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# ALBANIA RULE OF LAW ASSESSMENT

FINAL REPORT

DECEMBER 2014

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**Submitted to:**

USAID/Albania

**Prepared by:**

Charles Costello, J.D., Team Leader  
Joseph Traficanti, J.D., Rule of Law Advisor  
Mirela Bogdani, Local Expert

**Contractor:**

Democracy International, Inc.  
7600 Wisconsin Avenue, Suite 1010  
Bethesda, MD 20814  
Tel: 301-961-1660  
Email: [info@democracyinternational.com](mailto:info@democracyinternational.com)  
[www.democracyinternational.com](http://www.democracyinternational.com)



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# EXECUTIVE SUMMARY

## BACKGROUND AND RULE OF LAW CHALLENGES

USAID/Albania commissioned a Rule of Law (ROL) Assessment to be done in the fall of 2014. A team of experts from Democracy International, Inc. (DI) carried out fieldwork in late October-early November and submitted this final report in December 2014. The team did the assessment in accordance with USAID policy guidance contained in the “Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework.” The assessment was designed to assess the status of rule of law in Albania, determine the effect of USAID programming, and provide recommendations for future ROL programming.

Albania, a country of three million people in the Western Balkans, has made steady, even if uneven, progress in constructing a democratic society and government since emerging from communist dictatorship in the last decade of the 20th century. Open and free elections and peaceful alternations in power now mark it as a young parliamentary democracy. Albania has made clear its Euro-Atlantic integration aspirations and became a member of NATO in 2009 and achieved candidate status for accession to the European Union (EU) in July of this year. Steady economic growth rates have raised living standards significantly using market-oriented economic policies.

Serious deficiencies, however, remain in this new democratic framework. The rule of law is not yet strongly embedded, and high levels of corruption in government have eroded citizen confidence in public institutions and the legitimacy of any sitting government, regardless of party. In particular, the justice sector – courts, judges, prosecutors and police, the legal profession, and the administration of justice – have not gained the respect of the public based on either efficiency or integrity.

USAID has supported the justice sector, including the judiciary, law school faculties, legal training institutes, bar associations, court administration, and civil society organizations, for more than 15 years. Many improvements can be cited over this period of time, but surveys demonstrate the judiciary is still seen by the public as inefficient, plagued by corruption, and generally lacking both independence and accountability. The ROL assessment sought to identify issues and problems, actors and institutions that might lead reform processes, and recommend new ROL programming options.

Among the essential elements of rule of law, the report cites “checks and balances,” “equal application of the law,” and “effective application of the law” as the most problematic areas. The cross-cutting issue of “efficiency and integrity” is extremely important in any analysis of how to strengthen the essential elements of rule of law in Albania and might be considered as the areas of greatest weaknesses. Achieving true judicial independence and accountability, two sides of the same coin, form the basis of the team’s recommendations for any new programming.

The judiciary is by no means fully independent in the sense of “judicial self-governance” of the judicial branch of government. The executive branch, through the Ministry of Justice (MOJ), exercises considerable authority over the judiciary by controlling many of the administrative functions of the courts. The High Council of Justice (HCJ), which must be considered as the principal appointment, oversight, and disciplinary body for the judiciary, is headed by the President of the Republic and has members selected by Parliament as well as the Minister of Justice. The HCJ is regularly embroiled in inter-branch conflict (executive, legislative, and judicial), characterized by partisan infighting between the leading political parties to assure a judiciary friendly to their own agendas rather than a strengthening of the institution to play its intended role in rule of law in Albania.

The National Judicial Conference (NJC), headed by the President of the Supreme Court and including all judges in the country, does not play the central role that might be expected of it in advocating strongly for

judicial independence, self-governance, and in providing leadership and a strong voice for the judicial branch of government.

The Government of Albania (GOA) – including Parliament in this context where the governing party alliance has a solid majority – is under heavy pressure from the European Union as part of the accession process to carry out a thoroughgoing reform process in the justice sector. The criteria to be used are stated in rather general terms but clearly point to a much-reduced role of the executive in the affairs of the judiciary, structural reforms of the HCJ to try to depoliticize that body, and vigorous attempts to root out corruption in the judiciary and improve court performance.

## **ANALYSIS AND PROGRAMMING OPTION RECOMMENDATIONS**

The basic findings and conclusions of the assessment, which drive the recommendations for programming options, can be stated quite concisely:

- The justice sector, particularly judges and the courts, continues to lack public legitimacy and trust, due to perceived political interference and corruption, as well as court inefficiencies and delays.
- Though this mistrust is generalized and strongly felt, the judiciary feels it is unfairly stereotyped as corrupt; but the judiciary itself is failing at accountable self-governance, the necessary corollary to judicial independence.
- Within the court system, the judiciary must take active, open leadership and responsibility for the judicial reform process rather than resisting change or considering itself an injured party.
- The EU, with powerful leverage, is pressing hard for justice sector reforms, and the GOA will have to take responsive action demonstrating some political will.
- No reform and modernization program led by the government can succeed sustainably without major civil society participation and support; however, neither the public in general nor organized civil society appears well positioned to advocate effectively at the present time.
- Any new USAID rule of law programming should directly address the judicial governance reforms needed to inspire public confidence and the comprehensive judicial and court management modernization standards needed to visibly improve court performance overall, not in single, isolated areas of court operations.
- Any new USAID rule of law programming should include a major networked civic action component integrated directly into programming with the judiciary and other public institutions, not as a separate small grants program.
- Any new program should include both sizable supply (court performance) and demand (organized civil society reform coalition) components. Any other kind of project investment does not offer high enough return (impact on the judicial system and overall court operations) to validate a new project for USAID at this late stage of its ROL programming.

## **THE PREFERRED APPROACH**

The preferred approach is a program that helps to strengthen judicial leadership in the interest of protecting (or gaining) independence for the judiciary and demonstrating much greater accountability through better self-governance. The programming target is the body of the judiciary, especially its leadership, which must lead the institutional reform process, both internally and with the public. It is a process of organizational cultural change with needed buy-in by the judges. Any project should be built around specific measures (performance standards), preferably via an agreed upon strategy and action plan.

Given the centrality of the judiciary itself in such an approach, the institutions and actors most appropriate would be those where the judges play a leading role, such as the National Judicial Conference, which represents all judges, the High Council of Justice, which has significant authority with respect to the judiciary already (though not headed by a judge), and interest-based associational groups such as the Union of Judges, which is independent. All of them have their own limitations currently. The NJC would have to develop a

new self-identity and commit to a major increase in its activities and objectives. The HCJ needs reforms to depoliticize it, and in any event is likely to continue to have membership from outside the judiciary. The Union has considerable potential to participate in reform efforts but would also have to accept self-criticism and judicial accountability as part of its basic institutional identity and objectives.

At the current time the MOJ still exercises significant administrative authorities and functions with respect to the court system, but EU criteria clearly call for shrinking executive branch involvement in the judiciary's affairs. USAID should try to provide impetus to this process and offer new paths to follow that gradually promote leadership by the judicial-led entities. The independent Judicial Budget Office could play a leading role in court administration in addition to finance if its competencies are increased as the MOJ's are decreased.

Best practices and USAID policy guidance show clearly that civil society organizations need to participate actively in a judicial reform process if it is to gain public legitimacy and sustainability. CSOs are active in Albania but have not had demonstrated success in building strong coalitions.

Such a program (the "preferred approach") in Albania is not without vulnerabilities and risks. Sufficient political will for thorough reforms cannot be assumed. The reforms will affect vested interests and change the dynamics of power relationships among the branches as well as the interests in control by politicians and political parties. It should be remembered, however, that many changes will take place in the justice sector in the next five years as part of the accession process, creating opportunities for pushing through reforms and generating civic activism that are not considered feasible now. Political will is a dynamic factor, not static.

The team's recommendations represent a "high risk-high gain" approach. Other options shown below are considered "low risk-low gain." The next five years offer a window of opportunity due to the EU accession process that should not be passed up. For USAID/Albania's trajectory, this is likely the last chance to have as great an impact on rule of law in Albania. Programming may well need to be quite flexible in this environment, but the objectives of increasing public trust and setting performance improvement standards in the courts should be boldly stated and pursued. Strengthening of leadership in the judiciary is essential to a country-owned process that is not co-opted by traditional political party interests.

## **ALTERNATE APPROACHES**

A program could be based on legal and civic education for building human and social capital for the long-term with the key actors in the legal system. The objective would be to upgrade the capacities and skills of the legal profession and other related non-legal stakeholders, leaving the institutional and structural reforms in the judiciary to the GOA and other donors. The targets would be the School of Advocates, the Chamber of Advocates, Tirana University Law Faculty and other law schools, the School of Magistrates (through outside course providers), the CLE programs, the Union of Judges, law journals, unification of legal doctrine, clinical law programs, trial advocacy programs, legal research and writing, publishing of judicial case opinions, and links to EU member states' legal institutions.

A civil society element focused on understanding legal rights and responsibilities and the proper workings of a modern legal system would also be included. CSOs, journalists, teachers' groups, labor unions, business organizations, and other stakeholders would have access to civic/legal education activities. A major public awareness campaign about the law and a "culture of lawfulness" could be included.

Another alternative would be to undertake a program that focuses on certain ROL activities that are seen as directly supportive of the Mission's economic growth portfolio. This would include activities in such areas as enforcement of judgments, the administrative courts, alternative dispute resolution, and a small claims court. Commercial law-focused activities with the School of Advocates, the School of Magistrates, the Chamber of Advocates, and law faculties and curriculum would strengthen the legal system in the economic sphere.

A third alternative would focus on access to justice, protection of civil rights, and overall fairness in the justice system. This would include strengthening of the private and public legal aid systems, which do not provide adequate legal representation in criminal cases. Access to the courts and enforcement of judgments, especially on behalf of women, would promote gender equality in the justice system. Women-led CSOs defending and advocating for women's rights are among the most active in the legal sphere. A gender-equality focus to support for civil society activism would be an important element of this programming approach. Such CSOs might even form the core of a broader coalition around women's rights and equal treatment under the law in the broader justice sector reform process.

In the end, considering all these options, the team recommends that USAID commit to the most difficult, challenging programming option and accept the risks of failure associated with it. The objectives of achieving judicial self-governance to ensure the independence of the judiciary and promoting stronger accountability through self-discipline and improved performance standards for the courts are seen as the only approach capable of impacting seriously on public confidence and trust in the judicial system. Alternative piecemeal approaches will not change public attitudes in the available timeframe.

# INTRODUCTION

## ASSESSMENT OVERVIEW AND PURPOSE

At the request of USAID/Albania, Democracy International, Inc. conducted a Rule of Law assessment of Albania. According to the Statement of Work (SOW), found below in Annex A, the purpose of the assessment was assess the status of the rule of law in Albania, determine the effect of USAID ROL programming, and provide recommendations for future ROL programming activity. DI relied on a rapid appraisal methodology, utilizing several assessment methods to quickly, yet systematically, collect data. This approach included a document review, key informant interviews, focus groups, and observation during site visits.

The assessment team consisted of Charles Costello, J.D., as Team Leader; Joseph Traficanti, J.D., as Rule of Law Advisor; and Mirela Bogdani as Local Expert. The team interviewed stakeholders with direct knowledge of and some level of involvement in the ROL sector, conducted focus groups with a variety of actors across the country, and visited court houses in and outside of Tirana. Before arriving in Albania, the assessment team conducted a detailed desk review of relevant documents. This initial review helped the team to better understand the social and political context and related challenges and opportunities for the Albanian ROL sector, as well as USAID's goals and existing ROL programs. Through the desk review, the team developed and refined its assessment methodology, work plan, and interview guide based on a more thorough understanding of the context surrounding ROL. (For more information on the assessment methodology and activities, please see Annex F.)

Following an initial briefing and finalization of assessment planning with the Mission, the team conducted key informant interviews in Tirana, Kruja, Shkodra, Berat, and Korca. On-site key informant interviews provide an opportunity to make direct observations as well as to collect in-depth information on specific issues based on individuals' perspectives and experience. The interviews yielded insights not readily apparent or fully captured by formal programmatic reporting. (For a full list of persons interviewed, please see Annex B.)

The team conducted interviews on the basis of an interview guide laid out in the Assessment Methodology Plan, although the interview topics proved dynamic and were adapted to the situation as necessary. The guide served to structure discussions with key informants and provided for conversational, yet focused, communication. The specific mix of questions used in a given interview was based on the background and expertise of interviewees and demographic considerations, as appropriate.

## COUNTRY CONTEXT

Albania is a small country, approximately the size of the state of Maryland, with a population of three million,<sup>1</sup> located in the Western Balkans region of southeastern Europe. The country achieved independence from the Ottoman Empire in 1912 after more than 450 years under Ottoman Turkish control, but its independence was not internationally recognized within current borders until after World War I. First a monarchy for 10 years, then briefly a republic, then a kingdom again for 11 years under Italian influence, Albania was invaded and occupied by fascist-controlled Italy in 1939. Nazi Germany assumed control in 1943, and the Communist-led partisan resistance movement established a socialist people's republic in 1944. The Communist regime was highly repressive and isolated the country from the international community. Following open popular dissent and opposition as well as a crumbling economy, the regime began to liberalize

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<sup>1</sup> World Factbook 2014 at [www.cia.gov](http://www.cia.gov).

in the late 1980s, but ultimately collapsed. The Socialist People's Republic was dissolved in 1991 and succeeded by today's Republic of Albania, a multi-party parliamentary democracy with a presidency.

This brief recitation of well-known modern Albanian history provides contextual background for the reader but is meant especially to highlight that independent statehood for the Albanian people in today's boundaries is a little more than a century old. During the 20th century, Italian and German fascist governments controlled and occupied Albania for more than 20 years, and a harsh Communist government and totalitarian system prevailed for nearly 50 years starting in 1944. A basic semi-democratic political system and institutions dates only from 1991 once the Communist regime had collapsed internally and the first multiparty elections were held. In Albania, the institutions and practice of democracy are very recent and the roots of democratic culture are very shallow.

The lack of significant experience with democracy and a strong rule of law meant that Albania began its recent transition to democratic practices badly handicapped by its history of autocratic misrule and oppression. Building a strong democratic culture and institutions of government is a long and arduous task, and Albania is still early on this path. In assessing progress toward rule of law, Albania's history ("baseline") must be recognized and taken into account, as the legacy of the past still importantly affects the present. Though Albania is poor and underdeveloped by European standards, in the global context it is considered to be in the "high" human development category, with all component indices over the past 10 years showing continuous progress and an upward trend.<sup>2</sup>

The first open, generally acceptable multi-party elections were held in 1992 and won by the Democratic Party (DP). By then, the former ruling party had reconstructed itself democratically as the Socialist Party (SP). The two leading political parties – SP and DP – have ferociously contested for power ever since in a political environment characterized by extreme polarization and conflict. Subsequent elections were considered deficient by international standards, but the results were respected and power was transferred peacefully (DP won again in 1996; SP won in 1997 and 2001; DP won in 2005 and 2009; SP won in 2013), importantly cementing the principle of alternation in power. The electoral system itself was changed several times, and the conduct of elections improved gradually, with the 2013 election won by the SP-led alliance considered fully acceptable by international standards for the first time.

Albania's democratic stability was damaged badly in 1997 by widespread civil disorder following the collapse of the financial system due to a massive nationwide Ponzi scheme. Italian military police (*Carabinieri*) came to Albania to help restore order. The government changed hands that same year. Slowly but steadily, Albania has since made progress in strengthening democratic institutions and gaining political stability. Albania reached a major milestone in July of this year when it was granted candidate status for membership in the European Union. Nonetheless, weak governance and endemic corruption make it likely that the accession process will be lengthy. Weaknesses in the justice sector in particular are cited in the EU 2014 annual report and other reports<sup>3</sup> on Albania as a serious governance deficiency.

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<sup>2</sup> UNDP, 2014 Human Development Report 2014.

<sup>3</sup> EU Albania 2014 Progress Report, July 2014; Report on Progress in the Fight against Corruption and Organized Crime and in Judicial Reform, June 2014; EU Delegation to Albania Portal, October 2014.

Current developments in the justice sector shape the country context in important ways. The government of Albania is undertaking a new justice sector strategy for 2014–2020 with support from the donor community. The GOA is also planning to present justice sector reform legislative proposals to parliament in the near future. A consultative process has already begun, with President Nishani chairing a public roundtable meeting with the leaders of political parliamentary blocs on October 6th and the Minister of Justice chairing a follow-up stakeholders meeting on October 30th (while the team was in-country) to discuss the need for reforms. However, the GOA has not made public any draft bills or specific details about the legislative package.

The SP government enjoys a solid majority in parliament, so it presumably could pass its legislative proposals without need of support from opposition parties; however, a broader consensus, always difficult to achieve in Albania, would provide a much more solid foundation for acceptance and sustainability of new laws. The opposition alleges that the so-called reforms in fact are an attempt by the current government to gain more control over the judiciary for its own ends.

The most important consideration of all in the current context is that the 'non-negotiable' terms of the EU accession process with respect to the justice sector both set the framework and priorities for judicial reform and demand action by the GOA to make forward progress, with annual public reporting of results. The overriding political interest of the government is to demonstrate to the voting public that it is making such progress toward European integration. This can create political will that otherwise might be lacking and give valuable support to proponents of reforms.

**Many shortcomings [in the justice sector] remain and there is an overall awareness that deep reform of the judiciary is urgently needed. Further substantial efforts to ensure the independence, efficiency and accountability of the judiciary will need to be made, including through constitutional amendments. Albania will need to vigorously pursue this process with the constructive cooperation of all stakeholders, including through continued cooperation with the Venice Commission. Determined action is needed to reinforce the disciplinary system for judges, prosecutors and lawyers, as well as to further improve the efficiency of courts. (Excerpted from the EU Albania 2014 Progress Report)**

## MISSION CONTEXT

The U.S. presence in Albania has been strong since the democratic transition, with close political and diplomatic ties, including a robust USAID assistance program since the 1990s. Among other things, Albania has supported coalition military efforts in Afghanistan and became a military ally of the United States by treaty upon becoming a member of NATO in 2009.

USAID has invested heavily in the justice sector to promote democratic development and a market-oriented economy, both new phenomena in Albania. USAID has maintained continuous rule of law programming for at least 15 years, and currently funds a five-year, \$9.3 million rule of law project ("JuST") due to end in September 2015.

With Albania having achieved EU candidate status in July of this year, U.S. assistance levels are expected to decline gradually in coming years. The Mission program has become concentrated in the two sectors of democracy and governance (DG) and economic growth (EG), managed jointly. The Mission officially became a Country Office in 2014, but no plans for closeout have been adopted.

Other U.S. government (USG) agencies also are active in the justice sector, primarily the Department of Justice's Office of Prosecutorial Development and Training (OPDAT), which has worked with prosecutors for a number of years, and the International Criminal Investigative Training Assistance Program (ICITAP), which provides training to the police. Both have resident advisors in Tirana.

USAID/Albania already has made a clear programmatic decision to continue support to the justice sector with a new rule of law project sometime in 2015. With its ongoing presence for many years in the justice sector and the decision to continue rule of law project work, this assessment report fully takes into account

the Mission's knowledge and interests. This means, for example, the assessment gives greater emphasis to analyzing programmatic options for an expected new rule of law project. The primary objective of the USAID program is Euro-Atlantic integration, with the two interrelated sub-objectives of democratic governance and economic growth.<sup>4</sup> Thus, consistency with and support for the EU accession process becomes the organizing principle for any USAID projects.

## **OTHER DONORS**

USAID remains an important donor, as much for the diplomatic influence of the U.S. as for the level of resources in the bilateral assistance program. The EU is the largest donor in dollar amounts, but several other multilateral and bilateral donors have significant active programs. The OSCE plays a large role with its staff presence. OSCE and USAID (JuST project) have partnered in a program to reduce court delays in two courts, with expectations that the measures can be adopted across the country.

A small, joint EU-EC project works with some six courts on a “court coaching” basis involving European judges and judicial experts who mentor Albanian judges using a chosen number of European Commission for the Efficiency of Justice (CEPEJ) standards as a frame of reference. The EU also funds the Euralis IV project, with plans for an additional \$4.2 million beginning in 2015 to support a broad range of interventions across the sector.

The EU and the Council of Europe also are providing substantial financial support for the renovation or construction of much needed infrastructure such as courthouses and courtrooms.

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<sup>4</sup> USAID/Albania Country Development Cooperation Strategy (CDCS), 2011-2015.

# CONCEPTUAL FRAMEWORK

## ESSENTIAL ELEMENTS OF THE RULE OF LAW

Following the guidance in the USAID Handbook<sup>5</sup>, the team has looked at the five essential elements of rule of law, plus a sixth crosscutting issue, and analyzed them in the Albanian context. As shown in the following paragraphs, they are: (1) Order and Security; (2) Legitimacy; (3) Checks and Balances (4) Fairness, with its four subsections; (5) Effective Application of the Law; and (6) Efficiency and Integrity.

### ORDER AND SECURITY

Albania does not face problems of basic order and security. The transition from the last communist government was gradual and accomplished without major bloodshed. The civil unrest in early 1997 led to significant damage to many public buildings, including courthouses, and the destruction of records and files in many of them. Intervention by Italian paramilitary law enforcement personnel was needed to help restore order. The opposition party (SP) won the special elections that followed in 1997 with a peaceful transfer of power.

The armed conflict during the Kosovo independence struggle led to a flood of refugees across the border into Albania in 1999, but it was well-handled by the government and the welcoming families that sheltered them. The Kosovars returned to their new country after the situation there stabilized. Western Macedonia has a restive ethnic Albanian majority, but enjoys certain autonomy, and the borders between Albania and Macedonia do not suffer from instability. Albania's borders with Greece and Montenegro also are stable and secure. Albania became a treaty member of NATO in 2009, which is a strong guarantee of its territorial integrity.

Ethnic Albanians form more than 95% of the population, with small, recognized minorities of Greeks and Macedonians as well as Egyptians and Roma. Religious tolerance is a strong national value enshrined in the constitution, and relations among the majority Muslims and the Orthodox Christians, Roman Catholics, and non-believers are respectful and cordial.

The public complains about rising crime and violence imperiling personal security, but UNODC statistics, for example, demonstrate that Albania has relatively low levels of homicide.<sup>6</sup> Organized transnational crime networks have an entrenched position that affords them political influence behind the scenes, but violent street crime is not normally part of their operating methods. Inter-family blood feuds still occur, primarily in isolated mountainous regions in the north. The main public complaint about crime has to do with corruption in government, especially the impunity citizens feel senior officials (including judges) enjoy.

Feelings of national identity and common citizenship are strong, so Albania does not suffer from centrifugal forces. To the contrary, the strong Albanian cultural identity that unites Albanians, Kosovars, and the majority ethnic Albanian population in Western Macedonia has led some people in all three countries still to favor the notion of a "Greater Albania" bringing together all the 'Albanians' in a single nation state. However, the GOA and the political class in general disavow any such scheme, and the issue of national borders is not problematic in Albania.

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<sup>5</sup> USAID, *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework*, 2010.

<sup>6</sup> UNODC, *Global Study on Homicide 2013*. Albania was in the "low" category (<3 per 100,000 population), but since 2012 the rate has increased to <4.5-5.0), a negative trend.

## LEGITIMACY

The Albanian government and public institutions enjoy basic legitimacy but not respect. Citizen concerns about high levels of corruption throughout government undermine public trust and confidence in their political system. This view came through strongly in almost all interviews. Support for a democratic political system responsible to the voters is strong, although the public does not think that ideal is well realized in practice.

The Constitution of 1998, as amended, is democratically sound and provides the foundation for limited government and protection of citizens' rights. Governments are formed on the basis of periodic open and free elections and govern on the basis of the confidence of parliament. Laws passed by parliament are recognized as the basis for government authority. The prime minister is the head of government and the president is elected by parliament and serves as the head of state with limited but still significant powers. The courts are in principle independent but in fact suffer from undue interference by the other branches.

The culture of lawfulness is weak generally, and respect for the law is not well internalized. The lawless nature of the communist period and the underdevelopment of the new democratic institutions and legal system present a continuing challenge for strengthening the rule of law. Frequent government noncompliance with the law and the perceived impunity of high officials lead citizens to believe that acting outside the law is not truly antisocial behavior and is sometimes even considered necessary to deal with one's problems. As a result, social capital is much weaker than it needs to be in a modern democracy.

The issue of state capture by very strong political parties and the economic interests they are allied with definitely weakens the legitimacy of the state. The "public interest" and "public good" are not seen as the basis of government actions, either in the executive or the parliament, and laws passed are often not accepted as true expressions of the collective will. Courts are not seen as true guarantors of the law in practice. Feelings of citizen disempowerment alienate citizens from the state and undermine state legitimacy.

Public support for the democratic political system and aspirations for European integration and EU membership, however, are shared by the leading political parties and provide a strong basic foundation for legitimacy of the state. Freely contested elections and alternations in power have solidified expectations that no sitting government can maintain itself in power without the free vote of the people.

## CHECKS AND BALANCES

The lack of effective checks and balances among the branches of government and the lack of accepted definitions, customs, and patterns of behavior with respect to constitutional and legislative authorities seriously undermine democracy and the rule of law in Albania. Although the constitutional and statutory framework itself is adequate for good governance, frequent efforts to "change the rules of the game" represent a significant problem.

In particular, this kind of interference affects the judiciary and the courts, making accountable, responsible self-governance of the judicial branch very difficult. According to numerous informed interviewees involved in the justice sector, the lack of adequate internal checks and balances in the judiciary, exemplified by irresponsible self-dealing by the High Council of Justice and legislative meddling with its membership representatives, exacerbates the problem and intensifies efforts by the executive and parliament to try to control the judiciary. Much of the effort is self-serving, but it is also a response by the elected branches to public anger and dissatisfaction with the judiciary and court performance. The Constitutional Court does exercise judicial review of statutes and recently declared unconstitutional, for example, the Law on Judicial Administration.

A better functioning system of checks and balances, both in its constitutional sense and through accepted customs and practices, is essential if Albania is to achieve a rule of law meeting European standards.

Outside the three branches of government, civil society can play a role in keeping the powers in balance by active citizenship and advocacy to demonstrate that it will oppose any overreaching. This is especially true in the case of the unelected judiciary, which to a great extent depends on public support of its independence

based on trust in order to keep the elected branches from interfering with its proper role. As stated earlier, the judiciary lacks this support but must do more itself to earn it.

## **FAIRNESS**

The legal framework in Albania provides for acceptable fairness overall, but in practice problems with equal application of the law and access to justice make the “fairness” of justice in Albania inadequate. In this report, the fairness element in particular is so closely related to the cross-cutting issues of efficiency and integrity that the distinction between “essential elements” and “cross-cutting issue” (not an essential element) becomes meaningless analytically and programmatically.

### **Equal application of the law**

The team found that interviewees outside the government felt strongly that the law is not applied equally. Impunity of senior officials was their strongest complaint. They also stated there is one law for people with money, another law for ordinary people, i.e. ‘justice’ can be bought if you have money, and if you don’t have money you cannot prevail against the state in criminal cases or in civil cases against well-to-do, well-connected individuals or companies. In other words, “money talks,” and this view is the basis for the public’s lack of confidence in the law and the court system. Political or economic power is its basis; corruption is only its symptom.

**The reasons that laws are applied unequally are complex. Obvious flaws in the legal system (such as lack of judicial independence, severe administrative failings, or corruption) are only symptoms. The underlying malady is the power of entrenched political and economic elites who benefit from a compliant legal system [or ethnic or regional domination]. (From ROL Guide, p. 11)**

### **Procedural fairness**

Procedural code law and practice are generally sound and offer protection against judgments based on non-compliance with procedure. Citizens can sue the government in court (Administrative Court) and secure remedies for improper government actions or inaction. Attention to due process in the courts is generally followed, with rulings based on the law. No informants complained about the codes of procedure on fairness grounds, although in the opinion of legal professionals some changes are desirable.

Elements of procedural unfairness, which in practice are significant, are based mainly on the lengthy delays and high number of procedural steps in getting a case to final judgment – the classic problem of “justice delayed, justice denied.”

### **Protection of human rights and civil liberties**

Basic human rights and civil liberties are generally well respected in the constitution, laws, and actions by the government. Freedom of speech, association, and religion, and personal choice are protected, a view generally seconded by almost all subjects interviewed. Private media, print, broadcast and digital, operates freely although linked economic and political interests mean that most media is politically biased and lacking in objectivity. Serious investigative journalism exposing corruption is not a feature of mainstream media, but the digital press is harder hitting and finding more outlets.

### **Access to justice**

Citizens do have access to the courts and administrative bodies to seek remedies and protect their rights. The performance quality of these institutions is substandard, which leads directly to the need for efficiency improvements. No laws or overt discrimination prevent citizen access to justice, but women and poor people often receive less favorable (unequal) treatment within the system. The costs and time lengths involved with using the court system are a disincentive to seeking access to justice. Various issues affecting different

groups of users and potential users, when combined together, offer the possibility to focus directly on access to justice elements programmatically.

## APPLICATION

Consistent enforcement and application of the laws is necessary to achieve equality under the law. The executive branch, either through the police, prosecutors, regulatory and administrative agencies, or public bailiffs (excepting the larger role of the private bailiff system) plays the lead role in application of the law. In the context of this assessment, it is not expected that USAID will engage in any significant role with the police or prosecutors, as other USG actors attend to those areas. Many interviewees criticized the difficulties in getting judgments enforced, a problem that women especially mentioned. The enforcement of judgments, by both private and public sector bailiffs, has deficiencies that should be addressed in almost any programming option in order to make the effective application of the law a reality within the court system for citizens. Weaknesses in the enforcement of judgments system also raise questions of proper access to justice for disadvantaged groups, especially women.

## CROSS-CUTTING: EFFICIENCY AND INTEGRITY

Efficiency and integrity are not considered essential elements per se, but the seriousness of the deficiencies of the judiciary on these two issues make them rise to a level of importance equal to any of the elements considered essential. Meeting an acceptable standard of rule of law in Albania as to legitimacy, checks and balances, fairness, and effective application of the law will not be possible without major improvements in efficiency of the court system and the integrity of judges and other actors in the court system. In programmatic terms, efficiency and integrity as expressed in the idea of a self-governed, independent and accountable judiciary are perhaps the most important issues to deal with in order to strengthen the rule of law elements considered essential.

## POLITICAL ECONOMY

The current situation in the justice sector, though considered unsatisfactory and in need of reform by most Albanian and outside observers, nonetheless serves well the vested interests of certain elite groups. In particular, continuations of widespread corrupt practices of illicit enrichment that involve both public and private actors depend on a weak system of law enforcement investigation, prosecution, criminal trials, and judicial sentencing.

Conflicts of interest by public officials, favoritism in contract awards, even outright bribery and kickbacks, can flourish in the current status quo, where the risks of prosecution are low and the financial rewards of corruption are high. Impunity prevails, which justifiably angers the public. The majority of interviewees commented on the corruption issue, whether asked about it or not. Violations of the law in private dealings are common and also face low risk of punishment, making many key economic actors and interests opposed to a stronger rule of law.

What institutions, leaders, and groups can be pro-reform drivers of change and what are their interests in doing so? First, Prime Minister Edi Rama's government is staking its public support on making progress in the EU accession process. Even if its intentions may be in question, the GOA needs to show that it is taking steps to meet the stated criteria for the justice sector. Second, business groups interested in the benefits of EU membership and an improved business climate for domestic and foreign investment might be enlisted in support of justice sector reforms they otherwise might not consider a high priority.

Albania has made further progress towards fulfilling the political criteria. A High Level Dialogue on the Key Priorities was launched and Joint Working Groups to structure work on the required reforms were established. National Council for European Integration is yet to be established to foster inclusiveness and unite all stakeholders around the reform process. A constructive and sustainable political dialogue between government and opposition is vital for the sustainability of reforms. (From the EU Albania 2014 Progress Report)

Thirdly, organized civil society, very supportive of European integration and interested in strengthening democracy and the rule of law, especially in combating the endemic corruption in public life, can be a powerful force. That is not to say that civil society today is united, well organized, and an influential advocate for policy reforms, but civil society leadership could take advantage of the government's need for allies and the EU's interest in an inclusive process of accession reforms.

However, the assessment team is of the strong opinion, developed throughout this report, that the most important self-interested actor pushing for judicial reform has to be the judiciary itself. This concept was alien to most persons interviewed, as the judiciary in Albania has never asserted itself that way. The judiciary, a "hermetic institution" as one interviewee called it, has to assume open, public leadership and responsibility for judicial reforms through effective, accountable self-governance. The judiciary has to earn its independence in large part by demonstrating its public accountability and improved performance. Admittedly, this will require a change in mindset in the judiciary that can only happen with strong leadership from the top. Also, civil society needs to provide necessary support for such reforms not only as an ally and advocate but also as a vocal critic pressing the judiciary for reform. The EU will welcome civic activism and participation as stakeholders, as demonstrated in its public statements and documents.

## **PROGRAM OPTIONS BEYOND THE JUSTICE SECTOR**

USAID programming in Albania is now restricted to two sectors – democracy and governance and economic growth. Thus, program options beyond the justice sector are few to none, with the exception of integrated programming in the DG and EG sectors. In fact, the assessment team recommends building in economic growth elements into new rule of law programming.

Civil society programming is in the DG sector but not necessarily part of justice sector programming. Where it is integrated into a project that is primarily rule of law, it should be considered as part of the justice sector effort. Working with political parties and the parliament might be conducive to reducing the polarization and lack of cooperation between the parties, but the team considers such programming at this stage in Mission programming to be too tangential to the core interests and objectives of rule of law programming.

# JUSTICE SECTOR INSTITUTIONS AND ACTORS

## LEGAL FRAMEWORK

### CONSTITUTION

The Albanian constitution is the foundation for rule of law and the source of legal authority for legislation in Albania. It establishes the most important principles of government and lays out institutional competencies. It was initially approved in November 1998 by referendum and subsequently amended in 2007, 2008, and 2012. Thus far, the constitution has reflected a comprehensive approach to political representation and has been applied with reasonable ubiquity, as evidenced by the consolidated case law of the Constitutional Court of Albania.

Still, there are some evident deficiencies of the Albanian constitution that have influenced the weakening of independent institutions vis-a-vis the political majority. This weakening of independent institutions presents problems in a number of key areas, including relationships of the parliament with the General Prosecutor, the election of Ombudsman, the appointment of Constitutional Court and Supreme Court judges, lack of full guarantee of judiciary independence, the inability of the parliament to exercise an effective supervision over the executive/government, the formula and procedure for election of the president of Albania by the parliament, etc. These issues are crucial in establishing judiciary independence within the constitutional framework, judiciary reforms for accountability, professionalism, de-politicization, and overall rule of law. Accordingly, they must be addressed properly.

Recently, after the new government was established after parliamentary elections in 2013, many actors within government felt that it was important to have a public discussion about constitutional reform. Several roundtable discussions have been held to discuss general principles, concrete reforms, etc. This activity is financially supported in large part by the Soros Foundation of Albania and the Albanian Legal and Territorial Research Institute (ALTRI). The need for amending the constitution is also relevant considering the candidate status granted to Albania and full integration of the legislation to join the EU.

### STATUTORY LAW

Statutory law in Albania is relatively solid and consists of codes and laws approved by the parliament, in most cases by a qualified majority. Statutory law faces continuous amendments and updates in an effort become harmonized with EU legislation *acquis communautaire*. There has also been an increase in the number of new laws approved by the parliament, as well as an increase in rights protected, institutions established, and procedures provided.

As part of the justice reform that is expected to be undertaken by Albanian actors and institutions, there will be a wide debate process for amending/reforming the organic laws and civil and criminal procedural codes. This debate will center on which reforms are required to achieve an independent, professional, and de-politicized judiciary. This reform was initiated by the president of Albania in October of 2014 and will be sustained by the Ministry of Justice in cooperation with Venice Commissions as a crucial partner in the process. Reform efforts are also being strongly encouraged by all foreign donor communities operating in Albania and all justice actors, political and nonpolitical.

## **JUDICIARY**

The Albanian judiciary is not an independent branch of government, other than in name, and does not exercise strong checks and balances over the parliament and the executive branch. This was a conclusion easy to draw from document review and the interview process. It is axiomatic to say that the Albanian judiciary requires significant reforms at every level to be recognized as a viable democratic society. Heretofore, Albania has made significant strides in modernizing court operations across several important areas of operations, including the introduction of electronic recording of court hearings, case management and processing, upgrading of court facilities, and specialization of court types such as the Serious Crimes Court on the first instance and appellate levels. Laudable as these steps are, they have not risen to the level of reform required for the judiciary to be recognized as truly an independent branch of government. Modernization has occurred without substantive reform. Among the shortfalls is the absence of judicial branch leadership to lead the judiciary into the 21<sup>st</sup> century, ideologically, philosophically, and operationally.

### **JUDICIAL INDEPENDENCE AND JUDICIAL LEADERSHIP**

Based on the responses to interview questioning, the judiciary is not ready, institutionally, to be independent on the leadership level. It has a weak institutional and administrative capacity, lack of management culture, and a weak or unwilling cadre of leaders to be agents of change. There is no philosophical consensus on what independence means within the judiciary. There is also minimal communication and cooperation between actors at formal and informal levels of the judicial hierarchy. This viewpoint was reflected in some interviews but represents mainly the judgment of the team's experts based on documentary research and interview observations. This also presumably gives the other branches pause in releasing more of their powers and prerogatives to the judicial branch.

There is no one person or entity clearly identified or recognized as the leader or spokesperson for the judiciary – to lead, defend, and advocate for it. The court administrative and management structure is spread among a number of bodies lacking an operational chain of command, thus yielding to a web-of-command.

No clear identifiable focal point of judicial leadership exists within the judicial branch nationally. The chief judge of the Supreme Court is also the president of the National Judicial Conference. This body of judges typically meets once a year and, aside from appointing judges to other bodies, accomplishes little. It has within its structure a number of committees. They are as inactive as the NJC as a whole. The NJC, nevertheless, has the “institutional” potential to evolve given its judicial structure with the chief judge as its president.

### **ADMINISTRATIVE STRUCTURE FOR OVERSIGHT AND REFORM**

The courts suffer from a lack of a cohesive central administration on the court administrative level. Many respondents viewed this as an issue with the Ministry of Justice (MOJ) – in large part the current structure – rather than as an issue the judicial branch should take responsibility for. Despite a flurry of activities intended to modernize and improve court administration, human resource management and basic court operations, effectiveness, and efficiency vary from court to court. There is no unified court system with consistent management objectives. Many courts and court chairmen do quite well. Generally, this is due to the skills and/or charisma of the president judge and/or chancellor. The individual district and appellate courts resemble judicial fiefdoms with little structure to provide standardized and uniform services and support managed by a central office.

The cadre of human resources with knowledge, experience, skills, and motivation are wanting. Oversight and direction currently flows from the executive branch. The governance systems and management capacities required to operate a modern court system, with its many demands and heavy caseloads, are still underdeveloped nationwide, with few exceptions.

Confusion and dysfunction in court staff appointments and tenure stems from legislation centrally perceived by the executive and legislative branches. Laws addressing the appointment of judicial employees

have been challenged in the Constitutional Court. The confusion and uncertainty is exacerbated by lack of transparency in addressing the judicial reforms the government claims to support. In addition, a judicial strategy, previously approved by the government has reportedly been abandoned and is to be replaced with another. The Constitutional Court has invalidated a provision of law providing for executive branch selection of judicial branch non-judicial court employees. While the issue is still in flux, some court presidents are making the appointments anyway.

The appointment of the court chancellors continues to be the prerogative of the minister of justice. The chancellor is the second highest-ranking person in each court who, in essence, presides as a chief-of-staff of the non-judicial workforce.

Despite the fact that some of the chancellors are extremely committed and capable, the “system” does not advance branch independence.

There are a limited in number of judges and non-judicial personnel within the courts with strong leadership potential (e.g., the director of the Judicial Budget Office). Singularly, they provide limited leadership for judges, court administrators, and staff members. Collectively, they have the potential for cohesive, consistent, and unified leadership and management. Unfortunately, many with obvious leadership talents do not feel empowered to use them.

The appointment process and lack of central leadership is not the only issue that plagues the courts' workforce. Other inequities with public service employees include:

- The absence of civil service status enjoyed by other public servants under the Law for Public Servants;
- Employment contracts running year-to-year and thus no permanent status and tenure;
- Outmoded employee job descriptions;
- No universal competitive process for hiring employees;
- Absence of a career path with clear criteria for promotion;
- No formal process of employee evaluations;
- Ad hoc administration of disciplinary measures without clear criteria and universal discipline from court to court for the same offenses; and
- Lack of in-depth training at all levels.

This complex condition directly threatens the rights of litigants to timely and expeditious justice. A workforce that is not universally trained further erodes trust and confidence in the judicial institutions and the overall fairness of the process. Further training in all areas of non-judicial court administration and management is vital.

The state of confusion leaves the courts and the court presidents with little certainty in the human resources area particularly regarding hiring, discipline, and removal of employees serving the courts.

## **INDEPENDENCE AND EFFICIENCY OF JUDICIAL PROCESSES**

The court budget is woefully inadequate. It appears that the budget for the entire judicial sector is approximately 2.8 percent of the national budget. Information varies as to the portion allotted to the courts but estimates range around 0.04 percent. A budget, which does not allow for the needs of the judges and staff, is a threat to judicial independence and people's access to the courts.

The state of court information communication technology (ICT) is distressing. There are two case tracking systems that provide some important information but have limited results. Each system tracks cases and provides the courts with the ability to assign cases to judges randomly and to prepare court calendars. The

automation is used in a limited way, in some courts, to track courtroom use and distribute vacant courtrooms to judges as needed. Courts have public visual displays showing the names of the parties, judge, and courtroom. Limited information is provided to the Ministry of Justice although the ministry is displaying limited case information on its website. The most recent year displayed is 2011. It is doubtful that these limited systems, taken together, will be able to provide the in-depth reports required by the European Union due to Albania's accession status.

Neither of the two parallel systems is able to create detailed customized reports. They are also incapable of capturing all the information required to fulfill the courts' responsibility to keep up to 46 register books. These registers are therefore populated manually with much of the same information put into the automated system upon case filing. Staff time, already limited, is wasted.

## **FAIRNESS AND EFFICIENCY OF JUDICIAL ADMINISTRATION**

The relatively poor functioning of the judiciary and its central administration has contributed to ineffective court performance, lack of transparency, and lack of impartial application of the law. The result is a low level of public trust and confidence in the judiciary and the formal justice sector, which was manifested prominently in the interviews. The processes, especially at the district court level, give most litigants a negative first impression.

Achievements include a well-functioning Judicial Budget Office, increase in transparency especially through the introduction of electronic recording of court hearings, limited facilities' improvement, case processing initiatives, and backlog reduction. Notwithstanding these limited achievements, a number of challenges remain, which, if not addressed, endanger the progress made to date.

There are still a number of courts and courtrooms without electronic recording. A number of judges continue to hold hearings in their offices. However, in some, but not all instances, this is a matter of an insufficient number of courtrooms combined with the pressure to resolve cases expeditiously. On other occasions, it is a matter of poor planning on the part of courthouse administration and the lack of central administration to monitor the assignments of judges to courtrooms.

The enforcement of court judgments and orders are fundamental to the just and final phase of litigation. The EU does not consider the right to a speedy trial of a dispute fulfilled until the judgment is collected or court order satisfied. If a member state or signatory to the European Convention on Human Rights does not adequately provide the means to timely enforce a judgment or order, the aggrieved party may bring a lawsuit against the state in the European Court of Human Rights in Strasbourg. Aside from fundamental fairness, this brings enforcement to the forefront of modernization and streamlining procedures and practices.

Albania has parallel systems; one, the public bailiff system, is a function of the executive branch and the other is the private bailiff system. The private system consists of bailiffs that are licensed by the state but are essentially private entrepreneurs. They are selected by the Ministry of Justice and overseen by an audit unit within the MOJ.

The private system was created by statute and became operational during 2010. The body has a chamber, which oversees members' activities, training, and discipline. It was anticipated that the public system would phase out by 2012. However, that did not happen. As a result, the two systems run side-by-side.

Due to government intervention, it continues to operate, although with significantly less resources. It lacks appropriate automation – hardware and software, staff, supplies, and other material means. The public system maintains a central office in Tirana as well as satellite offices in each district. It appears that the public is looking to the public system as well as the private. The public system is filling an important place in the enforcement world – enforcement of family law matters, including child support and orders of protection.

## CONSTITUTIONAL COURTS

The Constitutional Court of Albania is tasked with the duty of guaranteeing and respecting the constitution – it is seen as the ‘guardian’ of the constitution from the ‘attacks’ of government oppression. Its responsibilities, powers, and activities are mandated by the Albanian constitution and also by the organic law, titled ‘On the functioning of the Constitutional Court’ of Albania.

Through its decisions, the Constitutional Court ensures in practical terms the rule of law by establishing a consolidated case law. It also adjudicates cases related to human rights and due process of law brought by Albanian citizens. In these cases it serves as a last domestic resort after adjudication by the Supreme Court - in all these types of adjudications and therefore decisions issued, it had inter alia extensively reflected the ECHR case law. In this respect, Constitutional Court activity is considered relatively professional by those familiar with the legal system that the team interviewed. It has a support staff that enhances the quality of decisions; trainings for law clerks are provided periodically due to very good institutional cooperation with similar institutions abroad. In the last several years there has been a considerable increase in the number of applications by individuals, which has led to a significant backlog. Also, there had been an increase in the number of requests by political parties, especially by the opposition, to address some major political reforms. These reforms include laws on civil servants/public administration status, administrative/territorial reform, judicial administration law, etc.

Constitutional Court independence is jeopardized by many current procedures, including its ability to adjudicate requests from political parties on the constitutionality of laws and reforms undertaken with the approval of the legislature. In addition, there are concerns about court composition and the appointment procedure for judges. Part of the justice reform initiative will include changing the laws and relevant constitutional provisions that regulate the appointment of judges, the professional criteria for their application and pre-selection, and their status.

## SUPREME COURT

The Supreme Court in Albania is the highest level of the judicial system, although it sits apart from the rest of the judiciary and the ambit of High Council of Justice, described in more detail below. It generally exercises reviewing jurisdiction over the decisions of lower courts and, occasionally, it has initial jurisdiction over disputes where high state officials are involved. The Court faces a huge number of annual appeals, including those carried forward from previous years. To reduce the backlog, the Court was reformed in 2013. The number of judges was increased from 17 to 19, and cases are now adjudicated by a panel of three judges, instead of five as previously required. The Supreme Court faces the same challenges as the ones noted above about the Constitutional Court regarding the judges’ appointment, since both follow the same constitutional procedure. Overall, the role of the Supreme Court is key for the judiciary in Albania. In some cases, they establish judicial precedents when they decide on the “full bench.” Also, the lack of independence in the Supreme Court tends to project down onto the lower courts and undermine the entire judiciary.

Their professionalism and integrity is constantly disputed due to strong partisan political influence in the appointment process, and even later on as sitting justices, as well as the poor legal qualifications of the lawyers appointed to these high-level positions. The president has the appointment power, and he may or may not (currently not) share the same political affiliations as the prime minister and the parliamentary majority. Changes for the Supreme Court are expected to be part of the justice sector reform proposals. This may bring in the Court as an integral part of judiciary even with regard to the appointment of the judges. One of the options is to include the Court under the authority of the HCJ and transform it into a merit-based, career path court freer of partisan political influences.

## HIGH COUNCIL OF JUSTICE

The High Council of Justice, a constitutional body,<sup>7</sup> plays a central role in governing the Albanian judiciary and in maintaining constitutional checks and balances. It is a “hybrid” in terms of political separation of powers doctrine, with membership from all three branches of government. The HCJ has 15 members; the president is a member and the chair of the HCJ. The Minister of Justice and the President of the High Court are also members. Three members are selected by parliament. Nine members are judges of all levels elected by the National Judicial Conference. Members are elected on a staggered basis and serve a five-year term with no immediate reelection.

The HCJ has significant powers. The Council selects all judges below the level of the Constitutional Court and the High Court and has authorities over promotions, transfers, disciplinary actions, and removals. Members serve on a part-time basis, and judge members continue to sit in their courts even while serving on the Council. They are free to approve promotions, transfers, and new appointments for themselves while on the Council, creating real conflicts of interest, especially when they assume positions on the High Court or Constitutional Court, as happened recently.

The HCJ, under the current institutional structures, should be the body that guards the independence, accountability, integrity, and quality of the judiciary. In order to play its intended role properly and to defend the judicial branch adequately from interference and encroachment, the HCJ needs to enjoy broad public respect and support and be seen as acting without partisan political motives. Unfortunately, that is not the case. The HCJ is as much a part of the problem of judicial governance as of the solution. The HCJ is universally seen as ‘politicized,’ simply another power center to be fought over for control between DP and SP or between any sitting government and its opposition in parliament and the president, who presides over the Council.

The SP government is openly critical of the HCJ and wants to make changes to its structure and operations, though a structural change would require a constitutional amendment. The disciplinary process in the judiciary is not transparent or seen as effective. Jurisdiction and authorities overlap between the MOJ and the HCJ, with each having judicial inspectorates of questionable effectiveness. The HCJ rules on disciplinary actions against judges, but only the Minister of Justice can make the formal determination to submit a judge’s name to the HCJ to initiate proceedings.

The public’s view of the complex procedures and wide discretion accorded to the MOJ and HCJ is that they serve to maintain political patronage in the judiciary and protect judicial corruption from accountability. The HCJ and the judiciary in a broader sense are not seen as combatting corruption aggressively; the judiciary is seen as ‘protecting its own’ rather than exercising responsible, accountable self-governance. Plans of the SP government for reforms to the HCJ, as of yet unannounced, are seen as self-serving and an attempt to exercise greater control over the judicial institutions in the party’s own interest. This opinion was commonly expressed in the majority of interviews. Reform of the HCJ is a critical but thorny issue.

## APPELATE COURTS

The creation of the appellate courts of the Republic of Albania are established by Article 135 (1) of the Constitution – “The judicial power is exercised by the High Court, as well as by the courts of appeal and courts of first instance, which are established by law,” as well as the Law on Judicial Powers. Courts of Appeal sit in six regions of the country and review appeals from decisions of courts of first instance. Cases are decided with three judge panels.

The courts of appeal function in regions defined by the President of the Republic, based on a proposal of the Minister of Justice after consulting the High Council of Justice. There are six such courts presiding in

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<sup>7</sup> See Article 147 of the Constitution of the Republic of Albania.

Tirana, Durres, Shkodra, Vlora, Korca, and Gjirokastra. Appellate courts can, and do on occasion, take testimony during the appellate process, if deemed required by the court panel.

Although there are modest efforts at harmonization of decisions and publication among appellate courts (e.g., in the Appellate Court of Tirana), the concept has not been widely addressed and institutionalized.

Court decisions on all levels are not considered of high quality. Members of the bar, academics, and other donors have described decisions, in general, as confusing and lacking in factual analysis as legal reasoning. This systemic weakness is exacerbated by the lack of the appointment of law clerks. This is particularly problematic in appellate courts, which can offer guidance to lower courts through their decisions.

The Appellate Administrative Court was established November 2012 and was formally organized in late 2013. The court's appellate jurisdiction is limited to appeals from the Administrative Court, (a court of first instance) also newly formed and with jurisdiction in cases where the State is a party. Presently, seven Judges sit in three-judge panels. The appeals are from the Administrative Courts situated in six regions throughout the country.

The volume of cases inherited from the district court when the Appellate Administrative court was established has overwhelmed it. The standard of resolving the cases within the 30 day prescribed time is impossible to meet, especially with the lack of law clerks allocated to the judges by law, but not appointed owing to political and legal issues.

The court is further hampered by a lack of automation and woefully inadequate court facilities (although a new building is in the offing).

The Serious Crimes Appellate Court presides in Tirana over appeals from verdicts of the first instance Serious Crimes Court, also sitting in Tirana. It enjoys an adequate facility and a strong president judge who seems to have the court running smoothly.

A judge of the courts of appeal is appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition after having worked for no less than seven years in the courts of first instance; having distinguished him or herself for their professional abilities and high ethical-moral qualities; having been evaluated "very good" for professional abilities the last two evaluations and not having a disciplinary proceeding against them.

The High Council of Justice selects these judges by a point system that incorporates seniority and previous work results.

## **DISTRICT COURTS**

There are 26 district courts serving the Albanian population. These courts are also known as "first instance courts" and have jurisdiction over civil and criminal cases according to the Codes of Civil Procedure and Criminal Procedure.

The territorial jurisdiction of each one is defined by a decree of the President of the Republic, based on a proposal from the Minister of Justice after soliciting the opinion of the High Council of Justice.

There are no jury trials under the Albanian system of justice. A panel of between one and three judges renders court verdicts depending on the type of procedure and the severity.

Systems-wide, the development of ICT infrastructure in the courts is minimal. There are two independent systems used for case management, which is more of a case tracking system. There are divergent views among the court policy makers as to which system should be prioritized. These systems are outdated and serve only a minimal purpose. They do not generate sufficient statistical reports needed by any modern court system.

The District Court of Tirana handles approximately 50 percent of the country's caseload with 76 judges. The courthouse space is inadequate, there is a lack of courtrooms, and the administrative operations are in

two separate buildings. On a positive note, like some other courts, the District Court of Tirana has an extensive website through which the court decisions are available. The Court uses the ARK IT system, which it prefers to the more widely used ICMIS system, and is resisting a move to ICMIS.

**Serious Crimes Court:** The Serious Crimes Court is a first instance court and began operations at the beginning of 2004. It was created to increase the effectiveness of the fight against organized and serious crimes and corruption. It is also perceived to improve the trial standards in criminal cases of this category. The court is in Tirana and appeals from this court are heard in the Appellate Serious Crime Court, also in Tirana.

A judge of the Serious Crimes Court is appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition after:

- Having worked for no less than five years in courts of first instance;
- Being distinguished for professional abilities and high ethical- moral qualities;
- Being evaluated “very good” for professional abilities for the past two evaluations; and
- Not having a disciplinary brought against them.

The criterion provides that an appointment to the court is considered an appointment within the judiciary and is meant to ensure that serious crime judges are experienced and selected from among those with the best professional performance.

The facilities are modern and well appointed. Concerns, however, exist. The court is tainted by the overall public perception of the court system’s fairness, openness of the proceedings. There is also a question of public access to the courthouse and courtrooms. The security force does not seem inclined to favor access to the proceedings by an ordinary citizen wishing to observe.

## **ADMINISTRATIVE COURTS**

This newly instituted first instance court enjoys exclusive jurisdiction over civil cases involving the state. The implementation and the procedures of this court for resolution of administrative cases are expected to influence the performance of administrative bodies. As a consequence, it is presumed to improve the climate for business activity by increasing the possibility of successful appeals of an administrative act or decision considered unlawful or unfair. The court is located in six locations throughout Albania coinciding with the locations of the courts of appeal: Tirana, Durres, Shkodra, Vlora, Korca, and Gjirokastra.

The Administrative Courts received a large number of cases upon beginning operations due to the assumption of cases involving the state formally heard in the district courts. Most are overwhelmed and find it difficult, if not impossible, to resolve cases in the short prescribed time. They lack adequate software as well.

## **NATIONAL JUDICIAL CONFERENCE**

The National Judicial Conference is a judicial institution created under the Law of the National Judicial Conference. Its membership is comprised of the judges of the Republic of Albania. Presently, its main activity is to elect the nine judicial members to the High Council of Justice. The chief judge (president) of the Supreme Court is an ex officio member and its chair.

The NJC has a number of committees, which, in theory, support NJC activities regarding pending and impending legislation. The NJC is reported to meet once a year to carry out the HCJ election process. It is perceived to be inactive and reluctant to use the inherent authority of judicial leadership resting within a separate and independent branch of government. Even most judges interviewed expressed that opinion of the NJC. Nonetheless, the team feels, at least given the current structure of the HCJ, the NJC is the only body capable of assuming self-directed responsibility for leadership and reform of the judiciary.

## JUDICIAL BUDGET OFFICE (JBO)

The formal name of the Judicial Budget Office is “Office for the Administration of the Judiciary Budget.” By law, it is an independent institution established in April 1991 with specific competencies to:

- Study and determine the need for the budget of courts in cooperation with financial sections of courts of all levels;
- Process financial indicators which relate to the requirements and activities of courts; and
- Control the use of funds that have been allocated to courts pursuant to fund allocations.

The JBO is managed by a board chaired by the chief judge of the Supreme Court, a member of the Supreme Court, two president judges of courts of appeal, four members of the district courts elected at a joint meeting of the presidents of the district courts, and a representative of the Ministry of Justice. A director elected by the board performs the day-to-day management of the office with the assistance of 18 staff members. It is important to note that the board is, in effect, selected and controlled by the Judicial Conference, giving that body the scope to assume much greater active responsibility for governance of judicial operations.

The current, long-time director is dynamic and proactive. The courts' budgets are determined in this office in cooperation with the individual courts. The office advocates for the needs of the courts with other institutions including the Ministry of Finance. It also provides instructions to the courts' finance personnel and, when possible, offers much needed training in budgeting and financial management. The office is automated and receives court budget requests both electronically and by hard copy.

## JUVENILE JUSTICE

The EU, UNICEF, and the Swedish International Development Agency have vigorously scrutinized juvenile justice, a subject of immense importance for Albania. They have conducted an in-depth analysis of the factors and causes of juvenile offenses and produced a report, *An Analysis of Juvenile Justice in Albania*. This publication includes extensive recommendations on all levels — from framework amendments to needed services and legal representation.

Juvenile justice still has a number of important needs. Presumably these needs are being advanced and advocated for through other organizations within the international community. There is a lack of education, awareness, and social services. Practitioners and scholars see the need for legislative changes, such as the rights of a juvenile to be accompanied by a psychologist during the investigative stage of a proceeding. The present system continues to be driven by punishment and there is a need for additional services to promote rehabilitation. There are also reports of juveniles being incarcerated beyond their required sentence due to the detention authority's miscalculation of the sentence. Adequate legal representation for the needy is inconsistent and often poor, with some lawyers being undertrained for this specialty of law.

## EXECUTIVE

### MINISTRY OF JUSTICE

The Ministry of Justice has oversight over the justice sector with broad authority extending into the judicial branch. The Albanian minister of justice has wide-ranging powers extending deeply into the judicial branch of government. Among the extensive powers under the current Law on Judicial Powers, the minister of justice is empowered to:

- Recommend to the High Judicial Council the number of judges in each court;
- Transfer of judges from one court to another;
- Propose territorial competencies of the courts to the president;

- Request the dismissal of court presidents;
- Start disciplinary proceedings against judges in the HCJ;
- Appoint the courts' chancellors;
- Appoint law clerks (legal assistants in the Administrative Courts and Administrative Appellate Court (law being challenged); and
- Appoint administration and staff personnel in the courts (a portion of the law enabling such action is in flux following a recent decision of the Constitutional Court).

The minister is also an ex officio member of the HJC and the National Judicial Conference and has a representative on the Judicial Budget Office board.

As a result of the judiciary's legal framework, the Minister of Justice has a long reach into the business of the judicial branch.

The MOJ has recognized bankruptcy as a key factor in economic growth. Accordingly, the Albanian Bankruptcy Supervision Agency is a new unit within the MOJ established in 2010 but recently implemented. This agency is primarily responsible for bankruptcy administrators and overseeing their work. Problems exist even after amendments of 2010, e.g., bankruptcy law conflicts with other laws such as the Code of Civil Procedure. The director asserts that there are a number of major areas of the laws pertaining to bankruptcy that need revision. The new agency is also in need of an electronic tracking and reporting system.

There is also an Office of Planning to focus on reforms. The office is working on the new strategy and an action plan to run from 2014 to 2020. As of November 16, 2014, it was not yet completed. The assessment team was advised that there is a new draft law regarding the evaluation of judges.

The MOJ also has a legislative department but it is not perceived to be proactive and has questionable abilities according to some interviewees.

There is also within the ministry an audit office which oversees the functions of a number of agencies including, notaries and public and private bailiffs. It is viewed as overworked and not particularly effective within the bailiff community.

## **POLICE**

The national Police Office is a consolidated institution under the authority of the Ministry of Interior Affairs. Its role is being increased due to the executive strategy for fighting corruption, informality, and crime in Albania, especially in light of Albania's candidate status for EU accession. State police are often perceived by citizens to lack professionalism, especially in comparison to other Balkan countries. The new governmental initiatives and reforms are focused on increasing (almost doubling) the number of police officers and their performance, but these reforms are still in the inception phase and will take some time to go into effect.

Even though national police play an important role in enforcing law and fighting corruption, which is a high priority issue in Albania, they are not seen as having played an active role in the justice reform initiatives launched by the Albanian Ministry of Justice and other justice actors. In the view of most informants, the police are not invited to be a part of that dialogue. ICITAP provides some assistance to the police.

## **OMBUDSMAN**

The Ombudsman is a constitutional institution that protects and promotes human rights by issuing recommendations to relevant state institutions. Its major activity had been focused on recommendation for legislative changes to improve respect for the rights of vulnerable groups, such as Roma, former political prisoners, and persecuted people. The Ombudsman also cooperates with civil society organizations. It was responsible for the establishment of the Civil Society Advisory Board on human rights and coordinates activities with civil society organizations (CSOs) where possible.

The role of the Ombudsman can be increased in the future as part of broader justice reform, especially through draft legislation. This type of reform presents another dimension of justice issues from the prospective of human rights issues and social inclusion, which is a requirement of EU accession.

## **COMMISSION FOR PROTECTION AGAINST DISCRIMINATION**

The Commission for Protection against Discrimination is a relatively new institution, established to achieve full compliance with the EU accession requirement to protect human rights and eliminate all forms of societal discrimination. Although a new institution, it is already fully operational at the central level in Tirana and at the regional level outside the capital. The Commission for Protection against Discrimination is empowered to penalize entities in violation of discrimination laws by imposing fines and referring cases to courts for official adjudication. In its enforcement capacity, the Commission has coordinated with relevant NGOs to organize trainings with judges at the national and local levels to share knowledge across different judicial institutions and improve anti-discrimination practices. In the process, the Commission has managed to establish good professional relationships with these courts. Member of the Commission have indicated that they want to increase collaboration efforts with other first instance courts all over Albania, to establish regional offices/branches, and promote anti-discrimination policies at different levels of the judicial process, including at the university level. Based principally on the team's interview with the senior official herself, they have displayed clear ambition to increase the level of anti-discrimination services provided and amplify and widen collaboration efforts with all justice institutions, social services, SCOs, the private sector, the academic community, and international donors. As it is a new institution and has thus far performed well its role in the justice reform process should be increased.

## **PRISONS**

Although prisons are part of the 'linked justice sector chain,' USAID is generally prohibited by statute to provide assistance for prisons, and USAID/Albania has no intention of working in this area. The assessment team, therefore, did not study the prison situation. However, the country's prisons are known to be overcrowded. According to the General Prosecutor's Office, the prison population is some 6,000 compared to a capacity for 3,000 prisoners.

## **LEGISLATIVE**

### **PARLIAMENT**

Parliament, consisting of 140 deputies, exercises full legislative powers. As a parliamentary system, the leader of the party winning the most seats at the last election attempts to gain majority support in parliament, become selected as prime Minister by the president, and form a government. In the June 2013 national elections, the SP (running formally as a multi-party alliance called Alliance for a European Albania (ASHE)) won 42% of the vote and 65 seats. With its main partner the Socialist Movement for Integration (LSI) winning 10% of the vote and 16 seats (a gain of 12), and two more seats from minor parties, the SP-led government holds 83 seats,<sup>8</sup> a comfortable and stable majority. The government-allied parties won 58% of the popular vote, giving it a strong political mandate. This is an extremely important country context fact when considering passage of legislative reforms or the exercise of political will by the current government.

Party discipline is extremely strong, and deputies almost always vote a strict party line in accordance with the prime minister's wishes. With rancorous partisanship the norm, the opposition DP argues that its views are ignored in parliament. Boycott of parliament or particular committees, such as the Law Committee, is

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<sup>8</sup> The World Factbook, op. cit. cites ASHE as having 85 seats as of March 2014.

used to try to delegitimize legislation passed by the legislature with minimal consultation or input from the opposition parties.

Current, as of yet unofficial, proposals for judicial reform to be presented to parliament soon are caught in this vise. An inability or failure to hold public hearings, committee consideration, and floor debate will weaken legitimacy of legislation passed and rob the public of a clear view during the process. Further damage to an open legislative process is that the debate and negotiations over legislative proposals usually occur behind closed doors before bills are even presented in parliament. Such a procedure, if followed in the case of judicial reforms, will not yield the broad-based, inclusive, consultative process with civil society and political forces that is needed to reach a consensus about the public interest and sustain the reforms adopted.

## **NON-STATE JUSTICE INSTITUTIONS**

### **PUBLIC DEFENDERS**

The Law on Legal Aid has shaped the legal aid program in Albania. Although adopted in December of 2008, it was not fully operational until 2012, according to a report of the Tirana Legal Aid Society supported by the Civil Rights Defenders. The constitution guarantees the right to legal representation in criminal proceedings, including for destitute and otherwise needy people.

The Law on Legal Aid provides for the establishment of a special state body responsible for the functioning of Albania's legal aid program. The State Commission on Legal Aid (SCLA) is a body, composed of representatives of stakeholders, which plays an important part in the legal aid process, including representatives of the not-for-profit organizations operating in the field of legal aid services.

Through this network of providers, legal assistance for the poor exists. However, there are serious concerns. Anecdotal information supplied to the assessment team suggest that the quality of services are, in a large number of cases, sub-standard. There are some dedicated lawyers attempting to comply with the constitutional mandate. However, the training, in general, has not been readily available to the practitioners. In addition, the state payments due for legal representation are extremely low and the lawyers routinely wait long periods of time for payment. More efficient management of the system, as well as adequate funding, is in order. The commission is perceived as "not active" and "invisible" according to some respondents.

Legal assistance is also provided through a network of NGOs such as the Center for Legal Civil Initiatives supporting legal assistance for women.

Full implementation of the SCLA continues to lag behind. Reportedly, there are only four donor-supported organizations that are effective. In interviews the team conducted, respondents placed the responsibility for this squarely on the SCLA.

### **LEGAL EDUCATIONS AND PRIVATE INSTITUTIONS**

Legal education in Albania is mainly provided by the curriculum of law schools/faculties, both public and private. Most of these are Bachelors programs (which consist of three years of study) and Master programs (which consist of approximately two years of study). Recently there has been an increase of legal professionals, generally from academia, that have completed their Doctoral (PhD) studies in Albanian law schools and abroad. However, most of these PhDs are theory-based rather than practical or empirical. Many of the private university law faculties are not considered as meeting minimum adequate standards, but their graduates are eligible to sit for the bar exam.

#### **School of Magistrates (Public)**

The School of Magistrates (SM) is the institution that provides initial and continuous training for judges and prosecutors (for this academic year, students' admission process has been suspended until the 2015-16 academic year) and has a very good performance of training delivery, especially regarding the training curric-

ula offered in collaboration with foreign donors, SCO, and other relevant institutions. SM has also provided trainings for court administration staff and State Advocates. Training methodologies for judges and prosecutors are based on active teaching and learning, mocked trials, and the all other approaches that trainers have required for their curricula. The School of Magistrates' staff has been very open and collaborative and is considered one of the best training providers for all judges and prosecutors.

SM is part of the broader justice reform effort. A new law has already been approved by the Albanian parliament which changed the selection criteria for the appointment of the School's Director, Governing Board and academic staff. The new law also limits the competences of the High Council of Justice in the appointment process. Transitional provisions of the law provides that the present serving officials should lose their positions at the end of the current academic year if their respective profiles are not considered to be in compliance with the new criteria. Part of justice reform is also a platform which increases the number of prosecutors which will require additional facilities and trainings during the new academic year.

Legal training for judges and prosecutors is obligatory, and continuous. For specific training curricula, the School of Magistrates collaborates with local NGO-s, national and international experts, and different international donors. Training needs for judges and prosecutors are relatively well-covered by the School of Magistrates.

### **School of Advocates (Privately Financed)**

The level of professionalism displayed by Albanian lawyers has always been considered poor as compared to judges and prosecutors, who are considered much more professionally capable due to their initial training and the continuous training they get from the School of Magistrates. Accordingly, the School of Advocates, a division of the National Chamber of Advocates, was established in 2013. This institution provides initial training and professional schooling for nine months for lawyers who graduate from their master's studies; after they graduate from the School of Advocates they are eligible to take the bar exam, conducted by the National Chamber of the Advocates. This year, the school provided initial training for approximately 250 assistant advocates and for this coming year they expect to have around 600 trainees. The School of Advocates is relatively new and faces a number of challenges regarding school facilities, qualified advocates that are supposed to train and teach, appropriate training methodologies, and school management. The School Director will require assistance from other judicial institutions and international donors if it is to overcome these challenges.

The school is also expected to provide continuous training for advocates at regional level for all local chambers, but so far they have only had a few of them in some local pilot chambers, despite the fact that continuous training has become mandatory for advocates. In this regard, continuous training for advocates remains in its early stages and not well organized in comparison to continuous training processes for judges and court officials.

### **Other Legal Professions**

Regarding other legal professions such as notaries, bailiffs, officers, and state advocates, there are no professional entities analogous to the School of Advocates. Their trainings have been rare and sporadic and therefore have no impact on their everyday activity.

Overall, considering the legal trainings offered for different justice actors, there has been substantial improvement. Training needs for Albanian legal professionals and legal practitioners are reasonably well addressed at the national and local level, but significant work still remains to be done. Albanian advocates and other categories of legal professionals in Albania lack skills and professionalism at different levels and different areas of law.

## **BAR ASSOCIATION AND NATIONAL CHAMBER OF ADVOCATES (NCA)**

The Bar Association in Albania is the national organization of lawyers; it also includes regional chambers of advocates. The NCA is a private organization, empowered to license all advocates. Previously, the Bar Association license was obtained through the bar exam, which consisted of a written test after acquisition of a law school degree and a one-year internship as an assistant advocate to a law firm. From 2013, considering the high level of trainings provided to judges and prosecutors, and lack of advocates continuous trainings requirements, the legislation was amended; it provides that graduated lawyers must attend the initial training from the School of Advocates, newly established to provide it, and after the successful completion of an initial training module (certificate issued) they are eligible to take the bar exam to become advocates.

The Bar Association is also responsible for the continuous training of advocates, which is now mandatory. Regulations approved for this purpose require that advocates take 12 credits of mandatory training each year. The NCA, however, cannot enforce this new requirement until it offers the program to all lawyers nationwide. The NCA has the necessary financial capacity to conduct these types of trainings, but they lack managerial capacity. Their focus now is toward the School of Advocates, which is the institution charged with continuous education. Plans are in place for USAID's CLE to transition to the School of Advocates in the next year. It is noteworthy that in its first year of operation the School has had a strong start by providing initial training to more than 250 assistant lawyers from all over Albania.

In January 2012 the NCA published the periodical *Advocates' Journal* for the first time, which is noteworthy for the legal profession the court system. It has been published regularly every quarter since then.

## **UNION OF JUDGES/ASSOCIATION OF JUDGES**

The Union of Judges has recently elected a new board, providing the body with a new vision. Approximately 200 judges, representing approximately two-thirds of the judiciary, are members and provide a collective voice to the organization. The recent large growth in membership (up from 45 members in 2010) is evidence of its growing acceptance. JuST provided the initial resources for an office and some equipment and has supported the development of a bench book for judicial use.

Encompassing a mix of young judges and experienced judges, the Union of Judges strives to become a regional player and aims to become financially independent and to establish regional branches. The organization also advocates for laws and shows potential for becoming an activist organization that possesses the human capacity to support judicial independence at various levels. The leadership aims to be active in training judges in civil, criminal, and administrative areas. They understand that public perception is poor and is concerned that few speak about work conditions of judges or judicial salaries. The Union is a very vocal organization in challenging laws in the Constitutional Court in defense of independence of the judiciary and providing legal opinions to the MOJ or the Parliamentary Legal Commission. The leadership has ambitious goals for training judges, regional training, harmonization of decisions with EU laws and best practices, and comparative studies of laws and practices abroad.

The Union has become quite well established and now pays its own office and staff. The will to continue and do more is evident; however, in interviews with the team, the staff was clearly worried about their financial future and said they were in the process of finding cheaper office space. The obstacles they named were insufficient funding as well as inadequate human and administrative resources.

The rival judges' grouping, the Association of Judges, appears to be inactive or minimally active at this writing. As such, JuST decided not to provide support to it.

## **LEGAL ASSISTANCE NGOS AND LEGAL ADVOCACY/RIGHTS NGOS**

A small number of NGOs are active in the justice sector, either as legal aid providers (advice and representation) or as legal advocacy CSOs, or sometimes doing both. The team met with two women-led NGOs that are very active in dealing with issues such as domestic violence or women left without family support

for themselves and their children. One law faculty CSO (a JuST grantee) is also working on strategic litigation cases that involve women's rights. These organizations are all to a certain extent donor-dependent, but they are ideal candidates to be part of a civil society network to work on justice sector reform. An effective coalition would have to be much broader than just these NGOs working in the justice sector already.

## **ALTERNATIVE DISPUTE RESOLUTION**

### **Mediation**

On June 19, 2012, a concerted effort began to establish the National Chamber of Mediators in Albania. Albania's Minister of Justice, Eduard Halimi, recognized the role mediation is now playing to reduce lengthy and costly court proceedings and reiterated the Ministry's commitment to support the expansion of mediation and the further development of this profession in Albania.

The National Chamber of Mediators, an independent public institution, constitutes the governing body for mediators. The chamber approves the rules that guide the conduct of mediation, as well as the mediators' code of ethics. It also exerts oversight and ensures the training of mediators as well as public information.

According to the USAID JuST project, the Mediators' Licensing Commission has provided a number of mediation licenses. The licensed mediators come from Tirana, Durrësi, Kavaja, Kruja, Elbasani, Vlora, Korça, Bilishti, Përmeti, Gjirokastra, Kopliku and Shkodra.

USAID, through JuST, has supported family and commercial mediation services by expanding the court-connected Mediation Center at the Durrës District Court and by establishing another such center at the Korça District Court. It has also conducted training of mediators and public outreach efforts to increase awareness about mediation and its advantages.

The current Mediation Law, effective on April 9, 2011, assigns the responsibility to the Ministry of Justice of creating and maintaining the Register of Mediators. The law obligates judges to invite parties in relevant court cases to participate in mediation, thus providing an important tool for faster decisions and increase transparency in the courts.

In spite of the advances made, the road to mediation of legal disputes in Albania has had a slow start. It embraces a theory relatively new to the region and will need more time to be thoroughly institutionalized in all areas of the country. The leaders of the chamber are not seen as activists and there are clashes within the chamber's leadership.

Successes have been realized where the courts have been aggressive in inviting the use of mediation, such as District Court Korca.

### **Arbitration**

Currently the use of arbitration in Albania is limited. Larger entities – commercial ventures and private industry – tend to have arbitration clauses built into contracts. These provide for standard arbitration practices.

## **MEDIA ASSOCIATIONS**

Individual journalists and their associations continue to feel pressure from political forces and, in some instances, are reluctant to candidly publish sensitive events or issues. Some bright spots have emerged, however. Among them is the founding of the Association of Journalists for Justice (AJJ). This entity was recently established with support from the USAID JuST project and is designed to promote a vigorous and independent media as another anticorruption strategy. A recent grant enabled it to focus on uncovering corruption by statistically examining decisions throughout the entire criminal process from arrest until final disposition and sentencing. By building and analyzing a database, the journalists examined the question of whether

defendants charged with similar offenses under similar circumstances are treated similarly. AJJ recently received an invitation to become a member of a regional network.

With the support of JuST, 11 students from the journalism faculties of Tirana University and Elbasani's "Aleksander Xhuvani" completed a two-month professional internship program at the AJJ. The internship program focused on writing investigative stories and producing video reports for publication on the online independent media venue.

Furthermore, AJJ has established an independent media venue. The media venue is specifically intended to publish stories that are well documented, fair, accurate, and independent. To assure it will remain independent, the organization will only receive funding from non-partisan or outside donors. Articles and blogs continue to increase and are published on their website.

Nationwide, the media is free in Albania, but is not seen as independent. Most media outlets favor one political agenda or another. Investigative articles do get published from time to time that shed some light on corrupt practices even if driven by biased political interests. It should be noted, however, that the perception of some media interviewees was that they would be marginalized if they were too forthright in their criticism. Nonetheless, most informants were hopeful about the positive role the media will play over time in the future. As social media and other outlets become more available to the regular media and to the public, the impact of their reporting will grow and influence the mainstream media.

## **GENDER CONSIDERATIONS**

The assessment team has taken into account gender considerations throughout its research and fieldwork. The evidence, particularly through the interview process, indicates that women are disadvantaged in various ways in the operations of the justice sector, such as in instances of domestic violence and sexual violence, and in protecting spousal and child support rights. Employment discrimination also affects women disproportionately.

Women are well represented in the judiciary, although less so at senior levels. Women form the majority of administrative staff in the courts and often occupy the chancellor position.

Cultural traditions favor men over women in public affairs, although many women are active in public life and hold public office. Helping to achieve gender equality in the justice sector for participants and users will require, in the team's judgment, designing and building in gender-sensitive elements in any new activity. The recommended programming options cover gender considerations.

# PROGRAMMING OPTIONS

Based on the preceding analysis, the basic findings and conclusions of this assessment, which drive the recommendations for programming options, can be stated quite concisely:

- The justice sector, particularly judges and the courts, continues to lack public legitimacy and trust, due to perceived political interference and corruption, as well as court inefficiencies and delays.
- Though this mistrust is generalized and strongly felt, the judiciary feels it is unfairly stereotyped as corrupt; but the judiciary itself is failing at accountable self-governance, the necessary corollary to judicial independence.
- Within the court system, the judiciary must take active, open leadership and responsibility for the judicial reform process rather than resisting change.
- The EU, with powerful leverage, is pressing hard for justice sector reforms, and the GOA will have to take responsive action demonstrating some political will.
- No reform and modernization program led by the government can succeed sustainably without major civil society participation and support; however, neither the public in general nor organized civil society appears well positioned to advocate effectively at the present time.
- Any new USAID rule of law programming should address directly the judicial governance reforms needed to inspire public confidence and the comprehensive judicial and court management modernization standards needed to visibly improve court performance overall, not in single, isolated areas.
- Any new USAID rule of law programming should include a major networked civic action component integrated directly into programming with the judiciary and other public institutions, not as a separate small grants program.
- To summarize, any new project should include both sizable supply and demand components and be “top down and bottom up, from inside and outside, all at the same time” to paraphrase one interviewee’s characterization. Any other kind of project investment does not offer high enough return (impact on the judicial system and overall court operations) to validate a new project for USAID at this late stage of its ROL programming.

The preferred approach is a program that helps to strengthen judicial leadership in the interest of protecting (or gaining) independence for the judiciary and demonstrating much greater accountability through better self-governance. The programming target is the body of the judiciary, especially its leadership, which must lead the institutional reform process, both internally and with the public. It is a process of organizational cultural change with needed buy-in by the judges. Any project would be built around specific measures, preferably via an agreed upon strategy and action plan.

Given the centrality of the judiciary itself in such an approach, the institutions and actors most appropriate would be those where the judges play a leading role, such as the National Judicial Conference, which represents all judges; the High Council of Justice, which has significant authority with respect to the judiciary already; and interest-based associational groups, such as the Union of Judges, which is independent. All of these organizations, however, have their own limitations. The NJC would have to develop a new self-identity and commit to a major increase in its activities and objectives. The HCJ needs reforms to depoliticize it, and in any event is likely to continue to have membership from outside the judiciary. The Union has considerable potential to participate in reform efforts but would also have to accept self-criticism and judicial accountability as part of its basic institutional identity and objectives.

### **USAID ROL Guide, Pg. 32**

**Legal reform commissions and citizen mobilization:** In designing programs to address the absence of the rule of law, it is important to include mechanisms such as legal reform commissions that generate society's buy in both for the need for change and for the changes themselves. Complementary mechanisms include the mobilization of a broad-based bar association or NGO coalitions. It is often necessary to develop the capacity of these organizations to effectively represent their constituencies and advocate on their behalf. These approaches help ensure that the resulting new legal system reflects citizens' priorities. They also engender citizen support for reform.

The statutorily independent Judicial Budget Office, under the direct supervision of its board, named by the National Judicial Conference, is another judge-led entity that can play a large role on the operational side. It is a central level organization that works with all courts. At the current time, the MOJ still exercises significant administrative authorities and functions with respect to the court system, but EU criteria clearly call for shrinking executive branch involvement in the judiciary's affairs.

USAID should try to provide the impetus to foment this process and offer new paths that gradually promote leadership by the judicial-led entities. The JBO does have competencies in its authorizing legislation for some oversight authority, e.g., Article 3(b) to "process financial indicators which relate to the requirements and activity of courts." With the right resources in the budget, the JBO proposes to Parliament that they could initiate the needed activities not being done by MOJ, such as watching caseload, identifying trends, and making projections and doing the same with

personnel matters. For example, in Macedonia, USAID started management reforms with a court budget office years ago and little by little it grew to become the administrative arm of the Judicial Council with significant authority. The fact that the judiciary already manages its own finances gives Albania a huge advantage compared to many other countries facing similar issues of judicial independence.

The MOJ would need to agree with this evolution or find that the accession process requires it to begin the shift to judicial control of judicial administrative management. In addition to the MOJ's role, the role of the HCJ is being scrutinized, and in some form the HCJ will remain a governing body of the judiciary, but perhaps without membership from the other branches. The accompanying text box, above, from the ROL Guide, rightfully presents a nuanced view of "political will" and this reform process.

At the local level, the institutional target would be a court itself, treated as an integrated management unit to be improved, with leadership by the court president and his or her college of judges. Improvement standards would be specific, practical, and measurable, with support from the central level (i.e., USAID project technical assistance and field support). Standards across the whole range of court operations, as distinct from single interventions, such as DAR (which is usefully serving to set a new standard in one given area of court operations), are preferred if the objective is to show the public that the courts have measurable stated improvement plans that will earn the public's respect for the court as a whole. Standards such as those developed by CEPEJ (being used in an EU-EC project currently) or by the National Center for State Courts in the United States or developed and tested under other USAID-funded projects in the region could be studied and adapted for use in Albania.

The central level effort and the court level effort (with a reasonable number of selected courts to start) constitute the "top down, bottom up, at the same time" approach needed for sustainable impact. It must be understood that the court-led change process seeks to achieve substantive, qualitative, integrity reforms as well as operational improvements. A program's stated objective would be to increase public legitimacy and public confidence in the judiciary and the courts.

While the reform effort in the courts can be called the “from the inside” component, partnering with a civic network or coalition that the project would also support can be called the “from the outside” component. Again, this process would be “at the same time” in order to create the synergies needed to achieve strategic program objectives. This design is consistent with best practices in the region, e.g., Macedonia, Bosnia-Herzegovina, and Kosovo, where rule of law programming is joined with civil society programming in a single project or side-by-side projects. It is also consistent with the guidance in the Country Rule of Law Assessment Guide.

**USAID ROL Guide, Pg. 34**

**Stimulating citizen support for judicial independence: Judicial independence cannot be secured by institutional mechanisms alone. Oversight and citizen awareness are also important. USAID has funded judicial watch programs, court media programs, public awareness programs, constituency building and advocacy initiatives, and judicial outreach and education to involve citizens in bolstering the independence of the judiciary. These activities have a synergistic effect. On the one hand, citizens watch the courts. On the other hand, the courts are proactive in familiarizing citizens with their work. Satisfied citizens then become advocates for the judicial branch**

Such a program in Albania is not without vulnerabilities and risks. Sufficient political will for thorough reforms cannot be assumed. The reforms will affect vested interests and change the dynamics of power relationships among the branches as well as the interests in control by politicians and political parties. It should be remembered, however, that many changes will take place in the justice sector in the next five years as part of the accession process, creating opportunities for pushing through reforms and generating civic activism that are not considered feasible now. Political will is a dynamic factor, not static.

USAID cannot expect to have decisive influence across the board in helping generate political will, nor should it try. Let other forces drive most of the justice reform issues at the

national level.

USAID policy dialogue and policy reform objectives should be narrowly focused, concentrating on the judiciary, and within the judiciary on the leadership of the National Judicial Conference and its operating arm, an expanded Budget Office, keeping the activities within USAID’s “manageable interest.” The central importance of the HCJ means that USAID would have to participate in the dialogue about structural reforms in the HCJ that would make a judicial-led governance initiative more feasible.

The Mission should also learn lessons from its current project, JuST, which has been involved in many of these same issues. The project supported judicial leadership conferences. They served to achieve their specific purposes. Such activities definitely promote a more activist judicial role and could be a part of the recommendation for judge-led reform processes.

JuST has had greater success and gained broad support and public visibility with the introduction of digital audio recording equipment (DAR) in courtrooms and was able to scale up the program quickly. JuST is working on a

promising procedural improvement activity (“active case management”) to reduce the number of hearings per case and thereby reduce delays. These show that the judiciary at top levels and lower court levels are open to improved practices. Both DAR and “active case management” (a limited form of integrated case management) should be considered as successful interventions. They are setting performance standards in

**The support for rule of law reforms is often characterized by the term “political will.” Everyone agrees that political will is an important ingredient for the success of reform programs. However, applying the concept to program decisions requires some caution...political will is complex and nuanced. A superficial analysis, one based upon the actions or inactions of a few officials, for example, will not tell the whole story. The assessment must be sufficiently broad to develop a more accurate picture. Also, there is no fixed standard for how much political will is sufficient to launch a program. Moreover, governments and elites usually have a range of conflicting interests and views on rule of law reform...While important to analyze, political will should not be a precondition for rule of law programming. In fact, rule of law programs themselves can cultivate political will.**

particularized areas for all courts even if they are not specifically treated as individual “standards” within a program setting standards more broadly. But both examples also show that single-focus interventions cannot be expected to set standards and goals for improving court performance overall, which is desperately needed as a central element of justice sector reform. In order to do that, courts need to be analyzed and worked with as integrated operating units of management using modern, judge-led “change management” methodologies.

Perhaps surprisingly, the team deemphasizes direct anti-corruption activities. Public anger and mistrust relates primarily to actual criminal behavior by judges and other court system actors, not ethical lapses or poor judicial performance of the sort covered by the inspectorates. Only aggressive, effective prosecution of crimes by judges, such as soliciting and accepting bribes, will change public attitudes toward the integrity of the judiciary. USAID should support such efforts indirectly in any way it can. Meanwhile, the Mission's anti-corruption objectives will be served by improving judicial self-governance on accountability issues and by the strong pressure a civil society justice sector reform coalition will put on combatting corruption, probably the most energizing issue for any such coalition.

A major challenge is that the judiciary is not ready, institutionally, to be independent. The judiciary has weak or non-existent institutional and administrative capacity, lack of management culture, and weak or unwilling cadre of leaders and change agents. Within the judiciary, there is no philosophical consensus on what independence means. There is also a lack of an integrated administrative system including minimal communication/cooperation between actors at formal and informal levels.

The assessment team has met some very talented and committed judges and court personnel. Generally speaking, however, the justice sector suffers from a lack of competency within its cadre of human resources (knowledge, experience, skills, and motivation), including judges, non-judicial court and administrative personnel, and attorneys. Most importantly, there is no one within the judicial branch identified as an active leader and the spokesperson for the Judiciary – to lead, defend, and advocate for it.

Likewise, the court administrative and management structure is spread among a number of bodies lacking an affective chain of command, thus yielding to a web-of-command.

The success of the recommendations that follow in this section depends on the overarching requirement of leadership – a strong leader who advocates, defends and is identified as a leader among leaders. There can be an “awakening” of the need for leadership from within the judiciary and a realization that, aside from the few born leaders, the skills can be learned and applied.

The following sections provide more detailed suggestions for how to integrate judicial reform measures with court administration interventions so that the two reinforce each other. A further discussion of possible civil society programming follows, and the joining of the two in a single program strategy and activity (project) completes the “preferred approach” recommendation. Alternate approaches follow.

## **INDEPENDENCE THROUGH JUDICIAL LEADERSHIP**

### **PURSUE MORE INDEPENDENT, EFFICIENT AND CONSISTENT APPLICATION OF JUDICIAL POLICIES AND PRACTICES**

Administration and management rules, policies, procedures, systems, and practices support a modern court system. It requires work with judicial sector authorities and actors to establish effective governance and operational systems for managing court resources – budget, human, facilities, equipment, etc. The following are recommendations for ways in which to achieve more independent, efficient, and consistent application of judicial policies and practices. The initiatives need to be developed over the long-term. They require support from the executive and legislative branches. Clearly, the Ministry of Justice is necessary as a major counterpart and such broad changes would require redefinition of institutional roles and statutory changes. Developing those bridges and collaboration is important to success.

- An independent committee appointed within the judiciary, with appointees from the judiciary, business and academic disciplines, should review judicial salaries periodically (e.g., every 3 years).
  - Compare salaries with other countries in the region similarly situated;
  - Factoring in inflation /deflation, GDP, and other economic factors; and
  - Recommendations of the “blue ribbon” panel to become part of the budget request.
- Develop a professional cadre of court managers. Independence requires that the judiciary take responsibility for the management of the courts’ administration and have increased control over human resources.
- Conduct a rapid assessment of existing administration and management systems, procedures, and capacities to identify procedural impediments and performance weaknesses.
  - Recommend changes in the systems, rules, and procedures to improve effectiveness and accountability in the management of courts and court resources (e.g., how to reduce 46 required registry books).
- Develop uniform system-wide human resources standards, such as staffing guidelines for all levels of non-judicial personnel in the courts as well as in a court administrative office.
- Develop a civil service human resource system within the judiciary, which includes competitive selection of court personnel, disciplinary procedures and practices, a clear standard of remedial disciplinary measures fairly applied across all the courts, etc.
- Develop a code of ethics for the non-judicial court staff and administrators.
- Prepare up-to-date job descriptions accounting for the increase in automation and the resulting redistribution of work<sup>9</sup>.
- Enhance and unify budget requests from the courts, which should include needs based or performance driven budget requests, uniform and enhanced budget elaboration and justification. There are examples of good budget requests, but they are not consistently seen by the JBO.
- The budget office should be supported by:
  - Specialized advanced training for court and budget office employees;
  - Cost-per-case analysis for budget purposes;
  - Legislation providing a minimal percentage of the gross domestic product (GDP);
  - Facilities upgrades, remodeling, and building;
  - Court facilities minimum standards guidelines for new and remodel construction; and
  - Funding to implement access for persons with disabilities and/or provide reasonable accommodations.

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<sup>9</sup> These last four may be doable in the vacuum of the court administration legislation and the ambiguity of many court administration functions between the MOJ and the courts, but it would have to be clear with MOJ that the objective is to have the courts do these things.

- Conduct an in-depth analysis of the current ICT systems being used by the courts. The assessment should be made by objective and neutral experts with the goal of providing the Ministry of Justice and the judiciary with options, which would permit full automation<sup>10</sup>. The recommendations should include information enabling the policy and decision makers to decide on options including:
  - Enhancing the current system(s) into one comprehensive automated court management and information system, or
  - Building a new software package.
- Re-align court staff and new job descriptions to meet the modern needs of a fully automated system.

## **DEVELOPMENT OF A PROACTIVE LEADERSHIP AND MANAGEMENT CULTURE**

Judicial actors at the highest levels within the judicial branch do not see themselves as leaders. There is a need to create a leadership mentality and culture through all levels of the judiciary. This shortcoming is due partially to systemic framework issues. The judicial legal framework does not offer clear direction as to who speaks for the judiciary. The framework lends itself to the specious conclusion that the Minister of Justice and/or the president is the voice of the judicial branch. Changing the legal culture is a step-by-step process, which allows the actors to accept their roles in the hierarchy of leadership. This is a multi-step process including the following actions:

- Identify Albanian leadership upon which to build a hierarchal system with a clear leadership within current structures. Clarify roles of the various judicial branch bodies (entities) in the context of judicial administration and management.
- Develop the National Judicial Conference abilities including overseeing a newly conceived Office of Court Administration that needs creating (perhaps within the Judicial Budget Office).
- Create a hierarchal (formal) structure of leadership with a chain of command, replacing the current “web of command” imbedded from the socialist times.
- Provide strong support for comprehensive (even exhaustive) leadership training. High-level leadership training should be conducted, including small group visits to established hierarchal offices of court administration in Northern Europe and the United States. Trainers should include specialized international judicial administration and leadership experts.
- Nurture commitment from the judicial leadership. The selected leaders should be encouraged to accept, lead, and manage the substantive administrative and judicial behavioral changes necessary for comprehensive internal reforms to achieve true judicial independence. They must see themselves as agents of change.
  - Consider engaging appellate court chief justices as informal overseers of the courts within their districts.
- Develop a leadership mindset. Support leadership and management education among the president judges of the district and appellate courts.

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<sup>10</sup> The EU is pushing for system-wide use of ICMIS. Some courts use and prefer ARK-IT. It should be stated that neither system fully meets requirements and that upgrading of current systems is needed no matter what.

- Support a president judges' assembly. Form an unofficial entity consisting of the chief judges of the district and appellate courts to meet at least quarterly with a structured agenda at the call of the chief justice of the Supreme Court.
- Continue the Annual Leadership Conference. The leadership conferences previously held and implemented by the JuST project have been valuable and should continue. It should eventually become a function planned and implemented by the "new" and "empowered" judicial leadership.
- Establish a Judicial Branch Forum of the eight or 10 top judicial leaders to meet periodically, in a relaxed setting with four or five pre-agreed upon topics. Suggested attendees might include the chief judge of the Supreme Court, president judges of the appellate courts, the president of the Union of Judges, representatives from the High Council of Justice, the director of the Judicial Budget Office, and the director of School of Magistrates. Suggested topics may include pending or impending legislation, training needs, etc. A consensus, if not unanimity would go far in advancing the particular causes.
- Work with the chief judge to identify the office of Chief Judge as the voice of the judiciary.
  - Establish and support Albanian Judicial Public Information Office to disseminate regular public and media information about the positive works of the judiciary.
  - Support the chief justice in preparing and delivering a written and oral "State of the Albanian Judiciary" on an annual basis with extensive media coverage.

## **BUILD THE CAPACITY OF THE NATIONAL JUDICIAL CONFERENCE**

Build the capacity of the National Judicial Conference and its existing sedentary committees to be the clearinghouse for laws, rules, regulations, practices, and procedures affecting the judiciary in general as well as the courts, judges and members of the bar. As a strong judicial entity the NJC should:

- Develop a Bench/Bar committee of judges, practicing lawyers and academics to:
  - Review and build consensus on all proposals proffered by the government affecting the judiciary;
  - Propose and advocate for favorable laws and oppose unfavorable proposals; and
  - Develop a "legislative package" of desired legislation to be presented to the parliament annually and to be included in the chief Judge's State of the Judiciary presentation (e.g., sub-committees of the NJC might cover legal fields, such as civil, criminal, commercial, bankruptcy, family law, procedures, etc.).
- Provide training and mentoring through international experts to remedy the lack of professional experience in the area of law drafting, analysis and advocacy.

## **JUVENILE JUSTICE**

The School of Magistrates has apparently addressed specialized training in the past. Future education on all aspects of juvenile justice, including education of the bar should be ongoing. Many lawyers representing juveniles, on a court assignment basis, are inadequate to the task.

There is a need for specialized juvenile sections of courts. Some larger courts employ this practice. As there is no "central command," it is likely not universal. The smaller courts are in need of a modified model focusing on training.

Recommended are specialized parts for all large courts and at least one specialized judge in smaller courts. (Not full-time but assigned as needed depending on the caseload.)

At a minimum, this intervention should include the creation of an online data base available to judges showing the available services by geographical area, including available rehabilitation centers, job training, housing, health, psychological, education, etc. Development of a bench book designed by a working group of judges, service providers, lawyers, and academics should be considered.

## **COURT MODERNIZATION/COURT ADMINISTRATION**

This section addresses long-term development that should take place at the court and central administrative levels. Modernization should continue and the judiciary should simultaneously be moving toward full independence, a key reform. Full independence provides the judiciary with decision-making powers within the branch consistent with adherence to the laws and Constitution and its responsibilities as an “equal partner in government.”

### **ADMINISTRATIVE STRUCTURE FOR OVERSIGHT AND SUPPORT**

The journey towards judicial independence requires long-term, step-by-step actions during which the judiciary simultaneously builds its capacities and institutions to develop the confidence of the citizenry as well as of the executive and legislative leaders. Establishment of a judicial administrative structure can only be developed over the long term and requires support from the executive and legislative branches. Clearly, the MOJ is necessary as a primary counterpart. Changes of the sort described below become feasible only within the context of justice sector reforms that assign the main responsibility for court administration to the judiciary rather than leaving it with the executive branch in the MOJ (against EU criteria). Under current conditions, many of these desired changes still have to be considered as “aspirational.” A dynamic set of reforms, however, could make them actionable quickly.

Once developed, oversight and support to be assumed over time include but are not limited to the following:

- Receive Information from the district and appellate courts on case processing and backlog reduction issues, human resources, budget and financial management issues and overall court management and productivity;
- Analyze information received from the courts and identify trends, make projections for future needs, and report to the president of the Judicial NJC;
- Solicit innovative ideas and suggestions from courts and judicial agencies of systemic benefit through court site visits;
- Act as a liaison between courts, court agencies, government ministries, and agencies regarding operational or budget expenditure concerns;
- Conduct operational reviews of courts and/or departments facing specific challenges;
- Provide in-depth operational guidance and recommendations to increase effectiveness in challenged courts;
- Make recommendations to the president judges regarding implementation of new legislation, procedures, regulations, and sub-regulations;
- Develop capacity as a Court Operations “Help Desk” to the president judges and provide a forum where president judges can routinely request non-adjudicative based assistance;
- Provide recommendations for future enhancements of the two current automation systems used in the Albanian courts;
- Periodically assess the needs of the court’s Public Information Office and the needs, in general, of the NJC’s public relations capacities;

- Oversee facilities management and maintenance;
- Provide guidance for improving access for people with disabilities;
- Oversee language translation services;
- Provide recommendations on human and material resources needs and anticipated timing for the needs;
- Manage a newly formed Judicial Public (Civil) Service unit with the OCA; and
- Administer civil service tests for the appointing body.

Over time, and in cooperation with the Judiciary's partners in government, far-reaching reforms could include:

- Establishment of a civil service system for the judicial branch;
- Upgrading the ICT system to accommodate a modern court's needs;
- Staffing guidelines for non-judicial and judicial personnel;
- Centralizing the portions of the procurement process.

## **INCREASED FAIRNESS AND EFFICIENCY OF THE ADMINISTRATION OF JUSTICE THROUGH MORE EFFECTIVE LEGAL PERSONNEL AND EFFICIENT PROCESSES**

### **Case Processing and Backlog Reduction**

A significant effort is underway through the auspices of the USAID JuST project and the Organization for Security and Co-operation in Europe (OSCE). Appropriately, the focus is on certain management principles shown to improve case flow in all courts, regardless of type. These include the principle of trial date certainty, good pretrial preparation by the parties, firm control by the judge who manages the pace of litigation, adherence to the principle that each court appearance is meaningful, and, that trial postponements should be the exception, not the rule.

Informational brochures were prepared to inform court stakeholders and the public about the new way of doing business. Forms for use by the court chancellor and the judges have been designed. The Kruja District Court was selected as the first demonstration court to implement these basic active case management principles followed by the Korca District Court.

The effort has borne fruit in both courts – continuances have declined and backlogs reduced. The process should be implemented in all district courts across the country. It has been reported that the MOJ and the chief judge have supported this effort. Special effort should be given to the time between hearings. While the number of continuances may be reduced, the time can be squandered if the time between hearings is unreasonably delayed.

### **Appellate Court Delay Reduction**

Delay can arise in the appellate level courts as well. A model should be formulated to accommodate the unique processes of appellate courts. It should be designed with input from court users – judges, lawyers, litigants, academics, and civil society.

## Differentiated Case Management

Although cases vary substantially in their relative levels of complexity and the requisite judicial attention they command, all follow generally the same criminal or civil processing model from filing or joinder to resolution. However, cases can also be separated into multiple processing tracks based on their relative level of complexity. This enables a judge to subject each case only to those processing events essential to moving it from filing to disposition; unnecessary procedural events could be eliminated, thus improving productivity. This thinking eventually resulted in differential case management (DCM), the concept that cases should be managed separately according to their complexity; the least complex would be processed utilizing one or more procedurally streamlined or expedited tracks that would move them quickly toward resolution. Those entailing greater complexity but still unproblematic would be processed via a more deliberate but reduced assortment of procedural events on one or more tracks that allocated more time for the additional judicial attention required. Finally, the most complex and problematic cases would be routed onto one or more tracks that incorporated the full range of procedural events and time sequences to ensure the systematic resolution of all evidentiary conflicts and legal issues under a sustained review process culminating in carefully crafted judgments unlikely to be successfully challenged on appeal. The underlying assumption in DCM is that cases proceed through only those procedural events essential to their resolution, subject to existing law.

DCM provides a structured and proactive approach to caseload management. It is deployed to propel the early and appropriate resolution of simpler cases that can be resolved in a single hearing while preserving adjudication time and court and public resources for more complex cases that require multiple trial hearings. One of DCM's primary goals is to minimize the number of court appearances and assure the timely provision of resources for the expeditious processing and resolution of cases in each track.

Consideration should be given to formally incorporate a DCM system into the countrywide effort of introducing case processing and backlog reduction criteria.

## Enforcement of Court Judgments and Orders

As described above, two systems for enforcing court judgments and orders exist side-by-side with overlapping jurisdiction. What seems clear is that the public system may have "risen from the ashes" due to public demand and finding a niche clientele in family law issues and property rights cases. However, it is impossible for it to continue as it is – starved of public funds. In this teams view the following steps should be taken:

- Conduct a full-scale feasibility study to determine.
  - Viability of supporting two systems;
  - Cost vs. benefit analysis for retaining the public system; and
  - Analysis of capacity of the MOJ oversight office.
- Advocate for automation across the entire public system, if retained.
- Capacity building of the public system, if retained by the policy and decision makers, after the feasibility study.

## Administrative Court of Appeals

- Automation: Both hardware and software are needed and an integrated network. There is no automated court management and information system now in use. There is a dispute between the MOJ and the court as to which one to use.
  - The automation should be developed simultaneously with the first instance administrative court to eventually provide electronic transfer of appealed cases to the appellate court.

- Case Processing and Management System: There is no formal manual court management system in place. The “back office” staff is overwhelmed with piles of paper and huge files. Immediate assistance would clarify and formulate a manual system anticipating an automated system.
- Training: Training for administrative and operational support staff is crucial. Judges had some initial training sponsored by OSCE but the president judge requests additional training, conducted jointly with the Administrative Court, offering an understanding by each of the other’s requirements.
- Facility: The courthouse facility is inadequate for the seven judges and staff and this before law clerks are hired. The court was offered a building, which needs remodeling and the tender is underway. When the new facility is ready, organization and management assistance will be necessary.

## **Publication of Court Decisions**

Decisions of the Supreme Court, including an explanation of its reasoning, are proclaimed not later than 30 days from the date of termination of the judicial review. Decisions of the joint panels, along with their reasoning, are published in the Periodical Bulletin of the Supreme Court. Decisions that serve to unify or alter court practices are published immediately in the next issue of the Official Gazette.

All decisions of the Supreme Court and the appellate courts should be published on courts’ websites and be available to the public in hard copy when requested. If practical, all decisions of the district courts should be published on the courts’ websites. There are many decisions and they will take a large amount of server memory. Having a panel of judges review decisions of the first instance courts and select those have significant import may offer a viable alternative.

If supported, this intervention is best integrated into a complete analysis of the current automation systems serving the courts.<sup>11</sup> Support to the courts should assure that they all have user-friendly websites with the capacity to display all decisions. Development of a model website would assure that the same information for every court is available, e.g., directions to court, court hours, forms for court users, information for disabled access, picture of the court, court updated court calendar, etc.

## **Records Retention Schedule and Archives**

During a visit to District Court Korca, the team found that there is adequate space provided for archiving completed files. Although a fine facility, files are stored on top of shelving and on the floor. This is due to the lack of enforcement of a retention law or rule permitting the periodic culling and purging of old files according to case type. In fact, some of the files are from the 1940s.

The previous DPK project prepared a study and a records retention schedule. A memo from a previous Minister of Justice provided for a destruction schedule, which was apparently countermanded by a subsequent minister. Most court personnel and administrators, therefore, are reluctant to destroy files without a specific directive.

The courts have reportedly completed their work by putting aside folders that qualify for destruction pending an approval of the Minister of Justice to actually destroy these files. Final approval has not been received and the MOJ is now looking into finding premises for a central court archive. Unfortunately, this will not resolve the destruction issue.

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<sup>11</sup> As cited earlier, differences between the current systems used (ICMIS and ARK IT) should be discussed openly within the context of the need for upgrade of the IT system overall beyond current capabilities.

The MOJ should be encouraged to move ahead with the direction to implement the destruction schedule. The courts will need support with this since, if completed properly, it is a labor-intensive effort. Oversight is necessary to assure that the correct files are destroyed and a log is kept to verify accuracy and to avoid mistakes and possible malfeasance. It must be an organized and managed process.

## **Formation of a Court Administrator and Staff Association**

The administrators and staff of the Albanian courts can be a major force in modernization and reform. It is recommended that they form an association or NGO along the lines of the Union of Judges. Collectively, they can be effective in advocating for their status and the professionalism of their members. Collectively, through a board and committees, they can have an impact on future laws, regulations and sub-regulations, not only affecting the membership but also affecting the judiciary in general, the rule of law and judicial independence. This group can also become part of a coalition of professional legal associations and other CSOs to pursue rule of law and independence issues.

Such an association will need assistance in its incubation period, but could become self-sufficient through the collection of dues. Once established, it can become associated, regionally, with other countries with similar associations (e.g., Macedonia) and, eventually, membership in the International Association of Court Administration.

## **COURT PROCESSES INFLUENCING ECONOMIC GROWTH**

Bankruptcy and commercial cases seem to be inconsistently processed from court to court. There is a lack of awareness by judges and lawyers of business community needs, especially expeditious resolution of disputes. Interventions could include:

- Perform a complete review of the processing of bankruptcy and commercial cases, including closed-case analyses.
- Pursue reforms of laws and practices in weak areas.
- Support consistent publishing of court decisions for guidance to the business community.
- A proactive approach to implement and support specialized commercial parts of the largest courts where they do not already exist.
- Select individual judges in smaller courts to be assigned commercial cases and require specialized training and continued follow-up training.
- Use a working group of judges, lawyers, professional legal associations (LPAs), and business-oriented CSOs to define “commercial cases” for the purposes of court assignments.
- Identify special court rules and procedures unique to commercial cases and lobby for approval with the appropriate bodies.
- Invest in specialized software to accommodate the unique aspects of commercial cases, e.g. preliminary remedies, fast tracking, special deadlines, etc., and the production of accurate statistical reports and data storage.
- Provide online information of all commercial cases, including special court rules for commercial cases, calendaring, court forms and publication of all commercial case decisions.
- Form a coalition of existing CSOs and LPAs, with interests in the business community, chambers of commerce, business associations, etc. to advocate for or against proposed legislation or, where applicable, propose legislation through appropriate channels.

- Engage a select group of licensed mediators through the Chamber of Mediators for specialized training on commercial litigation.
- Construct a series of formal curricula for commercial court judges, including the entire spectrum of legal and procedural issues unique to commercial cases including a study of international good practices and the review of case law.
- Provide training for commercial and bankruptcy issues to lawyers, judges, court administrators, and the business community overall.
- Establish Small Business Legal Clinics in the law school (in cooperation with the business community).
- Support a law school Mediation Clinic to reduce backlog in the district courts.
- Support legal internships within the business community and law firms specializing in commercial & bankruptcy litigation.

## **CIVIL SOCIETY COALITION IN SUPPORT OF JUDICIAL REFORM**

The discussion in this section will not be detailed because the methodology of this kind of demand side programming is well known. It involves a core program of support to a single lead organization that in turn would provide sub-grants to coalition members or to a limited number of lead organizations as a steering committee that can support the activities that the coalition members would carry out.

It definitely would not be a collection of small grants to individual CSOs to pursue their separate activities based on a call for proposals from USAID or its contractor. Structurally, it would have to have the potential to achieve sufficient mass and scale to provide leadership and direction to a large network of collaborating member NGOs operating under the umbrella, some with financing, some without. Funding could only be used in support of the coalition's strategy laid out in a strategy and action plan document that all would sign.

The coalition would try to partner with the judiciary, assuming the judiciary assumes its new role in the justice sector reform program. Without that ability to link together, a separate civil society activity is of dubious value. At times, the coalition would be a partner with the judiciary in advocating for and carrying out reforms. Together, they would form the outreach effort to the public. Public expressions of support for a reforming judiciary will be essential to maintain commitment and momentum.

At other times, the coalition would be a vocal critic of the status quo, advocating critically to the public, the government, parliament, and the judiciary to make needed reforms, i.e., working to create stronger political will. Of course, advocacy, both supportive and critical, should be directly linked to the EU accession process and reflected in the annual reports by the EU on Albanian progress in meeting conditions in the justice sector.

## **SUMMARY**

The critical strategic objective of the “preferred approach” model as a whole is to set an ambitious, “high risk, high gain” program in motion that tries to maximize impact during the coming five-year period that will see the justice sector, the judiciary in particular, under tremendous pressure internally and externally to carry out serious reforms. USAID should seek to ride that wave with a clear focus on judicial independence and accountability, with major operational improvements as well. Civil society support for such a change process is essential, and USAID has a clear advantage in being able to design and build the needed civic coalition.

## **ALTERNATE APPROACHES**

Though the “preferred approach” is strongly recommended as consistent with the literature and current best practices in rule of law programming in the region as well as what is considered necessary in order to

achieve significant, sustainable impact in the Albanian context, it may be considered as too much of a “high risk-high gain” scenario for the several reasons described above.

## **LEGAL AND CIVIC EDUCATION CLUSTER**

If the “preferred approach” is not adopted, one alternative would be to develop a program that is based on building human and social capital for the long-term with the key actors in the legal system. The objective would be to upgrade the capacities and skills of the legal profession and other related non-legal stakeholders, leaving the institutional and structural reforms to the GoA and other donors.

The targets would be the School of Advocates, the Chamber of Advocates, Tirana University Law Faculty and other law schools, the School of Magistrates (through outside course providers), the CLE programs, the Union of Judges, law journals, unification of legal doctrine, clinical law programs, trial advocacy programs, legal research and writing, publishing of judicial case opinions, and links to EU member states’ legal institutions. The program would emphasize training opportunities. Judges and prosecutors could also be participants in addition to the private bar. Court administrative staff could also receive skills training, including IT.

A civil society element focused on understanding legal rights and responsibilities and the proper workings of a modern legal system would also be included. CSOs, journalists, teachers’ groups, labor unions, business organizations, and other stakeholders would have access to civic/legal education activities. A major public awareness campaign about the law and a “culture of lawfulness” could be included. To some extent, the overall strategy of the civil society component or even the entire project activity could be to create awareness and critical mass for a reform coalition to take shape and advocate for the more comprehensive restructuring and reforms needed in the legal system and state institutions. The EU accession process will be creating pressure on the government to make structural and institutional reforms, and better skilled legal professionals and civic groups can help move that process forward in both a critical and constructive fashion in the justice sector.

In all of the above elements, ethics, procedural correctness, openness of courtrooms and hearings, court case monitoring, and the like would be emphasized to help combat corruption and increase trust in the court system, the two most serious failings of the system today in the eyes of the public.

## **ACCESS TO JUSTICE, CIVIL RIGHTS, GENDER-SENSITIVE CLUSTER**

Another alternative programmatic option would be to emphasize access to justice and fairness in the legal system. Despite statements by some judges to the contrary, the team concluded that access to effective legal counsel in criminal cases is badly deficient. No formal, well-structured system of public defenders legal assistance organization for indigents in criminal cases exists. The EU will require such a system. Defendants are entitled to state-paid legal counsel, but a lawyer is assigned by the judge from a list of eligible private lawyers maintained by the court. Listed lawyers need to meet certain criteria such as minimum years of experience, but numerous informants stated that defendants often receive minimal attention to their cases.

The traditional link between judges and prosecutors dating back to the inquisitorial system still tends to disadvantage defense counsel, especially when it is the judges who appoint the defense lawyers. Conviction rates in criminal trials in Albania are above 95%, which indicates that defense counsel is rarely successful in court. This would strongly indicate structural biases in the system against defendants and inadequate defense representation. USAID has had considerable access to justice-type rule of law programming successes in other regions through strengthening public defenders’ offices that can be studied. Diversionary programs for youthful offenders would also be very useful innovations to the criminal justice system.

Women are at a disadvantage in the court system. Gender-sensitive issues should be recognized and taken into consideration. Domestic violence recently has been criminalized but is rarely prosecuted. Women’s complaints about domestic violence and even rape are often minimized by police and prosecutors, and wives are often told to go home and find a way to make peace with their husbands without even formally accepting and filing their complaints, let alone investigating and prosecuting. Women are at a severe eco-

conomic disadvantage when claims against their men for spousal and child support run into the usual procedural delays and enforcement weaknesses in the courts. The public bailiff's office, weak and officially destined for extinction, plays an important role in enforcement of judgments for low-income people, especially in the case of women, and might need continuation and support to ensure better access to justice for disadvantaged citizens.

Women-led CSOs defending and advocating for women's rights are among the most active NGOs. A gender-equality focus to support for civil society activism would be an important element of this suggested programming approach. Such CSOs might even form the core of a broader coalition around women's rights and equal treatment under the law. Issues of access to justice are by no means limited to women. Physically handicapped, mentally ill, indigents, and minority groups such as Roma all face higher hurdles in any dealings with the justice system and need more equal support from state institutions and civil society organizations. Juvenile offenders, with the exception of one facility in Tirana, are incarcerated in regular prisons alongside convicted adult offenders, which is a totally discredited system.

The team also found evidence of police misconduct, said to be widespread. Beatings during arrests or while in custody, threats and intimidation against complaints about misconduct, and cover ups or dismissive treatment by superiors, prosecutors or even judges are highly corrosive to public confidence, not to mention criminal behavior. Citizens are afraid to expose misconduct and solicitation of bribes to receive favored treatment. Project activities to combat such abuses would receive broad public support, especially if widely publicized. The Commissioner for Protection against Discrimination and the Ombudsman are two state institutions with mandates for fairness and equal application of the law. They could become institutional partners in a program emphasizing access to justice.

## **DG-EG CLUSTER**

DG and EG programming have been seen as highly complementary for a long time, especially in the formerly communist countries. Where country program strategic objectives emphasize democratic development and creation of a sound, market-oriented economy, as is the case in Albania,<sup>12</sup> a programmatic option emphasizing the two in explicitly linked form may be another acceptable alternative. This is not to say that economic growth objectives cannot be built into the other suggested options, especially the "preferred approach," except that more explicit linkages might be a separate option. This would certainly include attention to:

- Enforcement of judgments;
- Commercial judge/court specialization, including bankruptcy law;
- Administrative Courts;
- Alternative dispute resolution, including mediation and arbitration;
- Small Claims Courts;
- EU harmonization (disfavored);
- School of Advocates/School of Magistrates;
- Chamber of Advocates; and
- Law School curriculum

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<sup>12</sup> USAID/Albania Country Development Strategy Statement (CDSS)

# ANNEX A: SCOPE OF WORK

AID-182-TO-14-00004– Rule of Law Assessment

## SECTION C – DESCRIPTION / SPECIFICATIONS/STATEMENT OF WORK

### C.1 INTRODUCTION

The United States Agency for International Development (USAID) in Albania seeks the services of a Contractor to conduct a targeted analysis of the status of rule of law development in Albania, and an assessment of the primary opportunities and constraints to the development of the rule of law in Albania. The target for field work for the assessment team to begin is September 2014. The assessment will lead directly into a design for rule of law assistance in Albania and, therefore, shall identify priority areas that could benefit from USAID interventions and shall prioritize recommendations for future programming.

### C.2 BACKGROUND

Albania was the last of the central and eastern European countries to embark on democratic and free market reforms, and it started from a disadvantaged position due to communist leader Enver Hoxha's catastrophic policies. The democratically elected government that assumed office in April 1992 launched an ambitious economic reform program meant to halt economic deterioration and put the country on the path toward a market economy. However, the collapse of the infamous pyramid schemes in 1997 and the instability that followed were a tremendous setback. The country subsequently recovered and is now pursuing its Euro-Atlantic integration agenda. In June 2006, the Albanian Government signed a Stabilization and Association Agreement (SAA) with the European Union (EU), the first step in the EU accession process. In April 2009 Albania became a NATO member country and in December 2010 visa liberalization within the EU was granted, both major milestones in the country's history. In 2009, the GOA formally submitted their application for EU membership, but that application has languished.

The criteria for EU integration are set against an environment where in which the judicial, legislative and administrative sectors continue to be affected by undue influence, bribery, and other forms of corruption. The country has not yet sustained the momentum required to introduce strong and sustainable democratic institutions that form the foundation for a stable, prosperous, and equitable society. National and local government institutions are ineffective at the administrative level and deliver poor services to citizens. There are high levels of corruption throughout the government and society and Albania's judicial system and weak civil society are unable to serve as a deterrent. Albania's most vulnerable groups, such as the poor, women and children lack an effective voice to affect change.

Corruption and inefficiency in the judiciary are of particular concern, as it is the very institution whose fundamental mission is to impartially uphold the law. According to studies, the judicial system lacks transparency, adequate funding, independence, and efficiency. Attorneys often serve as conduits or negotiators for bribes, and there are numerous inefficiencies in the overall management of the judiciary. A culture of impunity originating from political patronage and money undermine the entire rule of law system. Some more elaborate findings regarding the rule of law in Albania are presented below:

- Corruption. The fight against corruption in the judiciary has made limited progress. Both judicial and administrative sectors continue to be rife with undue influence, bribery, and

other forms of corruption. Cases sometimes do not appear to be decided on the basis of legal argumentation, and attorneys often serve as conduits/negotiators for bribes. Lifting judges' immunity as part of the fight against corruption has not yet led to any convictions; the Criminal Procedure Code needs to be amended to clarify the relevant investigative procedures.

- **Transparency.** Especially in the courts that have an inadequate number of courtrooms, civil and, sometimes, criminal proceedings continue occasionally to be heard in chambers, not in open court, affording opportunity for inappropriate interference/influence. Without the benefit of audio recording in judges' chambers, courts rely on summaries of proceedings, often dictated by the judge to the court secretary and containing inaccuracies and omissions and often tempered with by the judge.
- **Efficiency.** It is estimated that roughly 60% of the court hearings are nonproductive. It is necessary that active case management principles start to be implemented in the courts. Central to the idea is the recognition that judges, with the assistance of court administration, must take "ownership" for the movement of cases through the system from filing to final disposition. Gaining greater control of the case flow process can lead to more effective advocacy for all litigants. Unnecessary continuances should be avoided. Trial dates should be firm. The court should set clear expectations of what is expected of attorneys at each event, along with what the judge will do if the expectations are not met.
- **Evaluation and Promotion Systems.** The objective evaluation of judges is a crucial requirement for a merit based and transparent process of appointments, transfers and promotions. The margin of discretion enjoyed by the High Council of Justice is still too wide and should be reduced. Disciplinary proceedings against judges have been applied in only a few cases.
- **Lack of Financial Resources.** Many courts are underfunded and lack even the ability to purchase the most basic supplies. Regular IT maintenance and updates are often underfunded.
- **Judicial independence.** The judiciary does not act as a check and balance to Executive Power, as it should in a democratic society. Judges often dismiss cases against executive officials, even if they are engaged in corruption. The independence and impartiality of the High Court is not guaranteed as long as the appointment procedure of its members is not changed. The promotion system inside the High Council of Justice is often not merit based and depends on political considerations.
- **Alternative Dispute Resolution Methods.** Courts in Albania continue to deal with every sort of case. Inefficient and lengthy court proceedings and backlogs remain an issue of concern. Alternative dispute resolution methods are still not very popular in Albania. Mediation has seen some successful developments in the recent years. However, it remains dependent upon donor funding. The recently established Chamber of Mediators should be strengthened to be able to regulate the profession including the fee system.
- **Professional Regulation and Education of Private Legal Practice.** Attorneys remain the weakest link among legal professionals: insufficiently prepared and disruptive. The disciplinary committee of the National Chamber of Advocates has just started to operate. The continuing

Legal Education Program that was established in the recent years should extend to the rest of the country.

- Legal education. Legal diploma mills have proliferated because of the lack of an effective accreditation process. Albanian legal schools continue to turn out large numbers of unqualified/under-qualified students. Even in reputable law schools there is a lack of courses that sharpen practical and critical thinking skills.

USAID's current rule of law project, JuST (Sept 2010 – Sept. 2015) focuses on increasing transparency and efficiency of the courts, strengthening the performance and watchdog role of civil society, as well as improving the skills of legal professionals. USAID's interventions focus on increasing transparency of justice sector decision-making in courts through introducing information technology-based solutions and through engaging watchdog NGOs. The digital audio recording equipment that it is implementing ensures verbatim recording of everything that is said in the courtroom, expedites court hearings, and makes judges more responsible in administering sessions and rendering decisions. To date, the USAID has successfully installed and completed training in audio recording in two-thirds of the Albanian courts of the district and appellate levels.

USAID, together with the National Chamber of Advocates (NCA), established Albania's first Continuous Legal Education Program (CLE) for Albanian lawyers and assistant lawyers in 2011. The CLE program represents an important step in training legal professionals, in line with legal education found in other European countries. Over 70% of all lawyers and assistants registered in the Vloë, Durrës and Fier chambers attended the training sessions. A project co-funded between USG (60%) and NCA (40%), the program is expected to become a national, mandatory program managed and financed completely by the NCA by the end of 2014.

Mediation programs offer the possibility of removing cases from crowded court dockets for resolution by the parties with the assistance of specially trained mediators. USAID has funded 5 court-connected mediation offices in Durrës, Korça, Gjirokaster, Saranda, and Permet. They have a high success rate resolving cases in a time period far shorter than the customary traditional litigation.

### **C.3 PURPOSE OF THE ASSESSMENT**

The purpose of this assessment is to provide USAID/Albania with an analysis of the primary challenges and opportunities in advancing the rule of law in Albania. The assessment will prioritize areas of intervention where USAID has a comparative advantage and will include recommendations for a future ROL project.

The contractor shall conduct a background review of key documents, as well as on-site research and interviews to develop a report that addresses these areas. The assessment will be consistent with the Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework, which is designed to synchronize with the mission's broader DG objectives.

The Assessment Report will consist of two major components:

1. Analysis of the current state of rule of law in Albania

This section of the report will analyze the current state of the justice sector in order to develop and present strategic recommendations.

The assessment will identify primary challenges and opportunities in advancing the rule of law. The assessment team will examine and identify other corollary impediments to democratic transition outside the justice sector that condition potential progress in the justice sector.

The assessment team will assess the justice sector itself identifying key challenges and opportunities for promoting the essential elements of the rule of law within the legal framework and justice sector institutions. The purpose of this section will be to identify potential points of intervention within the justice system itself that are in need of reform and amenable to change.

In addition, the assessment will review existing USG and other donor programs (including EU and OSCE programs) in the justice sector, to determine what progress has been made so far, and where opportunities and entry points might exist for programming. The assessment will identify lessons learned and areas of programming that are both strategic for the USG and complementary to existing donor programs.

2. Recommendations for future ROL programming

The assessment will be used to inform the development of programmatic options for rule of law interventions. The assessment will lay out future program recommendations that aim to focus activities around the primary challenges in promoting the rule of law in light of the current state of political will, opportunities and constraints for reform, and past successes.

Program recommendations will identify the specific activities which can bring about realistic and long-lasting change to address the rule of law problems. Sustainability issues will be addressed. The recommendations will clearly identify the intended results. They should be prioritized both in order of importance and USAID's comparative advantage.

**C.4 GENDER CONSIDERATION**

Pursuant with USAID's recognition that gender issues are important considerations in development, the Contractor will look for gender implications or opportunities in the assessment. The Contractor will make its best effort to evaluate gender considerations and opportunities in rule of law in Albania, as well as to define gender-based barriers. If such barriers are identified, the Contractor shall propose an approach to eliminate them in the assessment.

**C.5 TASKS**

The contractor will employ a team to work directly with USAID staff to conduct the work in three phases outlined below:

Phase I—Preparation:

The preparation phase of the assessment will involve reviewing background materials and key documents; developing an assessment and developing an evaluation methodology that includes primary research questions and interview protocols; and preparing a schedule of interviews for the subsequent field work stage.

Phase II--Field-work (in-country):

The field-work phase will consist of field research, including gathering and reviewing documents, and conducting structured interviews with key informants (and focus groups, if appropriate) and beneficiaries, including the Judiciary, Government personnel, international and donor personnel, USAID partners, lawyers, judges, court administrators, mediators, civil society organizations, citizens groups, and other relevant stakeholders. The team will present a list of interviewees to USAID for approval prior to conducting interviews. The contractor will be responsible for developing the list of interviewees, as well as transportation and interpretation to the meetings. USAID will help with the arrangement of interviews. USAID will provide one or two technical experts to participate in the field-work phase of the assessment team.

Phase III—Report-writing:

The report-writing phase will consist of the Contractor drafting the Assessment Report, which will include all of the components outlined above

## C.6 PERSONNEL

The contractor will provide the following key personnel for the performance of this Task Order:

- **Bradford P. Johnson, Esq. – Team Leader**
- **Ariola Molla, Esq. – Subject Matter Expert**
- **Mirela P. Bogdani – Local Expert**

Key personnel specified in the Task Orders are considered to be essential to the work being performed thereunder. Prior to replacing any of the specified individuals, the Contractor shall immediately notify both the USAID Task Order Contracting Officer (TOCO) and Task Order Contracting Officer’s Representative (TOCOR) reasonably in advance and shall submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No replacement of key personnel shall be made by the Contractor without the written consent of the TOCO.

USAID reserves the right to adjust the level of key personnel during the performance of this task order.

USAID will appoint one to two professional staff to participate in the assessment, including in all meetings during the field research stage.

## C.7 SCOPE OF WORK

The contractor will employ a team to work directly with USAID staff to conduct the work in three phases outlined below:

### Phase I—Preparation:

During Phase I Contractor’s team members and home office staff will make all the arrangements necessary to conduct an effective and efficient assessment. Phase I will last approximately one week, with three days of LOE. Team members will conduct preliminary research to review key documents and to identify inter-view candidates, locations for site visits, and locations and ideal compositions for focus groups. Team members will also develop interview protocols, questions, and schedules, in consultation with Contractor’s home-office staff and USAID/Albania. Contractor’s home-office staff will book international flights for the Team Leader and Subject Matter Expert to Tirana and will also book all necessary hotel reservations. Contractor’s home-office staff will also brief team members on the details of the assessment methodology discussed above, and will solicit opinions from the team as whether improvements or alterations can be made to that methodology. During this phase Contractor will provide USAID with a more detailed version of the assessment methodology plan, which will include primary research questions, interview protocols, and a list of interviewees, in addition to a list of key site visit locations and focus group plans. Contractor will also submit the anticipated schedule for the assessment and all logistical arrangements.

### Phase II--Field-work (in-country):

During Phase II, Contractor’s team will conduct the substantive assessment. Phase II will last approximately three weeks. The team will spend the first ten days LOE of the assessment in Tirana, conducting ROL research from within the political system, as detailed above, and doing on-site visits to Tirana court-houses as appropriate. Team members will conduct interviews with relevant stakeholders in the capital during this period. Two focus groups will be held in the capital, which will include members of the legislature, members of the administration, and judges or court officials. After concluding research in the capital the team will move out into the prefectures to conduct site visits at court houses throughout the country, conduct interviews with regional court officials and CSO members, and interview local politicians and bureaucrats as deemed appropriate and necessary. Contractor team members will conduct three focus groups while in the various prefectures to ensure a representative perspective on ROL in Albania from a variety of groups, including CSO’s, local judicial officials, and Albanian citizens.

During Phase II Contractor team members will conduct an introductory briefing with USAID/Albania within two days of arrival in Tirana and will also conduct an exit briefing with USAID/Albania upon completion of the assessment to summarize initial key findings and recommendations. Throughout the process Team Members will coordinate regularly with a Contractor analytics program manager at Contractor headquarters, who will in-turn coordinate with USAID as necessary. Contractor will remain continually apprised of the status and location of the team throughout the assessment and will relay that information to USAID as requested or as deemed pertinent. Any changes in schedule, logistics, or substantive methodology will be

implemented in consultation with Contractor and USAID staff. Contractor home office support staff will manage logistics, travel, and accounting needs for the duration of the assessment.

#### Phase III—Report-writing:

During Phase III Contractor’s team will write and submit the assessment report. Phase III will last approximately three weeks. The team will conduct an internal synthesis session before departing Tirana so the Albanian members of the team can participate in the preliminary distillation of findings. During this preliminary synthesis process the assessment team will produce an initial outline of the final report for USAID to review. The Team Leader and Subject Matter expert will then fly back to the United States and begin drafting the report. The Team Leader will be responsible for managing intra-team communication and communication with Contractor staff during the report-writing process. Contractor will submit a draft of the final report to USAID within 10 working days of departure from Tirana and will submit a final report within 5 working days of receiving comments on the draft from USAID. A Contractor analytics program manager will be responsible for ensuring timely delivery of drafts. For details, see work plan in Annex B. Contractor’s final report will be clear, concise, comprehensive, and specific. It will provide both an accurate assessment of the current state of ROL in Albania and specific recommendations for future ROL strengthening programs targeted at areas in which USAID has a developmental comparative advantage.

## C.8 METHODOLOGY

During the preparation phase Contractor will provide an evaluation/assessment methodology plan, which will include primary research questions, interview protocols, and a preliminary list of interviewees. Additionally, Contractor will submit the anticipated schedule and logistical arrangements, delineating roles and responsibilities of team members. During the field-work phase Contractor will conduct an introductory briefing to USAID within two days of arrival in-country and an exit briefing upon completion of the assessment to summarize key findings and recommendations. During the report writing phase Contractor will provide USAID/Albania a draft assessment report within ten working days of departure from Tirana and a final report 5 days after receiving comments on the draft. Contractor’s final report will be a clear and comprehensive assessment of the status of ROL in Albania and the major opportunities and challenges associated with strengthening its ROL sector. Contractor will submit all data collected during the evaluations to USAID/Albania at the end of the contract, including qualitative and quantitative data. Contractor will manage all logistical and operational aspects of the project to ensure success, including for travel, operations, and appointment scheduling for the duration of the project.

[END OF SECTION C]

# ANNEX B: LIST OF INTERVIEWEES

## Judiciary

Name of Interviewee	Position	Institution
Luljeta Laze	Director	Judicial Budget Office
Fatri Islamaj	President	Tirana Judicial District Court
Kastriot Selita	Chief Justice	Administrative Appellate Court
Xhezair Zaganjori	Chief Justice	Supreme Court
Alaudin Malaj	President	Tirana Appellate Court
Sander Simoni	Chief Justice	Serious Crimes Court
Ardiana Bera	President	Judicial District Court of Kruja
	Chancellor	Judicial District Court of Kruja
Shehzade Boriçi	Chancellor	Shkodra Judicial District Court
Arber Çela	Former President	Shkodra Judicial District Court
Sokol Shehu	Civil Judge	Shkodra Judicial District Court
Agron Vavla	President	Berat Judicial District Court
Sokol Berberi	Judge	Constitutional Court
	Chancellor	Korça Judicial District Court
	Judge	Korça Judicial District Court

### Independent Institutions

Name of Interviewee	Position	Institution
Luljeta Laze	Director	Judicial Budget Office
Marsida Xhaferllari	Chief Inspector	High Council of Justice
Irma Baraku	Commissioner	Commissioner for Protection from Discrimination
Adriatik Llalla,	Attorney General	General Prosecutor's Office
Alma Hiçka,	State Advocate	State Advocate Office
Ervin Pupe,	Director	School of Advocates
Shkelqim Gani,	Inspector General	High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests
Neshat Fana	Director	School of Magistrates
Maks Haxhia	President	Chamber of Advocates

### Government Institutions

Name of Interviewee	Position	Institution
Sokol Pasho	Director of Strategic Planning	Ministry of Justice
Klajdi Mati	Director	Albanian Bankruptcy Supervision Agency
Fatmira Seferaj	Finance-HR Director	National Public Bailiff Office
	Director	Tirana Office, National Public Bailiff Office

### Civil Society and Independent Organizations

Name of Interviewee	Position	Institution
Aurela Anastasi,	Executive Director	Center for Civil and Legal Initiatives
Myftar Doçi,	Executive Director	Albanian National Training and Technical Assistance Resource Center
Juliana Hoxha	Executive Director	Partners Albania
Marjana Semini	Executive Director	Center for Legal Studies
Arta Mandro	Legal Expert and Trainer	Center for Legal Studies
Fitore Sulejmani	Coordinator	Citizens Advisory Panel
Afroviti Gusho	Executive Director	Me, the Woman Organization

Kristina Fidhi	Director/Journalist	Investigative Journalism
Gerd Hoxha	Chairman	Union of Judges

### Donor Community

Name of Interviewee	Position	Institution
Fiorentina Azizi	Head of Rule of Law and Human Rights Department	OSCE
Adela Llatja	Country Coordinator	GIZ (German Cooperation)
Jon Smibert		OPDAT
		ICITAP
Tea Jaliashvilli	Project Manager	EU / CoE Support to Efficiency of Justice, Council of Europe Office in Tirana
Lora Ujkaj	Programme Manager for Justice and Home Affairs	European Union
Jay Carver	Chief of Party	USAID JuST Program
Elina Koçi	Rule of Law Specialist	USAID Albania
Suren Avanesyan		USAID Washington
Marc Ellingstadt	DG Specialist	USAID Albania
Marcus Johnson	Mission Director	USAID Albania

### Individuals

Name of Interviewee	Position	Institution
Eduard Halimi	Former Minister of Justice, DP Member of Parliament;	Deputy Head of DP Parliamentary Bloc

# ANNEX C: FOCUS GROUP METHODOLOGY

## GENERAL METHODOLOGY

The methodology for the assessment involved some 80 hours of documentary research prior to arrival in Albania; 50 semi-structured interviews with key stakeholders in Tirana and elsewhere; five site visits, including courthouses, in Tirana, Kruja, Shkodra, Berat, and Korca; and two recorded focus groups in Tirana and one each in Shkodra and Pogradec.

The primary research questions guiding the desk review, interviews, and focus groups were:

(1) With EU candidate status now achieved, what are the specific major areas where improvements are needed in the justice system to satisfy European standards? Have those areas been specifically recognized by the GOA? What is the quality level of actors in the system and the institutions within which they act?

(2) How well is self-government of the judiciary being managed and judicial independence and accountability being realized? How much political interference with the judiciary still exists and what steps are being taken to eliminate it?

(3) Do the police and prosecutor functions operate sufficiently well to link with the judiciary to make the criminal justice system reasonably effective? Is adequate defense counsel guaranteed?

(4) What roles do non-state stakeholders (civic groups, professional associations, law faculties, and media) in the justice system play in strengthening the justice system? Does civic culture actively motivate strengthened rule of law in the country?

(5) The justice sector/rule of law is a critical element in democratic development. What are the feedback loops, both positive and negative, between the justice sector and other actors and institutions outside the sector that are important to democratic development? What are the interests that drive their actions?

In all interviews and discussions, the team asked about public trust and confidence in the integrity of the judiciary and about perceptions of court operations. The team also raised the issue of corruption in the judiciary and other institutions of government, but it is noteworthy that almost all informants raised the issue of corruption on their own without need for prompting.

## FOCUS GROUPS

Focus groups discussions provide an opportunity to collect the quotes, sentiments, emotions, and reasons behind certain attitudes and opinions. As part of this Rule of Law Assessment project Democracy International conducted a total of four focus groups discussions. Two focus group discussions took place at the Kotoni Hotel in Tirana with law students attending the law clinic and judges. Additional two focus group discussions took place in the offices of two non-governmental organizations: Women to Women in Skoder and Me the Woman in Pogradec. One interview was conducted with the court administrator in Skoder. Each focus group discussion comprised between four and 13 participants and lasted between one to two-and-a-half hours. The focus group discussions in Tirana comprised of both male and female respondents while the ones in Skoder and Pogradec comprised of female respondents only.

Prior to commencing the focus group discussions and for the purposes of developing the focus group discussion guide, DI conducted an extensive literature review about the Albanian judicial system and court administration in general. The guides consisted of approximately thirty-one open-ended questions ranging

from the participants opinion on the state of the judicial system in Albania, to the role of civil society in serving as catalysts for such reforms.

Below is a brief description of the issues that DI took into consideration when moderating the discussions:

**Translation:** All of the focus group discussions were conducted in the local language and the local expert engaged simultaneous translation.

**Developing Rapport:** A key step in conducting the focus group discussions is developing a good rapport with the respondents. DI developed rapport with the respondents by introducing the team members, explaining the purpose of the study, putting the respondents at ease by listening and observing carefully as the moderator guided the respondents through the conversation until all of the important questions on the focus group discussion guide were covered.

**Understanding and Interpreting:** DI ensured that the team members actively listen to the respondents, attend fully to their responses and reflect upon them, interpret / rephrase what has been said to ensure a greater and complete understanding of the message provided by the respondents. DI also ensured that the respondents stay on track by limiting distractions and seeking clarity and understanding throughout the focus group discussions.

**Audio Recording:** All participants were asked for permission to audio record the sessions prior to commencing the focus group discussions. All participants agreed to have the focus group discussions audio recorded. As a result DI managed to review all of the focus group discussions prior to commencing the transcription, which further increased the data accuracy.

**Data Transcription:** DI conducted the data transcription by listening to the simultaneous translations and transcribing the content of all focus group discussions. All focus group discussion transcriptions are available for USAID's review.

## FOCUS GROUP DISCUSSION GUIDE

### I. INTRODUCTION

- Begin by introducing the project (e.g. a few sentences about the background of the project will suffice).
- Individual introductions (e.g. employer, position, main tasks).

### II. QUESTIONS

#### Confidence in the courts

- In your view, what is the biggest success that the judiciary as a whole has achieved in the past five years?
- Could you also tell me what are the most important challenges facing the court system today? How can these challenges be overcome? Please provide as specific examples as possible.
- If you were tasked to put together a plan to address these challenges what would your plan entail? Please provide details.
- In general, how would you rate your confidence in the court system? Do you feel very, somewhat, not very, or not at all confident in the performance of the system as a whole? Please provide details.

- In your opinion, what is the degree of confidence that the general public has in the court system? If no or low confidence, ask why?
- From your personal perspective, what have been the most important positive developments that happened to the court system during the last five years?
- The need for judiciary reform comes up a lot in the day-to-day conversations. In your opinion, what are some specific areas of the judiciary system where such reforms are the most necessary? Please provide specific examples.

## **Dealing with the litigants**

- Could you describe the typical process from the intake of the case to its resolution? What are the major obstacles facing the litigants throughout this process? How can such obstacles be overcome?
- Are the litigants able to have their say in court? Do they have enough “face-to-face” time with the judge? Are they able to win their case based solely on facts?
- If not, what prevents the litigants from winning the case solely based on facts?
- How would you rate the general procedural fairness and the degree of respect for the dignity of the individual by the court system? Are the judgments mostly fair? If not why aren't the litigants being judged fairly? Are there certain groups that are not judged fairly as compared to others?
- Do the litigants know their rights? Are they able to get enough information about their legal rights? What source(s) of information do they use to learn about their rights?
- What is the role of the Bar Association in informing citizens about their legal rights? Are they actively informing the citizens? If so, in what ways?
- What are some of the barriers or customs that block people from taking a case to court? Is there a perception that litigants would not receive fair treatment? Are there any gender biases in the court systems?
- Is there a general perception within the population that the court serves as an independent and accountable entity? If not, what are the peoples' perceptions of the court systems?
- Do citizens question the independence of the courts? If so, could you please provide reasons as to why do they question the courts independence?
- Are the courts perceived to be accountable to litigants? If not, why aren't they accountable to litigants? Provide examples.
- What could be done to help to improve the public trust and confidence in the courts? Are there specific mechanisms that should be put in place to ensure a higher level of public trust in court system?
- Is the public informed of the work of the court? If so, what mechanisms are used to inform the public of the works of the courts? In which ways do courts inform citizens of their work? Please provide examples.

## **Media and Civil Society**

- What is the current role that civil society plays in advocating for judicial reform?
- In what ways could civil society/media organizations better serve as catalysts for judicial reforms? Please provide specific examples.

- In what ways do civic society and the media keep the judiciary accountable?
- Is the media reporting fairly about the problems in the justice sector? Do they base their reporting on facts or are they reporting their stories in a sensational fashion?
- Do media and civil society organizations have free access to courts?
- Do they reach out to the judges and courts administrators when investigating stories?
- Is the relationship between civil society, media and the justice sector a positive one?
- What can be done to link these sectors together in order to commence a conversation on judicial reforms?

## **Gender**

- Do women have a more difficult time accessing the court system?
- Are there any gender specific issues you would like to share with us that impede women's access to the justice system?
- What about minorities, do they have free access to the courts? If not, what specific issues impede minorities to have free access to the courts?

## **Corruption**

- What are the most prevalent examples of corruption within the court systems? Please be specific.
- Are there any specific mechanisms set up to help combat corruption within the court systems? If so, what are these specific mechanisms? Are they effective in combatting corruption?
- If there are no specific mechanisms in place what kind of mechanism should be put in place to diminish corruption in the courts?

## **Alternative Dispute Resolution**

- What is your opinion on the use of mediation and arbitration as alternative dispute resolution mechanisms?
- Are these methods used in Albania? If yes, how successful are they in resolving the issues at hand? If not, why aren't these methods useful?
- What kinds of disputes tend to be dealt with through the alternative dispute resolution channels?

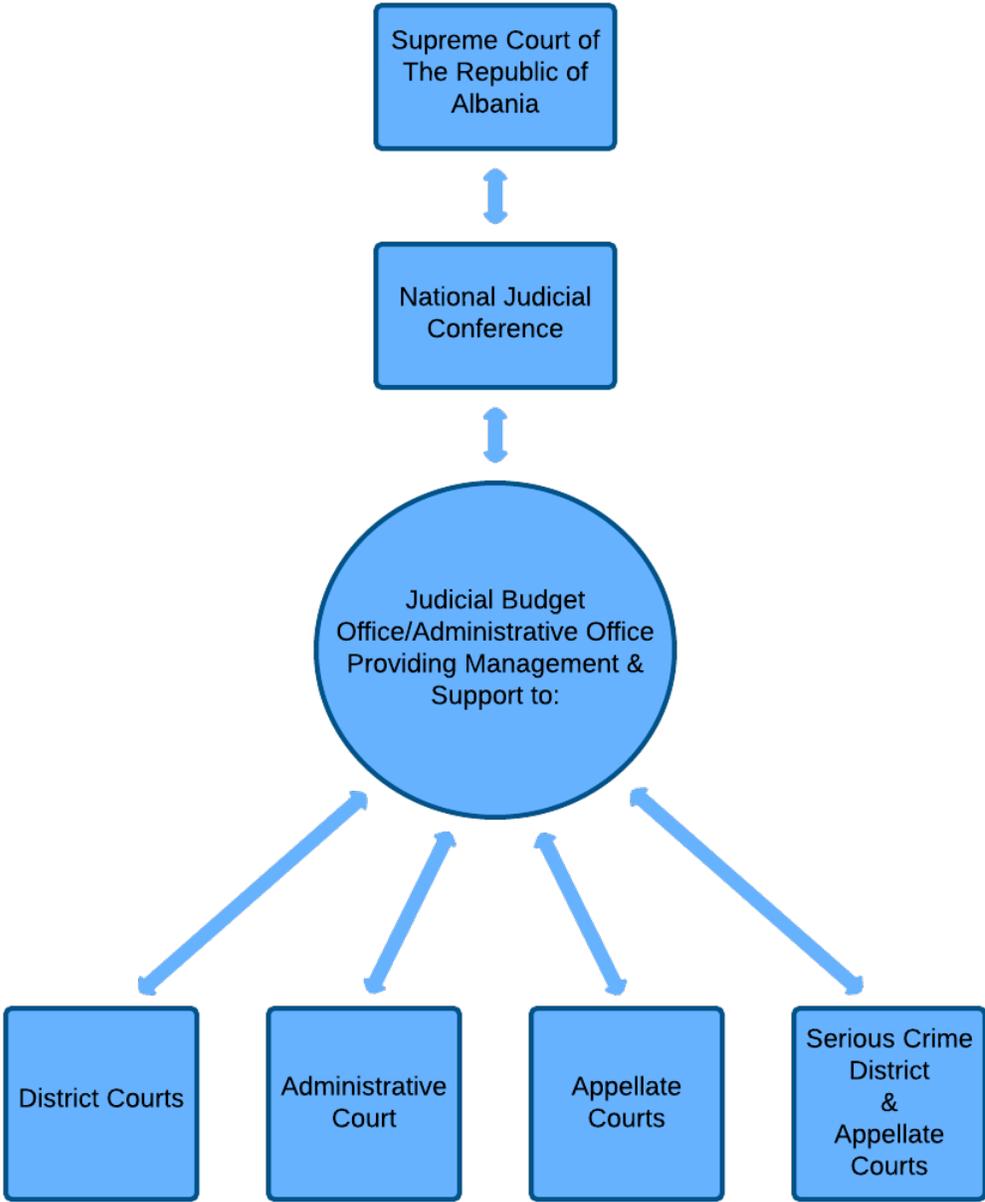
## **III. CONCLUSION**

- In your opinion what is the single most important area of reform intended to improve the justice system the government should focus on in 2015? Please provide specific examples.
- What actions need to be taken in order to improve the court administration and service delivery? Please provide specific examples.
- Do you have any additional thoughts, comments or suggestions on this particular subject

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# ANNEX E: SAMPLE OFFICE OF COURT ADMINISTRATION



**U.S. Agency for International Development**

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

[www.usaid.gov](http://www.usaid.gov)