



USAID | **KOSOVO**
FROM THE AMERICAN PEOPLE

EVALUATION OF THE JUSTICE SYSTEM REFORM ACTIVITY – KOSOVO

JULY 19, 2006

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc.

EVALUATION OF THE JUSTICE SYSTEM REFORM ACTIVITY – KOSOVO

JULY 19, 2006

DISCLAIMER

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

Acknowledgements:

The evaluation team would like to acknowledge the support and assistance provided by Merita Emini and her colleagues at USAID/Kosovo. We would also like to acknowledge the able assistance of three graduates of the University of Prishtina Law Faculty who assisted in both scheduling meetings and administering a survey to local participants in working groups on two important pieces of legislation.

Prepared for the United States Agency for International Development, USAID Contract Number DFD-I-00-04-00229-00, Task Order No 14

Submitted to:
USAID/Kosovo

Submitted by
ARD, Inc. in partnership with Checchi & Company Consulting, Inc.:
Keith Rosten, Team Leader
Natalija Djurickovic
Louise D. Williams



CONTENTS

- EXECUTIVE SUMMARY v**
- 1.0 BACKGROUND TO THE JUSTICE SYSTEM REFORM ACTIVITY 1**
 - 1.1 POLITICAL BACKDROP..... 1
 - 1.2 USAID’S FIRST FORAY INTO SUPPORT FOR KOSOVO’S COURT SYSTEM (2001–2003)..... 3
- 2.0 JUSTICE SYSTEM REFORM ACTIVITY (2003–2007)..... 5**
- 3.0 THE DESIGN OF THE PROJECT: NCSC’S APPROACH 7**
 - 3.1 NCSC’S APPROACH TO COMPONENT 1 7
 - 3.2 NCSC’S APPROACH TO COMPONENT 2 8
 - 3.3 NCSC’S APPROACH TO COMPONENT 3 9
 - 3.4 NCSC’S APPROACH TO COMPONENT 4 9
- 4.0 PURPOSE AND METHODOLOGY OF EVALUATION 11**
 - 4.1 OVERVIEW OF EVALUATION 11
 - 4.2 FIELDWORK 11
 - 4.3 UNAVAILABILITY OF DOCUMENTS 12
- 5.0 FINDINGS AND ANALYSIS: BEGINNING OF THE PROJECT TO THE TIME OF THE EVALUATION (2003–2006)..... 13**
 - 5.1 MANAGEMENT..... 13
 - 5.2 COMPONENT 1: DRAFTING LAWS AND FORMULATING POLICY 14
 - 5.2.1 Coordinating Mechanisms/Judicial Reform Strategy..... 14
 - 5.2.2 Legal Drafting 17
 - 5.2.3 Support for the Ministry of Justice..... 18
 - 5.2.4 Support for the Kosovo Judicial Council..... 20
 - 5.3 COMPONENT 2: COURT ADMINISTRATION..... 21
 - 5.3.1 Caseflow Management/Backlog Reduction..... 21
 - 5.3.2 Alternative Dispute Resolution 25
 - 5.3.3 Audio Recording..... 25
 - 5.3.4 Access to Texts of Laws, Regulations, and Legal Decisions..... 26
 - 5.3.5 Notaries..... 27
 - 5.3.6 Records Management 27
 - 5.3.7 Other Initiatives 27
 - 5.4 COMPONENT 3: ETHICS 28
 - 5.5 COMPONENT 4: PUBLIC AWARENESS 29
- 6.0 RECOMMENDATIONS 33**
 - 6.1 COMPONENT 1 33
 - 6.2 COMPONENT 2 34
 - 6.3 COMPONENT 3 37
 - 6.4 COMPONENT 4 39
- 7.0 GUIDELINES FOR DEVELOPING A STRATEGY IN THE JUSTICE SECTOR 41**

7.1	SUPPORT INSTITUTIONS	41
7.2	BUILD CAPACITY.....	41
7.3	DETERMINE THE ROLE OF THE ASSISTANCE	41
7.4	MATCH THE ASSISTANCE WITH THE ABSORPTIVE CAPACITY OF THE LOCAL ORGANIZATION.....	42
7.5	INTEGRATE ACTIVITIES	42
7.6	SUPPORT THE PROCESS, RATHER THAN CONTROL THE RESULT	42
7.7	PROVIDE REGIONAL TECHNICAL ASSISTANCE.....	42
7.8	DEVELOP AN AGGRESSIVE EXIT STRATEGY.....	43
	ANNEXES.....	45
	ANNEX A SCOPE OF WORK.....	47
	ANNEX B SUMMARY OF ACTIVITIES AND OUTCOMES	57
	ANNEX C EVALUATION TEAM WORK PLANS.....	69
	ANNEX D PERSONS AND ORGANIZATIONS INTERVIEWED	79
	ANNEX E SURVEY INSTRUMENTS.....	85

ACRONYMS AND ABBREVIATIONS

ABA/CEELI	American Bar Association/Central European and Eurasian Law Institute
ADR	Alternative Dispute Resolutions
AOC	Administrative Office of the Courts
CAWG	Court Automation Working Group
CMIS	Case Management Information System
DFID	Department for International Development
DJA	Department of Judicial Administration
DOJ	Department of Justice
EAR	European Agency for Reconstruction
ICTS	Interim Case Tracking System
IFES	International Foundation for Election Systems
IR	Intermediate Results
IREX	International Research and Exchanges Board
IT	Information Technology
JART	Kosovo Judicial System Assessment and Proposed Options (2003–2004)
JIU	Judicial Inspection Unit
KIPA	Kosovo Institute for Public Administration
KJC	Kosovo Judicial Council
KJPC	Kosovo Judicial and Prosecutorial Council
KJI	Kosovo Judicial Institute
KLA	Kosovo Liberation Army
KLC	Kosovo Law Center
LAN	Local Area Networks
MPA	Ministry of Public Services
NATO	North Atlantic Treaty Organization

NGO	Nongovernmental Organization
NCSC	National Center for State Courts
PIO	Public Information Offices
PISG	Provisional Institutions of Self-Government
PSI	Policy Studies Incorporated
SRSG	Special Representative of the Secretary General
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID	United States Agency for International Development
USOP/COE	United States Office in Pristina/Council of Europe
WAN	Wide Area Networks

EXECUTIVE SUMMARY

USAID commenced assistance to the nascent judicial system in Kosovo in early 2001. In 2003, USAID awarded a contract to the National Center for State Courts (NCSC) to implement the Justice System Reform Activity (the Project). The Project was divided into four components: support for coordinating mechanisms and assistance to develop a judicial reform strategy; court administration; legal ethics; and public awareness. The contract for the Project was signed in April 2003, and the Project is scheduled to conclude in July 2007. USAID requested this evaluation not only to evaluate the Project, but also to recommend adjustments to the Project during the remaining life of the Project and to suggest follow-on activities.

Section 1 of this evaluation provides the political and legal context in which the Project was implemented. Section 2 summarizes the duration and amount of the contract. Section 3 summarizes the design of the Project as NCSC launched its activities. Section 4 reflects how the evaluation team collected data on each of these components from site visits, interviews, review of documents and literature, focus groups, and a survey instrument. Section 5 details the evaluation team's findings and analysis by component, starting at the outset of the Project and continuing to the time of the fieldwork for this evaluation. Section 6 is also organized by component and enumerates the evaluation team's recommendations for the remaining term of the Project and follow-on activities. Finally, Section 7 offers guidelines for developing a strategy in the justice sector in Kosovo for any further activities that may be planned. The key findings and conclusions are summarized below.

For the first component, NCSC participated in a series of roundtable discussions on the development of the judicial system in Kosovo. NCSC then provided support on the drafting of two key pieces of legislation, the law on courts and the law on prosecutors. More recently, NCSC has commenced providing important support to the newly-created Ministry of Justice and also the newly-created Kosovo Judicial Council, which is charged with appointing judges, preparing and executing the judicial budget, and overseeing other areas of court administration. The evaluation team found that some of NCSC's initial efforts in participating with other donors in roundtable discussion were redundant. The NCSC provided primarily logistical support in facilitating the drafting of legislation. Recently, the NCSC through its advisors has filled a vacuum created by the departure of a substantial number of international advisors from the United Nations Interim Administration Mission in Kosovo (UNMIK). As UNMIK winds down, efforts should be accelerated to shift the focus of assistance from performing the role of government officials to providing assistance to Kosovars so that they can assume the reins of authority themselves.

NCSC's approach to the second component, court administration, is multi-faceted and has undergone numerous changes since the beginning of the Project. NCSC has supported training in caseload management and endeavored to inject measures to reduce the caseload backlog in the courts. NCSC placed audio recording hardware in five courts in Kosovo as part of a pilot project. NCSC has provided numerous training programs in court administration areas, including records management, budgeting, human resources, caseload management, and other areas. NCSC is currently engaged in promoting court-annexed mediation and is further engaged in efforts pertaining to case tracking through automation, promotion of time standards for judges, and development of indexed legal publications. The evaluation team found that several of the Component 2 activities suffer from inadequate implementation—that is, the sheer number of activities launched by NCSC has resulted in insufficient follow through for the purpose of ensuring genuine impact. In addition, although NCSC's training programs are generally well-received, they lack monitoring for impact and sufficient integration into

Kosovo's local institutions. As responsibility for court administration transitions from the Department of Judicial Administration (DJA) to the Administrative Office of the Courts (the name of which has not been finalized) under the Kosovo Judicial Council (KJC), NCSC has new opportunities to support improved mechanisms of court administration and to more effectively integrate its court administration activities into local institutions.

Since the beginning of the contract, NCSC has considerably narrowed its activities for the third component, legal ethics. The NCSC concentrated most of its effort in Component 3 on developing the capacity of the Audit Section of the Judicial Inspection Unit, part of the UNMIK Department of Justice. The Audit Section audits and evaluates the functioning of the Kosovo justice system and makes recommendations to the Department of Justice for the resolution of systemic problems. The NCSC advisor provided critical support to creating and staffing the Audit Section, and the Audit Section is currently functioning, but will need continuing support to sustain its activities.

For the fourth component of the Project, public awareness, NCSC conducted a baseline survey and designed several programmatic responses, including public service announcements, press releases, and other information. NCSC conducted numerous public outreach meetings throughout Kosovo. Recently, NCSC has delivered training for journalists on rule of law, rights of the press, and other topics. NCSC has also been instrumental in establishing a public information officer working group and developed a draft handbook for public information officers. The evaluation team found that the training for journalists was especially effective, but recommends that the public speaker forums should be discontinued in favor of more reliance on television and radio. The evaluation team also found that the work supporting the public information officers should be deferred until these positions are staffed.

Overall, the NCSC's performance since the beginning of the Project has been good, which would equate with a three on a five point scale. During the first two years, the Project was fraught with considerable difficulties, including considerable personnel turnover, an uncertain strategy and mission, duplication of effort with other donors, lack of integration of activities, and little follow-through. The performance over the past year has improved markedly and NCSC has started to address some of the deficiencies of the first two years of the Project. NCSC advisors are providing significant support and guidance to several institutions, particularly the Kosovo Judicial Council and the Audit Section of the Judicial Inspection Unit. Hence, NCSC's performance over the past year raised the overall assessment of the evaluation team.

objective assessment of the training program that was provided by NCSC. The firm was only able to conduct its assessment on the journalists who were from the print media. Its methodology included comparing articles written by the journalists trained before and after the training. Several key aspects were reviewed and analyzed, which included improvement in use of legal terminology, improvement in understanding of the justice system, and writing styles. The conclusion of the firm's first report was that there was a definite improvement in the quality of stories written by the journalists that were trained by NCSC, but that further training would help improve critical skills that were still lacking.

Speakers' Forums Were Not Effective

The activity which NCSC undertook to facilitate speakers' forums where judges and legal professionals addressed citizens groups was less successful. The evaluation team believes that these types of wide-scale meetings, which only lasted for 45 minutes and were presented randomly to the public, had little effect in raising awareness or trust for the judiciary. This activity should be discontinued. The USAID Justice Sector Assessment of October 2005 contains a more in-depth explanation as to why these types of activities are less likely to produce effective results in Kosovo.

Good Groundwork Laid for Public Information Officers

NCSC's scope of work indicates that it has participated in developing a working group for public information officers. The Project's work has been successful in assisting to develop a plan, budget, and concept for creating these offices in each court in Kosovo.

The team reviewed the Handbook for the Court Public Information Officer and found that it was developed in a professional manner and will probably be very useful in the trainings that are to take place in the future when these officers are hired. The handbook should be somewhat revised, however, first to remove some of the typical US idioms which will be unintelligible when translated in the Albanian or Serbian language. (Example: Keep it Simple Stupid, would be something that a Serbian audience would be very confused by). More importantly, there are several categories of information that are not included in the handbook. One important aspect of this new position will be that the PIO will deal with the public that comes to the courthouse on a day-to-day basis. The evaluation team suggests that this issue would be an important addition to the handbook and future seminars or trainings should address these issues very seriously.

6.0 RECOMMENDATIONS

This section contains the evaluation team's recommendations for the Project's current activities and for activities following the end of the current Project. All activities recommended should include an impact-based monitoring and evaluation plan.

6.1 COMPONENT I

Use Model of MOJ to Build KJC/AOC Coordination

Donor coordination should be part of a mechanism to provide more effective assistance; it should not be an end in and of itself, and the benefits should outweigh the very large transactional costs in gathering foreign advisors together. As UNMIK withdraws and the new institutions of Kosovar self-government develop, the paradigm of cooperation and integration must evolve. The model recently developed by the Ministry of Justice is a sound model. Under this approach, the Ministry gathers the interested donors together to articulate what it views as its needs and tries to encourage the donors to divide up the assistance to prevent duplication of efforts. A similar model should be developed for the KJC and its Secretariat, and the Administrative Office of Courts under the KJC.

Legal Drafting will be a High-Profile Area: Coordinate Challenge with DFID and Others

The legal drafting effort in Kosovo has matured since the Project provided assistance in developing the law on courts and the law on prosecutors. With the establishment of the MOJ, the Legal Affairs Department will assume greater responsibility for drafting legislation and will need considerable support. There are two major areas in which the MOJ should receive support: techniques of legislative drafting; and substantive expertise on the area of the law that proposed legislation may cover. Other donors have also recognized these needs, and duplication of efforts is a particular concern. There may be various projects providing assistance in the area of legislative drafting support. For example, DFID, the Council of Europe, and possibly others intend to provide assistance in the area of legal drafting. USAID should focus on those areas that other donors are not targeting. For example, USAID could provide support to those drafters in other ministries who are responsible for preparing regulations. USAID may also provide support on certain areas of the law, by providing the best practices from other countries. Outside technical assistance such as that which DLA Piper has provided would be very useful in this regard, although as reflected in the findings above, Kosovars, not foreigners, should take the lead in drafting legislation.

Develop Systems to Support Ministry of Justice

To date, the system of governance in Kosovo has been that of foreign advisors performing the role of government employees. Kosovo's host institutions have become dependent on foreign assistance. As UNMIK withdraws, the extent to which UNMIK and others have succeeded in building local capacity will become exposed. For its part, USAID should focus on developing systems within target organizations. This approach requires the donor to disaggregate the skill sets required for certain positions and to devote only those resources that are necessary to bring that employee up to the level where he or she can perform the duties of his or her job. Under this approach, effort should be exerted to identify those who can work with contractors to develop this approach and instill this approach in the target institutions. For example, in the context of the Ministry of Justice, if USAID determines to

provide support to the MOJ, then it may work with local professionals to develop a handbook that explain the functions of whatever department is the target of assistance, for example in budget or IT. With foreign assistance, Kosovars should prepare this handbook or manual and provide the training to existing and new personnel on the techniques and skills required to work in that department.

Provide Support to MOJ through End of Contract

As UNMIK readies for its departure, it has created a vacuum in the institutions that it is leaving behind. And because UNMIK's emphasis has been on running Kosovo, rather than on transferring skills to Kosovars, there is an urgent need to provide essential support for the fledgling institutions of governance in Kosovo. As the head of UNMIK/DOJ indicated, the NCSC is filling an important gap. In essence, the Project is being used to fill critical positions. This role is important and should be continued through the end of the contract, but it may not need the large administrative structure to support these foreign advisers, especially if the foreign advisers are fully seconded to Kosovar organizations.

Continue to Provide KJC Policy Support in Transition

Chiefly through secondment of advisors to the DOJ, the NCSC currently provides the KJC with operational support. As a member of the KJC stated to the evaluation team, “we would collapse without your help.” NCSC should wean the KJC from direct support and move to an approach under which the NCSC provides policy resources. The NCSC can provide excellent resources to assist the KJC in identifying policy directions and providing the KJC with the tools to make decisions, some of which USAID or other international donors may not agree with. But NCSC should get out of the business of performing the services of the Secretariat. It should instead concentrate on determining skill sets and transferring skills to newly appointed employees of the Secretariat to provide operational support. One key area is to assist the KJC in distinguishing between policy and operations, only the former of which KJC should be responsible for. The new AOC, when it is formed, should be responsible for court operations.

Integrate with Component 2

The development of KJC and the support for court administration have taken divergent paths. As the KJC assumes responsibility for the various areas of court administration, the support for the KJC should be integrated with the plethora of stand-alone initiatives under court administration.

6.2 COMPONENT 2

Design and Implementation of Training Activities Should Be Accomplished through Local Structures

The Project's tendency to engage in “stand-alone activities” or to avoid direct integration of local actors can be attributed in part to a lack of capacity on the part of local organizations. There seems to be no excuse in the future, however, for leaving the primary local institutions out of the design and implementation of similar initiatives. Full engagement of local actors—even at a cost of reduced efficiency or quality of instruction—will become doubly important as the KJC and the AOC, under the KJC, emerge and garner responsibility for prioritizing, planning, and implementing court-related activities.

Court Automation Should Be Part of Comprehensive Program

Court automation in Kosovo desperately needs policy ownership and oversight beyond the small offices of the DJA and the limited influence of NCSC. The creation of KJC provides an opportunity for that organization to devote the attention to court automation that so far has eluded the donor community.

The weaknesses in CMIS should be aired, evaluated, and addressed. It is not possible for NCSC's marginal court automation efforts to be effective until this happens.

Data Collection Activity Should Be Repeated in 2007

The Project's time to disposition study proved to be a time-consuming and resource-intensive initiative. Moreover, whether Kosovo's judges understand and appreciate the significance of the study's findings pertaining to the length of time each stage of a case takes did not become evident from interviews. Nonetheless, the information contained in the study is valuable as a benchmark for Project impact and for future work in the areas of caseload management and time standards. Whether and to what extent Kosovo's courts improve the rate at which they resolve cases can be tracked through a follow-up to this study—ideally developed in conjunction with the AOC, using new technology to the extent available, and published no later than the end of the Project.

Time Standards for Judges Requires Significant Long-term Attention and Support

Although the adoption of time standards by the KJC represents an important step toward more consistent and accountable case management, interviews with several judges over the course of the evaluation revealed no champions of the concept. Nor were any substantive plans for implementation of time standards shared with the evaluation team—NCSC refused to provide one document, a strategy paper concerning the AOC that might address the topic. Thus, whether this “good idea” will be implemented in a meaningful fashion remains to be seen. Assuming that time standards remains among the Project's central priorities in the near-term, the Project should develop a comprehensive plan for implementation, including a method of benchmarking. This plan should identify which possible means of case-tracking it plans to use: current manual systems, CMIS, ICTS, a second-round data collection activity, or other. The breadth of the initiative suggests essentially a full-time job in project management and implementation for at least one local staff member.

Efforts Pertaining to Execution of Civil Judgments Require Significant Long-term Attention and Support

In consultation with USAID, the Project has identified execution of civil judgments as a priority for its final year. Three local NCSC staff members have developed relationships with three municipal courts for the purpose of reducing backlog. Again, the challenges associated with this work are highly substantive and included significant, consistent, and nearly full-time engagement of individuals who are charged with making it work. Only when the pilot courts have proven themselves significantly and substantively reformed in the area of execution of judgments should the Project launch efforts to work with additional courts.

Efforts Pertaining to Mediation Require KJC Prioritization and Engagement

Like time standards and certain other Project initiatives, the development of court-annexed mediation represents an enormous undertaking that does not yet seem to have the benefit of comprehensive strategic development. The state of mediation at this time seems to be aspirational, rather than clearly defined in practice. Moreover, long-term visions for court-annexed mediation have not yet come before the KJC for analysis, debate, and prioritization relative to all the other issues before the courts. A decision to pursue court-annexed mediation in earnest at this time should be up to the KJC and weighed against other priorities. If the KJC approves such an endeavor, a detailed strategic plan should be developed in consultation with local actors, before significant resources are devoted to implementation.

Implementation of the Audio Recording Project Needs Revisiting and Significant Improvement

Although the audio recording project is regarded throughout the court system as a welcome idea, it appears to suffer currently from a lack of oversight, monitoring, training, and use for the specific purpose for which it was introduced—recording of criminal trials. The positive rhetoric concerning the equipment’s impact and usefulness¹⁴ is belied by the fact that it is not consistently employed in the courts where it is set up, transcripts are rarely accessed by litigants, training seems to have stopped, and judges say that using the equipment proves, on balance, more burdensome than the general method of preparing summaries of testimony. Moreover, there is no evidence that the Project is following the evolution of the technology at issue, including advances over the course of two years that likely have brought the cost of audio equipment down significantly from its original price of around \$8000 per unit. The audio recording project threatens to become a symbol of the worst type of donor intervention: one in which a project is initiated, proclaimed a success, and then abandoned during the critical period of implementation. Although Project reports suggest that its work in promoting use of the equipment and duplication of the initiative in other courts will continue, current evidence suggests that the Project has already, and prematurely, turned its attention away from this initiative.

Thus, the audio recording project needs a prompt, objective, and thorough reevaluation at this time. The Project should find a way to track the number and type of cases in which audio equipment is used, as well as whether and to what extent transcripts developed through the equipment are considered on appeal. The Project needs to assess the extent to which the technology has changed over the past two years. The Project should revisit those individuals trained in the technology to see what their additional needs are. If and when additional units are purchased for other courts, the Project needs to do a much more thorough job of implementation, oversight, tracking, and evaluation.

For NCSC Efforts in Access to Legal Information to Be Effective, Institutional Coordination and Ownership Must Improve

Although the criminal law compendium in the process of development through KJC will serve as one useful tool for lawyers and judges in the future, neither the Project nor USAID, nor any other donor, apparently, seems to have a grip over the enormous need for consistent and wide-spread access to texts of laws, regulations, and legal decisions. The following critical questions remained unanswered during the course of this evaluation:

- What is the status of the Official Gazette, and how can it be more effectively issued as a definitive source of law and regulation?
- What are the respective roles of various law-related institutions—among them UNMIK, the KJC, the Ministry of Justice, and even NGOs or the private sector—in providing public access to the universe of laws?
- Assuming the implementation of CMIS will continue, how will the fact that judges have access to the Internet affect access to laws, regulations, and court decisions?
- Does CMIS include a function through which judgments will be available on-line?

¹⁴ For example, in April 2006, USAID posted an article on its website suggesting that the audio recording project actually resulted in reduced case backlog, a fact that has not been substantiated. Moreover, as discussed elsewhere in this report, the Government of Kosovo did not, in fact, decide to purchase 25 additional units, as stated in the article. See “New equipment expedites court work, reduces case backlog: Justice Moves Faster,” available at http://www.usaid.gov/stories/kosovo/cs_ko_courts.html.

Not unlike the area of court automation, the topic of publication of laws seems to suffer from significant activity, but a lack of coordination, ownership, and long-term planning. Given the current environment, NCSC's efforts can only be of limited influence at this time.

Assistance in the Area of Notaries Should Be Turned Over to Another Donor

As a common law system, the United States does not use notaries in the fashion anticipated by the new law on notaries in Kosovo. Moreover, the new law constructs a publicly sanctioned monopoly that seems contrary to values of competition that are inherent in the US legal system. Thus, to the extent that NCSC contemplates recruiting or training notaries, these plans should be cancelled. Such a function more properly belongs in the hands of a donor or neighboring country with first-hand experience in civil law systems.

Records Management Efforts Do Not Require Significant Changes at This Time

Records management is no longer a central priority of the Project, yet it appears that certain activities continue in this area. No changes in the status quo seem warranted at this time.

Address Space Needs

Whether Kosovo has enough judges is subject to debate, and promoting improved caseload management, time standards, extended work hours for judges, and other fixes has proven enormously challenging in the context of an audience that simply wants more people. Yet whether courts have enough space can hardly be subject to debate; the work conditions in most courts are simply deplorable. For various reasons, donors have not begun to effectively work with local institutions to address this issue. As a result of the space crisis, certain NCSC activities, such as audio recording or court-appointed mediation, are almost inevitably constrained in their impact. US expertise (and that of other donor countries) in the area of space and facilities has yet to be tapped, and perhaps it is time that it should be. Ultimately, policy decisions concerning space and facilities should be placed in the hands of the KJC, with sufficient donor support.

Remain Mindful of the Separation of Powers

The perception of the NCSC in Kosovo as a “court reform project” is as it should be. The extent to which the Project is engaged in activities that, at least from the US perspective, belong more appropriately in the executive branch would come as a surprise to many. Yet the NCSC toils in both camps—through secondment of advisors to the Ministry of Justice, pursuit of its print publishing activity, potential training of notaries, and certain other initiatives. Though attributable to changing needs in Kosovo, the Project's involvement in the work of the executive branch has the effect of undermining the principle of judicial independence. A follow-on project that takes on the current agenda of the NCSC might be more appropriately designed as two projects—one to assist the judiciary and one to support the executive branch.

6.3 COMPONENT 3

Continue to Develop Systems at the Audit Section

For the remainder of the year, NCSC should continue to work with the Audit Section to conduct audits. The Audit Section appears highly unlikely to be self-sustainable until NCSC has gone through a series of at least 8–10 audits with the Audit Section. Training should continue and should focus on making some of the Audit Section employees capable of training future employees to prepare for NCSC's departure.

It is unavoidable that at some point in time there will be turnover at the Audit Section. If this turnover occurs after the NCSC Project is over, there must be some local capacity to continue the training in this function. The evaluation team also believes that it would be beneficial for one or two members of the Audit Section to visit another country which has an already efficient and established audit function. Croatia currently has a similar audit unit that has had several years more experience than that of Kosovo. It could prove beneficial for one or two of the Audit Section team members in Kosovo to spend some time with their Croatian counterparts.

Finally, the seminars that were conducted for the Court Presidents in order to gain their buy-in to the audit process should be repeated for the members of the KJC and the Ministry of Justice. Local buy-in should involve these officials because future audits may focus on these institutions as well.

Raise Public Awareness of JIU Competencies

The backlog that was noted in a USAID assessment in October 2005 has been cleared to a manageable level. The JIU may have additional resources now to make the public aware of the JIU competencies. The JIU and the Audit Section have never had the benefit of a public awareness campaign which would inform the public of their existence and how to file a complaint. This task should be accomplished in the year to come.

Provide Support for the Vetting of Judges

The upcoming judicial vetting process will create many challenges and opportunities to work with the judiciary in NCSC's follow on activities. The current plan for vetting judges includes a judicial examination, financial audits, and judicial interviews. There is a strong likelihood that this process, if applied rigidly, will eliminate many of the judges that are currently sitting on the bench in Kosovo. If this does occur a great amount of institutional memory may be lost with the coming of new judges. USAID will not be able to respond to these changes until it has established NCSC's follow on activities. Given the current state of the Project, USAID should look into designing the follow on activity to prepare for the coming of a significant number of newly appointed judges, who may have a better knowledge of the law, but have less training on how to be a judge. It would be highly beneficial to prepare training materials and to train the newly appointed judges on court room procedures, new laws that have recently been passed, legal writing, drafting of court documents, ethics, civil service obligations, and other subjects that they did not have the opportunity to study while in law school. As noted earlier it may be helpful also to mentor these newly appointed judges by using the international judges that are currently serving in Kosovo.

It is unclear whether the JIU will be carrying out the investigations of the judges during the upcoming judicial reappointment process or whether the KJC will carry out this function on its own. UNMIK believes that the JIU will carry out this function, while NCSC contends that the KJC will have its own internal inspection unit. If the process is carried out in the JIU, then NCSC should provide the necessary support to assist the JIU to carry out this activity successfully.

A NCSC advisor prepared a memorandum for UNMIK DOJ, outlining all the major issues that the reappointment process may face and taking into consideration some of the problems that were faced in prior vetting processes such as in Bosnia and Herzegovina. Although the NCSC's work in preparing a draft memorandum for the vetting of judges in Kosovo was performed outside the planned activities for the Project, the evaluation team reviewed the memorandum's contents. This document served as a good basis for the future development of the judicial vetting process in Kosovo. The NCSC Advisor, however, may have significantly underestimated the cost of this process, especially compared with similar efforts in Bosnia and Herzegovina.

Conduct Judicial Ethics Training

The evaluation team reviewed the materials prepared by NCSC for training judges and spoke to several of the judges who took part in this training. These trainings were conducted in an extremely effective manner and the training materials were appropriate. NCSC should continue to train newly appointed judges in the year to come; however, there should be some modification in this follow on activity. The KJI currently hosts a large part of the trainings that are conducted by donors in Kosovo. Usually the donor organization or the donor's contractor designs and delivers the trainings at the KJI premises. The KJI has little to do with actually developing the training itself. This creates vacuum in the KJI's future ability to become the training institute for judges in Kosovo. When the donors and implementers leave, there will be little knowledge within that KJI on how to design and deliver ethics/judicial training. NCSC's activities in developing ethics trainings should involve the staff of the KJI in the actual design and delivery of the ethics training. This could be accomplished with international experts sitting side by side with local staff of the KJI and imparting knowledge on how to develop materials. A train the trainers' seminar would also be beneficial to teach future KJI staff on how to use modern and interactive teaching methods for future trainings. An ideal opportunity for this will arise when the judiciary is vetted and many new judges, who have never served before will sit in their first judicial training at the KJI.

Despite the effectiveness of the judicial training, there is a tremendous lack of donor coordination on the subject of training judges in general, and a specific problem with training in ethics.¹⁵ The KJI is the most appropriate vehicle through which USAID and the follow on contractor can coordinate the activities of these trainings. The problem remains, however, that the KJI is still highly dependent on the OSCE and the OSCE has done little to strengthen this institution's sustainability. It would be wise for USAID to design the follow on activity to include assisting the KJI in its capacity-building activities. This could be achieved in the same fashion that USAID is now trying to work on institution building in the MOJ and the KJC. The first provision should include a US advisor who specializes in judicial ethics training and institution building. The qualifications for this advisor should include previous work in creating and running a judicial training institute, preferably in the Balkans. A second (and perhaps complementary) approach could involve conducting an in-depth assessment of the KJI. NCSC could work with KJI staff to identify key obstacles to its sustainability. Once the assessment is completed a NCSC expert could develop manuals and training materials that would identify how other countries in the region overcame these obstacles in their sustainability.

6.4 COMPONENT 4

Use Interactive Teaching Methodology for Journalists' Training

The evaluation team believes that NCSC should continue its effort to train journalists on reporting on justice sector activities. USAID may want to consider a few key programmatic adjustments. First, trainings should be more interactive. The Project should rely less on university professors, who may be accustomed to lecturing and requiring rote memorization and lecturing in their teaching. The evaluation team believes that using prosecutors, judges, and even trial attorneys would be more beneficial and would assist in making the topics more interesting.

Many of the journalists interviewed for this evaluation commented that they would have preferred to have a module in the training course that would include covering a case and actually reporting on it. The evaluation team believes that this is a valuable recommendation. Future trainings should also include peer review once the articles are written.

¹⁵ The evaluation team believes that some of the rampant donor coordination problems may be eased with the coming of the new Senior Rule of Law Advisor to post in November.

A final recommendation is to expand and continue the training of journalists. Many journalists commented that their colleagues outside of Pristina had not been brought to the trainings. Others claimed that radio journalists were neglected. Future trainings should pay particular attention to drawing in journalists from outside of Pristina, particularly because the baseline survey showed that the highest percentage of the population with lack of knowledge about the judiciary was living outside of the capital.

Support Development of Public Information Offices after Funds Allocated from Budget

The evaluation team believes that a public information office is a necessary and useful component for Kosovo's judicial system. NCSC should remain engaged in this activity. The one thing that does concern the evaluation team, however, is that these offices may not come into existence in 2006. The budget for these public information officers reportedly has not been confirmed by the Kosovo Consolidated Budget. There is no indication of when and if this budget will be approved. Even if the budget is approved now, it will take at least one year to hire the numerous employees that this project would service. Given the unlikelihood of the completion of this project in the year to come, the funding for this portion of the program should be channeled into some other activity or component of the Project. Given the likelihood that these PIO offices will not come into existence for some time, the evaluation team suggests that further development of the PIO offices in Kosovo would be a worthy follow-on activity that the USAID Mission in Kosovo should pursue.

KJC is also in the process of developing its own strategy and ability to interface with the press. The evaluation team spoke with the Public Information Officer of the KJC. She indicated a keen interest in being involved in the journalist trainings and future PIO trainings that would take place in Kosovo.

Encourage Greater Reliance on the Television and Radio Media

One of the most effective methods for dissemination of information in Kosovo is the broadcast media. The evaluation team determined that the broadcast media may be a more effective way to reach most Kosovar citizens. There are numerous ways in which the Mission could approach this and NCSC has suggested infomercials and public service announcements. The evaluation team believes, however, that the best way to reach the public and boost confidence in the court system is to actually broadcast live television or radio talk shows. This type of programming is especially effective when the public is given an opportunity to call in to the live program with questions. This type of activity would be far more beneficial than brochures, public service announcements, infomercials, and other types of public information campaigns that have been conducted in the past. One particularly interesting method for a future follow-on activity would be to include the new public information officers in this type of programming as well.

7.0 GUIDELINES FOR DEVELOPING A STRATEGY IN THE JUSTICE SECTOR

As USAID crafts its strategy for further work in the democracy and governance area, the evaluation team suggests that it may want to incorporate the following considerations into that strategy.

7.1 SUPPORT INSTITUTIONS

Kosovo has been subject to various development approaches. On the one hand, some donors have adopted a goal-driven view of development, emphasizing substantive outcomes.. These donors have assisted in drafting laws of high quality that meet international standards, although it may be subject to debate whether the local structures will be able to implement these laws. In the context of the Justice System Reform Activity, NCSC has produced quality manuals, but without substantial local input. The principle underlying this strategy is that simply setting forth the laws on paper will force the local institutions to comport themselves with these laws.

Another approach is to focus on the development of institutions. Under this approach, the premium is placed on developing systems within institutions. If private companies develop systems to control quality of service and assure continuity, then assistance programs should develop similar systems to support the development of institutions or organizations. Within this framework, the approach should be to target institutions as the focus of assistance. This approach militates in favor of targeting institutions or departments within institutions and developing processes and procedures that can guide the development of those institutions.

7.2 BUILD CAPACITY

A constant refrain in many of the institutions the evaluation team visited was that although the foreign assistance was welcome, little has been done to build the capacity within local organizations. Many of the foreign assistance providers conceded that because of the press of time little has been done to build the capacity of the Kosovar professionals, or to transfer skills to those who will soon be charged with running organizations. The Kosovars with whom the team met expressed willingness to learn how to discharge the responsibility of operating the institutions themselves. Many expressed frustration that foreign technical assistance was drying up without having left marks in the sand. As the pace of UNMIK's exit quickens, any further assistance should be targeted at building the capacity of Kosovars so that they can begin to run their own affairs.

7.3 DETERMINE THE ROLE OF THE ASSISTANCE

USAID should attempt to focus more on what is in its manageable interests, particularly when working in a semi-protectorate such as Kosovo. The original project as envisioned by USAID called for working

within UNMIK, which is a huge international organization that has a bureaucracy unlike that of USAID. In effect, the UN was both a donor, as it provided services to and indeed replaced the Kosovar Government, and a recipient, receiving assistance from a plethora of other donors. This dual UNMIK relationship posed serious challenges to USAID's ability to provide effective assistance in Kosovo. As USAID crafts its strategy, it should decide whether it wants to supplement UNMIK's role¹⁶ in assuming primary responsibility for governance or whether it wants to assist institutions of government by providing them with the tools they need to better to discharge their duties to the people of Kosovo.

7.4 MATCH THE ASSISTANCE WITH THE ABSORPTIVE CAPACITY OF THE LOCAL ORGANIZATION

USAID may want to consider focusing on appropriate targets of assistance opportunity. The recipient organization should fulfill three requirements before it qualifies as an appropriate target: first, it should need the assistance; second, it should want the assistance and be willing to provide the support to accept the assistance; and third, it should have the capacity to absorb the assistance.

7.5 INTEGRATE ACTIVITIES

The assistance programs should be well integrated as they target a recipient institution. A quick, stand-alone intervention with no follow-up has little chance of effecting long-term change. Activities should build on and support one another. And all activities should be driven by a coherent strategy of assistance.

7.6 SUPPORT THE PROCESS, RATHER THAN CONTROL THE RESULT

USAID should emphasize process. With an emphasis on process, the result may not be easily controlled. That is one of the compromises that should be made to support the sustainability of assistance work in Kosovo. The assistance provider may prefer to assure the outcome, but that is not possible if the indigenous organization receives the authority.

The President of the Supreme Court was particularly discouraged by a new UNMIK regulation that removed the authority of appointment for judges from the newly-created KJC to an independent body under the KJC, but over whom the KJC did not have any authority. The results may not always be perfect if the local authority controls the process, but Europeans and American assistance providers may also not agree on the optimal result. So long as the process is safeguarded and meets human rights standards, the result should be respected.

7.7 PROVIDE REGIONAL TECHNICAL ASSISTANCE

The experience of other developing countries in the region is fresh and provides good guidance on how Kosovo should develop and what mistakes it should avoid. Many of the Kosovar officials with whom the evaluation team met openly welcomed assistance from the surrounding countries, especially those countries with which Kosovo shares a common legal tradition. The Kosovars are particularly receptive to developing ties with sister organizations in the surrounding countries, and they are also receptive to the technical expertise of foreign experts who have a common experience and understanding of the

¹⁶ Or the role of whatever entity such as the European Union that may assume some of UNMIK's responsibilities after the final status talks are concluded.

pressing issues facing Kosovo. To the extent that USAID can require its contractors to reach across the border and make these connections, the assistance will be that much more effective.

7.8 DEVELOP AN AGGRESSIVE EXIT STRATEGY

The sound policy is to assist countries to “graduate” from assistance programs. Although “graduation may be years away,” according to USAID’s Assistance Strategy for Kosovo 2004–2008, donor assistance is not forever, and a strategy should build in preparation for departure. Developing countries cannot wean themselves from the assistance if contractors are figuring out ways to make their assistance indispensable and continuous. The assistance should select discrete opportunities, provide assistance, accomplish the goals of the assistance, and then leave.

ANNEXES

- Annex A. Scope of Work**
- Annex B. Summary of Activities and Outcomes**
- Annex C. Evaluation Team Work Plans**
- Annex D. Persons Interviewed**
 - Alphabetical List**
 - List by Organization**
- Annex E. Survey Instruments**

ANNEX A SCOPE OF WORK

**Scope of Work for
Evaluation of the “Justice System Reform Activity – Kosovo”
Implemented by the National Center for State Courts (NCSC)
(Contract No: 167-C-00-03-00104-00)**

I. Background

A. Kosovo

Pre 1999

“The 1974 Constitution of the Socialist Federal Republic of Yugoslavia provided Kosovo with dual status as an autonomous province of Serbia and a constituent part of the federation with the same rights as a full-fledged republic. Soon after the forceful abolition of Kosovo’s autonomy by the Parliament of Serbia in March 1989, an apartheid system was established in which Belgrade extended privileges to Serbian Kosovars but excluded Albanian Kosovars from the public sector and systematically repressed them. In response, on July 2, 1990, Kosovo’s Parliament proclaimed the territory’s independence. The Democratic League of Kosovo (LDK), a popular movement seeking independence through peaceful means, created a government in exile and established a parallel system of education and health care supported by an official 3 percent tax system. The two systems coexisted in relative peace through a status quo that lasted for nearly a decade.

However, as early as 1993, a group of political activists opposing the LDK’s pacifist philosophy established the first cells of the insurgent Kosovo Liberation Army (KLA). Serbian military attacks against civilians in February and March 1998 helped the KLA grow from a 300-man insurgency into a 20,000-to-30,000-guerilla force. Despite efforts by the international community to establish a negotiation process, Belgrade intensified its military campaign in the towns and villages where the KLA had taken shelter.”¹⁷

1999

“Alarmed by the execution of more than 40 unarmed civilians in the village of Racak in January 1999, the so-called Contact Group, consisting of the United States, the United Kingdom, Russia, Germany, France, and Italy, organized talks in Rambouillet and arbitrated a deal in which international military forces would safeguard Kosovo’s autonomy within Yugoslavia during an interim period, until a permanent solution on the territory’s status could be negotiated.

When Belgrade rejected the deal and continued its attacks on Kosovar civilians, NATO launched an air campaign against Serbian forces on March 24, 1999. Nevertheless, during NATO’s 76-day air campaign, Serbian forces continued their violence against Albanian Kosovars, killing 12,000, abducting close to 2,600 (according to the International Committee of the Red Cross figures), and forcing nearly 1 million out of the region. On June 10, 1999, the UN Security Council approved Resolution 1244, establishing the UN Interim Administration in Kosovo (UNMIK). Headed by the special representative of the secretary-general (SRSG), the UNMIK was tasked with creating substantial autonomy for Kosovo within Yugoslavia until the territory’s status could be resolved. Yugoslav armed forces were ordered to withdraw from Kosovo, and a NATO-led peacekeeping coalition known as the Kosovo Force, or KFOR, stepped in.

¹⁷ Jeannette Goehring, et al., Freedom House Nations in Transit 2005 (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2005) 560-561.

Before the deployment of the UNMIK was completed, the Kosovo provisional government, led by former KLA political leader Hashim Thaci, established itself at central and municipal levels and filled a vacuum left by the withdrawing Serbian administration. Through intense international pressure, the KLA was eventually transformed into a civilian emergency organization named the Kosovo Protection Corps (KPC).

Between June and December 1999, thousands of Serbian Kosovars fled Kosovo, fearing retaliation from returning Albanian Kosovars. Those Serbian Kosovars who remained in Kosovo were subject to systematic attacks and intimidation which eventually forced them to leave the territory or to concentrate in Serb-dominated enclaves protected by the KFOR. According to the International Committee of the Red Cross, around 900 Serbian Kosovars, Roma, and other minorities are reported to have been killed or gone missing from January 1999 to April 2001.”¹⁸

Post 1999

“On June 10, 1999, the UN Security Council approved Resolution 1244, which established the UNMIK and effectively suspended the Federal Republic of Yugoslavia’s sovereignty in Kosovo. Until the country’s final status is resolved, Resolution 1244 gives the UNMIK legislative, judicial, and executive powers.

To prevent a legal vacuum following the collapse of the Serbian administration in Kosovo, the UNMIK also established a legal system based on Kosovo and Yugoslav laws existing pre-March 28, 1989; nondiscrimination laws approved after 1989; UNMIK regulations; and international human rights conventions. The talks between the UNMIK and Kosovar political representatives in 2001 resulted in the approval of the Constitutional Framework for the Provisional Institutions of Self-Government (PISG), which produced a dual system of governance with executive and legislative powers shared between the UNMIK and the PISG. In addition to being a caretaker for the PISG, the UNMIK has direct administrative responsibilities in all areas involving sovereignty issues, such as foreign affairs, justice and police, fiscal policy, customs, and minorities, and is accountable to the UN Security Council. The Supreme Court of Kosovo is responsible for the interpretation of the Constitution. However, the UNMIK retains final say in all legal and constitutional matters. The police and judiciary fall under the jurisdiction of the UNMIK, with administrative issues pertaining to the judiciary transferred to the PISG Ministry of Public Services.¹⁹

Since 1999, UNMIK, KFOR, the international police force (CIVPOL), the OSCE, the European Union, and a host of bilateral donors, particularly the United States, have worked vigorously to bring stability and rule of law to Kosovo. After two and a half years, trained Kosovar police officers and CIVPOL patrol the streets, which has led to a precipitous drop in serious crime; the court system is functioning with adequate personnel and material resources for most case processing; prosecutors and judges dispense with cases; and the penal system is working, though reaching capacity. UNMIK has passed a multitude of new regulations, largely consistent with international human rights standards, creating a clearer legal framework for Kosovo, and introduced international judges and prosecutors to the court system to handle the most sensitive cases. Lawyers and prosecutors are better versed in new regulations and applicable law. The first bar exam open to Albanian Kosovars in over a decade was held in 2001, which should begin to improve access to representation. Continued improvements in the courts’ ability to influence administrative and budgetary functions are also needed to advance judicial efficiency. Breaking the cycle of impunity in Kosovo will remain an elusive goal unless all judicial

¹⁸ Jeannette Goehring, et al., Freedom House Nations in Transit 2005 (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2005) 561.

¹⁹ Jeannette Goehring, et al., Freedom House Nations in Transit 2005 (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2005) 579.

