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# KAZAKHSTAN JUDICIAL ASSISTANCE PROJECT

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# CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY</b> .....	7
<b>II.</b>	<b>PROJECT ORGANIZATION</b> .....	8
<b>III.</b>	<b>ENABLING ENVIRONMENT FOR JUDICIAL REFORM AND AUTONOMY</b> .....	10
	The Kazakhstani Judicial System.....	10
	Description of the Various Indigenous Reform Initiatives This Year .....	11
	Revisions of the Law on the Judiciary .....	11
	Revisions of the Law on the Enforcement of Judgments .....	11
	Introduction of the Idea of Private Enforcement of Judgments.....	12
	Support for Pilot Court Video Recording .....	12
	Support for Expansion of Mentorship Program .....	13
	Support for Revisions and Enhancement of Judicial Ethics .....	14
	Support for the Introduction of Jury Trials .....	14
<b>IV.</b>	<b>PROGRAM IMPACT TO DATE</b> .....	16
	KJAP Cultivation of Judicial Partnerships .....	16
	Strategy of Targeted Assistance .....	16
	Review and Commentary on New Draft Law on the Judiciary to Promote Further Structural Protections for Judicial Independence .....	16
	Involvement of Kazakhstani Judicial Officials with UIHJ to Promote Adoption of Best Practices in Private Enforcement of Judgments.....	17
	Making the Bostandyk Piloting Court Video Recording Program a Success.....	18
	Building a Culture of Professional Development with the Mentorship Program ..	22
	Encouraging the Judiciary to Take Ownership of its Disciplinary Process for .....	
	Ethical Breaches .....	23
	Education on Jury Trial Best Practices.....	24
	Supporting the Development of a Sustainable Capacity to Deliver Judicial .....	
	Training in Kazakhstan .....	25
<b>V.</b>	<b>CHALLENGES AND ROADBLOCKS TO DATE</b> .....	27
	Kazakhstani Structural Changes — The Shift to Astana.....	27
	Managing Expectations with a Small Project .....	27
	Kazakhstani Staff Turnover .....	28
	International Skepticism About Reform Commitment.....	29
	Lack of History or Familiarity with Jury Trials .....	29
<b>VI.</b>	<b>TACTICAL CHANGES TO ADDRESS CHALLENGES</b> .....	30
	Restructuring of the Program Footprint, Emphasizing Astana .....	30
	Working from the Judicial and Government Side on Judicial Discipline.....	30
	Increased Education on the Administrative Challenges Involved in Managing .....	
	Jury Trials.....	31
	Increased Coordination at the International Level to Build Targeted Reform .....	
	Coalitions.....	31
<b>VII.</b>	<b>LONGER TERM GOALS</b> .....	32
	Converting the Bostandyk Pilot to a National Reality .....	32
	Institutionalizing More Effective Judicial Disciplinary Procedures .....	32
	Increasing Public Awareness of New Developments — Particularly with .....	
	Regard to Jury Trials .....	32
	Solidifying International Cooperation Targeted at Reform Opportunities .....	33
	Assisting with the Restart of the Judicial Training Institute in Astana .....	33
<b>VIII.</b>	<b>CONCLUSION</b> .....	34



## I. EXECUTIVE SUMMARY

Although the Kazakhstani judiciary labors under a negative Soviet legacy, the support for reform within the rank and file of the judiciary is notable in Central Asia. All too often, Central Asia is viewed as a monolith. But in recent years especially, the five Central Asian republics have each moved in their own separate directions. What happens in one country is no longer a bell-weather for change in another. Though Kazakhstan is by most measures developing far faster and successfully than its neighbors, it continues to struggle with the challenge of how best to develop judicial capacity that can meet the needs of its citizenry and those of the increasing number of foreign investors. The needs of these two constituencies should not be viewed as contrary to one another. Indeed, the priorities of these two constituencies can be mutually reinforcing, such as where the effective enforcement of judgments is concerned.

The favorable judicial reform climate provides an uncommon amount of domestic support for the Kazakhstan Judicial Assistance Program (KJAP). This support is in part because there is a domestic constituency for reform, in part, a function of the international attention focused on the country, and in part, a function of the close and productive relationships KJAP has developed with the Kazakhstani judiciary. Whether a long-term commitment to the “rule of law” will be achieved remains an open question, but the collaboration with KJAP has been consistent and productive.

KJAP’s core program objectives revolve around the planting of seeds for long-term systemic change in five areas: 1) judicial training and support for the judicial academy (hereinafter referred to as the Institute of Justice (IOJ)) in Kazakhstan; 2) a court video recording pilot project; 3) media training and citizen awareness; 4) technical assistance to the Union of Judges of Kazakhstan (UJK); and 5) technical assistance with core, structural legislative reforms. At the end of year one, these seeds for change have been embraced. Momentum and enthusiasm exists to change the way Kazakhstani judges deal with ethics, discipline, enforcement of judgments, record-keeping, and the like.

At the same time, resources to expand the scale of these changes remains very limited, and there exists cause for concern about whether these promising changes will result in permanent improvements in judicial capacity in each and every oblast. The next - and final - year of KJAP will test these sensitive areas, and the project results will be very instructive as to the appropriate next steps. The KJAP experience to date demonstrates that true reforms are possible, and many positive reform concepts are rooted in the activities of local counterparts.

The Kazakhstani judiciary understands that its commitment to professionalism and growth are a public matter that will require a robust domestic and international involvement. An effective program to combat public perceptions of corruption in the judiciary necessitates a change of the way in which the judiciary is administered. KJAP, in conjunction with its judicial counterparts, has embarked on a robust program geared towards effecting such change. The challenge will be how to institutionalize ownership of these reforms across the nation with the limited resources that are currently available.

## II. PROJECT ORGANIZATION

Chemonics signed the Kazakhstan Judicial Assistance Project (KJAP) contract on October 1, 2005. The overarching objective of KJAP is to promote transparency within the judicial system and equal access to the courts by training the media and the judiciary to cooperate with fair reporting and information exchange. It also aims to continue the pilot court recording project, to work with the Institute of Justice to train judges in areas of ethics and decision writing, and to strengthen the Union of Judges of Kazakhstan. Also, KJAP is providing core technical assistance in areas relating to the judicial legal framework. The prime contractor, Chemonics International, is implementing KJAP in conjunction with subcontractors MetaMetrics and the National Judicial College. The KJAP contract currently ends on October 1, 2007.

Working closely with its Kazakhstani counterparts – particularly the Supreme Court of the Republic of Kazakhstan, the IOJ, and the UJK – KJAP accomplishes its objectives through targeted activities in several areas. KJAP is capitalizing on a window of opportunity made possible by the political will for judicial reform within the Government of Kazakhstan and its judicial institutions. Through a collaborative process, KJAP works with its Kazakhstani counterparts to design and implement activities focused on strengthening these institutions, on improving their performance, and on expanding citizen participation. This emphasis on a consultative process that complements indigenous reform efforts will help make KJAP’s activities sustainable.

KJAP’s activities are aligned to – and contribute to the realization of – USAID/CAR Strategic Objective (SO) 2.1 “Strengthened Democratic Culture Among Citizens and Target Institutions,” as well as Intermediate Results (IRs) 1.3.3, “Increased Implementation of Laws and Regulations,” 2.1.2, “Increased Availability of Information on Civic Rights and Public Issues,” 2.1.3 “Enhanced Opportunities for Citizen Participation in Governance,” and 2.1.4, “More Effective, Responsive, and Accountable Local Governance.”

KJAP has five project components. The first four are derived from the task order scope of work (SOW), and the fifth was subsequently added at the request of KJAP’s Kazakhstani counterparts to capitalize on emerging opportunities uncovered during implementation:

1. Judicial training and support for the Institute of Justice
2. Court video recording pilot project
3. Media training and citizen awareness
4. Technical assistance to the Union of Judges of Kazakhstan
5. Core structural technical assistance

During the course of the first year of project implementation, four out of five of these components progressed apace as described below. The only exception is the media and citizen awareness component. Though KJAP committed a significant amount of resources to this component in the early months, the initial management of this component yielded limited results. After a change in the field office staffing structure,

this component was re-engineered to ensure proper impact over the course of the KJAP contract. As KJAP's year two commences, the media and citizen awareness components are moving forward along multiple tracks, which are expected to yield tangible impact in the early months of the coming project year.

### **III. ENABLING ENVIRONMENT FOR JUDICIAL REFORM AND AUTONOMY**

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

Unfortunately, throughout its young history, the Kazakhstani judiciary has remained largely within the control of the executive. In some important respects, the legal system has not changed significantly since the Soviet times. Corruption is believed to be widespread among judges and prosecutors, as well as advocates.

Nevertheless, Kazakhstan has taken some important steps away from its Soviet past. In terms of the judiciary, Kazakhstan stands in notable contrast to its neighbors in allocating significant amounts of resources to improving work conditions for judges. Most importantly, the judiciary's institutions are also keenly interested in building their own capacity, and KJAP is helping them meet this goal. Recognizing that donor funding has a limited duration, KJAP takes great care to ensure the sustainability of its activities by working not just to deliver trainings, but to build the capacity of its counterparts and to help create systems and frameworks that will serve the judiciary and the country as a whole into the future. KJAP is capitalizing upon the reform-minded spirit currently present within the judiciary to fulfill its project objectives and identify new opportunities, jointly with our counterparts, where the project may lend additional assistance through leveraging resources.

#### **The Kazakhstani Judicial System**

In Kazakhstan, the judicial system has three levels. The Supreme Court is the highest court in the country. The next level is the district- (oblast-) level court, which, for some types of cases, may also be the court of first instance. These oblast courts may handle cases in rural areas where there are no local courts. These courts, with 572 judges, sit in each of the country's 14 oblasts, plus in the cities of Almaty and Astana. The lowest courts are the town or oblast level, which, in most circumstances, serve as the court of first instance. There are about 260 located around the country with 1,851 judges.

Apart from the traditional court structure, there are also economic and military courts. There are 16 economic courts (one in each oblast and in the cities of Almaty and Astana), which are analogous to the oblast courts and adjudicate commercial disputes among entrepreneurs and enterprises. Military courts, at the oblast levels, have jurisdiction over crimes committed by members of the military and disputes between military units.

Appeals from the military courts may go to the Supreme Court, although the latter has abolished its military section.

Kazakhstan is also introducing, on an experimental basis, specialized administrative courts to resolve challenges to administrative fines. So far these courts exist only in Almaty and Astana. In addition, a program incorporating juvenile justice and providing for the establishment of specialized juvenile courts has been initiated but is yet to be implemented.

The first constitution the Government of Kazakhstan adopted in 1993 established the Constitutional Court. Pursuant to the constitution adopted in 1995, the Constitutional Court was replaced by a Constitutional Council. The seven-member Constitutional Council renders decisions as to the constitutionality of legislation and decrees. Decisions of the Constitutional Council can be vetoed by the president, but the council can override a veto with a two-thirds vote.

## **Description of the Various Indigenous Reform Initiatives This Year**

### **Revisions of the Law on the Judiciary**

The primary law governing the judiciary is Constitutional Law No. 132 of December 25, 2000, “On the Judicial System and the Status of Judges in the Republic of Kazakhstan” (hereinafter “Constitutional Law”). At the request of the Supreme Court, KJAP provided the technical assistance of a retired U.S. State Supreme Court Chief Justice to analyze the Constitutional Law, comparing it with international standards and reviewing the draft proposed amendments to the law. KJAP’s expert, Justice Robert Utter, traveled to Kazakhstan and met with members of the Supreme Court, Constitutional Council, Union of Judges of Kazakhstan (UJK)<sup>1</sup>, Parliament, and other government officials. Justice Utter interviewed these individuals to gain a comprehensive understanding of the context for the proposed amendments. The report, complete with an analysis of the proposed amendments, was submitted to the Supreme Court and Parliament in September 2006 and is discussed further below.

### **Revisions of the Law on the Enforcement of Judgments**

The public’s trust and confidence in the judiciary is a significant measurement of a well-functioning judiciary. When the courts are unable to, or incapable of, enforcing the judgments they render, the public’s perception of the institutions’ utility diminishes. KJAP closely monitored the new measures proposed to strengthen capacity in this area due to their potential for impact on private enforcement of judgments where the project was engaged in providing technical assistance. On June 22, 2006, President Nazarbayev signed the draft law. This law focuses on the administrative system of enforcement of judgments, specifically increasing the status of bailiffs by increasing their powers, authorities, and pay, and strengthening their social guarantees.

<sup>1</sup> The Union of Judges of Kazakhstan (UJK) is a nationwide, voluntary judicial association, of which the majority of Kazakhstan’s judges are members.

## **Introduction of the Idea of Private Enforcement of Judgments**

In April 2006, KJAP sponsored three officials from the Kazakhstani Supreme Court — Justices Anatoliy Smolin and Ulbossyn Suleimenova, and Deputy Chair of the Court Administration Committee (CAC) Irak Yelekeev — to attend the 19th International Conference of the International Association of Judicial Officers. KJAP sponsored these officials to attend the training so that they could partake in discussions concerning the private enforcement of judgments, a topic of growing interest in Kazakhstan, at one of the foremost events in this field.

Following the conference, the CAC presented a draft law on the private enforcement of judgments to the Legal Policy Council under the President’s Administration. The presentation, delivered by Deputy Chair Irak Yelekeev, was favorably received, and the Council requested that the CAC prepare a concept paper supporting the draft law. To bolster this effort, KJAP provided technical expertise on the following issues: the draft law’s goals and objectives, the current judicial and legal areas that are in need of improvement vis-à-vis the private enforcement of judgments, measures to protect the rights of parties of the enforcement proceedings and to balance the interests of the recoverer and the debtor, the enforcement of judicial and other court acts on a private basis through the recoverer’s free will in civil cases, the list of court orders the enforcement of which shall be done only by state bodies, the elimination of the possibility for private judicial officers to use coercive measures, the mechanism providing functioning of the private enforcement institution, and areas of expanding the procedural judicial control over judicial and other legal acts enforcement. The CAC submitted the final concept paper in September 2006, and the Legal Policy Council is currently reviewing it.

## **Support for Pilot Court Video Recording**

Despite recent judicial reform, public distrust in the Kazakhstani judicial system is still prevalent. Court procedures are still perceived as corrupt, and the judicial staff is frequently viewed as incompetent. In addition, cases are frequently appealed, and without detailed and accurate records, judicial independence is compromised. Without a verbatim record, judges fear being accused of (and disciplined for) bias or corruption. Court video recording of judicial proceedings provides a verbatim record of trial events and holds the promise of reversing this perception.

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

KJAP is introducing the novel concept of video court recording into Kazakhstan’s judicial procedure — a concept that holds the promise of increasing judicial transparency

and accountability and provides an accurate case record to be used on appeal. During a 12-month pilot project at the Bostandyk District Court in Almaty, KJAP is testing a high-tech system with four cameras and six microphones that thoroughly and accurately captures all aspects of a court case and provides a verbatim record of the case. At the end of the pilot, KJAP will offer official recommendations on the merits of the different systems to the Supreme Court of Kazakhstan and USAID.

There is strong support among the general public, the court staff themselves, and the Kazakhstani government for installing and using a court video recording system in all Kazakhstani courts to promote transparency of the judicial system, protect judges against false accusations in cases of unfavorable judgments, and fight corruption amongst the judiciary. Moreover, the Bostandyk Pilot Court Recording Project has shown that using court video recording equipment during trials reduces the rate of appeals and complaints, and increases the preparation and professionalism of all parties involved as records are provided to all participants on a CD-ROM following the case. The increased quality of proceedings has been highly praised by the entire judiciary.

Nevertheless, the Kazakhstani legal system does not currently recognize an audio or video recording of the case as an official judicial record, and the system still requires the old manual records to be kept. Thus, the procedural legislation needs to be revised to recognize audio and video recordings as official judicial documentation to facilitate the full-use of the system and effectively empower this anticorruption tool.

Recently, discussing the reciprocal relationship in an interview on the Kazakhstani TV show “No Third Option,” K.A. Mami, Chief Justice of the Supreme Court of Kazakhstan, stated: “If all courtrooms in the country were provided with such equipment, we would probably galvanize the procedural amendments.” Further endorsing the need of the video recording equipment, B. Yelchibayev, Chair of the Bostandyk Court, stated that “[i]ntroduction of court recording ensures the transparency and openness of a trial. People would be fully confident in the court as forgery of the evidence would not be possible.”

### **Support for Expansion of Mentorship Program**

Judicial mentorship was introduced in Kazakhstan within the framework of a wider program of training young judges. Mentorship for judges supplements other measures and training programs for newly appointed judges designed to develop both their knowledge of law and trials, and the skills of applying legislative standards and conducting trials. Judicial mentorship recognizes that the judicial examination of a case is not only a professional skill but also an art. Therefore, mentorship for judges solves issues connected with judges’ culture, values, ethics, and the development of the judicial personality.

The mentorship program is a voluntary, but structured, program designed to promote contact between experienced and young judges on issues such as transition of the new professionals, judge’s culture, ethics for the judiciary, development of the individual, and the art and craft of judging. The UJK strongly supports this already popular program and endorses its expansion and improvement to effectively meet the needs of young judges

and capture valuable institutional knowledge. However, expansion of the program has been slowed down, as many Kazakhstani judicial staff still confuse mentorship with “apprenticeship” (the latter was a popular practice during Communism). Thus, the UJK was faced with the need to clarify the roles, responsibilities, and processes of mentorship further before pursuing expansion of the program this year. KJAP proactively assisted the UJK in distinguishing these concepts by providing a training on the topic in March, 2006.

### **Support for Revisions and Enhancement of Judicial Ethics**

All judicial systems must be prepared to deal with breakdowns in discipline. To maintain high professional standards, judicial conduct must conform to a set of norms that inspires public confidence through the existence and enforcement of rules by which judges are governed. For the judiciary to be worthy of the respect of the citizens of this nation and the world community, a consistent legal framework is necessary to regulate conduct. Such regulations should be comprehensive and clear, so that judges understand the standards to which they will be held accountable.

However, present provisions of the Constitution, the Constitutional Law, and other laws and regulations that establish the criteria for discipline and the bodies to investigate complaints and apply sanctions are somewhat inconsistent, because they were developed at different times and in different contexts. On the one hand, there exists a statutory set of government machinery for handling disciplinary inquiries, and on the other hand, the UJK has a set of ethical obligations and procedures for policing their enforcement. Ideally, the two could work in harmony, demonstrating that the judiciary can police itself and, when necessary, is able to subject itself to scrutiny at a higher level. KJAP has made the harmonization of these procedures a technical assistance priority.

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

### **Support for the Introduction of Jury Trials**

In January 2006, the President of Kazakhstan signed a new law on juries, as well as amendments to the Criminal Procedure Code and Civil Procedure Code of the Republic of Kazakhstan to pave the way for the introduction of jury trials. Kazakhstan is, for the

first time in January 2007, introducing and implementing jury trials in courts. These developments are the culmination of several years of intense discussions about the nature, implementation pathway, and process of jury trials, and their very introduction represents perhaps the most significant development in the legal and judicial sectors since Kazakhstan's independence in 1991.

The Kazakhstani jury trial system differs from the Anglo-American and Russian models in that the jurors deliberate with the judges on case verdicts and have a right to preview the case materials before the trial. The jury trial system is being introduced to strengthen democracy, fairness, and human rights in Kazakhstan's court system. Though international organizations such as the Organization for Security and Cooperation in Europe (OSCE) have expressed skepticism, this development still appears to hold the promise of promoting greater citizen involvement in and understanding of the judicial system along with increased transparency and fairness of cases. Thus, there is popular support for the introduction and implementation of jury trials among both the citizenry and Kazakhstani government and justice officials.

## **IV. PROGRAM IMPACT TO DATE**

### **KJAP Cultivation of Judicial Partnerships**

An important element of KJAP's successful implementation of activities and meeting its project goals is its commitment to partnering with its counterparts. KJAP continues to apply a policy of open communication and dialogue with our Kazakhstani counterparts. Open communication ensures that parties operate with the same store of information, managing expectations and engaging in cooperative dialogue.

To achieve this objective, KJAP staff routinely meets with Chief Justice K.A. Mami and Justice Suleimenova of the Supreme Court of the Republic of Kazakhstan. In her position as the Supreme Court's Training Coordinator, Justice Suleimenova oversees the development of training programs and learning tools for Supreme Court justices and lower court judges across Kazakhstan. KJAP is similarly engaged with Justice Kazhenov of the Supreme Court, who is currently serving as the Chair of the UJK. Other members of the judiciary are likewise regularly consulted for their views on technical assistance needs. Additionally, KJAP regularly coordinates with the judiciary when planning media activities. For example, the April launch of the Bostandyk Pilot Court project, which was heavily covered by the national media stations, was attended by Chief Justice Mami and other judiciary members. This level of close collaboration fosters a true partnership and the Kazakhstani government gains a sense of ownership for the results of KJAP's work.

### **Strategy of Targeted Assistance**

#### **Review and Commentary on New Draft Law on the Judiciary to Promote Further Structural Protections for Judicial Independence**

As mentioned above, KJAP submitted a comprehensive review and analysis of the Constitutional Law and draft proposed amendments to this law in September 2006. Given the great strides the Kazakhstani judiciary has made over the last decade, potential amendments to the Constitutional Law represent an opportunity to assign further authority and responsibility for internal court administration to the judiciary. Such a development is an evolutionary change that is a part of the common history of many judiciaries of the world: As judicial capacity and sophistication rise, so do judicial responsibilities and authority. If the proposed amendments were to follow through on their envisioned goal, two results are likely: 1) the judiciary could accelerate the modernization process, and 2) Kazakhstan could address certain concerns that have been raised by international authorities, such as UN Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy. Such amendments could further demonstrate Kazakhstan's commitment to increase the independence of the judiciary from the influence of other branches of government. In this way, Kazakhstan could make an internationally recognized statement of its commitment to increasing judicial independence and the fair administration of justice.

During the review process, KJAP's technical expert found that the Constitutional Law is fairly comprehensive, and it should be emphasized that most of its provisions are in line with international standards. For example, the chapter on the status of judges provides for

the basic safeguards of independence and impartiality, guarantees the basic rights of the members of the judiciary, and envisions the establishment of a Supreme Judicial Council with a relatively broad mandate. However, the law focuses on the *structure* of the judicial system, and pays less attention to the administration of justice *within* the system. For example, in several cases, final decision or approval is allocated to the President, not to the judiciary.

KJAP's analysis of the proposed amendments, considering the above mentioned concerns — including thorough reviews of several other relevant Kazakhstani and international documents — revealed several other priority areas not currently contained in the proposed amendments that the project believes are an opportunity to support the Government of Kazakhstan's ongoing judicial reform areas. During meetings with officials from the judicial and legislative branches for instance, there were many requests for additional information regarding judicial selection. These officials expressed clear interest in learning about the international experience of judicial selection, with the intent to make improvements or modifications to the current Kazakhstani system.

The analysis and recommendations captured in the report submitted to the Supreme Court and Parliament thus focus not only on the current proposed amendments but also on these other priority areas that KJAP believes could be useful additions or modifications to the current legislation. These priority areas cover four basic topics: 1) the judicial selection process, 2) the legal and regulatory framework for judicial disciplinary procedures, 3) judicial immunity, and 4) judicial transparency. Taking judicial selection as an example, KJAP's recommendations are designed to ensure that only candidates of the highest possible quality receive judicial appointments and that the judicial selection process itself is clear, transparent, and not subject to improper outside influence, thereby supporting judicial independence. The report is currently being reviewed by the Supreme Court and Parliament.

### **Involvement of Kazakhstani Judicial Officials with UIHJ to Promote Adoption of Best Practices in Private Enforcement of Judgments**

Since Kazakhstan is having difficulty in the area of enforcement of judgments, Kazakhstan's full integration into the larger global marketplace will have to await a point when foreign investors consider the local court systems to be fully capable of bringing commercial disputes to a final resolution. Failure to enforce judicial decisions properly undermines confidence in the Kazakhstani legal system, both domestically and internationally, and as such, this concern represents a more general threat to the viability of the judicial system.

Currently, the Government of Kazakhstan is working on a new draft law and amendments that will make it possible for private agents to participate in the enforcement of judicial decisions. There has been growing concern within the Kazakhstani judiciary on the problems experienced with the enforcement of judicial decisions. KJAP is committed to providing technical expertise to the Government of Kazakhstan on the issues involved in enforcement of judgments. As noted above, KJAP has linked the Kazakhstani judiciary with the International Association of Judicial Officers (UIHJ), the world's leading organization on the private enforcement of judgments. As a result, CAC Chair Irak

Yelekeev has become known as a strong proponent of the private enforcement of judgments, and he actively participates in preparing legislation to promote private enforcement of judgments.

KJAP continuous to explore ways to support CAC's efforts in developing this law.

Earlier this year, KJAP engaged in discussions with an EU-funded project in Azerbaijan to secure the participation of a Kazakhstani official in an international conference on the enforcement of judgments, organized by the EU project.

The conference is scheduled to take place in November 2006 in Azerbaijan and will provide an opportunity for the Kazakhstani official to give a presentation on the country's move toward developing a system of private enforcement of judgments. KJAP communicated with CAC regarding this opportunity, and the Committee selected Mr. Yelekeev to participate. KJAP will continue liaising with both parties to arrange all of the conference details in the coming

months and to explore opportunities to provide assistance in the area. Although many factors contribute to recent developments of the private enforcement of judgments, KJAP continues to provide significant support to CAC in exploring best practices and engaging in discussions with practitioners from all over the world.

Supreme Court Delegates attending the 19<sup>th</sup> UIHJ Conference on Private Enforcement of Judgments



If the private enforcement of judgments is accepted in Kazakhstan, there is the potential to revolutionize judicial enforcement in civil cases. Enforcement bailiffs currently struggle with caseloads averaging between 300 and 400 cases a month. The adoption of private enforcement could dramatically reduce this burden and increase the efficacy of the judicial process.

### **Making the Bostandyk Piloting Court Video Recording Program a Success**

During a 12-month pilot project at the Bostandyk District Court in Almaty, KJAP is testing a high-tech system with four cameras and six microphones in each criminal courtroom and four cameras and five microphones in each civil courtroom, which thoroughly and accurately captures all aspects of a court case and provides a verbatim record of the case. At the end of the pilot, KJAP will offer official recommendations on the merits of the different systems to the Supreme Court of Kazakhstan and USAID.

When KJAP started on October 1, 2005, the video recording system had been installed in the Bostandyk Court, but had not yet become operational. One challenge KJAP immediately confronted was that the previously trained court personnel had subsequently left the court. Consequently, KJAP's initial pilot project activities were focused on

repairing several existing technical malfunctions and training the new court staff to operate the equipment properly.

Once the video recording system was up and running, KJAP began monitoring its impact through four main indicators: the quality of the video recordings, the court secretaries' familiarity with the equipment, the number of appeals of cases that used the video recording system versus those that did not, and the number of complaints on the protocol filed on cases that used the video recording system versus those that did not.

The number of appeals and complaints, in particular, are the most important indicators of the pilot project's impact. Analysis of this statistical data from April through September reveals that recorded cases are nearly three times less likely (17 percent versus 46 percent) to be appealed than non-recorded cases. Recorded cases are similarly less likely to have complaints filed on the protocol, or trial record, (.5 percent versus 4 percent) than non-recorded cases. These results show that the video recording system has had a clear impact, which judges and lawyers attribute to the fact that all trial participants are generally better prepared for trial — and act more appropriately during trial — when they know the video recording system will be used. This monitoring will continue throughout the remainder of the pilot project.

Also in September, KJAP fielded a “Customer Survey” at the Bostandyk court to gauge the opinion of individuals who have used the video recording system. The survey results indicate that 71 percent of respondents felt the video recording system improved the preparation of the lawyers and prosecutors in the trial, 83 percent said that they would have more trust in courts that use video recording than in those that do not, and 92 percent support the use of video recording in all of the country's courts.

KJAP strives to promote sustainability of this system by training staff not only on the use of the court recording technology but also on techniques to allow them to train new personnel independently. KJAP's early emphasis on enabling the Court staff to train new secretaries has proven very valuable, given the high turnover of the court secretaries. Earlier this year, Chair Assistant Maksat Kasymov was elected to serve as a system administrator of the Pilot Court and will be coordinating court recordings both technically and procedurally, and will be training new personnel in the future. Court staff are now able to train new court secretaries with little or no additional assistance from KJAP, and when KJAP does assist with training, it is often provided in an outside “advisory” capacity.

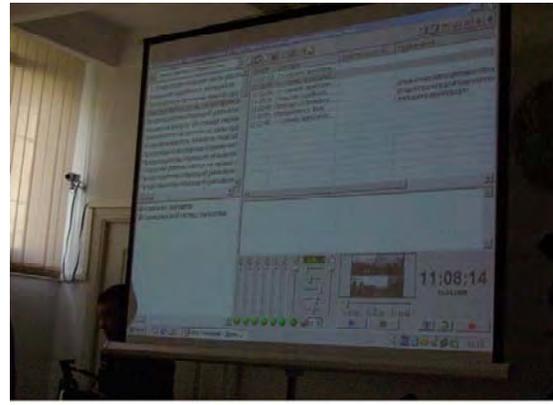
**Practitioners Find Value in Videorecording**

“Implementation of video recording in court hearings helps defense lawyers prepare for appeals by providing useful evidence of the prior court hearings.”

*Defense lawyer, Almaty*

“I would like to see this system implemented in all courts of Kazakhstan.”

*Representative for civil claims plaintiff, Almaty*



April 15, 2006 Workshop on Digital Court Recording Pilot Project Implementation in the Bostandyk City District of Almaty. Participants observed a demonstration of the system and learned more about its benefits and use.

To make the system more useful, KJAP also oversaw the installation of a Kazakh-language interface on the recording equipment in all four courtrooms. Previously, the interface had been in Russian only. The new Kazakh-language interface will allow the recording equipment to be used in court cases heard in the Kazakh language, thereby increasing the system's applicability and usefulness to the court.

In addition, early KJAP research indicated that other courts were engaging in various recording initiatives on an ad hoc basis. The project is therefore also evaluating the nature and extent of these initiatives to prepare for the development of a general applicable protocol for proper practice in this area.

To make this analysis, KJAP is conducting a two-pronged assessment of court recording: comparing the merits of video court recordings versus other electronic recording systems currently used in Kazakhstan, and examining the benefits of using the video court recording equipment versus not using the equipment in terms of quality and credibility of the court proceedings and the rate of appeals and complaints.

The first aspect of this assessment consisted of visits by Senior Legal Advisor Tashmukhambetova to several courts that use court recording equipment and a final report on findings and recommendations on the future applicability of the court recording systems. The information gleaned as a result of the visits to the Akmola Oblast Court and the Schuchinskiy Rayon Court, for instance, contributed to a detailed and accurate initial assessment of the merits of the Bostandyk pilot. An explanatory memorandum noting the differences between the high-tech equipment used in the Bostandyk Court and the home video systems used in some regions by their private initiative (e.g. South-Kazakhstan Oblast and West-Kazakhstan Oblast) was submitted to Supreme Court Chief Justice Mami in September, and also included a discussion on the legal status of digital court recording's possibilities. In brief, findings of this assessment showed that the courts visited by Ms. Tashmukhambetova were equipped with mainly low-quality audio recording equipment that produces unusable material, lack protocols on the systems' use, do not provide security of the records, have few if any staff members who understand and know how to use the equipment, and do not use the recording systems in most cases.

The second aspect includes monitoring the four indicators described above, such as the rate of appeals and complaints.

This comprehensive assessment — which will culminate in a final report to KJAP’s counterparts — aims to help the Supreme Court develop strategies of equipping additional courts with recording technology.

Due to KJAP’s efforts in reviving and improving the court video recording system technology and processes, the court recording pilot project quickly caught the eyes of government officials and Kazakhstani citizens alike. Starting in April 2006, with coverage of KJAP’s workshop on the pilot project, this component has enjoyed significant media attention. Since April, many television channels have featured stories on the pilot project and its progress.

The latest media coverage on the topic was generated by the visit of U.S. Ambassador to Kazakhstan, John M. Ordway, who attended a demonstration of the video recording system at the Bostandyk Court. The demonstration received impressive national media attention and illuminated USAID’s support for judicial reform in Kazakhstan. This wide publicity serves two main purposes by further educating Kazakhstani citizens of their judicial system and USAID’s efforts to support ongoing judicial reform and by promoting the merits of the system to pave the way for a nationwide expansion of the court recording system and for the adoption of legislation that recognizes electronic records as official court proceeding documents.

KJAP has held a series of fruitful discussions with the Supreme Court of Kazakhstan on the possibilities for expanding the court recording pilot project beyond the Bostandyk District Court. While the pilot is only in its first phase, intense interest in the system — fueled by considerable media coverage — has already been generated in other district courts, with several courts asking that they be the next to receive it. The judicial administration has agreed in principle to move forward rapidly with expansion plans, but financial and technical capacity constraints of the Supreme Court currently present an obstacle to this strategy.

#### **Sustainability of Court Recording Systems**

KJAP’s monitoring of Bostandyk and evaluation of other systems is extremely useful for the Kazakhstani judiciary. Z.M. Makashev noted that such work has never been done in Kazakhstan and KJAP’s analysis will be very useful for the Court Administration Committee to develop a strategy of identifying and selecting the court recording systems suitable for Kazakhstan based on such criteria as financial value, quality of equipment, and effectiveness of recording.

*Z.M. Makashev, Chair of the Court Administration Committee of the Supreme Court of the Republic of Kazakhstan*

Ambassador John M. Ordway, second from left, discusses KJAP’s Bostandyk pilot project during a demonstration on 19 September 2006. Representing the Kazakhstani judiciary were, from left, Mr. B. Yelchibaev, Chairman of the Bostandyk District Court, Mr. N. Mambekov, Chairman of the Almaty Courts, and Mr. M. Alimbekov, Chairman of the Civil Collegium of the Supreme Court of Kazakhstan.



## Building a Culture of Professional Development with the Mentorship Program

Judicial mentorship — in which a new judge is paired with an experienced judge — is a proven means of giving new judges continuing education on important professional and personal topics relevant to serving as a judge. The existing mentorship program is only active in a few oblasts, but there is strong demand from judges in other oblasts to participate. Thus, KJAP is working to strengthen and expand the program so that more judges can take advantage of this effective learning module.

Based on the research undertaken in previous months, KJAP concluded that, on the regional level, the mentorship program is often confused with the former Soviet “apprenticeship” program, which, interestingly, has recently enjoyed a revival in certain areas. Thus, in March 2006, KJAP organized its first mentorship training event, targeting UJK leadership and representatives of UJK’s regional branches and focusing on clarifying the differences between these two initiatives. As a result of the training, specific recommendations on implementation of the mentorship program were produced.

*Training for mentor-trainers, held in Almaty on 7-8 September, 2006.*



The training reached a wide audience, because an article about it was published in the monthly magazine *Zanger*, so the initiative generated considerable excitement and enthusiasm for expanding the current judicial mentorship program. While the UJK was anxious to expand the program rapidly, KJAP’s focus on being responsive, yet responsible, in its implementation, necessitated that progress be more gradual, but effective, and that training support should focus on the quality of the mentoring rather than the number of participants. The UJK and KJAP agreed on a two-part plan to expand the mentorship program to several new oblasts that included an initial training-of-trainers course for new mentor-trainers, who would then travel to the regions and conduct trainings for new mentors.

After months of preparation and intense dialogue with the UJK, the mentor-trainer session, conducted in September by pro-bono consultant Judge Nancy Flatters, provided the participants with the necessary skills to train mentors and, if necessary, orient protégés in the oblasts. These new KJAP-developed training tools included a new “Mentor Guidebook” to help mentor-trainers train new mentors and help new mentors perform their important functions.

## **Encouraging the Judiciary to Take Ownership of its Disciplinary Process for Ethical Breaches**

The rule of law is a central element of the good governance necessary for participation in international society and for the achievement of economic development. The rule of law requires an effective judicial system composed of independent, competent, and ethical judicial officers. In Kazakhstan, the Constitution of the Republic of Kazakhstan, in Article 77, provides for the independence of the judiciary. These basic statements provide a favorable framework for judicial independence, ethics, and professionalism. The challenge is to establish efficient and effective mechanisms to implement these objectives.

Important to strengthening the judiciary is the maintenance of high professional standards by establishing and enforcing rules by which judges are governed. For the judiciary to become worthy of the respect of the citizens of this nation and the world community, a consistent legal framework is necessary to regulate conduct. As noted above, present provisions of the Constitution, the Constitutional Law, and other laws and regulations that establish the criteria for discipline and the bodies to investigate complaints and apply sanctions are somewhat inconsistent because they were developed at different times and in different contexts.

Such regulations should be comprehensive and clear, so that judges understand the standards to which they will be held accountable. Another aspect of maintaining high standards of judicial professionalism is the presence of an effective process and body responsible for holding judges to these standards.

The UJK, organized in 1996, has played an active leadership role in building a professional judiciary. The UJK's activities — in this connection and in providing training and relevant materials for judges — have been positive. However, the UJK has not yet fulfilled all the goals provided in Article 2 of its Charter, which include playing a role in determining the judiciary's positions on major legal issues, participating in debates on judicial practice and legislative improvement, and participating in the assessment of draft laws which affect operations of courts and law enforcement.

With this in mind, a KJAP judicial ethics expert, Judge Evelyn Lance, researched and analyzed the relevant bodies of law in a report that included recommendations for the statutory and regulatory changes relating to judicial conduct that may be necessary to close the gaps between these laws and the actual situation in the judicial system at the present time. The report included a detailed analysis of the current Code of Judicial Ethics and judicial disciplinary process, a comparative analysis of both against international standards, and specific recommendations for improving both.

A major component of the report was a proposed revision Code of Ethics, based on the internationally accepted Bangalore Principles. The report also included specific recommendations to the disciplinary process to improve judicial independence. The report was delivered to the UJK in September and is currently under review.

## **Education on Jury Trial Best Practices**

As Kazakhstan prepares to implement jury trials in January 2007, KJAP strives to be responsive to its local partners by providing them with support to learn more about jury trial implementation challenges and opportunities. To bolster these efforts, in April 2006, KJAP organized an educational program with the U.S. Federal Judicial Center (FJC) for a Kazakhstani delegation.

The purpose of this two day program with the FJC was to provide the Kazakhstani Supreme Court delegation with information and consultations on jury trials and their implementation. At the FJC, the delegation received information on the U.S. experience in: instructing jurors on how to weigh evidence; juror behavior and confidentiality; administration of the housing, feeding, securing and compensating of jurors; preventing jury tampering; and avoiding discrimination in the selection of jurors. This intensive seminar provided the delegation with useful and timely information with which to understand the implementation process and anticipate some of the possible problems. The delegation reported that this educational experience was very useful.

In addition, following the success of the study tour to Washington, D.C., KJAP leveraged its collegial program resources in Moscow to ensure that Kazakhstani officials would have an opportunity to closely collaborate with and learn from their Russian counterparts. KJAP organized a study tour for 18 Kazakhstani judges to Moscow in September 2006. This study tour was initially requested by Mr. Zhukenov, Deputy of the Supreme Court and head of the Criminal Collegium, and after conducting an initial assessment of the merits of the request in accomplishing KJAP's strategic objective and receiving support from USAID, KJAP undertook several months of preparation and of close collaboration with the Russian Judicial Reform and Partnerships (RJRP) project, which is based in Moscow and is also implemented by Chemonics.

Under a cost-sharing agreement with the Supreme Court, KJAP provided transportation and lodging expenses for 15 judges, and the Supreme Court provided per diem for all judges and travel and lodging costs for the remaining 3 participants. In mid-September, KJAP Chief of Party Patrick Lohmeyer and Legal Training Director Julia Maliyeva accompanied the delegation, composed of the Chairman of the Criminal Collegium of the Supreme Court and representatives from the criminal collegia of each oblast court in Kazakhstan, to Moscow.

18 Kazakhstani judges learn from their Russian counterparts during a study tour in Moscow



**“I’m extremely appreciative to USAID for receiving a deep understanding of the subject. You’ve done what we were not able to do by our own efforts,” said one of the participating judges.**

In Moscow, the judges received hands-on training at Russia’s premier judicial training centers and spent a day watching jury trials in Moscow courts. The trip gave the judges a first-hand look at how jury trials work and better prepared them to implement this important new law. Over the coming months, using materials provided by KJAP, these judges will train their colleagues in the oblast courts, vastly multiplying the impact of the initial study tour.

**Jury Trials: One Step at a Time**

“[A] very useful study tour that will definitely facilitate Kazakhstani courts’ jury trial implementation.”

*A Kazakhstani judges who participated in Jury Trial Study Tour held in Moscow*

**Supporting the Development of a Sustainable Capacity to Deliver Judicial Training in Kazakhstan**

In the Spring of 2006, Chief Justice Mami approved the creation of regional “Training Coordinators” to support the identification and delivery of judicial training in Kazakhstan. The training coordinators (one per region) are judges who will voluntarily gather information in their region about the specific training and educational needs of local judges and perform needs assessments and monitor and evaluate regional trainings. The training coordinators will then report their findings to the Judicial Training Coordinator at the Supreme Court of Kazakhstan, Justice Suleimenova. The Supreme Court will then work with the training coordinators to provide trainings to meet specific regional needs.

However, several months after the positions were created, regional training coordinators had still received no training on how to complete their important new jobs.

To support the improvement of judicial preparation and the continuing education of judges on a long-term basis, KJAP designed and delivered a training course for the 17 judges who had recently assumed the Training Coordinator position. The training taught the judges how to determine their region’s judicial training needs accurately, deliver the trainings, and monitor their impact. Topics covered included how to conduct a needs assessment, how to identify the appropriate trainers, how to use adult and interactive teaching methodologies, and how to use monitoring and evaluation tools. The content was ideal for the judges, as it exposed them to international best practices in judicial education.

*Workshop for Regional Training Coordinators held in Almaty from August 16-18, 2006.*

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



## **V. CHALLENGES AND ROADBLOCKS TO DATE**

### **Kazakhstani Structural Changes — The Shift to Astana**

In 1997, Kazakhstan moved its capital from Almaty to Astana. Since then, many institutions have relocated to the new capital, and, as of the date of this report, many others are currently facing the challenge of relocating their staff and moving into new buildings. The relocation strongly affected the KJAP project's progress in the component labeled in the work plan as "Support to the Institute of Justice."

Because the IOJ relocated to Astana in August 2006, KJAP spent many months during the Spring and Summer of 2006 working closely with the Kazakhstani judiciary to assess the IOJ's needs and prepare various training and organizational support activities designed to mitigate any negative effects of the its relocation to Astana and merger with the Academy of Public Administration. The most serious negative effect was that the IOJ's entire staff refused to relocate to Astana.

Therefore, the new IOJ was forced to hire a new faculty in just two months. The delay of the move and the complete staff loss meant that KJAP had to delay several of its planned training activities and had to conduct a new needs assessment based on the new staff hired.

Depending on the new staff's level of experience and qualifications, KJAP will have to tailor its strategy and trainings to best meet the IOJ's needs. In addition, the IOJ's complete change of staff also meant a loss of valuable institutional knowledge and the disruption of the strong relationship built with project staff, necessitating the need to start building the bond anew.

### **Managing Expectations with a Small Project**

KJAP's first year provided an opportunity to identify several project implementation lessons, especially those pertaining to the management and operations of a small project with resource and time constraints. These lessons are integral to the realistic management of expectations held by our counterparts and USAID. The most important element is maintaining constant communications and a strong relationship with Kazakhstani counterparts.

KJAP team members make it a point to meet with our counterparts to discuss issues relevant to the work we currently implement and exchange ideas on areas for future improvement. Our project staff takes every opportunity to conduct onsite visits with our counterparts. In fact, the project's Senior Legal Advisor, Sholpan Tashmukhambetova, recently relocated her entire family to Astana to establish the project's second office. This move will further solidify the project's connection with our counterparts.

Additionally, two qualities that small projects must demonstrate are resource leveraging and the ability to respond quickly to changing environments. KJAP's limited resources include project length of time, staff, and funding. However, these limitations are realities

of project management, and KJAP has demonstrated creativity to maximize the project's potential within these constraints.

For example, the resignation of our deputy chief of party (DCOP) in August 2006, reduced the project's Kazakhstani professional team to two specialists. In the period after the DCOP's submission of notice, our project chief of party (COP) immediately assessed the project's ability to meet its goals vis-à-vis the staff reduction and decided to relocate Senior Legal Advisor Tashmukhambetova to Astana and shift other workplan activities to ensure appropriate workloads.

Equally important to maintaining communications with counterparts and the client is the communication of results frequently, effectively, and across multiple media.

Kazakhstan's media environment is fairly well developed. Radio, television, and print journalists are interested in covering stories about development activities in Kazakhstan, and the Kazakhstani government and donor programs have much to gain from promoting their successes to local media outlets as a means for informing the general population.

### **Kazakhstani Staff Turnover**

KJAP faced several operational and personnel challenges during its first few months of implementation, which resulted in slower start-up than anticipated. In January of 2006, USAID expressed dissatisfaction with the technical and operational progress of the project. To respond to the request for more dynamic progress, Chemonics deployed a home-office recovery team on overhead to assess the situation and restructure the staff as necessary. Within 30 days, the Chemonics home office had performed a detailed analysis of staff roles and responsibilities — which included meetings with project counterparts and partner organizations — and, with USAID's concurrence, had effectively restructured the field team.

As a result, KJAP's deputy chief of party, Joseph Luke, voluntarily resigned his position, effective March 31, 2006 and was replaced by the then chief of party, Darkhan Nurpeissov. The position of Senior Legal Advisor was created to supplement technical capacity and was filled by Sholpan Tashmukhambetova. Soon thereafter, the home-office project manager, Patrick Lohmeyer, was deployed to the field office to assume the role of chief of party (COP).

Toward the end of the project year, the field office staff experienced several additional changes — the project hired Zarina Mussakhojayeva as the Astana Program Assistant and the project deputy chief of party, Darkhan Nurpeissov, resigned from his post. Finally, Senior Legal Advisor Sholpan Tashmukhambetova relocated to Astana to ensure responsiveness to, and close collaboration and daily communication with, the project's primary local partners — the IOJ, the Union of Judges, and the Supreme Court. Overall, following all of the above staff changes, the field office team has become more cohesive, stronger, and more focused on achieving successes and results, while ensuring close communication with and responsiveness to the needs and expectations of our client USAID and all of our local partners.

## **International Skepticism About Reform Commitment**

Like other Central Asian Republics, Kazakhstan did not emerge from the breakup of the Former Soviet Union with a strong tradition of democracy, human rights, and judicial independence. To the contrary, Kazakhstan inherited the Soviet legacy of dominant prosecutorial offices, which were not subject to appropriate checks and balances. Since achieving independence in 1991, Kazakhstan has made progress toward a judicial system that can exercise its authority independently, but there is a sizeable degree of international consensus that Kazakhstan still has not achieved this goal.

While a new criminal law framework was installed in 1998, this new framework unfortunately relied heavily on its historical antecedent. Prosecutors continued to possess extraordinary powers, allowing them to suspend proceedings and granting them the authority to issue arrest warrants. Consequently, international assessments of judicial independence have remained consistently bleak, and in the case of Freedom House's annual *Nations in Transit* studies, Kazakhstan's assessed performance has actually declined in recent years.

Furthermore, the U.S. State Department's most recent Human Rights Report bluntly stated, "The law does not adequately provide for an independent judiciary." One of the most egregious shortcomings is the large role that the President of the Republic plays in the selection and tenure of judges. As Leandro Despouy, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, states in his most recent statement on Kazakhstan, "The process of nomination of judges at all levels of the court system, their tenure, removal, and salaries, should not remain the quasi-exclusive domain of the President of the Republic."

For KJAP, this context presents clear technical challenges. The existing legal framework needs revision with a specific eye towards protecting judicial independence. In addition, these negative reports have conditioned donors to consider progress in the area of judicial reform as a slight possibility. Consequently, resources in the area are quite limited, and the ability to exploit reform initiatives that hold genuine promise is correspondingly restricted.

## **Lack of History or Familiarity with Jury Trials**

The jury trial is not a wholly new concept in the former Soviet Union. In Russia, for example, jury trials were implemented before 1917 and reinstated in 1993. The challenge is educating countries like Kazakhstan, where there is concerted interest in initiating jury trials, but the judiciary and legislative bodies are unfamiliar with the necessary framework and best practices for modern jury trial systems. Numerous workshops, international scientific research conferences, and round tables addressing jury trials have taken place in Kazakhstan. Members of the judiciary are becoming increasingly aware that the introduction of jury trials is aimed at strengthening of democracy, fairness, and human rights in the court system of Kazakhstan.

## **VI. TACTICAL CHANGES TO ADDRESS CHALLENGES**

### **Restructuring of the Program Footprint, Emphasizing Astana**

In the fall of 2005, KJAP started operations in Almaty. This step was logical for a variety of reasons. The judicial training facility was located there, the Bostandyk pilot court was nearby, the USAID/CAR Regional Mission is based in Almaty, and the bulk of legal professionals resided there. However, events have evolved rapidly over the year, and at the close of KJAP's first year, the center of gravity of KJAP's programmatic activities has taken a decisive shift toward the capital in Astana. For instance, as discussed earlier in more detail, the government shifted the judicial training center to Astana, even though the shift resulted in the resignation of the entire faculty.

### **Working from the Judicial and Government Side on Judicial Discipline**

As noted previously, there is also the question of whether it is optimal to maintain the present system of two separate bodies, the Judicial Ethics Commissions (JEC) of the UJK and the Disciplinary and Qualification Collegiums (DQC), to deal with judicial conduct. The duality and lack of coordination between the two required KJAP to add a legislative reform component.

This system is partly attributable to the fact the legal and regulatory framework in Kazakhstan was developed in several stages. For instance, the Constitution was adopted in 1995, the UJK was created in 1996, and the initial Code of Judicial Ethics was adopted in 1996 by the First Judicial Congress. The Constitutional Law was adopted only in 2000. While Article 82(5) of the Constitution provides for a "Qualification Collegium" for judicial selection, there is no mention of the DQC.

Regulations for the JECs were approved at a meeting of the Central Council of the UJK on July 6, 2001, and they were amended and supplemented in 2002 and 2004. The JECs operate at UJK branches at the oblast level and review complaints against judges for Ethical Code violations only. They may review complaints against judges who are not members of the UJK. Review may be initiated by officials *or individuals*, by prosecutorial motion, or based on information reported by the media. The JEC may "confine itself to deliberations on the case" (i.e., take the complaint no further), issue a public reprimand, or make a referral to the appropriate DQC to initiate a disciplinary action, if the JEC believes that the judge's conduct constitutes a ground for discipline pursuant to the Constitutional Law.

Republic and oblast DQCs were authorized in Article 38 of the Constitutional Law to "resolve issues of disciplinary liability of judges or to terminate the powers of a judge." Regulations for the DQCs were approved by Decree #643 of the President of the Republic of Kazakhstan on June 26, 2001. Per Article 41 of the Constitutional Law, complaints to the DQCs may be initiated only by the Chief Justice and Chairs of the Oblast Courts. Grounds for discipline by the DQC are listed in Article 39 of the Constitutional Law. A decision of an oblast DQC may be appealed to the Republic DQC. There is no appeal from the decision of the Republic DQC.

In September 2006, KJAP presented the UJK with its official analysis of the Code of Judicial Ethics, including a proposed revised Code based on the universally accepted Bangalore Principles. The initial step in this activity will be to hold discussions with the UJK on KJAP's proposals and to have the UJK circulate the proposed new Code to its members for review and comments. KJAP will then hold a judicial ethics round table for the UJK, featuring a discussion of proposed changes and of the need for legislative change.

### **Increased Education on the Administrative Challenges Involved in Managing Jury Trials**

A primary concern of the OSCE is whether the Republic of Kazakhstan has the capacity to administer the new jury trial law<sup>2</sup>. KJAP is committed to bolstering this capacity, and KJAP has committed to undertaking a series of activities designed to equip judges to meet these needs. These future plans are detailed below.

In addition, KJAP has designated a section of its program to public outreach. The primary goal is to teach the Kazakhstani citizenry to exercise their judicial rights. To achieve this goal, KJAP has committed to a full public awareness and outreach plan, focused on average citizens that will concentrate on each of the core areas of emphasis.

### **Increased Coordination at the International Level to Build Targeted Reform Coalitions**

KJAP identified early in the project cycle that collaboration with international partners was crucial. KJAP's ultimate success will, in part, depend on whether broader international coalitions for change are present. Kazakhstan would like to enjoy full membership in the World Trade Organization (WTO). KJAP brought in the European-based UIHJ (International Union of Judicial Officers) not because they were in the Anglo-Saxon tradition of jurisprudence, but because they had the possibility to effect real change in the way business is conducted in Kazakhstan.

In addition, KJAP prides itself on coordination with the OSCE, ABA/CEELI, Internews, and other donors/implementers. There are targets of opportunity in Kazakhstan, but resources are limited. Kazakhstan is often associated with other states in Central Asia, which makes most donors skeptical about the possibilities for reform. It would be a mistake to group Kazakhstan with the other Central Asian Republics, however, since Kazakhstan's judiciary is ripe for reform, and the opportunity exists to change the current dynamic. Whether change will be possible, however, largely depends on whether international donors will recognize the capacity for change and work together to achieve it.

<sup>2</sup> The OSCE is also concerned about the structure of the juries such that judges and jurors deliberate together and the consequent impact on the deliberative process.

## **VII. Longer term goals**

### **Converting the Bostandyk Pilot to a National Reality**

The outstanding support for the Bostandyk Pilot is notable, but its ultimate success is uncertain. The Kazakhstani judiciary is prepared to invest heavily in this promising technology. The shift to this technology could revolutionize the way the judiciary operates, and is perceived to operate, in Kazakhstan. However, a pilot is only a pilot. The reality is that the administrative capacity of the Kazakhstani judiciary is limited.

Real nationwide change is in the offing. The political will is present, but the indigenous technical resources are limited. The question that looms is whether donors will rally to seize the moment. Chief Justice Mami's term will soon expire. He is one of the strongest proponents of reform and KJAP's experience over the last year proves that.

Chief Justice Mami has offered to match judicial funds for hardware, if the technical expertise is present. KJAP has researched the cost of building out the Bostandyk pilot and will soon present its findings. KJAP remains committed to making this happen if there is interest in the donor community.

### **Institutionalizing More Effective Judicial Disciplinary Procedures**

Whether or not the Kazakhstani government will accept KJAP's recommendations for reform will be an important item to monitor next year. Kazakhstan's judiciary is better compensated and organized than those of its Central Asian neighbors. Whether the Kazakhstani judiciary will continue to enjoy such compensation depends on whether they are perceived to earn it. This assessment will be a matter for the Kazakhstani general public when they consider whether the Kazakhstani judiciary holds itself accountable to the international standards they should.

Many reform initiatives are in the works. KJAP is fully engaged with most of them. The ultimate assessment of these initiatives will take time. So long as resources are available, KJAP is committed to keeping track of their progress. KJAP sent its best Kazakhstani expert to Astana, at considerable expense, to monitor and advance this progress. This decision was taken because of its overall importance to the project goals.

### **Increasing Public Awareness of New Developments — Particularly with Regard to Jury Trials**

To educate, and provide practical training to, Kazakhstani judges, KJAP plans to conduct and film a mock jury trial. In addition to benefiting the judges who actively participate in the mock trial, this recording will then be used as a judicial training tool and disseminated to judges as part of the comprehensive jury trial training packages KJAP will provide to each oblast criminal collegium in December 2006.

KJAP will also seek to include faculty of the IOJ in the mock trial to build their capacity regarding jury trial implementation, both for in-person training and/or distance learning.

Another version of the recording will be broadcast on television to educate Kazakhstani citizens.

### **Solidifying International Cooperation Targeted at Reform Opportunities**

The OSCE and others are fully engaged in the reform process in Kazakhstan. KJAP is committed to working with all of them to make the current reforms a reality. The international resources that are currently available are very limited. Though Kazakhstan enjoys media coverage, most of it is negative.

This fact complicates the reform movement within the country. Chief Justice Mami has exerted a positive influence for bold change, but the results are still unknown. If the international community does not take advantage of the initiative that he has demonstrated, they may face a more difficult terrain. KJAP's initiative with the UIHJ is only one example of where KJAP has demonstrated added value through cooperation. The future success of KJAP will be in part a function of whether it is able to continue to marshal international resource for change.

### **Assisting with the Restart of the Judicial Training Institute in Astana**

Professional development of Kazakhstan's judges is essential for them to administer justice more effectively, ethically, and transparently. As such, KJAP is working with the IOJ to support the design and delivery of judicial training, and also to strengthen the IOJ's administrative, technical, and academic capacities, thereby contributing to its ability to prepare judges to properly administer justice.

The IOJ's move to Astana was disruptive in many ways, and this year's IOJ performance will largely be a factor of this move. Whether the IOJ will be able to provide adequate training is doubtful at best. To assist, KJAP has teamed with its partner, the National Judicial College (NJC), to provide training in how to draft judicial decisions. In addition, KJAP provided a variety of advice on how to restructure operations. The key concern is whether the IOJ will be subject to judicial control or executive. One of the most laudable qualities of its predecessor was that it was under the supervision of the judiciary, and thus, it reflects their needs. Placing it under the overall rubric of public administration may fairly be assessed as retrograde motion.

To support the IOJ's ability to deliver high-quality judicial training, KJAP is designing a training-of-trainers (TOT) course for the IOJ's new faculty. This course is scheduled to be delivered in the fall/winter of 2006, and will provide the new faculty with interactive and adult-specific teaching skills, and will help create a sustainable capacity within the Institute to provide recurring professional-level training for judges and other judicial staff.

Finally, KJAP plans to design and deliver training for Institute faculty on distance education, which — in a country as large as Kazakhstan — has enormous potential to improve the delivery of judicial education across the country.

## VIII. CONCLUSION

Working on the rule of law in Central Asia is always a challenge. The legal traditions are different and constantly under a state of evolution. All USAID contractors must approach this task with a combination of humility and commitment. Although KJAP has struggled with the landscape, so must all contractors. There exists a will to change, and progress has been made. The rule of law takes years to cultivate and ensconce in the body politic. KJAP has been fully engaged in this struggle with limited resources. Time is a central issue.

The current chief justice of the Supreme Court is committed to reform. Whether or not the U.S. Government is willing to support him in these efforts remains a key question. KJAP cannot, and should not, claim to have effected a revolution in the first year of its implementation. At the same time, KJAP can humbly proclaim that it has fastidiously supported the sentiments of Chief Justice Mami, which are all about change in the time he has left.