



To all Applicants:

From: USAID/CAR Regional Mission
Acquisition and Assistance Office
Park Palace Building
41, Kazybek bi Street
Almaty, Kazakhstan 050010

Date: April 29, 2011

Subject: Modification 1 to RFA-176-11-000006, Judicial Strengthening Program

The purpose of this Modification is to make changes in the RFA and provide Questions and Answers for the subject RFA. Accordingly, the following changes are made:

- 1) Pg. 16 – Section II, Subsection D, Numbered Paragraph 1 SUBSTANTIAL INVOLVEMENT, Paragraph 2.
Replace and insert the following:

Approval of Specified Key Personnel: For this program the following three positions are considered key personnel and must receive USAID approval:

- Country Director (or the position of the in-country project's manager or director)
- Senior Judicial Reform Advisor
- Judicial Budget Advisor

- 2) Pg. 20 – Section IV, Subsection E TECHNICAL APPLICATION FORMAT, Introduction Paragraph.
Replace and insert the following:

The Technical Application shall contain the following sections: (1) Cover page, (2) Executive Summary, (3) Program Strategy and Approach, (4) Management Plan, (5) Key Personnel, (6) Institutional Capacity/Past Performance Information, and (7) the Annex.

- 3) Pg. 24 – Section IV, Subsection F COST APPLICATION FORMAT, Numbered Paragraph 2. Replace and insert the following:

The cost application should be for the entire period of performance using the budget format shown in the SF-424A.

- 4) Pg. 24 – Section IV, Subsection F COST APPLICATION FORMAT, Numbered Paragraph 7. Delete the following:

Include a chart containing the main activities of the program. List on the vertical axis the activities, and on the horizontal axis the following information: (a) name of implementers; and (b) time frame, noting estimated dates of completion; and (c) the respective cost. Note that this is a similar chart to the one requested under the Technical Application, but also including cost.

- 5) Pg. 26 – Section IV, Subsection F COST APPLICATION FORMAT, Numbered Paragraph 11. Delete the following:

Source and Origin Requirements - Goods and services provided by the Recipients under this USAID-financed award shall have their source and origin in the United States (000).

- 6) Pg. 28 – Section V, Subsection B MANAGEMENT PLAN. Replace and insert the following:

B. MANAGEMENT PLAN (20 points)

- 7) Pg. 29 – Section IV, Subsection C KEY PERSONNEL, Introduction Paragraph. Insert the following:

Proposed personnel not yet identified may be shown as “TBD” (to be determined). However, failing to provide qualifications of three key personnel may adversely affect scoring under this category.

- 8) Pg. 29 – Section IV, Subsection C KEY PERSONNEL, Numbered Paragraph 1. Replace and insert the following:

1. Country Director (or the position of the in-country project’s manager or director)

- Fluent written and spoken English is required and fluency in Kyrgyz or Russian is preferable.

- 9) Pg. 29 – Section IV, Subsection C KEY PERSONNEL, Numbered Paragraph 2. Replace and insert the following:

2. Senior Judicial Reform Advisor

- Minimum of 5 years’ experience in a leading role in judicial or legal reform programs in an international development context and additional minimum of 10 years’ experience in a judicial setting;
- Knowledge of English will be considered an advantage;

- 10) Add Annex 2 – Summary of USAID Local Employee Compensation Plan.

- 11) Add Annex 3 – Final Report for Judicial Reform Assistance Project.

- 12) Questions and Answers

- a) Would you please provide a copy of the USAID Local Employee Compensation Plan?

A summary of the USAID/ Kyrgyzstan Local Employee Compensation Plan is attached as Annex 2.

- b) The cover letter refers to a budget up to \$5,000,000 for a five-year period of performance which agrees with the period of performance listed in Section II, Clause C (p. 16). The Cost Application Format, numbered paragraph 2 (p.24) asks for a budget for a period up to 24 months. Please clarify.

The appropriate changes have been reflected in the modification to the RFA. Please see above.

- c) Section II, Clause F. *Authorized Geographic Code* (p.17) states that the authorized geographic code for this grant is 000 and 110. The Cost Application Format, Paragraph 11, *Source and Origin Requirements* (p. 24) says that the authorized geographic code is 000. Please clarify. Could USAID advise on the geographic region and specific countries assigned to Code 110?

Code 110 (New Independent States) and Code 000 (United States) are the authorized Geographic Codes for procurement of goods and services under grants to any of the New Independent State. New Independent States are defined by legislation (Section 3 of the Freedom Support Act) to include Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

- d) Under Section E. Technical Application Format, on page 20 of the RFA, the instructions state "The Technical Application shall contain the following sections: (1) Cover Page, (2) Executive Summary, (3) Program Strategy and Approach, (4) Management Plan, (5) Key Personnel, and (6) the Annexes (including past performance information, CVs for Key Personnel, Performance Monitoring Plan)." However, on page 22, under Section 6. "Past Performance Information" the instructions list the information included in the Past Performance Reports as being separate from the Annexes and limited to 5 pages. Can you confirm that the Past Performance Reports should be included in the Annexes.

The appropriate changes have been reflected in the modification to the RFA. Please see above.

- e) Section IV – Application and Submission Information (p. 23). Under subsection E.7 (Annex), does USAID have a preferred format for a draft annual work plan and for performance measurement plan? If so, could USAID provide sample formats? In addition, is the offeror required to include in its performance measurement plan the USG standard indicators listed on p. 17 of the RFA?

No. There is no preferred format for the draft annual work plan or performance membership plan.

Yes. Applicants are required to include the USG standard indicators in their performance measurement plan, in addition to any other indicators proposed by the Applicant.

- f) Section II, Clause F, Item 7 (p.24). The RFA requires the proposed budget to "provide cost estimates for the management of the program (including program monitoring)." Please clarify if this requirement concerns project costs related to the performance measurement plan.

Yes. The proposed budget should reflect all foreseeable costs including those related to implementing the performance measurement plan.

- g) Section II, Clause F, numbered item 7, second paragraph (p.24) asks for a chart of the main activities “...similar ...to the one requested under Technical Application, but also including cost.” We do not see such a requirement under the Technical Application. Please clarify. Additionally, does USAID have a sample chart in the format described under Item 7?

The appropriate changes have been reflected in the modification to the RFA. Please see above.

- h) Section II, Clause F, numbered item 10, (p.24) requires a “DFB” format for the cost application but provides no example. Are we correct that USAID wants a summary budget with the SF424A categories listed down the page and columns for Objectives 1, 2, and 3 listed in the RFA plus a column for administrative and support costs as requested in Section II, Clause F., numbered item 7, first paragraph? We assume that this breakout is required only at the summary level since a five-year budget by task would make the budget extremely lengthy, time consuming to prepare, and complicated to analyze. Is this correct?

Correct. The Development-Focused Budget format should provide a summary budget by objectives outlined in the RFA.

- i) Section V – Application Review Information (p. 28). The RFA indicates that technical evaluations shall be evaluated against stated criteria and that 100 points are possible. The breakdown of points under Subsections A – D, however, show a total point score of 110 points: A – 40 points, B – 30 points, C – 30 points, and D – 10 points. Can USAID clarify the overall scoring system and the breakdown of points by section?

The appropriate changes have been reflected in the modification to the RFA. Please see above.

- j) Will USAID provide offerors with copies of or links to the annual and final reports of the JRAP implemented by DPK which have not been posted on dec.usaid.gov?

A copy of the final report is attached as Annex 3.

- k) Section 1 – Objective 3/Restoring Judicial Integrity (pp. 7 – 9). The RFA indicates that a computerized information management system (CIMS) was installed in all 28 courts of Bishkek City, Chui Oblast and Osh Oblast from 2002 – 2004. The RFA indicates that a relatively simple and non-expensive set of activities could increase the usage of the CIMS to its full potential. As an illustrative activity, the RFA indicates the expansion of use of the CIMS (training and/or updating the software). Does USAID have a desired cost range or ceiling for project investments, if any, to improve the CIMS system? Are there specific courts that USAID views as priorities for expanded use of the CIMS during the project lifecycle?

USAID prefers that the cost be minimal and limited to the upgrading or modifying of software and the purchase of additional components, if necessary. Therefore, we would anticipate a budget of less than \$100,000 in equipment and software modifications or upgrades. There is not a pre-award expectation to prioritize the courts that have CIMS.

- l) Section 1.F – Other Considerations (pp. 10-11). The RFA makes reference to the Country Development Strategy 2007 – 2010 (CDS) at p. 10 and five laws that concern the judiciary at p. 11. Has USAID translated the strategy and the laws into the English language and, if so, can these laws be made available to the offerors?

The latest versions of the draft laws in English are available at:

http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=45&L=E

- m) Would USAID consider a Country Director and/or Senior Judicial Reform Specialist who meets all of the criteria listed but has experience *in* Kyrgyzstan, in lieu of or in addition to experience *outside* of Kyrgyzstan?

No. For the Country Director (or the project's in-country manager or director)—A minimum of 3 years (*successfully*) managing a donor funded rule of law, public administration, anti-corruption, or legislative strengthening program outside of Kyrgyzstan in a comparable setting of a less developed and transitional country will be a critical factor in evaluating their ability to lead this program.

- n) Section V.C – Key Personnel. The RFA identifies three key personnel positions (p. 29): (1) Country Director, (2) Senior Judicial Reform Specialist, and (3) Judicial Budget Advisor, (listed as Judicial Training Specialist on page 16 of the RFA). Both the Country Director and Senior Judicial Reform Specialist positions require fluency in English and fluency or knowledge of Russian and/or Kyrgyz. For the Judicial Budget Advisor position, there is no listed language requirement and RFA indicates only that knowledge of English will be considered a strong asset. Can USAID clarify whether the first two key personnel positions are required to be filled by internationals and the third position is to be filled by Kyrgyz national?

The appropriate changes have been reflected in the modification to the RFA. Please see above.

USAID does not exclude locals or necessarily favor internationals in either three positions as nationality will not be ranked; only successful experience according to the enclosed criteria. It is anticipated that the Judicial Budget Advisor would be a local hire and we do not view their ability to speak English as a factor in their ranking.

- o) Are these Key Personnel mandatory, or may bidders suggest alternative approaches?

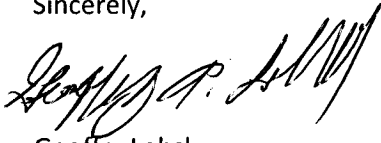
Applicants may have some flexibility in 'titling' the positions, but there shall not be any modifications to the position's listed credentials and skills.

- p) Does the United States Government have a bilateral agreement with the Government of Kyrgyzstan? If so, can USAID provide a copy of the bilateral agreement?

It is available at:

http://photos.state.gov/libraries/kyrgyzrepulic/231771/PDFs_001/AGREEMENT.pdf

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoffrey Lohsl', written in a cursive style.

Geoffrey Lohsl
Regional Agreement Officer
USAID/CAR, AAO

ANNEX 2

Summary of USAID Local Employee Compensation Plan

Compensation Guideline - Kyrgyzstan

Based on USAID/CAR/Bishkek Compensation Plan dated August 29, 2010

USAID Levels	USAID Position Titles	USAID Contractor Positions	Qualifications	RANGE (In U.S. Dollars)		
				Low Daily Rate	Middle Daily Rate	High Daily Rate
Grade 11	Chief Accountant Sr. Project Management Specialist	Sr. SpecialistHead Finance Manager Head Field Coordinator	Over 7 Years of Professional Experience or Demonstration Highly Advanced Skills Advanced Degree in Technical or Mgt. Area (additional weight is given to U.S. degrees) Policy Level Responsibility in Technical or Mgt. Area	\$87.15	\$101.67	\$116.19
Grade 10	Project Mgt. Specialist; Computer Management; Specialist Chief Accountant	Sr. Specialists; Finance Manager; Field Coordinator	Over 6 Year of Professional Experience or Demonstration Highly Advanced Skills Advanced Degree in Technical or Mgt. Area (additional weight is given to U.S. degrees) Policy Level Responsibility in Technical or Mgt. Area	\$79.15	\$92.34	\$105.53
Grade 9	Supervisor Administrative Asst.; Procurement Agent	Office Manager Marketing/Economic etc. Specialists	Over 5 Year Advanced Degree in Technical or Mgt. Area of Professional Experience Technical/Management Leadership in Programmatic or Operational Area Usually has supervisory responsibility	\$59.65	\$69.59	\$79.53
Grade 8	Interpreter/Translator; Project Manager; Accounting Technician; Travel Assistant; Maintenance Supervisor	Interpreter; Engineer; Computer Specialist; Other Technical Professionals	Professional Degree in Technical Area Over 4 Year of Professional Experience Highly developed skills in technical area	\$53.86	\$62.84	\$71.82
Grade 7	Administrative Assistant; Accounting Technician; Travel Assistant	Accountant; Information Specialists; Sr. Administrative Assistants	University Degree Over 3 Years of Professional or Administrative experience Management Responsibility for Specific Tasks	\$47.12	\$54.96	\$62.81
Grade 6	Warehouse Storekeeper; Senior Office Secretary; Expendable Storekeeper; Motor Pool Supervisor	Administrative Assistants	University Degree Over 3 years of professional or administrative experience Responsibility for Specific Tasks	\$41.59	\$48.51	\$55.43
Grade 5	Secretary, Personnel Clerk	Jr. Administrative Assistants; Jr. Interpreters	University Degree with no professional experience Currently in college No college with 5 years of experience	\$37.74	\$42.77	\$50.32
Grade 4	Electrician; Carpenter; Plumber; Receptionist	Electrician; Carpenter; Other Skilled Labor	5 years of experience in skills area	\$34.25	\$39.96	\$45.67
Grade 3	Chauffeur	Drivers	Proven driving experience with reliable automobile	\$30.19	\$35.23	\$40.27
Grade 1	Cleaning woman	Cook	Proven skills to cook or clean	\$23.61	\$27.55	\$31.50

ANNEX 3

Final Report for Judicial Reform Assistance Project

JUDICIAL REFORM ASSISTANCE PROJECT

**Final Report
June 2010**

Submitted to USAID
June 21, 2010
DPK Consulting, a division of ARD, Inc.
Bishkek, Kyrgyzstan

**Millennium Challenge Corporation (MCC) Threshold
Program
Strengthening Rule of Law in the Kyrgyz Republic**

JUDICIAL REFORM ASSISTANCE PROJECT, MCC THRESHOLD PROGRAM IN KYRGYZ REPUBLIC FINAL REPORT

Program Title:	Millennium Challenge Corporation Threshold Program, Strengthening Rule of Law in the Kyrgyz Republic
Sponsoring USAID Office:	USAID/Central Asian Republics Kyrgyzstan Country Office
Contract Task Order Number:	116-C-00-08-00007-00
Contractor:	DPK Consulting, a division of ARD, Inc.
Date of Publication:	June 2010
Authors:	Daniel Deja (JD), Margaret O'Shea (JD), and Joseph Lowther

The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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BACKGROUND

On March 14, 2008, the United States Government and the Government of the Kyrgyz Republic entered into a Millennium Challenge Account Threshold Program Assistance Agreement for a Program to Improve Rule of Law and Control Corruption (TPAA). The stated objective of the agreement was to “improve the rule of law and control corruption with a focus on reducing corruption and enhancing professionalism in the judiciary, law enforcement and criminal justice systems.”¹ The program was divided into three components: **Component 1, Judicial Reform**, Component 2, Law Enforcement Reform, and Component 3, Criminal Justice Reform. The Judicial Reform Component was further divided into four sub-components: Personnel Management, Judicial Independence, Commercial Justice, and Court Computerization. On April 18, 2008, DPK Consulting, a division of ARD, Inc. (DPK) was awarded a contract for the implementation of the two-year Judicial Reform Component of the program under USAID Contract No. 116-C-00-08-00007-00, named as the Judicial Reform Assistance Project (JRAP).

EXECUTIVE SUMMARY

The Personnel Management sub-component of Component 1 of the TPAA sought to improve the system for selecting, dismissing, and disciplining judges, and ensuring that the activities of the judiciary are organized in the most efficient way to handle current and future projected caseloads. This was to be accomplished through a functional analysis of the judicial system and technical assistance to help implement new laws concerning judicial selection and dismissal including the establishment of the new National Council for Justice Affairs (NCJA). This sub-component was designated by JRAP as “Sub-Component A Personnel Management.”

The second sub-component of Component 1 of the TPAA, Judicial Independence, sought to develop the capacity of the judiciary to independently manage its administration and provide for continuing education and professional development of judges. It was to support the establishment of a new Judicial Council which would resolve issues related to judicial self governance, manage the resources for court operations, oversee professional performance, and organize judicial training. These goals were to be achieved through assistance to establish the Judicial Council, assist the Judicial Council with budget planning and budget implementation, help the Judicial Council implement transparent disciplinary procedures, improve the citizen complaint process, publish the results of disciplinary actions more widely, and assist the Judicial Council to improve judicial training. This sub-component was designated by JRAP as “Sub-Component B Judicial Independence.”

Commercial Justice was the third sub-component of Component 1 of the TPAA, and it sought to streamline the procedures for handling commercial cases and enforcement of commercial judgments. Activities were to provide assistance to improve implementation of amended and improved commercial laws and to strengthen enforcement of judgments. This sub-component was designated by JRAP as “Sub-Component C Commercial Law.”

The Court Computerization sub-component of Component 1 of the TPAA could not commence until the completion of certain conditions precedent defined in section 5.2 of the TPAA. Once those conditions precedent were met, this sub-component sought to expand the use of a previously existing information management system and provide for random case assignment and greater access to court decisions. A Court Information Management System (CIMS) installed in five courts by the World Bank was to be expanded to sixteen additional courts.

¹ Millennium Challenge Account Threshold Program Assistance Agreement Between the United States of America and the Kyrgyz Republic for the Program to Improve the Rule of Law and Control Corruption, section 2.1.

By mid-2008, JRAP was at near full staff, located in a suite of offices reasonably near all counterparts, and began to work with the judiciary while a formal work plan was being developed. Counterparts were eager to achieve the goals agreed to by the Government of the Kyrgyz Republic in the TPAA and readily accepted the assistance of JRAP.

JRAP met and exceeded the TPAA and contractual obligations by producing a comprehensive Functional Analysis of the Judicial System together with numerous recommendations ranging from a recommendation for a new case numbering system to significant modifications to the governance structure of the judiciary. All of the recommendations were review and discussed by a select working group consisting of representatives from all judicial bodies plus the Office of the President. As a result of these JRAP efforts, more than half of the recommendations were adopted by the Government and the judiciary.

Work with the NCJA proceeded more deliberately. Although JRAP sought to assist the Office of the President to devise an appointment process which would ensure transparency and objectivity in both selection and ultimate make-up of that body, appointments were made without input. Delays in appointing members of the NCJA resulted in that organization beginning its work in November 2008, several months later than the Judicial Council which began work in April 2008. NCJA immediately began undertaking its responsibilities and with JRAP assistance had operating procedures adopted and in place by March 2009.

As work proceeded with the NCJA, it became apparent (as outlined in the Functional Analysis) that there were areas where the work of the Judicial Council might come into conflict with or be thwarted by the work of the NCJA. This was most apparent when Judicial Council recommendations for dismissal were later addressed by the NCJA. The law provided no guidance on what procedures the NCJA should or could take regarding recommendations from the Judicial Council on disciplinary matters. This dilemma was resolved within the working group established by JRAP to review and implement recommendations from the Functional Analysis (FAWG).

Pursuant to Kyrgyz law, an examination for judicial candidates was given in early 2008 and a list of candidates deemed acceptable for local court judgeships was prepared. Those persons on the list were eligible to be selected until the list was exhausted or at the expiration of three years, or early 2011. This list effectively prevented the NCJA from achieving the goals intended under the TPAA. In spite of this obstacle, with JRAP assistance, the NCJA developed 1000 written examination questions and an oral interview procedure for judicial candidates, the latter being significantly influenced by a JRAP-sponsored study tour to Western Europe. Another obstacle was met by the NCJA when the final outline for a judicial candidate school was adopted by Presidential Decree in December of 2009. This Decree gave the authority for written examination of judge candidates to the Judicial Council. The questions previously developed were transferred from the NCJA to the Judicial Council.

The Judicial Council began functioning in April 2008 and JRAP became involved in its activities in June 2008, immediately upon the project's technical start-up. Initial assistance focused on the Council's budget responsibilities, including helping to prepare and submit its first three-year budget. Additional assistance on the budget responsibilities for the judiciary continued throughout the project using USN and local consultants in addition to JRAP long-term professionals. The most significant achievement in the budget area came in the JRAP-drafted amendment to the budget law of the Kyrgyz Republic, giving the Judicial Council full responsibility for the courts' budget process, and eliminating the Ministry of Finance's veto authority over the judiciary's budget. The Ministry of Finance retained the ability to provide comment on the judiciary's budget, but could not edit the budget the Judicial Council submitted to Parliament, a significant step towards strengthening judicial independence.

Kyrgyz law and Judicial Council procedures made the newly undertaken judicial discipline process very cumbersome. The Judicial Council struggled with a process that was extremely time-consuming. JRAP provided assistance from a USN expert, a study tour to the United States, and extensive assistance from the JRAP professionals. The resulting legal and Judicial Council procedural changes, such as allowing the disciplinary commission, as opposed to the full membership of the Judicial Council, to reject claims where there “are no reasons to bring a judge to disciplinary responsibility” (in cases which are more properly appealed), all drafted with JRAP assistance, markedly increased the number of cases disposed by the Council.

The type and quality of judicial training improved significantly as a result of JRAP assistance. With the help of a USN consultant working closely with Judicial Training Center (JTC) staff and JRAP professionals, a new strategic plan for the Judicial Training Center was written, a three year curriculum developed and adopted by the Supreme Court, and Training of Trainers processes put in place. Modular testing was introduced and a manual for creating such tests was written by JRAP professionals. JTC staff were trained on the process and pilot tests were delivered under JRAP supervision and guidance.

The achievements in improving the quality and integrity of the judicial training offered at the JTC were significant accomplishments for JRAP, but an even greater task was the development of an effective format for new judge candidate training. Having never experienced a judicial training school, Kyrgyz judicial leaders used the opportunity to explore the entire field of existing options available. A study tour to three western European countries planned by JRAP professionals with Judicial Training Center and judiciary personnel, and conducted in cooperation with the European Commission project “Support to Judiciary Reform in the Kyrgyz Republic,” provided important information from some of the best and most prominent judicial training schools in Europe, including schools in Spain and France. As options narrowed, JRAP professionals drafted two alternate options for candidate training schools approved by the judicial leaders which were then submitted to the Office of the President for adoption. The option chosen by the President had the effect of moving the written examination portion of the judicial selection process from the purview of the NCJA to the Judicial Council. The questions previously drafted with JRAP assistance were also transferred and, with some amendments, were adopted by the Judicial Council. The first scheduled entrance examination on April 19, 2010 was cancelled as a result of the revolution on April 7, 2010.

JRAP’s Sub-Component C Commercial Justice launched in September 2008 and within a few short months had assessed the civil law and enforcement processes in the Kyrgyz Republic, mapped the flow of cases through the system, held focus group meetings with key stakeholders in sectors such as banking, business organizations and chambers of commerce, and lawyers engaged in commercial law practice. JRAP established an inter-departmental working group with key enforcement personnel from the Kyrgyz Republic Court Department and representatives from Parliament and the Office of the President to begin drafting a comprehensive package of laws and amendments to laws which would streamline enforcement of judgments by incorporating the recommendations previously made. Although the law package was submitted to the Office of the President and circulated to the Ministries, it was not introduced into Parliament prior to the revolution on April 7, 2010 which resulted in the dismissal of the Office of the President and disbanding of Parliament. Nevertheless, JRAP successfully conducted training on the potential changes to the law for all 194 enforcement officers in the Kyrgyz Republic.

Funding for Sub-Component D, Court Computerization, was released by the Millennium Challenge Corporation (MCC) on August 28, 2009. JRAP had already done extensive preparatory work on the component in anticipation of funding. Various delays which occurred in Kyrgyz Government bodies outside the judiciary contributed to the late release of funds in spite of timely completion of the TPAA conditions precedent by the Kyrgyz judiciary with the assistance of JRAP.

JRAP immediately began negotiating a subcontract with local software development company SIC Arashan Ltd., who we determined as, based on extensive research and practical limitations, capable of performing the expected tasks within the timeframe allotted. During the course of these negotiations, an alternate proposal for computerization which would have the effect of increasing the number of courts served from sixteen to twenty-eight and covering three complete oblasts rather than portions of all oblasts was offered and discussed. Not only was the result improved by adding to the number of courts, but the statistical gathering and reporting functions of the CIMS could be better tested and demonstrated by having entire oblasts covered. In addition, the cost was less than installing CIMS in sixteen courts scattered across the entire country. When presented with this option, the Supreme Court requested that JRAP modify the prior plan to include the twenty-eight courts in Bishkek, Chui, and Osh Oblasts. All 330 judges and court personnel in these courts were trained in basic computer skills and the CIMS during 2010.

An extremely important aspect of the TPAA and the DPK contract was to increase transparency of the courts by disseminating information to the public from all of the judicial bodies. JRAP approached this task by creating the project's Public Outreach Officer position responsible not only for ensuring that the information from the work of the judicial bodies was available to the public, but also creating an environment within the judiciary where the media is viewed more as a partner capable of relaying the positive work of the judiciary to the public and informing the public of the various decisions and actions of the judicial bodies. Numerous press releases were issued, interviews of judicial leaders arranged, and media roundtables facilitated by the JRAP Public Outreach Officer. More importantly, however, JRAP worked with the Supreme Court, the Judicial Council, and the NCJA to identify press secretaries for each of them who would carry on the media relations activities for these bodies. With JRAP assistance, strategies were developed to disseminate the information from these bodies to the media and the public, and a judicial web portal was designed and created for all judicial bodies as a repository of and mechanism for distributing information.

The significant achievements of JRAP working in cooperation with the judicial counterparts helped to increase the transparency and independence of the Kyrgyz Judiciary. Many of the initiatives begun in the project required more time to bring to fruition than the two years allocated for the project's activities. The revolution on April 7, 2010 has affected how the work of the project will be sustained by the judicial counterparts in the near- and long-term future. After the government was displaced on April 7, the Interim Government dissolved the Parliament, suspended the NCJA, Constitutional Court, and the activities of the Judicial Council including the projected start of the candidate school (although, with Interim Government approval, the Judicial Council did meet on May 27 – 28, 2010 to confirm budget-related matters for the 2011 budget year). The Office of the President was also dissolved and the Chairperson of the Supreme Court was asked to resign her position as chairperson, although she remains a judge on that court. On June 27, 2010, a referendum on a new constitution will be held. As a result of that vote, it is likely that a new constitution will become effective. Under that constitution, a new body will be created with functions similar to those exercised by the prior NCJA, but likely with a different composition. Several other changes will be made to the structure of the courts. Fortunately, many of the recommendations for change, as well as changes actually made by JRAP, will be incorporated into the judicial governance structure.

A key part of the sustainability of JRAP's work is the experience gained by the local project staff and counterparts. Those individuals will continue the work begun by JRAP into the future. Of the four JRAP component leaders, three ended their tenure with the project on April 20, 2010. Of those, Erkinbek Mamurov became a member and judicial expert of the working group established to draft a new constitution. Mr. Mamurov later became the senior legal advisor to the Interim President on courts. Daniyar Narymbaev became a member and secretary of the 75-member Constitutional Council, a body established to review the newly drafted constitution and accept public comment on it in order to prepare a final version for the referendum. Nurlan Alymbaev worked on the secretariat for

the Constitutional Council. One of the primary JRAP counterparts was also a member of both the constitutional working group and the Constitutional Council. JRAP was successful in meeting the objectives of the TPAA and benchmarks set by work plans. The true measure of success and sustainability, however, is in how the various structures are reorganized after the revolution. It is apparent thus far that much from the JRAP experience will be transferred to newly-formed judicial bodies through the new constitution. Sustaining the momentum for reform that was gained during the project will depend on the availability of additional support from donors such as USAID.

OVERVIEW

Work on the project began locally in May-June 2008 with intense start-up activities and contracting of several key local staff persons and identification of short-term consultants. Although Sub-Component C started not until September 2008 and Sub-Component D was deferred until conditions precedent were met, Sub-Component A and Sub-Component B began work immediately. Two areas in particular required immediate attention: the diagnostic work within the courts necessary for the Functional Analysis, due October 2008; and work on the three-year budget with the Judicial Council which was driven by the Kyrgyz Government budget cycle. Along with these initial efforts, work began on a first-year work plan which followed the methodology set out in the DPK technical proposal. The design of the project allowed each component to work independently of the others, although collaboration among them was easily facilitated when necessary or desirable. The project is best reviewed, therefore, by reviewing the work of each component separately including the cross-cutting area of public outreach.

"The effectiveness of the operation of any judicial system can be measured by analyzing how well the **central administrative and policy making bodies are organized and function** and also how **effective and efficient the trial and appellate courts are in the actual delivery of judicial services to the public.**"

*DPK Technical Proposal to
USAID, 2008*

SUB-COMPONENT A: PERSONNEL MANAGEMENT

Functional Analysis

The TPAA lists as a proposed activity: "Conduct a functional analysis of the judicial system and assist in implementing recommendations to optimize the court personnel system."² DPK expanded this activity to include a review and analysis of the policy-making bodies for the judiciary. This included the Supreme Court, Judicial Council, NCJA, and Court Department. Local project staff and two USN consultants began work on the Functional Analysis. One USN consultant focused on the newly adopted laws, decrees, and other documents having the force of law which implemented the new judicial bodies. The second consultant began identifying a sampling of courts to be studied to determine the case flow rates and administrative mechanisms in place.

Two USN consultants and two project staff members with direct experience in the Kyrgyz justice system separately reviewed laws and documents and conducted interviews relating to court structure, functions, management, and budgeting procedures. Meetings relating to structure and budgeting procedures in the Kyrgyz courts were held with members of the Judicial Council and its Budget Commission and representatives of the central and regional offices of the Court Department. Analysis of relevant legislation, procedures, and workload statistics was conducted; a tool that

² TPAA Annex 1 Amplified Program Description III Program Components; Goals; Proposed Activities, A Component 1: Judicial Reform, 1 Personnel Management, Proposed Activities.

assesses governance, budgetary, and human resources issues in the Kyrgyz courts was utilized; and meetings were held concerning the Functional Analysis with USAID and two heads of chancelleries in Kyrgyz courts. Most of the implementing authority (laws, regulations, and presidential decrees) for the Kyrgyz judicial bodies were adopted in early 2008, immediately prior to or contemporaneous with the DPK contract start. Much of the legal framework for implementing the new judicial bodies was in a form not anticipated in the DPK Technical Proposal, for example, when the Court Department was separated from the Ministry of Justice, it was not placed under the Judicial Council as contemplated in the TPAA, but rather “within the judiciary.” These differences resulted in recommendations being made in the Functional Analysis that were not anticipated.

As part of the Functional Analysis of case processing, JRAP developed and carried out a survey of information contained in closed civil, economic, and criminal cases and pending civil cases. The information gathered by JRAP’s law student interns was used to determine how long a case takes from arrival at the court to disposition, and what case attributes or events might impede the speedy disposition of cases. Given this information, the court can review its processes and make changes to improve case processing time.

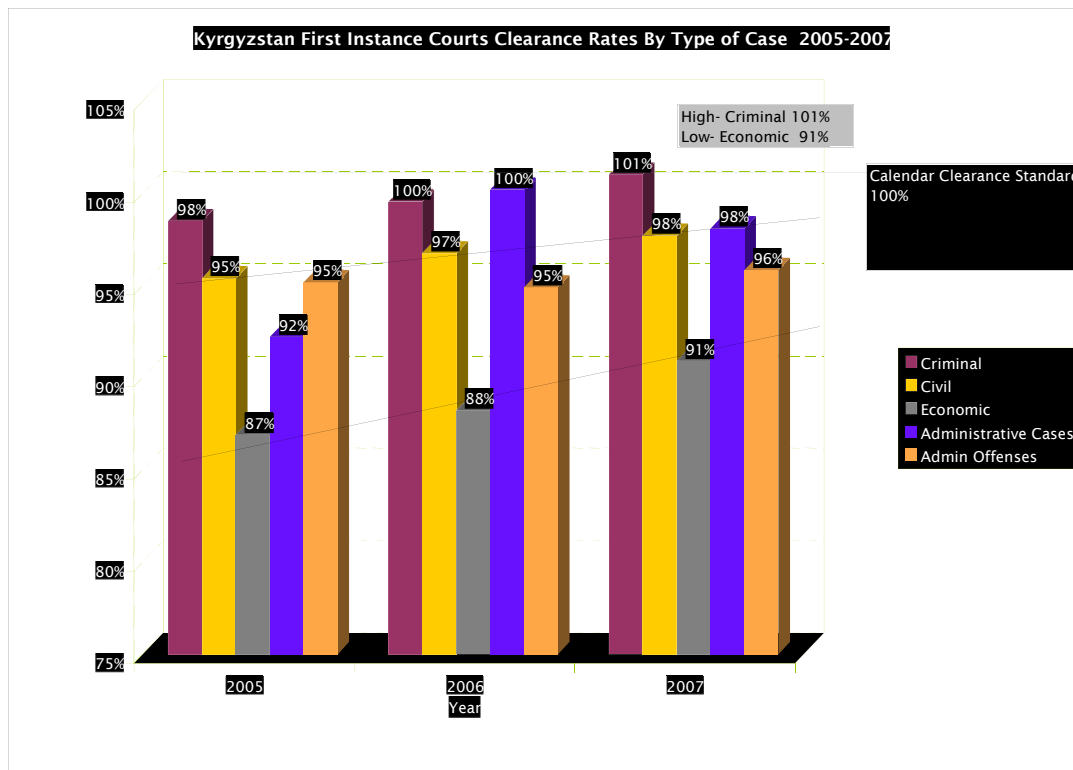
For civil and economic cases, the questions answered in the survey of the closed cases included:

- What is the pace of civil litigation in the court?
- What case factors are closely related to the pace of litigation?
- What problems are associated with notifying the parties of court proceedings?
- What happens at scheduled court hearings?
- What is the current aging of the pending civil case inventory?

For criminal cases, the questions answered in the survey of the closed cases include:

- What is the pace of criminal case processing in the court?
- What case factors are closely related to the pace of case processing?
- What happens at scheduled court hearings?

More than 1,000 randomly selected pending criminal and civil cases in twelve courts across the Kyrgyz Republic were selected for study. The totality of the methodology is contained in the Functional Analysis Report. Generally, case clearance rates were well within acceptable standards and, in fact, for the case type with the lowest clearance rate; economic cases, JRAP recommended that the unusually short time allowed for case processing by Kyrgyz law -- 30 days – be extended to match other case processing times, specifically 60 days.



Although several recommendations were made regarding case processing, it was found that this was not an issue to be dealt with to the extent anticipated in the DPK Technical Proposal. Instead, many of the unanticipated issues which resulted from the creation of judicial bodies in forms not expected and conflicts between responsibilities of judicial bodies uncovered during the Functional Analysis became the primary focus of the work of the Personnel Management sub-component.

In total, 25 recommendations were made in the Functional Analysis. The Functional Analysis' examination and review of the judiciary was widely received within the Kyrgyz Government and donor community as a comprehensive and reliable baseline analysis of the judiciary from which reform efforts could be gauged. The recommendations were wide-ranging, spanning an array from recommending a sequential case numbering system to recommending one central governance authority for the judiciary. It was apparent that many of the recommendations would require input and buy-in from the highest levels of the judiciary and perhaps even the Government in order to implement the recommendations. To resolve this dilemma, JRAP, by signed memorandum, obtained the commitment from all judicial bodies (the Supreme Court, the Judicial Council, the NCJA, the Court Department, and the Legal Office of the President) to form a working group specifically to review and implement the recommendations of the Functional Analysis and address discrepancies in the legal framework of the judicial institutions. Each judicial body appointed a representative at a level that would ensure that there would be input from the highest level of each institution represented.

The Agreement was signed in November 2008 and the Functional Analysis Working Group (FAWG) met in December 2008 and periodically, usually monthly, thereafter until April 2010. All but seven of the recommendations were recommended by the FAWG for adoption with little modification by the Government or relevant judicial bodies. Of the seven recommendations not put forth for adoption, four were deemed untimely or were recommended in a modified form. Ten recommendations were ultimately implemented in full. Several recommendations were being considered by the Office of the President without decision when the revolution on April 7, 2010

effectively stopped all further consideration. Recommendations regarding modifications to the structure and method of appointing members of the NCJA, which appeared to be meeting resistance from the Office of the President, will likely be incorporated into the new constitution.

Technical Assistance to the NCJA

The TPAA provided for the provision of technical assistance to implement the selection and dismissal process of judges including the establishment of the new NCJA. The “Law of the Kyrgyz Republic on the National Council for Justice Affairs of the Kyrgyz Republic” was adopted on June 25, 2007 and published in September 2007. The law provided for a 16- member body, four each from the Parliament, the Office of the President, the judiciary, and public associations. Although each sector was to select representatives for membership on the NCJA, the final four members, those representing public associations, were ultimately named in a process determined by the President without proffered input and assistance from JRAP as DPK had proposed in its Technical Proposal. JRAP assistance to the NCJA finally began when the full body was organized in November 2008.

The immediate work of JRAP professionals was, first, to assist the NCJA to adopt rules for its own operation, and second, to resolve a conflict that immediately developed between the NCJA and the Judicial Council regarding the procedure for dismissal of judges.

Before rules of procedure for its operation were drafted and adopted, the NCJA began working in an *ad hoc* manner reviewing recommendations for dismissal of judges received from the Judicial Council. The issue of what role the NCJA would play in reviewing cases where judges were being recommended for dismissal came with the first such case. The NCJA decided that it would have the authority to hear evidence and take statements from the judge in question. The Judicial Council maintained that the role of the NCJA was a *pro forma* role where the NCJA would simply act upon the recommendation of the Judicial Council by adopting that recommendation and thereafter recommending that the President remove the judge.

The issue was brought before the FAWG for a resolution. Numerous procedural variations and options were presented including: NCJA action being *pro forma* only, NCJA entertaining issues in the nature of appeals of due process violations, NCJA having *de novo* review of all cases. After much debate during the course of several FAWG meetings, it was finally determined that the NCJA would review Judicial Council recommendations for dismissal to ensure that the Judicial Council followed the Judicial Council’s procedures for such cases and if the proper procedures were followed, the NCJA would recommend that the judge be dismissed from office. This compromise was incorporated into the rules of procedure of the NCJA drafted by JRAP professionals, and adopted by the full membership of the NCJA in March 2009.

The rules of procedure were the second priority for NCJA assistance from JRAP. Work on these rules began in December 2008. The Chairperson of the NCJA appointed a working group of the NCJA to work with JRAP on rules of procedure. JRAP prepared a draft set of rules covering all aspects of operation of the body, from preparation for and conduct of meetings, voting on issues, procedures for authorizing the Prosecutor General to bring criminal proceedings against judges,



“At the present time we are discussing the Rule of Proceedings of the National Council that was developed by the Working Group consisting of NCJA members and experts of the USAID Judicial Reform Assistance Project. I would like to use this opportunity to thank the experts of your Project for the assistance they provided in developing draft Rule of Proceedings.”

Honorable Abibulla

procedures for appointing chairs of courts, procedures for considering the rotation of judges, and the procedure for processing recommendations from the Judicial Council for dismissal of a judge. There are a total of fifty articles in the NCJA rules of procedure.

By law of the Kyrgyz Republic, judicial selection has two parts: the written examination and the oral interview. The “Constitutional Law of the Kyrgyz Republic - On Status of Judges of the Kyrgyz Republic” contains the provisions for written examination and oral interview and took effect on July 9, 2008. Prior to the adoption of this law, a written examination was given to those seeking to be appointed judge but it was administered under the prior law. When such an examination is given, those who pass are placed on a list from which judicial vacancies will be filled. Persons who are entered onto the list are eligible for appointment to local court judicial vacancies for three years. The list, therefore, is valid for three years unless all names have been exhausted prior thereto. The names on the list have not been exhausted at this time and the list will be effective until 2011 unless exhausted before that time.

One of JRAP’s expected outcomes was the introduction of a transparent and objective judicial selection process. Unfortunately, all judicial appointments made during the period of the project were made under the prior law. This circumstance impacted the outcome to the extent that no judges would be appointed during the project’s duration under new selection procedures, but it did not prevent JRAP from assisting the NCJA to develop a new selection process based on transparency, objectivity, and the newly adopted law of the Kyrgyz Republic.



“Our budget was examined by international consultant Deborah Botch who wrote a special report indicating that the budgeting process generally was in compliance with international standards. She also carried out useful workshops on budget planning for court chairpersons, because they have never dealt with the budgeting process and have no understanding of how it was done.”

Honorable Larisa Gutnichenko, Chair of Judicial Council

The law provided that the written examination would be in the form of a computer test. Working with a NCJA working group, JRAP commissioned and funded legal experts to draft a total of 1,000 test questions covering all areas of the law. These questions were put into a database from which a specially designed computer program would randomly select 100 questions for each candidate taking the examination. JRAP selected and funded the programmer for this task as well. The database is housed in computers at the Judicial Training Center and is ready for the initial examination.

While activity continued in the development of test questions and procedures for administering the examination, JRAP’s Judicial Independence sub-component was engaged in an effort to define a structure for a school for judicial candidates. As the issues related to selecting persons to participate in such a school were discussed, it became apparent that there would again be conflict between the Judicial Council responsibilities and those of the NCJA. The matter was resolved when the President issued a Decree authorizing the establishment of a judicial training school, admission to which would be based in part on passage of a written examination. The examination requirement was then removed from the “Law on Status of Judges.” The work completed by JRAP in preparing 1,000 test questions and a computer program to create random tests was transferred to the Judicial Council by the NCJA.

Developing procedures which would ensure that the oral interviews were transparent and objective presented JRAP with a more difficult challenge. To better acquaint the NCJA members with interview procedures meeting international judicial standards and best practices, JRAP conducted a

study tour to the United Kingdom, Belgium, and Hungary in June 2009. The information gained from this experience proved invaluable in assisting the NCJA members to develop a procedure for interviewing candidates which was fair and objective. JRAP professionals and selected NCJA members worked in the following months to draft procedures which were adopted by the full NCJA in February 2010. A jointly sponsored seminar (between JRAP and the European Commission Support to Judiciary Reform in the Kyrgyz Republic) on conducting oral interviews using the JRAP-drafted procedures was scheduled for April 15 – 17, 2010, but it was cancelled due to the April revolution, subsequent to which the NCJA was suspended.

The draft constitution which has been prepared for the June 27, 2010 referendum creates a new body, the “Council on Selection of Judges,” with essentially the same responsibilities as the former NCJA. It will have the responsibility for selection of judicial candidates. The Council on Selection of Judges is composed of judges and civil society representatives. The Council of Judges, the parliamentary majority, and the parliamentary opposition shall each elect one-third of the composition of the Council on selection of judges. Constitutional laws enacted at a later date will further define this process. The draft constitution does not specify if members selected are to be judges. Presumably, the one-third selected by the Judicial Council (Council of Judges) will be judges. Most of the assistance provided to the NCJA by JRAP can be used by the new Council on selection of judges either directly or as a guide for developing new procedures.

SUB-COMPONENT B: JUDICIAL INDEPENDENCE

Judicial Council

The TPAA proposed activities for this sub-component included assisting to help establish the new Judicial Council and assisting with its new responsibilities in budget planning and formulation, disciplining judges, and assisting the Judicial Council to improve judicial training. The Judicial Council was established in April 2008 and began work on May 2, 2008. The Judicial Council elected a Chair and Deputy Chair and divided its fifteen members into three commissions: a Budget Commission, a Disciplinary Commission, and a Judicial Training Commission, each with its own Chairperson.

Budget Commission

The start date of the Judicial Council coincided with the mid-point stages of the Kyrgyz Government budget process. Budgets are to be submitted to the Government in July of each year. JRAP seized the opportunity to assist the Judicial Council’s Budget Commission with its time-sensitive budget formulation process, first deploying Deborah Botch, former Court Budget Director for the State of New York, in early July 2008 to review the budget process being conducted by the Budget Commission. The consultant wrote an assessment confirming that the budget process used was generally within international standards. This assessment provided validation of the Judicial Council’s work at a critical time in its early development. The consultant also provided needed and first-of-its-kind budget training for local court chairpersons. This consultant, working with a local budget expert, provided additional budget seminars to court chairpersons and Court Department budget staff in May 2009 and February 2010. These seminars made important



Kyrgyz Judicial Council discussing judicial discipline with counterparts during study tour in San Francisco, California, October 2009

information on budget preparation available to local court chairs. The local court input into the budget process is an integral part of the overall budget preparation process of the judiciary. In addition, these seminars provided the first opportunity for the Court Department budget staff to work directly with local court personnel. The traditional separation in the budget formulation process between judges, who traditionally did not take part in the process, and Court Department Budget staff, who traditionally assumed all the budget responsibility for the courts, had been merged creating the foundation for a cohesive team capable of contributing accurate and meaningful information for the budget formulation process, thereby ensuring adequate resources for the courts and their constituents. To assist with future budget planning, the JRAP budget consultants prepared a Kyrgyz-specific court budget manual and distributed it to all court chairs and Court Department budget staff.

Kyrgyz law provided that budgets from the judiciary would be presented to the Government through the Ministry of Finance. It was at this stage that the judiciary advocated for the budget levels in the proposed budget. Once the Ministry of Finance approved the budget, it would be submitted to Parliament. Often the Ministry of Finance would make cuts and adjustments to the submitted budget. Once the budget was in the Parliament, the judiciary no longer had an opportunity to promote its needs. In an effort to maximize judicial independence in the Kyrgyz Republic, JRAP, working with the Judicial Council, drafted an amendment to the budget law which allowed the judiciary to submit its proposed budget to the Ministry of Finance for comment, but without the possibility of the Ministry of Finance changing it. The budget as originally proposed by the judiciary and with Ministry of Finance comments only would be submitted to the Parliament where the judiciary could promote its adoption and argue the need for all items in the budget. This amendment was adopted in 2009 and resulted in the judiciary having a greater degree of independence and more fiscal independence than other Central Asian countries.

Judicial Discipline

A new responsibility for the judiciary and especially the Judicial Council is the discipline of judges. When the Judicial Council's Disciplinary Commission began its work, over 300 complaints against judges had accumulated unanswered in the Office of the President. Rules for the processing of complaints were established by law of the Republic as well as regulations established internally within the Judicial Council. The rules, however, mandated that all complaints be reviewed and that the Judicial Council as a body should review all complaints, including complaints for which the Judicial Council could not provide a remedy, such as appeals improperly filed as ethics complaints and complaints not alleging actionable misconduct. This created a situation where the Judicial Council was spending an inordinate amount of time addressing complaints for which a remedy was not available and which should have been summarily disposed.



JRAP judicial discipline consultant
Eugene Brott with Judicial Council, 2009

In spite of this problem with the procedural rules, the Judicial Council managed to process complaints at a rate exceeding the expectations set out in the benchmarks used by the MCC. In the first year of operations, dismissal was the recommended sanction in 11 cases, and numerous others received lesser disciplinary sanctions. JRAP commenced working with the Disciplinary Commission to address the problems with the rules. Eugene Brott, a USN consultant with expertise in judicial disciplinary matters from the State of California, spent several weeks in Kyrgyzstan reviewing the

procedures being used, interviewing Judicial Council members, and ultimately drafting recommendations for improving the process and making it more efficient and less time-consuming. The Judicial Council reviewed and discussed the recommendations from JRAP for several months. In October 2009, Judicial Council members participated in a study tour to the United States, visiting California and Nevada judicial systems. Upon returning, the Council again reviewed the JRAP recommendations and finally, after much debate, adopted most of them in early 2010. As a result of the newly adopted procedural rules, the number of complaints disposed by the Judicial Council increased dramatically, nearly doubling the number of complaints processed during prior quarters.

In addition to procedural modifications made in an effort to streamline and make the process of hearing citizen complaints about judges more efficient, additional sanctions were provided which make the process more effective. The original sanctions available to the Disciplinary Commission were oftentimes either too lenient or too harsh for the facts of the case. Increasing the number of options available to the Commission made the process much more effective for both the complaining citizen and the charged judge. Additionally, due process improvements are included now for judges during disciplinary proceedings, including the right to representation.

Judicial Training Commission

Prior to 2008, the Judicial Training Center (JTC) was under the Ministry of Justice, along with the Court Department and other institutions of the judiciary. Subsequently, it was placed under the authority of the Supreme Court and the Judicial Council. The JTC had prepared a strategic plan while under the Ministry of Justice to guide its activities. With the assistance of a USN judicial training expert, Joanne Adams, JRAP worked with the JTC staff to update and revise their strategic plan.

The JTC's core function is to provide meaningful training programs which will increase the competence, effectiveness, and professionalism of the judiciary. Prior to the JRAP initiatives, training at the JTC was performed in response to donor offers to conduct training. This situation had evolved primarily as a function of an insufficient budget for the JTC. JRAP's judicial training expert, working with the JTC staff, conducted a needs assessment prior to development of a three-year curriculum for the JTC. The skills learned through this process should allow the JTC to update its three-year curriculum annually and to prepare the next three-year curriculum when that time comes. The three-year curriculum was presented to the Supreme Court for adoption and, once adopted, JRAP held an informational meeting with all donors involved with judicial training. The donors accepted the concept of having the JTC proscribe a training outline when they realized that trainings which they had been giving were included (verifying the relevance of their work) and that there was enough flexibility within the curriculum outline to accommodate specialized and one-off trainings as circumstances dictated. The JTC has operated under the three-year curriculum since its adoption by the Supreme Court in December 2008.

"We have to know what our training needs are in order to proceed. We have changed our tactic of work with donors; we plan to suggest to them directions and subject areas ourselves. If they are interested, we shall conduct such trainings."

Honorable Larisa Gutnichenko, Chair of Judicial Council

In order to ensure that training programs met their stated objectives, and as a way to measure the effectiveness of the assistance to the JTC, MCC required that tests be administered to the judges receiving training and that 75 percent of those being tested obtain a passing score. This modular testing process is unique in judicial training programs internationally. Without models and experiences to draw from in this area of judicial training, JRAP began developing the procedures for creating and administering such tests based on accepted pedagogical standards. Procedures were developed, JTC staff persons were trained by JRAP in creating and administering the tests, and pilot

testing began in April 2009. A “Manual for Developing Module Tests” was drafted and distributed to JTC staff.

The response to the module testing was enthusiastic among both training participant judges as well as instructors. Pass rates have exceeded targets for MCC reporting purposes and have been in the 80-90 percent range. Participant judges have found the testing to be an opportunity to ensure that they have understood the material. They have spent time to review test results and to learn from their incorrect answers and discuss the answers among colleagues. Instructors have been interested to determine if participant judges understand the materials as delivered and have modified instruction to better present the material. More than a monitoring tool, the modular testing has been a very successful experiment in refining judicial education to better achieve training goals.

The Judicial Council was also charged with developing a new candidate training course. Judges in the Kyrgyz Republic have certain criteria that must be met concerning age and mandatory experience in the legal profession, but not a required educational background beyond a legal education. Several donors have been interested in various aspects of this proposed undertaking, e.g., IDLO focused on civil areas of the curriculum, GTZ focused on other areas of the curriculum, and the European Commission Support to Judiciary Reform project, along with JRAP, expressed interest in the organizational aspects of the school.

JRAP, in cooperation with the European Commission Support to Judiciary Reform project, sponsored a third country study tour in March 2009 to visit candidate training programs in these countries in Austria, Czech Republic, Spain, and France. JRAP, working closely with the Director of the JTC, planned visits to several schools. The experience gained from the training academies in Barcelona, Spain and Bordeaux, France were particularly helpful and relevant.

Collaborating closely with the JTC director, Chair of the Supreme Court, and Chair of the Judicial Council, JRAP used the experiences from the third country study tour to help fashion a format for a judicial training program which would meet the needs of the Kyrgyz Republic. As various models were developed, each conflicted with or overlapped a portion of the responsibilities of another judicial body, particularly the NCJA. If a selection process occurred prior to entrance into the candidate school, then the number of candidates being trained could be limited to the anticipated number of local court vacancies existing at the conclusion of the course. If the selection process were to occur after the conclusion of a candidate training course, then there would be many candidates spending as much as one year in school without assurance or expectation of being appointed to a judicial position. In addition, if the candidate school conducted a rigorous entrance process including examination, and an examination and oral interview were given by the NCJA at the conclusion of the training; it would result in the candidates having to go through two selection processes in order to receive a judicial appointment. In the end, JRAP prepared two alternative proposals for judicial candidate training which were approved by the Supreme Court and the Judicial Council and presented to the Office of the President for consideration.

Presidential Decree No. 577, dated December 14, 2009, ultimately adopted one of the two versions for a candidate school originally prepared with JRAP assistance. The adopted version provided for an examination be administered by the JTC prior to admission to the school. It relieved the NCJA of the responsibility for administering a similar examination. As a result, the 1,000 questions prepared with JRAP assistance for the NCJA were transferred by the NCJA to the Judicial Council. The Judicial Council made additional modifications and adopted the examination. The questions were published on the JRAP-developed web site of the Judiciary.

To ensure that the examination will be administered fairly and objectively, JRAP and the Judicial Council had a computer program written which would randomly select test questions for each candidate. Each candidate therefore will be taking a unique examination. The examination will be

administered via computer in either Kyrgyz or Russian. The first examination for entrance to the judicial candidate school was scheduled for April 19, 2010. The revolution on April 7, 2010 resulted in that examination, along with the activities of the Judicial Council and the JTC, being suspended by the Interim Government. The JTC has resumed operations at least to allow subcontractor Arashan to complete the CIMS training of judges and court staff for the project's court computerization sub-component, but the examination for the candidate school has not been rescheduled nor has work toward opening the school recommenced.

In October 2009, the Judicial Council participated in a JRAP-sponsored study tour to northern California and northern Nevada in the United States. The purpose of the tour was to review the operations of the California Judicial Council, the California and Nevada judicial disciplinary processes, budgeting processes, administrative procedures, judicial training mechanisms, and media/court relations in both states. Participants attended two full days of schooling at the National Judicial College in Reno, Nevada. The U.S.-based study tour was invaluable as a way for the participants to solidify and refine the comparable activities they had been engaged in for the prior year. It also proved to be the necessary key to finalizing reforms to the Judicial Council's disciplinary procedure whose inefficiencies had been causing delays and the undue consumption of Judicial Council time. On January 28, 2010, the Judicial Council adopted changes to its procedures which dramatically increased the number of cases being disposed. These amendments were the direct result of the recommendations made by JRAP's judicial discipline short-term consultant and the U.S. study tour.

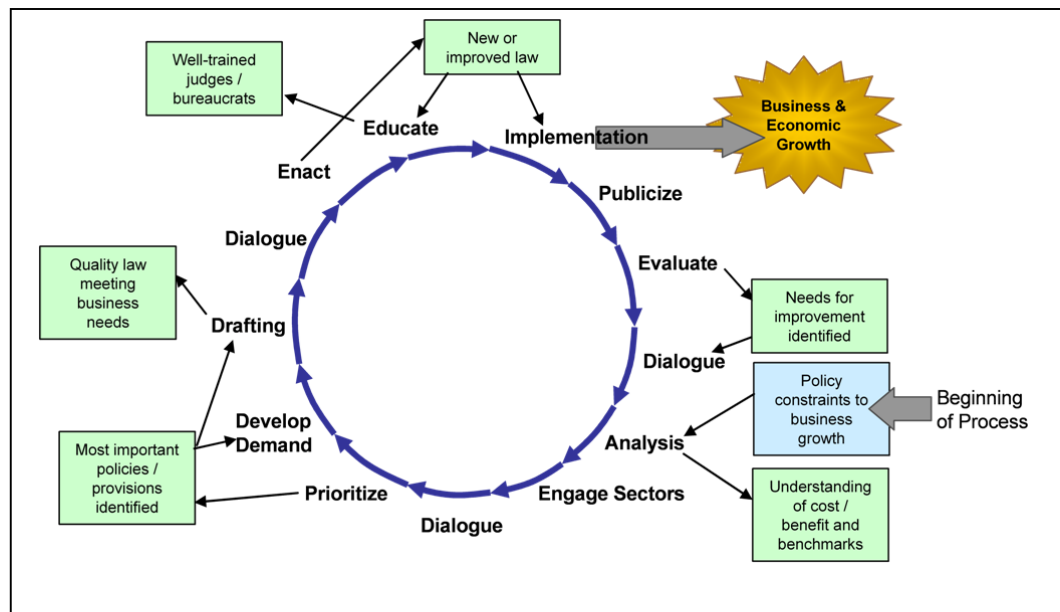
SUB-COMPONENT C: COMMERCIAL JUSTICE

The TPAA goal for Sub-Component C was to streamline the adjudication procedures for commercial cases, including fee payment, and to improve the process for the enforcement of judgments. Potential areas of intervention included modifications in the Civil Procedure Code, the Law on State Fees, and the Law on the Enforcement of Judgments, as well as administrative or other changes in proceedings. The following activities and expected results for Sub-Component C were outlined in the contractual statement of work:

- Provide technical assistance to analyze existing legislation related to commercial justice and provide recommendations that would remove administrative and other barriers in this field, especially in terms of access to courts. This may include recommendations related to the simplification of adjudication procedures for commercial cases and to improving laws and regulations on the enforcement of judgments.
- Provide technical assistance to support the adoption and implementation of required improvements in the Civil Procedure Code.
- Provide technical assistance to the Court Department to improve the system for the enforcement of judgments in commercial cases.
- Provide technical assistance to the Court Department to establish a system for tracking the enforcement of judgments.
- Provide technical assistance and training to the Court Department to enhance its institutional capacity for the enforcement of judgments, based on the results of the analyses noted above.

JRAP used a collaborative approach to developing and implementing the new legislation and improving processes and procedures in commercial case enforcement. Fostering collaboration within the Government and between the Government and the Kyrgyz private sector and outside experts has been a challenge in Kyrgyzstan. The approach used to promote this collaboration is depicted in the diagram below. This approach required analysis-based decision making, an open legislative drafting process, constant outreach to stakeholders, and evaluation of reforms.

JRAP was able to provide the stakeholders with analysis of the system for enforcement of judgments and to facilitate dialogue between the Government, the Court Department, and associated stakeholders, particularly judges, lawyers, banks, and businesses. This dialogue allowed the working group – made up of representatives from Government, Parliament, the Judiciary, and Court Department, as well as legal experts – to develop a law that best reflected the needs of stakeholders. JRAP also worked closely with enforcement officers and others charged with implementing the laws to develop training programs and other assistance to ensure that the new laws and procedures would be properly applied.



During the first four months of its work under this sub-component, JRAP first conducted a comprehensive review of the process and procedures of enforcement of judgments. Numerous meetings with counterparts and stakeholders from both public and private sectors to assess areas where structural inefficiencies hinder the resolution of commercial disputes and to identify potential areas for reform were held. JRAP conducted and documented a detailed analysis of court practices and procedures and assembled a detailed process mapping of the enforcement process. The team conducted a survey and assessment of information technology (IT) capabilities and developed recommendations to integrate IT solutions into enforcement activities.³ The team also reviewed

³ The IT assessment results revealed that the current level of IT capacity, including physical infrastructure (internet access, office space, continuous access to electricity), is negligible; there are no computers, no telecommunications infrastructure, and delivery of power is often intermittent. There are four computers for the entire enforcement service at the Court Department in Bishkek, two of which are inoperable. There are no IT professionals to maintain networks, perform routine maintenance on either hardware or software, or to keep users trained. The extremely low level of computerization of the Court Department had not been fully envisioned by the Project. The result is that the introduction of IT solutions for the enforcement service must start from an exceedingly basic level. The introduction of any new technology must include extensive basic skills training. Automation of the Court Department will not simply require the addition of more advanced IT equipment, but must begin with a basic provision of computers and thorough training of all aspects of computer usage. This basic lack of computer and IT infrastructure must be recognized and addressed when resources become available. The CIMS expansion has placed one computer in each Court Department office at the Oblast level. This will be used primarily for statistical reporting. A future expansion of CIMS should integrate the enforcement offices into the system. Currently, case tracking within the enforcement service of the Court Department is accomplished with a paper-based system for tracking enforcements of judgments using quarterly reviews by senior enforcement officers. This system is an adequate tracking system which can form the basis for a future electronic case tracking system.

relevant codes, laws, and regulations governing the enforcement of judgments and identified key issues for future improvement through legislative amendments. These analyses and recommendations were used to develop a detailed report with comprehensive recommendations for the reform of processes and legislation. JRAP also provided Kyrgyz stakeholders with a survey of enforcement systems in selected comparable countries in Central and Eastern Europe and the former Soviet Union.

In close coordination with JRAP, the Kyrgyz Government formed an interdepartmental working group to review the Law on Enforcement of Judgments and provisions in related laws and to develop amendments to the Law on Enforcement and ancillary and related legislation. The working group included representatives of the enforcement arm of the Court Department, a legal advisor from the Presidential Administration, a Member of Parliament, a judge of the Supreme Court, a judge of the Bishkek District Court, and representatives of the EU-funded judicial reform project. JRAP's Component C team was formally a member of the working group and was the key driver in organizing and conducting working group meetings and provided research and supporting analysis. JRAP organized a study tour to Bulgaria (which underwent a similar reform process with successful results) to educate the working group members on international practices and to demonstrate how recent changes in the enforcement process there were affected.⁴

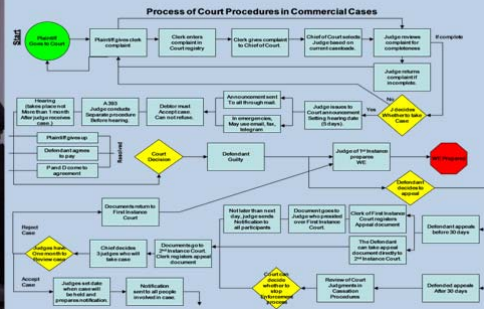
JRAP also developed a Code of Ethics for the first time in the history of the Kyrgyz Republic. The Code of Ethics was formally adopted by the Court Department and JRAP provided training for enforcement officers and addressed their concerns about the improved disciplinary procedures system.

During the project's second year, working with the interdepartmental working group, JRAP finished the draft Law on Enforcement of Judgments. In addition to a new law, the working group advanced the following eight legislative reforms that will result in a more coherently and logically organized enforcement regime, with greater efficiency and effectiveness: amendments to the Civil Code, the Civil Procedure Code, the Code of Administrative Responsibility, and Laws on Pledge, Bankruptcy, Banks and Banking Activity, Bank Secrecy, and Bankruptcy. These amendments were developed simultaneously in order to ensure logical consistency, coherence, and harmonization of the enforcement regime *en toto*. This legislation was advanced, along with a justification memorandum, as a "package" to ensure that the resulting legislative changes would not be undermined, as would likely happen if the laws were to be addressed individually. JRAP, together with the working group, attempted to shepherd the revised law through the government's law-making system. This included targeted communication campaigns for legislators, stakeholders, and the general public. The package of draft laws was accepted by the Presidential Administration but not advanced to Parliament during the life of the project (before Parliament was dissolved in April 2010).

After the package of laws was drafted and finalized, JRAP developed and implemented a training program for enforcement officers on the draft law and amendments. This provided enforcement officers with both an introduction to the upcoming changes as well as a chance to review best practices applicable to the Kyrgyz legal and commercial environments. The training program began with a Training of Trainers (TOT) and then a pilot training held in Bishkek.

⁴ The experiences of Bulgaria demonstrated that a combined system of public and private enforcement of judgments could be quite helpful in improving efficiency and lowering costs of enforcement in Kyrgyzstan. This concept was not included in the draft law by the working group but there was interest in the concept among many of the members.

Mapping the Process of Court Procedures and Enforcement of Judgments in Commercial Cases



JRAP team and Enforcement Officer, Svetlana Nikolaeva, document all steps involved in enforcing a judgment from filing an initial complaint in a commercial court to debtor payment. This first step was a helpful tool in order to identify bottlenecks in the current procedures. The complete process maps are available in the report “Streamlining Enforcement of Contracts: Report and Recommendations Regarding Commercial Case Procedures and Enforcement of Judgments”

Summary of Key Changes in Draft Law

The draft legislation developed with JRAP assistance aims to create an efficient system for enforcement of judgments in the Kyrgyz Republic, improving the procedures in the current system and making enforcement more reliable, faster, and less costly. This will in turn increase investor and consumer confidence, as businesses and citizens will be able to enter into contracts and other legal arrangements knowing that penalties for breach of contract will be enforced. The new legislation also includes stronger protections for debtors to ensure that creditors do not abuse the enforcement process. Judgments are obtained after a trial or arbitration using the procedures set forth in the Civil Procedure Code, normative acts, court rules, and arbitration rules. Once a judgment is obtained, the creditor must enforce it, using the procedures set forth in the draft law, which direct an enforcement officer to locate, seize, and sell assets owned by the debtor.

Important improvements in the procedures include:

- Requirement that an enforcement officer execute an enforcement document within two months of a judgment being issued and that a court ruling on securing a claim must be executed on the day of receipt of the writ.
- Procedures for notice of enforcement actions to the debtor are clarified and simplified. In addition, according to the new law, notice of enforcement and seizure of assets need not be given to the debtor in advance. This eliminates the ten-day notice requirement in the current law, which allowed debtors to hide or transfer assets before the enforcement officer could seize them.
- New procedures for an enforcement officer to locate debtors or a child removed from custody, or to obtain assistance from internal affairs bodies in such cases.
- Requirements that the debtor, government institutions, and banks provide enforcement officers with information about the debtor’s assets.



- Grounds for disqualification of enforcement officers, including conflicts of interest, are better defined, and a new separate Code of Ethics for Enforcement Officers is established.
- Streamlined and more flexible requirements for auctions of seized property.
- Clear procedures for collection of judgments for alimony and child support, with criminal penalties for evasion from such payments.

Prior to the overthrow of the President in April 2010, JRAP was ramping up its public outreach campaign efforts to generate popular support to push the legislation through the President's Office and into Parliament. A series of roundtables were planned. The team expected that the package of legislation would be advanced to the Parliament in April. However, the changes in the government stalled legislative efforts.

SUB-COMPONENT D: COURT COMPUTERIZATION

Beginning in 2002 and extending through 2004, the World Bank financed a pilot Court Information Management System (CIMS) project which covered five Kyrgyz Republic courts, including the Supreme Court. The TPAA sought to expand the CIMS to sixteen additional courts, enhance access to judicial opinions, and provide for random case assignment. The TPAA required that the Government of the Kyrgyz Republic meet certain conditions before the funds would be released for the computerization subcomponent. The conditions, contained in Article 5, Section 5.2 of the TPAA, required that: the NCJA be created and in operation for a period of three months with adequate staffing to operate and administer a qualifications exam; that a functional analysis of the judiciary be conducted; that the Judicial Council be established and operating for three months with adequate staff to operate, that it have procedures in place to process complaints against judges, and that it adopt a training program for judges; that the Kyrgyz Republic include sufficient funding in its budget to support operations, maintenance, and staffing costs of the court computerization subcomponent.

JRAP began work on court computerization by conducting an IT assessment early in the project's life in an effort to identify the status of CIMS as it then existed including IT infrastructure in place, staff capabilities, and an overview of the database of judicial opinions. Implementation issues were identified and preliminary discussions were held with the Supreme Court, all in anticipation of the start of the component. This assessment was completed in November 2008. In December 2008, in an effort to assist the Supreme Court to meet the requirements of the conditions precedent as they related to budget and staffing requirements, JRAP provided the Supreme Court with minimum IT staffing requirements necessary for sustaining the CIMS expansion project. This estimate was based on a list of courts proposed by the Supreme Court and included courts in every Oblast of the country.

On February 13, 2009, DPK submitted an ADS 548 review request from USAID for approval of the anticipated procurement of hardware and software for the CIMS project. USAID concurred with the procurement request in March 2009 with several conditions which were incorporated into the RFP for the project. During the weeks from March to May, 2009, DPK prepared all documentation for the anticipated start-up of the computerization sub-component, including justifications for sole source procurement for software development and an RFP for both software and hardware with all contractual and TPAA requirements for the system and with a projected timeframe for project completion.

By March 2009, the Judicial Council, Court Department, and Supreme Court prepared and approved a budget covering the balance of 2009 and for 2010 which included funding for the CIMS maintenance and support. The only remaining item to meet the conditions precedent was sufficient confirmation from the Government of the Kyrgyz Republic that the IT positions needed to support CIMS would be authorized by the President and actually allocated to the Supreme Court and Court Department's complement of employee positions. This action required a decree signed by the President of the Kyrgyz Republic. In May 2009, a draft decree was prepared by JRAP and submitted to the Legal Office of the President. The decree was finally signed by the President of Kyrgyzstan on July 20, 2009. MCC gave its final approval for the release of court computerization funds on August 28, 2009. This delayed the anticipated start-up of the sub-component and severely shortened the projected twenty-month timeframe for completion by the end of the contract period on April 20, 2010.

DPK began immediate negotiations with SIC Arashan Ltd., the developer of the original CIMS system and the only software developer in Kyrgyzstan capable of undertaking the expanded CIMS project in the time remaining to complete the project. In the early stages of negotiations, Arashan proposed an alternate plan for expansion of CIMS which would provide CIMS to 23 additional courts (28 in total) rather than the 16 additional courts originally projected. The alternate plan would have the benefit of covering three entire Oblasts, cost less to implement, and, of critical importance, consume less time than the original plan. Arashan proposed installing CIMS in all courts in Chui Oblast, Bishkek City, and Osh Oblast. JRAP initiated discussions with the Supreme Court who preferred the alternate proposal and requested that JRAP pursue that plan.



Computer Training for the CIMS at the Judicial Training Center, 2010

It was clear that under any proposal for court computerization that the project could not be completed by the contractual April 20, 2010 end date. Projected timelines for successful court computerization completion extended to September 2010 at the longest and mid-July 2010 at the shortest. JRAP worked with Arashan to develop a timeline which would conclude on June 30, 2010. DPK and USAID began the process of seeking a no-cost extension of the project to at least that date. Arashan's final proposal, which was incorporated into a subcontract signed on November 19, 2009, provided that the Chui Oblast and Bishkek City courts would be completed with all personnel trained by April 20, 2010. An option period, to complete the Osh Oblast CIMS installation by June 30, 2010 subject to the approval of an extension request by USAID, was included into the subcontract.

While Contractor DPK and USAID worked on obtaining an extension until at least June 30, 2010, Arashan began work under its subcontract and JRAP began the procurement process for necessary hardware for the courts. On January 11, 2010, Arashan began training the 330 judges and court staff on basic computer skills and the original CIMS program. Timelines for completion of the procurement process, installation of computer hardware and cabling, and training of court personnel had virtually no flexibility requiring all items to be completed on schedule. With the exception of the revolution on April 7, which delayed Arashan's training and computer installation schedule for several days, all aspects of the project remained on schedule.

On February 25, 2010, Contractor's request for a no-cost extension of the project to June 30, 2010 was granted by USAID. This allowed Arashan to begin work on the option portion of the subcontract covering Osh Oblast. Again, the schedule was very inflexible and violent events in June 2010 in Osh delayed the hardware installation due to problems at the border affecting procured equipment delivery. In the original proposal, the Supreme Court had agreed to assume fiscal responsibility for

full CIMS implementation in the original five CIMS courts. As a result of the impact that the April revolution had on infrastructure and on fiscal stability of the country, the Supreme Court requested that JRAP supply new computers for the five original CIMS courts. In addition, it became apparent that courts were vulnerable, and two courts were directly impacted by the riots in Talas.

JRAP prepared a request for additional funding to purchase 114 computers for the five original CIMS courts, make security enhancements at the Supreme Court building, purchase equipment damaged, looted, or destroyed during April 6-7, and conduct a security assessment of courts, primarily CIMS courts. Additional unrest in Osh during the month of June confirmed the need to address the security of court buildings. On May 15, 2010, USAID expanded DPK's scope of work and added \$250,000 in obligated funds to the contract.

The judiciary now has incorporated CIMS into its annual budgetary process and it is installed in 28 courts covering all courts in Bishkek City, Chui Oblast, and Osh Oblast. The enhanced CIMS version has incorporated the recommendations from judges and clerical staff of the original five courts to ensure that case processing within all interested courts is enhanced, is in Russian and Kyrgyz languages, and will significantly improve recordkeeping and statistical reporting for the courts. Statistical reports can be sent to the Supreme Court and the Court Department central office electronically, increasing the efficiency and accuracy of the reporting process. All judicial opinions from all CIMS courts will be transferred electronically to a central database of opinions at the Supreme Court in Bishkek. The database has the capacity to be integrated with other databases. The volume of opinions will be too large to effectively integrate with several of the existing databases and Toktom (the legal resource website for CIS countries), but selected options on issues of significant interest can be uploaded to those databases. The entire Supreme Court database of opinions can be linked to the website of the judiciary when the decision is made by the new court leadership. Random case assignment is possible using the CIMS and all CIMS courts can adopt this form of case assignment. All 330 court staff and judges in CIMS courts have received comprehensive three-week training conducted by Subcontractor Arashan covering basic computer skills and the CIMS. The costs for internet access and future maintenance have now been assumed by the judiciary.

CROSS-CUTTING ACTIVITY: PUBLIC OUTREACH

JRAP's approach to ensuring that information regarding selection and disciplining of judges as well as other information concerning the activities of judicial bodies was open and accessible to the public resulted in a transformation of the relationship between judicial bodies and the local and national media as well as accomplishing the goal of making information more accessible to the public. The initial step in this process was the adoption of a communications strategy. This strategy, developed with the assistance of an international consultant and JRAP Public Outreach staff, provided a map for increasing the cooperation between the media and the judicial bodies while also disseminating information on activities within the judiciary to the public. A part of the strategy also included improving internal communications within the judiciary to ensure that the reform process was understood by judicial personnel. A number of distinct but interrelated activities were undertaken.

Media Seminars

Judicial reform and the creation of new entities such as the Judicial Council are best explained in open meetings where participants can ask questions. Whereas the normal relationship with media and the courts had been more adversarial than congenial, JRAP introduced a method of changing that relationship. The initial media seminar was held in JRAP's office and included all Threshold Component representatives and USAID. This introduction to the process was well received by the media and they gained a more comprehensive understanding of the reforms being undertaken by the TPAA. A second media seminar was held at the Supreme Court and included Supreme Court and Judicial Council representatives. A similar seminar was held with members of the NCJA. These

seminars gave an opportunity for media and judicial leaders to gain a better understanding and trust for each other.

Bulletins and Brochures

JRAP began producing periodic brochures to highlight the accomplishments and progress of the TPAA reforms. These included articles on the various activities of JRAP working with counterparts as well as interviews with judicial and TPAA reform leaders. Although available to the public generally, these bulletins were used primarily as a way to keep the judiciary informed about the project. A total of six bulletins produced during the course of the project were distributed to all courts in the Republic. Several brochures describing briefly the goals, objectives, and structure of JRAP were prepared early in the project and were followed by a brochure of accomplishments after one year. These were widely distributed at all JRAP events. The judicial disciplinary process required that the public have accurate information regarding the appropriate method of filing a complaint about a judge. To assist with this challenge, JRAP developed a brochure for the Judicial Council's Disciplinary Commission detailing in concise and plain language how to file a proper complaint concerning a judge. The brochure explained how to distinguish those matters that are more appropriate for other forums such as appeals of decisions. JRAP also developed a form for filing these complaints which was adopted by the Judicial Council.

Interviews for Newspaper, Radio, and Television

JRAP and judicial leaders conducted several interviews for local media including radio programs, television interviews, and newspaper and Internet interviews. Many of the interviews conducted by JRAP staff of judicial leaders for inclusion in the project bulletins were submitted to print and Internet news outlets for publication.

Public Outreach Plans with Host Country Counterparts

JRAP worked with the Supreme Court, Judicial Council, and NCJA to develop public outreach plans for their institutions. Drafts were submitted to all institutions and, as a result, the Judicial Council and NCJA formally adopted such plans. These plans outlined what information should be routinely discriminated to the public, the method for disseminating the information, and the person responsible. The Supreme Court has long had a press secretary position. The plans adopted by the Judicial Council and NCJA named persons to those positions within their respective institutions. The responsibility includes ensuring that the web site for the judiciary is maintained. In June 2010, using the public outreach plan, the press secretary of the Judicial Council released a press release concerning the activities and outcomes of its most recent meeting.

Web Portal

JRAP's creation of a web portal for use by all judicial bodies provided the judiciary with a tool to reach the public instantly and with a level of detail of information never before achievable. The public has the ability to access the portal to get information, but more importantly and effectively, the media quickly learned to access the portal to find information on the activities of judicial bodies. JRAP funded and organized the project. All judicial bodies -- the Supreme Court, Judicial Council, JTC, NCJA, Constitutional Court, and Court Department -- participated and contributed to the development of dedicated pages. Institutions such as the JTC and Constitutional Court, who already had web pages, were able to link to the site created for the judiciary. Other links connect to other government agencies and useful sources of information. JRAP also trained persons from the Supreme Court, the Court Department (the Secretariat for the Judicial Council and NCJA), and judicial bodies including the Judicial Council and NCJA. The portal is used to post information on disciplinary actions of the Judicial Council, meeting outcomes of the Judicial Council, and actions of the NCJA, in particular names of candidates for judge positions and recommendations to the president for dismissal. The 1,000 random written examination questions for judicial candidates are also posted on the site. The Supreme Court has already assumed the responsibility for funding the hosting of the site for the year 2010.

ISSUES FACED

There were some delays in project start-up due to replacement of key personnel. The delays were overcome within a short period of time in a way that did not affect the desired outcomes. Finalization of the first-year Project work plan was deferred pending arrival of the permanent Chief of Party (COP), approved by USAID as replacement for originally proposed COP who withdrew due to health reasons. Assistance to the NCJA was deferred until the final four members -- civil society representatives -- were appointed by the President. The members were not appointed until after the second quarter of the Project. The formation and operation of the NCJA is a condition precedent to the launch of Sub-Component D of the Project, Court Computerization. These delays were superseded by extended delays on the part of the President's Office in approving a decree authorizing IT staff positions for the judiciary.

Although JRAP's various host country counterpart institutions agreed in writing to analyze discrepancies in the judicial legal framework in the context of a working group consisting of all affected institutions, independent legislative amendment efforts were concurrently being carried out by several of the participants, primarily the Judicial Council. These efforts tended to negate the work of the working group. In addition, the working group indicated an inclination to not review certain portions of the legal framework such as the constitution and constitutional laws, limiting the scope of the possible outcomes of the group. These initial impediments to the work of the working group were eventually overcome and a full range of topics were addressed. All judicial bodies eventually came to view the working group as the most effective forum for initiating and vetting legislative amendments.

Although the Supreme Court officially adopted a three-year curriculum for the JTC, it also invited all donors to present workshops and trainings that the donors deemed relevant. The desired impact of the JTC-developed curriculum, which resulted from a Kyrgyz-led needs assessment, was impacted as a result. With regard to the MCC-required modular testing, donors expressed a strong desire to not participate in such testing related to any trainings that they will sponsor. JRAP presented the parameters for testing to both the donor community and MCC/USAID in an effort to resolve this dilemma. Once the modular testing began, instructors from donor organizations embraced the concept.

JRAP prepared an outline of requirements for meeting the conditions precedent to court computerization activities under JRAP's Sub-Component D, based on an analysis by USN short-term expert Kazimierz Lobaza, regarding operational costs and staffing commitments necessary to sustain the project. This outline was presented by USAID and JRAP to the Supreme Court who reviewed it on behalf of the Government of the Kyrgyz Republic. The Supreme Court provided a detailed written response indicating that funds have been committed to cover the necessary items, with the exception of the hiring of IT staff positions. This action required the concurrence of the President, who had the authority to add new positions. This concurrence and commitment were delayed which, in turn, delayed the launch of JRAP's Sub-Component D. The delay in the President's concurrence remained a critical issue for JRAP during two quarters of the project life.

JRAP began implementation of court computerization activities in earnest as soon as MCC approval was ultimately granted on August 28, 2009, leaving only eight months to complete a project originally projected to take approximately twelve months to complete. JRAP worked to minimize the time necessary for full and effective completion of the CIMS court computerization as outlined in project documents, but was not able to reduce the time necessary to allow completion within the eight months that remained on the project. The CIMS project was divided into a primary implementation period ending on April 20, 2010 which would cover Bishkek City and Chui Oblast courts, and an option period extending to June 30, 2010 and adding Osh Oblast courts, subject to

USAID modification of DPK's contract. A request for a no cost extension was made, requesting an extension until June 30, 2010. Action on this request did not occur until February 2010.

JRAP's Sub-Component C team, together with local experts, finished all amendments to Kyrgyz legislation affecting enforcement of judgment procedures as well as drafting a new Law on Enforcement of Judgments in October 2009. The package of laws was approved by the Court Department and forwarded to the Office of Presidential Administration for further processing. The President's Legal Office forwarded the package of laws to the various Ministries for comment. The date for submission of their comments was December 15, 2009. Comments were reviewed by the President's Legal Office and changes made as appropriate. JRAP made numerous inquiries and had several meetings with personnel from the Legal Office of the President, and received various timetables on when the package of laws would be processed further, including introduction into Parliament. In anticipation of the passage of these laws and amendments, JRAP conducted training of all 194 enforcement officers of the Kyrgyz Republic on the changes proposed by the new law package. The law package, however, remained in the Office of Presidential Administration, and JRAP activities proposed to take place from the time the package was introduced into Parliament through its passage and implementation were delayed. The events of April 7, 2010 resulted in the Office of the President being destroyed and its activities suspended by the Interim Government. Sub-Component C activities ended on April 20, 2010.

On April 7, 2010, Bishkek was the site of violent protests resulting in injury and death of civilians and police, and ultimately the displacement of the ruling authorities including Parliament and the President of the Kyrgyz Republic. An interim government assumed responsibility for governing and in the process disbanded Parliament and the Office of the President and suspended activities of the Judicial Council and the NCJA. These actions have interfered with the completion of certain activities including the passage of the draft law package on enforcement of judgments, the administering of the written entrance examination for the judicial candidate school, the training for NCJA members on how to properly conduct oral interviews of judicial candidates under their adopted rules, routine Judicial Council activities, and training for judges and court personnel. Subsequently, in late April, the training necessary for the CIMS implementation was authorized as was a regularly scheduled meeting of the Judicial Council.

A new constitution for the Kyrgyz Republic has been drafted and is scheduled to be presented to the electorate in a referendum on June 27, 2010. If adopted, it will change the name and responsibilities of the NCJA. The Office of the President will have more restricted authorities. Much of the constitution will require additional laws in order to implement it. These laws will not be adopted until a new Parliament is formed after the anticipated October 2010 Parliamentary elections. The procedural rules developed for the NCJA and perhaps the judicial candidate school may no longer be relevant after the implementing constitutional laws are adopted.

On April 10, 2010, violence erupted in the southern Kyrgyz city of Osh, a location where JRAP is installing CIMS in all courts, and has continued and intensified through June 2010 as of the time of this report. Work on CIMS installation in that region, scheduled for completion on June 26, 2010, has been suspended until stability and security return to the region.

CURRENT STATUS OF HOST COUNTRY COUNTERPART INSTITUTIONS

Supreme Court

The Supreme Court has undergone a recent change of leadership since the April 7, 2010 events. The Chair resigned and was replaced by her First Deputy as Acting Chair pending appointment of a new chair according to the provisions of the new constitution when adopted. This is one of the few Government bodies operating under legitimate leadership since the April 7 change in government. The Supreme Court has remained supportive of the CIMS implementation and other activities. The

leadership of the Supreme Court remained constant for the duration of the project until shortly after April 7 when the change took place.

One of the Deputy Chairs of the Supreme Court is the former Chair of the Pervomysky Court and the Deputy Chair of the Judicial Council. He remains committed to and has a keen understanding of the reforms undertaken by JRAP. This will lend continuity to any future reform efforts.

JRAP has consistently recommended that the Chair of the Supreme Court be a member and possibly the automatic Chair of the Judicial Council. The Chair has acted as the *de facto* member/chair of the Judicial Council for the duration of the project in that the elected Chair of the Judicial Council is a Supreme Court judge and would defer to any decision of the Supreme Court Chair.

Judicial Council

The Judicial Council has endured two key transitions since its formation. Its first Deputy Chair was promoted to the position of Deputy Chair of the Supreme Court. The replacement Deputy Chair of the Judicial Council was asked to resign after the April 7 events. The Chair of the Judicial Council has served two years in that position and is scheduled to be replaced in June 2010. She will remain as a member of the Judicial Council for an additional year. She will be eligible for re-election to the Council by virtue of amendments to the law initiated by JRAP to help provide continuity to the Council.

The Judicial Council has operated in an exemplary manner during the tenure of the project. All three Commissions -- Disciplinary Commission, Budget Commission, and Judicial Education Commission -- have moved their respective areas forward. By the end of 2009, nearly 1,000 complaints against judges were reviewed and processed to conclusion; most of those were complaints on which the Judicial Council could not take action, but of those complaints reviewed, 58 judges were called to account for misconduct. A disciplinary action in the form of “admonition” was taken in regard to 25 judges; 19 judges were reprimanded; and 14 judges were dismissed on the grounds of their misconduct. 13 judges out of these 14 judges were dismissed by Presidential decree. The Budget Commission prepared a three-year budget in early 2008 for the years 2009 – 2011 and revised that budget in succeeding years, including after the events of April 7, 2010. JRAP assistance providing budget training ensured that the newly assumed process was conducted within generally accepted international standards. The Training Commission approved a three-year curriculum as well as regulations for conducting entrance examination for a judicial candidate training program to be launched in the near future.

The impact of the new constitution on the responsibilities of the Judicial Council appears to be minimal. Although originally suspended from its activities by the Interim Government after the April 7 incidents, the Judicial Council received approval to conduct a regular meeting in May 2010 at which the judiciary budget for 2011 was approved. During the 2010-2011 year, a new Chair for the Judicial Council will be elected from among its members. In April 2011, the Congress of Judges will elect a new judicial Council. The work performed by the Judicial Council during the past two years will be invaluable for the future.

National Council for Justice Affairs (NCJA)

The NCJA has been suspended by the Interim Government and will be reorganized under the new constitution, if adopted as submitted, as the “Council for Judicial Selection.” The composition of the new council will be closer to the composition recommended by JRAP in the Functional Analysis. JRAP recommended that the NCJA be comprised of no less than 50 percent judges. The new constitution proposed that the Council for Judicial Selection be composed of judges and civil society representatives. The Judicial Council, the parliamentary majority, and the parliamentary opposition shall each elect one-third of the composition of the Council for Judicial Selection. It is unclear

whether judges may represent civil society organizations. These details will be resolved in implementing legislation approved after Parliament is reinstated.

Court Department

The Court Department was separated from the Ministry of Justice and placed under the judiciary but not specifically under the Judicial Council or the Supreme Court. The TPAA required that it be under the Judicial Council. Directors appointed by the President provided marginally effective leadership. Cooperation between the Court Department and the Judicial Council nevertheless improved during the two years of the project. JRAP recommended that the Court Department be under the Supreme Court and that its director be appointed by the Chair of the Supreme Court. The effectiveness of the Court Department as a judicial body will only be improved significantly when it is specifically made a part of either the Supreme Court or the Judicial Council with its director being appointed by one of those judicial bodies.

CONCLUSIONS AND RECOMMENDATIONS

This final report has summarized the accomplishments under the subject contract and the salient challenges that exist in Kyrgyzstan to the continued development and strengthening of the rule of law. The report revealed a number of areas for improving rule of law and strengthening judicial independence and delivery of court services to the public. The principal challenges to ensuring a fair, efficient, and democratically based justice system include: efficiency and effectiveness of justice sector institutions; accountability and transparency both within and external to government institutions, including public perception of wide-spread impunity; a lack of access to justice; and inadequacies in enforcing laws and judicial decisions.

Future programmatic interventions will need to be mindful of the political will to effect change, particularly the support for, as well as the limits imposed by, the governmental structures. While this project, in collaboration with reform-minded host country counterpart leaders, has opened new avenues for reform and improving judicial self-governance, there have also been recent indications of backsliding. We recommend focusing on practical objectives to maximize local ownership and on providing sustainable capacity development and appropriate institutional strengthening for key justice sector institutions, in order to consolidate gains made in this sector with JRAP's technical and material assistance. Given the importance that the Judicial Council has played to date, it will undoubtedly be a key player. Future activities should seek to ensure local buy-in and success of interventions. Kyrgyzstan's judiciary must be able to effectively generate its own budgets, allocate human and other resources to increase performance and access to justice, and perform other competencies essential to an effective judiciary.

Further improvements are needed to expand use of CIMS automation and technology in the judicial system and to ensure that with increased use of automation requisite types of operational efficiencies and streamlining are applied. Any support in this area should build on the ongoing efforts in court automation achieved during this project.

Some of our specific recommendations include the following:

- 1.) Every effort should be made to continue the work begun during this project. A great deal of momentum was gained in judicial reforms. The host country counterparts showed a keen interest and understanding of the reform effort and a strong desire to continue. The structure of the judiciary needs to be refined. Work in the areas of budget for the judiciary, judicial discipline, judicial training, and public outreach needs to be continued. The events of April 7 and subsequent revision of the constitution increase the need for follow-on with what JRAP began.

- 2.) A new constitution will likely be adopted creating at least one new judicial body to replace the NCJA. This new body, the Council for Judicial Selection, should be established in a manner consistent with the recommendations of the Functional Analysis and desires of the judicial leaders of the Kyrgyz Republic. Although it is being established as a new body which will require new implementing legislation, the functions are essentially those that the NCJA discharged at the project's close. The JRAP deliverables and products designed for the efficient and transparent operation of the NCJA can and should be used as the basis for internal procedural regulations of the new entity.
- 3.) Any constitutional laws adopted to implement the new constitutional provisions regarding the Judicial Council should be drafted in a manner as not to exclude the Chair of the Supreme Court from membership or participation in the Judicial Council. If possible, and particularly if the provisions of the proposed constitution are retained providing for a one-year term for the Supreme Court Chair, the Supreme Court Chair should be the automatic Chair of the Judicial Council.
- 4.) The draft law package on enforcement of judgments should be moved toward adoption in its present form. All stakeholders have had input, and a diverse working group drafted the revisions to the laws, but Parliament was dissolved before the law could be adopted. The law package is clearly needed, but circumstances and timing prevented the ultimate enactment of the law until a new Parliament is installed. Since the work is completed, any new effort should build upon the draft laws already produced rather than beginning anew.
- 5.) The Kyrgyz Government should engage in public discussions about the possibility of introducing private enforcement officers in Kyrgyzstan or a mixed public and private system and the potential advantages or disadvantages of each system.
- 6.) The Court Department should be specifically placed under either the Judicial Council or the Supreme Court as recommended in the Functional Analysis, with the director being appointed by the entity under which it is placed. JRAP strongly promoted this with full support of all but the Court Department and the Office of the President. The President's Office will have a much less prominent role under the proposed new constitution. Achieving the desired goal of providing more definite oversight of the Court Department within the judiciary will be facilitated by this change in governmental structure.
- 7.) The CIMS should be expanded to all Oblasts. JRAP's expansion of the original World Bank-funded pilot CIMS project should be considered as the beta version of the ultimate expansion of CIMS to all courts of the Republic. Upgrades to the software should again be made based on the experience of the courts in Bishkek City, Chui and Osh Oblasts. The full benefit of the CIMS can only be achieved by equipping all courts with the system.
- 8.) The Functional Analysis of the Judicial System completed in October 2008 by JRAP should be revisited and updated at the beginning of any new judicial reform assistance effort. It proved to be an excellent guide to JRAP's work. Much has changed since the in-depth study was conducted, including the transition to a new government and the likely adoption of a new constitution. A refreshed diagnostic study will highlight the changes and illustrate the areas where the focus of new reform assistance should be directed.
- 9.) The Kyrgyz Republic is plagued by inadequate and substandard court facilities. This contributes to courts being held in low esteem, judges being subjected to undue threats, and, in a prominent case recently in Bishkek, the escape of prisoners. JRAP developed facility standards for court buildings with the assistance of local and international experts working together with the Judicial Council and other members of the judiciary. These standards were adopted by the government but tend not to be followed because of financial limitations. They should be given the highest priority for any new

construction or major court remodeling activities. Appropriate facilities enhance access of the public to courts in a way that fosters efficiency and lends dignity to the courts and the judicial process. Security of the public, judges, court staff, witnesses, and prisoners is enhanced with appropriately designed facilities. With the likely introduction of jury trials in 2012, the need for improved court facilities is heightened.

10.) Security is lacking or nonexistent in the courts of the Kyrgyz Republic, as confirmed by the findings of JRAP's recent security assessment during the project's final month of implementation. Judges are routinely threatened by litigants who bring large groups of supporters to the courts often armed with weapons or cans of fuel. The security of judges, court staff, the public, witnesses, and prisoners is jeopardized daily in all courts in the Republic. The dignity of the judicial process is decreased by the lack of proper decorum and security. In addition, the equipment supplied to modernize courts is placed on jeopardy by the lack of security. Courts have largely escaped the destruction experienced by other government agencies during recent riots and civil unrest, but they are by no means immune. Basic security within the courts is fundamental to an open, transparent, objective, and effective judiciary.

In conclusion, at project completion, although Kyrgyzstan faces a number of challenges, there is reason to hope that a series of targeted interventions can continue to have impact, even in the near term. Reforms that can adequately address institutional deficiencies and corruption will be a longer term process. The rule of law is continually developing and results are more sustainable where there is a participatory process adapted to local cultures and expectations. There is a current willingness to seek judicial reform, both within and outside of the government, particularly in light of JRAP's successes. USAID should take advantage of this opportunity.