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KOSOVO JUDICIAL SUPPORT PROGRAM MID-TERM EVALUATION FINAL REPORT

JULY 2009

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List of Abbreviations

ABA/ROLI	American Bar Association Rule of Law Initiative
CLO	Court Liaison Officer
CMIS	Court Management Information Systems
DC	District Court
EAR	European Agency for Reconstruction
EC	European Commission
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
ICO	International Civilian Office
IJPC	International Judicial and Prosecutorial Commission
JIU	Judicial Investigative Unit
JSP	Judicial Sector Program
KJC	Kosovo Judicial Commission
KJCS	Kosovo Judicial Commission Secretariat
KJI	Kosovo Judicial Institute
KJSP	Kosovo Judicial Sector Program
KPA	Kosovo Prosecutor's Association or also known as KPC (Kosovo Prosecutor's Council) or PCK Prosecutor's Council of Kosovo
KPPA	Kosovo Public Prosecutor's Association
MC	Municipal Court
MOJ	Ministry of Justice
NCSC	National Center for State Courts
NSSL	National Center for State Legislatures
ODC	Office of Disciplinary Council

SDC	Swiss Development Corporation
UNDP	United Nations Development Program
UNMIK	United Nations Mission in Kosovo
USAID	United States Agency for International Development
WG	Working Group

Executive Summary

The Republic of Kosovo is the newest country in the world. With approximately 2,000,000 citizens, it is smaller than the state of Connecticut. Although there are no reliable statistics, estimates put the Serb ethnic population at around 150,000 after nearly 60,000 Serbs fled the country during and after the fighting with Serbia.

A long running feud between the central government of Serbia and the autonomous territory of Kosovo broke out into student demonstrations and armed liberation resistance in the 1980's. The Serbian government retracted Kosovo's autonomous status and sacked all Kosovar Albanian public employees, from judges to teachers to doctors to police, replacing them with ethnic Serbians. When NATO and the United States feared that Serbia would repeat the massacres of men and boys committed in Srebrenica, they bombed Serbian targets to force their withdrawal from Kosovo.

In 1999, the United Nations established the United Nations Mission in Kosovo (UNMIK) and placed the territory under its protection, while setting up, staffing and financing a new set of governmental institutions. UNMIK has since morphed into the European Union Rule of Law Mission in Kosovo (EULEX), and the International Civilian Office (ICO) presently maintains veto power over any action of the Kosovo government, legislature, or courts.

USAID Judicial Support in Kosovo

Since early 2001, USAID has been collaborating with local and international bodies to improve the Kosovo Judiciary. USAID in collaboration with DPK had a \$2 million project. Since 2003, the National Center for State Courts (NCSC), which was contracted by USAID, has been working on Judicial Reform. This second project began in April 2003 at a cost of \$12 million.

On June 17, 2007, USAID awarded a three-year, approximately \$19.5 Million contract to the National Center for State Courts for a follow-on program, the Justice Support Program (JSP). USAID has requested this evaluation of the JSP not only to evaluate the project's progress two-thirds the way through, but also to recommend adjustments for the remainder of the project and to suggest possible follow-on activities.

The general purpose of the JSP is to further develop the Rule of Law in Kosovo by making contributions in the following areas or Tasks:

1. Improve the Capacity of the Kosovo Judicial Council (KJC) to Operate, Effectively and Efficiently, as an Independent Judiciary
2. Improve Court Administration
3. Improve Professionalism and Ethics of Judges and Court Staff
4. Support the Transformation of the Court System to More Effectively Represent and Serve the Non-Albanian Populations
5. Develop Ministry of Justice Legal Drafting and Policy Formulation/Guidance Skills
6. Establish and Support the Organization and Critical Tools Necessary to Build an Effective Public Prosecutors' Service. Local laws and regulations need to be passed before the JSP

can move forward with the major institutions that will be working to implement these laws.

The following laws have been sent to the Prime Minister for approval. If approved they will then be sent to the Assembly to be voted upon:

1. Law on Courts;
2. Law on Prosecutors;
3. Law on the KJC; and
4. Law on the KPC.

The Kosovo Judicial System

There are 56 courts, divided into three layers, with about 390 judgeships. There are currently 90 prosecutors, Currently 57 court administrators and approximately 2000 authorized court staff members. Courts are generally held in low esteem by the populace.

The Judicial Reform Environment

In taking over management of the Kosovo government, the UNMIK installed jurists from member countries to sit as judges, appointed all of the local judges now sitting, and created policy councils whose members were also international advisers and local Kosovars. In 2008, Kosovo unilaterally declared its independence from Serbia.

Since 1999 many international organizations have been operating in the Kosovo judicial sector, including USAID. As is usual, the multiplicity of international actors translates into a multiplicity of competing and often contradictory agendas. Drafts of legislation to formalize new judicial institutions have gone through innumerable permutations over this period. However, as noted above, key legislation regarding the judicial system has not yet been passed to the legislature for consideration and approval. As can be imagined in such this complex environment, key judicial reform events have not been sequenced in a logical order or in a timely manner. There is much confusion in the country and among the actors about how and when reform might happen.

In a variety of ways, the USAID Judicial Sector Program (JSP) has often been overtaken by events. Unforeseeable events altered both the course and timeline for implementation for some of the discreet tasks envisioned in the original project. For example, key legislation, such as the Law on Courts, the Law on Kosovo Judicial Council and others has remained in draft stage for more than five years.

The Kosovo Judicial Council (KJC), the key policy-making body, worked for several years to establish court administration standards and procedures, only to fade away before legislation created a permanent successor institution. This obviated any orderly transition of personnel or policies from one body to another. Then the declaration of independence altered the working of the courts after the project began.

The administrative arm of the KJC, its Secretariat (KJCS), for the past several months has received no guidance or supervision after the effective dissolution of the KJC. The Secretariat does not have the power to roll-out policy initiatives in court administration.

There seems to be no recognizable Kosovar champion for judicial reform capable of keeping the key reform elements moving forward in a timely manner. Without a local “fixer” who can intervene at the political level to assure that laws are passed and implemented as conceived and on time, it is doubtful that the judiciary and the rule of law will prosper.

Many within the judiciary, including judges, prosecutors and court administrative staff members, find it difficult to identify needs or to plan how to resolve them. In effect, all judges have been appointed on an interim basis. Initially, all judges were to have been vetted through the KJC for appointment to permanent positions. However, the International Judicial and Prosecutor Commission, a non-Kosovar institution, took over the vetting process. This current vetting process began almost two years late, and is projected to run for 18 to 36 months. This means that judges and prosecutors are focusing on the reappointment process, exams that they must pass to be eligible for reappointment, and the salaries that they might earn, rather than on the future of court administration.

However, even given the constraints listed above, there are many positive factors leading to JSP task achievement. Both USAID and JSP/NCSC staff have maintained very good relations with most of the other international actors. They have also established and maintained very good relations with the local stakeholders. Kosovars interviewed find NCSC staff both knowledgeable and helpful. High quality local staff members, some of whom have been working for several years for USAID and its contractors, have provided important continuity to USAID reform efforts.

Evaluation Findings

The work with the KJC, while it was functioning, achieved many of its goals. The KJC was able to standardize court fees and expenses, formulate Disciplinary Committee procedures, and train the Judicial Investigation Unit to undertake quality investigations.

In the area of court administration reform, with JSP/NCSC help, the KJC was able to develop criteria for Model Court selection, set performance criteria, establish nine key performance standards, and promote the use of a variety of important court performance measures, labeled the CourTools for Kosovo.

Key personnel in the KJC Secretariat were well trained in budget development, data collection, statistical analysis, preparation of reports for Committee review, and developing and promulgating regulations.

Although much effort went into producing these impressive results, it is unclear if they will be carried forward given that neither the successor institution nor its members and support staff members have yet to be identified.

Although not all Model Courts were set up on time, the project established court improvement teams which adopted action plans, prioritized standards, and identified responsible actors.

JSP/NCSC performed extensive training for court administrative personnel. For three Model Courts, extensive physical renovations have been planned with the local court staff, and are to get underway shortly. NCSC has been able to support some courts in integrating prosecutor and court CMIS systems.

NCSC implemented an important innovation by drawing on its extensive network of United States state court administrative employees to work voluntarily with Model Court counterparts to improve Kosovar judicial practices in the areas of Case Filings, Central File systems and Human Relations.

Early on, emphasis was put on reducing case backlogs, disposition of cases, and case delays; so far there have been mixed results. Although statistics are unreliable, comparing Model Court results with the rest of the courts indicates that the Model Courts have functioned better than the other non-model courts in reducing backlogs.

JSP/NCSC has furthered the legal expertise of the Kosovar judiciary by teaching classes at the Kosovo Judicial Institute (KJI), at the NCSC offices and other locations in Kosovo. The “Train the Trainers” concept is a good one, but it cannot be accomplished in a few classes. Effectively training local experts who can go on to train others without assistance would involve a much longer course, which would include Adult Training Methodology. Merely learning content does not enable most people to become effective educators.

The audit component of the Judicial Investigative Unit (JIU) is a competent body that should receive additional support from JSP/NCSC. The IJPC should be encouraged to work with the findings of both the Audit Unit and Investigative Unit as it vets judges and prosecutors.

JSP/NCSC has worked with the KJI in developing a Code of Ethics for judges, prosecutors and court staff members. The IJPC has written an Ethics exam which has been given in two sittings to all judges and prosecutors who have applied for reappointment or for initial appointment to the judiciary. JSP/NCSC could work with the IJPC to re-write the exam after the results of the test have been studied.

JSP/NSCS has been instrumental in working with the Ministry of Justice (MOJ) on drafting new laws that affect the judiciary. Once these laws are passed and promulgated, the judicial system will be on a more solid footing. JSP should continue to teach, train and mentor the legislative drafters.

JSP has made a significant contribution to the MOJ drafting committee. JSP staff members coached, trained, and mentored the young attorneys assigned to the MOJ and imbued them with a passion for drafting legislation, which should help improve the justice sector in Kosovo. By training advisory staff members of the Assembly, the JSP has greatly improved the chances of draft laws being understood and passed.

JSP/NCSC has made a major contribution to the judiciary of Kosovo by implementing the Case Management Information System (CMIS) used in the prosecutors’ office. The CMIS is a major move towards the modernization of the judicial system and must be integrated with the court’s system. JSP’s involvement in this program will have a lasting effect on the judiciary.

JSP/NCSC has developed a Working Group that will aid the full implementation of the CMIS throughout the judicial system.

JSP is currently developing a *Prosecutor's Administrative Instruction Manual* in order to help unify work flow management.

Task 4 requires the JSP to support the court system to more effectively represent and serve non-Albanian populations. In this regard, the project successfully worked with the judicial vetting commission to identify outreach partners in the minority legal community and NGOs to promote minority candidacies.

The project supported Court Liaison Offices in the Ministry of Justice and the Legal Aid Commission in their efforts to promote awareness and access to the courts among minority communities. It promoted cooperation between the Commission and the Kosovo Bar to obtain pro bono representation of minorities. It also established Citizen Advisory Boards and conducted workshops on minority and gender issues for judges.

Conclusions

Major project activities were significantly stymied by factors that could not have been anticipated when the project was designed. Notwithstanding these setbacks, the project has accomplished many of its goals within an ever-changing environment.

Anti-discrimination efforts have been as successful as could be anticipated, although within the society in general so much more needs to be worked out in the future.

Successful implementation has required both USAID staff and NCSC staff to have extreme patience, be flexible and be able to swim in turbulent waters while striving to reach goals.

The JSP/NCSC has worked well with KJI in developing an Ethics course and has contributed significantly to both the Continuing Legal Education Program and the Magistrates school.

The JIU is a competent body which has the ability to conduct both audits and investigations.

The JSP/NCSC has had a substantial influence on drafting legislation. The efforts of DLA Piper, which assisted the lawyers of the MOJ, as well as the law program at Tulane University, which taught drafting skills to MOJ employees, have resulted in four important draft laws affecting the judiciary. These laws are expected to pass into law in the near future.

The JSP/NCSC has implemented the CMIS in some of the prosecutors' offices; due to lack of dependable electricity and necessary computer software, the program has not been as successful as was hoped. Prosecutors are still using a dual system to track cases, the old paper method and the new computerized system.

Recommendations

1. The JSP should establish the remaining four Model Courts as expeditiously as possible so that more local court involvement will enable a larger and faster roll-out of the new practices and procedures;
2. Attention should be given to training court staff to implement the 14 remaining court administration standards and to working with judges to assure that those standards are implemented;
3. The JSP should continue to cooperate with the KJI both in the Continuing Legal Education program and the Magistrate's school. The "Train the Trainers" program should be further developed in order to teach pedagogical skills to those who are expected to train their colleagues;
4. JSP should work closely with the Audit Unit of the JIU; when that unit finds court administrative deficiencies, the JSP staff could then work with the court president on how to implement the recommendations;
5. JSP should continue to provide legal expertise to the lawyers of the MOJ as well as advisors to the Assembly;
6. The CMIS program needs further assistance from JSP in order to spread the program to all of the prosecutors' offices and then to the entire judicial system, with the goal of establishing a single functioning computerized system in Kosovo; and
7. JSP/NCSC should continue to work with both the KPPA (Kosovo Public Prosecutors Association) and the Kosovo Prosecutors' Council (KPC) once it has been established.

1. Background

Recent History and Background

The Republic of Kosovo is the newest country in the world. After the dismemberment of Yugoslavia into independent countries, Kosovo was still considered to be an integral, although autonomous and in many ways self-governing, part of Serbia. Beginning in 1981, Serbia quelled student riots, cracked down on separatists, and went after armed liberationists. Ultimately, in 1989, Serbia retracted Kosovo's autonomy, replacing Kosovar public employees with Serbian employees, at all levels of government, including judiciary officials. After Serbia stripped Kosovo of its autonomous status, the territory was put under the control of the Serbian military, which violently crushed the opposition. Violent opposition to Serbian domination produced chaos in every sector of public endeavor, and terrible inter-ethnic violence broke out between the minority Serb population and the dominant Albanians. Mindful of how Serbia slaughtered thousands of men and young boys in Srebrenica in the mid-1990s as Bosnia fought for its independence from Serbia, in 1999 the United States and NATO warned Serbia that if it did not withdraw its troops from Kosovo, Serbia would be bombed. Serbia ignored the warnings, and NATO bombings started in mid-year. As a result, Serbia de facto lost physical and political control of the territory, and the United Nations placed Kosovo under its protection until a political solution could emerge. The UN governed Kosovo as it tried to set up institutions that would function in a democratic manner and would protect the rights of minorities. Serbia never yielded claims to Kosovo, and while negotiations were being conducted, Kosovo unilaterally declared independence in February 2008. Kosovo today is an independent country, although not sovereign since any act of the executive, legislative, or judicial bodies can be vetoed and reversed by the International Representative (Judah 2008).

While there are no current reliable statistics available, it is estimated that Kosovo has approximately 2 million citizens, including only about 150,000 Serbs and four other minority groups. About 60,000 Serbs fled during the conflict leading up to and after the bombings. (Judah 2008, p. 102). A few have returned, mostly to ethnic enclaves scattered through the country.

Judicial System in Kosovo

It is within this framework that the international community is helping Kosovo's judiciary to become an independent, efficient and effective system. There are 56 courts, divided into three layers, with about 390 judgeships. The court administrative support staff numbers approximately 2000. Currently there are 90 Prosecutors. There is extremely low popular esteem for the courts. Some interviewees indicated that there is a widely spread perception that corruption prevails within the judiciary, although well-placed observers feel that the perception is worse than the reality. Some familiar with the judicial sector feel that there is low trust in the judiciary because of low efficiency, effectiveness and professionalism.

Environment for Judicial Reform

When UNMIK began operations in 1999, it installed jurists from member countries to sit as judges, appointed local judges, and created policy-making bodies whose membership was composed of international advisors and Kosovars. It created institutions such as the Ministry of Jus-

tice, the Kosovo Judicial Council and its Secretariat to run the judicial institutions on a day-to-day basis, and appointed their staff members.

As time moved on, other international institutions developed projects to reform Kosovo's judicial system. As is usual, the multiplicity of international actors translated into a multiplicity of competing and often contradictory agendas. For Kosovo to become eligible for membership in the European Union, its institutions must be compatible with those of the member states. Thus, Kosovar judicial institutions and laws must be compatible with those of EU member states. Often, Kosovars feel that they lack control of their own institutions.

In the interim between the initial UNMIK mandate and Kosovo's unilateral declaration of independence, the Ahtisaari Accords brought additional demands on Kosovo jurisprudence. Quotas for minority hiring were imposed on all the courts. Legislation to formalize the institutions created or desired by the UN were drafted, often only to languish through innumerable revisions. Only a few important draft laws have even been forwarded to the Assembly. Without the laws pertaining to the judiciary being passed, it is difficult for the JSP to operate effectively. Key events proposed by the international actors have not been sequenced in a logical order, or just as importantly, in a timely manner. Their disorderly implementation creates extreme confusion and anxiety within the judiciary. For example, the proposed Law on Courts would establish a completely new court structure and pay scale for jurists. The pay scale is dependent upon the national budget. However, a vetting process that will decide which judges are eligible for reappointment to life tenure terms was started before any of the new initiatives in the Law on Courts or KJC were promulgated, and began several years behind schedule. As a result, applicants for judgeships knew neither to what kind of court they might be appointed, nor what salary to expect. This confusion raises the question of whether the best possible candidates for judgeships bothered to apply.

This extremely complex scenario resulted in a most difficult milieu, in which USAID has been trying to implement Rule of Law projects since 2000.

As a result of this tangle of competing interests and actors, forward planning and projection are extremely risky and prone to change. In a variety of ways, the USAID Judicial Support Program as contracted to the National Center for State Courts (JSP/NCSC) for implementation has often been overtaken by events. There were many unanticipated and unforeseeable events that altered both the course and the timeline of implementation for the discrete tasks envisioned in the proposed project.

2. Evaluation Findings, Conclusions, and Recommendations

Task One: Improve the Capacity of the Kosovo Judicial Council to Operate, Effectively and Efficiently, as an Independent Judiciary

Background

In April 2006, during the preceding NCSC- run Judicial Reform Activity Project, the Kosovo Judicial Council (KJC) was formally established. Its role was to formulate policy, implement regulations for the courts, oversee the development of a fully functioning independent judiciary, and recommend to the President of Kosovo judicial candidates to fill vacancies in the various courts under its purview. Much of the JSP/NCSC project was predicated upon the idea that the KJC would be a primary host-country counterpart institution. As noted in the preceding introduction, in the three years since its formal creation, significant political events have affected its operations. The most crucial of these was the declaration of independence in February 2008, when, for a variety of reasons, the KJC effectively ceased to operate. After independence, it languished and usually could not muster a quorum. Among the interviewees, there are conflicting accounts as to whether the KJC was subsequently disbanded by an international organization that holds order authority over all Kosovar executive, legislative, and judicial institutions, or simply became demoralized and ran out of steam. Sources indicate that the last KJC meeting was held in December 2008. A Kosovar government proposal to reactivate that KJC was not permitted by the EULEX. Many observers of the judicial environment in Kosovo do not expect the KJC to be functional again for many months, perhaps not even before the JSP project terminates in June 2010. Time lag estimates range from 12 to 36 months from the time of this evaluation. The same estimates apply to finishing the vetting process and filling judgeships.

Findings

During the few months of this project that the KJC was functioning, the JSP/NCSC staff worked successfully with it to:

1. Standardize court fees and expenses;
2. Formulate procedures to be followed by the Disciplinary Committee;
3. Enable the Judicial Investigation Unit (JIU), a quasi-independent authority, to undertake quality investigative methods and present its findings to the KJC Committee on Discipline;
4. Work with the Committee itself to develop procedures to follow in handling complaints. Indeed, before the KJC became dysfunctional, the JIU prepared 19 investigations, of which five were heard by the Committee and 14 are still pending, awaiting a reconstitution of the KJC. However, it is unclear if those investigations may have been made moot if those judges against whom complaints were lodged are not returned to the bench because of problems uncovered during the IJPC vetting process, which took control of the vetting from the KJC and did not include the JIU. (Although the JIU originally was to vet all of the candidates for initial appointment or reappointment of judges and prosecutors, that

task was taken from it and given to the International Judicial and Prosecutors Committee, composed exclusively of international, not Kosovar, staff. As one respondent noted, this meant essentially “eviscerating” the JIU.) Therefore, although a JIU still exists, its future role within the judiciary is not clear;

5. Draft criteria for the selection of Model Courts, select them and set performance criteria;
6. Initiate a review and revision of Internal Rules of Court Operation, of which 23 performance standards were set for all courts, nine of which were given priority for JSP/NCSC backstopping; and
7. Promote the use of a variety of important court performance measures, labeled the Court-Tools for Kosovo.

It is totally unclear if any of the “current” KJC members will be reappointed or if it will be composed of entirely different members, although the latter scenario is the one often suggested by observers interviewed.

When it was functioning, the KJC set up a variety of committees to study issues affecting the reform of court administrative practices, including investigating and otherwise disposing of disciplinary complaints against judges. When the KJC was disbanded, the committees also ceased to function, leaving behind the studies and policies upon which agreement had been reached.

The KJC has an administrative arm, the KJC Secretariat, which performs the myriad daily functions required to backstop the courts: developing budgets, preparing proposed court-related legislation, developing and promulgating implementing regulations, disseminating case decisions, compiling statistics for managing the individual courts, providing and maintaining court facilities throughout Kosovo, hiring court personnel, measuring court performance, promoting public information efforts, etc. Units of the Secretariat prepared information for review by Committees of the KJC, and subsequent KJC action. These staff members were tutored by JSP/NCSC staff and became very proficient in their jobs.

Although the Secretariat has not supervised the KJC for some time, the JSP/NCSC project initiated KJC Secretariat staff development in various components:

- a. Secretariat Legal Office staff were tutored in the preparation of analyses and summaries of judiciary related legislation for Committee review.
- b. Secretariat Statistical Division staff were given rudimentary training on data collection, analysis, and use of statistics for management purposes.
- c. Concepts of the importance of Public Information were instilled and several Public Service Announcements were prepared and widely disseminated through television. Other television series are ready for release and appear to be very appropriate for the task of informing Kosovars about access to the courts.

Additional important findings are:

- For several years there have been many persons in several institutions coordinating a draft Law on Courts. Before and during this current USAID project, USAID contractors have been called upon to make substantive contributions to the drafting and or give substantive comments on the various permutations developed. Although the executive branch is reviewing the draft law, it has not been sent to parliament for adoption. There was some sentiment expressed that the adoption process could take many more months, although other key respondents believe that it must and will be enacted sooner, rather than later. When the proposed Law on Courts is adopted it will set up an entirely new court structure, but JSP/NCSC efforts have been designed to migrate the previously adopted administrative changes as seamlessly as possible to the new system.
- The recently adopted Constitution mandates a new designation procedure and eligibility composition of the KJC. This could mean a replacement of those members with whom the JSP/NCSC team has worked, even if they survive the vetting process and return to the judiciary. It remains to be seen if the KJC will operate under a temporary law.
- The KJC Secretariat has lost important staff members with whom the NCSC team has worked because they have been hired away for more attractive salaries or better working conditions. Some of the most talented have been appointed to other positions in the judicial administration and they can be a resource for reform, either in their own institutions or in conjunction with ones yet to be established.

Conclusions

Progress on Task 1 has been significantly stymied by factors that could not have been anticipated and were beyond the control of JSP/NCSC. Particularly given these last findings, it seems doubtful that any of the accomplishments resulting from the work with the KJC and its Secretariat will be carried over to the new body and therefore be permanently instituted in the Kosovo judiciary.

On the other hand, if some of the KJC members were to be reappointed and a significant corps of well-prepared Secretariat staff members was still in place to backstop the future KJC in those areas where they have been tutored and trained, the efforts would not have been wasted.

The same is true of the KJC Secretariat. If there is a change in personnel at the top level, some of the court administration principles could be carried over by existing staff.

Recommendations

1. Should the Director of the KJC Secretariat retire soon or be appointed to another position (as rumored), efforts should be made to tutor the replacement in the proper role of a support institution.
2. Efforts should be made to train those in the Secretariat who do not have the same skill level as those who were previously trained and have been hired away.

Task Two: Improve Court Administration

Findings

The JSP design anticipated that there would be a KJC with which to work during the three-year span of the project. As reported, that has not been the case. Nevertheless, the JSP/NCSC was able to work at the base of the judicial structure by setting up Model Courts on which to focus. While there were to be 10 Model Courts, not all could be set up at the same time.

In the six model Courts originally approved by the KJC, the project established Court Improvement Teams which adopted action plans, prioritized standards, and identified responsible actors. Unfortunately, because of post-independence ethnic problems, work in one Municipal Model Court changed. Before the commencement of the evaluation, four additional model courts had been identified. Additionally, the Commercial Court will disappear as a separate entity when the new court structure is organized under the Law on Courts, as noted, still to be passed and promulgated. Therefore, little project energy has been expended on the Commercial Court.

Of the six Model Courts, only four have actual backlog and can be compared with other Kosovo courts. The Commercial Court is a special court, unique in Kosovo, and has a very small caseload. Thus, the backlog aspect of the project only focused on four courts.

Model Court activities related to backlog reduction did not start immediately. The initial focus was on administrative reorganization and defining the respective roles of Court Presidents/Court Administrators and relationships between different functional teams within the court. In three Municipal Courts – Ferizaj MC, Gjilan MC, Prizren MC – planning discussions started in May 2008, implementation in November/December 2008, and training was delivered in April/May 2009. In the District Court – Peja DC – there was a slightly different situation because its first backlog reduction plan (successfully implemented) is a couple years old. The Court President of Peja DC provided a presentation to his colleagues at one of the Model Courts Consortium Meetings.

Court-by-court data¹

- Peja District Court has the following priorities for backlog: 1) civil first- and second- instance cases, 2) criminal first-instance cases. This is the court's third backlog reduction plan. The first two focused only on criminal first-instance cases – their largest case category by far. While it had some successes, this plan also led to increases in pending civil cases. This third plan is an effort to be more balanced in tackling problematic case categories. Peja District Court has clearance rates above 1 – which means more cases are dis-

¹ For purposes of comparison, case clearance rates for Model Courts have been calculated individually and then for all other courts of the same level taken together. Comparison is made for the last reporting period: January-March 2009.

posed than received – in all three categories over the last quarter. These clearance rates are also much higher than the averages in non-Model Courts.

- Ferizaj Municipal Court is a more complex situation. There are several judicial vacancies in that court, leaving only two civil judges to deal with civil contested, non-contested, inheritance and execution cases. Consequently, the backlog has soared dramatically in civil cases. In criminal cases, the situation is slightly better, with virtually no pre-2005 cases currently pending – a situation that is much better than in other courts. Civil execution has been a particular problem, with staff members refusing to work for all of 2008 due to personnel disputes among them. In any case, the comparison for last quarter shows efforts being placed on civil cases, with a clearance rate above the average of non-Model Courts Municipal Courts, and greater than 1.
- Gjilan Municipal Court has set two priorities in late 2008: 1) criminal cases, and 2) civil disputes. Actual progress on civil cases has been delayed because one of the three judges, a Serb, left work in February 2008 and only returned to the court in March 2009. It is hoped that the civil case clearance rate will pick up accordingly. The comparison for last quarter shows good progress on criminal backlog with a clearance rate well above 1 and above the average of non-Model Courts Municipal Courts. Gjilan MC has also made some good efforts to address civil execution backlog – in part due to efforts under the previous project that led to continued engagement of the staff – and has a clearance rate above the average of non-Model Courts Municipal Courts. It is important to note that the clearance rate in civil execution cases is affected by extremely high levels of filings, mostly utility bills (mostly from the phone company).
- Prizren Municipal Court has set two priorities in late 2008: 1) criminal cases, and 2) civil disputes. Judges are very engaged. Clearance rates are above 1 and well above the average for non-Model Courts Municipal Courts over the last quarter.

Comparisons can be misleading because there are a relatively small number of courts in Kosovo. For example, there are only five District Courts, two of which are part of the MCP. Of the remaining three, two have extremely low caseloads – between 300 and 800 pending cases. Yet all of these courts have a similar number of judges. The same is true of Municipal Courts where JSP will be working with five of the seven “large” Municipal Courts, when Pristina MC and Gjakova MC are added.

There are a growing number of judicial vacancies due to death (for example, the Court President of Peja DC) and resignations (for example, one of the civil judges of Ferizaj MC). Between 2000 and 2009, Gjakova MC never functioned with the number of judges at full capacity. In addition, there are a number of judges on sick leave or with serious health problems that limit their capacity to work – in Peja DC, in Ferizaj MC, in the Commercial Court, in Prizren MC, etc. In the context of reappointment, no vacancy can be filled until applicants are fully vetted by the IJPC – and since there is no functional KJC, there is no entity to make those appointments.

Case filing levels have been increasing. The monthly average of received cases has increased in all courts except the Commercial Court between 2008 and 2009. The monthly average of disposed cases has increased in all courts between 2008 and 2009. This means that with fewer judges and more cases coming in, the Model Courts disposed of more cases than the other courts, but not always enough to put a dent in the backlog.

With a view to the sustainability of initiatives begun in the Model Courts, and subsequent roll-out to the rest of the courts in the nation, the project succeeded in having Model Courts liaisons established among KJC Secretariat personnel. Regular tripartite (KJC Secretariat, NCSC, and court personnel) strategy and implementation meetings were held. This was accomplished even though the Secretariat does not see itself as an enabler, but rather as a controller of the judges and court personnel.

Plans for the extensive physical renovation of three courts have been developed in conjunction with the judges and others in the courts; construction is to begin in the first court before this review is published. Unfortunately, at least three of the Model Courts will not benefit from physical renovation because circumstances beyond the control of the project make it unwise to make such a monetary investment. Reconstruction is costly, and if the future of the court is in jeopardy it would be inadvisable to spend the money on such renovations.

As an important innovation, JSP/NCSC drew on its extensive network of United States state court administrative employees to work voluntarily with Model Court counterparts to improve Kosovar judicial practices. These volunteers mentored local staff members on the themes of Human Relations, Central Case Filings and Central Files. They were well received by their local counterparts.

Although Case Management Information Systems (CMIS) for the courts basically fall under the purview of European organizations (EAR), the JSP/NCSC teams have been able to provide some support to help implement CMIS in some of the pilot courts, especially in integrating the prosecutors' case files with those of the courts.

The project surveyed staff members of the Model Courts to assess training needs. When necessary, NCSC staff members conducted trainings in case flow, records management and CMIS docketing, and rudimentary computer skills. At the same time, the project urged the Kosovo Judicial Institute (KJI) to add court administrative staff training to its program. Although it has agreed to do so, the KJI is not prepared to offer significant training beyond that which is being given to the approximately 450 judges and prosecutors in the Continuing Legal Education program.

The project also conducted surveys on court user and court employee satisfaction.

Early on in the project, emphasis was put on reducing case backlogs, case closings, case delays, and case execution delays. There have been mixed results. A number of case executions for backlogged utility payments have been resolved in the pilot courts, but overall court-wide statistics indicate that times to process cases have increased, as has the total backlog. This is due in part to the fact that, because of ethnic tensions sparked by Kosovo's unilateral declaration of independence, some judges belonging to the Serbian community no longer report for work. Also, some judges have retired or died but could not be replaced.

Conclusions

In the sense that, in both the short-run and long-run, court administration policies and practices need to be sanctioned by a functioning KJC, what has happened to date can only be considered a rudimentary beginning to set up courts that embody the practices and procedures needed to be both efficient and effective. It remains to be seen if a new judicial policy body, a reconstituted KJC, will continue these “best practices” set in motion by the JSP/NCSC, or whether different administrative philosophies will be implemented for a newly structured court system.

The Model Courts program has had success in reducing court backlog.

So far the small number of model courts with which the project has engaged limits the overall effectiveness of the project and makes roll-out to other courts more difficult. There is a limited number of court staff members available who are able to carry on training for the other 50 courts when necessary.

It is highly likely that case delays will increase significantly during the 18 to 36 month vetting and appointment process. While closings of case executions for the utility companies might proceed apace, backlogs of much more important civil cases might continue to build up. If the training given to police and prosecutors by ICITAP and others is effective, more criminal cases should be filed, relative to the past, over the period of time required to restructure and re-staff the courts. At the same time, neither the prosecutors nor the judges interviewed felt that they had a command of all the laws and processes required to handle these cases adequately. Judges expressed that they were uncomfortable with their knowledge of narcotics, human trafficking, money laundering and other more recently codified concepts. Should prosecutors not be able to prosecute or judges not be able to process cases in a timely manner, criminal case backlogs will increase.

The KJC Secretariat, even if it presently wanted to, cannot, without significant backstopping, roll out the concepts of court administration developed for the Model Courts to the other courts in the system. Its staff is too limited in direction, knowledge and numbers to do so.

Recommendations

1. The most important recommendation is that work should proceed as quickly as possible in the four newly identified Model Courts. A larger critical mass of courts well grounded in the new systems is needed so that an eventual system-wide roll-out can happen.
2. Attention should be given to the 14 court administration standards that have not been addressed, since they were not given priority by the KJC. Work needs to be done with judges and court administrative staff members to institute those standards as well.
3. Depending upon the Director of the KJC Secretariat, if its Model Court representative officers are effective, the JSP/NCSC should continue to involve them in the planning and implementation of court administration reforms, so that they are aware of what is happening in the courts and thus may be more inclined to be responsive to court administrative needs.

Task Three: Improve Professionalism and Ethics of Judges and Court Staff

Subtask One: Improve Capacity of the Kosovo Judicial Institute (KJI) to Identify and Deliver Essential Training

Background

In 2000, OSCE established the Kosovo Judicial Institute (KJI) to develop curricula and train judges and prosecutors. The first director served from 1999 to 2006. In 2006 a law was passed giving the KJI dual functions: 1) establishing the Continuing Legal Education Program (CLEP) and 2) establishing the Initial Education Program (ILEP), otherwise referred to as the Magistrate School.

In 2006, KJI had an acting Director and worked closely with a special advisor to the KJI from OSCE. There is now a fulltime director who is a Kosovar. The OSCE still has an advisor who works closely with the director, but that person is becoming less involved.

Findings

In the first year of the JSP project, JSP/NCSC worked with KJI to identify gaps in the curriculum at KJI. JSP/NCSC detailed a fulltime employee to work with the KJI staff to train the trainers. In addition to the fulltime staff, JSP also brought in regional and international experts to conduct specific training of the KJI staff.

In the second year, JSP brought in international experts who introduced a basic “Train the Trainers” course and then an advanced “Train the Trainers” follow-on program. Local teachers worked with international teachers.

In 2008, KJI developed the two separate programs mandated in the 2006 law: 1) The Initial Legal Education Program (ILEP) or the Magistrate School, and 2) the Continuing Legal Education Program (CLEP). The Magistrate School trains both potential judges and prosecutors and has 30 students. The program, which goes for 15 months, began in September 2008 and will end in December of 2009. There are three phases: 1) a six-month course that judges and prosecutors take together; 2) a three-month course in which the judges and prosecutors study separately; and 3) a six-month Internship Program where the student judges are assigned to a judge to mentor them and the student prosecutors are mentored by prosecutors. If the students pass the vetting process, they will be given priority to be appointed to vacancies before other candidates can be considered.

Core classes for the program included Professional Ethics, Administrative Law and Constitutional Law. One of the classes taught in Phase One is Legal writing, reasoning and legal research. The IRAC method is stressed: issue, rule, analysis and conclusion.

JSP/NCSC developed and delivered a Code of Ethics as part of the curriculum at the KJI and has also worked extensively with KJI in developing a course on ethics consisting of two classes – basic and advanced. A law professor from the United States, an Albanian law professor, one local prosecutor and one local judge have collaborated on a Code of Ethics.

JSP/NCSC has worked with law professors from the United States and Albania as well as local judges and prosecutors to develop an extensive curriculum at the KJI in the following topics: Administrative Law, Mediation, Case Management, a Code of Ethics, and the roles of professional associates and administrative court staff.

JSP/NCSC facilitated an agreement between the KJI and members of various court administrations to provide training for court staff.

Conclusions

The KJI has benefited greatly from its close association with both NCSC and international staff members sponsored by JSP. These staff members have furthered the legal expertise of the Kosovo judiciary by teaching classes at the KJI, at the NCSC offices and other locations in Kosovo.

However, “Train the Trainers” cannot be accomplished in a few training sessions. The “Train the Trainers” as currently presented is not sustainable.

Recommendations

1. JSP/NCSC should continue its close association with the KJI in both the Magistrate School and the Continuing Legal Education program. An adult methodology course in how to teach should be a prerequisite course. If a course in adult pedagogy were introduced at the KJI as a prerequisite to a “Train the Trainers” program, it would stand a much better chance of being successful. Local and international trainers should design the curriculum together, and then the local trainers should observe the international trainers teach. The next step would be a team teaching approach with the local trainer gradually doing most of the teaching and the international trainer observing and critiquing. Finally, the local trainer would be able to teach the course on his or her own.

Subtask Two: Develop a Judicial Inspection and Audit Function

Background

The second project of the JSP/NCSC provided employees who worked closely with the Coordinator of the Judicial Inspection Unit. The JIU was divided into two components: 1) an Audit Division and 2) an Inspection Division which has now become the Office of the Disciplinary Council (ODC).

Findings

Although there is no JSP project with the Audit Unit of the JIU at the present time, due to past involvement, the JIU now audits both judges and prosecutors. The Audit Division issues a report citing deficiencies and six months later returns to see if the needed corrections were implemented.

The JIU conducted eight audits in 2007 and seven audits in 2008; however, its findings have not been acted upon.

The JIU found that some backlogs are the result of not having enough judges to form a panel.

In September there will be a planning conference to develop a Strategic Plan for auditing the courts. JSP participated in drafting the reporting forms used by the ODC for findings of misconduct.

JSP/NCSC trained JIU legal officers to conduct interviews and draft written complaints, and conducted Public Awareness workshops and roundtable discussions in order to enhance the communication skills of the JIU, thereby improving the Unit's transparency and accountability.

JSP/NCSC also provided significant assistance to the JIU to improve audit skills with greater precision and clarity, and improved testing procedures and drafting skills to produce better structured audit reports.

With the disintegration of the KJC, there is no mechanism in place for the Audit Unit's recommendations to be implemented. At present, the JIU does not fit under any other Kosovar organization.

Conclusions

The JIU seems to have the political will to perform effectively but needs additional help from international experts.

Merely citing the administrative deficiencies of a court and returning six months later, without offering assistance to those courts that have not been trained in proper procedures on how to make improvements, would seem to be a waste of time and energy.

The IJPC has not absorbed the Office of Disciplinary Council (ODC) as originally planned, perhaps because it has been dismissive of the ODC as a local institution.

Recommendations

1. Assign a member of JSP/NCSC to work with the Audit Unit of the JIU on a regular basis. When the JIU cites court deficiencies, teach the staff to do a follow-up report to the court advising it on how to overcome these deficiencies.
2. JSP/NCSC should coordinate with the IJPC and encourage it to use the findings of both the Audit investigation team and the ODC. JSP/NCSC can continue to help both the Audit Unit and the ODC by honing their legal analysis skills.

Subtask Three: Institute a Judicial Code of Ethics and Well Functioning Disciplinary System²

There are three codes of ethics: one for judges, one for prosecutors, and one for lay judges. International and local experts met in Skopje to draft the Ethics Exam. The Ethics Exam was offered two times this year. The first exam was given in April for all lawyers who had seven plus years of

² Please see the discussion of ethics in the above section relating to the KJI.

experience; the second was to be given on May 23rd for all lawyers with less than seven years of experience. It is a 50-question, multiple-choice test. Questions are scrambled in three different sets of tests. There are international monitors in the testing rooms, and scrutiny is quite strict. Representatives of the Independent Judicial and Prosecutor Commission (IJPC) monitor the exam. The results of the exam will not be published until the second exam has been given and evaluated. All applicants for judgeships, including presently sitting judges, must pass the exam to be appointed.

It is unclear what will transpire if many of the applicants fail the exam. The test is Pass/Fail so the passing grade may not ever be divulged.

The JSP/NCSC developed a Code of Ethics as part of the curriculum at the KJI. The JSP has worked extensively with KJI in developing a course on ethics. There are two classes – basic and advanced. A law professor from the United States, a law professor from Albania, a local prosecutor and a local judge have collaborated on a Code of Ethics.

Subtask Four: Develop a Sustainable System for Distribution of Laws/Access to Laws by the Courts

Printing laws in the Official Gazette is the manner in which laws are promulgated. The government of Kosovo has had problems printing and delivering laws to the courts on a consistent basis.

Findings

JSP has worked with the MOJ Legal department by offering courses at the JSP office for MOJ employees, the KJC, and legal officers of the Assembly in the areas of legislative drafting, secondary rules and regulations, etc. The MOJ legal department would like further training in extradition and how to be better litigators as they represent the government of Kosovo in court.

JSP has been instrumental in producing a 12-part legal series, *Inside Justice*, and three public service announcements to inform Kosovars of ways to access the judicial system. *Inside Justice* has nine dramatic episodes and three final episodes covering the making of the series, a student panel discussion, and a documentary on the newly renovated court in Ferazaj.

The JSP has structured a Working Group (WG) composed of two JSP/NCSC staff members, one who acts as the moderator and the other as a legal advisor, 10 to 15 law students, and a member of ABA's local staff. The WG meets on a monthly basis to review press clippings and to discuss ways to improve the public's perception of the justice system. The WG also discusses strategy, planning, scheduling and implementation of activities to nurture more positive image of the judiciary in the public's mind.

Conclusions

The development of a sustainable system for the dissemination of laws was suspended early in the project. Nevertheless, a paper version of the laws is perhaps outdated, and putting laws online may be a better solution.

The TV series may be an effective way to educate the public as how to access the courts through Legal Aid or the Court Liaison Officers.

Recommendations

1. Have JSP/NCSC work with MOJ on promulgating laws online.
2. Have JSP/NCSC train MOJ in law on extradition; in conjunction with OPDAT, sponsor a Moot Court Program or Mock Trial for judges, prosecutors and private attorneys throughout Kosovo.

Task Four: Support the Transformation of the Court System to More Effectively Represent and Serve Non-Albanian Populations

Background

The historic relationship between Serbs and Albanians in Kosovo has caused terrible conflict. After NATO forced Serbian troops to leave Kosovo's territory, there were grave concerns for the protection of Serbian minority rights within an overwhelmingly Albanian population. Because of forced and voluntary Serbian emigration from Kosovo, there is no accurate census of the current percentage of the population formed by Serbs, although one estimate puts it at about 130,000 (Judah 2008). In an attempt to assure ethnic Serbs' physical safety, cultural heritage, and non-discrimination by governmental agencies, the international organizations overseeing Kosovo under the UN mandate forced the Government of Kosovo to include hiring quotas for judges, prosecutors and staff members in the newly adopted Constitution. Therefore, this task aims to improve access to justice and promote representation of ethnic minority groups in the Kosovo judiciary.

Findings

Because the Constitution places a minority hiring quota for the appointment of judges and prosecutors, the JSP/NCSC worked with the vetting and appointment authority, the International Judicial and Prosecutor Council, to identify outreach partners in the minority legal community and civil society organizations.

The JSP/NCSC also worked with Court Liaison Officers (originally created by the UN and subsequently transferred to the Ministry of Justice) to resolve administrative problems so that they could function adequately. Many administrative problems seem to remain, mostly in logistical support. There is a perception that the MOJ is not as engaged and forthcoming in resolving problems as it could be. The CLO also helps Kosovar Albanians obtain important documents that are available only through the Serbian parallel courts. The headquarters office of the CLO is in Gračanice, far from the center of power. Usually the closer one is physically to the decision-makers, the more chance one has to lobby them for the kind of operational support required and/or to enlist support from like-minded staff members who can solve problems without having to resort to the highest level of authority.

NCSC also worked with the Legal Aid Commission in promoting awareness of assistance available to minorities.

Additional Findings

The JSP/NCSC:

- Worked with the Kosovo Bar (Chamber of Advocates) to obtain appropriate pro bono representation of minorities, as well as compensated representation when the Legal Aid Commission referred cases to it.
- Worked to establish Citizen Advisory Boards by working with international agencies and the Prime Minister's office, though efforts so far have not been successful.
- Worked with both the Kosovo Judge Association and the Chamber of Advocates, by giving workshops on minority and gender issues with a view to increased minority participation in the justice system. In that vein, the JSP/NCSC sponsored a Serbian candidate from the Chamber of Advocates to attend the American Bar Association's Annual Bar Leadership Institute in Chicago.
- Worked with a variety of international donors, such as UNDP, EULEX, European Commission Delegation, European Centre for Minority Issues, and the Council of Europe, to promote a focus on minority issues.

Conclusions

Given the historic relationship between Kosovo's two major ethnic groups, the Serbs and the Albanians, the activities noted above cannot be expected to have any major impact on the deep-seated feelings within these two communities. This is not to say that some kind of modus vivendi will never be possible, only that much work, over a long period of time, will be required before there is a desire to fully implement the Constitution, as opposed to resentful compliance. The project seems to have been very successful in starting the process.

When the Law on Courts is in place, and a new judicial structure is manned by newly appointed judges and prosecutors, some additional work will be required.

Recommendations

1. As judgeships are filled, the Kosovo Judicial Institute will need to repeat the course given in November 2008 on the Application of the Anti-Discrimination Law for all jurists and prosecutors early in their tenure.
2. Local court support and administrative staff members should also have training on their obligations to provide nondiscriminatory access to the courts.
3. The JSP/NCSC might consider heavily lobbying decision-makers to relocate the principal CLO office within the Ministry of Justice, where it would be more visible and might thereby receive more support.

Task Five: Develop Ministry of Justice Legal Drafting and Policy Formulation/Guidance Skills

Background

Kosovo's laws are in a state of flux. There have been many changes to the law since the war, with some old Yugoslav laws remaining in effect if they have not been superseded. UNMIK DOJ morphed into EULEX. The Ministry of Justice has its own legal drafting department as do all other ministries. Although Kosovo declared Independence in February 2008, the UN has not recognized Kosovo as a sovereign state and UN Resolution 1244 is still in effect. There are currently four relevant laws that have been sent to the Prime Minister for approval, which will then be sent to the Assembly for passage. They are the Law on Courts, the Law on the Prosecutor's Office, the Law on the KJC (Kosovo Judicial Council), and the Law on the Prosecutors' Council of Kosovo (PCK). It is uncertain when these laws will be passed and promulgated, as noted earlier.

Findings

If the Law on Courts passes, there will be a re-structuring of the courts into Basic Courts, one Appellate Court and a Supreme Court, but it remains unclear which courts will be established in North Mitrovica.

JSP/NCSC has established courses in legal research, reasoning and writing, and has developed multipart Legislative Drafting Training Programs for the MOJ, KJC and Legal Officers of the Assembly.

If these laws are passed, Kosovo will have an independent judiciary, subject only to the oversight of the EULEX and/or the ICO.

JSP/NCSC has provided advanced training for two MOJ legal officers at Tulane University's International Legislative Drafting Institute. Tulane University is scheduled to send a two-person team in late September 2009 to provide training and to assist in various drafting committees

JSP/NCSC provided the MOJ with a self-sustaining curriculum with which to train new attorneys coming into the Ministry. The curriculum deals with both form and substance regarding drafting. JSP has assisted the legal drafting committee of the MOJ in drafting the Law on Courts, the Law on the Prosecutors Office, the Law on the Kosovo Judicial Council and the Law on the Prosecutor's Council of Kosovo (PCK).

Since 2004, DLA Piper has collaborated with this JSP and its predecessors and donated more than 4000 billable hours in assistance to the MOJ Drafting committee.

JSP/NCSC has frequently been asked to review and comment on draft laws before such bills are sent to the executive branch for approval. During the first year of the JSP, a significant amount of time and effort was expended on training MOJ lawyers in basic skills of legislative drafting; one of the staff members was embedded in the MOJ to be an advisor to the Minister, but according to interviewees the Minister did not fully utilize this staff member.

During year two, the JSP/NCSC became significantly more involved in working with the leadership of the legislative drafting unit on drafting critical justice sector laws and developed a curriculum and delivered training for Committee staff members in the Assembly.

Along with input from the KJSP, JSP has made significant progress on justice sector laws regarding USAID'S proposed court structure.

In conjunction with the National Center for State Legislatures (NCSL) and Tulane University, JSP/NCSC is in the process of developing a comprehensive Legal Drafting Manual that will be used by all legislative drafters throughout Kosovo, including members of the Executive Branch.

Conclusions

The above-cited efforts have been of great benefit to not only train those drafting the laws but also those who will be advising Members of Parliament. Although much has been accomplished, the drafting committees of the MOJ and other bodies are still in great need of help in drafting legislation.

Recommendations

1. JSP/NCSC should continue to assist MOJ and advisory members of the Assembly with their legislative drafting needs.

Impact

JSP has made a significant contribution to the MOJ drafting committee. JSP staff members coached, trained and mentored the young attorneys assigned to the MOJ and shared with them a passion for drafting legislation that will contribute to improving the justice sector in Kosovo. By training advisory staff members of the Assembly, the JSP has greatly improved the chances of draft laws being understood and therefore passed.

Task Six: Establish and Support the Organization and Critical Tools Necessary to Build an Effective Public Prosecutors' Service

Background

The Prosecutor's Office has gone through major changes in the past 10 years. Under Yugoslav law, the prosecutor's main function was to write the indictment and to appear in court but not to argue or present evidence to the court. Investigative judges had many of the tasks normally assigned to prosecutors under the adversarial system.

The law changed after the recent war and now prosecutors have a much more active role, including performing investigations and writing indictments. They now have an active role in criminal trials, making opening and closing statements, examining and cross-examining witnesses, introducing evidence at trial, and making plea agreements.

OPDAT has conducted training of prosecutors. The JSP program originally had a prosecutor on staff to work with the KPC, but that person left and, as the workings of the KPC were delayed, it

was decided not to hire another prosecutor at this stage. A former prosecutor on the staff is now the Task Manager for Task Six and does some advisory work with the prosecutors. He has encouraged OPDAT, EULEX and other international organizations to assist the Prosecutor's Office.

JSP's pilot program, the Court Management Information System (CMIS), has been introduced in the Model Courts.

Findings

There are currently approximately 90 prosecutors in Kosovo, plus six or seven in the Special Prosecutor's Office. According to the prosecutor's office, a total of 154 prosecutors are needed.

Kosovo is awaiting the passage of four new laws that will have a major impact on the Judiciary: the Law on Courts, the Law on Prosecutors, the Law on the KJC, and the Law on the KPC. These laws have been sent to the government and, once the drafts are approved, they will be sent to the Assembly for passage. It is impossible to know how many judges and prosecutors will be needed if the Law on Courts passes and the court system is revamped to move Minor Offense Courts and Municipal Courts into one Basic Court, with an appellate court and a Supreme Court.

The major work of JSP with the Kosovo Public Prosecutor's Association (KPPA) has been the implementation of a Case Management Information System (CMIS) in the prosecutor's office. Before this system was introduced, each prosecutor's office had its own system. JSP successfully facilitated locally led implementation and oversight of the Prosecution Office's CMIS pilot. Within three months, all of year 2008's cases were entered into the system. JSP will replicate the pilot project in other prosecution offices. The CMIS in Gjilan is installed and functional; however, that court also continues to use the old paper system. Electricity is sporadic and the software program, ProNet, has some glitches, especially with legal terminology in the vernacular. The Gjilan court anticipates keeping the dual system for the next four or five years. The District Prosecutor in Gjilan expressed concerns that both prosecutors and staff members need further training in CMIS.

JSP/NCSC has formed a working group (WG) to support the implementation of the CMIS in all prosecution offices. The Working Group consists of prosecutors, administrators of the prosecutors' offices, and IT advisors from the MOJ and JSP.

The CMIS pilot project was initially to be in Mitrovica, but since independence that court moved to Vushtrri and the pilot project was moved to the District Prosecutor's Office in Gjilan. The District Prosecutor's office in Gjilan is scheduled to train the Municipal Prosecutor's office in CMIS.

This pilot program included the procurement of computers for the District Prosecution Office as well as providing basic computer skills training to enable the use of the computer-based CMIS.

The Kosovo Public Prosecutors Office (KPPA) is having a board meeting in the near future regarding the strengthening of KPPA's capacity; both JSP and OPDAT have been invited to attend. JSP is currently developing a Prosecutor's Administrative Instruction Manual in order to help unify work flow management.

Judges report that some prosecutors are not well prepared for trial and do not have the requisite skills to introduce evidence.

Both Judges and Prosecutors reported that the forensics laboratory is not functioning as it should.³

Conclusions

The KPPA is a fledgling institution that still needs major support from international organizations. There seems to be some confusion among judges and prosecutors regarding the different forensics laboratories.

Recommendations

JSP/NCSC and other USG institutions can further assist the KPPA in the following areas:

1. JSP/NCSC can aid the KPPA to draft proposals to elicit donations from international donors.
2. If the Law on Courts is not passed and the courts are not restructured in the near future, then the JSP staff should assist the District Prosecutors office in training the Municipal Prosecutor's office in implementing CMIS.
3. Once the Law on the KCP is passed, the JSP should devote one fulltime staff member to work with the prosecutors in developing the council.

Impact

The CMIS is a major move toward the modernization of the judicial system. JSP's involvement in this program will have a lasting effect on the judiciary.

³There are three forensics labs in Kosovo; the forensics laboratory which the USG built, a forensics laboratory within the Department of Missing Persons, and a forensics laboratory within the Ministry of Health which would deal with such matters as pathology reports. The latter two will merge into one in the near future. It is believed that the criticism proffered by the judges and prosecutors was of the forensics laboratory within the Ministry of Health, dealing with pathology reports.

3. Overarching Issues

The following points affect the progress of the JSP/NCSC project at every level and can be considered part of the working environment that the project staff has needed to navigate.

1. The multiplicity of international actors has translated into a multiplicity of competing and often contradictory agendas. Kosovars unanimously express immense gratitude to USAID for its continued support throughout the last decade. It is one of the most complicated environments in which USAID has tried to implement Rule of Law projects.
2. USAID and NCSC as its implementer have established and maintained very good relations with local stakeholders. Kosovars found NCSC staff members knowledgeable and helpful (with one possible exception). High-quality local staff members have helped this positive image.
3. In a variety of ways the JSP/NCSC was overtaken by events. A number of unanticipated and unforeseeable events changed both the course and the timing of implementation:
 - Some of the changes came about because key legislation affecting the project, such as the Law on Courts, Law on Kosovo Judicial Council, Law on Prosecutors, Law on Kosovo Prosecutor Council, Law on Mediation and Law on Notaries either were pending for some years before the project plan was written and have still not been enacted, or were only recently passed but all of the implementing regulations have not been put in place.
 - The “clinical death,” as one respondent put it, of the Kosovo Judicial Council has stymied plans to move forward on court administration reform.
 - With the effective demise of the KJC, its administrative arm, the Secretariat, has had no authoritative guidance and supervision. As a result it has not become an organization that can rollout the policy guidance for court administration that the JSP/NCSC so carefully crafted with the KJC Committee on Court Administration. Additionally, the Secretariat has lost some well-trained staff members to other positions. As a result, the Secretariat has been weakened.
 - With independence occurring several months into the project, plans for working with the Model Court in the North had to be changed, and the KJC Committee on Discipline stopped functioning.
 - Renovation plans for Model Courts could not be implemented when circumstances changed.
4. Key events have not been sequenced for implementation in logical a manner. For example, it does not appear that the courts will be restructured into Basic Courts and Appeals Court before judges are vetted and appointed. This scenario makes it impossible for candidates to know what kind of job they are applying for. Certainly, the proposed salary scale for judicial officers was not promulgated before the job announcements were circulated. This

illogical sequencing might have discouraged better qualified candidates from participating in the vetting process, including minority candidates.

5. The KJC became inoperative before a replacement was constituted. Some members of the old KJC indicate that none of the old Council members will be reappointed, which means that there can be no orderly transition. Much of the work of the JSP/NCSC might need to be repeated for new Council members so that they can effectively continue with improved rules and regulations for court administration.
6. There seems to be no recognizable champion for judicial reform who is in a position to keep the key elements moving forward on schedule. Without a key “fixer” able to intervene at the political level to assure that the laws are passed and implemented on time and as conceived, confusion and uncertainty results.
7. Kosovar respondents found it difficult to define specific needs for continued USAID involvement, but all were adamant that they needed the continued knowledge and advice that the JSP/NCSC represents. Part of the inability to focus on the future is due to the reality that the respondents are focusing only on immediate concerns (e.g. whether they will pass the ethics exam, retire, be retired, be reappointed, and if they are reappointed, what will the job be, and at what pay.)
8. In many important ways the judicial system seems paralyzed right now.

4. Priority Questions

1. Impact: Included in this report are lists of achievements in each of the tasks. The achievements are numerous and important for each task.
 - a. In comparing results in institutions where there has been good access as compared to where there was limited access, one can compare the results of the KJC and its committees and those of the KJC Secretariat. The KJC committees developed for the most part into deliberative bodies that analyzed needed administrative changes and recommended changes adopted by the KJC itself. On the other hand, while JSP/NCSC had access to the Secretariat, it really had no philosophical buy in at the top. While several subdirector staff members were successfully mentored and trained, some of them are no longer with the Secretariat.
 - b. It appears that the of JSP/NCSC adopted a mentoring role and not just a technical approach, which resulted in more buy-in among judges and court administrative staff members, as well as with the other major groups with which it worked. When the target group of change feels that it is an integral actor in planning the change, the results are longer lasting.
2. The JSP/NCSC project by itself is severely constrained in achieving USAID's objectives in the justice sector. The project has no authority to move key events in a logical sequence or to get the Executive Branch and Assembly to adhere to a logical time schedule. On the other hand, JSP/NCSC activities have addressed critical areas of reform. Unfortunately, the project has been unable to address some key issues, such as vetting judges.
3. The JSP/NCSC results come at a high cost; in many ways, USAID has been working on the same issues for nearly a decade. At the same time, USAID does not control the environment in which it works, given that there are multiple actors with multiple agendas. USAID has established an agreed-upon path through the judicial reform maze, but the acceptance of the other actors can change with the replacement of the head of any other international agency. Efficiency has to be defined as whether the best product was produced under the given circumstances. Working in this substantive area requires great patience, an ability to roll with the punches, a high tolerance for uncertainty, and flexibility.
4. Sustainability is the big unknown at this stage of the project. The project has conducted many important activities with the KJC, judges, and court staff members with a high probability that many of these recipients may no longer be in the judicial system when the vetting and reappointment process is completed. To the extent that the Model Court standards are implemented if and when the Basic Courts are established, and the same staff members and judges who participated in implementing them are still in the system, these project endeavors will endure. But there are no guarantees that this will happen.

Appendix A: List of Persons Interviewed

National Center for State Courts, Washington, DC

1. William Kaschak, Vice President
2. Pamela Fahey, Project Director and Senior Subject Matter Expert

USAID-Justice Support Program, Pristina

1. Susan Kosinski Fritz, Deputy Mission Director
2. John Anderson, Democracy and Governance, Office Director
3. John Allelo, Senior Rule of Law Advisor
4. Merita Stublla Emini, Legal Specialist, Democracy and Governance Office

US Embassy, Pristina

1. Kimberly Moore, Resident Legal Advisor

National Center for State Courts, Pristina, Kosovo

2. Michael Sheppard, Chief of Party
3. JoAnne Richardson, Deputy Chief of Party
4. Michael Buenger, Task Master
5. John Cipperly, Program Officer
6. Violaine Autheman, Model Court Coordinator
7. Enver Fejzullahu, Court Administration Specialist
8. Bob Wily, Court Administration Advisor
9. Valentina Hoxha, Judicial Education Specialist
10. Ariana Zherka, Legal Advisor
11. Bardhyl Hasanpapaj, Legal Advisor
12. Arben Lila, Technical Advisor

Kosovo Justice System Institutions

1. Kabil Merovci, Judicial Audit Unit, Auditor
2. Lavdim Krasniqi, Director, Kosovo Judicial Institute
3. Kadria Bragshori, Liaison Officer, Kosovo Judicial Institute
4. Nasar Hasani, Statistics Head, Kosovo Constitutional Court (in-formation)
5. Halit Muharremi, Kosovo Judicial Council Secretariat, Director
6. Shkelzen Maliqui, Ministry of Justice Legal Office, Director
7. Trifun Jovanovic, Court Liaison Officer, Gracanica

Kosovo Court Personnel

1. Ymer Huruglica, President, District Court, Gjilan
2. Mursel Ahmeti, Acting President, Municipal Court, Gjilan
3. Rifat Abdullahu, President, Municipal Court, Ferizaj

4. Nazmije Ibrahim, Judge, Municipal Court, Ferizaj
5. Selim Nikci, Judge, Municipal Court, Pristina
6. Former head of Court Administration Commission at KJC

Kosovo Prosecutors

1. Sabit Maliqi, Chief Prosecutor, Gjilan
2. Tefik Dushica, Administrator, Prosecutor Office, Gjilan
3. Ismet Kabashi, Deputy Chief Prosecutor, Pristina

Institutions Related to Judicial Improvement

1. Xheladin Hoxha, Assembly Judicial Committee

International Institutions Affecting the Kosovo Judicial System

1. Gresa Sefaj, Project Officer, European Commission
2. Saranda Cana, Project Officer, Swiss Development Cooperation
3. Yordan Sirakov, Legal Expert, Legal Policy and Legislation Unit, EULEX
4. Nathalia Berkowitz, Legal Expert, Legal Policy and Legislation Unit, EULEX
5. Keith Wood, Independent Judicial and Prosecutorial Commission, Member
6. Timothy Baland, Independent Judicial and Prosecutorial Commission, Member
7. Yolanta Isrestova, Head of the Professional Assessment Unit of the Independent Judicial and Prosecutorial Commission Secretariat.
8. Elizabeth Rolando, Special Advisor to the SRSG

Others

1. James Molinero, Law Professor (phone interview)

Appendix B: Documents Consulted

The Ahtisaari Plan

The Kosovo Constitution

UNMIK Press Release on KJC

Strategic Plan of the Kosovo Judicial Institute

Continuing Legal Education Programs of the KJI

Annual Report of the KJI – 2008

MODULE An Introduction to the European Law

Memorandum of Understanding between UN Interim Administration in Kosovo and the USG and UN office for Project service on the Project relating to the Vetting and Selection of Judges and Prosecutors in Kosovo.

UN Administrative Direction NO. 2008/2 Implementing UNMIK Regulation NO. 2006/25 on a Regulatory Framework for the Justice System in Kosovo

Official Reports

Justice System Reform Activity, Final Report, October, 2007, NCSC (USAID/KOSOVO)

Evaluation of the Justice System Reform Activity – Kosovo, July 19, 2006 ARD, Inc

Kosovo Justice Support Program, Annual Report, June 2007 – June 2008, NCSC

Kosovo Justice Support Program (KJSP), Quarterly Report, January – March 2009

Kosovo Justice Support Program, Quarterly Report, October – December 2008, NCSC

Kosovo Justice Support Program, Quarterly Report, July 2008 – September 2008, NCSC

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Model Courts Program – Fact Sheet, USAID/Kosovo

Background Information on the Kosovo Justice Support Program, USAID/Kosovo

Program E-News, USAID/Kosovo, February 9, 2009

Statement of Work, Mid-term Evaluation of the Justice Support Program (USAID) 2009

Report on the Organizational Diagnosis of the Court Liaison Offices Program, KJSP/NCSC, October 2008

Performance Monitoring and Evaluation Plan, Year 1 Reporting July 1, 2007 – September 20, 2008

Criminal Case Pending Report, KJSP/NCSC Internal Document, April 30, 2009

KJSPK Accomplishments: June 2007 – January 2009, KJSP/NCSC Internal Document

Kosovo Justice Support Program (KJSP) October 2008, power point presentation

Pamphlets

Legal Aid leaflet supported by USAID

Model Courts Program, USAID, September 2007

Court Liaison Offices, USAID/Kosovo

Basic Guide to the Judicial System in Kosovo

Current Court Structures, Organizational Charts

Kosovo Judicial Institute, Annual Report, January 2009

Strategic Plan of the Kosovo Judicial Institute, 2008-2011

Continuous Legal Education Program 2009 (KJI)

An Introduction to the European Law, Yvonne Gogoll, Pristina, January 2009

Other Official Documents

The Constitution of the Republic of Kosovo, 2008 (English version)

Comprehensive Proposal for the Kosovo Status Settlement, 2 February 2007

Memorandum of Understanding: Legal Aid Commission and Kosovo Chamber of Advocates

Memorandum of Understanding between The United Nations Interim Administration Mission in Kosovo and The European Commission, and the Government of the United States with the United Nations Office for Project Services as Implementing Partner on the Project Relating to the Vetting and Selection of Judges and Prosecutors in Kosovo

Miscellaneous Materials

Kosovo: What Everyone Needs to Know, Tim Judah, Oxford University Press, 2008.

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