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IMPROVING ANALYTICAL SKILLS AND WRITING STRATEGIC POLICY ANALYSES OF THE MEMBERS OF THE FORUM FOR JOINT POLICY

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*REPORT ON WORKSHOP AND
RECOMMENDATIONS*

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.

I. INTRODUCTION AND BACKGROUND

(A). USAID Justice Sector Development Project (JSDP II)

In July, 2009, East-West Management Institute Inc. (EWMI) was awarded by the US Agency for International Development (USAID) a three-year contract (with a possibility of a two year extension) for implementation of judiciary reform in Bosnia and Herzegovina (BiH) through the Justice Sector Development Project (JSDP II).

European Union accession is a key guidepost for judicial reform in BiH. Component 2 of the Project is given the task of establishing a better coordinated and more unified justice system ready for accession to the European Union. One of the activities of the Component relates to the formation of a joint policy unit comprised of representatives of the Ministry of Justice of Bosnia and Herzegovina (BiH MoJ) and the High Judicial and Prosecutorial Council (HJPC).

(B). Justice Sector Reform Strategy

The justice sector in BiH is complex, and includes several institutions, out of which two, the BiH MoJ and the HJPC, take crucial positions within the system for realization of measures of the Action Plan and Action Plan (revised) for implementation of the Justice Sector Reform Strategy (JSRS) in BiH, the key documents adopted by the justice sector institutions to guide implementation of justice sector reform from 2009 - 2013.

The JSRS was adopted in June 2008 by the BiH MoJ, the Federation and RS MoJs, and the Judicial Commission of Brcko District. It provides the following Vision Statement for the Justice Sector of BiH: "An efficient, effective and coordinated justice system in BiH that is accountable to all BiH citizens and is fully aligned with EU standards and best practices, guaranteeing the rule of law." It establishes five strategic objectives, tied to the following five pillars of reform: judicial system; execution of criminal sanctions; access to justice; support to economic sector growth; and coordinated, well-managed and accountable sector. Under each pillar, the JSRS identifies key issues for reform and provides medium- to long-term actions or strategic programs to address those issues. The monitoring of implementation of the JSRS during the period 2008 – 2013 is delegated to a bi-annual justice sector Ministerial Conference, which is also charged with the responsibility to provide political and strategic direction. For each pillar, actual implementation is assigned to a permanent functioning working group composed of senior level representatives of relevant justice sector institutions and stakeholder groups. However, the overall coordination of implementation activities and the provision of secretariat support to the Ministerial Conference is entrusted to the Sector for Strategic Planning, Aid Coordination, and European Integration (SSPACEI) of the BiH MoJ, supported by entity and Brcko District strategic planning points of contact. A "strategic program" is defined as a set of related activities directed toward the accomplishment of a strategic objective. In turn, strategic programs are grouped into several sub-areas of initiatives under each pillar.

An example will provide helpful context for the discussion below. Under Pillar 1, the Judicial System is divided into three sub-categories: independence and harmonization; efficiency and effectiveness; and accountability and professionalism. Problems related to each sub-category are discussed, and a number of strategic programs designed to remedy those problems are identified. Regarding the "efficiency and effectiveness" sub-category, it is noted that a key impediment is the backlog of cases, estimated at 1.9 million at the end of 2006, 56% of which were execution cases for small value claims. Based on this finding, the following strategic program is identified:

Conduct analysis of the required changes to legislation to decrease the number of backlog cases in the enforcement procedure initiated on the basis of "authentic documents" (such as unpaid utility bills) and prepare appropriate measures.

The JSRS provides further that “[a]ll legislative initiatives should be preceded or accompanied by either a policy analysis or a wider consultation process (or preferably both) . . . in order to ensure that the solutions/measures put forth by law are in accordance with international best practices and in conformity with practical needs and capabilities in BiH.”

Annex 2 to the JSRS provides additional guidance regarding the backlog case reduction strategic program:

If the high portion of backlog in execution cases for claims of small value is to be reduced, changes to legislation need to be made in order to lower the number of these cases reaching the courts, as has already been done in relation to violation cases. Any new legislative solutions should be based on analyses that have already been made by HJPC, as well as individual donors, of the concrete measures that need to be implemented to reduce the number of executive procedures for small value claims.

In December 2008, the Ministerial Conference, attended by the Ministers of Justice of BiH and the entities, the President of the HJPC, and the President of the Brcko District Judicial Commission, adopted an Action Plan to guide the implementation of the JSRS from 2009-2013. In June 2010, the Ministerial Conference adopted a revised Action Plan.

(C). Joint Policy Forum

The BiH MoJ is assigned the major coordinating role in implementation of JSRS reforms, but no institution within the justice sector has taken the leading role in planning, proposing, and implementing measures in performance of tasks that arise from the Action Plans. Therefore, there has not been a single coherent organizational unit responsible for policy setting and identification of strategic goals, drafting of strategic proposals, and ensuring their enactment for the entire justice sector.

In response to this dilemma, JSDP II identified the need for the BiH MoJ and the HJPC to come closer together functionally and practically, and begin working on joint preparation and drafting of policy proposals and strategic proposals in the domain of the justice sector. Upon the initiative of JSDP II, the BiH MOJ and HJPC signed a Memorandum on Cooperation in June 2010 creating the Joint Policy Forum (JPF). The two institutions assigned their most experienced officials and staff members to be their representatives on the JPF, and their strongest internal units to provide professional and technical support for the successful work of the JPF. The first meeting of the JPF was held in August 2010.

To produce serious policy proposals, the JPF first needs to be able to do necessary analysis of the selected topic. Section 2.1 of USAID JSDP II Year 2 Work Plan states that JSDP II will provide assistance of an international short term expert to present a minimum of two workshops focused on improvement of analytical skills for the representatives of the JPF to assist them in the realization of joint tasks in the domain of policy and strategy. It is also planned that points of contacts for strategic planning of the Federation and Republika Srpska Ministries of Justice and the Brčko District Judicial Commission will be invited to attend these workshops.

This expert assistance will contribute to implementation of the Action Plans in such a manner that the JPF and its supporting structures will be adequately trained, capacitated, and skilled to produce high-quality analyses and policy proposals that will address the most important issues of justice sector reform in Bosnia and Herzegovina.

(D). Expert for Improving Analytical Skills and Writing Strategic Policy Analyses

The Expert for Improving Analytical Skills and Writing Strategic Policy Analyses has been retained to present the first workshop envisioned in the JSDP II Year 2 Work Plan. The

Scope of Work approved by USAID for the consultancy sets forth the following tasks: 1) based upon a thorough knowledge of the political, administrative, and legal structure of BiH, including the status of the implementation of the JSRS and Action Plans, prepare materials and conduct a two-day joint training for the JPF and its supporting structures in the methodology of policy analysis and policy proposal drafting; 2) present and discuss at the training two to three existing formats of analyses in justice sector policy or a similar field used in contemporary democratically developed legal systems; and 3) prepare a report with recommendations for the next training on the same subject with advanced content.

(E). Methodology of Execution of the Consultancy

In advance preparation for the workshop, the consultant performed a thorough literature search for existing formats of public policy analysis; summarized two such formats for presentation at the workshop; prepared a proposed public policy analysis protocol for the JPF for presentation, review, and adoption at the workshop; reviewed the JSRS, the Action Plan, the revised Action Plan, the Memorandum on Cooperation between the BiH MoJ and HJPC establishing the JPF, and the Annex to the Memorandum; prepared a proposed agenda for the workshop for review by JSDP II; and prepared a presentation to be made at the workshop. The proposed Joint Policy Forum Public Policy Analysis Protocol is attached as Annex 1.

In further advance preparation for the workshop, JSDP II met with members of the JPF to identify one strategic program to use in the practical application segment of the workshop. The strategic program selected was the backlog reduction program discussed above. The final Agenda for the workshop was modified to reflect this choice. The final Agenda is attached as Annex 2.

Upon arrival in Sarajevo, the consultant met with the Component Leader and Program Coordinator of the Coordinated and More Unified Justice Sector component of JSDP II, and completed work on the agenda for the workshop. The consultant also reviewed additional documents, including the Rules of Procedure of the Forum for Joint Policy of the Ministry of Justice of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Chapter 13 of the BiH Law on Ministries, applicable to the Ministry of Justice, and a summary of the law creating the HJPC.

II. JOINT POLICY FORUM WORKSHOP ON IMPROVING ANALYTICAL SKILLS AND PREPARING STRATEGIC POLICY ANALYSES

(A). Overview of Workshop

The Joint Policy Forum Workshop on Improving Analytical Skills and Preparing Strategic Policy Analyses, sponsored and organized by JSDP II, was conducted on January 27 and 28, 2011, at the Hotel Aquareumal, Fojnica, Bosnia and Herzegovina. Two members of the JPF from the BiH MoJ, the Deputy Minister, and the Assistant Minister and Head of SSPACEI, and a senior advisor from SSPACEI, participated in the workshop. One member of the JPF from the HJPC, the Director of the HJPC Secretariat, as well as two supporting staff from the HJPC Strategic Planning Unit, participated in the workshop. The Secretary of the Brcko District Judicial Commission also attended the workshop as an active observer, and the cognizant technical representative for JSDP II from USAID attended as an observer. In all, 8 persons, not including the consultant and JSDP II representatives, attended the workshop. The attendance list is attached as Annex 3.

The workshop was conducted by the consultant in close accord with the Agenda. On the morning of the first day, following a welcome from the CoP of JSDP II and introductions of the consultant and the participants, the consultant summarized two academic models for public policy analysis and development, expressly giving credit to the authors for the principles set forth in the models. Following a discussion of the two academic models, the

consultant distributed and presented an overview of the Proposed Protocol (Annex 1). During the afternoon session of the first day, the consultant walked the participants through the Proposed Protocol, explaining in detail the intent and purpose of the various provisions. The second day was devoted to the hypothetical application of the Proposed Protocol to the “reduction of the backlog in enforcement cases” strategic program identified in the JSRS and Action Plans, and described in detail above. The workshop closed with a discussion of the topic for a follow-on workshop, and the completion by the participants of a written evaluation instrument prepared by JSDP II.

(B). Consultant’s Assessment of Workshop

From the very beginning, the hallmark of the workshop was robust discussion and an exchange of ideas, not only between the participants and the consultant, but more importantly, between the representatives of the BiH MoJ and the representative of the HJPC. It is fair to say that much useful information on substantive issues was discussed and exchanged in this way, demonstrating quite clearly the underlying purpose and value of the JPF.

With respect to the subject matter of the workshop itself, the consultant concludes that the participants left the workshop with a much better understanding of the art of public policy analysis. On hindsight, the suggestion in the Agenda that the participants would tentatively approve a public policy analysis and development protocol was overly ambitious, and this goal was not formally achieved. In part, this result can be attributed to the relatively large amount of time devoted to the highly beneficial discussion and debate that was emblematic of the workshop.

Nevertheless, considerable progress was made by the participants in the adoption of a protocol to guide the public policy activities of the JPF. Section I of the Proposed Protocol is devoted to the important concept of identifying values, objectives, and evaluation criteria to guide those activities. Following Section I(B) of the Proposed Protocol, the participants identified the following overarching values to guide the activities of the JPF: conformity with common interest of the citizens of BiH, compliance with the rule of law, conformity with EU standards and international best practices, constitutionality, conformity with human rights, accountability, implementable, efficiency, promotion of public awareness, and supportive of the social and public system.

The purpose of the identification of overarching values is twofold: to inform the designation of specific objectives of the organization, and to provide criteria for evaluating proposed public policy solutions. The discussion of Section I(B) led to an agreement that, subject to the addition of specific public policy issues on an ad hoc basis, the specific public policy objectives of the JPF would track the 19 strategic programs identified in the JSRS and Action Plans for Pillar 1.

Section 1(C) of the Proposed Protocol calls for the identification of legal limitations that might constrain the public policy activities of the JPF. The identification of legal limitations is important because, together with the overarching values, legal limitations form the substance of criteria by which to evaluate proposed public policy solutions. The participants succeeded in identifying the following legal limitations: the Constitution of BiH, which by definition includes international treaties, covenants, and conventions referred to in the Constitution or ratified by BiH; the governing laws and bylaws of the two institutions, the BiH MoJ and the HJPC; and the Memorandum on Cooperation, including the Annex, and the Rules of Procedure of the JPF. Through the identification of overarching values and legal limitations, the participants succeeded in preparing a list of tentative evaluation criteria, as called for by Section 1(D) of the proposed Protocol.

Section II of the Proposed Protocol, entitled “developing a Public Policy Proposal,” incorporates many of the principles from the academic models, and provides a detailed roadmap for public policy analysis and proposal development. It is through the process outlined in Section II that the hard work of public policy analysis is performed. Section

II(A) prescribes a seven-step process, which is detailed in the subsections of the Proposed Protocol that follow: (1) select a public policy objective; (2) define the problem or problems to be solved to achieve the objective; (3) identify alternative possible policy solutions to the problem(s); (4) evaluate the identified alternative policy solutions using the adopted evaluation criteria and a political analysis; (5) select the preferred policy solution from the alternatives identified; (6) prepare the selected policy solution for presentation; and (7) pursue enactment of the policy solution selected.

Through the detailed explanation by the consultant and the accompanying discussion on day one of the workshop, but more particularly through the practical exercise on day two, the participants were able to gain a thorough understanding of the public policy analysis process. Having selected the public policy objective in advance of the workshop (reduction of enforcement cases backlog), which is step one as set forth above, the participants moved on to step two, the definition of the problem. The participants followed the Proposed Protocol precisely by undertaking an examination of the underlying causes of the backlog, that is, by “ripping the problem apart.” The discussion revealed the following categories of causes: inadequate existing legislation, inconsistent court practices and absence of well-trained court enforcement officers, inadequate collection practices by government regulated utility companies, poverty coupled with a cultural norm leading to non-payment of utilities by consumers, and inadequate transmittal of documents by the postal service. So, even proceeding hypothetically, the participants were successful at “peeling the layers of the onion” to reveal the root causes of the backlog. It should be noted that the actual strategic program in the JSRS and Action Plans regarding the backlog problem calls only for “an analysis of the required changes to legislation to decrease the number of backlog cases . . . and [to] prepare appropriate measures.” The hypothetical analysis performed by the participants went far beyond legislation, and demonstrates a key principle of public policy analysis – not to automatically accept the definition of a problem offered by others.

Having identified categories of precise causes under Section II(C), the participants moved on to suggest hypothetical alternative public policy solutions under Section II(D). Initially, the participants agreed that solutions directed at reducing poverty and changing cultural norms would be outside the scope of the JPF’s mandate. The participants identified, for example, the following hypothetical solutions: amend the operative legislation to provide for a modern disclosure procedure to identify non-exempt assets of a judgment debtor, to reduce the statute of limitations establishing the period in which small debts of this nature can be recovered or judgments enforced, and to prevent utility companies from accessing the court to collect very small claims; modify court administration by raising the court filing fee to discourage utility companies from bringing small claims, by raising the minimum education requirements for court enforcement officers, by using the entity judicial and prosecutorial training centres to train the enforcement officers, and by employing law faculty students on a temporary basis as interns to complete the collection efforts on the backlogged cases; open data bases on private citizen bank accounts to assist utilities in collecting on their court judgments; prepare an analysis to persuade utility companies and municipal government regulators of the cost savings that could be realized through modernization of utility billing and collection practices and the use of electronic communications; and introduce postal service changes to improve the service of court documents.

It is important to emphasize at this juncture that this was a workshop exercise and not an actual public policy analysis. Accordingly, none of the hypothetical solutions should in any way be attributed to the participants for any purpose, outside of the four corners of the exercise.

Following the identification of hypothetical public policy solutions, the participants expended the time remaining for the exercise in the evaluation of the solutions using the overarching values and legal limitations identified earlier, as called for by Section II(F) of the Proposed Protocol. For example, the participants considered the possibility that denying access to the courts on small utility claims might run afoul of the Constitution and

EU rule of law norms and best practices; or that revealing private bank account data might be contrary to human rights norms; or that an attempt to persuade the utility companies to modernize their billing and collection practices might not lead to implementation of reforms. The participants agreed that perhaps the court administration reforms could be implemented by the HJPC without the need for legislation or the involvement of other institutions, and therefore, meet the overarching goals of efficiency and likelihood of implementation.

In summary, the practical exercise was a very effective and successful way of teaching the principles of public policy analysis and demonstrating to the participants the value and usefulness of Article II of the Proposed Protocol.

During day one, the consultant explained the principles set forth in Sections III and IV of the Proposed Protocol, “Analyzing Another Organization’s Public Policy Proposal” and “Successfully Achieving or Opposing Enactment,” respectively. Regarding Section III, the participants expressed the view that the JPF would be primarily proactive in the implementation of the JSRS Pillar 1 strategic programs, but might possibly also react to public policy initiatives of other organizations or institutions. With respect to Section IV, the consultant learned that the JPF, as an organization, would not be directly involved in political efforts to secure the enactment of proposed public policy solutions, but that those efforts would be undertaken separately by the two member institutions, the BiH MoJ and the HJPC. The consultant recommended the process outlined in Sections III and IV to those institutions.

(C). Going Forward

At the end of the workshop, the proposal was made by JS DP II for a follow-up workshop in late May or early June devoted to the actual preparation of a public policy analysis. Such a proposal would require advance preparation by JPF members. The JPF will consider this proposal at a future meeting. The consultant supports the proposal as the next logical step in public policy analysis training. The consultant noted during the workshop that, with the exception of step seven, all the steps set forth in Section II(A) of the Proposed Protocol for the development of a public policy proposal are equally applicable to the preparation of a public policy analysis. The consultant also reviewed in detail the suggestions contained in Section II(G) regarding the drafting of a public policy proposal, and emphasized several times the importance of taking control of the drafting process. Therefore, drafting a public policy analysis or proposal would be the next logical step in public policy analysis training.

III. CONCLUSION

Having reviewed the results of the workshop participant evaluations, the consultant is of the opinion that the workshop was very successful in exposing members of the JPF and supporting staff of the member institutions to the principles of public policy analysis and the usefulness to the JPF of significant portions of the Proposed Protocol. The consultant is hopeful that JS DP II will work with the JPF to hone the Proposed Protocol into an instrument that will actually be useful to and used by the JPF. The success of the workshop is due to the thorough advance preparation done by JS DP II. Equally, and perhaps more significant, it is due to the knowledge, skill, professionalism, and enthusiastic participation of the members and support staff of the JPF institutions that attended the workshop. For that enthusiastic and meaningful participation, the consultant wishes to express his thanks.

JOINT POLICY FORUM PUBLIC POLICY ANALYSIS PROTOCOL (PROPOSED)

I – DEFINING VALUES AND OBJECTIVES OF JOINT POLICY FORUM (JPF)

(A). Purpose of Defining JPF Values and Objectives

- Provide guidance to the JPF in the execution of all its activities
- Provide a context for the development of public policy proposals
- Provide a means of analyzing and judging public policy proposals made by other organizations

(B). Defining JPF Values and Objectives

- Begin with the Memorandum of Cooperation and Annex establishing the Joint Policy Forum, and the Rules of Procedure of the JPF
- Analyze the laws governing the MoJ and the HJPC and any additional relevant governing documents
- Analyze the Justice Sector Reform Strategy and Action Plans
- Analyze international treaties, covenants, and conventions having the force and effect of law in BiH.
- Determine the overriding values that will inform JPF's specific objectives
- Determine as many specific objectives of the JPF as possible
 - The objectives may be the strategic programs identified in the JSRS and Action Plans
 - Prioritize the objectives in terms of importance
 - Based upon the prioritization, prepare a plan for accomplishing the objectives consistent with the timetable set in the JSRS, taking into account the resources of the JPF and the need to reserve some resources for use in responding to public policy proposals of other organizations

(C). Recognition of Legal Limitations Affecting Public Policy Proposals

- Limitations Imposed by the Constitution of BiH
- Limitations imposed by international treaties, covenants, and conventions having the force and effect of law in BiH
- Limitations imposed by the Memorandum of Cooperation and Annex, and the Rules of Procedure of the JPF
- Limitations imposed by laws governing the MoJ and HJPC, including those applicable to decision making, and the Rules of Procedure of the HJPC

(D). Formulating Public Policy Evaluation Criteria

- Based upon an analysis of the overriding values of the JPF and the legal limitations, prepare a list of criteria by which to evaluate public policy proposals made by the JPF and made by other organizations
- The purpose of the criteria is to evaluate proposals, and not to evaluate the chances of success in a political context

II – DEVELOPING A PUBLIC POLICY PROPOSAL

(A). Steps in the Process: (1) Select a public policy objective; (2) Define the problem or problems to be solved to achieve the objective; (3) Identify alternative possible policy solutions to the problem(s); (4) Evaluate the identified alternative policy solutions using the adopted evaluation criteria and a political analysis; (5) Select the preferred policy solution from the alternatives identified; (6) Prepare the selected policy solution for presentation and (7) Pursue enactment of the policy solution selected

(B). Selection of Public Policy Objective

- Referring to the list of prioritized JPF public policy objectives, select an objective
- In the selection, be realistic about the scope of the objective, understanding that the narrower the scope the better the chances of successful enactment

(C). Definition of Problem to be Solved and Identification of Potential Impact

- Define the problem or problems to be solved to achieve the objective
 - Analyze all the integral causes of the problem(s)
 - Too often, public policy is made on the basis of anecdotes instead of hard facts
 - Challenge preconceived ideas of the best way to proceed
 - If limited or extensive research is needed to fully understand the problem, perform the research before deciding upon approaches to solve the problem
 - If facts are important to the definition of a problem and the identification of a solution, do not accept facts as stated by others without independent verification of their accuracy
 - When analyzing factual statements and arguments of others, look for possible conflicts of interest
 - Do not automatically accept the statements or definitions of problems by others
 - Generate independent ideas about how to solve the problem(s)
- Identify any beneficiaries if the objective is achieved, including institutions
- Identify any objects of compliance if the objective is achieved, including institutions

(D). Identification of Possible Alternative Policy Solutions

- From the problem-solving ideas generated, identify alternative policy solutions
- Identify as many policy solutions as possible
- Be specific and detailed

(E). Evaluate the Identified Alternative Policy Solutions Using the Adopted Evaluation Criteria

- The evaluation involves two steps and is intended to lead to the selection of a policy solution to be pursued
- The first step is to apply the adopted evaluation criteria to each of the alternative policy solutions identified
 - First, to what extent does the policy solution meet the values and objectives of the JPF
 - Second, what, if any, are the legal obstacles to the enactment of the policy solution

- The second step is to analyze each policy solution from the standpoint of political reality to determine the likelihood of successfully enacting the solution

(F). Select the Preferred Policy Solution from the Alternatives Identified

- The above evaluation process might lead to the rejection of one or more of the policy solutions initially identified
- In any event, the evaluation process will lead to a listing of the acceptable alternative policy solutions in a ranked order

(G). Prepare the Selected Policy Solution for Presentation

- Identify the authority or authorities that must take action if the public policy proposal is to be accepted and go into effect – see Section IV(A) below
- The identification of the enacting authority will dictate the form of the presentation of the proposal, for example, proposed legislation, proposed regulation, a position paper, etc.
- Regardless of the form, drafting will be an essential part of the preparation
- Drafting is a skill that depends on research, analysis, organization, and knowledge of applicable drafting rules, guidelines, customs, and practice
- Drafting is critical because the words matter, especially if the proposal contains provisions that are intended to be mandatory and binding on the actions of others
- Furthermore, a well-drafted proposal has a much better chance of acceptance than a poorly-drafted proposal
- Following are 10 rules for good drafting:
 - Do not rely on others to do the research, analysis, or drafting
 - Do thorough research and analysis first before beginning the drafting process
 - Prepare a general outline of the draft
 - Prepare a second detailed outline of the draft
 - Review the detailed outline for completeness, inconsistencies, and potential unintended results
 - If warranted because of length and repeated references, consider including a “definitions” section
 - Prepare a final detailed outline of the draft
 - Prepare the first draft from the detailed outline, following all applicable drafting rules, guidelines, and customs, and avoiding ambiguities, consulting a drafting manual or guide, if available
 - Review the first draft for clarity, completeness, inconsistencies, avoidance of ambiguities, and potential unintended results
 - Prepare the final draft for internal review and approval

(H). Pursue Enactment of the Policy Solution – See Section IV

III – ANALYZING ANOTHER ORGANIZATION’S PUBLIC POLICY PROPOSAL

(A). Purpose of the Proposal

- Closely analyze and fully understand the text of the proposal
- Define the problem or problems apparently to be solved by the proposal
 - Analyze all the integral parts of the problem(s)

- Too often, public policy proposals are made on the basis of anecdotes instead of hard facts
- Challenge preconceived ideas
- If limited or extensive research is needed to fully understand the problem, perform the research
- If facts are cited in support of the proposal, do not accept them without independent verification of their accuracy
- When analyzing factual statements and arguments of others, look for possible conflicts of interest
- Do not automatically accept the statements or definitions of problems by others
- Generate independent ideas about how to better solve the problem(s)
- Identify any intended beneficiaries of the proposal
- Identify any intended objects of compliance of the proposal
- Assess whether or not each identified problem is solved through the proposal
- Based upon the identification and understanding of intended beneficiaries and/or objects of compliance, analyze whether there would be a better way of solving each identified problem
- Identify any ambiguities in the language of the proposal
- Analyze the proposal within the context of existing laws and regulations
- Identify any unintended results of the proposal

(B). Proponents of the Proposal

- Identify expressed proponents of the proposal
- Identify potential supporters of the proposal
- For each proponent and supporter identified, analyze the political strength of the proponent or supporter to secure adoption of the proposal
- Identify actual and potential allies of each proponent and supporter identified
- Assess the political strength of each ally in securing adoption of the proposal

(C). Opponents of the Proposal

- Identify expressed or potential opponents of the proposal
- For each opponent identified, analyze the political strength of the opponent to secure defeat or weakening of the proposal
- Identify actual and potential allies of each opponent identified
- Assess the political strength of each ally in securing the defeat or weakening of the proposal

(D). Comparison of Proposal to Objectives of Joint Policy Forum (JPF)

- Compare the goals of the proposal with the overriding values of the JPF
- Compare the goals of the proposal with the objectives of the JPF
- Apply the JPF evaluation criteria to the proposal
- Analyze the possibility of using the proposal as a vehicle to accomplish a public policy objective of the JPF listed in the three-year plan
- If the comparison and analysis results in a determination that the proposal, to be consistent with the objectives of the JPF, must be modified, identify the specific modifications needed

- Without regard to the above analysis of proponents and opponents, but specifically taking into account the availability of JPF resources, reach a tentative decision whether the JPF should (1) support the proposal in its entirety, (2) support the proposal subject to the adoption of specific identified modifications, (3) oppose the proposal regardless of modifications, or (4) adopt a position of neutrality on the proposal
- Taking into account the above analysis of proponents and opponents, and available resources, make a final decision whether the JPF should (1) support the proposal in its entirety, (2) support the proposal subject to the adoption of specific identified modifications, (3) oppose the proposal regardless of modifications, or (4) adopt a position of neutrality on the proposal

(E). Execution of Final Decision

- Decision to adopt a position of neutrality
 - Analyze the pros and cons of making the decision public
 - Examples of pros
 - Credibility – enhanced by demonstrating to the public and interest groups that the JPF has exercised its due diligence in examining the proposal
 - Transparency – keeps the JPF in the public eye in an official way
 - Accountability – demonstrated through process of seeking input and/or approval of the decision from the MoJ and HJPC
 - Examples of cons
 - Public neutrality may be characterized by other interest groups as de facto support for the proposal
 - Public neutrality may place the JPF on the defensive to make a decision to support or oppose the proposal, or to explain in detail its reason for neutrality
 - Public neutrality may shift the focus of public interest and media attention to the MoJ and HJPC, thereby diminishing the role and public image of the JPF
 - Making the decision public if that option chosen
 - Press conference with detailed explanation of position
 - Press release with detailed explanation of position
 - Giving the story to selected media outlets through interviews with detailed explanation of position
 - Using MoJ and HJPC to release the story with explanation of positions
 - Advising selected proponents and/or opponents of the decision without explanation
- Decision to support the proposal subject to the adoption of specific identified modifications
 - Drafting the proposed modifications or amendments – see Section II(G) above

- Upon completion of the drafting process, thoroughly analyze the modification for the possibility of unintended consequences, either to the proposed policy, to other objectives of the JPF, or to existing laws and policies
- If deemed appropriate following an analysis of the likelihood of success in securing the adoption of the modification, prepare alternative drafts to achieve the desired objective, in whole or in part

IV – SUCCESSFULLY ACHIEVING OR OPPOSING ENACTMENT

(A). Once a JPF public policy proposal is considered approved by the BiH MoJ and the HCPC under the Rules of Procedure of the JPF, the final step is obtaining approval from the enacting authority

(B). Understanding the Enactment Process

- It is critical to fully understand the laws, rules, procedures, and customs governing the process of enacting a public policy proposal or an amendment to a proposal made by another organization, and of opposing enactment
- The process will likely differ depending on the identity of the enacting authority
- Regardless of the identity of the enacting authority, the overriding principle is that the development of a public policy proposal that is not adopted is a largely academic exercise of limited value
- It will be helpful to outline each enacting authority’s process, and prepare a checklist of steps that must be taken to achieve or oppose enactment

(C). The Political Equation

- The public policy arena, by its nature, involves politics and power
- Understanding the broad politics surrounding the particular public policy at issue, as well as the politics of the enacting authority is essential to success
- This understanding involves the identification of the institutions and persons that must be convinced
- Also involved is the identification of potential supporters of the JPF position, and actual or potential opponents of the JPF position
 - For each supporter identified, analyze the political strength of the supporter vis a vis the enacting authority, identify actual and potential allies of the supporter, and analyze the political strength of each ally identified
 - Undertake the same evaluation of actual or potential opponents

(D). Developing a Lobbying Strategy and Executing a Lobbying Campaign

- Achieving enactment of a proposed public policy (including a modification of a public policy proposed by another organization) and successfully opposing enactment of a proposed public policy involves essentially the same campaign, that is, a campaign to convince the enacting authority of the correctness of the JPF position on the public policy at issue
- For lack of a better term, the undertaking of this campaign can be called “lobbying”
- Successful completion of the lobbying campaign is determined by the acceptance of the JPF position by the enacting authority

- Of course, at the end of the campaign, success may be characterized as full or partial, but the campaign will be the same
- Every separate lobbying campaign, regardless of its scope and duration, requires a precise strategy
- Lobbying strategies will contain common elements, but each must be tailored to the particular JPF position at issue, as outlined in the foregoing sections
- Following are activities common to the development of a lobbying strategy and execution of a lobbying campaign (the list is not exclusive):
 - Setting timeframes and benchmarks to evaluate the lobbying campaign in progress
 - Crafting a concise and persuasive message in support of the JPF position
 - Forming and directing coalitions of supporters and allies of supporters around the particular JPF position at issue
 - Identifying and grooming key supporters within the enacting authority
 - Identifying those leaders in the enacting authority who must be convinced in order for success to be achieved
 - Meeting with enacting authority leaders
 - Identifying supporters and allies who can approach each enacting authority leader
 - Attending meetings and hearings organized by the enacting authority
 - Preparing pertinent position papers for policy makers, supporters, and the public
 - Preparing and giving testimony before the enacting authority
 - Organizing and preparing others to give testimony before the enacting authority
 - Preparing and providing information requested by the enacting authority or enacting authority leaders
 - Grooming print and electronic media personalities to present the JPF message
 - Preparing press releases, calling press conferences, and speaking at press conferences
 - Determining fall-back positions as necessary and appropriate
 - Preparing relevant amendments to have at the ready if needed or warranted
 - Identifying the JPF team or teams that will be authorized to make decisions on tactics and substance during the campaign, depending on the decision-making timeframe

JOINT POLICY FORUM WORKSHOP ON IMPROVING ANALYTICAL SKILLS AND PREPARING STRATEGIC POLICY ANALYSES

Fojnica, Hotel “Aquareumal”, 27 & 28 January 2011

Agenda

Thursday 2011	27 January
10:00 – 10:15	Welcome and Opening Remarks – Richard Gebelein, Chief of Party, JSDP II
10:15 – 10:45	Introductions of Workshop Presenter and Participants – Steve Swanson
10:45 – 11:45	Overview of Public Policy Analysis and Models
11:45 – 12:00	<i>Coffee Break</i>
12:00 – 12:45	Overview of Public Policy Analysis and Models (cont.)
12:45 – 13:15	Distribution and Description of Proposed Public Policy Analysis Protocol
13:15 – 14:15	<i>Lunch</i>
14:15 – 15:45	Detailed Review and Explanation of Proposed Protocol
15:45 – 16:00	<i>Coffee Break</i>
16:00 – 16:45	Discussion, Modification, and Preliminary Adoption of Public Policy Analysis Protocol

Second day

Agenda

Friday 2011	28 January
9:00 – 9:30	Discussion, Acceptance of Additional Modifications, and Final Approval of Protocol
9:30 – 10:30	Practice Application of Protocol to Justice Sector Reform Strategy (JSRS) Action Plan (AP) Topic: Amending Legislation Pertaining to Reduction of Backlog of Enforcement Procedure Cases
10:30 – 10:45	<i>Coffee Break</i>
10:45 – 12:00	Practice Application (cont.)
12:00 – 13:00	<i>Lunch</i>
13:00 – 13:15	Discussion of Topics for Follow-up Workshop
13:15 – 13:30	Participant Evaluations and Closing Remarks – Richard Gebelein

List of participants:

BH MOJ:

- 1) Srđan Arnaut, member of the Forum, Deputy Minister of Justice
- 2) Niko Grubešić, member of the Forum, Assistant Minister of Justice, Head of the Sector for Strategic Planning, Aid Coordination and European Integration of the BH MOJ
- 3) Toni Šantić, supporting staff, senior advisor at the Sector for Strategic Planning, Aid Coordination and European Integration of the BH MOJ

HJPC:

- 4) Muhamed Tulumović, member of the Forum, Director of the HJPC Secretariat
- 5) Katarina Peroš, supporting staff, Head of the HJPC Strategic Planning unit
- 6) Delila Klovo, supporting staff, HJPC Strategic Planning unit

Brčko District Judicial Commission:

- 7) Slobodan Zobenica, secretary of the Brčko District Judicial Commission, observer

USAID JSDP II:

- 8) Steve Swanson, expert
- 9) Muhamed Sušić, Leader of Component 2
- 10) Nedim Daul, Component 2 Program Coordinator
- 11) Emir Budalica, interpreter
- 12) Adisa Okerić Zaid, interpreter
- 13) Richard Gebelein, Chief of Party

USAID:

- 14) Jasna Kilalić, Deputy Director of USAID Democracy Office