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BOSNIA JUSTICE SECTOR DEVELOPMENT PROJECT EVALUATION

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Bosnia Justice Sector Development Project Evaluation

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ACRONYMS

ABA	American Bar Association
AusAid	Australian Agency for International Development
BIH	Bosnia and Herzegovina
CIDA	Canadian International Development Agency
CMS	Case Management System
CoE	Council of Europe
CEC	Commission of the European Communities
CEE	Central and Eastern Europe
DFID	Department for International Development
EU	European Union
EUSR	European Union Special Representative
EC	European Council
FBIH	Federation of Bosnia and Herzegovina
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH
HJPC	High Judicial and Prosecutorial Council
IPA	Instrument of Pre-Accession
IJC	Independent Judicial Commission
JSDP	Justice Sector Development Project
JSRS	Justice Sector Reform Strategy
JIA	Judicial Independence and Accountability
MCI	Model Courts Initiative
MOU	Memorandum of Understanding
MOJ	Ministry of Justice
NGO	Non-Governmental Organizations
ODC	Office of the Disciplinary Counsel
OHR	Office of High Representative
OSCE	Organization for Security and Cooperation in Europe
PIC	Peace Implementation Council
PAR	Public Administration Reform
RS	Republika Srpska
SAP	Stabilization and Association Process
SAA	Stabilization and Association Agreement
SIDA	Swedish International Development Agency
UN	United Nations
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

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I. INTRODUCTION

Management Systems International was contracted to conduct an evaluation of USAID's Bosnia and Herzegovina Justice Sector Development Project (JSDP). As set forth in the Scope of Work (Appendix A), the purpose of the evaluation was twofold: first, to obtain an objective analysis of the overall impact and success of JSDP in the development of the Bosnia and Herzegovina (BiH) Rule of Law sector and second, to examine the broad status of reforms and needs in the Rule of Law sector, making recommendations for possible areas of further USAID involvement in this sector with special focus on possibilities for joint funding with additional donors.

II. EVALUATION METHODOLOGY

Pertinent background materials were received and reviewed in the United States, prior to departure for BiH, between April 28 and May 2, 2008. Consultants engaged in telephone conferences with USAID personnel in BiH and with an Evaluation and Impact expert at MSI headquarters. Consultants Suren Y. Avanesyan and Christie S. Warren traveled to BiH on May 3, 2008 and remained there through May 24, 2008. During that period, interviews were conducted of justice sector and court personnel, international donors, and USAID personnel in Sarajevo, Banja Luka, Mostar and Zenica. A list of interviews is set forth in Appendix B. Documents reviewed and referred to during this consultancy are listed in Appendix C.

III. BACKGROUND

A. Country Context

The war in Bosnia ostensibly ended in December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina was signed, hereto referred as the Dayton Peace Agreement. In order to broker peace, a complex system of divided and decentralized governmental structures was put in place. The Republic of Bosnia and Herzegovina was divided into two distinct Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, while the disputed area of Brcko was left for future negotiation. A state constitution was adopted as Annex IV of the Agreement. It delegated limited enumerated powers to the national government, leaving residual powers resting with individual Entities.

Following entry into the Dayton Peace Agreement, each Entity created its own constitution. At the State level, the judicial system consisted of a Ministry of Justice with limited powers and staff, a State Court with an international registry, and a High Judicial and Prosecutorial Council (HJPC), which was charged by statute with regulating issues relating to the justice sector, including the appointment and discipline of judges and prosecutors. The constitution of the Federation further divided each Entity into ten cantons, each of which had broad governing powers and institutions of their own, including individual Ministries of Justice and court systems. Separate criminal codes and codes of criminal procedure were created in each Entity, as well as in the Brcko District. The sum of this complex structure therefore includes four parallel and separate jurisdictions at the State, Republika Srpska, Federation and Brcko levels; ten subsidiary cantonal jurisdictions, each with its own set of institutions and budgets; directives issued by fourteen Ministries of Justice; four court systems and codes of criminal law and procedure; frequent inconsistent applications of the law; and high rates of reversal in major criminal cases.

Article II of Annex 10 of the Dayton Peace Agreement gives responsibility for overseeing implementation of civilian aspects of the accord to the Office of the High Representative, an ad hoc international institution. The High Representative, who also serves as the EU Special Representative in BiH, is tasked with ensuring that the country evolves into a peaceful and viable democracy on course for integration with Euro-Atlantic institutions and, specifically, with coordinating the activities of civilian organizations and agencies operating within the country. The OHR operates under the authority of the United Nations Security Council and is supervised by the Peace Implementation Council (PIC), to which 21 member states belong.

BiH officially became a potential candidate for EU membership in November 2005, when formal negotiations on a Stabilization and Association Agreement (SAA) between BiH and the EU were officially opened. Since then, the Commission of the European Communities (CEC) has filed regular reports on BiH's capacity to implement and adhere to European standards, including the ability to approximate its legislation and policies with the *acquis*, in line with the SAA. The conclusion of negotiations has been delayed due to a lack of progress in implementing necessary reforms. In particular, BiH's complex institutional structure is believed to interfere and undermine the country's agenda for reform.

On December 4, 2007, the SAA was initialed following a decision that sufficient agreement existed on reforms among BiH's political leaders. The SAA was signed on June 16, 2008 and it is expected that substantial financial assistance will become available to make further reforms possible and move BiH towards EU accession.

A 2007-2009 Multi-Annual Indicative Planning Document for Bosnia and Herzegovina was adopted in June 2007. Assistance under the 2007 Instrument for Pre-Accession Assistance (IPA) totals just over 62 million euro. The IPA's main area of focus is strengthening the rule of law. Assistance to BiH is conditioned on its progress satisfying the Copenhagen political criteria, which includes achieving status as a stable democracy, guaranteeing respect for the rule of law and human rights, adopting the common rules, standards and policies that make up the body of European Union law, and on meeting specific priorities identified in the European Partnership with BiH entered into November 6, 2007.

The need for constitutional reform has been a subject of continuous discussion since the Dayton Peace Agreement went into effect. The principal purpose of the constitution created in Annex IV of the Framework Agreement was to end the conflict in the country, but not necessarily to establish a functional state. At the time the constitution was created, Bosnia and Herzegovina's accession to the European Union was not of primary concern, either to peacemakers or to Bosnians themselves. In the last few years, however, it has become clear that in order for accession to occur, constitutional reform will have to be undertaken.

In March 2005, the European Commission for Democracy through Law (the Venice Commission) issued an Opinion on the Constitutional Situation in Bosnia and Herzegovina at the request of the Parliamentary Assembly of the Council of Europe (CoE). The opinion concluded that constitutional reform was indispensable and would have to be carried out in several stages, with an entirely new constitution based on a democratic process as the final outcome.

In March 2006, a first phase of constitutional reform was undertaken in BiH. The first phase was comprehensive and included revisions of five main parts of the constitution, including provisions related to human rights and fundamental freedoms, responsibilities and relations between the state- and Entity-level institutions, the Parliamentary Assembly, and the Presidency and Council of Ministers. That month, with support from the U.S. Embassy, party leaders approved the agreement on the first phase of constitutional reform. It was subsequently presented to the Parliamentary Assembly but failed on

April 26, by two votes, to achieve the necessary two-thirds majority. Since then, no further attempts have been made to amend the constitution.

On February 27, 2008, the Steering Board of the Peace Implementation Council reaffirmed its view that constitutional reform would be necessary in order to equip BiH to meet the requirements of a modern European state. Criteria deemed necessary for BiH to meet before the transition would take place include the entrenchment of the Rule of Law, demonstrated through the adoption of the National War Crimes Strategy, the passage of a Law on Aliens and Asylum, and the adoption of a National Justice Sector Reform Strategy.

B. Project Background

In 2003, USAID/BiH's Democracy Office commissioned a Rule of Law assessment in order to evaluate Rule of Law activities being implemented in the country and to make programmatic recommendations. As a result of this assessment, USAID/BiH issued a request for proposals for the Justice Sector Development Project (JSDP). In March 2004, a five-year contract in the amount of \$14,337,346 was awarded to the East-West Management Institute to implement the project.

The overall goal of JSDP is to improve the efficiency, transparency and fairness of the justice system of BiH. This goal is to be achieved through: (1) strengthening the High Judicial and Prosecutorial Council (HJPC), (2) improving court administration, (3) strengthening the State Ministry of Justice (MOJ), and (4) engaging in judicial sector policy reforms.

Over the course of the four year implementation period, some project activities were modified to reflect changed circumstances, including drastically reducing assistance to legal aid providers and adding Judicial Independence and Accountability (JIA) activities. Project personnel have also changed, as a new Chief of Party has directed JSDP for the past eighteen months.

USAID has always sought to ensure that JSDP programming is consistent with and facilitates BiH's entry into the European Union. Thus, this report examines the work of JSDP and other donors in that light and recommendations are framed in a manner consistent with that goal.

IV. FINDINGS: JUSTICE SECTOR DEVELOPMENT PROJECT

Overall, the work of JSDP has been productive and effective, particularly since the mid-term project evaluation and change in personnel. Project goals and activities have been geared towards criteria that further BiH's path towards EU accession.

Specific activities and impacts are listed below according to the program components:

A. Judicial Independence and Accountability; Improved Inter-Branch Dialogue

The Constitution of BiH, promulgated pursuant to the Dayton Peace Agreement, contains no provision guaranteeing judicial independence. At the Entity level, Article 4 of the Constitution of the Federation of BiH states that all judicial power in the Federation shall be exercised independently and autonomously. The constitution of the Republika Srpska contains a similar provision in Article 121, stating that courts shall be autonomous and independent and shall adjudicate on the basis of the constitution and laws.

In 2004, the the High Judicial and Prosecutorial Council (HJPC) Law of BiH was promulgated by the High Representative. The new statute eliminated High Judicial and Prosecutorial Councils that had previously existed at the Entity levels and created one State-level institution. However, the national HJPC Law is not of constitutional magnitude. True judicial independence and constitutional protection for the HJPC therefore still do not exist.

In order to participate in policy dialogue and work towards constitutional reform and protection of judicial independence, both of which are prerequisite to European Union accession, JSDP initiated the Judicial Independence and Accountability Initiative (JIA) following a mid-term evaluation of the project. JIA program activities have focused on creating an environment that fosters better dialogue among the three branches of government. These activities, outlined below, have been important in the current politicized environment, in which judicial independence is under frequent attack and attempts to remove powers from the HJPC are not uncommon.

Findings

1. During the initial preparation stage, JSDP identified high level representatives from lead institutions within each branch of government who were willing to participate in the initiative. The goal was to identify issues of priority within each branch, ascertain whether there were common views and perspectives, and evaluate which issues were the most viable and important. This preparation stage laid the foundation for a later series of workshops. It is expected that during the final stage of the JIA, JSDP will support representatives from the three branches of government in establishing formal mechanisms to continue inter-branch dialogue and other measures leading towards constitutional change. The recently approved JSRS has envisioned various fora for this type of inter-branch coordination, e.g., through the ministerial conferences.
2. To facilitate inter-branch dialogue, JSDP organized a study trip to Spain for representatives of the three branches of national government in May 2007. The purpose of this trip was to assist the process of promoting constitutional, statutory and policy reforms. The trip was followed by a conference in which different models of inter-branch dialogue were discussed.
3. In November 2007, JSDP organized a conference on Issues of Judicial Independence and Accountability in the Justice Sector Reform Strategy (JSRS). The conference was attended by representatives of the judicial, legislative and executive branches, as well as members of civil society, all of whom presented their perspectives on the pillars of the JSRS most directly connected with the JIA.
4. As part of JIA activities, JSDP supported a HJPC working group on court fees and drafted potential legislation. This law would introduce for the first time a requirement that court fees be paid in advance, which would increase funding to the judiciary. The court fees legislation has already been adopted by several cantonal assemblies and by Republika Srpska. JSDP has been working with the Federation to have this legislation adopted at that level as well. In its Annual report under Section 3.2.4, the HJPC also identified this area as one of its top priorities.
5. In March of 2008, JSDP hosted a working meeting between the HJPC Presidency and the Ministers of Justice in the Federation, including eight cantonal ministers and representatives from the Federation and State Ministries of Justice. Participants discussed issues that included the draft law on court fees, the need for unified court budgets, and the establishment of legal aid institutes throughout the Federation.

Conclusions

1. There is currently a constitutional vacuum in the area of judicial independence and there is no constitutional protection for the institution created to ensure that the judiciary remains independent from other branches of government. The HJPC has been the target of recent political attacks from Entity-level institutions. In the absence of a comprehensive constitutional reform, it is therefore necessary that mechanisms set up through the JIA continue since they appear to provide the only avenues for inter-branch dialogue at this time. This is likely to change in the near future due to the approval of the JSRS, which envisions formal mechanisms for such coordination. The JSRS is expected to be adopted in the fall of 2008.
2. The absence of a national constitution that provides a legal basis for the changes occurring in the BiH justice sector will continue having a significant long-term impact on sustainability of these reforms at the national level. As was stated in the Commission of the European Communities (CEC) 2007 Progress Report— “Bosnia and Herzegovina has made no progress towards creating more functional and affordable State structures which support the process of European integration, e.g., though constitutional reform.” Problems stemming from the failure to complete constitutional reform include the fact that the 2006 general elections were conducted under provisions that violated the European Convention on Human Rights. Further, a 2005 Opinion of the Venice Commission stated, “The very limited powers granted to the State level by the present constitutional text are in no way comparable to the powers exercised by other federal states, and they are insufficient to enable Bosnia and Herzegovina to participate in the process of further European integration.” Recently, the Steering Board of the Peace Implementation Council reaffirmed its view that constitutional reform will be necessary in order to equip Bosnia and Herzegovina to meet the requirements of a modern European state.
3. In addition to constitutional reform at the national level, constitutional reform at the Entity levels is also necessary. The CEC 2007 Progress Report criticizes both Entities for failing to bring their constitutions into line with a March 2006 decision of the Constitutional Court of BiH with respect to Entity symbols and anthems. Further, the Republika Srpska still permits the imposition of the death penalty for capital crimes, which violates the European Convention on Human Rights.
4. The HJPC holds a unique place among the justice sector institutions as it is the only body that has the authority to manage and administer courts nationwide. The Council’s position will further be strengthened once the HJPC gains budgetary authority in accordance with the principles as stated in section 1.1.1 of the JSRS and Strategic Objective 2 of the HJPC Strategic Plan. However, the current system interferes with judicial independence and the separation of powers. A related problem is that judges who reportedly did not survive the recent judicial vetting process were able to secure employment in the Ministry of Justice, which means that members of the executive branch who failed the judicial branch vetting process control the judiciary’s budget. This interferes with the practice and appearance of judicial independence.
5. The scope of authority and purview of the HJPC and the State Ministry of Justice, as well as the internal departments within each institution, require clarification. Substantial overlaps are leading to confusion and inertia. Cooperation between the State Ministry of Justice and the HJPC is not smooth and many tensions exist between the two institutions. Unless these problems are resolved, the HJPC risks losing some of the legal and institutional gains it has made, especially given its absence of constitutional legitimacy and protection.

B. Strengthening the Institutional Performance of the High Judicial and Prosecutorial Council (Component 1)

Since the program's inception, JSDP has undertaken the task of assisting the HJPC in elevating its capacity to function on a day-to-day basis and of fulfilling its obligations pursuant to its role as the national institution responsible for governing the judicial and prosecutorial bodies.

The HJPC is the only institution with specific authority to appoint, discipline and remove judges and prosecutors. The HJPC absorbed the mandates of the Independent Judicial Commission (IJC), which had operated under the auspices of the Office of High Representative (OHR), as well as previous judicial councils that had existed at Entity levels. In addition to responsibility for appointment and discipline and removal of judges and prosecutors, Article 17 of the HJPC Law gives authority to the Council on matters relating to the administration, management, and budgeting of courts and prosecutorial offices.

JSDP assistance to the HJPC has focused on improving institutional capacity in the areas of policy making, planning and management, developing codes of ethics for both judges and prosecutors and drafting judicial performance standards. The project has also assisted the HJPC in developing a long-term strategic plan, collecting statistics, improving budgeting processes, preparing and adopting legislation regarding court fees, strengthening the Office of Disciplinary Counsel (ODC), and creating a Public Relations Office used to improve internal and external communication.

Findings

1. Four years after its creation, HJPC is a well-established institution that appears to receive adequate resources for its day-to-day operations. The Council moved into a new building not long ago, and the current facility is modern and well-suited to institutional needs. As of June 2008, the first group of Council members finished four-year terms and eleven new members were appointed, including a new Council president.
2. JSDP provided assistance to the HJPC in developing better protocols for communication, while keeping strategic plan objectives in mind. For the first time, the HJPC Secretariat produced a public relations and communications strategy. JSDP provided assistance to the newly established Court Administration Department in defining the categories and frequency of collection of statistical information for different purposes. The project also assisted with developing statistical forms that can be integrated into the automated case management systems. JSDP continued building on the work in the area of judicial ethics by enhancing operation of the Office of the Disciplinary Counsel. The project supported the working group established by the HJPC, which produced a draft law on court fees. The project continued monitoring the implementation by the HJPC of appointment regulations, particularly the transparency and fairness of the appointment procedure. JSDP facilitated the transfer of responsibility for collecting, maintaining, and analyzing court data from the Budget and Statistics Department to the Court Administration Department. The project assisted HJPC members in building a foundation for the development and adoption of court performance indicators.
3. The HJPC is divided into two distinct bodies, the Council and the Secretariat. Initially, Council members were *ex officio* and the Secretariat served as a permanent body, an arrangement that created tension between the Secretariat and Council members, whose tenures were only temporary. This problem was ultimately resolved by the HJPC creating four full-time Council positions. The Secretariat now serves in a supporting role to Council members.

JSDP support to the Secretariat has included providing senior level management training and organizing a study tour to the Ecole Nationale d'Administration in France. With assistance from JSDP, the Secretariat also transferred responsibility for collecting and analyzing statistical data to the Court Administration Department. JSDP assisted in developing a statistical classification framework and improved case management software.

4. Since its creation, the HJPC has undergone and completed two strategic planning exercises with assistance from JSDP. Pursuant to the sub-chapter 3.1 of the 2007-2012 Strategic Plan, implementation, monitoring and evaluation of the Plan is delegated to a newly established Department for Planning and Communications within the Secretariat. That Department is charged with analyzing compliance with plan objectives and submitting bimonthly reports stating progress made toward implementation and making recommendations for problems that arise. However, it appears that the Department is not yet in a position to assume these responsibilities. Because of a lack of capacity in other departments within the HJPC and the comparative competence of the Director of the Department for Planning and Communications, the director has been tasked with preparing the Annual HJPC Report, leaving limited time and resources to carry out her own strategic planning responsibilities. During this evaluation, there was no evidence that the current Strategic Plan would be implemented at any time in the near future.

5. One of the more important activities completed during the final year of the JSDP project was the adoption of a new Book of Rules, which introduced new management and administrative practices for all courts in BiH. At the time of this evaluation, the Book, drafted with assistance from JSDP, was undergoing a process of review and revision by a working group of judges under the auspices of the HJPC. It was subsequently adopted by the Council on May 26, 2008.

6. One of the most visible activities undertaken by JSDP has been the Model Courts Initiative (MCI). This initiative is described in further detail in the following section of this report. During the final year of the project, JSDP plans to transfer responsibility for this component to the HJPC in order to ensure its sustainability.

7. As is the case in other countries of the former Yugoslavia, judicial performance in BiH is still measured through a quota system, which prescribes the number of cases individual judges must complete during set periods of time. Problems with quota systems have been documented in detail in a number of studies carried out in the region and include the fact that quotas do not usually reflect the complexity of cases or actual judicial performance. Objective court performance measurements which would permit effective assignment of cases to judges are lacking. JSDP introduced improved gathering of statistical data which will help, once the time standards are defined and adopted, to introduce sound caseflow management to the court of BiH. In its Annual report under 4.2.1.3, the Council identified the adoption of the time standards as one of its priorities.

8. The HJPC Office of Disciplinary Counsel, created by Article 64 of the Law on HJPC, is tasked with fact-finding responsibilities concerning allegations of misconduct by judges and prosecutors. The office is currently understaffed and suffers from a significant backlog of cases. It is estimated that more than one thousand cases falling within the statutorily prescribed two-year statute of limitations exist. Although this evaluation team did not analyze the specific nature of the backlog, it was reported that a significant number of backlogged complaints related to delays in judicial proceedings. In evaluating the legitimacy of these complaints, disciplinary office staff use the quota system. Judicial and prosecutorial disciplinary sanctions are not standardized or consistent.

9. The current policy and practice governing the advertisement of names of candidates for judicial appointment is problematic. Candidates' names are reportedly posted on the HJPC website even though the majority of citizens do not have computers or access to the internet. It was reported during an

interview that at times individuals with criminal records are appointed since members of the public are not informed of their candidacy and are not able to provide input or commentary online.

10. There are indications that the Office of the Ombudsman is not fulfilling its responsibilities. The HJPC Judicial and Prosecutorial Disciplinary Office did not report receiving any complaints from the Ombudsman, and the CEC 2007 Progress Report stated that although an Ombudsman Law was adopted in March 2006 in order to meet obligations under international conventions, a State Ombudsman had not been appointed.

11. It appears that there are a number of various initiatives under way that bring together judges from the Federation and the RS. This is done both formally and informally. For example, it appears that at the level of the Entity Supreme Courts, judges are involved in informal codification efforts (described in an interview as ‘harmonization of practices’) aimed at achieving similar outcomes for similar categories of cases in both Entities. In the HJPC, the Government of Spain is funding a database of ‘model’ decisions which in theory can be used to train judges to write better judicial opinions through its ‘Center for Judicial Documentation’ initiative.

12. As stated in the HJPC Annual report, the Law on HJPC defines part of the HJPC’s responsibilities as “[p]articipating, at the Council’s discretion, in the drafting process of annual budgets for the courts and prosecutors offices.” However, Entity laws on courts explicitly stipulate that all courts must submit their budget requests to the HJPC. HJPC comments, if any, are to be submitted to the relevant ministry of justice along with budget requests. If the relevant ministry of justice disagrees with a court budget proposal, it shall inform the HJPC, and the relevant ministry of finance shall conduct consultations with the HJPC before amending a court budget proposal. However, the HJPC does not have the authority to manage the budgets for the courts and prosecutors.

Conclusions

1. The HJPC is a well-funded and functional institution. JSDP plans to continue supporting the Council during the remaining year of the project. Additionally, a number of other donors, including Norway, Sweden, and the Netherlands, plan to continue to provide assistance to the Council by funding seconded personnel, providing resources for operational expenses and funding and supporting implementation of the automated Case Management System (CMS) in all courts of BiH. The Department for Planning and Communications is currently responsible for coordinating donor assistance and prioritizing funding needs, based on priorities set forth in the 2007-2012 Strategic Plan. The department is in need of ongoing assistance from the donor community in order to carry out this role. Although the newly appointed director of the department is very capable and has substantial experience working with EU funding agencies, it does not appear that she is currently able to carry out her responsibilities for reasons beyond her control.

2. The HJPC leadership has demonstrated its interest in ensuring the ongoing sustainability of the most visible component of JSDP, the Model Courts Initiative (MCI). The greatest challenge on the horizon for the Council as well as for JSDP will be replicating the initiative in the remaining courts in the country and sustaining the momentum for change in all 65 courts after the project ends.

3. Currently, the quota system is still being used in all courts to measure judicial performance. No real time or performance measurement standards are in place to accurately monitor and measure court performance. Statistical data is not reliable or uniform. Comprehensive caseload studies and mapping exercises have not been conducted; both would assist in identifying system bottlenecks that contribute to inefficiencies and possibly corruption. Substantial case delays exist. Although some of these activities might have been premature while prosecutors and judges were undergoing the review and reappointment

process during the time the Council was being created, conditions are now favorable for further systemic interventions that would facilitate improved case management practices. JSDP has provided the necessary know-how to the Council and the HJPC has the capacity to take the lead in this area. Importantly, improvements in case management would move the courts of BiH closer to compliance with EU accession requirements as well as guidelines set forth by the European Commission for the Efficiency of Justice.

4. In the absence of court performance measurement and time standards, the judiciary cannot govern itself effectively or internally monitor court and judicial performance. Some performance monitoring is currently preformed by the Disciplinary Counsel; however, it is done on an *ad hoc* basis. Under the new Book of Rules, Presiding Judges conduct performance reviews. It is recommended that objective measurement criteria for court and judicial performance be put in place.

5. JSDP provided the Office of the Disciplinary Counsel with investigative training as well as with the training on drafting the indictments and defining the role of ODC in disciplinary hearings, procedure for negotiating and elaborating plea-bargaining, procedures for temporary suspension of judges and prosecutors. ODC seems to perform dual functions of the investigative body for the judiciary and prosecutors and of the auditing arm of the Council. It appears from the interviews of the ODC staff that there are few cases that lead to investigations of judicial and prosecutorial misconduct. Most of the complaints are performance based and relate to case delays. These types of complaints result in performance audits by the ODC.

6. Under current law, the HJPC does not have central budgeting authority, although Article 17(14) of the HJPC law permits the Council, in its discretion, to participate in the annual budget drafting process for individual courts and prosecutors' offices. During this evaluation, it was observed that different courts had varying levels of expertise in formulating, presenting and defending budgets. During interviews at the courts, it was pointed out that the Council does not play any significant role in the budget process. JSDP plans to provide assistance to the Council and courts to improve its budgeting capacity. Throughout the judicial system, including the interviewed judges in the Republika Srpska, there is strong support for a unified central budgeting structure. Even though political pressures may prevent the HJPC from actually creating a centralized budget structure in the near future, it should nevertheless attempt to move toward this goal by taking on a more prominent role in budgeting processes. The HJPC Annual report in 5.2 also identifies centralized budgeting as one of its priorities and recommendations.

7. Prosecutors' offices are not sufficiently supported, and capacity is generally lacking. Under the new system of criminal procedure introduced several years ago, the roles and responsibilities of prosecutors have substantially changed, and they are in great need of skills training as well as training in case management and general administration principles. A Model Prosecutors Office program similar to the Model Courts Initiative would be useful, and there is U.S. Embassy support for such a program.

C. Court Administration Reform (Component 2)

The principal focus of the JSDP Court Administration Reform Component has been to develop and implement the Model Courts Initiative (MCI). The MCI has been very successful and has produced a number of visible results. Over the course of the project, JSDP has provided assistance to seventeen courts. One especially effective activity has been the use of change management teams, which have created a forum for regular meetings between court leaders and JSDP staff to discuss project implementation and other issues that arise.

The Model Courts Initiative has focused on introducing modern records management strategies, including introducing open file shelving for vertical filing of case files, which replaced the previous horizontal filing system; creating a common case numbering system; providing durable file folders, a color coding system, file movement cards, and white boards for the daily listing of scheduled cases; delivering training in principles of court management and administration; increasing public access and public information systems; creating a case backlog reduction plan; introducing budget planning procedures; providing digital audio recording equipment; creating eligibility standards for appointment of *ex officio* attorneys and mechanisms for recovering court costs; conducting study tours; renovating public entrances and registry areas to provide better public access to court services; and improving the overall atmosphere of professionalism, resulting in improved staff motivation and stronger public confidence in the judicial system.

In order to participate in the Model Courts Initiative, courts are invited to enter into a Memorandum of Understanding, thereby agreeing to implement a number of standards that generally serve to increase public access to justice, improve court governance, stability and administration, deliver more efficient and effective justice, and increase transparency and accountability (Appendix D). Courts selected to participate are required to comply with nineteen standards that are mandatory as well as several that are optional.

In order to ensure sustainability of the MCI after the conclusion of JSDP, a Model Courts Plan Meeting European Standards (Appendix E) has been developed. This approach is designed to meet the twin objectives of increasing the sustainability of the MCI and bringing the courts of BiH into compliance with EU accession requirements. The Standards program is currently administered jointly by JSDP and the HJPC and covers 22 courts, some of which have already participated in the MCI.

The HJPC Strategic Plan 2007-2012 addresses those EU standards that are within its legal ambit. During its functional review of the justice sector in March 2005, the Office of the Public Administration Reform Coordinator identified a number of improvements, which, if undertaken, should strengthen the judiciary. These include providing adequate financing for courts; developing mechanisms to address citizen complaints about courts and judges; providing adequate training for judges and staff; establishing performance evaluation criteria for judges; and improving the administration of courts. The Justice Sector Reform Strategy (JSRS), prepared by the State Ministry of Justice in close cooperation with DFID and JSDP, also addresses a number of issues involving the courts, including performance standards; court efficiency, effectiveness and reduction of case backlogs; reconstruction of courts; improving information and communications strategies; providing management training for staff and court leadership; improving court administration; developing case processing timelines; improving the preparation, adoption and execution of court budgets; introducing financial assessments of actual court needs; and introducing court automation procedures.

Findings

1. The evaluation team visited nine model courts in the Federation (Sarajevo, Mostar and Zenica) and the Republika Srpska (Banja Luka). This sampling of model courts included some that had participated in the initial Model Courts Initiative and some that joined during the fourth year of the program. At the time of this evaluation, the new Standards program had commenced, and some of the former model courts were in the process of signing MOUs to participate in the program. Overall, positive feedback about the program was received from participating courts as well as the Council with respect to JSDP assistance. One significant indicator of the success of the program was the fact that several non-model courts had begun to replicate some of the new practices that had been introduced in model courts as part of the MCI, and some former Model Courts were providing mentorship to newer courts. For example, the Municipal

Court of Mostar works with a sister court in the Republika Srpska and regularly provides its staff with mentorship and training.

2. Through the MCI, JSDP has provided visible assistance to courts and has generated quite a bit of good will. The most immediately visible accomplishment of the MCI is significantly improved court registries and new techniques in records management, including the adoption of a common case numbering system, color-coded terminal digit file folders and open shelf vertical filing systems. However, it does not appear that archival records management has been incorporated into this aspect of the MCI, and the old Book of Rules did not provide sufficient guidance on how to handle archived records. The large number of archived records remains a significant problem in a number of courts. In order to address this problem, the new Standards for Model Courts include a mandatory standard for improved archival management.

JSDP has also carried out significant remodeling in some courts, including integration of multiple court registries into a centralized location on the ground floor, installation of public information desks, posting new signs, and producing and distributing public information brochures. The President Judge of one court reported that court files can now generally be located in less than five minutes, whereas before they often took several days to locate.

3. Study tours have been strategically and effectively used to further the introduction of new standards, move the judicial system towards compliance with EU integration, help initiate dialogue between the three branches of government, and provide opportunities to observe best practices in the region. Study tours have also served to compensate court staff for their assistance implementing the Model Courts Initiative, which has often required large amounts of uncompensated time outside regular working hours.

4. Development and implementation of case backlog reduction and purging plans has been successful for the most part, although backlog reduction activities under the MCI were based on the quota system. It appears that in some courts disposition rates are now equivalent to inflow rates, resulting in the creation of no new backlogs. However, as the JSDP midterm assessment pointed out, structural reforms based on sound caseflow management practices are needed, which would require the introduction of performance measurement and time standards. Following the introduction of the new Standards Program and the new Book of Rules, the groundwork will be laid for developing a comprehensive caseflow management system.

5. The MCI activities introduced a number of basic elements of caseflow management. The model courts were engaged, for example, in the backlog reduction activities. However, the most important element of a sound caseflow management system is the adoption of the time standards that allow courts to measure elapsed time between key events in cases—from filing through disposition and the completion of all postdisposition court work. The agreed upon time standards serve as the most reliable yardstick when it comes to measuring court performance. JSDP has been working with HJPC on moving the courts of BiH in that direction. However, the quota system is still in place. There are positive developments though and it appears that there are champions in the system who are interested in piloting the time standards initiative. For example, judges of the Federal Supreme Court were recording times for each case in their docket in the past year and the President of this Court would like to pilot time standards. By his account though, this did not find traction with the old HJPC. However, the 2007 HJPC Annual report identifies time standards as one of its priorities.

Conclusions

1. Overall, the Model Courts Initiative has successfully introduced a number of modern court administration practices to the courts of BiH. The initiative also generated a large amount of good will throughout the judicial system.

2. Nevertheless, in the absence of a comprehensive approach to caseload management, the risk of continued, and even increasing, backlogs remains. A thorough caseload mapping exercise should be undertaken in order to identify bottlenecks and inefficiencies in the current system. A related and overlapping problem is the extremely high number of utility cases that continue to flood courts on a daily basis.
3. A system-wide records retention scheme should be developed. Problems with the current archiving system are significant and promise to impede further reforms in a number of courts.
4. The most pressing challenge facing JSDP and the courts is ensuring the replication of reforms and sustainability of impacts achieved during the MCI. Introduction of the Standards Program (Appendix F) is an important step and will help the judicial system begin to comply with EU accession requirements. Long-term funding continues to be an area of concern. It does not appear that the judicial system is able to independently fund programs since adequate national resources do not yet exist, although international donor assistance will help to fill this gap in the short term.
5. The common use of multi-judge panels throughout court systems appears to be a standard practice which may be contributing to the current backlog of cases. Currently, three- and five-judge panels sit at many, if not most, stages of legal proceedings. If single-judge proceedings were authorized, a large number of judges would become available to handle new cases and address the large case backlogs that plague most courts. This will require legislative changes.
6. Although JSDP and the work of the Model Courts Initiative significantly helped to reduce case backlogs overall, large backlogs still exist at all levels and continue to impede the work of courts. At the end of 2006, almost two million cases were pending; statistics were not found for 2007. The CEC 2007 Progress Report states that the slow processing of cases due to backlog, poor management skills and the scarcity of modern equipment and premises creates obstacles to establishing an effective judiciary, and that a systematic action plan to reduce the growing backlog is needed.
7. During the interviews, it appeared there is a common confusion among the court staff between records management and caseload management. JSDP provided considerable support to the courts records management and had accomplished significant measurable results. However, comprehensive reform of caseload management is still needed and will become possible once the quota system is abolished and is replaced by the time standards.

D. Strengthening the Institutional Performance of the State Ministry of Justice (Component 3)

The State Ministry of Justice was established by the Law on Ministries and other Bodies of Administration of BiH in 2003. Article 13 of that law gives the Ministry of Justice a number of administrative responsibilities relating to the judicial branch. Some of these appear to overlap the responsibilities delegated to the HJPC under the Law on HJPC.

Pursuant to Article 13 of the Law on Ministries and other Bodies of Administration of BiH, the Ministry of Justice is responsible for:

- **administrative functions related to the judicial institutions at the state level** (*emphasis added*);

- international and **inter-Entity judicial co-operation** (mutual legal assistance and contacts with international tribunals); (*emphasis added*)
- drafting of relevant legislation to address the issues referred to in sub-paragraphs 1 and 2 of this article;
- ensuring that legislation and implementation by BiH at all levels is in compliance with the obligations of BiH deriving from international treaties;
- co-operating both with the Ministry of Foreign Affairs and with the Entities in the drafting of International Bilateral and Multilateral Treaties;
- providing guidelines and monitoring legal education to ensure inter-Entity harmonization and compliance with best practice;
- generally acting as a central coordinating body ensuring inter-Entity legislative and justice system harmony and best practices, whether by providing good offices for discussion or coordinating initiatives;
- extradition;
- tasks of administrative inspection and legislation governing civil servants and employees of the bodies of administration, of administrative proceedings and special administrative proceedings, as well as of office operations in the bodies of administration;
- the issues of association of citizens and keeping of registers of associations of citizens and of non-governmental organisations operating within BiH;
- other tasks and duties which are not within the competence of other Ministries of BiH and which are related to the tasks and duties of this Ministry.

Of these competences, the most problematic overlap between the MoJ and the HJPC is that both have budgetary and administrative responsibilities over the courts in BiH. This overlap contributes to tensions between the State MoJ and the HJPC as the MoJ contends that some of the administrative responsibilities should be taken away from the HJPC and placed under the competencies of the Ministry.

Five years after its establishment, the State Ministry of Justice has grown to over two hundred employees and is now the largest of the thirteen ministries of justice in the country. JSDP support to the MoJ has been aimed principally at strengthening the internal capacities of the Ministry (including through enhancing legislative drafting skills, holding stakeholder consultations, providing training in human resource and financial management, strengthening public relations, and introducing automated office operations) and directly assisting the Ministry in performing its statutory functions more effectively (including by improving international legal assistance services and meeting international obligations in the area of fighting corruption and organized crime).

In 2007, the State MoJ was tasked with coordinating the development of two major strategies: the Justice Sector Reform Strategy (JSRS) and the War Crimes Strategic Action Plan, both of which are prerequisite to moving BiH towards EU accession. The draft JSRS was finalized in September 2007 and approved by the Steering Board consisting of HJPC and state, entity and two cantonal Ministries of Justice. Its adoption by state, entity and Brcko District executive governments is expected by September 2008, at the latest.

Findings

1. Along with other donors who made significant contributions to building capacity at the State Ministry of Justice (including DFID and CIDA), JSDP support was well-targeted and effective. For example, the project helped the Ministry automate its workflow system by developing software and eliminating handwritten registries. With JSDP support, the Ministry also developed mid-term and annual budgets as well as a communications strategy. JSDP provided further support to the Ministry by creating

mechanisms necessary to implement the Regulations on Consultations, including the development of internal consultation guidelines that were important during the drafting of the JSRS. The project also assisted in developing a database of serious crimes, which was used by the Ministry during the preparation of its first required report to the Council of Ministers. In conjunction with World Learning, JSDP provided training on anti-corruption strategies and assistance to a MoJ working group created for the purpose of making revisions to the national criminal code in order to bring it into compliance with the United Nations Convention against Corruption.

2. JSDP provided some support during the drafting of the Justice Sector Reform Strategy, even though most assistance was provided by DFID and the role of JSDP was somewhat peripheral. The JSRS was recently approved by the PIC and it promises to become the blueprint for future donor assistance; a number of international donors stated that future interventions will be directly linked to priorities set forth in the JSRS. Since DFID plans to phase out its program soon, the Ministry will need large amounts of assistance in implementing the JSRS once it is adopted.

3. Many Entity and cantonal laws are inconsistent with each other, with Entity constitutions, with the State constitution, and/or with international and European conventions to which BiH is a party. Inconsistencies in criminal laws among the state, entities and Brcko District lead to disparities in enforcement and sentences. A comprehensive legislative reform program is needed. A list of laws out of compliance with international conventions to which Bosnia and Herzegovina is a party, made available during this consultancy, is set forth in Appendix H.

4. International conventions to which BiH is a party are almost always available only in English and not in local languages. This makes it impossible to build local capacity to engage in legislative reform in order to bring domestic laws into compliance with EU law and the jurisprudence of the European Court of Human Rights. Translations that do exist are often incorrect. This problem prevents compliance with CEC 2007 Progress Report criteria requiring respect for international obligations, which is an indicator of compliance with Copenhagen political criteria.

5. Criminal codes are inconsistent and outdated and require amending to include new crimes, such as cyber crimes and other transnational crimes that affect BiH and the region.

Conclusions

1. The State Ministry of Justice and the HJPC are the two state-level institutions vested with policy-level and administrative responsibility for the justice sector of BiH. Of the two, the Ministry of Justice is by far the weaker institution, both in terms of the scope of its mandate and its capacity. Nevertheless, the MoJ is expected to play a central role in applying for and managing funds that will soon come from the Council of Europe pursuant to the terms of the Instrument for Pre-Accession Assistance. The opinion that the Ministry is ill-equipped to carry out these responsibilities is widely shared throughout the country, including within the Ministry itself.

2. Now that the JSRS is about to be adopted, the MoJ will require assistance in developing implementation plans for each priority area within the JSRS as well as monitoring and evaluation processes. Since DFID will not be able to provide this assistance, other international donors will need to come forward to meet this need. JSDP is in a good position to fill this void and it appears that the MoJ has already requested the JSDP to provide technical assistance with implementing the Judicial System Pillar of the JSRS.

3. Since their ability to work cohesively together is important to the judicial system as a whole, working relations between the MoJ and the HJPC must be improved. Respect for the independence of the HJPC

should be reinforced, especially in the absence of constitutional protection for that institution. Undercurrents of a desire to transfer some powers currently held by the HJPC to the Ministry of Justice were heard during this consultancy. If that transpires, the HJPC would be weakened as a national institution and the principal guarantor of judicial independence.

4. In order to strengthen the stature of the Ministry of Justice and carve out its own niche, it should seek to become a more relevant national institution without impinging on the powers of the HJPC. Under the current system, in which thirteen Ministries of Justice exist throughout the country, identifying and protecting specific powers and competences for the State MoJ seems to be a challenge. However, since the constitutional reform appears to be inevitable at some point, it is important not to marginalize or disempower the State Ministry of Justice altogether. During this interim period, attention should be paid to defining an appropriate scope of work for the MoJ that would reinforce its position as an important national institution while not interfering with the work of the HJPC. Article 13 delegates to the State MoJ responsible for inter-Entity coordination and legislative harmonization—two tasks that should keep the MoJ fully occupied and make it relevant to the Bosnia justice sector.

5. The capacity of the State Ministry of Justice to draft and harmonize legislation is inadequate. It needs to better utilize the assistance that has been provided to the Ministry by the JSDP until it becomes more capable of fulfilling its responsibility to draft legislation and harmonize it with EU and international conventions.

E. Other Findings

1. Witness protection areas and programs are needed, although it appears that several donors foresee becoming involved in this area. In war crimes cases, witnesses are reportedly required to sit with members of the public and even defendants' family members as they wait to testify.

2. National professional associations, including a national judges' association, appear to be weak or non-existent. Judges from both Entities are already working well together through the Entity Training Institutes. A strong, active national judges' association would serve to further embed a sense of judicial independence and provide an additional forum for cross-Entity professional collaboration, which in turn would strengthen a unified judiciary.

3. Donor coordination is generally poor, although several European Embassies and donors appear to be making efforts to coordinate more effectively. In the past, because of the size of its budget, USAID has not particularly needed to focus on coordinating and collaborating with other donors. This situation will change given the reduced size of future interventions.

4. A State Supreme Court is needed to ensure equal application of laws throughout the country. The need for a State-level Supreme Court with appellate jurisdiction was emphasized in the Commission of European Communities 2007 Progress Report, which states that in the absence of a State Supreme Court, the Constitutional Court is increasingly forced to act as an appellate court, resulting in inappropriate delegations of jurisdiction and excessive burdens to its own caseload.

5. The chain of authority within and between the State and Entity Ministries of Justice need clarification. There is reportedly no legal framework setting forth reporting lines or hierarchies. Improved coordination between State and Entity Ministries is one of the criteria required for European integration.

V. DONOR STRATEGIES

A large number of international donors are involved in providing assistance to various institutions in BiH. Efforts have not been well coordinated in the past, often leading to duplication, overlap and inconsistencies. Additionally, interviews conducted during this assessment revealed that BiH counterparts often did not feel part of any consultative process leading to the development of interventions.

In an effort to better coordinate international assistance, UNDP recently undertook a Donor Mapping Exercise. The section of the report titled “Good Governance and Institution Building” (Appendix G) contains a sub-section on Legal and Judicial Reform, which sets forth an overview of funding efforts, a list of key funders and activities in 2007, an analysis of sector strategy, a list of positive developments and challenges in the sector in 2007, and a summary of future priority areas.

During this assessment, international donors provided the following information about their budgets, strategic approaches and future plans:

A. Embassy of Netherlands

The Netherlands has an annual budget of 1.5 million euro for Rule of Law work but plans to phase out assistance by the end of 2010, at which time the EC will take over their projects. Future bilateral assistance may be forthcoming but is not planned in detail at this time. The Embassy currently provides assistance to the HJPC and the State Court Registry and, along with the EC and Norway, are providing computers and software to those institutions. The Embassy plans to continue assisting rolling out software and servers to other institutions.

The Embassy has never coordinated with USAID and states that their approach is somewhat different than that of USAID, but they are willing to partner and coordinate. They believe the most appropriate way for this to take place is for the HJPC to call for joint coordinator meetings.

Future programming will be based on priorities identified in the Justice Sector Reform Strategy. The Embassy has been waiting for the JSRS for quite a while in order to decide what activities to plan.

B. Embassy of Norway

Norway currently has an overall budget of 30 – 40 million euro. There are no plans to decrease this budget; if anything, it will increase.

The Embassy of Norway has been the main supporter of the HJPC and its facilities, and seconded a judicial advisor, who concentrates on capacity building. HJPC staff provide the Embassy with a list of projects they believe should be prioritized, and the Embassy evaluates them. Facility renovation has been based on assessments carried out by the HJPC itself as well as by the OSCE, both of which recommended that improving the appearance and functioning of the HJPC would improve the appearance of access to justice. Norway is also working to resolve backlog issues in the HJPC. Support to the HJPC has totaled 1.2 million euro to date, not including secondment salaries.

The Embassy also provides support to the State Court, mainly in the War Crimes division. The annual budget in this area is 340,000 euro and will continue through 2009. Several Norwegian judges and one prosecutor are also seconded to the State Court, although the Norwegian budget does not include their salaries. The Embassy representative stated that there is a great lack of resources available to prosecute war crimes, including the absence of facilities for witness protection. A Norwegian consultant, working

through OSCE, has developed a war crimes database, which is now being implemented by a consultant from the United States. The Embassy supports longer terms of office for international judges in the War Crimes division because of the difficulty in recruiting judges; low salaries, political sensitivities and threats to judges and their families contribute to this problem.

The Embassy representative stated that better cooperation between the police and prosecutors is also badly needed, and the Embassy plans to become involved in this area, including conducting a training needs assessment and helping to create a victim-witness protection program. The British Embassy also plans to work on these problems, although only in the area of organized crime.

Support is also provided to the Sarajevo Municipal and Cantonal courts. The Embassy plans to continue this assistance, along with the EC, SIDA and the Netherlands. Areas of focus will include implementing the case management system and providing IT assistance.

To date, the Embassy has done very little in the State Ministry of Justice and was not involved in the development of the JSRS. They would like to become involved with building capacity at the State MoJ, but so far there are no specific plans to do so. They would welcome USAID involvement and assistance in this area.

The Embassy has engaged in talks with the American Bar Association regarding future programming and is interested in moving more into capacity-building instead of simply reconstructing facilities. The Embassy representative stated that in general, the capacity of judges is adequate, although they have no understanding of European conventions and laws that will soon become applicable in BiH. The Embassy plans to conduct a training needs assessment and is discussing the possibility of creating a single national training institute to oversee the work of the two Entity training institutes. Part of this goal is to support state-building.

Other possible areas of future assistance include supporting the work of NGOs in the areas of civil society outreach, victim support services, and public education. The Embassy would support the creation of a State Supreme Court since they believe one is needed in order to harmonize legal practice. They may also become involved in providing assistance regarding enforcement of judgments.

In general, the Embassy would prefer not to provide assistance in any new areas but rather to build on work already undertaken, either by itself or by other donors. They have entered into a joint funding and reporting agreement with Austria, the U.K., the Netherlands and Sweden. The Embassy does no work with UNDP. They would welcome the opportunity to partner with USAID.

C. Swedish International Development Cooperation Agency (SIDA)

SIDA completed an analysis of the justice sector in June 2007 and created a booklet containing the results. It utilizes the “chain of justice” analysis used in Sweden. Findings in the report include a lack of capacity and support to the prison system, and SIDA plans to become involved in this area. SIDA and the CoE are also doing some work in prison reform. The CoE has written a report on the need for cooperation between the Entities and State in prison work; the report states that roles and responsibilities need clarification, and training is needed as well.

SIDA is also undertaking an analysis of the juvenile justice sector with the French Embassy and is working with Vernell Trim on providing support to state courts. Fifteen to sixteen donors altogether are reportedly providing support to state courts, although a harmonization of effort is a problem. SIDA has

signed a joint funding agreement with other donors to aid in harmonization. A meeting was scheduled in June to discuss improved collaboration.

SIDA's current intervention ends in 2010; future assistance depends on the status of the Stabilization and Association Agreement. They currently provide 2 million euro in assistance to the State Court, 2 million euro to support the Case Management System at the HJPC, 1.8 million euro to improve the land administration system, and 2 million euro for prisons. They are currently doing an assessment regarding their programming priorities. Future assistance will be based on priorities identified in the JSRS.

SIDA welcomes collaboration and partnership with USAID.

D. Embassy of Spain

The Embassy plans to spend 300,000 euro annually for the next 5 years and is currently assessing its strategy in order to decide how to most effectively use the funds. The Embassy representative plans to engage in a formal assessment to find out what Rule of Law activities are being carried out, although the representative states that it is the State Ministry of Justice who should really be doing this. Future projects will be bilaterally funded and will supplement activities undertaken by the EC.

In the past, Spain has supported the Center for Documentation, which collects judicial decisions and makes model decisions available to judges, and the Embassy has been asked to extend this support. One hundred and twenty judicial decisions will be collected, inputted into a database, and be made available to judges to assist in their decision-writing. The database will be made available to the Ministries of Justice and judges. Currently, no training is provided to judges on decision making or opinion writing.

The Center for Documentation's Virtual Center was scheduled to open at the end of May. Three Center operators will work out of the HJPC and are on the payroll of that institution. Part of the goal of this project is to introduce the concept of *stare decisis*, or judicial precedent, as well as to make available model judicial decisions. The Embassy representative states that this project has proven to be very successful and sustainable, and no further training or assistance is needed in this area.

Areas of interest for future programming include creating a witness support program in all criminal cases (not only war crimes), which they envision developing through an NGO; providing assistance to prosecutors, including sponsoring a national conference to bring all prosecutors together to evaluate their most pressing needs; creating a mentor program allowing Spanish prosecutors to provide ongoing assistance to BiH prosecutors; providing support to the HJPC Department of Organized Crime, including support for salaries, equipment, operational costs and training; establishing long-term training centers for prosecutors; providing support to border police on human trafficking issues, and providing support to the Ministry of the Interior for a forensics center.

The Embassy must complete its assessment and decide how to use its funds by September, or else funding will become unavailable. They are interested in collaborating and partnering with USAID. The Embassy representative reported that this was the first assessment team that had ever inquired about their activities and possibilities for coordination and partnership.

E. GTZ (Germany)

GTZ is working strictly on economic issues, primarily through the State Ministry of Justice. This includes drafting and amending laws on bankruptcy, land registries (undertaken in conjunction with SIDA and AusAid) and public notaries. The representative stated that GTZ's bankruptcy reform project has been

very successful. They even plan to begin a consumer protection program, a program to strengthen post-graduate studies in market reform at the law faculty, a public notary reform program, and a program to improve public understanding of international trade issues. Proposals for these programs are currently being reviewed by the government of Germany.

GTZ's work will continue through 2010; over this period, they plan to refocus their strategies on regional cooperation among the former Yugoslavian countries.

GTZ has worked with USAID on legislative reform strategies in the past, including drafting a Law on Obligation Relationships, and is willing to work with USAID again in the future. The representative stated that the work of JSDP is very important since it assists in implementing the laws that GTZ is working to strengthen. He said that there are still many training needs that remain unaddressed, and once the new laws are drafted and enacted, further training needs will emerge.

The representative stated that GTZ has also been working with SIDA and AusAid on land and business registries, but additional assistance is needed in this area. Backlogs in land registry cases are very bad; currently, a case must be brought to court to register property. There are two views on whether these cases should be resolved in court or simply handled through the use of registry books; the GTZ representative stated that due to the political situation in BiH at this time, he believed that handling these cases in court is a better option, despite the backlogs that are created.

The GTZ representative stated that no real progress will be made until the legal complexities created by the Dayton Peace Agreement are resolved through constitutional reform. He stated that although EU accession requirements will probably drive constitutional reform, more important is the fact that economic aspects of the everyday lives of citizens will not improve absent such reform.

F. Embassy of France

The French Embassy representative stated that her main contact with JSDP has been through the Model Courts Initiative. She worked with JSDP to try to plan a study tour to France last year for HJPC staff to observe work at the Ecole Nationale de la Magistrature, but the trip never materialized due to funding issues within JSDP. The Embassy itself organized a five-day study tour to France for BiH court secretaries, the secretariat of the Federal Supreme Court, and the president of a Mostar court. During this trip, participants also visited the Dijon School for Court Secretaries and the French Ministry of Justice, and observed the role of French court secretaries during a number of court trials. The objectives of French efforts with respect to court secretaries are to reform national Secretary of Court statutes, elevate the level of pay and status for court secretaries, clarify their competencies and nomination process, set up an education and training system, and draft a long-term training plan. There are approximately 200 court secretaries in BiH.

The main area of focus of the French Embassy, however, is juvenile justice. Work in this area began in 2006, when an expert from France arrived. Few donors are active in this area, and the representative stated that juvenile justice needs are very great. Beginning in 2007, France has participated in a coordination group to devise a strategy to fight delinquency, which was adopted in 2006 by the Council of Ministers. This group still has no budget, however. In November 2007, a conference was held, and in December 2007, judicial training on juvenile justice issues was provided at the two Entity training centers. During the training sessions, the president of the Court of Appeals from France delivered a lecture, but, overall, the program was a disappointment since attendees did not necessarily work in juvenile cases. Another seminar, held in March 2008, was more successful since invitees were more carefully selected. A new draft bill is expected to be adopted soon and will take effect in 2009; it will

create special juvenile departments in courts. There are large training needs in the area of juvenile justice for judges, prosecutors, social workers, prison guards and police. The Embassy is working together with OSCE, Save the Children, Soros and other funders on juvenile justice issues. Collaboration is strong and meetings take place regularly.

In 2006, a joint project with the Paris Bar Association was undertaken to strengthen the capacity of local bar associations. However, that project is now in abeyance. Work in the area of Bar statutes, salaries and training is needed.

The representative stated that judges in general are in need of extensive training. One BiH judge is currently studying in France for three months. The representative stated that in her opinion, the work of the Entity training institutes is not sufficient. A long-term training needs assessment should be undertaken; currently, no strategic plan is in place and the institutes simply take and use whatever donor funds become available on an *ad hoc* basis. Insufficient training is provided to newly-appointed judges

France's annual Rule of Law budget for 2008 is 20,000 euro (not including salaries for two seconded personnel: one legal associate and one prosecutor for organized crime). Neither their presence nor their funding will be impacted by EC funds. The Embassy representative stated that there is good coordination with the EC delegation, and that monthly plans and updates are exchanged.

G. Canadian International Development Agency (CIDA)

In general, CIDA's work focuses on three components: strengthening policy dialogue and legislative reform, improving judicial and prosecutorial education, and working in two targeted courts. The representative stated that training is going well; approximately 100 courses have been mapped out by the Entity training institutes, and approximately 30 have been completely created. However, the institutes are under-sourced and require additional funding. CIDA is currently assisting in developing a curriculum to train judicial assistants, which will go to the HJPC for final approval and will consist of twelve courses that will be required over a three year period. They are also creating a Train the Trainer module for online training, although some resistance to this concept is being experienced. A DVD training program is also being developed.

When the CIDA representative arrived in BiH two years ago, he was tasked with implementing a plan that had been developed by others. At that time, the Model Courts Initiative was underway, and CIDA's scope of work overlapped with it to some extent. JSDP was very helpful in negotiating a coordinated effort that did not overlap. Subsequently, JSDP's work with three model courts ended, and CIDA continued to work in two of them.

CIDA is also carrying out a survey to determine the number of legal interns in the country and what their needs are. Additionally, they will be devoting resources, including software, to address the backlog of cases, especially utility cases. There is an action plan for backlog reduction that will be used during their strategy. CIDA is also working with the Office of the Disciplinary Counsel at the HJPC to develop a plan for assessing whether complaints should be handled through criminal or administrative mechanisms. This activity will need to be taken on by another funder when CIDA leaves.

CIDA's programming is scheduled to end in September 2009 and will not be extended.

H. United Kingdom Department for International Development (DFID)

DFID representatives stated that their agency prefers to engage in long-term strategies and approaches, including capacity-building, instead of short-term, high-profile or “quick fix” activities. To that end, DFID’s main activity recently has been assisting the State Ministry of Justice develop the Justice Sector Reform Strategy. Although they consider the JSRS project to have been generally successful, the State Ministry of Justice is still lacking the capacity to implement it. DFID will not be able to undertake the necessary capacity-building work, however, since their work in the justice sector will end in 2008. Representatives stated that capacity-building is needed in all areas at the MoJ, including management, planning, and administration. They state this work is not high-profile and visible and will be tedious, but that without it, the Ministry of Justice will not succeed.

DFID stated that, initially, work at the MoJ was complicated due to the absence of a strategic plan and the tendency of the Ministry to report the same needs to all donors, resulting in duplication of effort and turf wars. Once the Ministry was tasked with responsibility for developing a prioritized list of its own needs, this situation improved.

Representatives predicted that when the EC takes over major funding responsibilities, justice sector work will most likely encounter problems since the EC is not especially strong in strategic planning. Enhanced assistance will be needed by the MoJ at this time. Work of the Ministry is further complicated by the fact that it is currently split up into five different locations in Sarajevo.

I. United Nations Development Fund (UNDP)

Detailed programming information from UNDP was not available, but in general, the UNDP representative stated that they plan to remain engaged in Access to Justice and transitional justice issues. No projected budget was available or would be estimated. UNDP has no plans to exit the justice sector, but specific programming will depend on fundraising efforts. They state that they have tried to partner with USAID in the past but without much success, except in the area of war crimes training.

With respect to specific programming needs, the UNDP representative stated that although the State Ministry of Justice now has a respectable long-term plan, implementing it will be another matter since capacity is very much lacking. She stated that UNDP will continue to work on legal aid issues. A Law on Legal Aid assistance in civil and administrative cases has been drafted with assistance from PILI/Soros; after it is passed, UNDP will work to implement it within the State MoJ. Although UNDP has provided support to the Entity training institutes, training for prosecutors is badly needed due to the change from an inquisitorial to an adversarial system. Work harmonizing the laws of BiH with European conventions is also needed.

UNDP is currently developing numerous proposals for IPA fundraising, but specifics were not provided.

J. European Council (EC)

EC’s assistance to BiH is expected to increase overall from 60 – 90 million euro between 2007 and 2010 through IPA funding; the specific budget for Rule of Law work was not provided. The Council wants the State Ministry of Justice to administer justice sector funds, although it knows that capacity to do this is sorely lacking. The EC representative stated that although it may appear that capacity at the State MoJ is low now, it is exponentially higher than it used to be, and she foresees that the Ministry will eventually be able to adapt to its new responsibilities.

The proposed process is for the Ministry and HJPC to draft proposals and send them to the Directorate for EU Integration, located within the Council of Ministers, who will then review and forward them to the EC Rule of Law section. If they are approved, the proposals will be forwarded to Brussels for final review. The entire funding process is expected to take 2 – 3 years.

The EC representative stated that areas of future priority will focus on increasing capacity at the HJPC, the State Ministry of Justice, and all other justice sector institutions. Availability of funds will not be a problem.

2007 IPA activities include support to the Case Management System at the HJPC (800,000 euro), assistance to the State Ministry of Justice's Department of Strategic Planning and EU Integration, management skill-building for state prisons, and assistance to land registries. IPA activities for 2008 are still being planned but will include assistance to prisons and providing computers to the HJPC.

Significantly, EC representatives state that they have no plans for capacity-building at the State Ministry of Justice to assist personnel in developing proposals, administering funds, or drafting budgets.

VI. RECOMMENDATIONS

A. Context and Framework for Recommendations

Activities carried out during the remaining period of the JSDP program, as well as future USAID programming, should focus on strategies that will facilitate BiH's integration into the EU. The following criteria relevant to justice sector reform are set forth in the 2007 European Partnership Agreement with BiH (Appendix I). Since these criteria are used to measure BiH's progress towards accession, all programming should be directly linked to them.

European Partnership Agreement, Short-Term Priorities

- Ensure that State-level ministries and institutions are adequately financed, operational and properly equipped, especially in terms of premises and staff.
- Take measures to achieve more functional and sustainable institutional structures and better respect for human rights and fundamental freedoms, including the agreement and adoption of changes to the constitution, as necessary.
- Ensure structured and institutionalized State/Entity coordination by establishing functioning mechanisms for political, legislative and technical coordination between the State and Entities.
- Reinforce the independence and accountability of the judicial system and improve its effectiveness, including the reduction of backlogged cases.
- Adopt and implement a strategy for development of the judicial sector.
- Ensure adequate training of the judiciary, in particular as regards human rights legislation and issues related to the implementation of the Stabilization and Association Agreement.
- Remove provisions of the death penalty from the Republika Srpska constitution.

- Improve implementation of the international conventions ratified by BiH, including reporting requirements.
- Enhance cooperation with neighboring countries, notably on judicial cooperation.

European Partnership Agreement, Medium-Term Priorities

- Continue the process of agreeing to and adopting changes to the constitution of BiH that will contribute to creating more functional and fiscally sustainable institutional structures, improving respect for human and fundamental rights and supporting the process of EU integration.
- Implement a strategy for the development of the justice sector and to consolidate an independent, reliable and efficient judiciary that guarantees the rule of law and equal citizen access to justice. Also, to guarantee that courts have the technical equipment and financial means necessary to impart justice efficiently and properly.
- Ensure that national legislation is fully compatible with the European Convention on Human Rights.

B. High Judicial and Prosecutorial Council

- **Short-term:** The HJPC has recently commenced its second four-year term, with a number of new members joining the Council. JSDP will need to actively engage with the new leadership of the Council to ensure their buy-in into the reforms already undertaken. The new HJPC will need to endorse the Standards Program and be ready to allocate resources necessary for this initiative to succeed in all 65 courts of BiH.
- **Short-term:** Ensure that JSDP transition plans take into account other donor activities in the BiH justice sector that go beyond 2009. In the final project year, JSDP is planning to transfer its activities to the HJPC, and international donor funding will be required to sustain JSDP programs after the project ends.
- **Short-term:** Encourage the HJPC to advertise positions via different types of media and reach out to broader audiences in order to solicit public input into the vetting of the judicial and prosecutorial candidates.
- **Short-term:** JSDP should continue working with the HJPC to strengthen the capacity of the Council to develop, present and defend court budgets. In the final year of the program, the HJPC will need to be prepared to formulate budgets for the courts and prosecutors and defend them during the next budget cycle in 2009.
- **Short-term:** Actively engage with SIDA and the Norwegian Embassy in the next several months during their planning activities to ensure that these donors allocate funding to the HJPC and the courts in order to help sustain JSDP initiatives as USAID assistance decreases in the next several months. These donors expressed interest in supporting the Standards Program and some of the court remodeling activities.
- **Short-term:** Further strengthen the capacity of the Department for Planning and Communications to perform its functions, as defined in the sub-chapter 3.1 of the 2007-2012 Strategic Plan. A needs assessment should be conducted in the near future so that necessary

training can be provided to the staff. The leadership of the Council should be engaged in order to help them better understand the role and responsibilities of this Department.

- **Mid-term:** Provide further support to the time standards working group under the auspices of the HJPC, and encourage the Council to initiate a time standards pilot in at least one court.
- **Mid-term:** Provide assistance to the Office of Disciplinary Counsel to develop its capacity to carry out performance audits of judges and prosecutors.
- **Long-term:** Work with the HJPC on establishing career track professional court administrators for the judicial sector. Even though the scopes of work for court secretaries have been changed to include some administrative functions, these employees do not yet perform traditional court administration functions.
- **Long-term:** Provide assistance to the HJPC on strengthening the Council as a policymaking body, with the Secretariat providing support to Council members and acting as the Administrative Office of the Courts for the judiciary with attendant budget, administrative, personnel, procurement and IT divisions.
- **Long-term:** Strengthen budgeting capacity throughout the judicial branch. Even if judicial budget responsibilities were removed from the State Ministry of Justice, the budgeting capacity of personnel at that institution would urgently require strengthening. As IPA funds become available and the Ministry is charged with administering funds allocated to the justice sector, this need will become exponentially more pressing. This activity would support the Commission of European Communities 2007 Progress Report, which cites management of aid on a decentralized basis as a medium-term objective for BiH on the path to accession.
- **Long-term:** Work should be done toward ensuring separation of powers by defining separate roles and responsibilities for judges and prosecutors. The CEC 2007 Progress Report states that harmonized rules for cooperation between police and prosecutors are needed, and that the majority of police and prosecutors have difficulty understanding and applying the Codes of Criminal Procedure. Significant training needs exist.

The institution of the Office of the Prosecutor should be strengthened. Consideration should be given to establishing Model Prosecutor Offices to develop and implement reform strategies and enhance capacity building. Prosecutors have not been included in the delivery of the types of technical assistance made available to the courts.

C. State Ministry of Justice

- **Short-term:** JSDP will need to continue to provide assistance to the State MoJ in the final year of the program. With DFID discontinuing its assistance by the end of 2008, and given the major role the MoJ will be tasked with in the IPA process, the Ministry will need assistance building its internal capacity to implement the JSRS and to monitor progress during implementation.
- **Short-term:** Implementation plans for the JSRS should be drafted, and the MoJ will need assistance with this activity.
- **Short-term:** Further assistance is needed by the leadership of the MoJ in form of training. Additionally, ongoing consultation with the incoming leadership of the HJPC on the roles and

responsibilities of the two agencies should be facilitated. Institutional protections are needed to ensure the integrity of the HJPC and to safeguard nascent judicial independence in BiH.

- **Short-term:** Relevant European Union and international conventions should be translated at the earliest possible date to facilitate local capacity-building efforts. Legislative reform and harmonization should not simply be carried out by international personnel; instead, it should be undertaken as a developmental, capacity-building exercise. This will require additional training.
- **Long-term:** A comprehensive strategy of legislative harmonization and reform will have to be undertaken in order to bring criminal codes up to date, harmonize them with each other and with national law, and ensure their compliance with applicable European and international laws.
- **Long-term:** The role of the MoJ as the coordinating body for the national justice sector needs to be strengthened. In a country in which fourteen semi-independent judicial institutions co-exist, the State MoJ faces the formidable task of coordinating their work and ensuring overall compliance with the SAA and EU accession standards. Further, the MoJ will have to become capable of coordinating justice sector funding under the IPA process.

D. Courts and Court Administration

- **Short-term:** Focus on providing technical assistance to courts in developing new archival practices that integrate changes introduced as part of records management activities. Retention schedules need to be revised, and assistance in designing court archives is needed.
- **Short-term:** Encourage the piloting of time standards in courts that are willing to undertake these activities. Continue to further interact with the time standards working group that meets under the auspices of the HJPC.
- **Short-term:** Provide assistance to courts in developing their capacity to formulate needs-based budgets as well as their ability to present and defend budget submissions. Assist courts to understand the role of the HJPC in the budget process. Make the Council more relevant to court activities with regard to formulating individual court budget submissions.
- **Short-term:** Encourage the sharing of best practices among courts that received technical assistance. Further encourage informal mechanisms for bringing judges and prosecutors from the Federation and the Republika Srpska together to discuss issues relating to the harmonization of practices as well as administrative and management reform of the justice sector.
- **Mid-term:** Provide support for developing comprehensive case-flow management reform in all courts.
- **Mid-term:** Integrate a new records management system, archival practices, and fees and fines practices into the automated case management system. Once time standards are in place, ensure that the case management system includes them and uses them to eliminate inefficient business practices.
- **Long-term:** Address the issues of the backlog of all cases, especially utility cases. In the near term, consider increasing fees for filing these types of cases in court. Currently, it costs the court KM 74 to process each case; often the value of the claim itself is less than costs associated with collecting it from a debtor. Ultimately, legislative change will be required to move authentic

documents from the jurisdiction of the courts into specialized administrative agencies. Courts should not be used as collection agencies for utility companies.

E. Institutional Reforms

In order to ensure uninterrupted progress towards European Union integration, future USAID programming should continue to focus on the requirements in the 2007 European Partnership Agreement with BiH. Following are general suggestions for future programming.

- **Long-term:** In order to continue moving BiH along the path towards accession into the EU, as well as to protect gains made to date in institutionalizing judicial independence and the status of the HJPC, constitutional reform should continue to be advocated. Without it, the necessary framework and legal basis to ensure permanence and sustainability of programmatic activities to date will not exist. The absence of constitutional and institutional frameworks has been highlighted with concern by several European bodies. The CEC 2007 Progress Report states that “Bosnia and Herzegovina has made no progress towards creating more functional and affordable State structures which support the process of European integration, e.g., though constitutional reform.” A 2005 Opinion of the Venice Commission stated, “The very limited powers granted to the State level by the present constitutional text are in no way comparable to the powers exercised by other federal states, and they are insufficient to enable Bosnia and Herzegovina to participate in the process of further European integration.” Further, the Steering Board of the Peace Implementation Council recently reaffirmed its view that constitutional reform is a necessary prerequisite to equip Bosnia and Herzegovina to meet the requirements of a modern European state. Problems stemming from the failure to engage in constitutional reform include the fact that the 2006 general elections were conducted under provisions that violated the European Convention on Human Rights.

In addition to national constitutional reform, constitutional reform at both Entity levels is also needed. The CEC 2007 Progress Report criticizes both Entities for failing to bring their constitutions into line with a March 2006 decision of the Constitutional Court of BiH with respect to Entity symbols and anthems. Also, the Republika Srpska still permits the imposition of the death penalty for capital crimes, which will prevent accession into the EU since that provision violates the European Convention on Human Rights.

- **Long-term:** Continue advocating for the creation of a State Supreme Court in order to ensure equal application of laws throughout the country and protect the appropriate jurisdiction and caseload of the Constitutional Court.
- **Mid-term:** Clarify and strengthen the role of prosecutors; improve police-prosecutor coordination and collaboration. Individual and joint training programs should be carried out to clarify and coordinate case investigation responsibilities and create a sense of partnership between these institutions.

Inter-Entity police cooperation and mutual legal assistance should be strengthened. Currently, the lack of coordination among Entity police agencies allows perpetrators to commit crimes in one Entity and flee into another, thereby avoiding arrest altogether.

- **Mid-term:** The strength of the lawyers’ bar appears to be a problematic impediment to reforms needed to meet the right-to-counsel requirements set forth in the European Convention on Human Rights. Although it is recognized that the current environment makes it difficult to work effectively in this area, this issue should not be abandoned since it has the potential to negatively

impact EU accession. Article 6 (c) of the European Convention on Human Rights, to which BiH is a party, and compliance with which is a prerequisite to entry into the European Union, guarantees every person the right to free legal assistance of his choosing if he does not have sufficient means to pay for it. In the absence of a national legal aid program, the current system is subject to manipulation and prevents courts from effectively predicting their budgetary needs.

Consideration might be given to supporting and replicating *ad hoc* efforts currently being undertaken by Brcko and Zenica legal aid institutes and providing training to legal aid lawyers in other cantons.

F. Further Capacity- Building

Virtually all justice sector personnel are in need of comprehensive training.

- **Entity Training Institutes:** Although some interviewees directed criticism towards the Training Institutes in the Federation and the Republika Srpska, the work the Institutes is doing appears to be generally acceptable. Further, the Institutes are engaged in important cross-Entity collaboration that appears to transcend local and national politics and which provides an important symbol of judicial independence. Both Institutes are in need of relatively minimal financial assistance to complete renovations and equip their facilities.

Since the CEC 2007 Progress Report states that lack of staff in both Training Institutes hinders effective training, consideration should be given to exploring solutions to this problem.

Some trainers have been given education in modern training methodologies. However, it does not appear that all trainers have undergone this type of education, and some received it a number of years ago. Updated education of trainers might be considered to ensure they are using the most current training methodologies.

- **Judges:** As EU accession approaches, judicial sector personnel will have to be trained on the laws of the European Union, the jurisprudence and referral requirements of the European Court of Justice, and their obligations under international conventions to which BiH is a party. This issue has recently been faced in other countries further along on the path to EU integration. (See Appendix J, Impact of EU Accession on the Rule of Law in the CEE Region.)

Consideration might be given to providing judges with training in alternative dispute resolution and mediation. Interviewees reported that many of the cases that are filed could be easily resolved outside of judicial proceedings, and the CEC 2007 Progress Report states that further efforts are needed to introduce alternative out-of-court resolution measures such as mediation and arbitration.

- **Prosecutors and police:** Training of police and prosecutors is badly needed, including joint training programs that would clarify their respective responsibilities and strengthen their capacity to investigate crime. Prosecutors need training in criminal law, criminal procedure, adversarial skills, and collaboration with police. The new adversarial system introduced several years ago eliminated the position of the Investigating Judge and delegated responsibility for investigating cases to police and prosecutors. However, neither office was trained to carry out their new responsibilities. The U.S. Embassy is currently involved in training and strengthening the capacity of prosecutors in serious crimes and war crimes, but no work is being done to train ordinary prosecutors to prosecute everyday crimes. In addition to training about investigation oversight responsibilities and methodologies, prosecutors are in need of skills-related education

that would enhance their ability try ordinary criminal cases under the new adversarial system. Consideration should be given to establishing a Model Prosecutor Program similar to the successful Model Courts Initiative undertaken by JSDP.

- **Lawyers:** It does not appear that any mandatory training requirements exist for lawyers who are not prosecutors, including criminal defense lawyers. Consideration might be given to analyzing this issue further and proposing change. Mandatory training programs might also serve as a forum for discussions about ethical responsibilities and international legal mandates that appear to be undermined by current efforts to prevent the introduction of a national legal aid system.
- **Administrative staff:** Administrative staff are in need of training in almost all areas, and the adoption of the new Book of Rules will create additional training needs. Computer training is needed and requested by staff in most courts. Even when computers have been provided by international donors, training has often not been made available, rendering the donations useless.

Training in principles of professional responsibility and ethics for court staff is also needed. The Entity Training Institutes state that they are willing to provide training programs for court administrative staff once their financial, infrastructure, staffing and equipment needs have been met.

Practice manuals for all justice sector personnel are needed. Training programs, although effective, can tend to be transient. Many personnel stated that bench-books and manuals that they can take back to their job sites would be very helpful.

- **Inter-Entity and regional training and other cooperation:** Communication and capacity could be increased by engaging in inter-Entity and regional collaborations, including through training and mentoring programs and professional associations. Cross-border cooperation with neighboring countries is one of the goals set forth in the Instrument for Pre-Accession Assistance.

Inter-Entity and regional collaborations are already being carried out by several offices and institutions. For example, the HJPC Office of Judicial and Prosecutorial Disciplinary Counsel recently traveled to Montenegro to train a counterpart office there on disciplinary issues. Inter-Entity cooperation also takes place between some courts; one court in Mostar mentors a sister court in the Republika Srpska. The Judicial and Prosecutorial Training Institutes in the two entities regularly cooperate and share resources. Inter-Entity cooperation will strengthen a unified sense of the judicial branch, and regional cooperation will facilitate BiH's accession to the EU.

G. Engage in Effective Donor Coordination

In order to maximize programming impact given decreasing levels of funding, effective coordination with other international donors should be carried out. Despite the impending influx of CoE funds, many donors intend to maintain or increase current funding levels. Almost all donors expressed a willingness to partner with USAID. Specifically, SIDA and the Embassy of Norway have substantial budgets and are willing to work with USAID on justice sector reform programs.

VII. CONCLUSIONS

During four short years, the Justice Sector Development Project has delivered a significant number of reforms and results that have helped to strengthen the judicial sector of Bosnia and Herzegovina and its institutions, promote judicial independence, and move the country further from its violent past and closer

to a society based on justice and the Rule of Law. Program gains are all the more remarkable given the extraordinarily complex and difficult legal and institutional environment in BiH. As US assistance begins to wind down and the influence of the Council of Europe increases, it will be important to ensure the sustainability of program successes.

In general and to the extent possible given decreasing funding levels, current programming strategies should be continued, and USAID should seek to remain engaged with the national institutions prioritized by JSDP.

Work should continue with the HJPC. Creation of and progress made by that institution should be considered a success, in part due to assistance provided by USAID, and engagement should not be abandoned. Although problems do exist within the HJCP, including unclear and overlapping competencies among internal departments and a lack of capacity in some important areas, including budgeting, the HJCP is currently the single strongest guarantor of judicial independence. In the absence of national constitutional protection for the judicial branch, it is essential that the HJCP continue to be supported and strengthened. The CEC 2007 Progress Report warns that the position of the HJPC is still not secure within the constitutional framework, and its existence and legitimacy are frequently challenged at both Entity levels (particularly from the Republika Srpska) and at the national level, most notably by the State Ministry of Justice.

Capacity at the State Ministry of Justice remains disappointingly low, but it is recommended that some level of engagement and programming be continued, in part in order to ensure that powers now held by the HJCP are not inappropriately transferred to the Ministry. National executive and judicial competencies need to be clearly delineated and separated, and this goal will be easier to accomplish if international presence and programs exist in both institutions. Programming should focus on elevating the capacity of the Ministry and assisting it to coordinate the implementation of the Justice Sector Reform Strategy. Budgeting capacity and proposal-drafting skills should be developed in order to ensure that the Ministry of Justice receives and effectively utilizes IPA funding that will allow Bosnia to meet EU accession requirements in the area of Rule of Law.

The Judicial Independence and Accountability Initiative should be continued, even if funding constraints require reducing it to a lower level. This initiative appears to be the most promising avenue for advocating for and participating in the constitutional and legal changes prerequisite to Bosnia's successful entry into the European Union. Although progress towards constitutional reform may appear to be politically unviable at this time, the IPA Multi-Annual Indicative Planning Document for 2007-2009 prioritizes support to domestic efforts on constitutional reform. Further, the Mostar Declaration on Police Reform, signed October 24, 2007, explicitly foresees a process of constitutional reform as an integral aspect of police reform, which itself has been declared a matter of urgency by the Steering Board of the Peace Implementation Council. It is thus clear that constitutional reform will have to be re-initiated at some point if BiH remains seriously committed to EU accession. Even if it is not clear that overt efforts towards constitutional reform would produce fruits at this immediate time, USAID should nevertheless remain positioned to participate in this important and inevitable process.