these discussions.

In each of these countries, USAID has promoted greater judicial independence and a broader role for attorneys in the process, particularly in criminal cases, as have other donor and human rights monitoring organizations. While USAID contractors and grantees have commented on laws relating to the judiciary and attorneys, and hosted workshops dealing with these aspects of the judiciary, neither USAID nor other donors have been directly involved, through technical assistance or loan programs, in effort to alter courtroom behavior.

²⁸ In Kyrgyzstan, concerns about the impartiality of judges has resulted, the Assessment Team was told, in proposals for judicial reform to the 4th Judicial Congress held in May 2000, including a proposal that would reinstate the Soviet era practice of having two lay assessors participate in court processes and contribute to decisions about guilt and sentencing. Proponents described their interest in this approach in terms of the accountability it would add to the procedure. Kyrgyz judges who did not agree with this proposal see it as a step backwards and as one that is not practical, since few otherwise employable people would want or be available to spend their time in this manner. This proposal, and others discussed at the Judicial Congress had been brought forward, around the time of the Assessment Team's visit, to high level discussions pursuant to a new \$35 million Asian Development Bank "corporate governance" loan to Kyrgyzstan that includes a judicial reform component.

(2) Judicial Appointments

Procedures for selecting and appointing judges differ in the three countries included in the assessment. Only in Kazakhstan are judges appointed for life, where it is being reconsidered.

- In Kazakhstan, the president appoints judges for a fixed term, to retirement age. In a 2001 address to the Third National Congress of Judges, President Nazarbayev indicated that he is reconsidering this approach. Corruption within the judiciary appears to be the concern that prompted this announcement. According to press reports, he stated that the practice of permanent appointments might have been premature.²⁹ While there are other ways to address judicial corruption, reducing judicial terms, and by extension the protections that a guaranteed length of tenure provides, is one that is being considered.
- In Kyrgyzstan, Supreme Court judges are appointed for 10-year terms by the Council based on nominations by the President. The President also appoints lower court judges, for terms of 3 or 7 years.
- The President appoints judges in Uzbekistan's Constitutional Court, Supreme Court and Higher Economic Court for five-year terms. As of December 2000, when the revised Law on Courts was adopted, it prescribed the creation of a High Qualifications Committee made up of judges, deputies from Parliament and other community leaders, appointed by the President, which is now responsible for nominating judges below the level of the highest courts.

Attestation procedures for judges as part of a reappointment process or simply as a check on their knowledge of the law, where reappointment is not a normal process, is a new practice in these countries. In Kyrgyzstan, which is furthest along in this regard, attestation was written into the law in 1999. Implementation of this law has not been untroubled, however, and at last round was criticized in the reports of international observers for involving favoritism in determining who passed or failed. In Kazakhstan, on the other hand, it was reported, and the Assessment Team was told in interviews, that a sizeable number of judges could not pass the test on the first try.

USAID does not appear to have played a significant role in the introduction of these procedures, nor did the team identify an other donor that was directly involved in this process. Like a number of other changes these countries have made in their laws and judicial system practices, it is difficult to identify sources of ideas that are more informal, or are significantly smaller in scale, than the kinds of projects and activities USAID funds. People with whom the Assessment Team met openly acknowledge that they have been influenced by the range of expatriates that have come to their countries and by trips and study tours to Europe and the United States. Ideas that seem to have come from a Western source most probably did.

What is more important than the exact source of an idea that results in a new practice is the effect of this practice on the legal system. In the case of judicial attestation, the Assessment Team was told that this process is raising awareness of the importance of knowing the law and it is creating a pressure on judges to make sure that they avail themselves of continuing education opportunities.

(3) Continuing Education for Judges

In Kazakhstan and Kyrgyzstan, USAID identified judicial training as a priority, linking it with the passage of new laws as one of the conditions required to improve the rule of law and provide a coherent legal framework within which private sector development, including small enterprise development, could proceed.

²⁹ June 7, 2001, Kazakhstan Daily Digest, Eurasianet.org

In Kyrgyzstan and Kazakhstan, where USAID was the primary donor involved in judicial training from 1995 to 2000. In these two countries, USAID's contractor concentrated on formal training programs, working closely with a national training institute in the first of these countries, and with a judicial association in the second. In Uzbekistan, rather than organizing these programs, USAID's grantee contributed to these efforts by teaching classes in conjunction with training programs organized by the country's legal training institute.

In addition to formal programs, USAID funded a limited number of study tours for judges and ad hoc workshops and seminars on topics of interest to the judiciary in these countries. Other donors also funded training programs for judges, including larger numbers of study tours than USAID itself funded.

(a) Formal Training Programs

USAID and USIA, as well as other programs, have brought many judges to the United States and other countries, and have supported a variety of in-country training programs. This section reviews the extent and impact of these training efforts.

While the MSI Assessment Team was able to gather relevant qualitative data on the training provided to judges by USAID and other donors, useful quantitative data on the extent of USAID and other donor training for judges were not readily available. USAID's performance reporting for several years, under its 1997 Strategic Plan provide, focused on the absolute number of "judicial positions filled with USAID trained professionals," a number reported to USAID by its training/commercial law contractor. Absolute numbers, e.g., "over 1,500 Kyrgyz judges, lawyers, and prosecutors received training"³⁰ are available. As USAID guidance on performance indicators suggests, however, raw numbers do not tend to be useful for characterizing the degree to which program activities saturate a population.³¹ Nevertheless, both contractor and USAID reports and MSI interviews make it clear that a relatively large number and share of the judges in these countries received some training.

Structured In-Country Training for Judges

The majority of USAID funded training was in-country training. Some training was delivered by expatriates, which occasionally, but not frequently, meant third country nationals, e.g., from Poland. Local trainers whom USAID had trained delivered a much larger volume of training. The primary target for USAID funded training was judges, and there was special emphasis given to training in commercial law. At the same time, USAID funded in-country training also covered other areas of law and reached out to other types of legal professionals, including prosecutors and attorneys, as discussed below.

In Kazakhstan and Kyrgyzstan, USAID has for a number of years been the main donor for judicial training. In both of these countries it mounted large-scale programs and developed long term partnerships with local organizations whose capacity to continue to provide continuing legal education for judges they fostered.

- **Kazakhstan** In this country, the partner organization with which USAID worked was the Union of Judges. This choice was made when the government's Judicial Training Institute under the Ministry of Justice fell into disuse. Working through the Union of Judges, USAID's commercial law contractor trained a cadre of judges in how to be trainers as well as on the country's new laws. These trainers then provided training for other judges both in Almaty, where the Union of Judges has its headquarters, and in oblast capitals around the country. Evidence of the value of

³⁰ Support for Economic Growth and Institutional Reform (Training), ARD/Checchi, Final Report, 2000.

³¹ For example, the percentage of judges working outside of the national capital trained in bankruptcy law.

this training, the Assessment Team was told, was apparent in the acclaim these efforts had won from the Supreme Court and the Ministry of Justice.

In interviews in Kazakhstan where this element of USAID's program has closed, the MSI Assessment Team learned that the Union of Judges is continuing to provide training, but on a smaller scale since it does not have the resources to bring judges to Almaty or to send judge-trainers to other cities. The Assessment Team also learned from both the Supreme Court and the Union of Judges that an effort is being made to revive the Judicial Training Institute and to bring on board as trainers many of the judge-trainers initially supported by USAID.

- ***Kyrgyzstan.*** USAID funded a similar program in this country, where the effort is institutionalized in that country's Judicial Training Institute, which receives some funds and equipment from the government and other donors as well as through USAID's commercial law contractor. Interviews at this Institute revealed that in this program, as well as in Kazakhstan, an important element of the judicial training effort has been trainings in oblast capitals. Funds to continue this part of the program, the Assessment Team was told, were not available, at least not at the level they had been when USAID's judicial training program was active.
- ***Uzbekistan.*** Training programs for judges in Uzbekistan are provided through the Republican Center for Continuing Legal Education, which is funded by the government. Interviews at this institution indicated that while most of the training is provided by local staff, expatriate lawyers, e.g., representatives of USAID's rule of law grantee, occasionally teach classes as well. This practice is reportedly valued by participants as well as by the faculty of this institution.

Topical Workshops and Seminars

In Kazakhstan, Uzbekistan and Kyrgyzstan, USAID's grantee has, since 1993, provided workshops and seminars for judges. Some of these were events linked to support the grantee provided to the development of judicial associations. Others involved a range of legal professionals and other stakeholders and were topically focused, e.g., on a topic on which a law was being drafted. In addition to USAID, Soros Foundation was an active sponsor of workshops and seminars that focused on rule of law issues, sometime funding regional workshops and seminar facilitated or taught by staff from Constitutional & Legal Policy Institute (COLPI), in Budapest, with which the Soros Foundation is affiliated.

Given their *ad hoc* nature, workshops and seminars were less frequently reported upon when the MSI Assessment Team asked judges about the kinds of training they received. Respondents tended to answer in terms of formal in-country training programs and any study tours on which they had participated. This is not to say that participants did not value these workshops and seminars. It only indicates that on a recall basis, these kinds of events did not have as strong an impact, from the individual's perspective, as other kinds of training, regardless of whether USAID, the Soros Foundation or some other donor sponsored them. USAID's grantee, on the other hand, made an effort to document the specific impacts of these efforts and show, for example, that one series of workshops led to the development of a judges' association, while another led to the development of a judicial code of ethics.

Study Abroad

USAID's overseas training was funded through specialized arrangements that existed solely for this purpose, although some funding of this sort was possible under broader USAID rule of law support contracts and grants. Most of this type of training was provided in the United States, but some was also provided in Europe. Practical training, including study tours that involved U.S. courts and Congress were a significant element in this portfolio. USIA complemented USAID's offerings by providing somewhat longer-term training options for professionals in Central Asia. Like the United States, other countries,

such as Britain and the Netherlands have funded study tours for judges from Kazakhstan, Kyrgyzstan and Uzbekistan.

In the course of the Assessment, the Team heard from respondents, many of who had participated in U.S funded training programs. Of all of the forms of training USAID funds, virtually every interviewee that mentioned training abroad indicated that it was the most valuable rule of law training they had received. Equally consistent were their reports that it is this type of training that makes ideas about judicial independence, transparent processes and the democratic system in general come alive. Every legal professional with whom the Assessment Team spoke who had traveled to the U.S on a study tour, even those who visited five or more years ago, reported that their trip had left an indelible image. Seeing, for an hour, how judicial processes work in the United States is invaluable the Assessment Team was told. It creates, respondents suggested, a vision of what might be.

Despite the many positive comments the MSI Assessment Team heard during its field visits concerning the judicial training programs provided by USAID and other donors over an extended period, reports prepared by official U.S. sources and other international observers continued to describe the judiciary as being poorly trained. Project designs developed for the 1999 IBRD loan initiated in Kazakhstan and the new 2001 ADB loan in Kyrgyzstan also reached this conclusion.

One of the main reasons why observers may view judges in these countries as being poorly trained, even after they have participated in USAID funded and other continuing education programs, has to do with the low base of education from which these judges start. Most who were appointed soon after independence, or were judges before independence as well, may not have had sufficient retraining to ensure that they are well prepared to rule on cases in any area of new law, let alone on all aspects of their country's commercial laws. The continuing education programs, to which judges are occasionally exposed, including the courses USAID funded, are not designed to fill all of the gaps in the knowledge base judges bring to their work. It is this broad knowledge base, moreover, not a narrow understanding of one law or another, on which external observers focus when they assess or rate legal and judicial systems.

In addition, as indicated above, many donors and institutional observers of the situation in these countries are convinced that corruption masks any improvements in judicial knowledge that have been achieved. Almost everyone the MSI Assessment Team interviewed in all three countries complained that judges are not consistently applying the laws of their countries.

(b) Judicial Associations

USAID has supported the establishment of judicial associations in Kazakhstan, Kyrgyzstan and Uzbekistan. It is the only donor the Assessment Team identified that is working in this field of legal association building. USAID's rule of law grantee began this effort during a regional workshop conducted in 1996, in Almaty, Kazakhstan, for 40 judges from all over region. This workshop led to the direct involvement of USAID's rule of law grantee in the creation of judges associations in all three of these countries. A second workshop in 1997 helped to establish linkage among judges associations in the region.

Judicial associations potentially serve their members in two ways. One is representational, i.e., by advocating on behalf of the membership on issues of specific interest. The second is through the provision of services, such as continuing education. Experiences in each of these countries are described briefly below, with particular respect to their involvement in continuing legal education and public policy.

- In Kazakhstan, USAID's grantee provided support to and worked with the Union of Judges, which was formed in 1996 at the end of a Ministry of Justice Congress of Judges. In addition to collaborating with USAID's contractor on judicial training, this organization has been involved in

other types of continuing education, e.g., it organized a 1999 workshop for judges on court reform in collaboration with the Supreme Court, the Ministry of Justice and Germany's technical assistance agency (GTZ). The Union of Judges has also engaged in representational activities, e.g., in one instance that was widely reported, the Union of Judges filed a law suit against a newspaper on behalf of one of its members who the paper linked to corruption in a manner the suit charged constituted libel.

- In Kyrgyzstan, the Kyrgyzstan Judges Association (KJA) was formed in 1997, with USAID assistance. That assistance included a significant level of training over roughly five years for the organization's leaders and selected members, including assistance in developing codes of ethics. The KJA is reported to have aired grievances concerning court facilities and housing on behalf of Kyrgyz judges.
- In Uzbekistan, the Association of Judges of the Republic of Uzbekistan (AJU) was also formed in 1997 with USAID support. Working with this organization, USAID financed series of workshops it held in around the country in 1998 and 1999 that involved over 140 judges in discussions of judicial independence. As noted above, USAID's rule of law grantee also credits the AJU with a significant role in that country's judicial reform movement. The success of the AJU may also have caused the organization difficulties. At the time of the Assessment, the AJU was in a transition, and its president was stepping down. The individual who captured the leadership position is someone who represents the Ministry of Justice, which is reportedly uncomfortable with the judicial reform process. The potential impact of this new president is a matter of concern to USAID and its grantee.

As these country summaries indicate all three of these organizations are engaged in continuing education activities and all appear to have a commitment to representing the views of their members. Those views range, as the examples show, from matters of individual and professional self-interest to broader public policy issues.

On the member services side of association development, the picture the Assessment Team developed was not as bright. Interviews carried out with judges outside of the capital cities in both Kyrgyzstan and Uzbekistan included a question about the benefits of membership in the national judges association. In interviews with groups of judges in both countries, none could recall any service it received as a function of being an association member and only one judge out of about ten identified the representational function the association played as a member service. This is not to say that judges, even these specific judges, have never received identifiable services from the judges associations to which they belong – it simply says that they were unable to recall or identify any services these organizations provided to them.

(c) Judicial Codes of Ethics

By 1996, USAID, through its rule of law grantee, was engaged in discussions of judicial ethics and the importance of codes of ethics the judges in Kazakhstan, Kyrgyzstan and Uzbekistan. In Kazakhstan, for example, USAID's grantee worked with the Union of Judges to produce a first code of ethics in 1996. Codes of ethics were adopted also by associations of judges in Kyrgyzstan (1997) and Uzbekistan (1997). Kazakhstan's experience with the development of its code is illustrative of issues that can arise as a function of differences in perceptions concerning the appropriate pace of change.

In 1996, when the judges of Kazakhstan adopted its first code of ethics, the draft presented for approval did not include all of the provisions USAID's grantee recommended, e.g., it did not include an enforcement mechanism. This was not what the Union's USAID funded advisors recommended. Five years later, the Union of Judges, acting without additional external assistance, updated the judge's code of

ethics and added an enforcement process. The new version was adopted in 2001 and is included as Annex E.

The pace at which Kazak judges moved toward a comprehensive code of ethics again illustrates the fact that local perceptions may be quite different from those of expatriate advisors. What, at a certain point in time, may appear to donors as the rejection of an idea may in fact be simply a case of tabling that idea until the time for its introduction seems ripe from a local perspective. Judges in Kazakhstan took two steps to develop the kind of code of ethics that U.S. advisors envisioned as a single step package. The implication of this experience, and other experiences discussed in this report, where expectations concerning the pace of change differed, is not simply for lower expectations, along the lines articulated in USAID/CAR's 2000-2005 strategy, but also for increased dialogue between USAID and host institutions. Dialogue, and encouragement from USAID, that results in local institutions increasing their sense of ownership and responsibility for establishing rule of law targets, and working with USAID to monitor progress against them, is what appears to be needed.

c. Improving the Performance of Prosecutors and Attorneys

Formal Training Programs

While improving judicial performance was the primary focus of USAID funded formal training programs in Kazakhstan and Kyrgyzstan, resources were also provided for upgrading prosecutor and attorney understanding of the new laws passed in these countries. Training for the procuracy, under USAID's commercial law contract, focused on economic crime and reached roughly 30 prosecutors in each of these two countries between 1998 and 2000. This program was implemented in collaboration with representatives of the U.S. Department of Justice.

Under the same contract, USAID provided 30 continuing education course for attorneys in Kazakhstan on commercial law issues. Similar training was provided for attorneys in Kyrgyzstan. USAID's contractor also prepared videos and other training materials that it distributed to participants in these programs.

Compared to the investments USAID made in judicial training, these efforts were on a smaller scale, and it is less likely that they reached as high a percentage in these professional groups. The MSI Assessment Team conducted fewer interviews with representatives of the procuracy than with either attorneys or judges. Its interviews with the Procurator's office in Kyrgyzstan, however, indicated that some of the training and materials provided by donors had proved useful enough to incorporate at least elements from those training events into the curricula for the Procuracy's in-house training institute.

Associations of Attorneys

The role of the attorney in courts in the region is still very limited. In contrast to the United States where an attorney gathers evidence and puts on a defense, for example, in these countries only the prosecutor has the right to develop and introduce evidence. According to the laws of Kazakhstan, defendants in criminal cases have the right to an attorney. In practice, as indicated above and in Annex H, people are not always allowed to see their attorneys and some people are detained for longer periods than specified by the law.

USAID has sought to improve the professional skills and understanding of Western justice systems among attorneys throughout the region by supporting the development of bar associations, as well as by supporting formal training programs. Professional associations are not totally new in Kazakhstan, Uzbekistan and Kyrgyzstan. In Soviet times such organizations existed, but they were state sponsored and not meant to change the status quo.

When USAID entered this field in 1995, it did not try to rework professional entities held over from the Soviet period, but rather created new organizations that would serve new functions. USAID appears to have been the only donor engaged in the development of associations in the region. In Kazakhstan, it helped to establish a local bar association in the southern city of Shymkent in 1997. In Kyrgyzstan, USAID provided assistance as early as 1995 to that country's newly formed Association of Attorneys of Kyrgyzstan (AKA). In Uzbekistan, USAID helped with the formation of the Association of Advocates of the Republic of Uzbekistan in 1997.

Attorney Association Development Experiences

Shymkent, Kazakhstan The Assessment Team met with the Southern Kazakhstan Association of Lawyers (SKAL) in Shymkent, which despite several years of assistance from USAID's rule of law grantee, describes itself as being close to the verge of collapse. This bar association's story, told much as it was told to the Assessment Team, is instructive from a sustainability perspective. Discussions with USAID's rule of law grantee indicated that the decision to support a regional bar association in Shymkent reflected the fact that a regional bar association already existed in Almaty, which was the capital at the time, and USAID's interest in working in other parts of the country. A subsequent decision to stop funding SKAL was also reportedly USAID's decision, and was linked to discussions with its grantee about the need for organizations it funded to become self-sustaining. Prior to terminating funding for SKAL, the Assessment Team was told, the grantee spent at least one year training SKAL staff in what it believed would be the skills it needed for sustainability. While USAID expects that the professional associations it assists can, with appropriate advice and assistance, become self-sufficient within a reasonable time period, two aspects of the Shymkent situation have worked against a successful test of this hypothesis, i.e., the untimely death of the organizations leader and an unemployment situation in Shymkent that spiraled out of control as factories closed and unemployment rose to 70-80%. These factors, together with the lack of traditions and laws, throughout the region, that are conducive to NGO support and growth, have made the chances for SKAL's sustainability marginal at best. Given local considerations of this nature, it is important that USAID and its grantees take a long term view as they make future decisions about supporting NGOs and have more realistic expectations concerning their prospects for self-sustainability.

Oskamen, Kazakhstan Around the time USAID's grantee terminated its support to SKAL, the organization was reportedly encouraged by USAID to open an office in another region, and to investigate the possibility of forming bar association there. The grantee held initial meetings with attorneys in that city where the attorneys themselves made clear that they did not want to start something just because they could get a grant to do so; they would only do it if they saw a need for such an association.

Bishkek, Kyrgyzstan The AKA, which has well over a 100 members in Bishkek alone, is a national association that started up in the capital city. While the Assessment Team was not able to meet with a representative of this organization, all reports indicate that it is an active organization that has been involved in efforts to make public hearings on draft legislation more common in Kyrgyzstan as well as training programs for its members, at least in Bishkek.

Osh, Kyrgyzstan The AKA's branch office in Osh has an active membership. It is aware of itself as an AKA member, but it also seems to have a separate local identity. Members described fairly active, self-stimulated processes for bringing members together to discuss a topic or other shared interests. This organization, as an AKA member reported, does not have a significant representational function. It appears to exist for professional development reasons, which it pursues on a low or no cost basis.

Jalabad, Kyrgyzstan Three attorneys met with the Assessment Team and told the story of how roughly 25 local attorneys had come together several years ago and begun the process of forming a bar association, without any outside assistance. AKA reportedly heard about this development, and the attorney's group received a phone call asking if AKA might visit. Once there the AKA made a strong pitch, the Assessment Team was told, to abandon their plans to form an independent bar and join the AKA instead. The Jalabad attorney's group, swayed by the AKA's arguments about the benefits of belonging to a national association, dropped their plans and about 2/3 of them joined AKA. Several years later they have yet to receive any services or training from AKA.

Tashkent, Uzbekistan The Association of Attorneys, based in Tashkent, has been actively involved in efforts to improve the country's law on advocates and advocate access to their clients. Members of the association with whom the Assessment Team spoke seem to view the organization as a change agent, rather than simply a professional association. Changes in the law that would give attorneys more of a role in court proceedings was one issue that had received this organization's attention.

The experiences of these professional associations have all been different. Some associations appear to be sustainable while others do not. Some seem to be more involved in public policy, while others focus on networking and continuing education as the text box indicates. Only in Shymkent and Tashkent did interview data suggest that these organizations are actively engaged in efforts to change public policy, in the latter case the law on attorneys in Uzbekistan. Impact also varies. For example, in Kyrgyzstan public hearings and draft legislation appear to have had a relatively modest impact beyond the profession itself.

The MSI Assessment team interviews did not identify a single dominant factor that explains these differences. Relative to judicial associations, which interview data suggest have a larger percentage of the profession as members than is the case for attorneys, attorney organizations speak more to the financial viability issue. As to the focus of these organizations, the interest of members and the energy of the association's leadership seem to play an important role, but not one that USAID's grantee, which helps to build these associations, can always spot in advance. From an investment perspective, that suggests that donors such as USAID may need to be able to articulate, for themselves, how many half-good organizations they are willing to fund to get one or two really impressive ones to emerge and make a contribution in a particular environment and serve as a model of the kind of organization USAID is promoting.

3. Access to Justice

Citizen access to justice is a complex concept that not only requires certain things be available, e.g., basic legal knowledge as well as legal representation, but also that other things be absent, i.e., bias or discrimination. In addition, accessibility connotes affordability and the facilities involved are within reasonable proximity. In Kazakhstan, Kyrgyzstan and Uzbekistan, the Assessment Team found, an individual's access to justice is more likely to be impeded by a citizen's lack of knowledge of his constitutional rights and the laws of his country than the distance to an appropriate court; the cost of a defense attorney, in criminal cases; or the gender or ethnicity of the individual, as discussed further in Annex H.

In criminal cases, persons accused of a crime have the right to counsel in all three countries and for those who cannot afford an attorney, the state will appoint a public defender. There is, however, considerable evidence from all three countries that indicates the right to an attorney and to have that attorney present during interrogations, is abused by police and prosecutors who do not make that right known to prisoners. This form of abuse appears to be most common when prisoners represent the opposition in some form, and to occur with greater frequency in Uzbekistan than in the other two countries. In all three countries, the state rights with respect to pre-trial detention are far greater than is the norm in the West. With the approval of the head of the Prosecutor's Office, detention can be extended from 72 hours to a full year in all of these countries. Lengthy pre-trial detention is a problem in all three countries and was noted as such in Kazakhstan and Kyrgyzstan during recent presidential elections when this feature of the law was used to sideline political opponents in both of these countries. These issues are well documented in reports of the International Helsinki Federation, Amnesty International and other well-known human rights monitoring organizations.

With respect to civil suits, the Assessment Team was told by a variety of sources that the cost of hiring an attorney discriminates against poorer citizens. Nevertheless, a significant element of the case load in these countries is said to be made up of civil suits that address disputes between parties, including disputes within families, which are initiated by women as well as by men and which cover, among other things, cases of domestic violence³². Quantitative data on these matters are not, however, readily available. Case load information, as well as information that would clarify the situation in these countries with respect to appeals and the frequency with initial judgments are overturned are not published and according to several sources are not even aggregated beyond the oblast level. Compared to most developing countries in other parts of the world that make these types of statistics available to the public, Kazakhstan, Kyrgyzstan and Uzbekistan are far from transparent with respect to the workings of their respective judicial systems.

³² Minnesota Advocates for Human Rights, *Domestic Violence in Uzbekistan*, 2000

Of the three countries visited, only Uzbekistan has an Ombudsman and in that country the Ombudsman's reported focus is on human rights issues. Uzbekistan created the post of Ombudsman in 1995 and regional offices were subsequently established. In 1999, the OSCE sponsored training for this office. Both Kyrgyzstan and Kazakhstan began discussing the creation of such an office after the one in Uzbekistan was established, but to date neither of these countries has established Ombudsman positions in their government.

In a country that does not have an Administrative Law code allowing citizens to pursue grievances against government in court, the Ombudsman's role is potentially an important one. Since its creation the Ombudsman's office in Uzbekistan has received complaints from well over 2,000 citizens, nearly 60% of who were women, according to a gender-focused report Uzbekistan provided to the United Nations. References made to the Ombudsman in other interviews indicated the individual in this position has taken his job more seriously than some observers may have originally expected. With respect to impact, however, little appears to have changed with respect to the kinds of complaints external monitors launch each year about human rights.

a. Legal Literacy and Civic Education

In each of the countries the Assessment Team visited it was told that citizens do not understand their rights. To some degree this situation, the Assessment Team was told, reflects the rapid pace at which laws have changed in Kazakhstan, Uzbekistan and Kyrgyzstan. In the Soviet era, it was generally assumed that, with the exception of family law, government would prevail in any case in which it took an interest. Average citizens did not, therefore, need to know a great deal about the law. With independence, and more importantly a significant degree of privatization in Kazakhstan and Kyrgyzstan, the need to understand the law is increasing.

Programs for Students

In Uzbekistan, following the lead of the country's President in a speech in August 2001, an un-funded national effort is being made, the Assessment team was told, to ensure that every citizen learns the Constitution of Uzbekistan. The team saw student posters on the Constitution posted in the stairwells at the University of World Economy and Diplomacy in Tashkent. It was not able to learn, however, how widespread this low cost initiative is or whether and to what extent it reaches adults or children in the regular school system.

USAID and other donors are also engaged in civic education programs in Kazakhstan, Uzbekistan and Kyrgyzstan. USAID's involvement goes back to the 1994 period when it provided small grants to NGOs for, among other things, civic education

Street Law in Central Asia

Street Law, Inc. and the Soros Foundation are long term partners in the development of a 13 Street Law program in countries in the former Soviet Union. This broader program, initiated in the early 1990s, focuses, first, on the creation of a local country team that will plan and carry out a program in their country, and was relevant, as in Central Asia, build a regional network of Street Law programs. In Kazakhstan, the Street Law, Inc.-Soros Foundation partner, the Kazakh Association for Citizen Education in the Law (KACEL). The local representative for the Street Law program is Aizhan Muhtarova, who teaches at Kazakh State University, and who was trained in 1995 when a USIA grant paid for staff from the original Street Law project in Washington, D.C. to travel to Kazakhstan. USIA subsequently funded her travel to Kyrgyzstan and Uzbekistan to identify individuals there who could become program counterparts and expand the Street Law program network.

Mrs. Muhtarova remains in touch with all Street Law projects in the country, including those in which USAID is involved, and has trained people from each of the other countries in the region on the fundamentals of this program. She has also named national coordinators in each of the other four countries. Mrs. Muhtarova views Street Law primarily as a program that could have an important national impact if it reached a large enough number of students in any country where it is part of the curriculum. Her understanding of the importance of "scaling up" the Street Law program as a means of increasing its potential impact has raised her interest in seeing the program promoted, initially, by Kazakhstan's Ministry of Education, and subsequently by education ministries in other countries in the region.

initiatives in Kazakhstan and Uzbekistan. USAID's involvement in this field continues today in Kazakhstan, but not in Uzbekistan. For example, in Kazakhstan, USAID supports a project with the Department of Education that involves the development of a new secondary school curriculum for democracy issues. Like most school-based programs, the impact of the kind of broad gauge civic education programs USAID is supporting takes time to emerge and tends to be diffuse when it does.

Street Law is another civic education program, through which high school students receive instruction on everyday legal issues. Street Law activities in the region, and in Kazakhstan in particular, where implementation is proceeded the furthest, by both the Soros Foundation and USAID. USAID's activities, which are intended to raise the level of legal literacy of students who will soon be young adults joining the workforce, are in an early stage. Street law courses have only been offered to students through the USAID funded student law association in Kazakhstan for a year or two. While members of USAID funded student bar associations are teaching some of these classes, i.e., where Street Law is funded by USAID, the majority of Street Law classes are taught by regular teachers who have received "Street Law" training. Anecdotes suggest that a few students have already found ways to apply what they have learned, but these data are insufficient for reaching general conclusions. The impact of the Street Law program, as a civic education program, will depend upon how many students it reaches and how well those students understand and retain what they learn.

USAID's Street Law activity in Astana, which uses student law association members as well as local teacher to offer Street Law classes on an extra-curricular basis is an offshoot of this broader program. However, based on interviews with USAID's grantee, with Soros Foundation staff, and with local Street Law representative, it did not appear that the USAID funded activity was closely linked to other Street Law activities in the country, e.g., exchanging information, working against a shared national plan, etc.

MSI interviews also suggested that donors do not have a shared vision of the ultimate aim of their Street Law efforts. USAID's grantee office in Astana indicated, for example, that it views the Street Law project there mostly as a project for the law student association to work on, rather than as a national civic education program. Street Law's local representative was the only individual with whom the team discussed Street Law for whom national, and even region-wide, adoption of the Street Law program in the schools was a clear objective.

Adult Legal Education

With respect to adult legal education, two kinds of efforts were reported to the Assessment Team. One of USAID's grantees told the Team that it had experimented with the use of television as a medium for delivering educational messages on legal questions. Cost reportedly prevented the further expansion of this program.

The second experience, which has a more immediate impact than do some of the other civic education programs in the region, is a broad, multi-donor effort to ensure that in the wake of Kyrgyzstan's passage of a land law that privatized much of the country's agricultural land, families that have acquired land rights understand those rights and what they must do to exercise them. Legal education on this topic is being approach on a campaign basis, aiming through a mix of approaches to ensure that all citizens who could be affected by this change understand it.

- One element of this campaign, funded by USAID and implemented by one of its contractors, has a strong educational focus. Between this program, which holds legal rights workshops, and other efforts, USAID has distributed 2 million pamphlets and trained roughly 150,000 people.
- A second program that contributes to this campaign is a Swiss bilateral development program, Legal Education for Rural Citizens (LARC), implemented through Helvetas, a Swiss

implementing agency. This project, which also receives funding from USAID, is one of at least three in Southern Kyrgyzstan that combines adult legal literacy and legal services. Its aim is to minimize the number of disputes that result from the new land laws. LARC workers receive their training in the country's land law from a USAID project team (not the one noted above as the presenter of educational workshops). They use their knowledge of the law to help farmers write contracts and to represent them in negotiations and in court, when necessary.

These initiatives are all complementary. Impact for all of them depends upon training at a saturation level. The objectives of the LARC project reach one step further, seeking to minimize conflict and ensure that dispute resolution processes fairly represent the interests of new landowners, some of whom are relatively poor and have had little contact with legal processes.

Like many of the rule of law activities the Assessment Team observed, the citizen education and legal services efforts mounted behind the passage of the new Kyrgyz land law are too new to assess their coverage or impact. What is important, and different, about these efforts is the way in which they seek to empower citizens through the provision of information, and by making legal services available, on a massive scale over a very short time period. These efforts appear to be making progress, the Assessment Team was told, with respect to ensuring a level of legal literacy that has not even been attempted for any of the other law passed in Kyrgyzstan, Kazakhstan or Uzbekistan during the past decade.

b. Legal Information Centers

USAID has been investing in legal information centers since 1994. Legal information centers represent another approach for empowering citizens. They provide both ordinary citizens and legal professionals with the resources they need to acquaint themselves with the laws of their countries.

The first two centers it supported, one in Almaty, Kazakhstan and the other in Tashkent, Uzbekistan were both considered to be potentially viable by the end of 1996, following their receipt of technical assistance and material inputs. These early centers were established in respected libraries including some law school libraries. During its visit, the Assessment Team visited one of the libraries that participated in this effort, the Adilet Law School library in Almaty. The team found the law library full of students and books and equipment that provided access to legal data bases and the Internet. When the origins of the law library were described for the Assessment Team it was not the USAID grant that was cited, but rather the impact of a Fulbright Scholarship that led to a 1998 USIA grant that financed a multi-year facility law library enhancement effort with the University of Indiana. From a sustainability perspective as well as from a utilization perspective, investments in the law library and information center at Adilet Law Faculty are paying off. The problem, in this case, as in many of the other successful projects the Team observed, is that it has multiple "fathers."

In addition to this legal information center, the Assessment Team visited legal information centers in Shymkent, Kazakhstan and Osh, Kyrgyzstan. While all of these cases demonstrated that there is a demand in the region for public access to legal information, each story was different.

- In Shymkent, where a legal information center had been created with USAID assistance as an adjunct of a local bar association, the bar association's current financial difficulties (following the termination of its support from USAID) may, the Assessment Team was told, result in the demise of the information center as well as the demise of the association itself. As of the time of the Assessment Team's visit the bar association no longer had the funds to pay for the information center's access to the legislative database, which the head of the bar association described as its most popular feature.

- In Osh, Kyrgyzstan, where USAID funded the establishment of a legal information center in the local library, the Assessment Team was shown the center's original room and the three additional rooms it had taken over as it grew both in terms of its holdings and its customers. Considered viable by all involved, the local library covers this center's core rental costs and there are plans for transferring the center's staff to the library as well, which would further reduce its long-term vulnerability. In addition, one of the rooms in the center's complex contains conference facilities that can be rented out and some center services involve a small user fee, the Assessment Team was told.

Grantee staff familiar with these examples told the Assessment Team that a new legal information center to be opened with USAID funding in Oskemen, Kazakhstan will apply the lessons learned from Osh as well as Shymkent, with respect to finding a long-term institutional partner. In Oskemen, the partner will be the local library, which will reportedly donate the space required to establish this center. The center in Shymkent has also recently relocated to the central library, providing some hope for its sustainability, but the key there will be regaining access to the legislative database, which costs about fifty dollars per month.

Another example of a legal information center whose continued expansion has been a function of its ability to establish and maintain effective funding linkage with multiple donors is the Open Library of Legal Information in Tashkent. This library, based at Tashkent State University has the Association of Businesswomen of the Republic of Uzbekistan as its primary partner. The center receives funding from both USAID and the Soros Foundation and has invested heavily in the development of legal information databases since its incorporation in 1997. What is interesting about this information center is not just what it is doing today, <http://www.cango.net/homepages/uz/OpenLib/>, but rather that its existence traces back to a \$10,000 grant USAID made in 1996 to the Association of Businesswomen to launch such an effort.

The Tashkent Open Library example also serves to illustrate where the legal information initiative in Central Asia is moving. Not only does this center have a website, the Ministry of Justice in Kazakhstan now has one at <http://www.banknet.kz/~rcli/index.htm> where some information can be downloaded and where the Ministry offers for sale CD-ROMs containing its legal data base, which is acknowledged to be the best in the country. The Ministry is not the only entity that has developed a CD-ROM and an Internet site. There are several vendors of this information in Kazakhstan and similar vendors in other countries the MSI assessment team visited. Illustrative of this kind of activity is [TOKTOM](#) information center in Kyrgyzstan, which is involved in collection and distribution of legal information of the Republic of Kyrgyzstan. In Kazakhstan, one private vendor is reportedly in negotiations with the Supreme Court to obtain and distribute its database of judicial decisions. In Kyrgyzstan, a USAID funded project has already taken the step of placing the legislative database of commercial law on CD-ROM and making sufficient copies to circulate them to judges who have access to the equipment needed to use it.

The legal information centers the Assessment team visited were, for the most part, places where visual information and utilization records indicated that these resources are being used. Legal information centers that grow, i.e., develop a clientele and attract resources, particularly local sources of financial and non-financial support, are the ones that have a good chance of becoming self-sustaining over time. What the experience of Legal Information Centers like the one in Osh suggests is that growth itself (clients, volumes, other resources) is worth monitoring as a leading indicator of their ultimate viability.

Used in this way, growth is a measure of demand, which not only speaks to viable but also to the kinds of attitudinal change USAID/CAR is aiming for under its current SO 2.1 strategy. An increasing demand for legal information is a signal that a population is becoming less passive and more interested in empowerment. Where there is evidence of a growing demand for legal information, e.g., from Legal Information Center sign-in registers and the like, USAID/CAR and its contractor/grantees may find it useful to analyze not only the sources of increased demand, i.e., what population subgroups are seeking

more legal information, but also what is prompting them to do so. The experience of the Legal Information Center in Osh, Kyrgyzstan suggests that some of the answers an examination of increased demand might reveal include (a) the importance of location and adequate space to usage and that (b) utilization rates build upon themselves, i.e., an increase in utilization by some groups leads indirectly to greater utilization by other groups via word of mouth and other informal communications.

4. Law School Education and the Next Generation

U.S. strategy documents in recent years have emphasized the Agency's interest in focusing on young people:

*"...through our involvement with the NIS over the past six years, we have come to the realization that democratic reform is a generational process in these countries, and we have focused our efforts on building a cadre of young leaders with an understanding of the day-to-day functioning of a market-based democratic system."*³³

Accordingly, it has focused some of its attention in rule of law activities on law students and young lawyers. This section examines USAID and other donor involvement in preparing the next generation of leaders in the legal community.

a. Law Faculty and Teaching Methods

Education, including continuing education has long been acknowledged as one of the greatest strengths of the Soviet Union. For this reason, Central Asia for legal education opportunities. Law faculties existed in each of the countries covered by this assessment prior to independence. In addition, the Soviet Union brought good scholars to Moscow to increase their knowledge and skills still further.

Law school education in Kazakhstan, Uzbekistan and Kyrgyzstan still has many characteristics of the pre-independence era, with many lectures and reliance on memorization and theory to train students, rather than practical experience and an interactive classroom approach. Students and donors concur on this assessment. Nevertheless, the Assessment Team's visit to roughly half a dozen law schools indicates that some movement has taken place over the decade.

In Kazakhstan, the Assessment Team was told that in 1999, law faculty from Astana, Almaty and Shymkent went to the U.S. on a USAID funded program that allowed them to examine the U.S. legal education system, including its use of legal clinics to foster a practical aspect to legal education in the U.S. Some of the impacts of this and other exposures the faculty appear to include, at least in some schools, the use of moot court exercises which may count for part of a course grade; the creation of a student law clinic within the school, and the addition of topical seminars, such as the ones on human rights and women offered at Miraaz Law School, in Almaty, Kazakhstan. Faculty at the schools visited also told the Assessment Team that they have more textbooks than in the past and more freedom with respect to teaching styles.

One problem many of these law faculties noted, particularly in Kazakhstan, but also in Kyrgyzstan, is the rapid expansion of the number of law schools in the region. New law schools, a number of which offer only correspondence courses have the effect of bringing down the average level of legal education and since there are no standardized test or certification processes for young lawyers, higher quality graduates that more progressive laws schools produce do not necessarily stand out, at least not at first, the Team was told.

³³ Freedom Support Act Annual Report, 1998.

Most students appreciate those improvements in the law school curriculum and teaching methods with which the best schools are experimenting. On the other hand, some faculty noted, there are students who do not really care about the curriculum, and are simply there to collect a degree. Some students even announce what government job they will have after graduation, as a function of who they are or know.

Faced with budget constraints and higher priorities, USAID/CAR has not made a serious investment in law school education reform. With a low level of effort, however, USAID's grantee had supported faculty training and study tours that provided law school faculty with exposure to interactive teaching methodologies in the United States. The grantee has also met with law school rectors on curriculum reform, including the Rector of Tashkent State Law Institute.

Tashkent State University in Uzbekistan has recently found a new partner to work with in taking steps to modernize its legal education program. The University signed an agreement with a Japanese law faculty that will start to provide assistance in 2001-02 to three institutions: Tashkent State Institute of Law, Samarkand State University School of Law and University of World Economics and Diplomacy. The push for legal education reform may be as much a function of demand as of Japan's willingness to provide assistance. For one thing, as the Rector of Tashkent State suggested, with reference to his son who is a student there, "law school students today are a different breed," i.e., they know what is going on in the world and can search out information on legal education in other countries on the Internet.

Another impetus for change, at least in Uzbekistan, is the harsh criticism Uzbekistan's law schools received from the country's President in a recent public address:

"I would like to emphasize that we have grounds to doubt claims to the quality of the graduates [of our law schools.]. The lawyers are being trained along the old traditional ways, the quality of the educational programs, especially on the new priority branches of law, do not correspond with the modern requirements. By and large, they reveal the old approaches and attitudes. The system of professional training and secondment of the teaching staff is carried out at a low level. They do not work sufficiently to increase their expertise. There are only three people with the degree of Candidate of Science and none with that of Doctor of Jurisprudence among the teaching staff at Andijan and Namangan State Universities. Nevertheless, these institutions issue their graduates the diploma of lawyers."

In a similar vein, the Assessment Team was told that in Kyrgyzstan, the law faculty at the American University of Kyrgyzstan uses participatory teaching methods. In addition, the new Minister of Education is reportedly interested in educational reform, including legal education, but plans in this area had not appeared as of the end of the Assessment Team's visit.

The team also noted that, even without external support, some law schools seem to be introducing new elements into their law school program. The law faculty at Adilet, in Kazakhstan, for example, told the team that students in both civil and criminal course now complete their studies by presenting a case in a trial format. A mock courtroom has been built as a classroom for this purpose. In addition, Adilet, which had a long-standing law library relationship with the University of Indiana as noted above, is one of the law programs that has a legal clinic on the premises and a "hands-on" evidence laboratory.

Initiatives like these, taken by a few of the top law faculties in Kazakhstan, Uzbekistan and Kyrgyzstan may not represent a commitment to reform all aspects of legal education in these countries, but some steps are being taken and the general level of interest in modernizing legal education may be changing in these countries even though most courses in most law faculties still rely on a straight lecture mode to convey information about the law.

b. Law Student Associations

Absent a direct assistance program to law faculties in the region, USAID's efforts to provide law students with new, practical education experiences has tended to focus on law student associations and activities those associations could undertake. The efforts made to date, however, reach a relatively small percentage of the overall number of students, and therefore may not have the hoped for result of "changing a generation."

Law student associations provide law school students with an introduction to professional associations and their purposes. In the United States, most law schools offer their students the option of belonging to one or more associations of this sort, some of which are general in their focus and others which focus on a specific aspect of the law or target population. Among other things, these associations are often involved in efforts to provide law students with opportunities to increase their exposure to the practical aspects of being a lawyer. While student associations differ from each other, the range of activities in which they may be involved include the mentoring of younger students, collaborative efforts to identify internships and other work opportunities for their members, moot court competitions, law student clinics and other kinds of community outreach. In the extremely competitive environment of U.S. law schools, key positions in a law student association and leading roles in moot court and law review activities are sometimes viewed as prizes to be used to highlight a resume and differentiate candidates seeking entry into prestigious law firms.

USAID is applying this model in the countries the MSI assessment team visited. USAID's rule of law grantee in the region estimates that there are roughly 15 student law associations, as compared to three in the mid-1990s. While some of these associations are based in universities and are part of the law faculty program, the law student associations funded by USAID tend not to be linked to law school programs. Instead they are mentored by USAID's rule of law grantee and often work out of the grantee's office. According to USAID's grantees, these "free standing" law student associations (a) allow students from several universities in a city to participate; and (b) preclude the possibility that faculty in a particular school will take over the association for their own purposes. One consequence of this decision, from what the Assessment Team was able to learn, is that USAID funded student law associations may have a lower likelihood of sustainability than they would have as an element of a law school program.

Another issue related to USAID investments in law school associations is the scale of these efforts, i.e., the number of students they reach and the likelihood that they have a discernable impact. In Kazakhstan, Kyrgyzstan and Uzbekistan a law degree is considered by students to be one of the most desirable professional degrees to obtain. The demand for law degrees so far outstrips the capacity of well-established law faculties in these countries that in each one a significant number of new law schools have been created, some of which are correspondence schools with no full time faculty. Older law schools complain that the rapid proliferation of sources of a law degree is leading to the certification of numerous young lawyers who do not have a complete or deep legal education. In large cities like Astana, Kazakhstan the number of students studying law through some institution can number in the thousands.

Law student associations created by USAID and its implementing grantee reach only a small fraction of these students, i.e., 50 out of a reported 5,000 in Astana, for example. When the Assessment Team asked about the number of students who are members of USAID funded student bar associations, which in most cases was 50 or less, it was told that these associations are more interested in recruiting high quality law students than in reaching large numbers. While this criteria may have certain merits, the proposition that USAID-funded, "free standing" student bar associations will consistently draw in those students who will end up being the leading lawyers and judges of their generation and thereby have a substantial impact on their country's legal and judicial systems needs to be tested rather than simply assumed.

Given that most of the student law associations USAID has helped to finance have only existed for a few years, this hypothesis cannot be tested immediately. On the other hand, the timing may be right for setting up procedures for assessing the impact of membership in USAID funded student bar associations on a longitudinal basis, e.g., following the career development of a random sample of students who are members of these organizations while in law school, and are, or are not, involved in the student law clinic activities of these associations, their moot court activities, etc.

As “free standing” entities, USAID funded student bar associations in Kazakhstan, Kyrgyzstan and Uzbekistan do not seem to have a good means of developing a following among faculty in the university community. Students and USAID grantee both reported that it is rare for law professors to play a role in these organizations. Taken together, this information suggests that if the USAID program were to end tomorrow, the law student associations it has helped to create would not long survive.

As to student perceptions, those with whom we spoke consistently found their law school association experiences to be positive and expansive with respect to their grasp of what a legal career is likely to involve. In all of these organizations, students are learning about the process for registering a non-governmental organization, first hand. They are also learning how to develop projects and a few are beginning to think of activities that will help to cover the cost of their operations.

(1) Moot Courts

Moot court is another practical legal education technique with which USAID is closely linked in the region, as the sponsor of annual moot court competitions since 1999. Seventeen teams competed in the competition that was held at the Tashkent State Law Institute in 2000, and one of USAID’s regional rule of law grantees estimates that there are fifty such teams in Kazakhstan alone.

As a practical supplement to a legal education, moot courts may become a sustainable part of the law school culture of the region more easily than legal clinics. For all intents and purposes, that already seems to be happening. While the Assessment Team did not observe any moot court events, students articulated their interest in these events, and some of the universities the team visited indicated that they already understood the purpose of these exercises and were incorporating them in one way or another into their offerings.

How Quickly They Learn

Kazakh State sent a team to compete in the University of Wisconsin sponsored 1999 Philip C. Jessup International Law Moot Court Competition. The team won 1 out of 4 of its competitions and turned in written memorial scores that put it ahead of law schools in Hungary, Denmark and the United States (Harvard).

www.ilsa.org/jessup/jess99/memorial.html

(2) Student Law Clinics

USAID and other donors throughout the former Soviet Union, recognizing the overly theoretical nature of legal education in the region, have supported programs that introduce clinical legal education into the system. Law school clinics not only provide practical experience to the law students, they also provide free representation and advice to the citizens of the community, and encourage interest on the part of law students in public service.

USAID’s rule of law grantee estimates that there may be as many as thirty law clinics in the region, including those funded by USAID, the Soros Foundation and Eurasia. This estimate is tempered by the sense the grantee has that only five or six of them are likely to be viable over the long term. “Clinics are the biggest boondoggle in Central Asia,” the assessment team was told, because there is plenty of funding. Training, however, is often minimal and supervision, based on the Assessment Team’s own

observations, varies dramatically from clinic to clinic, but not necessarily as a function of which donor sponsored a clinic.

As in other countries, the law school clinics developed in Kazakhstan, Uzbekistan and Kyrgyzstan by USAID and other donors tend to focus on the provision of legal services for those who cannot afford them. Students appreciate the opportunity that legal clinics provide. In USAID funded clinics, as in clinics elsewhere, students are gaining experience in working with clients and with practical legal problems. Of the law clinics the Assessment Team visited, roughly half were associated law schools and half were “free standing” clinics, linked only to law student associations, which were themselves not connected to specific universities. The “free standing” nature of USAID funded clinics sets them apart. Generally speaking, the number of students participating in the clinics the Assessment Team visited was relatively small, e.g., 10-15 per clinic.

Supervision

Team visits to a number of USAID and other donor funded law clinics in Kazakhstan, Kyrgyzstan and Uzbekistan suggest that the level of supervision that students in these clinics receive is inconsistent. In a few clinics there seemed to be a good deal of supervision, and in few others the level of supervision seemed to be inadequate. Differences in the level of supervision of students appeared to be a function of the initial training provided to organizers of these legal clinics and the funding for these centers. Some clinics, it appeared, had been initiated without a suitable level of “hands on” training for the individuals slated to run these clinics, which may in part account for these differences. Other clinics received intensive start-up assistance, e.g., a criminal law clinic at Osh State in Kyrgyzstan, which received start-up assistance from the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) as well as from USAID.

On-going supervision in the law clinics the Assessment Team visited also appeared to vary in part as a function of the level of financial support provided by external sources. At least one of the university-based student law clinics visited by the Assessment Team had begun to have problems maintaining adequate supervision after its donor grant ran out.

For the “free standing” clinics USAID has funded in Kazakhstan, Uzbekistan and Kyrgyzstan, adequate supervision, both in the immediate and long-term, may be a more difficult issue. One situation, of which the Assessment Team became aware during its visit, a student bar association, created with USAID assistance, was providing services in a U.N. financed legal aid program without, according to the program’s sponsor, adequate supervision from legal professionals. The program sponsor viewed supervision as being the responsibility of the USAID grantee that was mentoring the student bar association. The difficulties of effectively spinning off “free standing” student bar associations, and the perception that USAID may retain certain responsibilities for these organizations, are simply additional reasons for attaching student bar associations to law schools, attorney associations and other institutions that can continue to finance and oversee them after USAID’s start-up funding for such efforts ceases.

To its credit, USAID, in Kyrgyzstan, recognizes that a variety of problems can emerge in legal clinic programs, regardless of where they are located. Based on this recognition, USAID organized a conference for early December 2001 on “standards for clinical education programs,” which took place while the Assessment Team was in the region. Participants in that conference included individuals working with existing clinics and representatives of law associations, universities and NGOs. One of the products of the conference was a set of draft standards, both mandatory and recommended, which conference participants agreed should be shared with the Ministry of Education, adopted and promoted nationally (Annex G).

Sustainability

Law clinics, because of the need for close faculty supervision, can be expensive to run. They also require space and equipment. Ideally, such programs need to be integrated into the curriculum itself, which requires that class time as well as clinic time is invested.

In Kazakhstan, Uzbekistan and Kyrgyzstan, USAID and the other donors have provided grant funds based on what they estimate to be the start-up costs of these programs. All of the donors involved make these investments expecting that they will be able to cease funding these clinics within a short period of time, e.g., 2-3 years.

Evidence from law school clinics in the region that were started on this basis, and are no longer receiving donor funds -- or thriving -- suggests that donor estimates of what it takes to develop viable law clinic programs in this region may not have been valid. In one clinic the Assessment Team visited, it learned that when funding from the donor ended, so did the involvement of the professor who had been supervising the program. For another, the loss of donor funding meant moving to a less desirable space.

Sustainability is something that many donors and grantees begin to think about during the last six months of a program's funding period. Often, this is too late. Sustainability, for many kinds of programs, is realized only when it is planned for from the very beginning. Such planning may, in some instances, result in the charging "user fees" for service programs, or in the case of a university, building the cost of a service program into tuition fees, even before such funds are actually needed. Program managers who plan for sustainability, from the outset, come to understand, as they go through such exercises, that while it is always possible to "charge" for a service from the beginning, it is often impossible to transform a "free" program into one that someone (the client, the student, the university) has to pay for. Fee-for-service arrangements, however, are particularly difficult to apply to services provided by students, which is one of the reasons why their integration into law school programs that can eventually support them needs to be considered.

Pragmatic, up-front sustainability planning of this sort was not in evidence in the majority of the law clinic programs the Assessment Teams observed in Kazakhstan, Uzbekistan and Kyrgyzstan.

III. LESSONS LEARNED FOR THE DONOR COMMUNITY

In addition to an assessment of the outcomes and impact of legal reform programs, the scope of work for this assessment instructed the MSI Assessment Team to examine a number of assistance management issues, including:

- Assistance sequencing,

E&E/DG Assistance Sequencing Questions Raised in the Assessment SOW

- Was the rule law assistance provided appropriate in terms of the needs of the sector and the prevailing conditions in the sector at the time it was provided?
- Would it have been more effective to have first provided another type of rule of law assistance than what was provided?
- Were certain types of assistance more or less effective because they preceded or followed other types of assistance?
- Were there synergies between different types of rule of law assistance that made those types of assistance more/less effective when provided together?
- How was the sequencing of assistance interventions affected, if at all, by any changes in conditions in the host country? Were appropriate adjustments to assistance interventions made to reflect or respond to these changed conditions? What factors affected the ability of rule of law programs to adjust to changed circumstances?
- What does experience in the countries studied tell us, if anything, about the sequencing and effectiveness of assistance focused on the governmental versus non-governmental sectors?

- Assistance modality effectiveness,
- Assistance targeting, and the
- Assistance coordination

This section of MSI’s report addresses findings and issues in each of these areas.

A. Assistance Sequencing

Broadly speaking, both governments and donors that provided rule of law assistance to Kazakhstan, Kyrgyzstan and Uzbekistan placed a higher and earlier priority on the development of a new legislative framework for these countries than they did on conditions that would ensure the implementation and enforcement of new laws once they were adopted. The consequences of this decision are in evidence in all three of the countries included in this assessment. In each, as was shown in Section II, 1, A, confidence in the legal system is low among both individual citizens and businesses largely as a function of the fact that laws on the books are not consistently applied when judicial decisions are made, those decisions are not enforced in a timely manner.

While it was easier at the time to quickly draft a large number of new laws than to put in place a balanced and paced strategy for ensuring that every new law was reliably applied and enforced soon after it was adopted, opting for that approach may have made an initially bad situation more difficult to improve than it needed to be. When people consistently told the MSI assessment team that the legal system worked better in Soviet times, their reference, for the most part, was to the fact that, in that era, ordinary citizens could count on the fact that simple laws would be applied, in simple non-political cases, on a reasonably consistent basis. This is not perceived to be true today, which is what prompts people to report that it is “worse” than before. It is easy to assert that other factors, such as unchecked corruption, rather than government and donor sequencing decisions are responsible for this perception, but it is not totally accurate. The development of new laws at a rapid pace, in the absence of a performance-based criteria for judging how fast to move, e.g., *evidence of the extent to which new laws were properly applied and judgments based upon them executed*, has left all three of these countries in a position where they are strongly criticized at home and abroad for what is often described as a huge “implementation gap.”

At the same time, whether arrived at through a sector assessment or simply based on critical path analysis at the project level, some more discrete USAID/CAR funded activities seemed to be organized appropriately from a sequencing perspective, including:

- Judicial training programs that trained trainers before trying to provide training to large numbers of people;
- Citizen education and legal services programs inserted into relevant communities after a land law was passed that could have result in problems, before those problems started to emerge in large numbers.

Problems arose with respect to rule of law activity outcomes and impact, when there was something important to be done, from a long term perspective, that didn’t appear on any critical path analysis or require attention as a pre-condition for achieving some other result. Problems that are still in evidence in the region today in part for this reason include:

- Massive corruption which, despite the many times it was identified as a constraint to rule of law improvement in the region by USAID, the Department of State and a variety of organizations that periodically examine the investment climate and human rights conditions.
- Laws that are not being implemented because appropriate implementing legislation has not been adopted.

- Persistent weaknesses of legislative drafting capacity in Ministries of Justice where the heaviest burden for the development of new legislation falls in these societies.
- The absence of mechanisms, specifically information transfer and management technologies, for ensuring that judges trained through donor funded activities will quickly become as familiar with the next new law passed as they are with relevant laws the day they complete a training program.³⁴

Taking legislative drafting as an example of the sequencing issues and opportunities, illustrates the tension that may have existed to at least some degree, in decisions about rule of law programming for the countries included in this assessment.

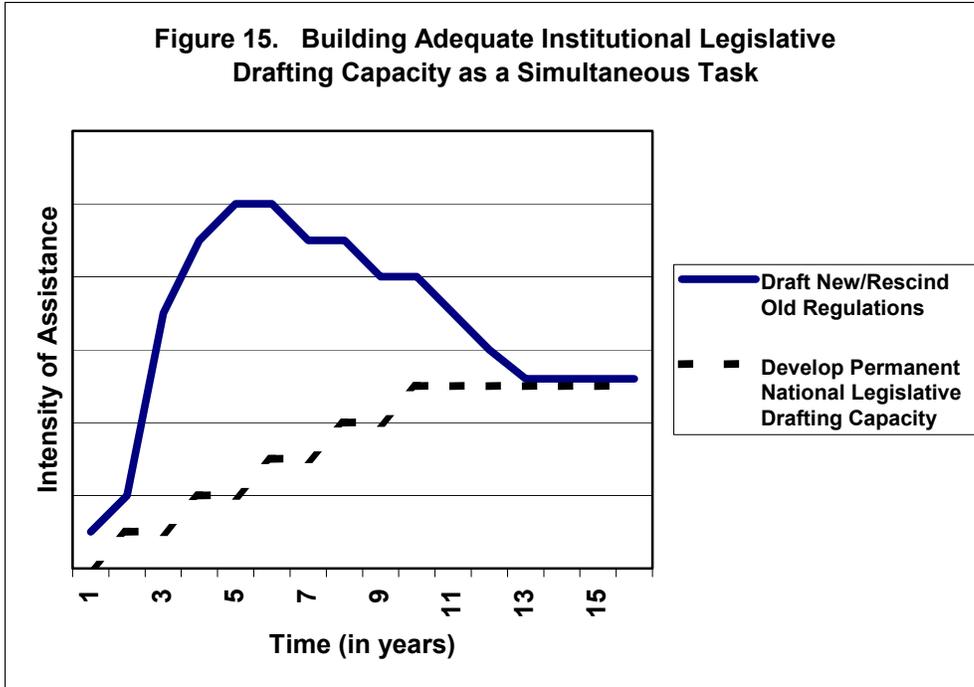
Where both action and institution building are needed, a normal sequencing strategy would be to build capacity first and then use it to do whatever job it is designed to do. In the early 1990s, time was considered to be of the essence and, as a result, the United States and other donors imported at least some of the legislative drafting talent needed to develop new laws and codes that were perceived to be needed by countries in this region. An alternative to importing drafting talent over many years might have been to invest heavily in developing drafting capacity while consciously using imported capacity for a limited “stop gap” period.³⁵ Figure 6 illustrates the kind of investment paths that are consistent with this strategy for “doing both” simultaneously.

To its credit, the World Bank’s 1994 project brought a number of local lawyers into the Legislative Drafting Institute it created in the Ministry of Justice in Kazakhstan and supervised what amounted to on-the-job legislative drafting training, which after a hiatus USAID continued to provide, when its commercial law contractor worked inside this Institute, to help rebuild its capacity, following the Ministry’s move to Astana. Over the decade, USAID also provided a number of seminars and workshops around the region on this topic. But these investments, which in the case of Kazakhstan were considerable, have, nonetheless, not created and institutionalized sufficient legislative drafting capacity to leave either the governments or parliaments in the region satisfied with the quality of the draft laws that are being produced today.

³⁴ Where USAID/CAR has made a technology commitment in support of solving a problem, as it has in at least one tax administration program in the region, it appears to be solving those problems.

³⁵ USAID did this kind of thing to help African countries create universities and staff ministries several decades earlier, i.e., sending a U.S. national to teach or work during the period needed for a designated host national to acquire a higher degree.

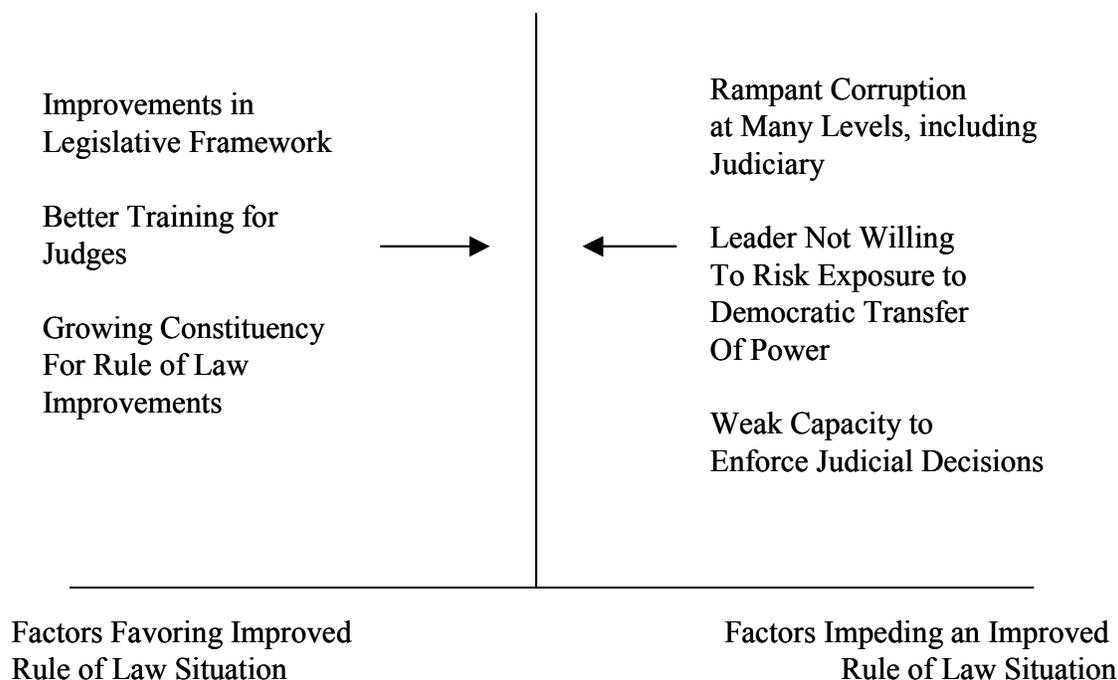
Figure 15. Building Adequate Institutional Legislative Drafting Capacity as a Simultaneous Task



While USAID invested in legislative drafting training events and in mentoring local lawyers in all three countries, it did not consistently make an effort to ensure that the capacity it was developing would be institutionalized. Circumstances in Kazakhstan worked out in favor of institutionalization when USAID’s contractor started to provide legislative drafting assistance from inside the Ministry of Justice. USAID’s approach in Kyrgyzstan, on the other hand – where drafting assistance is provided to the Ministry by a team working at a contractor’s site – did not appear to be focused on the institutionalization of the legislative drafting capacity the project created. It could easily dissipate when this contract ends. What this legislative drafting example is intended to illustrate is the value of plotting an ideal strategy early on, and analyzing the long term cost of diverging from that ideal to respond to pressing demands. The analysis itself, in these kinds of situations, can help organizations to find the optimum balance point between that which is time urgent and that which is truly important from a long-term development perspective.

Anti-corruption could be a better example in this regard. While long understood by USAID/CAR to be a problem linked to rule of law improvement as well as to citizen and investor confidence, Mission strategies completed prior to the Assessment have not tended to articulate realistic ways of intervening to reduce the level of corruption, nor have they struggled analytically with the pros and cons, and costs and benefits of investing versus not investing in this difficult area. Analyses of this sort, including simple “force field” analysis techniques, of the type illustrated below, if applied earlier in the decade to a strategic review of progress at the impact level – laws implemented, justice delivered, confidence increased – might have prompted the Mission to move earlier to address this problem, no matter how difficult the path might have proven to be.

Figure 16. Sample Rule of Law Force Field Diagram



Another problem that fits under the general rubric of sequencing is the problem of pace and differences between local and expatriate perceptions, which USAID/CAR recognized in its Assistance Strategy for 2000 - 2005. A different sense of pace, as indicated in the previous section appeared to contribute to an explanation of progress with respect to both judicial independence and the adoption of comprehensive judicial code of ethics, to cite two examples. If pacing perceptions differ, rather than views about what the end state of a course of action should be, USAID and other donors might find it useful to examine the implications of those types of differences not only for their own performance timetables, but also for the duration (possibly longer) and intensity (possibly lower) of the assistance they provide to institutions in these countries.

Other situations observed by the Assessment Team speak to inadequate attention to cross-linkages between the “supply” and “demand” for rule of law in the sequencing of activities. Another way of thinking about these kinds of sequencing issues is as “missed opportunities.” Examples of this sort are offered, recognizing that with its limited resources for rule of law activities, USAID/CAR had no option but to make choices. It could not pursue each and every opportunity it might have identified during the past ten years. Nevertheless, examples of these kinds of opportunities remain and may warrant consideration for the future:

- Programs that trained judges on the substance of laws did not teach judicial ethics.

- Efforts to involve citizen groups in public hearings or discussions of draft laws primarily when those laws focus on communities of interest, rather than focusing on the process itself and steps that would ensure its application to a wide range of laws on a permanent rather than *ad hoc* basis.

In addition to options of this sort, there is always the possibility that other strategies for improving rule of law in these countries existed that were radically different from the ones in which USAID invested, which might have had an impact potential at least equal to the strategy that was adopted. One can never really know the answer to this question, but over the course of the assessment the outlines of a few “roads not taken” were evident:

- Introducing soon after the first warning bell – in 1994 – programming in support of anti-corruption measures and relevant follow-up actions.
- Providing more direct support for advocacy NGOs that would work to protect media rights and human rights, similar to the programs that USAID is currently funding in Ukraine.
- Fund demonstration projects in law schools that were willing to make a serious commitment to overhaul of both their curricula and methods as the most efficient means of producing a next generation with different skills and different outlook, including sending faculty *en masse* for training in modern teaching methods in the U.S, and for training in commercial law as practiced in democratic civil law environments.

E&E/DG Assistance Modality Effectiveness Questions in the Assessment SOW

- What types of rule of law assistance have been the most effective in achieving results?
- Has this been true throughout the region or has it been largely country-specific? Which have been the least effective? Has this been the pattern in the region (or at least in the countries studied) or has it been country specific?
- What factors have made certain types of rule of law assistance more/less effective in achieving results? Are these factors common from one country to another or have they been largely country-specific?
- Within the basic types of assistance provided, have certain modalities of assistance been more effective than others in achieving results? e.g., when assistance has been provided in the form of training, has a certain type of training (i.e., long-term vs. short-term, overseas vs. local, group vs. individual; institutionalized vs. ad hoc training; use of judges vs. law faculty trainers; etc.) been more/less effective in changing attitudes or serving as a catalyst for change within the legal system? Is this true throughout the region (or in the countries studied)?

B. Assistance Modality Effectiveness

Data collected by the Assessment Team do not lead to the conclusion that one type of assistance is more effective than another simply as a function of modality. As one respondent put it, “they are all important – all necessary for us – but for different purposes.” The two modalities USAID has relied upon most heavily in its rule of law activities in Kazakhstan and Kyrgyzstan, in particular, are technical assistance and training. It has provided assistance in both of these forms through both contracts and grants. Grants ranked third and commodities as a modality ranked far behind all other forms.

1. Technical Assistance

Technical assistance has worked well where USAID has provided consultants who were capable of applying and transferring relevant knowledge and, in some instances, relevant skills. Law drafting or analysis and commentary on laws and association development are examples of technical assistance tasks for which USAID has supplied short-term and long-term expertise.

Technical assistance has worked exceptionally well where technical assistance providers are viewed by host nationals as being both committed enough to what they are doing to engender trust and knowledgeable enough about where they are working to be doing the right things, or at least trying to. USAID's commercial law project has this reputation locally as did the Pepper, Hamilton team under the first World Bank project in Kazakhstan. Factors that seem to be common in these two projects are that (a) they were long term, which allowed people time to build strong relationships and learn enough about where they were working to generate contextually appropriate ideas; (b) there was a heavy local hire component to these project, at the professional level and (c) some of the most effective of these projects carried out their work *inside* the organization they were trying to assist, e.g., the Ministry of Justice.

There are other instances where technical assistance in the region appears to have been less effective than it might have been. Some of the characteristics that seem to be linked to comments offered to the Assessment Team included:

- Fielding consultants who knew too little about civil law to provide relevant assistance no matter how well they understood a legislative field substantively;
- Involving short-term assistance providers in activities that are by nature of long duration.
- Under-funding technical assistance activities, such that the vision behind the activity is never realized, the value is not perceived and the concept is eventually abandoned, e.g., creation of legislative drafting centers, student law clinics, etc.
- Underestimating the design requirements, level of effort and length of time required to bring a technical assistance initiative to a point where it is sustainable, e.g., associations and other NGOs (in low income environments), legal information centers, etc.

2. Training

In the course of the Assessment, the Team heard from respondents, many of who had participated in U.S funded training programs. All forms of training, these respondents indicated, are useful for them. Interviews suggested, nonetheless, that two types of training made a very strong impact:

- Every legal professional with whom the Assessment Team spoke who had traveled to the U.S on a study tour reported that his or her trip had left an indelible image. Seeing, for an hour, how judicial processes work in the United States is worth many more hours in a classroom.
- Judicial training programs carried into the regions reached people who are not normally reached by training opportunities and here too the impression that remained was strong.

Because it focuses on the individual, the impact of training on larger systems is often hard to measure. Nevertheless, when the Assessment Team asked about the competence of groups of legal professionals such as judges and attorneys, most people were able to provide an aggregated answer. Very often that answer was that despite all of the effort that USAID and other donors have put in, competence remains low among judges and lawyers. Most respondents said that the situation has improved, but that it still had a long way to go.

Quantifiable data, which would make clearer the impact of training on both individual and the legal system are difficult to obtain in Kazakhstan, Uzbekistan and Kyrgyzstan. Percentage data on the share of subpopulations trained in specific fields, e.g., commercial law, and trend line data on such measures as cases overturned on appeal, would have helped to clarify the impact picture. The judicial training centers the Assessment Team visited could speak easily about the number of people trained in one type of course

or the other, but it did not appear that they converted this data in a way that would help them, or an external reviewer, understand, for example, *the percentage of Kyrgyz judges that had completed a course on business law during the past two years*. Aggregated case data were equally scarce. As noted above, the Assessment Team was told that the Ministry of Justice or the courts, depending on country, had case disposition information. However, local hire members of the MSI teams for each of the countries visited found that they could not obtain these data, even after multiple attempts.

As to what made an impact:

- As noted, short term training in the U.S. particularly for judges but also for those in parliament or anyone else who, through this kind of an opportunity, could see and experience for themselves how specific processes in which they were involved in their own countries work in the United States. Depending upon the trainee, this meant watching a jury trial or sitting in the House of Representatives while a bill was debated. These experiences made a lasting impression no matter when they occurred. Notably, the British Embassy in Tashkent indicated receiving similar comments from individual's they had taken to London for similar purposes.
- Well organized in-country training programs that invest in training of trainers programs, such as USAID's judicial training in Kazakhstan and Kyrgyzstan, have a strong reputation for several reasons, including (a) their ability to reach large numbers of people (partly by taking the training show on the road); (b) the "face" that this approach leaves behind, i.e., a cadre of trainers who can continue to play this role, under other auspices, after USAID's investment ends.
- Seminars, workshops and even speaker programs organized by associations all seem to have a place in the educational picture and the team was from time to time told about a specific short training experience in country that had made an impression. If anything, Central Asia is an environment where there might be more attention given to this low-cost end of the training spectrum. In the south of Kyrgyzstan, for example, a group of attorneys told the Assessment Team that they had been waiting for several years to receive some benefit from joining the bar association. In another town a group of judges were unable to identify any benefit, other than representation in the capital, they associated with being a member of the judges association.

As to who should provides training, the answers indicate that U.S. trainers, third country trainers and local trainers are all needed, but again, for different purposes:

- U.S. trainers and professionals from other Western democracies are the right trainers on topics that are totally new and so thoroughly part of another culture that it is difficult in the early stage of concept transfer for local trainers to be effective, i.e., everything from private property to jury trials fell in this category at one or another point in time. After a concept becomes well known and understood, the origin of the trainer can change. Analysis of this sort came to the team most often from those involved in training for legal professionals, i.e., legal training center staff.
- Third-country nationals, the Team was told, are the right kind of trainers for stimulating people in this region to try things that others in the NIS have made succeed, no matter which country originally developed an idea or practice. In these countries, some, but not a large amount of training was delivered by third country nationals, e.g., from Poland.
- Local trainers are the right trainers when there is a big job to do and the concepts involved can be transferred through a training of trainers program. USAID training in land law for local staff of a Swiss bilateral project is a case in point in this regard, as are a number of judicial training programs.

3. Grants

USAID has used grants as a technical assistance modality since 1994, primarily but not exclusively for NGO development. It has provided funding for association development and legal information center development for legal professionals while also providing technical assistance. Grant funding, the Assessment Team was repeatedly told, is essential for the survival of NGOs in the region and will be until more of a middle class develops. Until then most NGOs will survive only by being able to obtain grants from various donors and by keeping their rent and staff costs to a minimum. Several NGOs that have been operating in their countries for most of the ten year period the team examined relayed complex survival stories of how they had, for example, gotten a USAID grant, then had nothing for a year and subsequently got a Eurasia grant and was able to top that off with a Soros book publishing grant for a standard 1,000 copies and used that experience to bid on another kind of grant, etc. The issue most often raised to the Assessment Team as a problem with USAID and other donor grants was the length of time in the grant period. Donors, the Assessment Team was told, often expect things to happen faster than is realistic in the Central Asian context.

One other thing that stood out in NGO stories about donor grants and how they fit into the evolution of the NGO as an organization was that NGOs seemed to approach donors based on what they needed, more than on what the donor was offering, i.e., when they needed a certain kind of training, such as advocacy, they would approach the donor that was offering that skill at that time: when they needed to publish, they approached Soros; when they had developed an idea of their own and wanted to focus on that, they went to Eurasia under its “open grants” window, etc. The image created is of a supermarket of grant options with NGOs self-selecting what they need, or designing their own assistance programs. This “self-service” approach is surprisingly similar to the pattern of development and assistance that characterizes the growth of small businesses. Small firms have a variety of needs as they try to grow. At some points they need more cash and equipment, at other points it is technical training that will help them make a transition. Still other stages of their growth are characterized by spurts during which they dramatically expand their range of contacts and linkages with other organizations. Of the donor grant programs in Kazakhstan, Uzbekistan and Kyrgyzstan, the Eurasia program seems to be best attuned, although perhaps not explicitly, to the cafeteria model that the NGOs appear to be applying as they reach out for grants assistance and training.

4. Equipment

Equipment as an assistance modality is the least used of the four main approaches, at least for rule of law activities in Kazakhstan, Uzbekistan and Kyrgyzstan. The assessment team saw computers and other office equipment in NGO offices that had been donated to them by USAID on a second hand basis from larger projects. Equipment was also visible at training centers, with the Judicial Training Center in Bishkek, Kyrgyzstan and the legal information center in Osh, Kyrgyzstan being among the best-equipped facilities, which USAID has assisted. USAID was not the only donor, however, to the Judicial Training Center, where its director had an on-going acquisition program in place which worked, the Team was told, because the Center is persistent in its effort to obtain whatever the donor community can provide. The Assessment Team also saw the CD-ROMs that USAID’s commercial law project had produced, with project funds rather than a grant, however.

USAID has not initiated any equipment based activities aimed at improving the legal system of the type the British have underway, providing transcription machines to pilot courts in Uzbekistan, a program that has already worked so well that the British plan to expand it. This program, as best the Assessment Team could tell, is the only project that focuses on what are significant equipment and technology gaps that face the court systems in all three countries. Transcription machines are only one of the kinds of equipment courts need. Most do not have computers or much else by way of office equipment.

Distance is a huge problem for Kazakhstan, which has the monetary resources to deal with the massive length of its country. Distance is also a problem for Kyrgyzstan with its lower level of resources. In both of these countries, the Assessment Team was told that it will be difficult to continue to put judicial training teams on the road after USAID’s funding for this kind of outreach ends. It is equally difficult for judges to travel to capital cities and stay for the periods of time needed to complete the training programs they need. Those who already understand the power of the Internet articulated its potential for addressing this problem.

C. Assistance Targeting

For most of the assistance period covered by this assessment, USAID’s strategy and that of other U.S. government agencies was more closely linked financially and substantively than is often the case. This occurred in Kazakhstan, Kyrgyzstan and Uzbekistan, as well as in other countries in Europe and Eurasia as a function of legislation put in place when the Soviet Union dissolved to enable the U.S. to respond with assistance as appropriate. This legislation, the Freedom Support Act, was overseen by a Coordinator provided for under that Act, and housed in the Department of State. These circumstances explain account for the integrated interagency focus of assistance in the countries included in this assessment.

Under this framework, USAID’s strategy for democracy and governance assistance to countries in this Central Asia involved balancing assistance to governments in the region with assistance to civil society organizations. In 1994, on the democracy and governance side of its portfolio, USAID was poised to work with both government (i.e., ministries and parliament) and with civil society organizations (NGOs and media). Political developments in the region in 1995, particularly in Kazakhstan and Kyrgyzstan, resulted in decisions that undid this balance, and left the Mission’s democracy and governance program depending much more heavily on civil society to bring about change.³⁶ A modest level of work with parliaments in the these two countries after 1995 improved that balance, but still resulted in a strategy that, by definition, would take

E&E/DG Assistance Targeting Issues in the Assessment SOW

- At the time it was provided, did ROL assistance provided address the principal constraints to legal system development? If not, why not? Was targeting adjusted over time?
- Was assistance targeted appropriately in terms of type of assistance provided, parties assisted, and duration of assistance?
- Would assistance have been more effective or had greater results if certain areas of assistance/assistance recipients had been targeted that were not? E.g., should more attention have been focused on the governmental vs. non-governmental sector assistance; greater investments in institutional capacity building versus law drafting; to enforcement issues; long-term vs. short-term training; public defender/legal aid programs; defense counsel training; ADR; programs directed at changing the underlying legal culture; or programs designed to build government consensus on/capacity for broad legal system reform?
- To what extent did assistance recognize, target or deal with any gender issues arising in the administration of law? Were there gender issues that were not addressed by assistance programs that should have been? If so, why not? Was assistance more or less effective in achieving results because gender concerns were or were not factored into rule of law assistance programs?

³⁶ There were important differences between USAID’s SO 2.1 program and its SO 1.3 program with respect to their response to Mission level policy decisions to work more through civil society than government to achieve USAID’s objective. For SO 2.1, this decision had programming consequences according to USAID’s main rule of law grantee as well as USAID staff, i.e., USAID’s grantee recalled being asked directly to do fewer activities that involved government and more that supported civil society development and reports on USAID’s 1994-96 contract for technical assistance services to governments and parliaments, and grants to NGOs, show that its terms of reference were modified to delete assistance to government after 1995. This was not the case under SO 1.3, which has continued to work closely with the Ministries of Justices in countries wherever it was involved in commercial law reform, customs reform, etc.

longer to reach its goals than would be the case if government were also involved in an active and supportive way.

This is not to say that USAID's decision to look more to civil society than to government for a reform impetus was wrong. It is simply a slower way to get certain things done, particularly if the things that need to change, e.g., the performance of the judiciary, are government functions. The difference between working from the outside and from the inside to affect change is made most dramatically by USAID's own stories about the course that judicial independence took in Kazakhstan and Uzbekistan. In both instances, USAID and other observers credit the fact that a USAID contractor in one country and a like minded judge in the other had powerful opportunities to promote change "inside" the system.

USAID's shift, primarily for its democracy governance portfolio, to a civil society dependent strategy for bringing about change placed a heavy burden on the civil society side of the ledger to produce change from a structurally weak base. Unlike economic growth, which depends more heavily on the private sector than on government, justice is a commodity that is delivered by public sector institutions. Inadequate capacity in those institutions works against improvements in rule of law. USAID investments in judicial training as part of its commercial law project were an acknowledgement of this reality, but even these investments did not substitute for substantial direct assistance to major rule of law institutions, i.e., Ministries of Justice and the Judiciary, over a number of years. While USAID is able to point to improvements in judicial training achieved through non-governmental and quasi-governmental entities, other functions, such a court administration and enforcement, which are not amenable to improvement from the outside, lag behind.

The World Bank's judicial reform loan to Kazakhstan and the ADB's second corporate governance loan to Kyrgyzstan both focused attention on the low level of assistance provided to core rule of law institutions in these countries during the 6-8 years prior to the formulation of these loans. Signed in 1999 and 2001 respectively, these two loans entered the picture years after USAID had seen the need for institutional assistance, started to move in that direction and then changed its mind. While the Dutch filled in on this front in a limited way in Kyrgyzstan, the five to six year gap in assistance to major rule of law institutions in these two countries was significant. That is not to say that the governments of these countries would have been ready for reforms any earlier, only that when they did change the institutional base upon which to build might have been stronger. The same is true for Uzbekistan, which has received considerably less institutional rule of law improvement assistance from donors. GTZ and EU TACIS have been involved but not with major institution building programs of the type the multilateral institutions, or USAID when it so chooses, can mobilize.

Shifting from the question of what kinds of institutions USAID targeted, to the kinds of problems on which it focused brings this discussion squarely back to the issue of impact. The gap between *outcome* and *impact* level rule of law results in Kazakhstan, Kyrgyzstan and Uzbekistan, which in its simplest terms is represented by the gap between the adoption of an improved legislative framework and its implementation, including enforcement as well as appropriate judicial decisions, negatively effects both economic progress and the evolution of a functioning democracy in all three of the countries examined through this assessment. Closing this gap appears to be essential for increasing both public and investor confidence.

While many of USAID's rule of law activities have made contributions that are relevant from this perspective, others have had a different or longer-term focus. Some changes that appear to be essential for closing this gap, including a dramatic reduction in the prevalence of corruption, particularly as it impacts the judiciary, have not yet received the attention they will require from either governments or donors. While it is easy to point to limited funding as the impediment to earlier work in this field, given that a larger portion of USAID obligations in any year are "mortgaged" to existing commitments, this answer seems a bit too easy. Over an eight-year period, USAID had sufficient opportunity to shift its funds away

from initial activities in which it had engaged and into others. Even within existing arrangements, e.g., its rule of law grant, there were choice points and opportunities to highlight anti-corruption as a focus.

At the beginning of the 1990s, USAID adopted something of a mantra when it spoke internally of the need to “focus and concentrate.” What this phrase captured was the Agency’s sense that given its many mandates, it was doing a little bit of everything, everywhere, but not enough of anything, anywhere to make a significant difference. Today this concern is deemed to be part of the “aid effectiveness” dialogue with which both the multilateral banks and bilateral agencies are increasingly concerned. Within the USAID/CAR portfolio, its rule of law activities on the SO 1.3 side and on the SO 2.1 side differed with respect to their response to the “focus and concentrate” injunction.

- On the SO 1.3 side, projects were quite narrowly targeted on the development of new laws and regulations (under a number of different contracts) and the training of appropriate officials, e.g., judges, customs officials, concerning their provisions, at least until 1998, when a focus on implementation opened the door somewhat (for USAID’s long-term commercial law reform contractor) for the kind of advisor role it played in Kazakhstan on legal and judicial reform.
- On the SO 2.1 side, the pattern was quite different. Through an every other year grant negotiation and renewal process, the scope of USAID’s main rule of law grantee grew, with, as describe above, one or two new initiatives being added each year, without completely dropping any of the kinds of work on which the grantee had focused before. By 2000, the grant document for this program lays out eight distinct activity areas, each of which had a primary objective and several subordinate objectives.

Payoff or impact, or lack thereof, is the criteria against which a “focus and concentrate” approach to targeting should be judged. If one takes the list of objectives on which contracts and grants under SO 1.3 and SO 2.1 focused and compares them to “big picture” commentaries on the state of rule of law in Kazakhstan, Kyrgyzstan and Uzbekistan (in Section II, 1, A) the only result with which these countries are credited, and to which USAID clearly contributed, is an acknowledged improvement in the legislative frameworks of these countries. Whatever else is said about these framework, and a good deal of criticism persists, accomplishments in that area were at least noticed.

If this same type of “breakthrough” test is applied to gauge the relative impact of results, then widespread judicial training can also be said to have penetrated the broad awareness threshold in both Kazakhstan and Kyrgyzstan. Beyond this very little by way of assistance outcomes has reached the level of public awareness or awareness in the community that monitors economic development and democracy indicators in countries of the former Soviet Union among judges, on the one hand, and the law school community, on the other, certain results are broadly recognized. Judicial associations, to which nearly all judges belong, are an accepted feature of the environment, regardless of whether specific judges can articulate what services they receive from these organizations. Similarly, moot courts, which have reached something of a critical mass in the region, in part on a “copy cat” rather than direct assistance basis, seem to meet the broad awareness test, but only within the law school community.

What remains is an array of more isolated results, some of which are success stories and a few of which are not. What is common to all of them however, is their scale relative to the size of the problem or level of need in these societies. *In situ*, specific attorney associations and student law associations, some legal clinics, some information centers, work well. The ones that work well are useful demonstration projects, but they are not yet solutions for the region. To have a significant effect on their nominal national targets, e.g., youth, citizens at large, attorneys, etc., they would have to be scaled up, as in the case of the Kyrgyz attorneys association which is national in name only, or massively replicated. Given the wide variety of rule of law activities that USAID supports, particularly on the SO 2.1 side, resources do not tend to go a long way, or be there in sufficient volume to move in a straight line from a successful demonstration to its

broad replication. Opportunities to capitalize on productive demonstrations and transform them into national and regional practices will only arise if funds increase or USAID's narrows its focus, establishing fewer objective and targets and bringing these efforts up to a national scale, or at least to the level where they affect an entire community, e.g., all law students, all prosecutors, etc.

Another way targeting has affected program effectiveness is at the level of the objective and targets established in USAID funded contracts and grants for rule of law activities in the region. During the nearly three decades when USAID required a Logical Framework for every project it funded, it consistently expected contractors and grantees who implemented those projects to measure actual performance against plans not only at the level for which they were accountable (Outputs), but also at one level higher than that (project Purpose). It did this to ensure that contractors and grantees, as well as USAID staff, kept their focus on the reason they were involved in the project in the first place.

The fact that USAID required that performance be measured at this level served to alert the Agency and its implementing agents to situations where their Outputs were not leading to project Purpose. Throughout USAID, many current contracts and grants now focus more commonly on Activities (Outputs, and sometimes lower level outcomes). As a result, those involved in implementing them do not always understand their jobs to involve being reasonably certain at all times that what they are doing will produce results beyond the level of their "manageable interest" as well as within it.

Contractor and grantee activities that USAID invests in with the intent that they become sustainable are one example of where current contracts and grants are not focused on the "goal line", as it were.

This problem exists for a number of kinds of activities that do not have credible sustainability plans, including:

- Student law clinics established outside of a university framework;
- Student law associations established outside of a university framework;
- Legal information centers that lack an institutional base capable of covering their basic operating costs; and
- Activities that train people in law drafting outside of an institutional context in which those skills will continued to be applied for that purpose after the donor funded activity ends.

Sustainability, however, is not the only issue of this sort the Assessment Team saw represented. In some cases the "1st down" focus in a USAID contract or grant had to do with its scale relative to the problem or the absence of a clearly articulated and measurable linkage to rule of law improvements, and that fact that contractors and grantees were not expected to focus or monitor progress at a level just above the Output (deliverables) level of their contract or grant, such as:

- Small Street Law projects that do not articulate broad replication or "scaling up" to a level where they would begin to have a discernable impact on rule of law outcomes as an explicit objective.
- Judicial training programs in which the focus does not include as an explicit and measurable objective to the effect that "trained judges consistently and impartially apply the laws they have learned".
- Activities that have no explicit focus beyond "law adopted."
- Activities that result in the formation of professional associations but do not articulate, or measure, what effect the existence of those associations are expected to have on the rule of law outcomes.

With regard to gender targeting, it has not been until recently a focus for rule of law activities in Kazakhstan, Uzbekistan and Kyrgyzstan. In these countries, as in other countries of the former Soviet Union, women are as well educated as men and have the same rights, at least from the formal system.

Many judges and lawyers are women, some of whom hold very high office. There was little evidence from the assessment to suggest that access to justice was a problem as a function of gender per se.

D. Assistance Coordination

USAID staff, contractors and grantees working on each of the SO teams do not recall being involved in meetings for the purpose of coordinating across SO teams, nor do they recall participating in rule of law program coordination meetings called by USAID that involved other bilateral or multilateral donors. The World Bank indicated that some multi-donor meetings had been held over the past few years that focused on its rule of law loan to Kazakhstan, but neither the World Bank nor other donors described regular community wide meetings of donors and implementing organizations for the purpose of ensuring coordination or enhancing collaboration. A few donors recalled sporadic efforts to hold donor meetings. UNDP was involved in this effort, but was unable to establish a regular working group on this topic.

E&E/DG Assistance Coordination Issues in the Assessment SOW

- Have rule of law assistance interventions been adequately coordinated with similar activities of other assistance providers (international organizations, NGOs, other bilateral donors)?
- What external or internal (conditions within the host country) factors affected (positively or negatively) the ability of the various assistance providers to effectively coordinate rule of law assistance activities? E.g., to what extent did the presence or absence of a host country strategy for legal system reform affect the ability of donors to provide effective assistance?
- To what extent have ROL programs funded by other providers positively or adversely affected the results and effectiveness of USAID-funded rule of law programs?

As the foregoing suggests, the impression the Assessment Team gained from its field visits was of an assistance community that does not place a priority on coordination. This is not to say the team found a large number of problems that can be specifically attributed to a lack of coordination. On the other hand, the Assessment Team saw very few examples of coordination being used within USAID or between donors to leverage resources for the purpose of achieving wider results. An instance of positive coordination was noted in the Ferghana Valley, in Uzbekistan, where USAID is leading a coordinated, multi-donor effort focused on gender and rule of law that was described to the Assessment Team. Other examples of positive coordination seemed to have emerged simply because people decided to help each other in ways that formal donor coordination meetings might never have imagined, e.g., USAID assistance to the World Bank on the development of a judicial reform loan for Kazakhstan provided through the “back door” of its commercial law program. In addition, NGOs, particularly in Kazakhstan, told the Team that they are learning a lot about how to work together and have a greater impact through their collective efforts than they would operating individually.

The Assessment Team also identified at least two activities where the fact that USAID and other donors that support the same activities at different sites did not seem to be coordinating, left problems unresolved and failed to capitalize on opportunities for moving from demonstrations to “scaling-up” for a program that has national potential. The first of these examples is legal clinics, which are funded by USAID, Eurasia Foundation and the Soros Foundation. All appear to have supervision and sustainability problems. Coordination could help identify solutions. The second example is the Street Law program. Both USAID and the Soros Foundation fund this program, at different sites. Rather than investing in multiple demonstrations, coordination could help both use a very few demonstrations to create the momentum needed to make this a national program.

Documentary evidence from different program donors also indicates that at times they appear to have been working on the same activity, e.g., the development of a specific law. When they report on their activities, each organization claims responsibility for whatever was accomplished, rarely sharing credit with others. Many of these documents that include such claims are reporting or public affairs documents.

The impression created by these documentary records is consistent with verbal reports that suggest at best coordination only at the top of their respective organizations, not at the program level. These documents also comment in a negative way about the incentives at work in the performance monitoring systems various donors are using, i.e., these systems, either explicitly or implicitly, encourage donors to claim as *their* results, outcomes to which they were not the only contributor, rather than sharing that credit with host country and other donor partners.

Interviews conducted by the team revealed a few instances where a more formal approach to donor coordination might have, but also might not have, led to better outcomes. One situation involving a student law association and a major donor other than USAID was the most serious case of this sort, but better communication, even on an informal level, rather than formal donor coordination meetings, seems to be what was needed in this instance.

There is always, in cases like this, a strong temptation to say “more” because something seems to be lacking. But more can simply end up meaning more meetings and not better coordination and collaboration, and that would serve no one well. The only exception, in the Assessment Team’s view would be more interaction, even if it only takes the form of exchanges of ideas and information, at a technical rather than diplomatic level, about what each is doing, with key rule of law institutions in the governments of all of the countries in the region.

ANNEX A

Rule of Law Assessment Scope of Work

1.1 BACKGROUND

In early 2000, the Office of Democracy and Governance of the Bureau for Europe and Eurasia (E&E/DG) began a process aimed at developing a strategic framework to guide democracy and governance programming in the region for the coming decade. Over the course of the last year, this process has included a review of experiences gained and lessons learned from nearly ten years of democracy sector programming in the region. Various discussion papers have been prepared and fourteen discussion sessions have been held examining key issues in each of the major areas of democracy programming.

This strategy development process has included an examination of the effectiveness of assistance provided for the purpose of strengthening the rule of law (ROL) in countries in the region. In preparing for this review, it quickly became apparent that little in-depth evaluation work had actually been done of ROL activities in the region since the inception of ROL programming, either by USAID or other assistance providers. In fact, at the time, only one formal evaluation specifically focused on ROL programming had been conducted by USAID, a 1999 evaluation done of ABA/CEELI programs in the region. Despite the substantial amount of USAID ROL programming in the region over the last 7-8 years, little hard information has been systematically gathered regarding the effectiveness of ROL programming in actually producing changes in legal systems in E&E countries; nor on the relative effectiveness of different types of ROL assistance in strengthening law and legal institutions in countries in the region.

In March 2000, E&E/DG and the Office of Program Coordination and Strategy of the Europe and Eurasia Bureau (E&E/PCS) agreed that it would be desirable to carry out an in-depth ROL program assessment in the region. This evaluation was to focus on several countries and ROL program types in order to better validate findings and conclusions and to facilitate what were thought to be useful comparisons from one country to another.

Unfortunately, available funding and contracting limitations at the time did not permit the implementation of a multi-country assessment. Instead, a decision was made to conduct an assessment in one country as a pilot effort, with the anticipation that further assessments would be done as more funding became available. Armenia was chosen for the pilot assessment, which was carried out in March and April 2000 by a two-person contractor team, which spent ten working days in country. The lessons learned in carrying out that assessment (regarding approach and methodology) have been incorporated into this statement of work (SOW).

Consequently, the work proposed in this SOW represents a continuation, refinement and expansion of the evaluation work already initiated. The knowledge gained as part of the previous assessment work should, as much as possible, be integrated into the analytical work done as part of this assessment and factored into cross-country comparison process.

1.2 TITLE

E&E Regional Rule of Law Assessment Program

1.3 OBJECTIVE

The objective of this assessment is to determine the effectiveness of ROL assistance in promoting reform in the law and legal institutions in selected countries in the E&E region over the past ten years; to identify the various factors and conditions which have enhanced or limited the effectiveness of ROL assistance in

those countries; and to determine the relative effectiveness of various types of ROL assistance provided in the region in strengthening law and legal institutions.

The findings and conclusions generated as the result of this assessment are intended to assist rule of law strategists and mission DG officers to formulate more effective rule of law strategies, both regionally and on a country-specific basis, based on experienced gained and lessons learned from past programming in the region. The principal aim of the assessment is to determine what has worked and what has not worked and why, and whether certain means of delivering assistance have been more effective than others in achieving change in participants and institutions in the legal system.

The assessment is also intended to serve as a tool to assist ROL activity designers to:

- Decide what their best investments are likely to be when putting new ROL projects together;
- Make appropriate adjustments in ongoing programming as required; and
- Better evaluate whether proposals put forward for ROL programming (whether from internal or external sources) are likely to produce results and what level of results can be expected.

The information gathered should also assist Bureau planners in better understanding and demonstrating the results of programming in this key area.

Another important objective of the assessment is to assist the missions participating in the assessment to get another perspective on the effectiveness of their ROL programming, past and present, and to systematically gather for them important information about developments in the legal sector that they might not otherwise be able to obtain.

1.4 STATEMENT OF WORK

I. Work to Be Performed

A. General

During the period indicated in Section IV, the Contractor will perform, as requested, assessments of rule of law activities which have been undertaken in up to three (3) countries in the Eastern Europe and Eurasia region and will prepare and provide written and oral reports to USAID (as specified in Section V) on the results of those assessments. These assessments will include a review of all rule of law activities conducted by USAID in the selected countries since the inception of USAID ROL assistance in each country and, to the maximum extent practicable, an assessment of the effectiveness of ROL activities financed by other assistance donors, both public and private, during the same time period in each country.

Assessment work will be carried out when the USAID field missions are available to work with the Contractor's assessment team. This task order covers evaluation methodology development, regional analysis and synthesis work, and country assessments in up to three countries. Additional country assessments may be undertaken when additional funding becomes available.

As part of this assessment process, the Contractor will develop, along with USAID, a specific and common methodology to be used in carrying out the assessment in each country and for cross-comparison purposes. This methodology will be consistent with the methodology guidance provided in section III.D, and must be approved by USAID prior to the start of country assessment work under the task order. The methodology will be designed in such a way as to ensure that, as much as possible, activities in each country are assessed in the same way and that the same types and quality of results data are collected for

each rule of law activity assessed. The methodology must also be constructed in such a way as to facilitate country cross-comparisons of assessment results at the end of the individual country assessment process.

The assessment will include analytical work both in the U.S. and in selected countries in the E&E region.

B. Specific Work Tasks

1. **Development of Common Assessment Methodology (CAM).** Within two weeks of USAID's request to do a country assessment(s), the Contractor will provide to USAID (E&E/DG and E&E/PCS) for approval a proposed assessment methodology which will be used to conduct the requested assessment(s). This methodology will include the methods, techniques and indicators that the Contractor proposes to use to measure the impact and effectiveness of each type of rule of law assistance modality (see Annex A), and will describe the types of data that will be gathered and analyzed. The methodology will be designed to gather data which will provide a reasonably accurate and representative picture of the impact of the various types of assistance that have been provided and which can be analytically defended. Consideration should also be given to the availability of data throughout the region and the level of effort and cost involved in collecting that data or generating new data. Alternative methods of feasible data collection and the level of effort and the cost associated with each should be presented. The techniques used and information gathered should also be such as to provide a basis for answering the questions set forth in Annex B.

Within two weeks of receipt of the proposed CAM, USAID will provide the Contractor with its comments on it. It is anticipated that the Contractor and USAID will meet shortly thereafter to discuss these comments. Within a week after this meeting, the Contractor will present a final version of the CAM to USAID for approval.

2. **Country Assessments.** The Contractor will carry out the work on each country assessment in three phases:

a. **Preparation Phase.** During this phase, which will start with receipt of the request for the assessment, the Contractor will:

1) Identify and review all available documentation describing ROL assistance activities carried out in the selected country(ies), including, but not limited to, a review of mission R4s, contracts and grants under which assistance has been provided, interim and final contract and grant reports, internal or external evaluations and/or assessments, and documentation describing ROL assistance provided by other assistance donors during the period assessed.

A substantial amount of material about ROL programs in the Europe/Eurasia region has already been assembled by E&E/DG/ROL and will be made available to the Contractor for review. This documentation is not necessarily complete, however, and it is the responsibility of the Contractor to seek out and acquire any other documentation necessary to properly identify and assess ROL activities in each country. The Contractor will also arrange to get background briefings from AID/W officials in E&E/DG/ROL and elsewhere having knowledge of ROL activities in the countries selected for assessment.

2) **Country Assessment Plan (CAP).** Within three weeks of receipt of the request to do the assessment, the Contractor will prepare and submit to USAID a draft plan for conducting the assessment in each country included in the request. This plan will include a proposed schedule for all field work to be conducted, proposed dates for submission of draft and final reports, and a proposed methodology for doing assessment work in each country, consistent with the common methodology agreed to between USAID and the Contractor. The proposed CAP will include a description of what specific ROL activities

the Contractor proposes to assess and how the Contractor proposes to evaluate the impact of each of these (e.g., by interviews, review of statistical data, or survey work, etc.). The CAP will also indicate any areas of programming that the Contractor believes do not merit impact assessment because of low levels of assistance, impracticality due to cost or other considerations, or other reasons. The CAP will be provided by USAID to the USAID mission in the selected country for review and comment. After USAID has had the opportunity to review the draft plan, the Contractor will meet with USAID to review and agree on a final plan prior to the start of fieldwork.

b. Field Work Phase. Following USAID approval of the final CAP, the Contractor will proceed to carry out its field visit in the selected country (ies).

Upon arrival in-country, the Contractor will contact USAID Mission personnel responsible for ROL programming, discuss with them the Contractor's proposed plan for assessing ROL activities, and obtain the Mission's input regarding persons to contact, availability of information, and the Mission's views on the impact/effectiveness of ROL programming from the Mission's perspective. While the Mission may provide recommendations on individuals to contact and may be willing, in some cases, to assist in making appointments for the team, the assessment team will have primary responsibility for scheduling any necessary interviews or appointments and should not expect to receive significant logistical support from the participating missions.

Upon completion of assessment work in each country and prior to departure, the Contractor will provide an oral debriefing for Mission staff on the Contractor's findings for that country. Mission comments on the findings will be included in the Contractor's draft and final written reports.

Upon request, the Contractor will provide interim reports to E&E/PCS and E&E/DG/ROL on the progress of the assessment.

c. Reporting Stage. Within two weeks of completion of each field visit, the Contractor will provide a draft final report to E&E/PCS and E&E/DG/ROL on the results of the country assessment. Approximately a week thereafter, the assessment team will meet with and orally debrief AID/Washington staff on the findings and recommendations of the assessment.

In addition to the findings on the effectiveness of ROL assistance, debriefings will include a discussion of the methodology used, problems encountered, and recommendations on how to undertake future assessments of this kind. Based on comments received both in this meeting and in writing, the Contractor will complete the final country assessment report and submit it to USAID no later than two weeks following the debriefing.

3. Regional Comparative/Lessons Learned Analysis (CLLA). Within thirty days after the date of completion of the field work on the final country assessment under the task order, the Contractor will complete and submit to USAID a draft report presenting its comparative analysis of the impact of rule of law programming in the various countries in the region and its conclusions regarding lessons learned from programs conducted to-date.

The objective of this task is to determine if common problems have been experienced within the region in achieving impact from rule of law programming, why that has been the case, and whether techniques have been developed to successfully deal with those problems which might be used in other country programs. The analysis should also identify where, from a regional perspective, there has been success in achieving results, whether some types of programming have been more successful than others, the reasons for that, and what the implications of that are for future programming in the region. The analysis should be broken down by types of assistance (training, law drafting advice, equipment support) and by different modalities of assistance within types (such as long vs. short-term training; in-country vs. overseas training, etc.), to

the extent that sufficient experience exists to make meaningful comparisons. The analysis will also include a consideration of the results of the rule of law assessment report on Armenia published in May 2000.

The Contractor should also discuss differences, if any, in experiences and lessons learned in Eastern Europe as opposed to Eurasia. The E&E/DG Office has also identified separate political regime typologies in the region as an analytical tool for determining what types of assistance interventions are likely to be more or less successful in particular countries. The Contractor should review rule of law impacts, experience, and lessons learned using these topologies to determine if there is any correlation between regime type and success or failure in rule of law programming, in general or with respect to specific types of rule of law assistance. The Contractor's analysis and conclusions with regard to this will be included in the CLLA.

Within two weeks of USAID receipt of the draft CLLA, the Contractor and USAID will meet to discuss the draft. Within a week after this meeting, USAID will provide the Contractor with written comments on the draft. Two weeks after receiving USAID's written comments, the Contractor will submit a revised final report to USAID. Copies of the final country assessment reports done by the Contractor under the task order will be included as annexes to the final CLLA.

C. Team Composition

The work effort described above includes work to be performed both in the U.S. (common methodology development and comparative analysis/lessons learned) as well as in the field (country impact assessments).

Overall Team Management (Key Personnel). The Contractor will provide a Senior Program Team Leader with experience in managing and carrying out evaluations and assessments of development programs. This person should have experience in evaluating rule of law programs and programs in Eastern Europe and Eurasia. The Senior Program Team leader will be responsible for providing overall technical direction for all work provided under the task order. The Senior Program Team Leader will assure that all country assessments are carried out in a professional manner and in accordance with the approved methodology, and that all deliverables are of high technical quality. The Contractor will also provide a senior evaluation advisor who will be responsible for assisting with the development of the CAM, providing technical backstopping as needed throughout the country assessment period, and assisting as necessary with the preparation of the CLLA. . This expert should have an educational background and technical expertise in program and project impact evaluation, including substantial knowledge of evaluation methodologies, techniques and statistical and other data gathering practices; and at least 10 years experience in carrying out evaluations of development projects. This professional should also have experience in evaluating rule of law programs and programs in Eastern Europe and Eurasia. The Contractor will provide such other personnel as are required to adequately manage and carryout the task order.

Country Assessment Team Members. The assessment in each country will be performed by a team of no fewer than three people. It is preferable that the same team members conduct all of the country assessments under the task order, but individual team members may be changed if an individual cannot be available for all country assessments as scheduled. If the Contractor elects to use qualified local experts as third team members, different individuals can be used from one country to another in order to obtain necessary local expertise or local language capability. Any change in, or additions to the Contractor's team after commencement of work must be submitted and approved in advance by E&E/DG, unless the proposed substitute was included in and approved as part of the Contractor's proposal.

Each field evaluation team will be composed as follows:

(1) **Team Leader:** a senior professional with at least 15 years of progressively more capable professional work and 5 years experience in international development work. This person should also have substantial experience managing and participating in project/program evaluations and in designing and implementing projects, preferably rule of law projects.

(2) **Second Team member:** will be an attorney with experience in international development work; and experience with designing, developing, assessing or implementing rule of law projects. This person should have a minimum of 5 years of legal experience and have experience in working in the CEE and/or NIS regions.

(3) **Third Team Member:** will be a person with substantial background and experience in project evaluation and assessment. Experience with assessing legal reform projects, and particularly in the CEE and NIS, is highly desirable. This person may be a local expert with the foregoing qualifications who has expert knowledge of the local legal system and local language capability.

No substitutions of personnel will be made by the Contractor following signing of the task order without the written approval of E&E/DG. If substitutions have to be made and if the Contractor cannot find substitutes acceptable to E&E/DG, the assessment or portions thereof may be cancelled or postponed at the option of E&E/DG.

D. Methodology

As indicated above, during the preparatory stage of the assessment program the Contractor will prepare, and submit to USAID for approval, a planned common methodology for the conduct of all assessment work, including an explanation of the specific methods to be used to collect information necessary to assess the effectiveness of ROL assistance activities that have been undertaken in the region. This common methodology will be used as the basis for country-specific assessment plans to be prepared by the Contractor for each country assessed.

It is the Contractor's responsibility to assure that its findings and conclusions about the effectiveness of ROL assistance activities are based on available data that is both accurate and reliable, and that information gathered is representative of and reasonably reflects results actually achieved. Emphasis will be on collection, where available, of reliable empirical data indicating success or failure, as opposed to anecdotal evidence. Where surveys or interviews must be used to assess impact, appropriate sampling and questioning techniques will be used to ensure representativeness of results. If the Contractor is not sure about the availability of certain data in country at the time that a country assessment plan is prepared, alternate methodologies will be presented for use depending on what is found during the actual fieldwork.

The Contractor will assess all ROL activities that have been undertaken in the selected countries unless otherwise agreed by USAID at the time the country assessment plan is approved. During the preparatory stage of the country assessment plan, the Contractor should identify instances in which the low level of ROL programming in a certain area, lack of comparable activities in other countries assessed, or the age of the most recent activities in a country warrant exclusion of the particular activity from significant assessment effort. The number and types of activities carried out in each country may vary significantly. Annex A contains a listing of the various types of activities that have been undertaken in countries in the region over the past 7-8 years.

It is important to note that several different approaches may have been taken (at the same or at different times) in providing one type of ROL assistance, such as law drafting assistance---assistance for actual drafting, training to improve the skills of law drafters, assistance to strengthen legal drafting bodies (such

as computers and legal reference materials), and sponsorship of conferences and workshops for law drafting purposes. Each of these different approaches needs to be separately evaluated.

For the purposes of the assessment, the Contractor should focus on ROL assistance provided under activities that have had, as their principal objective, the strengthening of the legal system itself. The Contractor is not expected to examine the effectiveness of law-related components of assistance efforts designed primarily to achieve economic or other non-democracy/governance objectives (such as commercial, environmental, energy or health sector objectives), except to the extent such efforts have included legal institutional strengthening elements (such as training for judges or lawyers, support to bar associations or assistance for improvement of court operations) and the impact and effectiveness of such activities can be easily assessed as part of a review of other activities (e.g., a review of training provided to a particular court should include a look at training provided under both ROL and economic restructuring activities). Law drafting assistance financed under non-ROL activities but which are designed to put into place the infrastructure for the legal system itself (such as assistance for development of constitutions or for laws on the judiciary, the operations of the courts, the establishment of the bar, judge selection, etc.) should be reviewed to determine the effectiveness of such efforts.

The assessment will focus on gathering data indicative of the success or failure of specific ROL activities, both in terms of accomplishing their immediate objectives as well as their impact on the legal system as a whole. The in-country assessment will include information gathering from mission and embassy staff, assistance recipients and providers, persons or organizations affected by changes in the legal environment, as well as from other parties in a position to assess the extent of change (or lack thereof) in the functioning of the legal system as a direct result of the assistance.

The effectiveness of the ROL activities carried out by other U.S. Government agencies and non-USG assistance providers during the period covered by the assessment will also be reviewed to determine their overall effectiveness in achieving results. In assessing those activities, emphasis will be placed on determining how effective the assistance approach has been, particularly if the approach has differed from that used under USAID ROL assistance efforts and would be instructive to USAID. The Contractor should also focus attention on other donor programs which have worked in areas which have not been emphasized or supported by USAID assistance, particularly in cases in which the other donor's experience can be particularly instructive to USAID (either good or bad).

The Contractor will assess each identified ROL assistance activity in order to determine the extent to which the assistance provided has significantly improved the performance of the individuals and institutions assisted, the extent of any improvement, and whether such effects have been only temporary or longer term. Emphasis will be placed on the gathering---where possible---of objective, empirical data demonstrating improvement in the quality or amount of work performed or in efficiency of operations; or, in the case of support for law faculties and non-governmental organizations, the extent to which assistance enabled such organizations to more effectively carry out their principal function, be it educational, advocacy, service, or informational. The Contractor will also focus specific attention on the extent to which such activities have or are likely to become self-sustaining, as well as the effectiveness of assistance designed to enhance sustainability.

Where the only available evidence of impact is self-evaluation by participants, the Contractor will seek from those individuals' specific, concrete examples of how performance was directly affected. In cases in which abilities and performance have not been improved, the Contractor will identify the reasons for that. The assessment is to be focused on the extent of change made in the individual or institution that was the immediate target of the assistance provided.

Based on its assessment of the impacts of assistance in each country, the Contractor will also review and determine the relative effectiveness of different types of ROL assistance in producing significant, durable

improvements in both the structure and staffing of entities in the legal system and the relative effectiveness of different types of assistance in causing change to occur in the basic structure or operation of the legal system as a whole. This comparison should be done for similar activities within each country. In the case of training, the Contractor will separately consider and compare long-term vs. short-term training; U.S. vs. in-country training; individual training programs vs. training through judicial training centers vs. training-of-trainer approaches; substantive law vs. skills training; and training provided primarily by foreign vs. local trainers. The Contractor should also review whether training provided by certain types of legal professionals, such as lawyers/judges from the civil law tradition vs. lawyers/judges from the common law tradition, is more responsive to host country needs or more effective in achieving results.

The principal objective of these comparisons is to determine if, in general, investments in some types and modalities of ROL assistance have been more effective than others in producing significant and lasting changes in what happens in legal systems. If meaningful comparisons are not possible, or are of limited value because of various factors, the Contractor should so indicate and explain why that is the case.

As indicated above, the main purpose of the assessment is to obtain information on the actual impact and effectiveness of rule of law assistance activities over the assessment period. Although the information obtained may be useful in making judgments about past ROL strategy (ies) in the region and should be useful in determining the direction of future strategy, the principal job of the Contractor is to find out what has happened over time, and not to design new ROL strategies, programs or activities. The limited time and resources available for the assessments dictate that the Contractor's effort be focused primarily on determining, assessing and documenting its findings regarding the results and effectiveness of prior ROL efforts, rather than designing new strategies and activities. This does not preclude the Contractor from providing its views to mission or AID/W staff regarding effective approaches used by other assistance providers that may be worthy of adoption by USAID.

Key Questions to be Addressed. The proposed assessments also offer the opportunity to gather information to assist USAID in answering a number of key questions that have arisen with regard to ROL programming in the region over the past few years. These questions relate to the issues of appropriate assistance sequencing; the relative effectiveness of different modes of ROL assistance; whether ROL assistance has been effectively targeted, the extent and nature of results achieved by various ROL assistance programs; and the extent to which the good or bad coordination of ROL assistance activities among donors has made any difference in the effectiveness of ROL assistance. A non-exclusive listing of these questions are set forth in Annex B. The Contractor should design and carry out the assessment in such a way as to ensure that these questions are addressed during the course of the assessment and that sufficient information is gathered to permit these questions to be answered, if at all possible. The Contractor will also include a specific section in its final comparative analysis/lessons learned report providing its findings and conclusions with regard to the key questions presented in Annex B.

II. Deliverables

The Contractor will provide the following deliverables:

- 1) Written draft and final versions of the CAM and all CAPs, in English, to be submitted to E&E/PCS/NPSA and E&E/DG/ROL, in accordance with the time deadlines set forth in Section III.B;
- 2) As requested by E&E/PCS and E&E/DG, brief oral and written progress reports as required throughout the task order period;

3) Written draft final and final country assessment reports, in English, to be submitted to E&E/PCS and E&E/DG, in accordance with the schedule set forth in Section III.B. Each final country assessment report will include:

- An Executive Summary;
- A discussion of the background and rationale for the assessment;
- An explanation of the methodology used and field work done in each country;
- Findings and conclusions for each country (summary can be in main text, with details in annexes); and
- A listing of all documents reviewed and persons contacted and interviewed during the assessment

4) A written draft and final comparative analysis/lessons learned report, in English, which will include:

- Findings and conclusions with regard to cross country comparisons;
- Lessons learned regarding rule of law programming from a regional perspective;
- Identification and discussion of factors that have limited or enhanced the effectiveness of ROL programming in the region;
- Differences, if any, observed in impacts of rule of law activities between Eastern Europe and Eurasia;
- Findings and conclusions with regard to any lessons learned by analyzing rule of law program experience and impacts using the E&E/DG political regime typology;
- Findings and conclusions with regard to the usefulness, efficacy, and limitations of the methodology(ies) used in the assessment program and recommendations for changes with regard to future assessments
- A section addressing the key questions posed in Annex B.

5) Oral debriefings as specified in this statement of work.

Written reports and plans required above will be submitted in an original and ten hard copies and also in an electronic version in Microsoft Word format.

The Project Office's "**ATTACHMENT A** and **ATTACHMENT B**, is attached hereto as part of the Statement of Work and is located at Annex A.

Types of Rule of Law Assistance

I. Technical advice for:

A. Law drafting

1. Framework laws
2. Criminal laws
3. Commercial/civil law
4. Consensus building activities (forums, focus groups)

B. Institutional capacity building

1. government organizations
 - a. law drafting centers/departments
 - b. reform process planning/implementation (strategic plans; working group establishment)
 - c. establishment of special bodies/procedures (arbitration courts, pilot courts, jury trials, court administrative offices)
 - d. establishment of new management groups (judicial councils/conferences/committees)
 - e. judicial selection procedures
 - f. court monitoring programs
 - g. public outreach programs
 - h. law classification/codification projects
 - i. development of national anti-corruption strategy
2. non-governmental organizations
 - a. General management
 - b. Fundraising
 - c. Budgeting/Financial Management
 - d. Lobbying
 - e. Media Relations
 - f. Project/program design; proposal preparation
 - g. Project Implementation (legal advocacy/clinics)

C. Court operations

1. Case/docket management and processing
 - a. automated case management systems
 - b. manual case processing procedures
2. Courtroom management
3. Court Administration (conferences/training/manuals)
4. Physical facilities management
5. Personnel management
6. Procurement management
7. Publishing judicial decisions/laws/commentaries
8. Legal/statistical data management
8. Decision enforcement (establishment and operation of bailiffs' service---study tours, seminars/manuals)

D. Judicial training facilities/centers (curriculum development, staff training, training material development)

E. Legal information systems

1. PCs/LAN systems (court automation plans; design, procurement, and installation of hardware; software design, development and installation)

2. Internet/Web Connection
3. Establishment/operation of legal information centers

F. Law Faculty development

1. Curriculum development
2. Establishment of special programs (clinical/skills)
3. law school association development

G. Public education programs (seminars/radio & TV programming/publications/high school programs)

H. Bar Association development/lawyer support networks

I. Law Student/law student association development

II. Training

- A. Long-term overseas (U.S./other) (individual)
- B. Short-term overseas (individual & group)
- C. Short-term local (individual & group)
- D. Substantive law vs. procedural/skill vs. general principles (judicial role, function, status, ethics, independence, etc.)
- E. Type of trainer (foreign/local/judge vs. non-judge)
- F. Audience (lawyers/judges/staff/law faculty/law students)
- G. New entry/continuing

III. Commodity Assistance

- A. Law Books
- B. Publications (codes, manuals, reports, translations, commentaries)
- C. Equipment
- D. Facilities (courtrooms/furniture/space)

IV. Other

Funding (budget support) for non-governmental organizations (incl. support for legal reform activities of business, trade, environmental, health, watchdog, and court monitoring groups)

Gender-related activities (domestic violence programs; women's clinics)

Ombudsman assistance

Parliamentary assistance

Partnership activities (Karelia)

Public awareness activities

Rule of Law Assessment --- Issues/Questions to be Examined

Assistance Sequencing

Was the rule law assistance provided appropriate in terms of the needs of the sector and the prevailing conditions in the sector at the time it was provided?

Would it have been more effective to have first provided another type of rule of law assistance than what was provided?

Were certain types of assistance more or less effective because they preceded or followed other types of assistance?

Were there synergies between different types of rule of law assistance that made those types of assistance more/less effective when provided together?

How was the sequencing of assistance interventions affected, if at all, by any changes in conditions in the host country? Were appropriate adjustments to assistance interventions made to reflect or respond to these changed conditions? What factors affected the ability of rule of law programs to adjust to changed circumstances?

What does experience in the countries studied tell us, if anything, about the sequencing and effectiveness of assistance focused on the governmental versus non-governmental sectors?

Assistance Modality Effectiveness

What types of rule of law assistance have been the most effective in achieving results?
Has this been true throughout the region or has it been largely country-specific?

Which have been the least effective? Has this been the pattern in the region (or at least in the countries studied) or has it been country specific?

What factors have made certain types of rule of law assistance more/less effective in achieving results?
Are these factors common from one country to another or have they been largely country-specific?

Within the basic types of assistance provided, have certain modalities of assistance been more effective than others in achieving results? E.g., when assistance has been provided in the form of training, has a certain type of training (i.e., long-term vs. short-term, overseas vs. local, group vs. individual; institutionalized vs. ad hoc training; use of judges vs. law faculty trainers; etc.) been more/less effective in changing attitudes or serving as a catalyst for change within the legal system? Is this true throughout the region (or in the countries studied)?

Assistance Targeting

At the time it was provided, did ROL assistance provided address the principal constraints at the time to legal system development? If not, why not? Was targeting adjusted over time?

Was assistance targeting appropriate in terms of type of assistance provided, parties assisted, and duration of assistance?

Would assistance have been more effective or had greater results if certain areas of assistance/assistance recipients had been targeted that were not? E.g., should more attention have been focused on the governmental vs. non-governmental sector assistance; greater investments in institutional capacity building versus law drafting; to enforcement issues; long-term vs. short-term training; public defender/legal aid programs; defense counsel training; ADR; programs directed at changing the underlying legal culture; or programs designed to build government consensus on/capacity for broad legal system reform?

To what extent did assistance recognize, target or deal with any gender issues arising in the administration of law? Were there gender issues that were not addressed by assistance programs that should have been? Why not? Was assistance more or less effective in achieving results because gender concerns were or were not factored into rule of law assistance programs?

Assistance Results

What results did the various types of rule of law assistance provided achieve, in terms of:

- influencing the direction and content of the legal reform process
- changing attitudes of key players in the process
- changing the way in which key institutions/institutional processes operate
- creating constituencies for reform?

Have certain types of rule of law assistance consistently produced results, while others have not? Has this been true across the region or are results largely country-specific?

Have certain types of assistance produced more results than others? E.g., has training been more effective, in general, than technical assistance for law drafting?

To what extent did these results lead to broader systemic change, if at all?

To what extent have results achieved been sustainable? If they have not been sustainable, why not? What factors have effected the achievement of sustainability, and to what extent? To what extent has success or failure in achieving sustainability affected the ability of rule of law programs to have an impact on legal system reform and development, in the short and long term?

If an assistance activity was designed as a pilot to be replicated, if successful, has replication occurred? If not, why not? What factors effected whether an activity was successfully replicated or not?

To what extent were changes produced or impacts made by various types of ROL assistance long or short-term? What factors affected whether results achieved were long or short-term?

Have ROL assistance activities of other assistance providers been more or less effective in achieving results? Why? If other providers have financed the same type(s) of assistance that we have, and have been more or less effective, what factors accounted for that?

Assistance Coordination

Have rule of law assistance interventions been adequately coordinated with similar activities of other assistance providers (international organizations, NGOs, other bilateral donors)?

What external or internal (conditions within the host country) factors affected (positively or negatively) the ability of the various assistance providers to effectively coordinate rule of law assistance activities? E.g., to what extent did the presence or absence of a host country strategy for legal system reform affect the ability of donors to provide effective assistance?

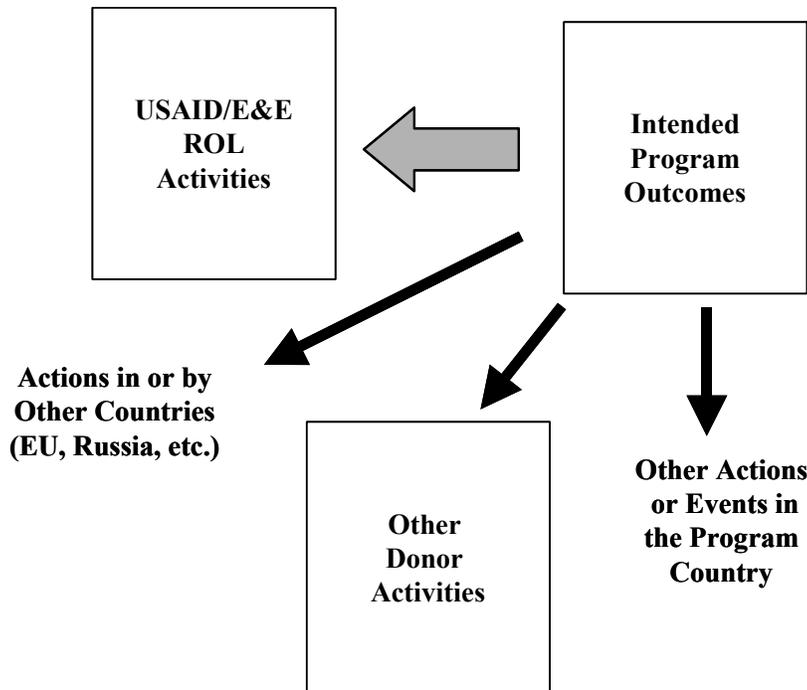
To what extent have ROL programs funded by other providers positively or adversely affected the results and effectiveness of USAID-funded rule of law programs?

ANNEX B

Expanded Description of the Assessment Methodology

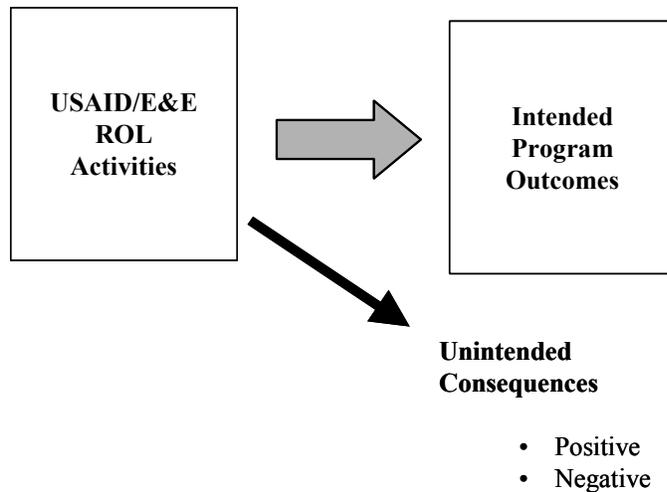
All country level assessments will incorporate two perspectives for answering the research questions posed in the E&E bureau's Scope of Work for this series of assessments. One perspective or approach will focus on the intended impacts of ROL programs. Assessment teams will gather data on the current ROL situation in a country and trace backward to identify changes that have occurred and to ascertain the degree to which programs of foreign donors, government, etc., contributed to those changes, as suggested in the figure below.

Moving Analytically from Results to Causes



In order to apply this approach, the MSI team worked with E&E to identify the main outcomes USAID rule of law programs seek to achieve. A diagram of the intended outcomes the assessment will use to focus this element of its work is shown in Exhibit I.A at the end of this section. Country programs will differ with respect to the specific objectives on which they focus, but across the region, the assessment can expect to find efforts in most of these areas.

The other perspective or approach will focus on important, but not necessarily all, elements of USAID programs and the impact these programs may have had. This perspective will trace cause and effect hypothesis forward from activities to see if the intended results of those activities (beyond the output level) were actually achieved, and whether these programs produced unanticipated effects, as the figure below suggests.



Generally speaking, approximately one third of the time of an assessment team will be allocated to tracing backward from the current situation to its causes and two-thirds will be allocated to tracing forward from activities to impact. Given that impact, rather than implementation, will be the main focus of the team’s work, the processes used to select activities for review will tend to favor completed activities, or those that are well enough established to be producing their intended outcomes/impact are more likely to be selected than are relatively immature activities.

Data collection for both assessment perspectives will involve a blend of document reviews and interviews.

In-country visits, in all countries, will begin with a document review. It is important, given the methodology for these assessments, for team members to be aware of all of the basic facts concerning the USAID program over the past decade before they begin to interview program stakeholders and others operating in the program environment. For this reason, the team’s review of documentary material will actually begin in Washington, using whatever materials are available there and supplementing these information sources upon arrival in country with documentary information that is only available on-site. One product of the document review, a map of USAID’s ROL portfolio over the past decade, will serve as an input for other aspects of the assessment.

Interviews undertaken for the purpose of defining the current ROL situation and identifying the causes of reported changes in that situation will be undertaken with representatives of key stakeholders, i.e., USAID, the Ministry of Justice, the judiciary, prosecutors, lawyers, other donors and “watchdog” elements of society (NGOs, the press, etc.) Given the limited time allocated for these assessments, the team hopes to use a “wise men” approach for these overview interviews, i.e., it would like to interview small groups of individuals who represent these different stakeholder perspectives (e.g., several USAID staff in one interview; several judges and perhaps a representative of the judicial association in another interview, etc.) rather than conduct a large number of one-on-one interviews with individuals.

Priorities for interviews from the activity perspective forward to impact will be determined after the “wise men” interviews with stakeholders have been carried out and analyzed on a preliminary basis. The “wise men” interviews represent one input into the pre-defined (methodology driven) process by which choices will be made about what USAID-funded activities, or elements of activities, the team will examine in detail. The individuals who need to be interviewed concerning specific activities will be a function of which activities are selected for review. For activities undertaken quite some time ago the appropriate interview respondents may be program beneficiaries in country as well as former USAID staff members

who are now located elsewhere and need to be interviewed by e-mail. For more current activities, the team may ask to interview implementers as well as intended program beneficiaries. The need for “site visits” to locations outside capital cities will be determined by the assessment teams, and discussed with host Missions, once activities for in-depth review are selected. Teams will arrive prepared to make such visits as are needed for the assessment.

Assessment teams will undertake sufficient analysis of their data while in country to be able to provide Missions with an oral briefing on key findings prior to their departure. Written versions of country assessments will be produced for each country visited within a reasonable time and will be shared with both the Mission and the E&E Bureau. All country level reports will serve as inputs to the ROL assessment synthesis, which will begin after the first few country reports are completed and continue through the end of this assessment.

Intended ROL Program Outcomes



Causes	Intermediate Outcomes	Ultimate Outcomes
Improving Legal Framework and Codifying Human Rights		
<p>USAID activity level results (outputs)</p> <p>Other donor activity level results (outputs)</p> <p>Government activity level results (outputs)</p> <p>Other factors within the country</p> <p>External (beyond the country) factors</p>	<p>Legislative drafting capacity</p> <p>Legislative research/analysis capacity</p> <p>Knowledge of the relevant sub-fields of law and internationally accepted norms in these sub-fields, i.e., criminal, civil, commercial, etc.</p> <p>Understanding of philosophy underlying/relevance of internationally accepted legal norms</p> <p>Knowledge of historical/traditional practices and their current relevance</p> <p>Participatory public dialogue regarding any potential legislative or regulatory changes</p> <p>Independent/judicial review of constitutionality of any potential legislative or regulatory changes</p> <p>Political will to create a full and rationalized body of law</p>	<p><i>Adequate</i> legislative framework consistent with/allowing for a functioning democracy and a market economy:</p> <p>A body of law exists in statute for all key areas/sub-fields, i.e., criminal law, civil law, commercial law, administrative law, i.e., the scope of the legislative framework is appropriate; it has all key elements/is complete.</p> <p>Laws and other Elements of the Legal Framework are Clear and Unambiguous</p> <p>Laws and other Elements of the Legal Framework are Harmonized</p> <p>Laws and other Elements of the Legal Framework Provide an Adequate Basis for the Protection of Human Rights</p> <p>Laws and other Elements of the Legal Framework Provide an Adequate Basis for the Protection of Property Rights</p> <p>Laws and other Elements of the Legal Framework Provide an Adequate Basis for the Protection of Legitimate State Interests</p>

Causes	Intermediate Outcomes	Ultimate Outcomes
Strengthening Justice Sector Institutions		
<p>USAID activity level results (outputs)</p> <p>Other donor activity level results (outputs)</p> <p>Government activity level results (outputs)</p> <p>Other factors within the country, e.g., media and/or other elements of civil society perform “watchdog” function</p> <p>External (beyond the country) factors</p>	<p>Judges have secure tenure</p> <p>Judges have immunity with respect to their decisions</p> <p>Judges operate in an environment that adequately provides for personal security</p> <p>Judges abide by ethical standards</p> <p>Judges know the law, including the body of law relevant to the specific to the type of court in which they preside</p> <p>Judges understand the law, i.e., its philosophical underpinnings, relevance, how it has been applied, etc.</p> <p>“Best folks” become judges, i.e., best trained, most relevant experience, etc.</p> <p>Judges caseload is appropriate in all types of courts</p> <p>Judges administrative load is appropriate in all types of courts</p> <p>Laws and case precedents easily accessed by judges</p> <p>Decisions are made in open court, recorded, and available to parties</p> <p>Case load/workload of clerks is appropriate</p> <p>Clerks abide by ethical standards</p> <p>File/case management systems consistent with workload (i.e., not an impediment)</p> <p>Appropriate incentives for</p>	<p>Judiciary is <i>objective</i>:</p> <p>Judicial decisions consistent with body of law</p> <p>Judicial decisions are consistent (i.e., similar cases in different jurisdictions yield similar decisions)</p> <p>Judiciary is <i>efficient</i>:</p> <p>Case processing time is reasonable (<i>to be defined</i>)</p> <p>Decisions are final</p> <p>Judicial Decisions <i>enforced</i>:</p> <p>Compliance with judgments is substantively consistent with judicial decisions</p> <p>Compliance with judgments is timely</p>

Causes	Intermediate Outcomes	Ultimate Outcomes
	<p>efficiency exist; disincentives are inconsequential, e.g., incentives and disincentives are sufficient to ensure that parties to cases appear in court.</p> <p>Judicial decisions are respected, i.e., parties self-enforce</p> <p>Bailiff system is (a) effective, (b) efficient and (c) ethical</p> <p>Political will to strengthen justice sector institutions and make the judiciary independent</p>	
Increasing Citizen Access to Justice		
<p>USAID activity level results (outputs)</p> <p>Other donor activity level results (outputs)</p> <p>Government activity level results (outputs)</p> <p>Other factors within the country, e.g., media and/or other elements of civil society perform “watchdog” function</p> <p>External (beyond the country) factors</p>	<p>Distance to court and other locations involved in justice system is reasonable (for all types of courts)</p> <p>Numbers of judges and court personnel are adequate (in all types of courts) [<i>Also see judiciary re efficiency, above</i>]</p> <p>Quality of prosecutorial work is high, e.g., criminal cases brought consistently based on (a) sound knowledge/understanding of the law and (b) adequate/ valid evidence</p> <p>Quality of police work is high, e.g., arrests/detention of suspects consistently based on adequate/valid evidence</p> <p>Cost of legal services is affordable</p> <p>Quality of representation is adequate (for all types of cases)</p> <p>Legal proceedings consistently conducted in languages of parties involved</p> <p>Citizen’s have adequate knowledge of their legal rights</p>	<p>Justice is <i>accessible</i> to all:</p> <p>Access to justice does not differ discernibly as a function of a citizen’s status (ethnicity, gender, wealth, etc.)</p>

Causes	Intermediate Outcomes	Ultimate Outcomes
	<p data-bbox="544 283 938 451">Citizens have adequate knowledge/understanding of how to pursue their rights through the legal system, e.g., how to obtain representation, etc.</p> <p data-bbox="544 483 961 583">Parties have reasonable access through courts to materials on their case, e.g., evidence, judgments</p> <p data-bbox="544 619 922 682">Political will to improve or enhance citizen access to justice</p>	

Annex C

Viewpoints Represented in Assessment Interviews ³⁷

Interviews	Countries Included in the Assessment		
	Kazakhstan	Kyrgyzstan	Uzbekistan
Country Representatives			
Parliament - Members	●	●	
Parliament – Legislative Section			●
Ministry of Justice	●		●
Prosecutors’ Representatives		●	
Higher Court Representatives	Supreme Court	Constitutional Court Supreme Court Higher Arbitration Court	Constitutional Court Supreme Court Economical Court
Judges Association	●	●	
Groups of Judges	●	●	●
Bar Association Representatives & Members	Shymkent	Jalalabad Osh	Tashkent
Groups of Attorneys	●	●	●
Public Defenders			●
Law School Representatives	●	●	●
Groups of Law Professors	●	●	●
Legal Training Centers		●	●
Legal Information Centers	●	●	●
Student Law Clinics	●	●	●
Student Law Associations & Members	Astana	Bishkek Osh (2)	Tashkent
NGO Representatives	Almaty	Bishkek	Tashkent Samarkand Kodund
Media Representatives	●	●	●
Business Representatives (Local and Foreign Firms)	●	●	●
Donor Representatives			
USAID	●	●	●
Other U.S. Government	Department of Justice Representative	U.S. Ambassador	Embassy Political Section
ABA/CEELI	Almaty Astana	Bishkek Osh	Tashkent
ARD/Checchi		●	
America Legal Consortium			●
Internews		●	●
National Democratic Institute		●	
Counterpart Consortium			●
Eurasia Foundation	●	●	
World Bank	●		
Asian Development Bank		●	
UNHCR		●	

³⁷ The team interviewed over 200 persons in the three countries. Names of those interviewed can be obtained from L. Carter at lcarter@msi-inc.com or C. Hespell at chespell@msi-inc.com.

Interviews	Countries Included in the Assessment		
	Kazakhstan	Kyrgyzstan	Uzbekistan
OSCE	●	●	●
EU TACIS			●
Swiss Bilateral – LARC Project Representatives		●	
British Embassy			●
Soros Foundation	●	●	

ANNEX D

ABA/CEELI Activities

CEELI in Kazakhstan

CEELI opened an office in Kazakhstan in 1993, and currently has three offices in Almaty, Shymkent and the newly established capital city of Astana, supported by four staff assistants. CEELI legal assistance activities in Kazakhstan are focused on the judiciary, the legislature and the legal profession. CEELI's most recent judicial reform efforts involve working with the Union of Judges of Kazakhstan (UJK) to coordinate curriculum development for a judicial training center that is being set up through a World Bank loan to the Ministry of Justice. To promote legal profession reform, CEELI has been working with the regional Southern Kazakhstan Association of Lawyers (SKAL) in Shymkent to continue legal education programs and to establish a legal resource center for the Shymkent community. Also on a bi-weekly basis CEELI continues to publish the national legal periodical "Lawyers' World," production for which it plans to turn over to the SKAL. Assistance to the legislature remains a priority with the opening of a new office and the posting of CEELI's first liaison to Astana, Kazakhstan's new capital city. Legislative work will focus on improving legislative drafting skills and legislative procedures. To date, CEELI has posted 13 legal specialists, sponsored 20 workshops and numerous continuing legal education programs, and prepared 21 legal assessments.

Legal Professional Reform

- In 1994, CEELI conducted a series of bar development seminars in Almaty and Petropavlovsk, sponsored in conjunction with Kazakhstan's National Association of Jurists (NAJ).
- The CEELI Liaison and a CEELI Legal Specialist traveled to the cities of Shymkent, Dzhambul and Petropavlovsk in the spring of 1995 to conduct several CLE workshops on comparative law and commercial law topics. These workshops represented the beginning of an expansion in continuing legal education efforts around the country and prompted consideration of the opening of a CEELI satellite office in Shymkent.
- In September 1995, three CEELI Legal Specialists and a CEELI Liaison conducted a series of mock trials on criminal and civil procedure in Shymkent and Almaty. Each seminar included about 45 local advocates, prosecutors and judges.
- In January 1996, CEELI Liaisons were joined by a CEELI Legal Specialist in conducting a series of CLE seminars on law practice management. CEELI also continued to conduct CLE seminars on commercial law topics.
- July 1996 marked the opening of the second CEELI office in Kazakhstan in Shymkent. The Shymkent office began organizing local legal professionals into an independent bar association.
- In October 1996, CEELI initiated an ongoing series of regularly held legal roundtables to discuss various legal issues and reforms affecting legal professionals in Kazakhstan.
- In September 1996, CEELI conducted a second series of CLE workshops on law practice management in Shymkent. As a result, a number of prominent attorneys began taking steps towards opening private law firms in southern Kazakhstan.
- In September 1996, CEELI established a partnership with the national newspaper, Southern Kazakhstan, to publish the bi-weekly legal periodical, "Lawyers' World." The periodical is a medium through which local lawyers exchange opinions, publish commentaries on recent draft laws and acquire knowledge about recent law reform developments.

- In June 1997, CEELI's legal profession reform activities culminated in the establishment of the first independent bar association in southern Kazakhstan. The founding charter of the Southern Kazakhstan Association of Lawyers (SKAL) was adopted at the founding congress and official registration for the organization was obtained in July 1997.
- In December 1997, the SKAL helped to register the Southern Kazakhstan Legal Information Center (SKLIC), which with funding will provide access to a full range of Russian and English language legal texts and on-line research databases to southern Kazakhstan's public and professional community. The SKLIC opened its doors in January 1999 after an extensive search for start-up funding.
- In June 1998 the SKAL was awarded a grant from the United Nations High Commissioner for Refugees (UNHCR) to sponsor a series of seminars on refugee law. The first seminar was held in November in 1998. In 1999, collaboration between the SKAL and Counterpart Consortium resulted in roundtables being held at the SKLIC on "Human Rights and Mass Media" and women's issues.
- In September 1998, the Executive Director of SKLIC traveled to the U.S. as part of the USIS training program for internet usage by libraries. SKLIC's start-up funding was secured in late 1998 and early 1999 from The Eurasia Foundation, the U.S. Democracy Commission, a CEELI advocacy grant, the Miller & Chevalier Foundation, and through donations of books by numerous embassies. The Center has obtained e-mail and Internet service, registered 25 regular users as members, and is expected to increase its membership significantly.
- In September 1998, CEELI began reaching out to law students at Miras International University in Shymkent, and subsequently to students at Adilet Higher Law School in Almaty, in an effort to establish an association of law students in Kazakhstan. Additionally, CEELI began to forge ties with attorneys and law students in Astana, with the Union of Lawyers in Almaty, and with women attorneys to gauge interest in forming and expanding regional and specialized bar associations.
- The SKAL implemented a dues structure in November 1998 where attorney members pay \$30/year and law student members pay \$10/year. In January 1999 the organization held a membership drive, inviting 40 local attorneys to learn about the SKAL's activities from its Executive Director, President, and the CEELI Liaison. Twenty-four potential members were encouraged to join the organization.
- In March 1999, three members of the SKAL and one reporter participated in a USIS International Visitor trip largely coordinated by CEELI. The four-member delegation, all of which have worked closely with CEELI in Kazakhstan, visited CEELI's office in Washington, DC, where they received training on bar development. This trip also provided an excellent opportunity for the member of SKAL to solidify plans to establish a sister relationship with the State Bar of Alabama, representatives of which they met during their stay in Montgomery, Alabama.
- In May 1999, a three-member delegation of women attorneys from Kazakhstan attended a regional workshop on domestic violence conducted by CEELI in Moscow, Russia. The workshop was designed to provide practical skills for handling domestic violence and to provide a forum for delegates to present successes and obstacles in combating the issue in their countries.

Judicial Reform

- In June of 1993, CEELI posted its first legal specialist to Almaty to discuss with Kazakhstan's three highest courts the concept and practice of judicial independence, court administration and judicial education. A second legal specialist, posted to Almaty in December, consulted with the Supreme Court Chairman and staff on topics such as judicial selection and tenure, pretrial detention, and military law.

- CEELI and USIA sponsored a three-week U.S.-based training program in 1994 for justices of the Supreme and Constitutional Courts of Kazakhstan and Kyrgyzstan. The justices observed state court proceedings and discussed issues vital to their countries' judicial reforms, including judicial ethics codes, court administration and case management. When CEELI noted significant changes in the attitudes of the judiciary regarding the relationship between the courts and the procuracy after this training, it increased its emphasis on practical measures for realizing judicial independence.
- Based upon widespread interest in a more detailed program, CEELI conducted a Central Asia Regional Judicial Workshop in June 1996. Fifty judges representing four Central Asian countries met in Almaty, Kazakhstan, to discuss establishing effective judicial associations adopting new codes of conduct, and devising strategies for enhanced judicial education.
- In December 1996, CEELI assisted the Ministry of Justice in planning the inaugural Congress of Judges of Kazakhstan. Four hundred judges participated in the Congress as delegates for Kazakhstan's 1,200 judges. At the Congress, the judges formally adopted the CEELI-supported draft charter creating the Union of Judges of Kazakhstan (UJK), and provisionally accepted a proposed code of ethics, which was later formally adopted.
- Two executive board members of the Union of Judges attended CEELI's Regional Judicial Association Workshop in Riga, Latvia, in April 1996. The participants were trained on sustaining and enhancing the structure and services of independent associations of judges. One of the Kazakh participants published an article in a national journal that relayed the content of the workshop to the judicial community.
- CEELI continued work with the UJK on judicial training programs, lobbying the parliament for changes in current laws concerning the judiciary, and on publishing a newsletter to more actively involve the judiciary in Kazakhstan's legal reforms.
- In August 1997, CEELI awarded an advocacy grant to the UJK to cover start-up costs for a legal periodical published to inform Kazakhstan's judiciary and citizenry about legal developments affecting the judiciary.
- In December 1997 CEELI co-sponsored a conference in Almaty to commemorate the first anniversary of the founding congress of the UJK. The conference focused on strengthening the UJK as an independent and self-sustaining, non-governmental organization, and reaching out to other national judicial organizations in the region. Representatives of the judiciaries of Kazakhstan, Kyrgyzstan, and Tajikistan attended and signed an agreement to form the Central Asia Regional Judges' Association.
- In January 1998 CEELI posted a Regional Judicial Specialist to Almaty to work with the Union of Judges in helping to determine the judiciary's needs for education and training to be conducted at the judicial training center of the Ministry of Justice. By late 1998, the focus of CEELI's work with the judiciary shifted from bolstering the sustainability of the UJK to providing direct support under a judicial reform program funded by a \$1.5 million World Bank loan to the Government of Kazakhstan.
- A twelve-member Kazakhstani judicial delegation participated in the Central Asia Regional Judicial Workshop in Issyk Kul, Kyrgyzstan, in June 1998. The workshop, co-funded by UNHCR and Global Training for Development, focused on the problems and solutions of judicial reform in Central Asia, the role of a judges' association in enhancing judicial independence, the development of judicial training centers, implementation of judicial ethics codes, and the development of the nascent Central Asia Regional Judges' Association.
- In March 1999, CEELI posted a Regional Judicial Specialist to Central Asia to work with the Judicial Training Center of Kazakhstan (JTC) to coordinate curriculum development. The CEELI Specialist

established criteria for evaluating curricula in Kazakhstan and conducted train-the-trainers workshops on judicial curricula.

Legislative Assistance

- In 1993, CEELI worked with a number of Kazakhstani governmental entities, including the Ministries of Justice and Economy and the Parliament, to develop a conceptual strategy for reform in the administrative and regulatory areas. CEELI has also assisted Kazakhstan with its efforts to establish regulations for the extraction of natural resources according to the precepts of a market economy.
- In 1993, a CEELI Legal Specialist advised the parliamentary Committee on Infrastructure and the Ministry of Energy on revisions to the proposed oil and gas law. In response to a request by the Parliament, CEELI prepared and presented a Draft Model Petroleum Law. CEELI's Legal Specialist returned to Almaty in 1994 to assist in the formulation of specific articles necessary to bring Kazakhstan's draft petroleum law into conformity with international practice.
- By the end of 1996, CEELI began a new initiative to advise Kazakhstan's Parliament on improving legislative drafting skills and enhancing legislative procedures.
- In March 1997, CEELI conducted a workshop in the Kazakhstan Parliament on the draft law of State Support of Small Business Development. The workshop centered on an analysis on the draft law prepared by a CEELI Liaison.
- In May 1997, CEELI presented comments on the draft Criminal Code before a meeting of the Majlis Committee on Legislation and Legal-Judicial Reform. This presentation prompted the Committee Secretary to invite CEELI to attend the joint session of parliament to discuss the draft.
- In September 1997, CEELI conducted the first legislative drafting seminar conducted by foreign assistance providers in the Round Hall of Parliament. Over 67 Deputies and staffers of the Parliament participated in training technical aspects of drafting clear and concise legislation. The idea to develop an independent professional legislative drafting department within the Parliament was also presented to the participants.
- In August 1998 CEELI provided support to parliamentarians and offered technical assistance on draft legislation, including the draft Law on Fighting Corruption and the draft Law on Education.
- In November 1998, CEELI opened an office in the newly decreed capital city of Astana.
- On November 7, 1998, the SKAL hosted a town hall meeting organized by CEELI and IFES aimed at constituency building in the Shymkent Region. Eight of Shymkent's ten parliamentarians and over eighty local citizens participated. The town hall meeting focused on a discussion regarding the October Constitutional amendments and issues of concern to the Shymkent citizens.
- In December 1998, CEELI and AED Global Training sent a delegation from Parliament to Vilnius, Lithuania, to participate in a workshop on public hearings that was followed by an actual public hearing on the Lithuanian Law on Charities and Sponsorship. That month CEELI also produced a commentary on the Draft Grain Law and was informed that all of its recommendations were adopted. CEELI also was invited to be a member of the working group drafting the legislation.
- On March 2, 1999, in Astana, CEELI co-sponsored a seminar on "Forging Better Relations Between Parliament and the Mass Media" with USIS, Internews and IFES. The seminar was held for the members of Parliament and the mass media and focused on how both entities might work together to develop a mutually beneficial relationship. At the invitation of USIS, the key speaker was former U.S. Congressman and presidential candidate, John Anderson.

- In May 1999, Kazakhstan's Parliament signed a Memoranda of Understanding prepared by CEELI and the United Nations Development Project establishing a joint Legislative Drafting Center within the structure of Parliament.
- CEELI in cooperation with the U.S. Embassy, USAID, USIS and Internews has been providing technical assistance on the draft law "On Mass Media." CEELI conducted a formal assessment of the draft law for the Majilis Committee on Social and Cultural Development and presented its findings in June.

Legal Education

- In 1993, CEELI sponsored a conference in Moscow, Russia. Participants in the conference included law school administrators from Russia and Central Asia. The focus of the conference was current issues in legal education reform across the NIS. Following USAID's decision not to extend funding for a CEELI education reform program in the NIS, CEELI obtained funding from USIA for a series of law faculty training programs for NIS law professors.
- CEELI's NIS Law Faculty Training Program enabled law professors from the region to spend three to four months in the U.S. working with their counterparts in American law schools. In 1994, a professor from the law faculty of Kazakh State University worked with Villanova University to gather resource materials and information on international law issues. In 1995, a Constitutional Court Justice and legal scholar spent several months researching separation of powers issues with the faculty at Northwestern School of Law at Lewis and Clark College.

Criminal Law Reform

- In October 1992, CEELI initiated its assistance activities in Kazakhstan by sponsoring a high-level workshop, the focus of which was the revision of the draft criminal code. In May 1993, the seven-member Criminal Code Drafting Committee traveled to Washington to discuss changes that had since been made to the text of the draft law.
- CEELI posted several legal specialists with expertise in criminal law issues to Almaty in 1993. CEELI legal specialists worked with parliamentary committees on juvenile justice issues and policy, organized crime and corruption, administrative offenses, economic crimes, and investigative procedures. These specialists also responded to requests from the Ministry of Justice and the Supreme and Constitutional Courts.
- In 1995, CEELI extended its contacts with the procuracy by posting a legal specialist to advise on penal code and criminal procedure matters. Subsequent specialists have worked with the Prosecutor General to assess the needs of the procuracy in the area of training and professional development.
- In 1998, CEELI offered comments on the draft law "On Fighting Corruption" and participated in a number of seminars and workshops on anti-corruption activities.
- In 1998-1999, CEELI assisted the Department of Justice in performing a needs assessment for a possible criminal law program in Kazakhstan.

CEELI in Kyrgyzstan

CEELI established its in-country presence in Kyrgyzstan in March 1993. CEELI presently maintains offices in Bishkek and the southern city of Osh. CEELI has chiefly focused on judicial reform, legal profession reform, legislative reform and legal resource development. Increasingly, CEELI is focusing on legal education reform. To date, CEELI has posted 16 legal specialists and held over 25 major workshops, numerous indigenous legal lectures, four U.S.-based training programs, and prepared 15 assessments of draft legislation.

Legal Professional Reform

- In 1995, CEELI initiated a weekly series of continuing legal education (CLE) programs for a group of Kyrgyz lawyers. The CLEs led to the creation, with active CEELI assistance, of the Association of Attorneys of Kyrgyzstan (AAK), the first independent bar association in Kyrgyzstan. Since its founding, the AAK has developed an active program of CLE and has been involved in the legislative process through sponsorship of public hearings on draft legislation.
- Kyrgyzstani lawyers participated in 20 CLE programs in 1995 on issues such as contract law, consumer protection and intellectual property law. These CLE programs were repeated in 1996 and expanded to Osh, Kyrgyzstan's second largest city. In Bishkek, over 35 lawyers and law students regularly participated in the workshops; in Osh, workshops routinely attracted 50 legal professionals.
- Three Kyrgyz bar leaders were among 11 participants from Kyrgyzstan, Moldova and Georgia who traveled to the U.S. in September 1996 as part of a CEELI-sponsored bar development training program. Program topics included lawyers' association governance, public advocacy, professional ethics, and continuing legal education.
- In December 1996, the AAK democratically elected a new Board of Directors at its first annual meeting. The re-election of four of the Board's members preserved continuity and leadership for the AAK through its second year, which started out with over 110 members.
- The AAK worked in 1997 to significantly expand the scope of services provided to members and the legal community, beginning publication of a commercial law newsletter. The AAK remains actively involved in the Library Center for Legal Information, which is now one of the most extensive legal resource centers in Central Asia (see below).
- In its third year the AAK voted to expand membership to fourth and fifth-year law students and established a Chairperson-Elect position on its board to ensure greater continuity between administrations. The Association also adopted a code of ethics that holds members to a higher standard of conduct than is currently required by Kyrgyz law.
- CEELI traveled with AAK Executive Board members to Osh in February 1998 to conduct a roundtable discussing the Osh lawyers' professional goals and their role in a democratic society.
- In March 1998, CEELI hired a local attorney in Osh to help improve AAK membership services and increase professional assistance to the Osh legal community, such as training seminars at the Osh Legal Information Department (OLID).
- The AAK conducts ongoing CLEs for its over-200-strong-membership and regular roundtables at the LCLI. The Association has taken seriously its role as the voice of the legal profession by urging legal professionals' involvement in the development of legislation such as NGO legislation. As it has matured the AAK has also secured non-CEELI funding, and broadened the scope of its services by launching various legal publishing projects. In 1998, the AAK developed three human rights handbooks for advocates, police officers, and prosecutors and judges, and produced two installments of a scholarly series entitled, "Laws of Kyrgyzstan: Problems and Perspectives," a collaborative effort with law professors.
- Throughout 1999 and 2000, the AAK increasingly focused on long-term planning and sustainability issues. That effort has included the development of work plans that place an emphasis on securing non-CEELI funding and increasing their membership fees and base.
- The AAK has increased their programming in southern Kyrgyzstan, particularly in Osh and Jalal-Abad, where most recently several seminars were held on the topic of the new Kyrgyz Advocacy Law -- a subject of great importance to all lawyers in Kyrgyzstan.

Legal Resource Center

- In 1995, CEELI initiated a project to create a legal resource center in Bishkek in response to the growing need for a centralized and accessible repository of the country's changing laws and comparative materials from other countries. CEELI succeeded in establishing the center by forging a partnership between the AAK and the National Library.
- In Summer 1996, the Library Center for Legal Information (LCLI) opened its doors to the public. A Board of Trustees was created to actively supervise the center, and oversee the development of the center's training, research databases and collection of books and other materials. The LCLI directly addresses the dearth of legal information in Kyrgyzstan, improves the ability of lawyers to practice law, and increases the public's awareness of the legal rights of citizens in a democracy.
- Since its opening, the LCLI has experienced a regular increase in users, prompting the Center to hire a full-time lawyer to help field research requests and assist in the purchase of new materials. During the first quarter of 1998, the LCLI hosted an average of 2,215 visitors per month. The law librarians loaned over 10,800 legal texts to patrons, and over 120 governmental and non-governmental organizations made informational requests to the LCLI. In addition, the LCLI continues to surpass their training goals by conducting over 180 consultations and trainings for lawyers, students, and the public on the use of the legal databases and other library informational services.
- The Osh Legal Information Department (OLID) celebrated its official opening on February 27, 1998. This was made possible through significant funding from the United Nations High Commissioner for Refugees (UNHCR) and technical assistance from CEELI. U.S. Ambassador Anne Sigmund gave opening remarks at the ceremony to commemorate the establishment of Osh's first comprehensive law library.
- During the first quarter of OLID's operation, the center registered over 800 new patrons and received over 3,980 visits. Additionally, OLID's law librarians processed 15,200 book loans, 573 periodical loans, and approximately 7,000 requests for information. CEELI funds also provided the staff members with legal database training, enabling them to service over 364 legal database requests. In addition, UNHCR grant funds, administered by CEELI, were used to train the librarians to more effectively utilize their computer programs and to conduct library classes for the law students of Osh State University.
- The LCLI and OLID increased public awareness of the proposed Constitutional amendments voted on in the Kyrgyz National Referendum of October 1998. Whereas voters' ballots asked a "yes" or "no" question, the over 1,000 informational brochures distributed by the LCLI and OLID provided details about the five issues that were the subject of the referendum: diplomatic immunity, land ownership, freedom of speech, the national budget, and the Legislative Assembly. The OLID also conducted a roundtable with local political party leaders and human rights experts who discussed the legal, political and economic impact of each of the proposed amendments. Over 50 people attended this important roundtable.
- In an effort to provide local citizens with a broader knowledge of the laws that affect them, the OLID sponsored a lecture on land law conducted by a CEELI Staff Attorney in April 1999. Ten members of the Osh community participated, including lawyers, representatives of agricultural agencies, and law students.
- Funding through the Eurasia Foundation enabled the LCLI to expand its premises and open a Business Law Annex in December 1999. As a complement to the opening of the Business Law Annex, the LCLI under CEELI's sponsorship held a series of three seminars dealing with issues concerning small and medium businesses.

- A reception to introduce the new annex to the public was held in March 2000, at which time all of the new furniture and equipment had been installed. The ceremony was attended by approximately 50 people and was covered by both the print and electronic media. Several presenters spoke at the reception emphasizing the importance of facilities such as the LCLI in developing democratic institutions and promoting the rule of law.
- The Business Law Annex now serves as the LCLI's principal reading room, while the LCLI's original quarters are being utilized as a technology center offering legal database and internet research capabilities as well as training facilities for lawyers and library patrons. CEELI is assisting the LCLI to locate funding for training workshops and additional equipment for the technology center.
- In recognition of the importance of getting young people involved in the political process, the OLID held a roundtable in February 2000 targeting first time voters in the parliamentary elections. The participants were presented with a "voter's dictionary," which the librarians had prepared, and a survey of literature on contemporary electoral systems.
- During the last six months of 1999 and the first six months of 2000, the OLID sponsored many seminars and roundtables on a variety of legal topics ranging from capital punishment, hospice care and euthanasia to the current election code and its application in the February 2000 parliamentary elections. In March and April 2000, the OLID conducted seminars in eight outlying areas including Karasuu, Nariman, and Kara Kuldzha. Between 23 and 35 participants attended each seminar on legal issues of relevance to farmers and others in rural communities.
- In order to enable the public to more easily utilize the print collections of both legal resource centers, CEELI provided funding to create an electronic card catalog program. The program was created by a local programmer and is being used at both centers. This program allows researchers to know which materials are available and also provides a brief synopsis of the content of the item. Over 6,000 holdings are currently entered into the electronic catalog at the LCLI.
- Both legal resource centers have received additional grants in 1999 and 2000 to further increase their holdings and to provide access to the electronic legal databases, which continue to be the only means of reliably accessing the laws of Kyrgyzstan.
- Due to the success of the LCLI and the OLID, CEELI has been asked to consider establishing legal resource centers in two other areas of southern Kyrgyzstan.

Judicial Reform

- In July 1993, CEELI posted its first legal specialist to Bishkek for consultations with the Constitutional Court and Supreme Court. This represented the beginning of a long-standing and productive relationship between CEELI and the judiciary of Kyrgyzstan. A second legal specialist traveled to Bishkek in the fall of 1993 to conduct discussions with the courts concerning the training of new judges, creation of a system of codifying and publishing new laws and enhancing the quality of legal education in Kyrgyzstan.
- CEELI conducted a U.S.-based training program for high-level judges in October 1993. Members of Kyrgyzstan's Constitutional, Supreme, and Arbitration Courts observed court proceedings in the U.S. and held discussions regarding the concept and practice of judicial independence. The delegation also obtained comprehensive information on court organization and operations.
- In conjunction with USIA, CEELI sponsored a three-week, U.S.-based training program in 1994 for justices of the Supreme and Constitutional Courts of Kyrgyzstan and Kazakhstan. The justices observed state court proceedings and discussed issues vital to their countries' judicial reforms, including judicial ethics codes, court administration and case management. Since that time, CEELI

has observed significant attitudinal changes in the relationship between the judiciary and the procuracy, and a greater will to make judicial independence a reality.

- In Fall 1995, three CEELI Legal Specialists, all judges, traveled to Bishkek to meet with members of Kyrgyzstan's Constitutional Court. The CEELI Legal Specialists discussed comparative judicial and constitutional principles, as well as strategies for improving judicial education.
- In November 1995, CEELI conducted a regional workshop in Sofia, Bulgaria on comparative approaches to judicial education and training. The Chief Court Administrator of the Council of Judges and a Bishkek city judge represented Kyrgyzstan at the workshop. Following the workshop, CEELI liaisons surveyed the Kyrgyz participants and other judges to ascertain interest in conducting a workshop focused on judicial associations and codes of conduct in Central Asia.
- As a follow-up to the Sofia workshop, CEELI conducted a Central Asia Regional Judicial Workshop in June 1996. Fifty judges representing four of the five Central Asian Republics traveled to Almaty, Kazakhstan, to discuss establishing judicial associations and adopting new codes of judicial conduct. Prior to the workshop, CEELI Legal Specialists met with Kyrgyzstani high court justices, the Parliament, and the judicial training committee of the Council of Judges. CEELI also placed a legal specialist in Bishkek in June to advise the newly formed Council of Judges regarding its mandate to administer the court system.
- CEELI helped to create the independent Kyrgyz Judges Association (KJA) in December 1996. CEELI provided technical assistance and relevant materials used by the KJA to establish its association charter and a judicial code of ethics.
- Three Kyrgyz delegates actively participated in the Second Annual International Judicial Workshop in Riga, Latvia in April 1997 and interacted with their NIS and CEE peers regarding each country's relative approach to judicial reform. The Kyrgyz Minister of Justice registered the Charter of the KJA two days after the return of the Kyrgyz delegation.
- CEELI placed a judicial specialist in Bishkek in April 1997 to advise the KJA and to help strengthen the Court Department by establishing a system for enforcing judgments and creating a judicial training center.
- In November 1997, CEELI, the KJA, the Court Department, and UNHCR co-sponsored a workshop at which four western judicial experts discussed western approaches to libel law, judicial ethics, judicial association building, and judicial training.
- With the assistance of CEELI and funding from UNHCR, the Judicial Training Center of the Kyrgyz Republic (JTC) opened on January 15, 1998 with Kyrgyz President Askar Akayev presiding. The JTC is institutionalizing continuing legal training for judges in Kyrgyzstan and promoting an increasingly independent judiciary. CEELI worked with the Court Department, UNHCR, the KJA, the President's Legal Department, and the Ministry of Justice in establishing the KJA as a chartered advisor for curriculum development for the Center.
- During the first three months of the JTC's existence, training programs were conducted for over 200 Kyrgyz judges on topics such as Kyrgyzstan's new Civil Code, new Criminal Code, and the Labor Code. In Fall 1998, the JTC added human rights training to its permanent curriculum. Nearly 200 judges were scheduled to receive training at the JTC during the first six months of 1999 on issues including constitutional law, judicial psychology, economic crimes, human rights, intellectual property, administrative law, and labor disputes.
- In April 1998, CEELI arranged for a delegation of three Kyrgyz judges to visit judicial training centers in Latvia and France to learn how to tailor the JTC's programming to the needs of the Kyrgyz

judiciary. In March 1999, CEELI placed a Judicial Specialist in Bishkek to work with the JTC on the development of a core curriculum that incorporated some of the topics introduced during the study tours in Latvia and France.

- Delegations from all of the Central Asian Republics participated in the CEELI/UNHCR Central Asia Regional Judicial Workshop in Issyk Kul, Kyrgyzstan, from June 17- 21, 1998. Workshop discussions centered on enhancing the reform process in their countries by working through their associations and existing or future training centers.
- In September 1998, the KJA and the Council of Judges jointly presented a list of grievances relating to court premises and housing for judges to government officials. The grievances were identified as obstacles to judicial training during the CEELI workshop at Issyk Kul in June 1998, and were targeted as being in violation of a 1997 presidential decree that obligated the government to supply adequate materials and financial support to the courts. The judges arranged for officials to tour court premises in Osh to spur the government to provide better court buildings and equipment to Kyrgyzstan's judges.
- The JTC remains a model for similar projects in other NIS countries. The JTC's experiences were shared at a judicial training workshop in Yerevan, Armenia, in March 1999. The JTC nominated KJA member and Constitutional Court Judge, Kachyke Esenkanov, to represent Kyrgyzstan and to describe the work of the JTC to the workshop's participants.
- In May 1999, CEELI's Judicial Specialist conducted a train-the-trainer workshop for judges at the JTC. The participants learned about and practiced interactive, adult teaching methodologies to enhance the effectiveness of training at the JTC.
- In February 2000, a three-day training session on the new Kyrgyz Election Code was sponsored by CEELI and IFES at the JTC. The training familiarized judges from Bishkek and the more remote regions of Kyrgyzstan on the new Code, with a focus on resolving election-related infractions. The judges from outside Bishkek conducted separate trainings for the judges from their regions. Two district court judges and one Supreme Court judge conducted the trainings. In connection with the trainings, CEELI and IFES prepared and distributed a Manual for the Resolution of Election Disputes.

Legislative Assistance

- During the first two years of CEELI's program in Kyrgyzstan, emphasis was placed on providing assessments and direct assistance to Parliament on drafting and revising legislation. Thus, CEELI Legal Specialists during 1993 and 1994 provided specific advice on language in the draft constitution and the draft civil code. This assistance led to interest in the development of a practical training workshop on legislative drafting skills.
- CEELI conducted a legislative drafting workshop in June 1995 in partnership with the National Conference of State Legislatures (NCSL). The four-day workshop focused on practical aspects of legislative drafting as well as enforcement and accountability and issues related to the legislative process generally. During Fall 1995, CEELI posted a legal specialist to Bishkek to provide follow-on assistance to the Parliament and legislative staffs. The legal specialist provided drafting assistance on the draft law on the advocacy profession and the draft labor code, and assisted in devising a concept paper on the unification of the courts. He also advised on methods of improving parliamentary procedures and committee structures.
- In cooperation with the AAK, CEELI coordinated a public hearing on the draft Criminal Code in October 1995. The first of its kind in Kyrgyzstan, the open public discussion of the draft legislation was an unprecedented step toward increased transparency in the legislative process. The Parliament

also sponsored public hearings on the draft labor code as well as the draft law on advocacy and the draft law on agriculture. CEELI's commentary on these laws was requested as well.

- In June 1996, CEELI posted its second legal specialist to advise Kyrgyzstan's Parliament. The specialist initially focused on the draft Criminal Procedure Code and the draft Criminal Code. As progress on the drafts was delayed, the specialist focused on draft legislation on organized crime, corruption and narcotics, which resulted in an analysis of sections of the draft Law on Organized Crime and Money Laundering.
- The AAK and CEELI helped organize in Bishkek an open public hearing with the Parliament on the final version of the draft Criminal Code in November 1996. CEELI worked with the drafting committee to organize the hearing and prepare the program materials for distribution among participants prior to the hearing. Through CEELI's efforts, Russian and Kazakhstani experts attended and contributed their commentary and comparative analysis during the hearing.
- In December 1997, CEELI co-sponsored a series of training workshops on the new Criminal Code, which went into effect January 1, 1998. The workshops were held in Bishkek, Osh, and Djalal-Abad, and were conducted by several members of the Parliamentary Drafting Committee on the Criminal Code. Several of the drafters appeared before lawyers, prosecutors, judges, government staff, and law enforcement to explain various sections of the Code and to answer questions about the meaning of many of the provisions.
- CEELI worked closely with Parliament and the Center for Parliamentarism during 1998 to prepare a detailed proposal on a professionally staffed Legislative Drafting Service to improve parliamentary procedure and the quality of draft laws. Having secured funding for the Legislative Drafting Department (LDD) from the U.S. Democracy Commission, Global Training for Development, a CEELI advocacy grant, and TACIS, CEELI began training three drafters in February 1999. The drafters used portions of the Oregon State Legislative Drafting manual as a guide. Formal training was completed at the end of March 2000, and CEELI continues to advise the drafters on proposed modifications to bill drafts and concept papers on proposed pieces of legislation.
- CEELI worked with the Bishkek Management Migration Center (BMMC) in 1999 to train a fourth legislative drafter who worked for the BMMC in writing a comprehensive bill on migration. The CEELI legal specialist and staff attorney participated in many meetings of a working group consisting of parliamentary deputies and ministry representatives who were all interested in a well-drafted piece of legislation. The bill was successfully written and is under consideration by the Parliament.
- CEELI coordinated with the Swiss Development Cooperation & Coordination Office to secure funding for the LDD from July 1999 - June 2000. CEELI has also approached a variety of assistance providers, most recently the United Nations Development Programme, about providing continued funding for the Department. Concurrently CEELI is working with Parliament to secure permanent space for the center.
- With CEELI assistance, a legislative drafting manual was completed during Spring 2000, and its basic concepts have been incorporated into a draft bill that would require all legislation in Kyrgyzstan to adhere to the same basic standards. Adoption of standard drafting conventions will result in laws that are much easier to read and understand and that are consistent with other laws.
- All four of the legislative drafters at the LDD attended a U.S.-based training program in the State of Washington in February/March 2000. The intensive program exposed the drafters to all facets of the state legislative process and introduced them to the roles of the judicial and executive branches in legislative affairs.

- During the first six months that the LDD drafters worked, they prepared 29 drafts of legislation and approximately 12 analyses of proposed drafts. Their services were used by approximately 30% of all parliamentary deputies.
- CEELI worked with the Dutch Center for International Legal Cooperation to conduct a two-part legislative drafting workshop in Kyrgyzstan. The first part of the workshop was held in March 2000, with drafters from Kyrgyzstan and Kazakhstan attending.

CEELI has completed the following formal assessments of draft legislation:

- Analysis of the Draft Law of the Republic of Kyrgyzstan on Bankruptcy and the Draft Statute on the Order of Actions of Experts and Proxies in Cases of Business Bankruptcies (February, 1993)
- Analysis of the Draft Constitution of the Republic of Kyrgyzstan (February, 1993)
- Analysis of the Draft Laws on the Advocate Profession in the Republic of Kyrgyzstan (April, 1993)
- Analysis of Amendments to Kyrgyzstan's Foreign Investment Law (October, 1993)
- Analysis of Kyrgyzstan's Draft Law on the Status of Bishkek (October, 1993)
- Analysis of the Draft Law on the General Principles of Civil Service in the Kyrgyz Republic (February, 1994)
- Analysis of Two Concept Papers on Judicial-Legal Reform in the Republic of Kyrgyzstan (September 1994)
- Analysis of the Law on Monopolistic Activities Limitation, Competition, Development, and Protection and Proposed Amendments to the Law for the Kyrgyz Republic (March 12, 1996)
- Analysis of the Draft Criminal Code for the Kyrgyz Republic (April 24, 1996)
- Analysis of the Draft Law on Mass Media for the Republic of Kyrgyzstan (July 17, 1996)
- Analysis of the Draft Law on the Status of Judges for the Kyrgyz Republic (August 26, 1996)
- Analysis of the Kyrgyz Republic Conception in the Sphere of Human Rights (January 30, 1997)
- Analysis for the Draft Criminal Procedure Code for the Kyrgyz Republic (November 26, 1997)
- Analysis of the Draft Law on Processing and Consumer Waste for the Kyrgyz Republic (September 21, 1998)

Criminal Law Reform

- As in other countries in the region, one of the most significant obstacles to criminal law reform in Kyrgyzstan remains the conservative nature of government institutions, in particular the powerful procuracy. Criminal law reform assistance began in 1993, when CEELI posted two legal specialists in July to consult with the high courts and the procuracy on strategies for reform of the criminal justice system and methods for curbing the growth of organized crime.
- In February 1995, CEELI posted a legal specialist to work with prosecutors around the country to discuss modifications to training and education programs for the investigation and prosecution of criminal cases.
- In 1996, CEELI hosted ten prosecutors and the Prosecutor General in Washington, D.C. as part of a USIA-sponsored training program. CEELI discussed with the prosecutors comparative criminal law

issues and the various drafts of the new Code of Criminal Procedure. Discussions also focused on integrating the prosecutors with the rest of Kyrgyzstan's divided legal profession. In Summer 1996, four of those participating prosecutors became the first prosecutors to join the Association of Attorneys of Kyrgyzstan.

- In early 1996, CEELI assessed the draft Criminal Code. The draft benefited from a CEELI-sponsored public hearing that produced a critique of the earlier draft in October 1995 as well.
- CEELI conducted a workshop in November 1997 on libel law and its use in western countries. The workshop was held, in part, to respond to concerns surrounding the incarceration of several Kyrgyz journalists on criminal libel charges. An Austrian Supreme Court Justice presented the European approach to libel and provided historical background on the development of libel law as a civil rather than criminal action. A judge from the Indiana Court of Appeals addressed the American experience, explaining that, while certain state laws in the U.S. permit actions for criminal libel, no action has been successfully maintained in over 30 years.
- In May 1999, CEELI received a request from the Prosecutor General's office to assist in the development of an anti-corruption strategy. In response, CEELI provided Russian-language materials, including a model corruption prevention policy, and arranged for a CEELI/DOJ criminal law liaison to conduct a two-day roundtable with prosecutors in Bishkek.

Legal Education

- CEELI's strategy for legal education reform in the NIS stemmed initially from the success of the Sister Law School Program in Central and Eastern Europe. Based upon that experience, CEELI sponsored a conference in Moscow, Russia in May 1993 for law school administrators from Kyrgyzstan, Kazakhstan, and Russia to discuss legal education reform in the NIS. CEELI subsequently obtained funding from USIA to conduct a series of law faculty training programs for NIS law professors.
- CEELI's NIS Law Faculty Training Program enabled law professors from throughout the NIS to spend three to four months in the U.S. working with their counterparts in American law schools. In 1994, one law professor from the Kyrgyzstan National University worked at Rutgers University School of Law, studying labor law and women's legal issues and related western teaching methodologies. CEELI also sponsored the visit of a Kyrgyzstani lawyer during Fall 1994 under the auspices of the ABA/International Association of Trial Lawyers Internship Program.
- In cooperation with the Asia Foundation, CEELI assisted in the delivery in 1994 of large shipments of law-related books and materials to several Kyrgyzstani law schools, as well as the Kyrgyz Bureau of Human Rights and the Rule of Law. CEELI has collaborated with organizations such as the Asia Foundation and Mercy Corps on a number of projects, particularly in the procurement and delivery of books and documents critical to the legal education reform movement.
- In December 1998, CEELI began collaborating with deans, rectors, and students of Bishkek's four principal law faculties to foster interest in the creation of a student bar association. The Student Bar Association of the Kyrgyz Republic (SBAKR) was officially registered in January 1999 by a group of 35 students. The Association formed four committees to conduct its business, and established bylaws for each committee. Initial projects included creating an electronic resume bank of its membership, a web page, and a database of scholarship and internship information. Utilizing electronic resources will assist the SBAKR in incorporating students from areas outside of Bishkek into its membership and activities.
- The SBAKR has sponsored three legal lecture series: at Kyrgyz Slavonic University on public international law; at Kyrgyz American University on individual rights; and at the CEELI office on legal English. The public international law series drew up to 75 participants at one lecture. In addition

to these activities the SBAKR has sponsored Tuesday night debates, where eventually they hope to involve members of the AAK as judges.

- The SBAKR also successfully applied to UNHCR for funding to initiate a law clinic providing legal and social services to refugees. In January 2000, students began receiving training to prepare the cases of indigent immigrants for determination hearings on refugee status and related matters. In March 2000, the SBAKR's Bureau for Refugees received an initial disbursement of a \$15,000 grant and secured office space for the Bureau.
- After receiving further grant writing training from CEELI, the SBAKR submitted a grant proposal in April 1999 to the U.S. Democracy Commission for an elections-related project. The SBAKR envisions training other students on the new election law by conducting mock elections.
- In February 2000, the Student Bar Association of the Kyrgyz Republic was re-registered with the Ministry of Justice as the Public Union of Young Lawyers of Kyrgyzstan. The newly renamed organization implemented an Election Hot-line/Clinic project in both Bishkek and Osh that was funded by the Elections Grant Commission of USAID. In Bishkek, approximately 20 students from several law schools worked on the project, which provided information and advice to voters on election rights and procedures in advance of the elections. Over 300 members of the public received consultations in Bishkek. Students were trained by CEELI on substantive election law, intake methods, and client interviewing techniques. In Osh an additional 14 students from all three Osh law schools participated in the project there, and provided advice to 44 individuals who visited the clinic.

CEELI in Uzbekistan

CEELI opened an office in Tashkent, Uzbekistan in August 1995. In 1999, DOJ-CEELI established a criminal law program in Uzbekistan, posting its first Liaison in June. Starting in February 2000 CEELI placed a Gender Issues Legal Specialist and an Environmental Law Liaison in Uzbekistan to begin programming in each of those areas. Rule of Law projects in Uzbekistan include judicial reform, legal profession reform, legislative assistance and legal resource center development. The program's most recent developments include assistance to a nascent women's bar association and association building with law students, as well as development of an Environmental Public Advocacy Center. To date, CEELI has posted 4 legal specialists, assessed 9 draft laws, conducted 10 CLE seminar series, over 32 workshops, and two U.S.-based training programs.

Legal Profession Reform

- CEELI began to focus on legal profession reform with the arrival of a second liaison to Tashkent in June 1996. This liaison's projects included working with Uzbekistan's advocates to enhance the quality and independence of lawyers, focusing primarily on Uzbekistan's advocates. Activities included conducting lawyer-training programs, fostering the creation of an independent lawyers' association and assisting in the development of a code of ethics for lawyers.
- In September 1996, CEELI sponsored a series of workshops on law practice management and legal association development in Tashkent, Namangan, and Samarkand, and in Shymkent, Kazakhstan. CEELI recruited the former Utah State Bar President to conduct the workshops in conjunction with CEELI liaisons in Uzbekistan and Kazakhstan. The workshops were conducted in part to promote involvement by advocates in the legislative process, particularly in providing comments on Uzbekistan's draft advocacy law. Approximately 240 Uzbek legal professionals were trained at the September workshops.
- Five advocates and one notary participated in a CEELI U.S.-based training program on Legal Association Building in March 1997. The participants were trained in Seattle and Chicago on

developing and enhancing judicial and lawyer associations. Upon their return to Uzbekistan, the Chairman of the Tashkent College of Advocates and the President of the Union of Advocates conducted special lectures for fellow advocates on their U.S. experiences. CEELI later worked with four of the five advocates who attended the U.S. training program to devise a sustainable CLE program series for lawyers.

- A CEELI Legal Specialist conducted regularly held CLE workshops on commercial law for judges and advocates in May and June 1997. The series included lectures by the Deputy Chairman of the High Economic Court, who together with the legal specialist, provided guidance to advocates interested in developing expertise in commercial litigation.
- The Association of Advocates of the Republic of Uzbekistan held their founding congress on August 1, 1997. CEELI assisted in the organization of this event, which was attended by representatives from each branch of government and 10 delegates from each of Uzbekistan's 14 regions. Representatives at the congress elected a president and two vice-presidents and preliminarily approved a charter and an ethics code for the independent association.
- CEELI has worked closely with the Association of Advocates to advise on their organizational structure, financial sustainability and the development of CLE programs. A series of bi-weekly CLE programs for advocates was initiated in March 1998 in Tashkent, covering contracts, torts, and business law. CEELI also has assisted the Advocates' Association in developing several series of CLE programs on fundamentals of civil law, fundamentals of international law, and "Innovations in Uzbek Law."
- CEELI liaisons and a CEELI Regional Judicial Specialist also traveled to the regional cities of Samarkand, Namangan, and Nukus during Spring 1998 to conduct CLE programs and garner support for regional bar association development.
- In June 1998, CEELI and Counterpart Consortium jointly conducted a workshop for advocates on NGO development, fundraising, conducting CLE programs, journal publication, and the implementation of ethical rules.
- CEELI worked with the Association of Advocates in the second half of 1998 to mount a grassroots campaign, the aim of which was to stimulate public commentary on the new Law on Advocates, whose revision from a 1996 law resulted in the elimination of the requirement that advocates receive prior authorization from the procurator to visit a client who is in custody. The new law went into effect in January 1999.
- In March 1998, CEELI began assisting a working group interested in forming a women's bar association through the provision of model charters and sponsorship of several roundtables. In September 1999, CEELI assisted the unregistered organization to conduct an eight-week CLE lecture series on developments in family law, focusing on how to implement the new family code. The Women's Bar Association (WBA) received its official registration as an NGO in December 1999.
- CEELI hosted association development workshops for leaders of the Association of Law Students and the Women's Bar Association in November and December of 1999. The workshops focused on the role of non-governmental organizations in civil society and the effective management and administration of NGOs. Attended by ten student leaders and five executive board members of the Women's Bar Association, the workshop relied on interactive teaching methods and was well-received by all participants.
- CEELI has commissioned the development of Uzbekistan's first manual on criminal defense advocacy. Several prominent defense advocates have been identified as contributors to the publication. The practice manual will cover the rights of the advocate during the preliminary

investigation, trial strategies, evidentiary issues, and appellate procedures. Because practical materials on lawyering are scarce or non-existent, the practice manual will be an invaluable tool for Uzbekistan's advocates. In connection with the publication of the practice manual, CEELI and the Association of Advocates will launch a series of training workshops on criminal defense advocacy for Uzbekistan's advocates.

- The Association of Advocates, with CEELI's support, contributed reports and proposals to the Presidential Reform Commission, established during Summer 1999 to identify areas in the Uzbek legal system in need of reform. The Commission is considering proposals that would significantly increase the power of defense advocates and could transform the legal system into one more nearly approaching an adversarial system, as envisioned in the Uzbek criminal code.
- CEELI liaisons continue to present regular lectures at the High Economic Court, and the Ministry of Justice's Continuing Legal Education Institute, and the Office of the Procurator's Continuing Legal Education Center. Such legal education assistance efforts bolster CEELI's support of the legal profession. As CEELI has expanded its work with local lawyers and organizations in fostering bar association development and CLE programs, the State Law Institute has become a valuable partner in promoting the importance of CLE to young lawyers.

Judicial Reform

- In June 1996, judges from Uzbekistan participated in the Central Asia Regional Judicial Workshop in Almaty, Kazakhstan, to discuss the importance of judicial associations and codes of conduct. Since that time, CEELI has worked with a group of judges to help develop, draft and provide comments on an association charter and a code of ethics for an Uzbek association of judges. At a congress in June 1997, the judges of Uzbekistan adopted a charter and an ethics code, which established the Association of Judges of the Republic of Uzbekistan (AJU).
- Four judges attended CEELI's two-week, U.S.-based training program on association building in March 1997. Following their return to Uzbekistan, the Deputy Chairman of the Constitutional Court notified the Uzbek Parliament that the time had come for the judiciary to gain its independence from the Ministry of Justice. Other participants granted interviews to television stations and published articles about the merits of an independent judiciary. CEELI continued to work with the judges who participated in the training program, helped to establish and strengthen the first independent judges' association, and assisted with the planning of a follow-up workshop to the 1996 Central Asia Regional Judicial Workshop.
- A CEELI Legal Specialist conducted a series of CLE programs for Economic Court judges in Tashkent in May and June 1997, providing expertise in the areas of international commercial transactions and dispute resolution.
- In September 1997, 781 judges from all levels of the court system participated in the Founding Congress of the Association of Judges of the Republic of Uzbekistan in Tashkent. The Association's organizers credited CEELI as the main impetus for its formation. Once formed, the AJU elected a Central Council, an auditing committee and a chairman, and approved an association charter and code of judicial ethics.
- CEELI organized a Judicial Development Workshop for Uzbekistan in cooperation with Global Training for Development from November 12-14, 1997. Workshop trainers included an Austrian Supreme Court Justice, a judge from the Indiana Court of Appeals, a Washington state criminal trial judge, and a judicial training expert associated with the Washington State Supreme Court. The judicial experts helped educate the AJU regarding the sustainability of their new association, the implementation of the new rules of judicial ethics, and continuing legal education for judges. Two

Almaty city judges, members from Kazakhstan's Union of Judges and a Supreme Court Justice from Tajikistan also participated.

- The CEELI Regional Judicial Specialist traveled to Tashkent in April 1998 to discuss with the AJU and the Ministry of Justice the structure of a potential judicial training center. The Regional Judicial Specialist and a CEELI liaison participated in CLE programs in Bukhara, Samarkand, and Namangan and discussed with judges there how they could start their own continuing legal education programs. Two CLE series sponsored by the AJU from May to June 1999 and November 1999 to February 2000 have been conducted in regional cities such as Nukus, Urgench, Karshi, Jizhak, Gulistan, Fergana, and Khiva.
- In March 1998, the AJU launched a series of twice-monthly CLE programs in Tashkent. A CEELI Liaison worked with the Chairman of the AJU to design informational brochures advertising the CLE series. The first lecture, on contracts, drew more than sixty participants. To date the AJU has completed six CLE series, three of which were conducted in cooperation with the Association of Advocates, and two of which were held in regional cities in order to educate member judges in smaller cities.
- A delegation of ten Uzbek judges participated in the Central Asia Regional Judicial Workshop in Issyk Kul, Kyrgyzstan, in June 1998. CEELI assisted the AJU in obtaining \$5,000 in direct donor funding to make possible the participation of these 10 judges. The workshop focused on devising solutions to the continuing problems associated with the implementation of judicial reform in Central Asia.
- Six members of the AJU traveled to the United States in November 1998 to receive training in association management and fundraising, CLE programming, the implementation of ethical codes, and advocacy for legal reform. The program was conducted in Washington, D.C., Williamsburg, VA, and Bluefield and Charleston, WV.
- From December 1998 to February 1999, CEELI assisted the AJU in conducting a series of workshops in Tashkent, Samarkand, Andijan, Nukus, and Karshi. The programs -- which were facilitated by U.S.-based training participants, the CEELI Liaison, and the Chairman of the AJU -- included discussions on the role the association can play in advocating for an independent judiciary in Uzbekistan. Over 140 judges received training through this four-city tour.
- In April 1999 two judges from the AJU participated in a judicial training conference in Riga, Latvia. Other participating delegations traveled from Georgia, Hungary, Latvia, Macedonia, Slovakia, Tajikistan and Ukraine. The delegates received training on how to create an effective judicial training program, including the need for a clear mission statement, the development of an appropriate curriculum, the selection of trainers and the utilization of various presentation and evaluation methods. These principles were reinforced for the Uzbek judges in a "Train the Trainers" workshop conducted by a CEELI Judicial Specialist in Tashkent in May 1999.
- CEELI assisted the AJU in preparing grant applications for the funding of a publication project. In September 1999, Soros awarded a grant to the AJU. Specifically, Soros agreed to fund the purchase of a computer, publishing software, printer, scanner, copying machine, telephone, fax machine, file cabinets, tables and chairs for the AJU. Through the Soros grant, the Association will finally have the necessary equipment to launch an AJU newsletter and assist with the production of judicial practice manuals. Securing funding from Soros was a significant step toward increased independence from the Ministry of Justice by the AJU.
- In December 1999, the AJU secured its own office space, separate from the Ministry of Justice. The Association paid for the first six months' rent out of proceeds from a recent Association publication on the qualification of judges. The AJU plans to cover the following six months' rent with funds

received through a CEELI advocacy grant. The securing of separate, non-governmental office space has greatly enhanced the independence of the Association and provided space for the publication equipment that the Open Society Institute awarded to the Association. Moreover, by making the initial rent payment out of its own coffers, the AJU has demonstrated at least partial financial self-sustainability.

- From November 1999 through February 2000, CEELI assisted the AJU in conducting another series of CLE programs for both practicing judges and advocates. Conferences were held in Karshi, Turtkul, Samarkand, Namangan, Gulistan and Tashkent. Among other things, the training series focused on the division of property in civil cases. Three justices from the Supreme Court of Uzbekistan, alongside AJU Chairman Abdil Tukhtashev, participated as trainers. Approximately 240 judges and 120 advocates received training in areas directly relevant to their practice. The AJU deepened the impact of the CLE series by publishing and distributing copies of the lecture presentations to AJU members.
- With the strong support of CEELI, the AJU has become a central player in shaping the direction of judicial reform in Uzbekistan. Under a presidential order in Summer 1999, the Presidential Reform Commission was created to identify areas in the Uzbek legal system needing reform and also to draft any necessary legislation. Abdil Tukhtashev, Chairman of the AJU, was asked to sit on the Commission, along with several other practicing judges and AJU members. The Commission has defined three main legislative priorities, all of which were proposed by the AJU. The first priority pertains to the procedures for selecting judges and creating a pool of qualified candidates for judicial selection. The second involves implementing the adversarial process in Uzbek courtrooms. A third priority is the removal of administrative and managerial control of the judiciary from the Ministry of Justice. These proposed reforms, if passed and implemented, would truly transform the Uzbek legal system and lead to a system more faithful to the principle of the separation of powers. It is the AJU, through its presence on the Commission, which is taking the lead in pushing the above-mentioned reforms.
- On April 13-15, 2000, CEELI and the AJU jointly staged a three-day regional conference on "Judicial Management and Administration." The conference successfully educated leading judges, members of judicial associations, and ministry officials in Uzbekistan, Kyrgyzstan, and Tajikistan on alternative approaches to management of the judicial branch in each of the three republics represented at the conference. Equally important, the conference focused on the importance of judges' associations in shaping judicial reform. Each participating judicial association considered which practical steps were necessary to strengthen it and eventually become self-sustainable. A total of 35 judges and ministry officials from nearly all of Uzbekistan's oblasts, 5 judges and ministry officials from Kyrgyzstan, and 5 judges and ministry officials from Tajikistan participated in the conference. The conference was particularly timely given the AJU's ongoing judicial reform work.

Legislative Assistance

- In June 1996, CEELI conducted a Bill Drafting Workshop in cooperation with the National Conference of State Legislatures (NCSL). Modeled after successful drafting skills programs in Moldova, Kyrgyzstan and Belarus, participants focused on practical aspects of legislative drafting as well as enforcement and accountability and the legislative process generally. The workshop was the first major collaborative training program with Uzbekistan's Parliament, the Oliy Majlis, with whom CEELI has worked on enhancing indigenous drafting capabilities and promoting transparency in the legislative process.
- In addition to providing an Analysis of the Draft Civil Code Section on Property Rights, and an Analysis of the Draft Law on Securities Markets, CEELI conducted reviews of the draft Law on Banking and a draft Regulation on Private Investment Funds. During 1996, the CEELI Liaison prepared commentary on these draft laws as well as a number of resolutions issued by the Cabinet of

Ministers. CEELI has also prepared analyses and commentaries on the draft law governing political parties, the draft notary law, the draft law on business competition and the limitations of monopolies, the draft advocacy law, the draft health care law, the draft NGO law, and the draft housing code.

- At the request of the Oliy Majlis, CEELI provided model laws and materials on employee benefits, securities law, the management of national debt, and foreign investment, and investor protection. CEELI also provided several briefings on the American legal system to parliamentary delegations traveling to the United States, including a delegation of three Oliy Majlis members in November 1996.
- Relying on several experts from the U.S. and Europe, CEELI completed a formal Analysis of the Draft Law on Advocacy for the Republic of Uzbekistan, the results of which were presented to the Oliy Majlis and key advocates in December 1996. More comments by concerned Uzbeks were offered on the Advocacy bill than any other piece of legislation at that time, a phenomenon partly attributable to the success of the CEELI Law Practice Management workshops. In working with Uzbekistani advocates on the draft, CEELI guided their efforts to inform Uzbekistan's Parliament on critical provisions of the draft law, including qualifications and licensing requirements for advocates.
- During 1997, CEELI submitted comments and drafted a revision to the rules of parliamentary procedure and continued to be an active member of the working group on this draft.
- In August 1997, CEELI was invited to attend the Ninth Session of the Oliy Majlis to monitor progress on several laws on which CEELI had commented. These included the Economic Procedure Code, the Civil Procedure Code, and the Law on Initiation of Legislation, the latter of which CEELI helped to draft.
- In September 1997, CEELI began coordinating with the International Center for Not-for-Profit Law (ICNL), the Soros Foundation, and Global Training for Development on an initiative to solicit public participation in moving a draft Law on NGOs out of the Ministry of Justice and through Parliament. In early 1998, CEELI provided information on the drafting process and the history of the NGO law, and participated in planning and conducting a five-city tour to Namangan, Fergana, Samarkand, Bukhara, and Nukus on the draft law. A final workshop with parliamentarians was conducted in Tashkent, resulting in the formation of a working group tasked with redrafting the law.
- CEELI's work with journalists and the legislature throughout Fall 1997 culminated in the passage of the Law on Mass Media in December 1997. In October, CEELI had presented comments on the draft law on mass media at a conference sponsored by Internews and the Soros Foundation, and later worked with Internews and the Konrad Adenauer Foundation to provide commentary and additional information through CEELI's Concept Paper on Mass Media Law.
- CEELI conducted a workshop for 14 parliamentarians in August 1998 on soliciting and incorporating public commentary into draft laws. The workshop outlined Western European and U.S. practices in an effort to create a more favorable climate for conducting public hearings in Uzbekistan. A booklet containing the presentations was distributed to all members of the Oliy Majlis at the December 1998 session of parliament.
- A November 1998 workshop on enforcement of legislation drew 43 participants who discussed the power of legislatures to investigate executive enforcement agencies and to recommend changes to existing law. CEELI distributed 70 copies of the workshop materials, which included translations of legislative drafting articles and a manual on drafting.
- Throughout 1998, CEELI provided technical assistance to the seven-member Uzbek working group spearheading the redrafting of the NGO law. In March 1999, CEELI conducted a workshop in cooperation with the Oliy Majlis to provide concrete recommendations on needed changes to the draft

that had been introduced to parliament in December 1998. CEELI supported the work of the Association of Advocates in seeking public input on the draft NGO law and further exposed the Oliy Majlis to the concept and importance of public hearings. The NGO law was passed during the April 1999 session of the Oliy Majlis, reportedly with all recommendations incorporated.

- In August 1999, CEELI assessed legislation on "Protection of Population and Territory from Emergency Situations" before its first parliamentary reading per a request by the Committee on Defense and Security Issues. CEELI recommended various technical and substantive changes, the most important being that an anti-democratic provision regarding emergency executive powers be eliminated and/or amended. The committee adopted nearly all of CEELI's recommendations, also deleting entirely the provision that would have tremendously strengthened the presidency during emergencies in a way that directly violated the Uzbek Constitution.
- In October 1999, CEELI and the Oliy Majlis co-sponsored a "Seminar on Improving Enforcement of Judicial Acts." The purpose of the seminar was to assess a comprehensive piece of legislation designed to improve enforcement of court orders. A German Embassy representative and CEELI liaison described how court orders are enforced under the German civil law and American common law systems before the floor was opened for public comment. The Chair of the Oliy Majlis Committee on Legislation and Legal-Judicial Issues requested CEELI assistance with the hearing because the Oliy Majlis expects to make significant changes to the draft legislation.

CEELI has completed the following formal assessments of draft legislation:

- Analysis of Uzbekistan's Draft Constitution (December, 1992)
- Analysis of the Draft Law on the Practice of Law of the Republic of Uzbekistan (May, 1993)
- Analysis of the Draft Law on the Elections to the Oliy Majlis of the Republic of Uzbekistan (November, 1993)
- Analysis of the Draft Law on Copyright and Related Rights in the Republic of Uzbekistan (March, 1994)
- Analysis of the Draft Civil Code Section on Property Rights for the Republic of Uzbekistan (January 19, 1996)
- Analysis of the Draft Law on Advocacy for the Republic of Uzbekistan (November 22, 1996)
- Analysis of the Draft Law of the Republic of Uzbekistan on Non-Governmental, Non-Commercial Organizations (March 29, 1999)
- Analysis of the Draft Law on Guarantees of Advocates' Activities and Social Protection of Advocates for the Republic of Uzbekistan (November 5, 1998)
- Analysis of the Draft Housing Code for the Republic of Uzbekistan (November 12, 1998)

Legal Education

- Professor Elvira Parpeva, a lecturer of the International Law Faculty of the University of World Economy and Diplomacy, participated in CEELI's NIS Law Faculty Training Program in 1995. Professor Parpeva spent three months at the Hamline University School of Law developing new courses on contracts and international law.
- CEELI worked with the Rector of the Tashkent State Law Institute to discuss curriculum reform and the development of commercial law courses. CEELI has also provided legal information to the

Tashkent State Law Institute on how state-operated law schools in the United States are organized and funded.

- CEELI's first liaison to Uzbekistan conducted a lecture series at the Tashkent State Law Institute on Banking and Securities Law to law students and lawyers. At the request of the Academy of State and Social Construction under the President of the Republic of Uzbekistan, CEELI liaisons and specialists have continued to provide legal instruction to its public administration students.
- At the request of the Rector and Deputy Rector of the Tashkent State Law Institute, in April 1999 CEELI reviewed proposed law school curriculum standards and provided feedback based on a comparison with U.S. law school curriculum standards. The comments were favorably received.
- CEELI's Rule of Law and Criminal Law liaisons cooperated in conducting two separate lecture series at Tashkent State Law Institute on both U.S. civil and criminal law, and at the University of World Economy and Diplomacy on U.S. criminal justice. In addition, CEELI conducted a lecture series for public administration professionals studying at the Academy of State and Social Construction under the President of the Republic of Uzbekistan.
- After CEELI co-sponsored the First Annual Central Asia Regional Student Bar Association Conference in Bishkek in August 1999, CEELI stepped up its outreach to law students, tapping into a new target group of future legal professionals. The Association of Law Students of the Republic of Uzbekistan was created with CEELI support and guidance. In September and October of 1999, students from both Tashkent State Law Institute and Tashkent State University (two of Tashkent's three law schools) convened a founding congress. At the founding meeting, students adopted the Association charter, elected a President and Executive Board, and defined focus areas for future programming activity. The Association of Law Students filed registration documents in January 2000 and received official registration as a non-governmental organization in April 2000.
- CEELI led a series of weekly student roundtables from October 1999 through April 2000 on a variety of substantive law issues. The roundtables were open to any and all law students from Tashkent's three law schools and focused on both public international law and on U.S. civil and criminal law and procedure. The roundtables introduced students to interactive teaching techniques and stimulated vigorous discussions.
- CEELI is working closely with the Association of Law Students to plan and organize two conferences scheduled for June and August, 2000. The first will be a two-day trial advocacy workshop for some 40 Uzbek law students focusing on the development of oral advocacy skills, a skill that receives little emphasis in the republic's law schools. The second will be a Central Asian regional summer conference, attended by some 40 law students from all five Central Asian republics. Central to the regional conference will be a moot court competition, giving student-teams the opportunity to write appellate briefs and present oral arguments to panels of appellate judges. In addition, the week-long conference will promote the growth of student associations throughout Central Asia.
- CEELI has agreed to provide technical assistance to the Legal Aid Society (LAS), a non-governmental organization recently established to provide free legal consultations and representation to indigent citizens of Uzbekistan, as well as stateless persons. The LAS is registered but has not yet become operational because funding promised by several donor organizations has not yet materialized. CEELI will also work with both the LAS and the Law Student Association to set up a clinical program.

Legal Resource Center

- In July 1996, plans were initiated to partner with the Tashkent State Law Institute on the creation of a public law library and legal resource center at the Institute. The Center was modeled after the CEELI-

created Library Center for Legal Information in Bishkek, Kyrgyzstan, which provides public access to statutes, regulations, and comparative legal information.

- In 1997 the CEELI Liaison completed a draft Charter for the proposed Open Library for Legal Information (OLLI). The Board of Governors for the center was formed with representatives from the Tashkent State Law Institute and the new Association of Advocates. Funding from the Soros Foundation, a CEELI Advocacy Grant and other donors covered start-up costs for the library, which opened its doors on October 21, 1997.
- CEELI cooperated with the Konrad Adenaur Foundation to prepare and distribute to the legal community informational brochures advertising the library's services. During the library's first three weeks of operation, 460 patrons utilized the center's collection and borrowed books. Students and faculty put over 650 books into circulation from Tashkent State Law Institute and other institutes, lawyers, members of the government, the Institute for Strategic Studies and journalists.
- CEELI secured funding for the OLLI to send its law librarian to train on modern library techniques in Kyiv in December 1998. During the training the librarian was exposed to various library cataloguing software, including the software OLLI purchased for its system.
- The OLLI has steadily expanded its collection as CEELI helps the library to purchase \$10,000 in CD-ROM software, including catalogue software that supports Cyrillic text, and to manage the first installment of a \$6,000 grant for salaries and office supplies. CEELI has arranged to send the OLLI's librarian to Russia to obtain Russian-language texts, and has provided continual guidance to the OLLI's Board of Directors. Areas in which CEELI has provided advice include a plan for setting and collecting membership fees, which OLLI finalized and began instituting in December 1998.
- In September 1999, CEELI held a regional conference in its Tashkent office for chief librarians and staff working in the four CEELI-supported legal resource centers in Central Asia. Participants received basic information on the hierarchy of laws, the legislative process, the court system, elementary legal research and analysis, the differences between civil and common law systems, and principles of international law. Law librarians also engaged in a roundtable to discuss their most pressing problems related to library management, budgeting, strategic planning and expanding readership.
- In 1999, approximately 30,000 readers used the OLLI. Library staff have calculated that 60% of their patrons are associated with Tashkent State Law Institute, 20% hail from other law schools, and 15% work in non-governmental organizations or small businesses. The OLLI also acquired ten new databases, 1,000 new books, and created an electronic catalogue of library materials.
- In February 2000, the CEELI Gender Issues Legal Specialist began discussions with the United States Information Service on the creation of regional libraries in Uzbekistan. CEELI plans to visit libraries in areas such as the Fergana Valley, Samarkand and Bukhara to determine their level of need for materials on the legal rights of women, with a particular focus on domestic violence and family law. CEELI then will develop a list of materials that should be supplied to each library. CEELI has also agreed to assist the OLLI in Tashkent to find funding to increase its holdings on women's rights issues.
- CEELI continues to work with OLLI staff and Board members to provide technical advice on management and sustainability. To preserve its mission as a provider of publicly available legal information, the OLLI Board has decided to relocate outside of the Tashkent State Law Institute to increase access to its collection. Once the issue of access has been resolved, CEELI will assist the library find funding for an electronic legal library.

Criminal Law Reform

- In June 1999, DOJ-CEELI posted an experienced prosecutor in Tashkent to initiate a criminal law program in Uzbekistan.
- In November 1999, CEELI sponsored an intensive, three-day conference on "Criminal Justice and the Adversarial System" together with the Association of Advocates, the Association of Judges, and the Office of the Procuracy. The purpose of the conference was to focus attention on Uzbekistan's criminal justice system and to consider how to address its shortcomings. Participants included 20 practicing judges, 20 practicing advocates, and 20 practicing procurators. By bringing together judges, defense advocates, and procurators for the first time in a conference setting, the conference provided a forum for healthy discussion and the meaningful exchange of views. Issues included: (1) the rationale and characteristics of adversarial practice, (2) the use of bail and pre-trial release, (3) discovery practice and plea negotiations, (4) challenges to the admission of evidence, (5) the role of judge, prosecutor, and defense at trial, and (6) appellate practice. The purpose behind each presentation was to detail how adversary practice can lead to an efficient and reliable criminal justice system that protects individual rights.
- The Criminal Justice conference in November complemented growing support within the government for criminal justice reform, as manifested by the recent creation of the Presidential Reform Commission. CEELI compiled the results of working group sessions from the conference, which had considered necessary reforms to the criminal justice system, and submitted the recommendations to the Presidential Reform Commission. Perhaps more significantly, at a meeting of the Presidential Reform Commission, a Supreme Court judge, who had attended the Criminal Justice workshop, gave an overview of the CEELI conference for Commission members. His presentation proved critical in persuading Commission members of the need to adopt a more adversarial system.

Women's Legal Issues

- In February 2000, CEELI placed a Gender Issues Legal Specialist in Uzbekistan to expand CEELI's programming in this area. CEELI will work primarily with legal professionals to increase their ability to deal with legal issues related to women's rights, with a particular focus on family law and domestic violence.
- In conjunction with the Soros Foundation, CEELI conducted two trainings in April 2000 for crisis center staff, including doctors and lawyers, on the legal issues associated with incidences of domestic violence and, more broadly, on women's rights.
- CEELI continues to work with the Women's Bar Association of Uzbekistan and coordinated the attendance of 22 Uzbek lawyers at the CEELI-sponsored Central Asian Women's Bar Conference in Almaty in June 2000.
- CEELI sponsored roundtables in Tashkent, Bukhara, Nukus, Samarkand and Kokand to bring together women's NGOs on issues of common concern and to foster greater coordination between and among international assistance providers working on gender issues.
- During the Summer of 2000, CEELI began conducting a series of 1-day trainings throughout Uzbekistan for women's rights lawyers on client development, interviewing and advocacy skills.
- CEELI is working with the Oliy Majlis (Parliament) Ombudsman to provide training for the Ombudsman's representatives in Tashkent and the regions on women's rights issues.
- CEELI, in conjunction with Global Training for Development (GTD), trained makhalla (community) leaders, psychologists, lawyers and educators on domestic violence in Fergana City.

- CEELI taught several classes on women's rights at the Economic State University, and will continue to coordinate with the University for the rest of 2000.

Environmental Law Program

- In November 1999, CEELI placed a short-term Environmental Law Specialist in Uzbekistan to prepare an assessment on the viability of an Environmental Public Advocacy Center (EPAC) in Uzbekistan. The specialist interviewed members of the environmental community in Uzbekistan and prepared a report with recommendations for future work by CEELI in the area of environmental law reform.
- In February 2000, CEELI placed an Environmental Law Liaison in Uzbekistan to coordinate CEELI efforts to build an indigenous EPAC modeled after successful programs in Ukraine, Moldova, and Armenia.
- CEELI met with interested members of the Uzbek environmental community, including NGOs, relevant government agencies, lawyers and law students, and began facilitating a dialogue on the need for greater environmental reforms and the role an EPAC might play in instituting such reforms.
- In April 2000, CEELI sponsored a two-day roundtable of Uzbek Environmental NGOs to share information on environmental legal issues and to start the process of coordinating the efforts of the environmental community. This was the first such meeting of its kind held in Uzbekistan.
- CEELI continues to work with various members of the Uzbek environmental community to successfully form an Uzbekistan EPAC.

ANNEX E

New Judicial Ethics Code – Kazakhstan

Judicial Code of Ethics³⁸

**Of the Judges Association of Kazakhstan
Revised and Reissued
July 2001**

**The Constitution of the Republic of Kazakhstan
(Excerpt)**

Article 76

1. Judicial power shall be exercised on the behalf of the Republic of Kazakhstan and shall be intended to protect the rights, freedoms, and legal interests of the citizens and organizations for ensuring the observance of the Constitution, laws, other regulatory legal acts, and shall ensure international treaties of the Republic.

**On the Judicial System and Status of Judges of the Republic of Kazakhstan
The Constitutional Law of the Republic of Kazakhstan
(Excerpt)**

Article 28. Requirements for Judges

1. Judges shall:

- 1) strictly observe the Constitution and the Law of the Republic of Kazakhstan;
- 2) observe the requirements of the Judges' Ethics in the process of carrying out their constitutional duties/responsibilities, as well as in social relationships, in order to exercise justice, and avoid all that might discredit authority and dignity of a judge, or arouse doubts in his/her objectivity and impartiality;
- 3) withstand any attempts of illegal intervention/interference with the activity of exercising justice;
- 4) observe confidentiality of the judges' counsel.

Article 39. Basis for disciplinary accountability of judges

1. A judge may be called to account for:

- 1) violation of law and order in the examination of court cases;
- 2) performance of fallacious misdemeanor, contradicting the Judges' Ethics;
- 3) flagrant violation of labor/office discipline.

³⁸ Translated by MSI for the Central Asian Rule of Law Assessment

On the Judicial System and Status of Judges of the Republic of Kazakhstan
The Constitutional Law of the Republic of Kazakhstan
(Excerpt)

Article 32. The Judges' Oath

1. The person, selected for the first time or appointed as judge, takes the following oath:

“Solemnly I swear to honestly and conscientiously stand for my duties, to exercise justice, subordinated only to the Constitution and the Law of the Republic of Kazakhstan, and to be impartial and just as the duty of judge orders to be”.

THE JUDGES' ETHIC CODE

Major Principles of Judges' Conduct

- The judge shall seek to establish higher standards of conduct and observe them in order to strengthen independence of the court and respect for it.
- Any judge shall respect independence and honor of the judicial authority and evade compromising circumstances for the position in any form of activity.
- The judge is a bearer of esteem and prestige of the judicial power.
- The rules of the present Code shall be interpreted and applied in compliance with the above mentioned principles.

Article 1

- The judge shall be loyal to the oath, strictly observe the law and act to rule out doubts about his/her impartiality and honesty.
- The judge shall not permit any of his/her family, social or other connections to influence the activity as judge. The judge shall be notified of the financial interests of his/her spouse and other persons at his/her expense.

Article 2

- The judge shall reach a decision, following only the careful and thorough determination of facts, in compliance with the law and conscience.
- In legal proceedings the judge shall have no right to express in words or actions any bias or inadequate objectivity, neither shall he permit this to any persons participating in the proceeding.
- The judge shall have no right to disclose or take advantage of any confidential information obtained as a result of the position.

Article 3

- The judge, lodged with administrative liabilities, shall observe them conscientiously and competently, assisting, first of all, judges in their activity and by no means permitting any restrictions on independence or pressure, or any other methods of influence on them, in order to have an impact upon decision taking. Otherwise, any judge under pressure or any other measures of coercion shall pose a question as to his/her accountability.

Article 4

- In the social environment the judge shall act in order to give no grounds for any doubt of his/her impartiality and honesty, so that his/her actions should not discredit the title of judge and the authority of the judicial system.

Article 5

- The judge shall have a right, without restrictions, to be engaged in any teaching, scientific or any other creative activity, and receive for it an adequate remuneration. Such an activity of the judge, as one of the forms of improving professional qualification, shall be supported and encouraged.
- The judge's position is incompatible with a deputy's mandate, engagement in any business activity or in any administrative body or a supervision council of any commercial organization.

Article 6

- The judge shall have no right to act in the capacity of a plenipotentiary representative on cases or other legitimate interests of other persons, with the exception of the cases concerning his/her family members and those not impeding the execution of his/her responsibilities.

Article 7

- For violations of the present Code's regulations, the bodies of the judges' associations may address a question to corresponding officials, who have a right to institute disciplinary proceedings, as to taking measures of a disciplinary character with respect to guilty persons.
- The present Code's regulations from the time of adoption shall be applied to all judges of the Republic of Kazakhstan, selected or appointed in prescribed manner, as well as to the resigned judges.
- The order and conditions for complying the Judges' Ethic Code shall be regulated by a decree issued by the Central Council of Judges' Association of the Republic of Kazakhstan.

**Issued at a session of the Central Council of
Judges' Association of the Republic of Kazakhstan
July 6, 2001**

The Regulation on the Commission for the Judges' Ethic

1. General Provisions

- 1.1. The Present Regulation is drafted in compliance with the Constitutional Law of the Republic of Kazakhstan, dated from December 25, 2000, "On the Judicial System and Status of Judges of the Republic of Kazakhstan", the Decree of the Judges' Association of the Republic of Kazakhstan, and the Regulation on a branch of the Judges' Association.
- 1.2. The Commission on the Judges' Ethic (further on – the Commission) in its actions follows the Judges' Ethic Code, issued by the 3rd Congress of the Judges' Association of the RK.
- 1.3. The aim of the Commission's work is attention to purity of a set of judges' associations, observance by all judges of ethic rules and behavior standards, established by the Judges' Ethic Code.
- 1.4. Commissions are formed and operate under the branches of the Judges' Association.

2. The Order of Commission Establishments

- 2.1. The Commission's staff is formed by the Council of the branch of the Judges' Association, consisting of the Council members of the branch and other judges, delegated by the judges' conference for a two-year term.
- 2.2. The Commission consists of a chairman, secretary and members. The number of the
- 2.3. Commission members, represented by the Council of the branch, is established by the Judges' Association.
- 2.4. Neither the Chairman of the regional court or other equal courts nor the Collegium chairmen of this court, shall be allowed in the Commission membership.
- 2.5. The basis for a judge to be dismissed from the Commission staff may be his/her personal statement or the judges' application.

3. Conditions of the material and application examination

- 3.1. The Commission may examine materials, applications and complaints about violations of the Judges' Ethic Code by judges, either on their own initiative or according to applications and complaints from citizens, officials and official organizations.
- 3.2. The cause for considering the issue of the violation of the Judges' Ethic may be the information contained in mass media publications, representations of the procurator's office and other official documents, letters, statements and complaints of citizens.
- 3.3. The Supreme Court Chairman, the chairmen of a regional and other equal courts may make a request to the Commission as to conclude: whether any of the judges' acts or his/her personal behavior violates the Judges' Ethic Code.
- 3.4. The citizens' and legal corporations' representations, letters, applications and statements, which express facts of law violation and obstacles in the case investigation process, shall be sent by the Commission for examination, according to their character, to a corresponding official authorized to start a disciplinary proceeding.
- 3.5. Neither the order of the Commission's work nor the term of application examination or other conditions, shall be stipulated by the Present Regulation; they shall be established by the Council of the branch.

4. The Order of the Commission work

- 4.1. At a session in a mandatory order, there is the judge, whose act is being considered. There may be present other interested persons at a Commission session.
- 4.2. Decisions of the Commission shall be taken by voting. So, thereby, the decisions of the Commission shall be admitted competent if the majority of the Commission members have been present at a session and there have been over a half of those present voting. In an equal number of the votes the chairman's vote shall be considered decisive. The Commission members shall keep the voting process confidential.
- 4.3. The Commission's judgments shall be pronounced in the form of a conclusion, signed by all the Commission members.
- 4.4. The conclusion shall be handed to the person whose acts has been the object of the Commission consideration.
- 4.5. Provided that the judges' acts have been considered according to an official person's application authorized to start a disciplinary proceeding, the Commission's conclusion shall be sent to this person. Other persons, according to whose applications the judge's acts have been considered, receive a response on the results of the complaint consideration.
- 4.6. As to the results of the examination, the Commission shall have a right:
- 4.7. to send the conclusion to a corresponding official, authorized to start a disciplinary proceeding, related to the judge who has violated the Judges' Ethic Code;
- 4.8. to reprimand publicly;
- 4.9. to pass over in discussion.
- 4.10. The Commission shall regularly review the considered applications and notify about it the Central Council of the Judges' Association, the Council of the branch, as well as the Supreme Court Chairman, the chairmen of regional and other equal courts.

**Judges' Association
Chairman**

Abdraimov B.Z.

Annex F

Alternatives to the Judiciary

Alternative dispute resolution (ADR), both arbitration and mediation, and traditional courts are of some interest to donors in this region, since they offer an alternative to judicial decision making which, as the foregoing indicates, is considered by many observers to be problematic.

ADR is not widely used in the region, although Kazakhstan, in principle, accepts arbitration through the International Court for Arbitration as an enforceable basis for settling disputes involving international firms. Donor experimentation with ADR of which the Assessment Team became aware include:

- An experiment that is being undertaken in southern Kyrgyzstan, with support from the British bilateral development agency, DFID in using third party arbitration to settle land disputes that emerge as a function of Kyrgyzstan's new land law. Arbitrators are being trained for this purpose. Judges in Osh, Kyrgyzstan are familiar with the project and understand that they will be expected to enter the results of these arbitrations as binding and enforceable decisions of the Court. Judges in Osh with whom the Assessment Team met saw the arbitration project as useful, since it will reduce the burden on courts in cases that parties are willing to resolve them in this way.
- Another approach to ensuring that citizens are able to exercise their legal rights is being implemented by AIKYN, a consumer rights organization in Kyrgyzstan operated by a group of retired attorneys, on a shoestring budget. This organization, which has an office in the capital and offices in two smaller cities deals with consumer rights problems not by filing law suits but rather by working with consumers who come to their offices, i.e., explaining to them what their rights are and how to speak up for those rights with the merchants with whom they have problems. AIKYN reports that their clients have a high rate of success with their efforts to obtain satisfaction from merchants without going to court.

Interest in ADR in this region extends among donors to the question of whether traditional courts and other structures in existence in the region have a sufficient resemblance to ADR to suggest that they might be used to augment the local judicial systems in some way. Two structures in the region are of interest in this regard.

- In Kyrgyzstan, courts of elders, or *aksakal*, literally "white beard" are linked historically to earlier times when village elders decided disputes. In 1995, Kyrgyzstan's President issued a decree recognizing these exclusively male structures for purposes of resolving small disputes and some family disputes. *Aksakal* leaders are now elected, and both men and women vote. While they have an official status, *aksakal* courts have no relationship to the judicial system, and citizens are free to take any case to court. Human rights observers have concerns about the *aksakal* because it can deny parties due process, regardless of whether they are male or female. There is also concern about cases where *aksakal* courts either handled cases beyond their purview or pronounced judgment that were excessive: in one reported instance an *asakal* court issued a death sentence. *Aksakal* courts are viewed by some as being more of a variant of a religious court than a community based arbitration or mediation system.
- In Uzbekistan, a neighborhood committees, call *Mahallah*, act as mediators for some types of disputes, but their recommendations are not binding and citizens are free to pursue their interests through the courts. Like an extended family, the *Mahallah*, which has an elected structure, often has views on the social behavior of its members, herding them, as it were, to conform to group

norms. Both men and women hold leadership positions in Mahallahs, which, among other things, see it as their role to try to ensure family stability. On some matters, the Mahallah may be asked to vouch for a person's character, e.g., to a court. The *Mahallah* is also where neighborhood residents tend to take smaller disputes that they believe they can settle out side of a court, including domestic violence cases. The *Mahallah* can act as an arbitrator in such circumstances, but its decisions are not binding and parties that are not happy with the outcome can proceed to bring their dispute before a judge, who may in turn ask the *Mahallah* whether it was consulted and what it concluded. The high percentage of domestic violence cases found in rayon level case loads in a recent study for USAID tends to confirm the idea that the Mahallah do not discourage women from taking their cases to court when non-binding Mahallah mediation is viewed as an inadequate response.³⁹ When first established *Mahallah* were thought by some to exist as a tool of government, which would report on them, reminiscent of elements of the Soviet system. Over the course of its interviews in Uzbekistan the Assessment Team found that views on the *Mahallah* structure differed, with some thinking it valuable and others not. Those living in cities were more likely than others to feel that the *Mahallah* concept is not relevant to their lives. Members of the judiciary view the arbitration role the *Mahallah* serves with respect to small disputes, including family disputes, as useful, but not as a substitute for the existing court system.

While the British funded arbitration experiment in Kyrgyzstan may yield a viable model for alternative dispute resolution, neither the *aksakal*, as a function of their arbitrary and potentially excessive decisions, nor the Mahallah, largely because of its reputation as a tool of the government, are not widely viewed locally as serious alternatives to the judiciary, no matter what people think about the honesty and impartiality of the courts in their country.

39 Minnesota Advocates for Human Rights, *ibid.*

ANNEX G

Preliminary Results of ABA/CEELI Conference on Student Law Clinic Standards

National Conference on Legal Clinical Standards Development

December 4-5, 2001.

Dostuk Hotel, Bishkek

THE GENERAL GOAL OF STANDARDS: Defining the minimal requirements for legal clinical education.

Legal Clinical Education – is one of the forms of practical education for law students aimed at forming and developing the professional skills.

Expected results	Compulsory Standards	Recommendatory Standards	Compulsory Indicators	Recommendatory Standards
<p>1. Clinic's Organization</p> <ul style="list-style-type: none"> • Effective structure establishment for the clinic • Standard establishment on curriculum development • Practical skills for Legal education promotion • Reduction of gap between the universal education and professional skills with the use of interactive methods. 	<ul style="list-style-type: none"> • Regulation, confirmed by competent agency, providing the general tasks and goals, management and supervision, financial sources, ethics rules; • Qualified lawyers and teachers of Higher Educational Institutes; • Provided services registration; • Administration; • Effective monitoring (internal and external); • Clinic to be established within University, NOG or on mixed basis; • Professional ethics; • Clinical provision methods; • Budget; • Clinical methodology; • Monitoring provision (corporate). 	<ul style="list-style-type: none"> • Partnership links between clinics and other organizations; • Accessible location; • Clinic's establishment under sustainable educational institution; • Specialization; • Incentive bonus mechanism for students, teachers and lawyers; • Competitive basis; • Strategic plan on sustainability and partial financing; • Marketing plan. 	<ul style="list-style-type: none"> • Order of competent body; • Contracts with lawyers; • Orders on teachers; • Registration documents (journal, cards and so on); • Consultative Committee; • Executive personnel of the clinic; • Questionnaires, articles, feedback, audit once a year; • Order on establishment, Contract on cooperation, Resolution on clinic's establishment; • Code on professional ethics – behavior, cases conduct, confidentiality matters, absence of complains from the clients; • Normative-legal base, legal literatures, telephone, fax; facility; • Monetary funds in the cashier, donors; • Curriculum of the clinic; 	<ul style="list-style-type: none"> • Business correspondence; • Center-convenient location; • Sustainability for clinic's establishment. Strategic plan on achieving the sustainability and partial self-financing, marketing; • Curriculum, range of studies classes, cases; • Certificates, diplomas, premiums, participation at conferences.
<p>2. Curriculum</p> <ul style="list-style-type: none"> • Development of a systemized and structured curriculum for students to acquire the practical and professional skills; • Maximal use of available resources; • Clinic's curriculum; • Specialization; • Consultative committee; • Inter-institutional clinic. 	<ul style="list-style-type: none"> • Practical skills on psychology ; • Discipline– specialization (depending on clinic's mission); • Working schedule; • Interviewing; • Work at public reception room; • Practical classes (moot court); • Techniques of legal letters; • Presentation skills; • Consultation; • Court representation; • Preliminary preparation of court materials; 	<ul style="list-style-type: none"> • Ability to work with the computer; • Interactive methods; • Training on examination; • Round table with law enforcement agencies and state bodies; • Feedback journal; • Participation of students at conferences; • Course papers; • Stress-manager. 	<ul style="list-style-type: none"> • Number of hours on psychology; • Number of hours on specialization; • Making a quarterly working schedule; • Number of hours for a facultative classes; • Introduction of additional hours; • Additional classes on consulting, preliminary preparation of court materials, assessment and collection of evidences, paperwork in the clinic; 	<ul style="list-style-type: none"> • Number of hours on informational science; • Number of hours on additional (facultative classes).

Expected results	Compulsory Standards	Recommendatory Standards	Compulsory Indicators	Recommendatory Standards
	<ul style="list-style-type: none"> • Collection and assessment of evidences; • Legal clinic’s ethics; • Paperwork introduction; • Differential credit, assessing the work of a student; • Develop the plan on clinical education as a part of state standards on legal education – interactive methods depending on the specialization and define the number of hours; • Student journal, documents, curriculum, registration journal, diary of a clinical expert, journal of a teacher-lawyer; • Internal document on professional ethics rules; • Confidentiality, responsibility – main principles of clinical work; • Main principles of clinical work; • Defined number of students assigned to each teacher or a lawyer; • Preparation of students before the participation in court or consulting; 		<ul style="list-style-type: none"> • Internal documents development on professional ethics of a lawyer regulating the ethic side of clinical activity; • Assess the knowledge of students by differential credit or course paperwork; • Development and use of listed above reporting documents. 	
<p>3. Students</p> <ul style="list-style-type: none"> • Maximum use of resources available; • Forming the contingent of clinical experts and advancing their professional level on competition basis – selection with the 	<ul style="list-style-type: none"> • Students of 1-2 course are not allowed to work in the clinic; • Students of 3-4-5 course – full and part time have the right to work in clinic; • Voluntary basis; • Evaluation of student’s activity in the clinic; 	<ul style="list-style-type: none"> • Gender balance; • Certificates on graduating the clinic; • Students of the 1 and 2 course; • The selection is done according to clinic’s decision; 	<ul style="list-style-type: none"> • Taking into account the screening; • One lawyer, 10 students % ration; • Application; • Resume of a head, written report, characteristics of a leader (feedback); feedback of a client; final attestation (differential credit); 	<ul style="list-style-type: none"> • Recommendatory indicators • 50 x 50 (depending on clinic’s specialization); • % ration of issued certificates number to the number of enrolled students;

Expected results	Compulsory Standards	Recommendatory Standards	Compulsory Indicators	Recommendatory Standards
<p>following certificate issuance and depending on the clinic's specialization</p>	<ul style="list-style-type: none"> Defining the minimum term for internship is 6 months; System of options; Control over consulting by students, different legal activity of students in the clinic. 	<ul style="list-style-type: none"> Contract between student and a clinic; Incentives: seminars, conferences, internships, selection process, specialization; Number of students; the term of internship 	<ul style="list-style-type: none"> Skills development, number of accepted clients, number of passed subjects, number of hours in reception room (registration journal); The ratio of volunteers and enrolled students; number of graduated in accordance with the number of enrolled depending on the number of lawyers; Feedback (client's opinion, final results of assessment) Tendency to improving the quality of provided services. Increase of client number, weekly analyses of students' activity, meetings. 	<ul style="list-style-type: none"> the number of application, % ratio of volunteers to the number of students' variety of forms, number of selected, the comparison of forms and the selection of best applications; fixing the rights and commitments, the connection between the students and clinic; the number of seminars and conferences. The number of promoted students; depending on the course 6 months.
<p>4. Clients</p> <ul style="list-style-type: none"> Improving the quality of free legal aid; Development and implementation of strategy on work with clients; Clients – socially vulnerable groups; Free legal consulting; Trust (protection); Quality of provided services; Contract between the client and clinic; Development of strategy on work with clients. 	<ul style="list-style-type: none"> Selection of clients (vulnerable groups – free consulting; the right to chose the client; absence of conflict of interests); Selection of a client depending on the complexity of the case; Procedures on taking in the clients; Questionnaires (contract- case study only if it is a court case between the client and clinic) The rules of confidentiality in work with the client – golden rule; Administration system – Internal document (№ case, folder, plot of the case) defining the range of beneficiaries (depending on clinic's specialization); 	<ul style="list-style-type: none"> Any client (independently from the social status); Questionnaire – or confirming document on social vulnerability; Network of partners (data base); Assessment of clinic's activity by clients (book of proposals and complains) Advertising activity to attract the clients; Alternative consulting (through mass media and other communication means – Internet, telephone) 	<ul style="list-style-type: none"> Fixation of biographical particulars, socially vulnerable groups, statistical analyses of clients in the Regulation of the clinic. Instruction on procedures of taking in the clients, schedule of consulting, registration journal, questionnaires. Application of questionnaire by each client; Regulation clinic. Contract (agreement) between the client and clinic, conflict of interests (exists or not) Participation of a lawyer under consulting; Ethics code, the book of feedback. Report of students Regulation and contract. 	<ul style="list-style-type: none"> Statistical Analyses; Questionnaires Joint activity. Dispatching cases; The book of feedback and proposals; Booklets, articles, mass media, plan; Through mass media, internet, telephone.

Expected results	Compulsory Standards	Recommendatory Standards	Compulsory Indicators	Recommendatory Standards
	<ul style="list-style-type: none"> • An appropriate recommendation on procedures of taking in clients – facility, access to telephone, table, chair, water, valerian drops; • Registration and systematization of cases going through the clinic; • Quality control – limitation upon complexity of the case; • Compliance with professional ethics; • Questionnaire for clients to define the quality of provided services; • Absence of conflict of interests – a separate facility for consulting; • Defining the quality of case for each student; • The clinic is responsible for the quality of consultations. 			
<p>5. Resources</p> <ul style="list-style-type: none"> • Provision of sustainable, integral and qualified activity of the clinic by attracting material-technical financial and intellectual resources; • Receive a maximal use from using the limited resources. 	<ul style="list-style-type: none"> • Budget; • Personnel (paid employees), students; • Material-technical resources (facility, equipment, legal resources, communication means) and intellectual resources; • Intellectual data base; • Manuals, instructions, leadership – dynamic and always varying. 	<ul style="list-style-type: none"> • Internet, e-mail; • Development of material-technical base • Public Relations (communicative resources); • Donors; • Relations with other organizations; • Volunteers, experts; • Search of resources to replenish the budget • Teacher – Lawyer; • Self-financing; • Financial resources search 	<ul style="list-style-type: none"> • Confirmed once a year. Financial report. • Students – complete number – attraction once a year. Volunteers and experts. Staff list. • Inventory of material-technical resources once a year. • Intellectual resources – the number of paid employees. 	<ul style="list-style-type: none"> • The contract with provider – once a year. • Additional financial resources available. • Relations with other organizations (contracts). Advertising activity. •

Annex H

Additional Findings Concerning Citizen Access to Justice in Kazakhstan, Kyrgyzstan and Uzbekistan

1. Access to Courts

Physical access to courts does not seriously constrain access to justice in any of the three countries visited. Since Soviet times, the court system has reached down to the rayon, or town level where both civil and criminal cases are heard. Only in Uzbekistan, where courts are implementing a recent decision with respect to court specialization was a problem reported. In order to separate civil and criminal courts without increasing the number of judges, a decision had been made to establish civil courts on a multi-rayon basis. In some towns the team was told that civil court judges were solving this problem by spending different days in different rayon. Other areas civil judges were hearing cases in only one of the rayons they covered. One judge in this position told the Team that she encouraged citizens to mail their cases to her, which is allowed under Uzbek law. Most observers of this situation said that people would be reluctant to trust important documents to the mail or the courts. The location issues involved in the decision to appoint civil judges on a multi-rayon basis is one that the Supreme Court is aware of and for which it is looking for alternative solutions.

2. Access to Representation

With regard to representation, the Assessment Team was frequently told that ordinary citizens cannot easily pay attorney's fees. This reportedly has an adverse effect when the cases in question are civil cases, where few options for obtaining free legal services exist. Although representation is not strictly necessary in commercial and civil cases, an imbalance may arise when only one of the parties can afford to retain an attorney. For criminal cases, officials in the Kazakhstan, Uzbekistan and Kyrgyzstan are required by law to provide the accused with attorneys when representation is requested. However, many people reportedly do not know that this is one of their rights. In Uzbekistan, where the Assessment Team met with members of a regional Collegium of Advocates, it was told that members of their organization, and organizations like theirs elsewhere in the country were assigned cases when defendants have no other option. This is similar to the laws and practice found in the other two countries the team visited.

Some NGOs in the region also provided free legal services for the poor when they are involved in criminal cases, including one funded by NED in southern Kyrgyzstan. The Assessment Team visited a private law firm in Samarkand, Uzbekistan that provides legal services for the poor, particularly women, including handling criminal cases. The Team also visited a new law school clinic that is being set up in Tashkent at Kyrgyz-Uzbek University specifically for the purpose of handling criminal cases. While the concept of legal services for the poor seems to be well understood in the region, the Assessment Team was not able to estimate the capacity of NGOs and pro-active firms to meet whatever demand for such services emerges.

Access to representation, the Assessment Team was told in interviews with attorneys that assist criminal defendants, is more than simply a matter of being able to pay for counsel. By law, these attorneys have the right to see their clients immediately and to be present for interrogations. In practice, however, a defendant's right to counsel is often compromised. Police reportedly fail routinely to inform defendants that they have this right, or that a lawyer can be appointed for them. Local attorneys also told the Assessment Team that there is no equivalent in the countries the team visited of "Miranda", i.e., the required reading of a citizens rights to each person that is detained. Attorneys who described these problems said that they only occur when prisoners are unaware of their rights and prosecutors do not

inform them. Law enforcement officials, these attorneys told the Team, are simply making assertions that allow them to hold off attorney involvement in the case. Reports prepared by the International Helsinki Federation (IHF), and other organizations that monitor human rights abuses, suggest that the denial of representation is particularly problematic for political cases, and particularly in Uzbekistan.

Human rights monitoring reports indicate that when individuals who represent the opposition in some form are arrested they are sometimes detained *incommunicado* for long periods or transferred to medical or mental health facilities where the fact that they are being detained without representation may be less apparent.⁴⁰ While reports of this sort appear to be more common and more widely publicized for Uzbekistan than the other two countries, pretrial detention, of up to a year with the concurrence of the head of the Prosecutor's Office, is sanctioned by the laws of Kyrgyzstan and Kazakhstan and applied. Arrests on weak charges coupled with a long period of pretrial detention was reported as a standard approach to dealing with representatives of political opponents during the presidential elections of 1999 and 2000, respectively.

3. Gender, Ethnicity and Other Potential Barriers to Access to Justice

The Assessment Team did not find strong evidence suggesting that women or members of specific ethnic groups are denied access to justice on these grounds. Human rights groups have commented in the past about problems faced by the Uighurs, but the Assessment Team was not told about these problems by any of the groups or individuals it interviewed. On the other hand, the Assessment Team did learn that special efforts that were being made to ensure that refugees in Kyrgyzstan received free legal assistance from a USAID funded student law clinic, with the support of UNHCR.

The Assessment Team was told by NGO representatives in Uzbekistan that rural women's access to court may be somewhat less than men's, but not as a function of the law or normal court practices in that country. What holds women back, to the degree that they do not pursue cases they might otherwise pursue, are traditions or "unwritten laws" that govern relationships within families and villages. Younger women, and those who live in larger cities, some of whom were present at the NGO meeting where the problem of "unwritten laws" were raised as a concern, suggested that this phenomenon may be either generational or rural in nature since the problem "didn't apply" to them, as several put it. A report from a Eurasia staff member on this topic included an example that seemed to be similar to those described by the NGO representative from Uzbekistan.

A more serious impediment to justice for women was noted for the Assessment Team when USAID's grantee and an NGO leader, independent of each other, reported on language in the criminal code that made it a woman's responsibility rather than the responsibility of the state to pursue the aggressor in certain categories of rape cases. This situation, as noted above, has been rectified.

⁴⁰ International Helsinki Federation (IHF) Mission to Central Asia (Kazakhstan, Kyrgyzstan and Uzbekistan), 2001.