


PERFORMANCE PROGRESS REPORT SF-PPR

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11. Other Attachments (attach other documents as needed or as instructed by the awarding Federal Agency)			
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Kazakhstan Judicial Program
AID-176-A-12-00011
Quarterly Report: October 1, 2017 – December 31, 2017

To: Agreement Officer Representative, U.S. Agency for International Development,
Almaty, Kazakhstan

CC: ABA ROLI, Washington, D.C.

From: ABA ROLI, Astana, Kazakhstan,

Date: January 31, 2018

I. EXECUTIVE SUMMARY

Since April 2012, the American Bar Association Rule of Law Initiative (ABA ROLI) has continued to successfully implement its USAID-funded four-year **Kazakhstan Judicial Program (AID-176-A-12-00011)**. Under this program, ABA ROLI is cooperating with the Kazakhstan Supreme Court, Union of Judges, and Academy of Justice under the Supreme Court of the Republic of Kazakhstan to strengthen judges' knowledge and application of international best practices in judicial decision writing techniques and substantive law, support the implementation of new legislation, and develop alternative dispute resolution methods in order to advance the goal of the modernization of and increased the public trust in the judicial system of Kazakhstan.

Over the reporting period, ABA ROLI completed all activities planned under its shortened work plan that was approved by USAID in the previous reporting period, namely:

- Conducted a roundtable on investment disputes for 30 representatives of the Supreme Court and Government of Kazakhstan, the results of which are informing a new normative regulation on the notion of the “investment dispute”.
- Printed and distributed 400 copies of the manual on judicial mediation to all 16 oblast courts, the Academy of Justice, and the Supreme Court for use by judges as part of their ongoing continuing education and professional development.

Please see the attached Excel document (Attachment A) for ABA ROLI's Performance Management Plan (PMP).

II. OPERATIONAL HIGHLIGHTS

In mid-December 2017, ABA ROLI received its final obligation under the award from USAID, as well as official confirmation from USAID to continue implementing the program within the originally approved scope of work. This final obligation will enable ABA ROLI to conduct activities through the end of the approved program period of September 2019. As of the time of this report, ABA ROLI is preparing a new work plan for the remainder of Year Seven of the Program – from January 1, 2018 till September 30, 2018. To carry out its work plan, ABA

ROLI will continue its fruitful cooperation with the Supreme Court of the Republic of Kazakhstan, the Union of Judges and the Academy of Justice.

III. PROGRAM ACTIVITIES

Objective 1: Improved Capacity of Judges to Consider Cases in Civil Law

Outcome 1.1a: Regional and first instance court judges write clearer, more consistent, and better structured decisions in civil law; 1.1b: Civil law cases in the court of first instance and regional level courts are adjudicated more efficiently

Activity 1.1.1: Develop civil law decision writing manuals for judges

ABA ROLI has developed five manuals on judicial decision writing for judges on various civil law topics, distributing 4,000 copies of these manuals to courts across the country. ABA ROLI did not take efforts under this activity this quarter, and is not planned to during Year Seven. ABA ROLI is on track to meet its total program target for number of civil law manuals developed and has exceeded its target of copies of manuals published, though anticipates developing a final manual and conducting corresponding seminars during a future program year.

Activity 1.1.2: Develop and conduct civil law decision writing courses

Over the course of the Program, based on the judicial decision writing manuals described in Activity 1.1.1 above, ABA ROLI conducted a total of nine seminars on judicial decision writing at the Academy of Justice and 10 regional seminars around the country. ABA ROLI did not take efforts under this activity this quarter, and will not during Year Seven as emphasis is on criminal law issues, but ABA ROLI will conduct the final civil law decision writing seminar in a future work plan year.

Activity 1.1.3: Develop and conduct ADR CLE course for the Academy of Justice

Over the previous work plan year, ABA ROLI conducted seminars for judges and students of the Academy of Justice Master's Program on mediation. The seminars covered international experience on court-related mediation programs presented by Slovenian expert, Mr. Ales Zalar, and compared it with Kazakhstani practice in judicial mediation presented by national expert retired judge Kuanova.

Following the seminars, Ms. Kuanova compiled a formal course curriculum for the Academy of Justice for their further use. This course can be used both for professional development of sitting judges as well as for students of the Master's Program of the Academy of Justice. The course is a practical tool for academic staff of the Academy of Justice containing not just theoretical materials but also practical examples for case studies.

Based on the course curriculum, Ms. Kuanova developed a comprehensive manual for judges on mediation. The manual contains three chapters: (1) mediation in the system of conciliation procedures in civil trials; (2) practical issues related to conducting mediation procedure in court; (3) procedural acts and agreements.

The manual presents comprehensive information on how the judicial mediation procedure shall be conducted, including a guide



ABA ROLI's manual on Mediation serves as a guide for judges on the application of judicial mediation.

on exact steps a judge should take to conduct mediation in the most effective way, including tips on how to check whether the mediation agreement signed out-of-court violates the rights of the third parties, in addition to a full mediation case study.

In October 2017, ABA ROLI received Scientific Board approval of the manual, thus confirming its scientific value and clearing it for distribution within the judicial community. In November 2017, ABA ROLI published 400 copies of the manual on mediation and disseminated them to all 16 oblast courts of Kazakhstan, as well as the library of the Academy of Justice and the Supreme Court. ABA ROLI also submitted the course curriculum to the Academy of Justice for its further use. ABA ROLI has received verbal affirmation by the Academy of Justice that it will use the course and manual as part of its continuing education for judges.

During the next quarter, ABA ROLI will conduct its survey of judges who took the course and are using the now-distributed manual. While ABA ROLI anticipated conducting this survey of judges who took the course during the reporting period, after further consideration and to reduce burden on respondents, ABA ROLI determined it would be better to conduct the survey simultaneously for both the seminar and manual once the manual had been distributed and available for use.

Expected Deliverable(s):

- One (1) manual on mediation is published in 400 copies and distributed to all 16 oblast courts of Kazakhstan, the Academy of Justice, and the Supreme Court of Kazakhstan.

Completed. In November 2017 ABA ROLI published and distributed 400 copies of the manual to all 16 oblast courts of Kazakhstan, the Academy of Justice, and the Supreme Court of Kazakhstan.

- One (1) course curriculum on mediation is published and submitted to the Academy of Justice for their further use.

Completed. In November 2017, ABA ROLI submitted the course curriculum on mediation to the Academy of Justice.

Outcome 1.2: A cadre of legal professionals is prepared to apply alternative dispute resolution (ADR) mechanisms

No activities took place this quarter under this outcome as they were not envisioned to take place as part of the Year Seven Work Plan approved by USAID in September 2017. However, with USAID's final obligation to ABA ROLI in December 2017, activities that advance this objective will take place in the remainder of Year Seven.

Objective 2: Improved capacity of judges to consider criminal cases

Under this objective, ABA ROLI will conduct a variety of activities aimed at improving the capacity of judges to implement new criminal legislation, with a particular focus on cases related to violent extremism, as identified by both the Government of Kazakhstan and USAID as a priority area for the judiciary to address.

No activities under this objective were envisioned to take place as part of the Year Seven Work Plan approved by USAID in September 2017. However, with USAID's final obligation to ABA ROLI in December 2017, activities that advance this objective will take place in the remainder of Year Seven and future work plan years.

Objective 3: Improve Capacity of the Judiciary to Handle Investment Disputes

Outcome 3.1: Judges have access to high-quality CLE courses on resolving investment disputes

Activity 3.1.1: Develop and disseminate a methodology (benchbook) for judges on uniform application of the law in adjudicating investment disputes

No activities took place this quarter as this activity was not envisioned to take place as part of the Year Seven Work Plan approved by USAID in September 2017. However, with USAID's final obligation to ABA ROLI in December 2017, activities that advance this objective will take place in the remainder of Year Seven and future work plan years.

Activity 3.1.2: Hold a roundtable to identify main issues/areas of importance and gaps in implementation of legislation related to the investment climate of Kazakhstan

On November 24, 2017, ABA ROLI in cooperation with the Supreme Court of the Republic of Kazakhstan organized a roundtable discussion on issues related to investment dispute resolution in Kazakhstan and in the international context.



The November roundtable convened justices of the Investment Disputes Panel of the Supreme Court and Astana City Court, as well as judges of the economic courts to discuss topical issues related to identifying the notion of “investor” and “investment dispute”.

This is the second roundtable on investment disputes organized by ABA ROLI in cooperation with the Supreme Court. The first one took place in February 2017 following the first year of operation of specialized investment dispute panels in Kazakhstan. Recommendations made at that roundtable laid the groundwork for legislative changes that came into effect in July 2017.



Roundtable participants, including Chair of the Investment Disputes Panel of the Supreme Court Aigul Kydyrbayeva and ABA ROLI experts Azer Aliyev and Tomas Vail discuss issues related to the national legal framework on investment dispute resolution.

Mrs. Kydyrbayeva, Chair of the Investment Disputes Panel of the Supreme Court in her welcome speech of the November roundtable noted “[...] we want to thank ABA ROLI for their active participation in further[ing the] development of investment dispute resolution in Kazakhstan. They organized a study tour to [the] US to learn international experience [on this matter], as well as a roundtable on the results of the first year of the investment disputes panel’s work. As the result, recommendations were produced: to specify the jurisdiction of investment disputes more clearly and to extend the length of the period of examining the case from one to two months. These recommendations were implemented [into the national legislation] and made into effect in July 2017. Thus, results of our cooperation were put in practical use and we hope for further fruitful cooperation on various aspects of our activity”.

The roundtable convened Justices of the Investment Disputes Panel of the Supreme Court of the Republic of Kazakhstan, judges of the investment dispute panel of the Astana City Court, judges of Economic Courts, members of the International Council of the Supreme Court, representatives of Astana Financial Court, Ministry of Justice, and others to discuss investment dispute resolution issues in Kazakhstan. The discussion focused on four main topics: notion of “investment dispute” in international arbitration practice, defining the status of an “investor” in international investment disputes, instances when the Republic of Kazakhstan is a major party in an international arbitration case, and tax disputes in the context of investment treaties.

ABA ROLI experts Mr. Azer Aliyev, associate professor at the Martin-Luther University of Halle-Wittenberg and Mr. Tomas Vail, associate of White & Case LLP’s International Arbitration Group, presented international experience in investment dispute resolution. In particular, Mr. Aliyev talked about the evolution of international investment dispute resolution practice and presented up to date trends and approaches taken in international investment law. Mr. Vail talked about practical aspects of international arbitration proceedings, as well as tax disputes in the context of investment treaties. *Please see Attachment B for the roundtable agenda.*

As a result of the discussion, the participants agreed that “investor” and “investment dispute” terms defined by national legislation of the Republic of Kazakhstan differ from those used in the context of international investment treaties and thus require further discussion and in-depth examination.

Based on the results of this roundtable, and using the lessons learned from the study tour in March 2017 and roundtable on investment disputes in February 2017, the Investment Dispute Panel of the Supreme Court started drafting a normative regulation on the notion of the “investment dispute”. The Panel expects to complete drafting the regulation in time for the anticipated May 2018 roundtable ABA ROLI will hold on this subject for further reflection and comment.

Expected Deliverable(s):

- One (1) roundtable for representatives of the business sector, related government agencies, and judicial sector on current challenges and gaps in investment law for approximately 50 participants, including 30 judges.

Completed. *On November 24, ABA ROLI conducted a roundtable for 30 people including 19 judges. The roundtable was held for less participants based on the Supreme Court’s decision to make this roundtable “internal” (i.e. mainly for judges) to discuss concerns in a more intimate setting before presenting them during a large-scale roundtable discussion to investors and other government officials. This broader roundtable discussion is currently planned for May.*

Activity 3.1.3: Conduct study tour to increase understanding of international best practices on adjudicating investment disputes

As earlier reported, from March 10-17, 2017, ABA ROLI conducted a study tour for eight people to Washington, D.C. to study the U.S. experience in resolving investment disputes. The delegation—comprised of Justices of the Supreme Court, city and economic court judges, and representatives of the Apparatus of the Supreme Court—delved into the many responses to the question of what constitutes an investment dispute, and which disputes are considered by

government bodies, international arbitration, or local arbitration, all with an aim to ensure investors' rights are clearly laid out and protected by the judicial system.

This activity is considered complete and no additional activities are planned. Nonetheless, ABA ROLI will collaborate with the Union of Judges and the Supreme Court over the remainder of the program period to identify additional mechanisms for lessons from the study tour inform the other activities that advance the outcomes under this objective.

Activity 3.1.4: Develop and conduct a CLE course on investment disputes for the Academy of Justice

This activity was not envisioned to take place as part of the Year Seven Work Plan approved by USAID in September 2017. However, with USAID's final obligation to ABA ROLI in December 2017, activities that advance this objective will take place in the remainder of Year Seven and future work plan years.

Objective 4: Improved public awareness of judicial modernization and court operation

In cooperation with the Supreme Court and the Union of Judges of Kazakhstan ABA ROLI will provide press secretaries and judge-coordinators of the oblast courts with training and best practices in communicating with the media and general population, and in explaining the ongoing or anticipated reforms, in order to promote greater awareness of rule of law reforms among the population of Kazakhstan.

No activities under this objective were envisioned to take place as part of the Year Seven Work Plan approved by USAID in September 2017. However, with USAID's final obligation to ABA ROLI in December 2017, activities that advance this objective will take place in the remainder of Year Seven and future work plan years.

IV. CONCLUSION

This quarter ABA ROLI completed all of its activities planned as part of the initial Year Seven work plan, namely conducting a roundtable on investment disputes and publishing and distributing 400 copies of the manual on mediation for judges for all 16 courts of Kazakhstan, as well as the Academy of Justice and the Supreme Court.

With the obligation of remaining program funds under the award, ABA ROLI looks forward to continuing activities through the end of the award period. To this end, in the next reporting period, ABA ROLI will submit its work plan for the remainder of Year Seven (January 1, 2018 – September 30, 2018) and will start implementing activities planned for this period.

Attachment A: Performance Monitoring Plan and Indicator Tracking Chart

Please see attached Excel document for PMP and updated indicator tracking table.

Attachment B: Roundtable Agenda



AGENDA of the roundtable on «INTERNATIONAL EXPERIENCE ON INVESTMENT DISPUTE RESOLUTION»

Astana city

November 24, 2017

Venue: “Moscow” conference room, “The Ritz-Carlton Astana”, 16 Dostyk str.

Moderator: Aigul KYDYRBAYEVA

Chairperson of the Specialized Judicial Board of the Supreme Court of the Republic of Kazakhstan

- | | |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09.30 – 10.00 | Registration of participants |
| 10.00 – 10.05 | Welcome speech
Aigul KYDYRBAYEVA
<i>Chairperson of the Specialized Judicial Board of the Supreme Court of the Republic of Kazakhstan</i> |
| 10.05 – 10.10 | Presentation of the Experts
Sholpan TASHMUKHAMBETOVA
<i>Director of the American Bar Association Rule Of Law Initiative Representative office in Kazakhstan</i> |
| 10.10 – 10.20 | Investment disputes resolution in the Republic of Kazakhstan
Denis SHIPP
<i>Justice of the Specialized Judicial Board of the Supreme Court of the Republic of Kazakhstan</i> |
| 10.20 – 10.30 | Some issues related to practice of law application on investment disputes resolution in the Republic of Kazakhstan
Aigul KENZHEBAYEVA
<i>Chair of the “KazBar” Managing Council, Managing Partner of Almaty Office of “Dentons” International Law Firm, Member of the International Council under the Supreme Court</i> |

Definition of an investment dispute in international practice

10.30 – 10.50	Azar ALIYEV <i>Associate Professor of International Economic Law and Comparative Law, Martin Luther University Halle-Wittenberg</i>
10.50 – 11.10	Tomas VAIL <i>Associate of the “White & Case” Firm's International Arbitration Group, London</i>
11.10 – 11.30	Coffee break
11.30 – 11.50	Q & A. Discussion
International experience in defining the status of investor in investment disputes resolution	
11.50 – 12.10	Tomas VAIL <i>Associate of the “White & Case” Firm's International Arbitration Group, London</i>
12.10 – 12.40	Azar ALIYEV <i>Associate Professor of International Economic Law and Comparative Law, Martin Luther University Halle-Wittenberg</i>
12.40 – 13.00	Q & A. Discussion
13.00 – 14.00	Lunch
14.00 – 14.40	Practice of considering investment disputes with participation of the Republic of Kazakhstan Azar ALIYEV <i>Associate Professor of International Economic Law and Comparative Law, Martin Luther University Halle-Wittenberg</i>
14.40 – 15.00	Tax disputes in the context of investment treaties Tomas VAIL <i>Associate of the “White & Case” Firm's International Arbitration Group, London</i>
15. 00 – 15.50	Q & A. Discussion
15.50 – 16.00	Closing remarks Aigul KYDYRBAYEVA <i>Chairperson of the Specialized Judicial Board of the Supreme Court of the Republic of Kazakhstan</i>