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EVALUATION OF THE JUSTICE SYSTEM REFORM ACTIVITY – KOSOVO

JULY 19, 2006

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DISCLAIMER

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

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ACRONYMS AND ABBREVIATIONS

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

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

EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

I.0 BACKGROUND TO THE JUSTICE SYSTEM REFORM ACTIVITY

I.1 POLITICAL BACKDROP

This evaluation was conducted almost seven years following the cessation of the war between the North Atlantic Treaty Organization (NATO) and Yugoslav forces, and concurrently with meetings convened for the purpose of resolving Kosovo's status. In the wake of the war, the civil authority in Kosovo known as the United Nations Interim Administration Mission in Kosovo (UNMIK) was established pursuant to UN Security Council Resolution 1244. As of the time of this evaluation, UNMIK is rapidly transforming from an agency with near-total authority over the government of Kosovo to one with an ever-narrowing set of issues over which it maintains control. Throughout its lifetime in Kosovo, UNMIK has been headed by a Special Representative of the Secretary General (SRSG) and has operated according to four "pillars" of authority under which reconstruction of Kosovo took place:

- Pillar I, "Police and Justice" (headed by the UN);
- Pillar II, "Civil Administration" (headed by the UN);
- Pillar III, "Democratization and Institution Building" (headed by the Organization for Security and Cooperation in Europe); and
- Pillar IV, "Economic Reconstruction" (headed by the European Union).

Under Pillar I, and through its own Department of Justice (DOJ), UNMIK has overseen the re-establishment of a judiciary in Kosovo and confirmed the appointment of over 380 judges comprised of majority and minority groups and operating at the local, district, and provincial levels. UNMIK's Pillar I authority has encompassed the development of a legislative framework for the judiciary, the creation of an effective and efficient court system, investigations of allegations of judicial misconduct, and oversight of criminal trials prosecuted and adjudicated by international prosecutors and judges.

In 2001, UNMIK established a Kosovo Judicial and Prosecutorial Council (the KJPC), a body consisting of local and international members that, until recently, advised the DOJ on matters pertaining to appointment, removal, and discipline. The KJPC has recently been dissolved as part of the creation of separate councils for judges and prosecutors, holding much broader responsibilities, as discussed later in this evaluation.

Although Pillar I reserves to UNMIK the authority over most aspects of Kosovo's judiciary, since 1999 an assortment of related topics has been covered by other areas of authority. Significantly, the Department of Judicial Administration (DJA), a division of the Ministry of Public Services (MPA) under Pillar III, was charged with overseeing the daily operations of the local judicial system, including the management of space and facilities, supervision of statistics and information technology, and appointment, training, and compensation of court staff. Training of court staff fell under the scope of

work performed by another MPA agency, the Kosovo Institute for Public Administration (KIPA). Similarly, the development of the Kosovo Judicial Training Institute was part of Pillar III's functions.

With respect to the creation of a legal framework, UNMIK drafted most pertinent laws pertaining to justice-related functions and promulgated them according to its own legislative regime of "regulations." Yet, over time, Kosovo's Assembly has exercised law-making authority over an ever-broadening scope of matters, including some directly pertaining to justice-related institutions. Since UNMIK assumed its authority in 1999, the law in Kosovo has been comprised of the following:

- UNMIK regulations, including the Constitutional Framework of 2001 which established the Provisional Institutions of Self-Government (PISG) and incorporates several international human rights instruments, and subsidiary UNMIK instruments;
- Kosovo Assembly laws, as entered into force by UNMIK;
- The law in force in Kosovo on March 24, 1989, the last day on which Kosovo held autonomous status within the former Yugoslavia; and
- Law promulgated in Kosovo after March 24, 1989 and before June 1999, insofar as it addresses a subject matter or situation not covered by the prior law, the UNMIK law, or PISG law, and it is nondiscriminatory.

Since mid-2005, changes have swept through Kosovo's environment pertaining to courts and justice at a rapid pace. Namely, following a report issued by special envoy Kai Eide at the behest of UNMIK, the UN elected to fast-forward its "standards before status" approach to building institutions in Kosovo into full-fledged resolution talks.¹ In so doing, it hastened the creation or formal recognition of a number of institutions, including the following:

- Kosovo Judicial Council (UNMIK Reg. 2005/52), supported by a secretariat and charged with setting administrative policy and providing administrative oversight of the judiciary and the courts²;
- Ministry of Justice (UNMIK Reg. 2005/53), charged with managing a variety of justice-related functions within the executive branch of government, including legislative drafting, prosecution of criminal cases, representation of the government in civil matters, and training of prosecutors; and
- Kosovo Judicial Institute (UNMIK Reg. 2006/23), whose mission to train judges and prosecutors in consultation with the KJC has been formalized

As final status talks for Kosovo proceed, there will be an increasing push to create and build the capacity of new institutions that will support Kosovo's future justice system. Yet as UNMIK plans to depart, many of its professionals have already left Kosovo and UNMIK has fewer people to do the business of creating mechanisms for the implementation and sustainability of these new institutions. The development, stability, and increased capacity of Kosovo's new institutions are increasingly in the hands of a post-status resolution donor community and, of course, the institutions themselves.

¹ See "United Nations Security Council: A Historic Day for Kosovo," *Focus Kosovo* (November/December 2005) at 8.

² A proposed Administrative Office of the Courts is expected to operate under the authority of the KJC and to take over most court-related functions currently vested with the DJA. At the time of the fieldwork for this evaluation, the exact appellation for this new office and its relationship with the Secretariat of the KJC had not yet been determined.

I.2 USAID'S FIRST FORAY INTO SUPPORT FOR KOSOVO'S COURT SYSTEM (2001–2003)

Late in 2000, USAID awarded the National Center for State Courts (NCSC) a task order pertaining to court administration in Kosovo. Along with its subcontractor DPK Consulting, NCSC implemented this contract from January 2001 through March 2003. The task order included 11 components, including developing a strategy for administration of justice in Kosovo, case and statistics tracking, and public access. Many of these components relate to components under the subsequent Justice System Reform Activity, which NCSC also implemented.

USAID commissioned an evaluation of the NCSC/DPK contract, which was released in November 2003. The evaluation found that the NCSC/DPK project “operated under a fundamental design flaw” in that the project was designed for an American-style judiciary, not for the developing judicial system in Kosovo. According to the evaluation, the program was “too ambitious for the amount of time and funding allocated and there was too much lag between the needs assessment that had been conducted for the project and the launch of the project almost a year later.”

The evaluation of the NCSC/DPK contract attributed the lack of progress in developing an overall strategy for the administration of the judicial system to differences among UNMIK, USAID, and the Kosovars themselves. USAID thereafter suspended the effort on this component. The evaluation applauded the NCSC/DPK effort to reach out to Kosovar counterparts in planning its projects, but criticized the failure to ensure the appropriate participation of UNMIK, which “clearly impeded its work in the development of a strategic plan.” NCSC/DPK completed “a number of manuals and provided training to many Kosovar judicial staff.” Although the quality of the manuals was high, the impact was minimal. As stated in the evaluation, “many of the outputs of the project were simply not relevant to the situation in Kosovo.” This contract ended in March 2003.

2.0 JUSTICE SYSTEM REFORM ACTIVITY (2003–2007)

In April 2003, USAID contracted with NCSC for the Justice System Reform Activity (hereinafter the Project) on the heels of the conclusion of the NCSC/DPK court administration program in Kosovo. The three-year base period was for \$10,221,984 with an option for an extension for \$3,438,282, which USAID has exercised. The total potential value of the contract is \$13,660,266. The Project is expected to end in July 2007. This evaluation was conducted with approximately one year remaining on the contract.

3.0 THE DESIGN OF THE PROJECT: NCSC'S APPROACH

Under the request for proposal, the Project was to consist of four major components. Although intervening events changed the scope of these components, as originally planned, they included the following:

- Component 1—Drafting Laws and Formulating Policy: Assist in developing laws and policies that support an effective and impartial Kosovo justice system.
- Component 2—Court Administration: Assist courts to operate effectively.
- Component 3—Ethics: Develop systems to provide effective oversight for legal professionals in the areas of respect for ethics and delivery of quality services
- Component 4—Public Awareness: Increase public awareness of Kosovo's evolving legal framework and justice system to improve access and ensure individual and community rights are protected.

In this section of the evaluation, the evaluation team outlines NCSC's approach to these components. The evaluation team relied primarily on the NCSC's initial work plan for 2003–2006 to glean what NCSC intended to accomplish as it set out to implement the Project and how it intended to accomplish the goals of the Project. The findings of the evaluation team of what NCSC actually has done to advance these goals are set forth in Section 5. As noted in more detail in that section, the activities that NCSC carried out departed substantially from those enumerated in its initial work plan.

3.1 NCSC'S APPROACH TO COMPONENT I

NCSC started its efforts where the previous contract left off. NCSC divided its work under Component I into contributing to developing a justice system strategy, establishing a Judicial Administration Advisory Group, developing a forward plan and action plan for judicial administration reform and assisting in drafting and revising legislation and regulations pertaining to the judiciary. As described in NCSC's Work Plan for 2003–2006, NCSC's approach changed based on terms of reference negotiated between USAID and the Department of Justice (Pillar I). The Justice Strategy Advisor under NCSC's contract would have no direct reporting relationship to NCSC. This initial break characterized the course of the contract through the time of this evaluation. On the one hand, NCSC attempted to achieve the results enumerated in the Scope of Work. On the other hand, USAID tapped the NCSC to provide support to the international effort to rebuild Kosovo under the UNMIK banner. As the Work Plan reflected, the NCSC program managers would not "have authority to task this advisor to carry out activities included in this component."

The Work Plan also hinted of problems to come. NCSC noted that it would coordinate closely with other donor efforts, including a joint study commissioned by the European Union and the United States Office in Pristina (USOP) as well as with a competing effort sponsored by the Department for International Development (DFID) to prepare for the transfer of justice sector policymaking. As the Work Plan indicated, "UNMIK has already moved in a different direction with respect to responsibility

for transition and strategic planning for justice sector institutions.” DFID was charged with the responsibility for preparing a broad-based justice reform strategy. All that was left for NCSC to do was to “participate with on-going and anticipated strategic planning exercises.” NCSC divided its approach into four major subcomponents.

The first subcomponent was to coordinate with other actors and build on the efforts of its previous contract. It proposed to draft an issues paper, and then organize and facilitate a series of workshops “to build toward a common vision.” NCSC proposed to prepare an analysis based on the results of these planned workshops. It then intended to hold additional workshops in the second and third years of the contract to “update” the stakeholders on the progress towards goals.

The second subcomponent that NCSC proposed on its own initiative was to establish a Judicial Administration Advisory Group. To guide reforms in the courts, NCSC proposed to work with UNMIK/DOJ and DJA to delineate and finalize draft terms of reference for the Advisory Group. The purpose of this Advisory Group was to “focus specifically on planning for judicial administration reform, and to provide for on-going input to and review and monitoring of the implementation processes.” Under NCSC’s approach, the work of the Group would “link closely” to another justice sector reform working group envisioned under a project of the UK Department for International Development.

The third subcomponent of NCSC’s approach was to develop a “forward plan” and “action plan” for judicial administration reform based on the results of the roundtable that NCSC would analyze and summarize. NCSC proposed that these results would serve as the basis for discussions and to guide preparation of the Advisory Group’s drafting the forward plan and the action plan. NCSC intended that the forward plan would serve as the “operational blueprint” for “introducing institutional changes, modifying and improving the functions of the courts, and introducing new legislation, working procedures, and automated systems.”

The last subcomponent of NCSC’s approach to Component 1 was to review current laws and regulations relating to the judiciary and make short-term consultants available to “provide drafting support.” NCSC’s approach to drafting was to review legislation and amendments “pending before the Assembly that relate to the work of the courts to identify provisions that may conflict with other codes or be unclear, as well as providing guidance on how to enact and implement new provisions.”

3.2 NCSC’S APPROACH TO COMPONENT 2

Component 2 of the Project encompassed significant support in court administration. As reflected in the Scope of Work for this evaluation, attached as Annex A, USAID planned to assist courts to operate effectively by “improving budgetary, procurement, personnel and facilities management, automation, case-tracking, and records keeping; installing local area networks and related technical equipment; developing an effective system for court recording; improving execution of civil judgments and case-purging; and ensuring that a compendium of applicable law was created and distributed to all legal professionals.” NCSC was also to ensure that budgetary, financial, case-management, procurement, personnel, and facilities management systems were functioning smoothly in each of Kosovo’s 54 courts. An objective of the Project was to enhance the transparency of court operations and the judicial process to improve court efficiency and accessibility to the public. This objective was to be achieved through improved documents management and case-tracking, publishing selected judicial decisions, and setting up systems that allow the public, including the media and legal service providers, as much access to information as possible.

During the course of the Project, NCSC has undertaken a variety of initiatives to support the work of courts in Kosovo. The Project has conducted assessments—some more formal than others—of the pertinent environment to determine the most effective manner in which it could respond to its mission.

After these assessments, NCSC developed and implemented a variety of approaches to its activities. These approaches include direct technical assistance to implementing institutions, including secondment of court administration professionals to pertinent agencies; development and distribution of policy papers and resource materials; stand-alone projects and training programs using foreign trainers and implementers; projects and training programs developed in cooperation with existing Kosovar institutions; creation of or participation in working groups and committees; and others. In general, the Project has attempted to remain flexible so that it could develop or modify activities according to the circumstances imposed by changing political circumstances and a complex donor environment.

3.3 NCSC'S APPROACH TO COMPONENT 3

Under an understanding between UNMIK and USAID, the initial approach to the ethics component was to second an advisor to the Audit Section of the Judicial Inspection Unit (JIU) of DOJ. The NCSC Advisor would receive assignments exclusively from the Coordinator of the JIU, not from NCSC. The Legal Ethics Advisor would have a role in establishing the Audit Section of the JIU. NCSC outlined several activities in which its advisor would be engaged at the JIU, including setting up and providing assistance in staffing the Audit Section, supervising the work of the Audit Section, establishing and maintaining contacts with relevant institutions regarding the activities of the Audit Section, and developing general inspections and audits throughout the judicial system of Kosovo. NCSC also suggested strengthening the ethics and disciplinary system in Kosovo for judges by preparing an issues paper identifying perceived weaknesses in the current system and then conducting a series of ethics workshops. NCSC also proposed to work with other institutions to develop effective training modules on ethics.

3.4 NCSC'S APPROACH TO COMPONENT 4

The public awareness component of the NCSC project focused on ensuring widespread understanding of citizen's rights and obligations, to help citizens become engaged in the judicial process, promote consensus, and carry out effective programs to promote transparency. NCSC proposed to conduct a public awareness baseline survey and, based on the survey results, to develop brochures and public service announcements, and a public awareness program for children, students, girls/women, and emerging leaders. Under this component, NCSC also proposed activities to improve the public's access to justice, including an active publications program, speakers' forums, public awareness workshops to "mobilize communities to use ADR [alternative dispute resolutions]," a public information function within each court, and workshops for journalists.

4.0 PURPOSE AND METHODOLOGY OF EVALUATION

4.1 OVERVIEW OF EVALUATION

As the NCSC contract reached its third-year anniversary earlier this year, USAID issued a task order to provide USAID/Kosovo “with an objective assessment of the appropriateness and effectiveness” of the Project. The Scope of Work included three tasks: 1) to evaluate NCSC’s current performance; 2) to recommend adjustments to NCSC’s activities through the end of the contract; and 3) to recommend possible follow-on activities in the justice sector. A copy of the Scope of the Work for this evaluation is attached as Annex A. Annex B provides a summary of NCSC’s activities,³ the current status of these activities (as of the conclusion of the fieldwork on May 26, 2006), the outcome of these activities, and a brief recommendation whether to continue, abandon, refine, or redirect these activities.

4.2 FIELDWORK

The team devoted the first week of the assignment to developing a detailed work plan and basic methodological guidance for the evaluation, including a description of the methodology for data collection. At this stage, the team reviewed relevant documentation available on USAID’s web site, conducted Washington, DC-based interviews, and organized logistics and field arrangements. The draft work and methodological plan was ready to be reviewed, discussed, and finalized in collaboration with USAID during the first two days of the team’s fieldwork in Kosovo. As discussed below, the unavailability of relevant documents to the team hampered both preparation for and execution of this evaluation.

Two members of the team arrived in Kosovo on May 15, 2006, and the third member of the team arrived on May 16. The team met with USAID on May 16 to receive further guidance on the scope and approach for the evaluation. The team devoted the first few days in Kosovo to initial meetings with relevant USAID/Kosovo staff, NCSC Project staff, and relevant UNMIK and PISG officials. During the evaluation team’s fieldwork in Kosovo, NCSC had a NCSC employee from Washington DC sit in on meetings between the team and NCSC staff in Kosovo.

The team prepared component work plans to guide its work, which are included in Annex C. The team mostly met as a group with respondents during the first week, but during the second week the team members generally met individually with those respondents who had specialized knowledge of the component for which the team member was responsible. A full list of those individuals with whom the

³ Since the activities of the Project have changed considerably since the beginning of the Project in 2003, the activities in Table B-I are a compendium of activities from the three Project work plans covering the period through August 2006.

team met, either together or separately, is attached as Annex D.⁴ The evaluation team met with USAID at the beginning of the second week to provide a “mid-term” briefing. At the end of the team’s fieldwork in Kosovo, the team gave a final briefing to USAID on May 26, 2006.

During the fieldwork, one or more members of the team visited the Supreme Court, the Pristina Municipal Court, the Podujevo Municipal Court, the Gjilan District Court, the Gjilan Municipal Court, the Gjilan Court of Minor Offenses, and also the Archives in Gjilan. The team also visited the Ministry of Justice, the Department of Justice, the Kosovo Judicial Institute, the Department of Judicial Administration, the Kosovo Law Center, the Statistics office of the Kosovo Judicial Council, and Partners Kosova, among other organizations and institutions.

The evaluation team supplemented its site visits and interviews by convening focus groups and implementing a survey instrument. For example, over the course of three hours on Tuesday, May 23, six judges and one court administrator of the Gjilan District Court participated in a roundtable discussion of the following issues: 1) audio recording project; 2) information technology; 3) backlog management; 4) law on mediation and law on notaries; 5) publication of laws; and 6) training in caseload management.

4.3 UNAVAILABILITY OF DOCUMENTS

This evaluation is limited by the unavailability of certain documents. NCSC decided which documents it would make available to the evaluation team, and delayed providing documents even for those documents that it agreed to make available. NCSC asserted that documents produced with US government funding and contained in binders marked “USAID from the American People” were proprietary to NCSC. During the second week of the fieldwork, NCSC allowed inspection of roughly 14 stacks of documents, and posted an expatriate monitor to watch the team review these documents. NCSC declined to provide documents in electronic form (except for work plans and quarterly and annual reports). After the fieldwork had been completed, NCSC provided copies of some of the documents requested by the team. NCSC also declined to provide for inspection, or otherwise, other documents, but did not identify which documents it withheld, and consequently, it is not possible to speculate whether any withheld documents would have significantly affected this evaluation.

⁴ Those individuals with whom members of the evaluation team had very short meetings are not included on this list. The evaluation team also had the opportunity to have informal conversations with lawyers, journalists and other observers of the legal community who provided a broad sense of the judicial system and NCSC's impact on it. Two of the members of the team spent a day with the Court Translator for the District Court for Mitrovica, who was able to share his views on the development of the court system in Kosovo.

5.0 FINDINGS AND ANALYSIS: BEGINNING OF THE PROJECT TO THE TIME OF THE EVALUATION (2003–2006)

In this section, the evaluation team sets forth its findings on the implementation of the Project by each component and analyzes the achievement of objectives of the Project.

5.1 MANAGEMENT

The NCSC had a difficult start as the expatriate staff during the first year changed rapidly. Although NCSC mobilized quickly, the first Chief of Party left within the first six months, as did the Deputy Chief of Party. The second Chief of Party also left the Project after a brief tenure due to a serious health condition, according to a NCSC quarterly report. The current Chief of Party, who had originally replaced the first Deputy Chief of Party, became the Chief of Party in early 2004. The current Deputy Chief of Party commenced his assignment in July 2004. The continuity in the leadership of the Project since 2004 has corresponded with some of the major achievements of the Project, as discussed below, particularly in the last 12 months.

Under the initial strategy for the Project, several people were to be seconded as advisors to the DOJ and DJA. According to a USAID official who was in Pristina at the time, however, UNMIK did not appear to be interested in the candidates offered by NCSC and seemed to prefer less experienced staffers. USAID and NCSC held extended discussions with UNMIK to place the NCSC advisors. They negotiated the draft terms of reference for the Court Administration Advisor and the Justice Strategy Advisor, but discussions with DJA and DOJ moved slowly. A major stumbling block was the issue of to whom the NCSC advisors would report. USAID and UNMIK eventually agreed that UNMIK would provide, through the relevant DOJ and DJA staff, day-to-day supervision of and direction to the advisors. UNMIK would also review, appraise, comment on, and subsequently approve (or disapprove) all final products or deliverables produced as a result of USAID/NCSC assistance.

The evaluation team reviewed the work of short-term advisors whose work was documented and provided to the evaluation team. But for other short-term advisors, the evaluation team was unable to make an overall assessment of their inputs or their overall effectiveness as the outputs or trip reports did not exist or were not provided to the evaluation team.

5.2 COMPONENT I: DRAFTING LAWS AND FORMULATING POLICY

5.2.1 Coordinating Mechanisms/Judicial Reform Strategy

Justice Sector Consultative Group (JSECG)

In 2003 the activities of the donors seemed to become increasingly unwieldy and effectively in competition with one another. UNMIK, working with the Kosova Foundation for Open Society, launched the Justice Sector Consultative Group (JSECG), a series of meetings to bring together various actors. The first meeting took place in September 2003, just as the NCSC was launching its activities in earnest. JSECG aspired to serve as a forum in which UNMIK could introduce topics on which it wanted to hear the views of JSECG members, including representatives from the Supreme Court, the Judges' Association, the Kosovo Law Center, University of Prishtina Law Faculty, and the Prosecutors' Association. JSECG meetings were to be a place for free and open debate and expression and exchange of views, though not for reaching decisions or achieving consensus. As one of the participants in the JSECG meetings told the evaluation team, these meetings were "informational" and "no decisions" were made. The purpose of JSECG was to provide a forum for consultation between UNMIK and key stakeholders on the development of a modern and responsive justice sector that would be sustainable after the withdrawal of the international community.

The primary responsibility for supporting the deliberations of JSECG fell to a project funded by DFID and implemented by KPMG, which commenced in or about May 2003. NCSC started collaborating with DFID/KPMG in providing support to the JSECG. But according to a NCSC work plan, "NCSC will work with DFID consultant KPMG to provide briefing papers for JSECG meetings. These may be written by NCSC but more likely by KPMG staff with input from NCSC. NCSC contribution will be through meetings with KPMG." NSCC representatives at these meetings "were observers at best," recalls a JSECG participant.

The DFID project provided various briefing papers, such as one dated November 29, 2003, which was "taken largely from reports prepared in connection with the EU [European Union] accession process." The paper is a well balanced primer on varying approaches to judicial administration, concluding properly that "International standards do not agree on the form of judicial administration best able to preserve judicial independence." The paper provides comparative experiences of countries in Central and Southern Europe, including Slovakia, Poland, Romania, Bulgaria, Slovenia and Hungary. The paper suggests that "courts should have meaningful involvement in their own administration, particularly in the areas of budgeting, appointments, and discipline," and at the end poses "key questions to consider."

According to a "white paper" on organization and management of the courts in Kosovo, the Deputy SRSG of Pillar I in January 2004 recommended incorporating the courts under the Ministry of Justice in a document entitled "Organization of the Ministry of Justice." This white paper, the author of which is not indicated on its face, argued that the Deputy SRSG "effectively reverts to models of judicial oversight and administration that characterized the old regime, are not reflective of the principles outlined in the Constitutional Framework nor consistent with judicial structures in the region and run contrary to USG [United States Government] goals and objectives for rule of law programs, developed and implemented in Eastern Europe." On February 23, 2004, NCSC's Justice Strategy Advisor prepared 1 ½ pages of comments critiquing the position of Pillar I. The Advisor commented that "Pillar I's proposal is intended to promote political accountability for the administration of the justice sector. It does so by making the Minister of Justice extraordinarily powerful, both by virtue of the levers of power the Minister controls and by virtue of the portions of the justice system on which s/he would be entitled to provide 'general guidance.'" It is not clear to whom these comments were distributed.

In 2003 and 2004, at the same time as the JSECG series of meetings, the Council of Europe and the United States Department of Justice were funding a comprehensive judicial assessment, which became known as the Kosovo Judicial System Assessment & Proposed Options 2003–2004, otherwise known as the JART Report. NCSC was not involved in the preparation of the JART Report. The JART Report was a significant effort to “re-evaluate and, if necessary, restructure Kosovo’s judicial and prosecutorial systems.” This 233-page report not only provided exhaustive estimates of judgeship and prosecutor estimates throughout Kosovo, but also made specific recommendations for restructuring the judiciary. The JART Report reviewed the experience in other countries in the region, such as Hungary, Poland, Romania, Bulgaria, and Macedonia. The report suggested reorganizing and renaming the Kosovo Judicial and Prosecutorial Council, established on April 6, 2001. The new entity, to be known as the Kosovo Judicial Council, would receive expanded authority for the judicial system, including submitting and executing the judicial budget. A draft of the JART report was circulating among the donor community as early as March 2004, but its official release was delayed until early 2005 while the hefty report was finalized and translated into Albanian.

During the series of JSECG meetings, it became clear that the Head of UNMIK Pillar I, Deputy SRSG Jean-Christian Cady, favored a model that seemed to depart from the emerging consensus of the other participants at the JSECG—and the recommendations of the draft JART Report, which also supported a model for self-administration of the judicial system removed from control of the Ministry of Justice. NCSC went to the USAID Mission Director, requesting him to prevail on the Deputy SRSG to release the JART Report. On April 7, 2004, the NCSC Chief of Party wrote to the Mission Director, recommending that USAID should propose to the DSRSG that “no decision be made on the Ministry of Justice model until UNMIK and the Kosovar justice sector community have had an opportunity to evaluate [the JART Report].” According to NCSC, USAID declined the recommendation and the release of the JART Report was considerably delayed.

As the issues before the JSECG ripened, a study visit was organized for members to go to Slovenia and Macedonia in June 2004. A NCSC advisor also went on these visits. DFID prepared a thorough report highlighting the various approaches employed in these countries. In preparation for the October 2004 JSECG meeting, a table was prepared attempting to reconcile the results of the study visit, the United States Office in Pristina/Council of Europe (USOP/COE) Report, and the position of the Department of Justice.

The last meeting of JSECG attended by Mr. Cady was December 13, 2004. The newly-appointed Director of the UNMIK Department of Justice, Thomas Monaghan, also attended. According to the minutes of the meeting, Mr. Cady indicated that he would prepare a note for the SRSG, informing him of the year-long, ongoing discussions under the aegis of the JSECG and highlighting the issues on which consensus was reached or not reached. The minutes reflect a wide-ranging discussion on critical aspects of the development of the judiciary and the role of prosecutors in Kosovo. Consensus was reached on organizing a new institution to be known as the Kosovo Judicial Council (KJC). The major issues were the role and composition of the KJC, appointment and discipline of judges, court budget, and administration. Mr. Monaghan, then the Director of the Department of Justice, related to the evaluation team that the JSECG meetings had dubious value. As far as the evaluation team could determine, the JSECG meetings ceased when he decided not to call any further meetings.

Project Review Board

Toward the end of 2003, the NCSC tried to insert itself into the strategy process, in accordance with its Scope of Work. NCSC offered to convene another committee, this one called the Judicial Administration Advisory Committee (JAAC). In proposing this committee, NCSC asserted that “no forum exists for the coordination of donor and justice system agencies to establish either a vision for the judicial system or a forward plan to achieve judicial system objectives.” According to NCSC’s

proposal, the JAAC would consist of 15 members, including judges, court administrators, and representatives of the DOJ, DJA, KJPC, and the public. NCSC proposed to submit a proposal to establish the JAAC in December 2003 and convene its first meeting in January 2004. NCSC contended that this committee would complement the activities of the JSECG.

In January 2004, the new Director of Administration at DOJ recommended transforming this concept into a steering committee for the NCSC project.⁵ Hence, the JAAC became a coordination committee overseeing NCSC's activities. According to NCSC's fourth quarterly report, the Project Review Board (PRB) was created "to facilitate communication between [sic] NCSC, USAID, and UNMIK." The PRB had "as its primary purposes, reviewing NCSC's core activities and progress towards goals, avoiding duplication of effort between NCSC, other donors, and UNMIK, as well as establishing priorities, open lines of communication, and facilitating the process of deliberating and reaching decisions on pending issues that arise during the course of program implementation." The PRB initially met on a monthly basis and provided a forum, as NCSC told the evaluation team, to "coordinate efforts" as there was a "misunderstanding of what we were doing."

Under the terms of reference, the PRB would "agree on a list of priority actions that USAID will assist Pillar I to accomplish for the forthcoming period (whatever the timeline we feel comfortable with/3 or 6 months?)." An example of the agenda from April 2004 reflects that Pillar I, DOJ, DJA/MPS, USAID, and NCSC participated in these meetings. At the April 2004 meeting, the PRB reviewed work plan progress and "new or revised project priorities." Under this structure, PRB would authorize NCSC to proceed in various areas, such as uniform schedule of fines and fees, notary services, and caseload management. The PRB was eventually discontinued, although the evaluation team was not able to determine when the PRB disbanded, but the last reference to the PRB in NCSC's quarterly reports was for the period ending September 2004.

Some Coordination Efforts Provided a Good Forum to Air Views

There were conflicting views as to the value of the coordination efforts during the first couple of years of the Project. On balance, the JSECG provided an important and significant forum to attract Kosovar participation and allow local stakeholders to air their views. When it appeared to some that the Deputy SRSG might try to impose a traditional European model of the Ministry of Justice, both DFID and NCSC successfully steered the process back to finding the appropriate model for Kosovo with Kosovo input and approval. The JSECG effort graduated into a full-fledged drafting effort, as discussed below. It is not clear to the evaluation team whether the drafting activities could have been mobilized as quickly without the JSECG meetings.

Although the JSECG process may have had some impact, the role of the Project in these meetings was not significant. NCSC's role was secondary to that of the DFID/KPMG project. It is not clear to the evaluation team how the roles of DFID through the KPMG activity and USAID through the NCSC project differed with respect to JSECG. The evaluation team could not determine that NCSC provided any significant value. Any minimal impact that the Project may have had did not warrant the considerable cost of time and energy.

⁵ At the same time, USAID was making a Herculean effort to bring all of the actors under one tent. On February 5, 2004, David Black, the Democracy and Governance Officer of USAID, chaired the first donor meeting, to which 14 donors, 24 nongovernmental organizations (NGOs) (including NCSC), and 32 observers, including UNMIK/DOJ, Kosovars, and others, were invited. Jean-Christian Cady, the DSRSG of UNMIK Pillar I, intended to establish regular donor coordination meetings. Mr. Black, however, left Kosovo later that month and it is not clear whether these donor meetings were continued. NCSC participated in this coordination effort. More recently, in early 2006, following the creation of the Ministry of Justice, the new permanent secretary of the Ministry has established a regular coordination meeting of donors for those providing assistance to the Ministry. NCSC has participated in these meetings.

5.2.2 Legal Drafting

NCSC Efforts in Legal Drafting Come to Life Only in 2005

Before 2005, there do not appear to have been any significant efforts at assisting in any major legislative drafting efforts. Rather, most of the effort with respect to Component I related to coordination and attempts by NCSC to insert itself into policymaking. As stated in NCSC's quarterly report, drafting laws seemed to be mostly confined to "stocktaking of existing laws and draft laws" or providing assistance...in reviewing laws and codes." In its July–September 2004 quarterly report, NCSC does not mention any drafting efforts whatsoever.

Several events converged in early 2005 to breathe life into this otherwise quiescent component of NCSC's activities. The new UNMIK DOJ Director Thomas Monaghan assumed his responsibilities. The Prime Minister's office had written a draft law on the courts, with some 163 articles, which apparently had serious shortcomings. The DOJ Director tapped DLA Piper Rudnick Gray Carey (DLA Piper), a law firm with 3100 lawyers located in 22 countries and an active *pro bono* practice. Monaghan asked DLA Piper partner Sheldon Krantz, who was based in DLA Piper's Washington, DC office, to spearhead the effort to revamp the draft law. The mechanism through which this effort would be orchestrated was the NCSC contract. NCSC provided the logistical support for this considerable effort.

In May 2005, UNMIK, along with the Office of the Prime Minister, established an advisory group on the law on courts. The first meeting was held in June 2005. DLA Piper prepared a series of memoranda, essentially briefing materials, which synthesized the essential questions. These memoranda were written in the formalistic style of law firm memoranda: thorough, without being exhaustive, and well-written. Although the memoranda may be faulted for not addressing the particular role in the difficult legislative landscape of Kosovo, they were good at highlighting the issues and synthesizing the materials from JSECG, JART, and the existing draft of the law on courts from the Office of the Prime Minister. DLA Piper prepared these memoranda in preparation for the meetings. It is assumed that these memoranda were translated and distributed to the members of the Advisory Group. Mr. Krantz chaired the meetings in Kosovo, which were also attended by DLA Piper associates. DLA Piper was charged with drafting the new draft law on courts in Washington, DC. NCSC then had the draft translated and distributed to the members of the Advisory Group. This process resulted in a draft law on the courts, which is now under review at the Prime Minister's Office. The representative from the Council of Europe indicated to the evaluation team that the draft law was in compliance with Council of Europe standards. A foreign advisor working in the Prime Minister's Office predicts that the Prime Minister's Office will make numerous technical amendments and then submit it to the Assembly. Although most members of the working group advocate passage, one sounded the alarm that some members of the Assembly may want to revisit the law, because they "don't know the history."

The Project employed a similar model for drafting the law on public prosecutors, again utilizing the services of DLA Piper to prepare policy papers and to conduct the working group sessions. This draft law is also under review at the Prime Minister's Office, which at the time of the fieldwork for this evaluation had not reviewed it yet. According to NCSC quarterly reports, DLA Piper also made recommendations on other draft or existing legislation. For example, DLA Piper drafted a proposed statute on bid-rigging and collusion in tendering. NCSC has worked on the law on notaries, although the primary responsibility for developing that law was the Swiss Agency for Development and Cooperation. NCSC commented and revised the Swiss draft of the law, and according to one NCSC staffer, the process "did not work well" as the draft was not harmonized with applicable legislation and did not contribute to the capacity of the country. NCSC has worked on a series of other laws, including the enforcement of civil judgments, fees and fines, and mediation.

Legal Drafting Efforts Incorporated the Views of Local Participants

There was generally enthusiastic support for the DLA Piper participation in the drafting of the law on courts and the law on public prosecutors. The evaluation team commissioned a survey, attached as Annex E, to determine whether the local members of the working group were satisfied with the process by which these laws were drafted. Twelve local members of the drafting group on the law on courts participated in the survey. They were asked whether their views were *fairly considered* by the working group. On a 5-point scale, the mean response was 3.2, indicating that “some of my suggestions were fairly considered.” When asked to what extent the final draft *reflects* the respondent’s views, the mean response was 3.7. Ten of the 12 working group members indicated that they agree with most of the contents of the final draft law or totally agree with the contents of the final draft law. According to one participant, “I think that the draft was created in a very good way; a very good job was done.” And another: “The majority in the working group agreed with the major pieces of the draft. ... No law is ideal. I would like to repeat that the experts in the working group agreed with the major pieces of this draft law.”

Based on these comments, it is not surprising that 10 of the 12 respondents believe that the Assembly should pass the law in its present form. But none of the respondents think that the process for drafting this law should be repeated for other major pieces of legislation. Responses for the working group on the law on prosecutors were similar. These responses reflect that although the participants lauded their experience on the working group, they recognize that as the drafting capacity matures within Kosovo there will be a keen need to provide support to local drafting efforts. Foreign expertise should support these efforts either by providing drafting expertise and increasing local capacity or by providing best practices in a particular area of the law either from international models or preferably regional models. Foreign expertise may also be used to help shape the legislative agenda.

5.2.3 Support for the Ministry of Justice

NCSC Project is Tapped to Provide Support to the Ministry of Justice

The transfer of authority from UNMIK/DOJ to a new Ministry of Justice (MOJ) has been planned for some time. USAID was informed that DOJ had commissioned the DFID project implemented by KPMG to develop a strategy for the transfer of authority from DOJ to the Ministry of Justice in June 2003. The Project was not originally tasked to provide support for the transition from the UNMIK structures to a new MOJ. The MOJ was established by UNMIK Regulation in December 2005. In the most recent work plan covering the period August 2005–August 2006, the only reference to the Ministry of Justice is under a discussion of coordination with other entities, in which NCSC planned to “provid[e] assistance in developing plans relating to the MOJ legislative process, the MOJ Administrative section, the KJC Secretariat, and the AOC [Administrative Office of the Courts].”

Now that the MOJ has been established, the Project has been tapped to provide substantial support, apparently at the request of UNMIK/DOJ. A recent document provided to the evaluation team by USAID reflects that the NCSC project is providing the part-time or full-time services of five NCSC consultants to work with the Minister, the Permanent Secretary, the Administration and Budget department, information technology (IT), and legal affairs. At the time of the fieldwork for this evaluation, the MOJ had 150 employees, but expected to ramp up to as many as 1900 employees, a large number of whom will fall under the penal management division. The Deputy Chief of Party of the Project, an experienced court administrator, is providing advice to the Minister of Justice. One of NCSC’s local staff is assisting the MOJ in preparing a strategic plan and an action plan.

One of the major challenges for the new MOJ will be to mount an extensive legislative drafting effort under the newly-formed Legal Affairs Department in the MOJ. Many of those interviewed by the

evaluation team reported the same thing: there is an urgent need to provide significant training to the Legal Affairs Department. The MOJ officials themselves recognize this need, recommending that “we need to invest in human resources” in that department, and provide the members with support in legal drafting and legal reasoning. The MOJ officials opined that they are “not in favor of consultants preparing laws for us.”⁶ But NCSC is reluctant to provide training without an action plan. The NCSC Advisor has tried to introduce strategic planning into the new department, but this approach, according to the NCSC Advisor, has not found a receptive audience.

According to NCSC, the Legal Affairs Department will be responsible for normative and sub-normative legislation, and will provide a substantive review of regulations. The Legal Policy Division of the MOJ will have to expand rapidly to assume the workload for all of the ministries. According to NCSC, morale is low in the office and turnover is expected. The drafters are expected to draft in English, not their native language. According to the UNMIK/DOJ representative, this department should have 27 lawyers to handle policymaking, international judicial assistance, drafting, representing the MOJ in legal disputes, and processing disciplinary actions against MOJ personnel. There is currently no specialization. There are now 15 lawyers, and the budget only allows for 22 lawyers.

As of the time of the evaluation, DFID has just started to work with the Ministry of Justice, but the DFID project will end in December 2006, although DFID may fund another project at the end of the current project. DFID is providing support in transitional planning, human resources, and other areas. The DFID representative told the evaluation team that it is “not well-defined who is going to do what.” The Minister of Justice has held coordination meetings and wants support from donors, including OSCE, USAID, and European Agency for Reconstruction (EAR), but he has left it up to the donors to decide who will take on which tasks.

Does Support for the Ministry of Justice Show Flexibility or Lack of Strategy?

At a time when NCSC Project staff is attempting to instill a strategic outlook in Kosovar counterpart organizations, the NCSC contract with USAID conspicuously lacks its own strategy. But a lack of strategy for one can be viewed as flexibility by another. A constant refrain in the evaluation team’s discussions was that NCSC should be applauded for its flexibility particularly in the last 12 months, so that the NCSC could be readily tapped to address whatever eventuality might occur. One major area of flexibility is that NCSC is recruiting short-term advisors to fill the vacuum left by the withdrawal of UNMIK advisors from various institutions. The head of UNMIK DOJ commented that if USAID were to remove these advisors from the MOJ or DOJ, then he would likely have to use slots for international judges or prosecutors to place foreign advisors in the positions held by NCSC advisors. As he stated, “they are filling a gap.” Nevertheless, it was not clear to the evaluation team that the NCSC advisors’ skills are well-matched to the needs of the MOJ.

The other major issue is what the role of these foreign advisors should be at a local institution. Are they fully seconded to the local institution or are they tasked to provide discrete inputs as part of an overall donor program? Their reporting relationship has continued to be a source of concern since the beginning of the Project, and their role even now is not been well-defined. MOJ officials related to the evaluation team that they were concerned that reports generated by the advisors were not being aired at the MOJ first before they went to the donor. If indeed the advisors are fully seconded to the local institutions, they should not have to obtain approval from donors before they submit reports to their respective local agencies. Further definition of the roles and responsibilities of Project personnel at local institutions would relieve some of this ambiguity.

⁶ There will be a number of laws that need to be developed, including, for example, laws on free trade, laws on the free movement of goods, banking laws, and company laws. The Ministry of Justice officials indicated that the most effective consultants to develop capacity within the MOJ are those with international experience, and particularly those who speak Albanian or Serbian.

5.2.4 Support for the Kosovo Judicial Council

NCSC Ready to Provide Assistance as Soon as KJC Was Created

On December 20, 2005, UNMIK issued Regulation No. 2005/52, establishing the KJC as a body under the authority of the SRSG. The provisions relating to the establishment of the KJC were taken from the draft law on courts. The main competencies of the KJC include appointment of judges and prosecutors, and judicial discipline, and will significantly include court administration. According to the Regulation, the KJC is composed of 11 members, seven of whom are judges (including two international judges for one year). Until a regulation is promulgated on appointment of prosecutors, one of the Kosovo judge positions will be held by a Kosovar prosecutor, and one of the international judicial posts will be held by an international prosecutor. The KJC convened for the first time in April 2006, just a few weeks before this evaluation commenced. Two expatriate staff members of NCSC sit in on every meeting of the KJC. There had already been four meetings as of the time of the fieldwork for this evaluation.

Under the current plans, there will be a secretariat to the KJC and an Administrative Office of the Courts (AOC), which will be responsible for the administration of the Courts. The NCSC has been actively preparing for the establishment of the AOC for at least a year. In March 2005, the NCSC advisor drafted a memorandum suggesting a blueprint for the scope and organization of the AOC. NCSC advisors have also been active in supporting the meetings of the KJC. One NCSC advisor has written the rules of procedure for the KJC. The Chief of Party has a weekly private meeting with the Chair of the KJC, who is also the Chief Justice of the Supreme Court. One NCSC advisor acts as permanent secretary of the KJC, although when he leaves the country, which he does frequently under his contract with NCSC, the position is vacant and others must assume the responsibilities. The Secretariat to KJC has or will have 16 people.

The AOC will inherit as many as 51 positions from the DJA and will likely provide administrative support for the operations of the courts, including budget and finance, IT, human resources, statistics, and other areas. The functions of the AOC may duplicate some of those of the Secretariat, and the organization and relationship between the AOC and Secretariat were under review at the time of the fieldwork for this evaluation. As a NCSC Advisor acts as the Head of the Administrative Office, he will be responsible for making the transition from the DJA to the AOC.

KJC Receiving Substantial Assistance from the Project

NCSC support of the DLA Piper process was substantial. NCSC did a very good job in anticipating the needs of the KJC and its Secretariat. The Project is now providing essential support to breathe life into these organizations. Without the assistance from NCSC, the transitional process would be much more difficult. The only major problem is that events are moving apace and the NCSC advisors are doing more than just advising – they are performing the duties of the Secretariat without transferring any skills to Kosovars. In some cases, it appears that there are too many advisors. It was not clear to the evaluation team why two expatriates need to sit in on all of the meetings of the KJC, and it was also not clear what the purpose is of weekly meetings between the Chief Justice and NCSC's Chief of Party.

The evaluation team did not see any document showing a comprehensive strategy for development of judicial administration. Strategy should be developed over time after the stakeholders have some experience in the areas in which they will have responsibility for developing and implementing the strategy. The Project's efforts to force a strategy during the first years of the Project were premature, but now these issues are ripening and an overall strategy is needed. As discussed below, preparation of a strategy will allow integration of the activities of Component 1 with those of Component 2.

5.3 COMPONENT 2: COURT ADMINISTRATION

A complete understanding of the facts underlying the Project's Component 2 activities was not fully attainable during the course of this evaluation. In addition to the unavailability of documents previously discussed, the Project seems to have launched, modified, or discontinued so many different initiatives relating to Component 2 that certain details have gone forgotten or unreported or are subject to highly disparate explanations. Thus, the analysis here is based chiefly on the common understandings and themes related by a variety of interviewees, along with documentary verification to the extent that it was provided. This section is organized according to general themes of the Project's Component 2 activities.

5.3.1 Caseflow Management/Backlog Reduction

Since its inception, the Project has approached caseflow management as the "single most important court administrative function"⁷ and has devised several activities aimed toward supporting improved caseflow management in Kosovo.

Training, Technical Assistance, and Core Competencies

The Project has worked with judges, court administrators, and central managers since 2003 to underscore the importance of coordinating and streamlining court processes so that cases can move from initiation to resolution in a timely manner. Training and technical assistance activities have included direct assistance to the DJA and the future AOC, at least one major study tour, some programs associated with the Kosovo Judicial Institute (such as a training program devoted to execution of judgments), and, since 2005, a series of at least four stand-alone programs devoted to the fundamentals of caseflow management. In 2005 and 2006, the Project also carried out a series of training programs for judges and court administrators pertaining to four "core competencies" in court administration: caseflow management, information technology, budgeting, and human resources. In 2005, the Project enlisted a short-term advisor to develop proposed job descriptions for future employees of the AOC.

Specific topics emphasized in the recent "fundamentals" training include values and characteristics of a well functioning judicial system, common obstacles to court system improvement, goals and dimensions of caseflow and docket management, and strategies for eliminating backlog and reducing delay. Through evaluation reports collected by the Project, as well as interviews conducted during the course of this evaluation, participants report a high degree of satisfaction with their experiences and relate a strong interest in receiving continuous and progressively sophisticated interventions in this area.

Whether these recent programs have actually changed caseflow and court administration habits as a result of these stand-alone activities, however, is not clear. The Project does not have a practice of following up directly with training participants to monitor their integration of the information transmitted at its programs. Nor does current court technology provide a readily available and consistent means of measuring change on a macro-level.⁸ When asked directly about changes in behavior, a number of judges responded that the training in fact "confirmed what they already knew."

⁷ See USAID/NCSC Justice System Reform Activity in Kosovo, *Caseflow Management and Delay Reduction: Statistical Studies of Caseflow and Pending Caseload* (October 2005) at 9.

⁸ As USAID indicated to the evaluation team, Kosovo does not yet have a consistent manner of measuring case activity in all the courts. Its data collection activity, discussed below, represents one comprehensive effort to acquire consistent, across-the-board data, but even this is a "snapshot" of activity and is not wholly reliable. Nor is the limited data currently maintained by the DJA. Availability of truly consistent data will only be possible when courts begin using the same case management software. When such software will be in place and universally employed cannot be predicted with certainty at this time.

Practicing lawyers interviewed for this evaluation similarly reported no tangible observations of streamlined or otherwise improved caseload management or court administration.

One message that the NCSC seems to have imparted effectively is that of the vital role of court administrators in the process of caseload management. Based on what they have learned from the NCSC, judges in Kosovo report a high degree of willingness to empower court administrators to assume responsibilities that, in a different era, they might have reserved for themselves. In addition, DJA staff reported that the placement of a NCSC technical advisor in their office was a positive and beneficial intervention that they would have liked to have seen sustained.

Although well received, the Project's programs in caseload management and core competencies generally lack substantial connection with Kosovo's formal infrastructure of support for judges and court administrators, namely the Kosovo Judicial Institute (KJI) and the DJA (soon to be the AOC). The Project and the KJI do have regular contacts concerning their respective programs, chiefly to avoid scheduling conflicts or duplication of effort. Moreover, the KJI claims to be highly satisfied with its interactions with the Project. Nonetheless, although the KJI would have welcomed the opportunity to co-sponsor caseload management programs for judges and court administrators, the Project elected to present the programs as independent initiatives featuring US-based trainers. Similarly, the DJA has rarely, if ever, played a substantive role in the development or execution of NCSC-sponsored training or resource materials. Nor does the Project yet rely on a cadre of local trainers to teach caseload management.

Another example of "doing for" as opposed to "teaching how" was the preparation in 2005 of job descriptions for the future AOC. However useful the end product (and whether it will be actually used remains to be seen), the Project seems to have missed the opportunity to work with local actors to conceive and develop a set of documents that may ultimately shape the direction of this new institution.

Court Automation

At the outset of the Project, NCSC envisioned implementing an information technology program through which it would create an integrated networking plan for the courts, including the development, installation, and support of a network that would provide for an effective method of caseload management, among other features. The Project discontinued this initiative as early as mid-2003, however, as a result of the undertaking by EAR of a similar initiative, reportedly valued at more than 2 million Euros, entitled the Case Management Information System (CMIS).

By the accounts of numerous interviewees, the development and execution of CMIS has proven uneven, incomplete, and poorly managed. According to various local and expatriate observers, there has been little integration of end-users into its design, inadequate consultation with the various donors involved in supporting courts, and almost no clear information available concerning the details of its implementation. The DJA, which is charged with managing implementation of CMIS, acknowledges an extreme lack of human resources and long-term planning that can provide for the sustainability of the CMIS effort. One DJA representative claims that it is "not the DJA's job to advise on the sensibility" of the execution of CMIS. Thus, information technology in the courts suffers from a debilitating absence of policy "ownership" and meaningful oversight throughout both the local and donor communities.

According to the DJA, CMIS is currently in its "third phase" and 38 buildings (encompassing 72 courts) will be outfitted with Local Area Networks (LAN) by the end of 2006. Following this work, DJA states that Wide Area Networks (WAN), through which virtually all judges will be provided access to the Internet, will be introduced in all the courts.

Notwithstanding the various reported shortcomings of CMIS, the District Court in Gjilan—known as one of Kosovo's most effective integrators of reform—has used CMIS since early 2006 and reports

general satisfaction with its implementation. The Court itself is very aggressive about communicating directly with the contracting implementer of CMIS, ProNet. Although the Court has proven generally successful in using CMIS, its President notes that the software in fact has achieved “only 1% of what is supposed to be done,” and points to the fact that it remains essentially a stand-alone program with no central interface or networking or integration functions.

Although it long ago stepped off center stage with respect to Kosovo’s plans for court automation, NCSC has remained involved in certain automation-related activities, including:

- A **Court Automation Working Group (CAWG)**, established in 2004 for the purposes of coordinating the implementation of a Court Automation Plan. The major activity of the CAWG appears to be the formation of a Criminal Procedure Code Analysis Committee, through which a lengthy document entitled *Administrative Implications of Implementation of the Code of Criminal Procedure* was prepared in mid-2005. To what extent this document influenced the content of CMIS is not clear—DJA representatives described it as “more or less” utilized. Nor is the document’s impact in other respects clear. Interviews and project reports provided to the evaluators do not indicate that the CAWG has met regularly or engaged in any other major projects since issuing that report.
- A **fees and fines software** initiative, which, according to a Matrix provided by NCSC, envisioned distribution of software to 40 locations by July 2006. None of the documents provided by NCSC offer significant detail on this project. It is not mentioned in the Annual Report for 2005 or First Quarter Report for 2006. Because this effort appears to have been abandoned, whether the introduced software was a purchased package or custom created by the Project did not become evident during this evaluation.
- Development of **budget management software** and **personnel management software** for use by court administration professionals. Software was reportedly introduced into the DJA in 2004 and modified in 2005. Reference to the software is not, however, contained in the Project’s Budget and Financial Management Workshop (March 2006) program materials, indicating that the software is far from being a fully integrated aspect of court functions in Kosovo. Again, whether the introduced software was a purchased package or custom created by the Project did not become evident during the evaluation.
- A relatively new, web-based **Interim Case Tracking System (ICTS)** initiative, geared toward tracking basic information pertaining to caseload management in the seven largest municipal courts. The ICTS is designed to “provide crucial support for fundamental projects such as case backlog reduction, judicial auditing, statistical reporting, and pending case management.”⁹ Implemented in significant part by the KJC’s Head of Statistics, the ICTS initiative is intended to be fully “migratable” into CMIS, which has been found not yet up to the task of tracking this information.¹⁰

The Project launched the ICTS in response to a need identified by UNMIK/DOJ, voiced in early 2005, for clearer, more detailed information about case backlogs in 10 of Kosovo’s municipal courts. DOJ representatives reported that the ICTS, however useful it may prove in its ultimate impact, has not proven responsive to its *immediate* need for a quick analysis of the backlog issue.

In the Current Environment Pertaining to Court Automation, NCSC Can Only Have Limited Impact

⁹ Letter from Thomas Monaghan, Director, Department of Justice, UNMIK (December 1, 2005).

¹⁰ The ICTS is the subject of a Project-generated implementation plan issued in or about March 2006. NCSC declined, however, to provide the evaluation team with that document. Moreover, one NCSC staff member suggested to the team that ICTS has undergone additional strategy development since March 2006, but no documentation was provided.

Three years after local actors, together with the donor community, determined that the business of automating Kosovo's courts would be handled through EAR's grant to Kosovo of at least 2 million Euros, the aspirations of CMIS are largely unmet. In the meantime, the NCSC has attempted to address court automation from the margins, through, for example, its fee and fines and budget software, the CAWG, its stand-alone training in information technology, and, most recently, the ICTS. Individually, each of these initiatives has its value (although the first two fell short of their potential for implementation and seem to have been abandoned, and the last represents an acknowledgement by USAID and UNMIK of the profound inadequacy of CMIS). What is lacking at this time is something beyond NCSC's control: namely, accountability at the highest levels within EAR—and the donor community as a whole—for an expensive project that virtually everyone claims to know is failing.¹¹

Data Collection Activity

In 2005, the Project gathered detailed case-related statistics in 10 selected courts to determine how long, on average, it takes for cases to progress from registration to final written judgment and the size and age of each court's unfinished workload. The resulting "time to disposition study," drawing from cases closed with a final written judgment in 2003 and published in October 2005, was designed to serve as diagnostic tool for judges and court managers in support of the overall goal to improve the rate at which cases are resolved in Kosovo's courts. In addition to reporting statistics derived from the pilot courts, the Project created and presented to judges during subsequent trainings a proposed Work Plan for Caseflow Management and Delay Reduction—including the creation of delay factors and solutions, creation of time standards for disposition of cases, and delay reduction plans—for courts to implement. Implementation of the proposed Work Plans, however, is not discussed in the Project's quarterly or annual reports. At present, according to NCSC staff, the Project plans to focus chiefly on management of reduction of backlog in execution of judgments on a pilot basis (see below), with the intention of building improved caseflow management habits as a "build out" activity.

Time Standards for Judges

Based on the time to disposition study and input from judges who attended trainings late in 2005, the Project developed recommended time standards for the resolution of various types of cases in Kosovo.¹² The Project presented these proposed standards to the newly formed KJC. In April 2006, in one of its first major actions on court-related policy, the KJC adopted the proposed time standards. The Project now plans to engage in an on-going process to implement the standards. Judges will reportedly be afforded the opportunity to list their pending cases and form a plan for bringing those cases in conformity with the new standards. Yet some judges interviewed for this evaluation exhibited ambivalence or even hostility to the notion of time standards. Thus, encouraging, tracking, and remedying adherence to time standards by all of the judges in Kosovo constitutes an enormous undertaking, one that, to be successful on a measurable and sustainable level, will require significant project management engagement by one or more staff members of the DJA/AOC, with strong, consistent, and long-term Project assistance.

¹¹ The recent words of development commentator William Easterly prove highly relevant:

Aid can still do much for the poor, but only when individual aid agents have the incentive to deliver tangible services for which they can be held accountable. The bad incentives created by top-down planning, collective responsibility, and multiple goals can be replaced by individual accountability for aid agents, based upon independent evaluation of aid outcomes, which will motivate a search for what works in the field under the varied circumstances of each time and place.

William Easterly, *Planners vs. Searchers in Foreign Aid* (Paper prepared for ADB Distinguished Speakers Program, January 18, 2006), at 23.

¹² A copy of these recommendations was not among the documents provided to the evaluation team.

Execution of Civil Judgments

Since 2004, the Project has developed materials, seminars, and pilot projects pertaining to the improved execution of judgments in Kosovo. Specific activities have included drafting proposed revisions to the law on execution procedures and sponsoring a course taught through the KJI on this topic. Currently, the Project is engaged in a pilot court initiative, through which it works with three municipal courts toward significantly reducing the number of judgments that remain unresolved through the execution process. This work includes consulting with utilities to close certain types of cases, improving the means of contacting persons whose cooperation is necessary in executing judgments, and installing new ICTS hardware and software related to tracking cases. The Project has assigned one local staff member to each court, thereby creating a clear and accountable point of contact, dialogue and follow-up. The Project expects to expand this work to other municipal courts in the future.

5.3.2 Alternative Dispute Resolution

Since 2005, the Project has engaged in the development of court-annexed mediation as one means of streamlining the resolution of cases. This work has included participation in the drafting of a law on mediation (currently pending before the Assembly) and working with a local organization, Partners Kosova, to prepare court officials for the integration of mediation into the administrative functions of courts. One major training initiative—again, a stand-alone program executed by the Project and Partners Kosova that did not engage the resources of the KJI or DJA—has been directed at educating over 100 court personnel and some prosecutors about the advent of court-appointed mediation.

Judges and others interviewed for this evaluation speak enthusiastically about mediation as a means of relieving judges from their overwhelming caseloads. Partners is currently overseeing the development of working groups in all five regions of Kosovo. The organization envisions working mediation into existing court procedures, rather than hiring new individuals to implement mediation. Yet, although both the Project's and Partners' expertise in the area is extensive, the current strategy as communicated orally to the evaluators does not yet clearly and specifically speak to the details of implementation of the program or integration of certain critical decision makers and implementers—namely the KJC and the AOC—into the use of mediation in Kosovo's courts. Whether a written strategy pertaining to the development of court-annexed mediation has been developed is not clear; none was provided to the evaluation team.

5.3.3 Audio Recording

In June 2004, the Project placed 10 sets of audio recording equipment in five test sites in an effort to launch a common means of preserving the verbatim record in criminal case proceedings. The Project conducted initial and follow-up training of individuals expected to use the equipment and trained at least one DJA staff member to continue to provide training to persons using the equipment. In 2005, the Project issued a users' manual for the equipment. In its first Quarterly Report for 2006, the Project stated that, with one exception that had been addressed, "all of the pilot sites for the court recording equipment were functioning at the beginning of the reporting period."

In general, the purpose of the audio recording project was to improve the efficiency and integrity of criminal case procedures, as well as to respond to the effective requirement within the new Criminal Procedure Code that all criminal trials are recorded verbatim. Positive feedback in early stages of this activity resulted in a commitment by the DJA to request funding for 30 new sets of audio recording equipment in the 2006 Kosovo budget. What happened to this request is subject to sharply conflicting reports, depending on who is asked; regardless of the explanation, the money was not dispersed, no new equipment has been purchased since the original pilot, and no new sources of funds have been identified.

In the meantime, the audio recording project seems to have been left to the individual priorities and practices of the courts in which they are placed, and there is no apparent monitoring, either by the Project or the DJA, of their actual use on a day-to-day basis. In Gjilan, district court judges claim to like and use the equipment, yet state that it is only used in a fraction of the criminal trials they hear, due to its placement in a single courtroom to which they only have limited access. Two years after its installation, they also claim that court staff has not received adequate training in use of the equipment; nor does there appear to be any awareness of a contact at DJA who could assist with further training. In the Pristina Municipal Court, one set of equipment is placed in the single courtroom and appears to be used rarely, if at all. The other set is placed in the chambers of a judge who exclusively handles pre-trial hearings. Although that judge's secretary claims to use the equipment, the fact that it is not used for actual criminal trials belies its purported intent. Moreover, transcripts are never accessed by criminal litigants, according to the secretary. Representatives of the Pristina Municipal Court also state that more training is needed for the equipment to be used regularly and effectively.

5.3.4 Access to Texts of Laws, Regulations, and Legal Decisions

Since 2003, the Project has pursued various means of developing improved access to Kosovo's legal framework. It appears that the first 12–18 months of this process involved the evaluation of opportunities and options, including consideration of whether to integrate its efforts into other initiatives, including a GTZ-led computerized legal database created for the Prime Minister's Office, or into CMIS.

The Project eventually settled on a limited, stand-alone initiative in conjunction with the Kosovo Law Center (KLC), under which the KLC is now engaged to compile, index, publish and sell copies of a compendium of legislation. The first such compendium, which will cover criminal law only, is due for publication in October 2006 and will be sold for about 25 Euro per copy, including a loose-leaf hard-copy volume, an accompanying compact disc, and free updates over the six months following publication. This project, though launched in spring 2005, suffered through an interruption of several months, which delayed its implementation. In a separate arrangement with the United States Office in Pristina, the KLC is working to compile, publish, and distribute at no cost copies of six volumes of decisions issued by the Supreme Court of Kosovo.

Notwithstanding these efforts, judicial and public access to texts of laws, regulations, and legal decisions remains extremely limited.¹³ Although most laws and regulations are available through the UNMIK website, very few judges have Internet access. Moreover, the UNMIK site is limited in its utility, because there is no meaningful search function among the laws. An American Bar Association/Central European and Eurasian Law Institute (ABA/CEELI) project that provided for the publication of laws on compact disk (with an accompanying index in hard copy form) was discontinued in 2005; some judges indicate that they still use the most recent compact disk published by ABA/CEELI containing most laws as scanned into the collection. There is an Official Gazette in Kosovo, but it is only sporadically published. Persons interviewed in May 2006 said they had not seen a new copy of the Official Gazette in at least six months. The KLC has independently launched discussions with representatives of the Official Gazette to see how it can help solve problems of getting the law published and adequately distributed.

Thus, while the NCSC compendium initiative will serve a limited need for more information pertaining to criminal law in Kosovo, it does not address certain larger issues of access to all laws generally. Nor

¹³ Previous compendia published by KLC do seem to get some use, although it was troubling at one juncture to find that the only well-thumbed edition on the desk of one judge was that of the Law of Yugoslavia prior to 1989. According to the judge, if a subsequent, related law has been enacted by UNMIK or the Assembly, the judge will render judgment according to which law "is more in favor of the citizens."

does it appear to coordinate with the separate case-publication initiative led by USOP. The evaluation team does not support a piecemeal approach; but the issue of publication of laws is less a function to be addressed by the judiciary or by initiatives specifically interested in court administration than by Kosovo's executive and legislative branches.

5.3.5 Notaries

As discussed in Section 5.2, along with the Swiss, NCSC worked on a new law on notaries, which is expected to be adopted later in 2006. With the anticipated enactment of this law, almost all "uncontested" legal actions—such as notarization of deeds, wills, contracts, and other documents—will be transferred from the municipal courts and into the hands of a cadre of up to 50 private notaries—essentially, a government constructed private monopoly. The impact of the law will be enormously welcome, according to judges and others interviewed for this evaluation, insofar as it removes certain ministerial functions from the courts and leaves more time for judges to address contested actions. The Project now anticipates involvement in training the private notaries, a task that, given the fundamentally different structure of the U.S. common law system from the type of system envisioned by the new law, would seem better placed with a different donor or local institution.

5.3.6 Records Management

Carrying on with the work of USAID's prior court administration activity in Kosovo, the Project has worked in the area of archival records management since 2003. Annual reports show that the Project has delivered records management training for more than 30 court archivists from all over Kosovo and seen to the review and classification for destruction or permanent retention of millions of archival court files. Although DJA complains that this work "took too much of our time and resources" and continues to do so, the fact that the Project engaged DJA to oversee much of the work can be viewed as a positive example of integrating its work with local institutions.

5.3.7 Other Initiatives

As indicated in Annex B, a number of activities were contemplated as part of Component 2 of the Project that apparently were never launched, were abandoned, or are characterized under a different name for one reason or another. These activities include the following:

- Training in legal research
- Court security and coordination with security services
- Chain of custody and evidence handling
- Harmonizing investigative procedures
- Technical assistance to the Kosovo Standards Implementation Plan

It was not clear to the evaluation team the reasons why these activities or others contemplated by Project work plans were cancelled, subsumed into other initiatives, or otherwise became inactive.

5.4 COMPONENT 3: ETHICS

Although originally planned to address legal ethics for legal professionals, including judges and attorneys, the primary emphasis for the Project under Component 3 has been on providing audits of the work of courts, and the secondary emphasis has been on judicial ethics.

Support for the Judicial Inspection Unit

NCSC initially encountered difficulties with providing support to the Judicial Inspection Unit (JIU) because the Kosovo Consolidated Budget was not able to provide sufficient funding for the proper functioning of the JIU. NCSC was able to overcome this obstacle by convincing UNMIK DOJ and the PISG about the importance of having adequate staff to perform the work of the Audit Unit. Once this problem was overcome, NCSC assisted the JIU to prepare a work plan. The bulk of 2005 involved hiring the additional JIU staff and NCSC aggressively participated in this by developing the terms of reference for each position, advertising the posts, and selecting the candidates. By the end of 2005, the JIU Audit Section staff had been hired and trained and NCSC moved to reduce the 50% audit backlog that was being experienced by the unit prior to the new staff being brought on.

In 2006, NCSC saw a high level of activity which continued with hiring of staff for the JIU. The first quarter of the year saw the hiring of a Judicial Audit Coordinator. Once the section was completely staffed, NCSC engaged a consultant from Croatia to train the Audit Section staff on how to perform audits. The trainings lasted three months and were attended by 14 JIU staff members. The topics included internal audits, environment, standards and principles, and scope and importance of audit work. This first module lasted over 40 hours.

In the second module, staff focused more on the application of the theory of internal audit to the justice sector. This training culminated in the drafting of the first audit report. The purpose of this first audit was to review the processing of criminal cases with an emphasis on the identification and assessment of deficiencies in the system that slow down or delay the processing of cases thereby causing a breach of the statute of limitations.

The fieldwork took place in three courts, Vushtrii, Gjilan, and Podujevo. The Audit Section then proceeded to draft a report containing its findings. The results of the audit showed that there were over 153 violations of the statute of limitations in these three courts. The report made recommendations on how to resolve these problems in the future. These findings were presented to the three municipal court presidents in late March 2006.

In addition to these activities, NCSC participated in developing a new judicial application form which provides for the disclosure of information necessary to perform background checks on potential candidates. NCSC also produced a model code of ethics for members of the then Kosovo Judicial and Prosecutorial Council, and made recommendations on the existing codes of ethics for the judiciary and prosecutors. During 2005, NCSC trained over 240 judges and 60 potential judges and prosecutors on the new ethics code through the Kosovo Judicial Institute.

In an additional activity that was not foreseen under the original work plan, NCSC's advisor working with the JIU prepared a memorandum to the then head of the UNMIK/Department of Justice, which presented a plan for vetting the entire judiciary of Kosovo in 2006-2007. This memorandum was the basis of the work that UNMIK later developed in the current Judicial Vetting Plan that was released this year by a UNMIK consultant.

NCSC also worked with the KJC to conduct background checks for the 60 candidates that applied to work for the KJC. The local consultant that performed this duty worked in the same function for vetting the police of Kosovo prior to her engagement with NCSC. Her duties included developing an

application for and maintaining a database with all relevant information collected from the applicants. In addition to this, the local consultant hired and trained local staff and established a uniform process for carrying out background checks in the field. As a result of her work, one candidate was eliminated for providing false information on the KJC application.

The Project Provided Critical Support to the Development of the JIU Audit Section

NCSC has provided critical support in assisting with the development of the JIU Audit Section of UNMIK DOJ. The NCSC advisor has been able to overcome two major obstacles that were presented in his work. First, there were not enough staff members to reduce the backlog and complete the task. In addition, there was a substantial amount of resistance to the audits being completed in the courts. The judges and the presidents of the various courts were very apprehensive about the upcoming inspections. NCSC showed great adaptability in convening a conference which was attended by 68 of the 72 justice sector managers. This seminar assisted in ensuring local buy-in for future audits.

In addition, NCSC has done an excellent job in training the employees of the Audit Section. NCSC's consultant from Croatia appears to have been an excellent choice as a trainer particularly because of his experience in Croatia, coupled with his ability to deliver these lectures in Serbo-Croatian to the employees of the Audit Section.

The evaluation team visited the court in Podujevo and spoke with the Court President, who reported that the statute of limitations audit was carried out in a professional manner and that he was pleased with the results and definitely plans on carrying out the audit report's recommendations.

Audit Section Needs Additional Support

There are several key issues, however, which continue to hamper the full functioning of the Audit Section, and NCSC should pay particular attention to addressing these issues in the remaining time left in the Project. First, the lack of a Serbian to English and English to Serbian translator makes the work of Serbian-speaking staff difficult. NCSC agreed that it has not been able to provide adequate Serbian translation services. The second obstacle involves management problems that the NCSC brought to the team's attention. There appears to be a serious lack of team work in the Audit Section. The NCSC advisor has proposed two methods for solving this problem. One is to engage an expert who could work on team-building exercises. The other is to terminate several individuals in the Section to send a message. The evaluation team believes that the latter option should be a last resort, considering the time and attention it has taken to train these individuals.

Another serious problem in the Audit Section is the lack of drafting abilities of the employees who work there. The evaluation team received several complaints that the quality of the memoranda and other written work of these employees is substandard. NCSC should endeavor to work with the Audit Section to improve the writing skills of the Audit Section's staff so that they can continue to perform their duties in a capable manner.

5.5 COMPONENT 4: PUBLIC AWARENESS

Baseline Survey

The first task of this component was to conduct a public awareness baseline survey. The purpose of this survey was not only to guide the process of the design of a public awareness program, but also to assist NCSC in measuring future progress in the activities that it conducted. NCSC subcontracted with International Foundation for Election Systems (IFES) to develop and conduct the survey. IFES was also involved in analyzing the data collected.

The baseline survey indicated that Kosovar society has a fundamental lack of understanding of how to use the justice system. In addition, the survey indicated that there was a serious lack of trust on the part of Kosovar citizens towards the justice system. Many citizens reported serious issues with professionalism of judges and corruption.

Public Service Announcements and Meetings

Based on this survey, the NCSC team designed several programmatic responses. The first was to design, develop and distribute public service announcements, press releases, topic specific articles, posters and other information which were disseminated widely.

With the assistance of its subcontractor International Research and Exchanges Board (IREX), NCSC also conducted numerous public outreach meetings and seminars in over 700 districts and municipalities throughout Kosovo to disseminate information to the public about the justice system, how it operates and how to access its services. There were special sessions for disenfranchised groups such as women, youth, and minorities. Handouts and brochures were disseminated during these meetings, many of which were conducted as town hall meetings.

Training for Journalists

Over the last several months of 2005, NCSC through IREX developed and delivered a one-day course for journalists aimed at educating key journalists on the importance of the rule of law and the rights of the press and citizens to demand information, as well as the obligation of the print and broadcast media to accurately, objectively, and responsibly report on justice reform activities. Approximately seven journalists from the print media and television participated in these courses. An outside firm was hired to evaluate the results of these courses to ensure that an improvement in the way journalists reported was achieved by this activity.

Public Information Offices

In 2005, it was decided to establish Public Information Offices (PIOs) in the major courthouses in Kosovo. The purpose of these offices was to provide information on a daily basis to public users of the court system. The PIOs would also function as official interface with the media on issues surrounding judicial cases and court decisions. NCSC was instrumental in establishing and supporting a Public Information Officer Working Group. In addition to this, the Project developed a draft Handbook for the Court Public Information Officer in Kosovo with the assistance of a short term consultant. Under the current work plan, NCSC plans to participate in assisting the Kosovo government with developing terms of reference for the PIO posts. NCSC will also offer expertise and assistance in interviewing and hiring new court employees. Once this process is completed, NCSC will develop a course and a manual and deliver training to the PIOs. NCSC has indicated that possible topics will include drafting and delivering press releases and conducting press conferences.

In 2005, NCSC was instrumental in developing an Administrative Directive for a freedom of information law in Kosovo. A working group was convened and an administrative guideline was drafted. NCSC ensured that experts, civil society, and journalists participated in the process. The administrative guideline is now with the Kosovo government and is waiting to be passed.

Training of Journalists had Impact

The evaluation team found that NCSC's activities under Component 4 were positive in many of the areas that were described in their work plan. One of the most beneficial activities under the public information component was the journalist training. The team met with several journalists who participated in the NCSC trainings. They indicated that they gained positive insights and experience in the trainings conducted by NCSC. In April of 2005, IREX engaged an independent firm to conduct an

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

Speakers' Forums Were Not Effective

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

Good Groundwork Laid for Public Information Officers

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

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

6.0 RECOMMENDATIONS

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

6.1 COMPONENT I

Use Model of MOJ to Build KJC/AOC Coordination

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

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

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

Develop Systems to Support Ministry of Justice

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

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

Provide Support to MOJ through End of Contract

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

Continue to Provide KJC Policy Support in Transition

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

Integrate with Component 2

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

6.2 COMPONENT 2

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

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

Court Automation Should Be Part of Comprehensive Program

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

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

Data Collection Activity Should Be Repeated in 2007

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

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

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

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

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

Efforts Pertaining to Mediation Require KJC Prioritization and Engagement

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

Implementation of the Audio Recording Project Needs Revisiting and Significant Improvement

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

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

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

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

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

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

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

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

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

Records Management Efforts Do Not Require Significant Changes at This Time

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

Address Space Needs

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

Remain Mindful of the Separation of Powers

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

6.3 COMPONENT 3

Continue to Develop Systems at the Audit Section

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

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

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

Raise Public Awareness of JIU Competencies

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

Provide Support for the Vetting of Judges

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

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

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

Conduct Judicial Ethics Training

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

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

6.4 COMPONENT 4

Use Interactive Teaching Methodology for Journalists' Training

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

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

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

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

Support Development of Public Information Offices after Funds Allocated from Budget

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

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

Encourage Greater Reliance on the Television and Radio Media

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

7.0 GUIDELINES FOR DEVELOPING A STRATEGY IN THE JUSTICE SECTOR

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

7.1 SUPPORT INSTITUTIONS

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

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

7.2 BUILD CAPACITY

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

7.3 DETERMINE THE ROLE OF THE ASSISTANCE

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

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

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

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

7.5 INTEGRATE ACTIVITIES

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

7.6 SUPPORT THE PROCESS, RATHER THAN CONTROL THE RESULT

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

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

7.7 PROVIDE REGIONAL TECHNICAL ASSISTANCE

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

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

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

7.8 DEVELOP AN AGGRESSIVE EXIT STRATEGY

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

ANNEXES

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ANNEX A SCOPE OF WORK

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

I. Background

A. Kosovo

Pre 1999

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

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

1999

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

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

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

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

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

Post 1999

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

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

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

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

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

decisions are implemented, but lack of clarity in and proper attention to the enforcement process means that civil judgments are rarely enforced.

Under the 2000/19 of the Constitutional Framework, the justice and police sectors are reserved powers for UNMIK under Pillar I, Civil Administration. Under this provision everything related to the judiciary was led by UNMIK's Department of Justice. The continued predominance of the SRSG over the judiciary has precluded significant local involvement, until recently. In December 2005, UNMIK signed an administrative regulation creating a Kosovar Ministry of Interior and Ministry of Justice. Transfer of competences started with UNMIK Regulation 2005/53 which establishes the Ministry of Justice, and UNMIK Regulation 2005/52 which establishes the Kosovo Judicial Council. As UNMIK scales down and prepares for its departure, the transition of responsibilities to these new Kosovar institutions is currently taking place.

Kosovo Status

The UN's Special Envoy, Kai Eide, undertook a comprehensive review of the situation in Kosovo and issued his report in October 2005. Mr. Eide concluded that while standards implementation in Kosovo has been uneven, the time has come to move to the next phase of the political process. The release of this report signaled the start of final status negotiations and a new consensus that deferring the status decision would no longer preserve stability in Kosovo but would in fact undermine it. The first Kosovo Status talks were held on February 21, 2006. Most international observers expect that Kosovo's final status will take shape during the summer, with a resolution—either through mutual agreement or imposition by the international community—before the end of the year. However, the talks will bring new rights and obligations on behalf of the PISG.

B. USAID

USAID/Kosovo Strategy

USAID contracted with the National Center for State Courts (NCSC) to implement a five-year, \$13.7 million Judicial System Reform Activity on April 15, 2003, several months prior to the establishment of USAID/Kosovo's Strategic Plan for 2004-2008. Under the prior strategy (2001-2003), the Justice Sector Reform Activity implemented by NCSC contributed to the USAID/Kosovo's Strategic Objective (SO) 2.1: Accountable and Transparent Governance. It was to directly contribute to Intermediate Result (IR) 2.1.2 – Transition to an Effective and Impartial Judicial System, and the following Sub-IRs:

- Sound laws and policies supporting justice system reform are developed and implemented;
- Courts operate effectively; and
- Legal professionals act ethically and provide quality services to the public.

Under the current USAID/Kosovo Strategy, the Justice Sector Reform Activity implemented by NCSC falls under Strategic Objective (SO) 2.2: More Open and Responsive Government Acting According to the Rule of Law which supports Kosovo's transformation to self-government by strengthening recently-created democratic institutions and helping Kosovars take complete ownership of these bodies.

USAID's democratization approach to date has focused on promoting transparency and accountability during the transitional phase of international administration. This approach includes the creation of a truly representative electoral system, responsive political parties, a legislature that exercises effective oversight, an independent judiciary staffed by competent legal professionals, efficient court administration, and increased access to justice for all Kosovars.

The Judicial System Reform Activity directly contributes to the achievement of two current Intermediate Results (IR) and related Sub-IRs:

- IR 2.2.2 – Legal framework ensures checks and balances
 - Sub-IR 2.2.2.1 – Increased independence of the judiciary
- IR 2.2.3 – Fair and transparent administration of justice
 - Sub-IR 2.2.3.1 - Increased capacity of legal professionals
 - Sub-IR 2.2.3.2 – More effective and efficient court administration
 - Sub-IR 2.2.3.3 – Increased access to justice

NCSC Contract

On April 15, 2003, USAID awarded a three year contract to the National Center for State Courts (NCSC) for \$10,221,984. The contract included the possibility of an optional 4th and 5th year totaling \$3,438,282, and USAID exercised this option. Thus, the grand total for the five-year contract is \$13,660,266. The purpose of this contract was to implement the Kosovo Justice System Reform Activity with the overall objective of furthering the Rule of Law in Kosovo by:

- (1) Assisting UNMIK, Kosovar legal professionals and civil society in developing laws and policies that support an effective and impartial Kosovar justice system;
- (2) Strengthening the capacity of the court system so that it operates smoothly;
- (3) Developing systems to provide effective oversight for judges, prosecutors, and lawyers in the areas of respect for ethics and delivery of quality services; and
- (4) Increasing public awareness of Kosovo's evolving legal framework and justice system to improve access and ensure individual and community rights are protected.

During the first year of the NCSC contract, access for NCSC advisors as well as for Kosovars to the justice sector was limited because of the reserved competencies of UNMIK, and therefore, the contract got off to a slow start. NCSC thus focused its initial efforts mostly on improving the capacity of the court system, an area which did not fall under the reserved competencies. In 2004, with the change in leadership within UNMIK Department of Justice, relations between UNMIK and USAID's contractor gradually began to become collaborative. Starting in 2005, NCSC advisors were embedded into UNMIK's Department of Justice as well as several other judicial institutions, and NCSC became a critical player in the development of the institutional and legal framework for the Kosovar judiciary. More recently, as UNMIK prepares to leave Kosovo and the transfer of justice sector responsibilities to local Kosovar institutions begins to take place, NCSC is increasingly seen as a key player in the development of local judicial institutions.

The specific purpose of the NCSC contract was to further the attainment of the above four objectives by assisting governmental and nongovernmental participants, as appropriate, to do the following:

- I. USAID planned for support in developing laws and policies that support an effective and impartial Kosovar judicial system. Priority areas for reform included structural and functional reform of justice system institutions, court administration, legal discipline, and public awareness. Reforms in each of these areas were to be addressed by long-term senior rule of law advisors working in the United Nations Mission in Kosovo Department of Justice or the Ministry of Public Services (responsible for court administration) as part of line staff, supplemented by short-term advisors who would address particular issues such as drafting legislation or legislative amendments, public participation, and technical issues such as court security, chain of custody and execution of judgments.

2. USAID planned to assist courts to operate effectively by improving budgetary, procurement, personnel and facilities management, automation, case-tracking and records keeping; installing local area networks and related technical equipment; developing an effective system for court recording; improving execution of civil judgments and case-purging; and ensuring that a compendium of applicable law was created and distributed to all legal professionals. This was to include working with other donors to ensure the compendium of applicable law was translated and applied by legal professionals. The contractor was also to ensure that budgetary, financial, case-management, procurement, personnel, and facilities management systems were functioning smoothly in each of Kosovo's fifty-four courts. Shortcomings of the system included non-execution of judgments, inefficient management policies and processes, public and legal professional lack of information, and a lack of coordination between courts and security forces in certain fields. Enhancing the transparency of court operations and the judicial process was included as a contract objective in order to improve court efficiency and accessibility to the public. This was to be achieved through improved documents management and case-tracking, publishing selected judicial decisions, and setting up systems that allow the public, including the media and legal service providers, as much access to information as possible.

3. USAID expected to be involved in developing systems to provide effective oversight for judges, prosecutors, and lawyers in the areas of respect for ethics and delivery of quality services. The contractor was to work with other donors and NGOs such as the Kosovo Judicial and Prosecutorial Council, Judicial Inspection Unit, and ABA/CEELI to develop a system of effective discipline and oversight for judges and prosecutors based on accepted ethical standards and codes of conduct, and study new options for lawyers. Because the system in which legal professionals serve is vastly different from the previous socialist system, legal professionals needed to become familiar with new methods for ensuring efficiency, impartiality, and correct legal interpretation through continuing education and practice already supported by other donors and USAID implementing partners. Kosovo's legal practitioners needed to better understand that poor delivery of judicial services and bias are destructive to creating a secure environment for sound governance and economic development. Better awareness and enforcement of rules governing professional standards was needed to improve discipline of legal professionals.

4. The fourth component of the contract was aimed at increasing public awareness of Kosovo's evolving legal framework and justice system to improve access and ensure individual and community rights are protected. USAID expected the contractor to launch a Kosovo-wide public awareness campaign for Kosovars to understand the recent and continuing changes to the legal system and to raise their expectations for courts and legal professionals in providing access to the justice system and delivery of services.

II. Evaluation Scope

A. Objective

The purpose of this evaluation is to provide USAID/Kosovo with an objective external assessment of the appropriateness and effectiveness of the current Justice System Reform Activity in Kosovo implemented by the National Center for State Courts. It includes three main tasks:

- (1) Evaluate NCSC's current performance;
- (2) Recommend adjustments to NCSC's activities through the end of NCSC's contract; and
- (3) Consistent with the recent and anticipated future developments in Kosovo recommend possible follow-on activities in the justice sector.

The evaluation team is tasked with assessing the efficiency, impact, sustainability, and relevance of the activities implemented through the NCSC contract. The evaluation team will examine the overall impact of the activities on the target institutions and validate/observe the progress made in achieving the Intermediate Results and objectives specified in the NCSC contract and also with changed and adjusted strategic plan. The evaluation team will review actual versus planned progress in attaining the anticipated results; identify and analyze problems, delays, and other issues related to project implementation; document lessons learned; and make recommendations for future USAID assistance in the justice sector. The results of this evaluation will provide feedback to USAID/Kosovo and to the NCSC for possible corrections for the remaining the life of the NCSC contract, which is expected to end by July 2007. This evaluation is particularly timely given the possible resolution of Kosovo's status in 2006. It will also guide future planning for USAID/Kosovo.

B. Methodology

On-sight research and interviews for the evaluation will be carried out in Kosovo by two people for approximately 12 person-days per evaluation team member. The team will conduct semi-structured interviews with key informants (and focus groups, if appropriate) with key beneficiaries (e.g., courts, United Nations Mission in Kosovo, members of the Kosovo Judicial and Prosecutorial Council, newly established Kosovo Judicial Council, and the Government), National Center for State Courts project staff, and other donors with particular focus on EU. The contractor will identify a list of key research questions to guide the semi-structured interviews. The evaluation will also draw on project documents and reports. An additional ten person-days per team member are authorized, five for pre- and five for post-trip preparations (e.g., planning, reviewing documents, report writing and editing). Note that the contractor may suggest an alternative approach if appropriate. USAID will include a Washington, DC representative (Ms. Natalija Djurickovic, Senior Rule of Law Advisor) on the evaluation team.

C. Scope of Work

The contractor will provide a team to conduct an evaluation of the USAID-funded \$13.6 million, Justice System Reform Activity in Kosovo implemented by the National Center for the State Courts and its sub-contractors, Policy Studies Incorporated (PSI) and International Foundation for Election Systems (IFES). The team will develop and adopt an approach that elicits and analyzes information, and provides key findings, conclusions, and recommendations on the issues below. The evaluation team will draw on project documentation and reports as well as structured interviews with project participants and partners. In addition, the evaluation team is expected to identify for the USAID/Kosovo Mission the further needs of justice sector and make recommendations about future programming to address those needs.

Priority Questions:

1. **IMPACT:** What has been the quantitative and qualitative impact of USAID-funded activities through NCSC on the judiciary? How has NCSC made a difference in the development of the institutions where they had access as compared to institutions where their access was limited? What effect did the approach adopted by NCSC have on the impact achieved?

2. **RELEVANCE:** As the flagship USAID project in the justice sector, how relevant is NCSC in achieving USAID's Strategic Objective 2.2: More Open and Responsive Government Acting According to the Rule of Law? Will the Strategic Objective and related Intermediate Results in the Justice/Rule of Law sector be met by this activity alone? If not, what additional activities should be done to achieve the objectives and intended results.

3. **EFFICIENCY:** Are the results being obtained by NCSC being produced at an acceptable cost compared with alternative approaches to accomplishing the same objectives?

4. **SUSTAINABILITY:** What has NCSC done to promote sustainability of judicial and institutional reforms? As currently implemented, are NCSC activities likely to have a sustainable development impact after USAID funding has stopped?

Subordinate Questions:

1. Should there be any programmatic shifts with the potential change of Kosovo's status? Will there be new opportunities with the justice sector with this change?
2. Is there potential for greater NCSC collaboration with other USAID and another donor project projects?
3. What has been learned from other USAID judicial reform projects in other countries? Are any of these lessons applicable to Kosovo?

D. Contractor Tasks and Deliverables

Task One: Literature Review and Evaluation Methodology Preparation

Prior to beginning the interview process, the contractor shall prepare for the evaluation by reviewing key documents on the justice sector; background material on Kosovo's political situation; and applicable sections of USAID and project documentation. The contractor may want to consider preparing an informal methodology plan and identify a list of key research questions to structure the interviews.

Task Two: Conducting Fieldwork

The contractor shall meet with the USAID/Kosovo Democracy and Governance Office to review the objectives of this evaluation and to receive their input on the evaluation questions to be answered. The contractor shall interview a broad range of stakeholders familiar with the NCSC project. These stakeholders may include justice sector representatives (e.g., UNMIK DOJ, representatives of the former Kosovo Judicial and Prosecutorial Council, and also newly established Kosovo Judicial Council, Courts, etc), Kosovar government officials, all current long-term technical advisors (LTTA), short-term technical advisors (STTA) currently in town (as well as previous ones by phone), NCSC staff attorneys, and other donors. The contractor is expected to provide its own translators and local transportation for the evaluation.

Task Three: Report Preparation and Briefing

The contractor shall provide an oral briefing of its findings to USAID/Kosovo prior to departure. The evaluation team will present a draft report within five business days of the return to the US. The final report will be due within 10 days following receipt of comments from USAID. See deliverables below for more detail.

E. Deliverables

1. **Oral Briefings.** The evaluation team will meet with USAID/Kosovo upon arrival in Pristina. The team will also provide a pre-departure oral briefing of its findings and recommendations to the USAID/Kosovo prior to departure.
2. **Draft Report.** The evaluation team will present a draft report in English of its findings and recommendations to the USAID/Kosovo Democracy and Governance Office within five business days from the time of return to the United States.
3. **Final Report.** The Final Report will be provided to the USAID/Kosovo Democracy and Governance Office in electronic format in MS Word and Adobe PDF, within 10 days following receipt of comments from USAID. The Report shall include an executive summary and not exceed 30 pages (excluding

appendices). Appendices should at a minimum include the scope of work for the evaluation; a list of individuals interviewed; a complete description of the methodology used for the evaluation; and any questionnaires used. The report shall follow USAID branding procedures and shall be in the format of "A General Guide to the Construction of An Evaluation Report," produced by Richard Blue for Management Systems International and dated August 7, 2004.

III. Team Composition

Evaluation Team Leader (senior): The Team Leader shall have at a minimum, a Jurist Doctor degree, five years of legal or judicial experience in the US and 10 years of experience in judicial reform work in developing countries. Evaluation experience is desired. The individual shall have excellent written and oral communication skills, as well as exceptional organizational and analytical abilities. Knowledge of USAID is preferred, and experience in the Europe and Eurasia region is a plus.

Justice Sector Specialist (mid-level): The Justice Sector Specialist shall have a minimum of five years of experience in international judicial reform work in developing countries. Knowledge of USAID is preferred, and experience in the Europe and Eurasia region is a plus.

IV. Logistics

A. Period of Performance and Duty Station

It is anticipated that the team will spend five days of preparation work in the US, reviewing documents and becoming familiar with the sector including the meeting with NCSC home office Ms. Jan Stromsem, Suren Avanesyan, Randall Hansen (International Programs Division National Center for State Courts; 2425 Wilson Boulevard, Suite 350; Arlington, VA 22201), meeting with Mr. Thomas Monaghan former UNMIK DOJ Director, and two weeks of fieldwork in Kosovo performing the assessment. A six-day workweek is authorized while performing the fieldwork in Kosovo (for a total of 12 workdays in Kosovo).

The team members will initiate work in Kosovo on/about May 1, 2006. It is expected that the entire team will remain in Kosovo until on/about May 19, 2006. An additional five work days for each team member are anticipated in order to complete the final report, which is due on/about June 30, 2006.

V. Evaluation Criteria

IQC holders submitting a proposal to provide services for Tier Two task order under the Analytical Services IQC for the evaluation should explain how they would conduct the evaluation. Prospective contractors should list staff proposed for this task order and include their resumes and statements of availability. The selection criteria are as follows:

Personnel (60 percent) – The education, experience, and expertise of proposed personnel. Personnel should have experience in justice sector and evaluation. See requirements under section III. Team Composition.

Overall Research Design (20 percent) – Quality of contractors' overall research design. Prospective contractors shall describe their overall approach to this scope, including alternative suggestions to descriptions in this scope of work if so justified.

Past Performance and Corporate Capabilities (20 percent) – Prior experience and track record of contractor in performing evaluations.

ANNEX B SUMMARY OF ACTIVITIES AND OUTCOMES

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
I. Sound Laws and Policies Supporting Justice System Reform are Developed and Implemented		
Coordinate with other entities involved in justice system strategy development	NCSC cooperated with UNMIK/DOJ, DJA, and international donors. It participated in Justice Sector Consultative Group, the Project Review Board. Most of these activities have reached their natural conclusion.	Extensive duplication of efforts. The transactional costs outweighed benefits. Project impact was minimal. Coordination should not be the end result but part of the design and implementation process. It should be continued but informally or through the Ministry of Justice for assistance to the MOJ or directly through the KJC for assistance to the KJC.
Provide technical assistance on justice system reform strategy	NCSC had a Strategy Advisor seconded to UNMIK/DOJ until May 2005. Position terminated and replaced by Special Adviser to Director of UNMIK/DOJ.	Strategy for structure of court system completed primarily with assistance of other donors. Duplication of efforts with other donors. Focus should be on implementation when the law on courts is passed.
Develop position papers for USAID/USOP involvement in providing diplomatic support for key issues to ensure an impartial justice system	No position papers were provided other than one memorandum regarding the release of the JART report. No further activity ongoing.	No measurable impact.
Develop judicial administration reform strategy	Work under this activity appears to have been subsumed under the activity below regarding support for the KJC.	Blueprints for transfer from KJPC to KJC and DJA to AOC were prepared and used as working documents. Issue is particularly ripe for attention. Should be integrated with Component 2 activities.

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
Assist in drafting and revising legislation and regulations pertaining to the judiciary	The most important pieces of legislation were developed with the assistance of the international law firm of DLA DLA Piper. These included the law on courts, law on public prosecutors. DLA Piper also made recommendations on legislative models on economic crimes Justice Strategy Advisor assisted in preparing a working draft of the legal aid law. NCSC reviewed other laws.	Draft laws on courts, public prosecutors, and notaries completed. Focus should be on building the capacity of the MOJ and other drafters to draft legislation. May already be covered by other donors. Should not be combined with project on court administration.
Support the establishment of the KJC and subordinate entities	NCSC laid foundation of implementing UNMIK Reg. 2005/52 on the establishment of the KJC. It also is preparing for the establishment of the Secretariat of the KJC and the Administrative Office of the Courts under the KJC.	KJC and its Secretariat established with substantial support from NCSC. Focus should be on building capacity of local Kosovars to perform the functions of the secretariat and the AOC. Project should provide substantial assistance in integrating AOC with the KJC.
Support to the MOJ	Activity is new initiative in 2006. NCSC is providing assistance to Minister, Permanent Secretary, administration and budget, IT and legal affairs. Support is ongoing.	Emphasis is not on skills training. Since this is new activity, it is too early to determine impact. NCSC should continue to serve as supplier of consultants at request of UNMIK/DOJ. Should not be part of any new activity, unless the areas addressed are not covered by other donors; and not part of court administration project.
Harmonize investigative procedures	No documents produced showing activity in this area.	No measurable impact at this time. Focus should be on other activities.
II. Courts Operate Effectively (Court Administration)		
Caseflow management/backlog		

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
reduction Training, technical assistance, and core competencies pertaining to court administration.	Many ongoing but stand-alone initiatives. Document identifying long-term strategy for central judicial administration not provided by Project.	No measurable impact at this time. Project should significantly improve integration of caseflow management activities into local institutions, including KJC, AOC, and KJI.
Court automation	Several activities (CAWG, fee and fines software, budget software, HR software, and ICTS) launched; only ICTS a current priority. CMIS, a non-Project initiative, is the major court automation activity.	NCSC court automation programs can have limited impact in the current environment. Project should report on status of integration of all software introduced to date, including state of compliance with licensing requirements, to the extent necessary. Implementation of and apparent lack of ownership over CMIS is beyond control of the Project. USAID should pursue a stronger implementation strategy within local institutions (including KJC) and better accountability within the donor community.
Data collection activity	One major study completed in 2005 and used as basis of time standards enacted by KJC.	Second study employing new software tools to the extent possible (CMIS or ICTS) should be conducted in 2007. A second study will measure impact of Project initiatives, including caseflow management efforts, time standards, execution of judgments, and other activities.
Time standards for judges	KJC adopted time standards proposed by Project in April 2006.	Develop comprehensive strategy for implementation of time standards. Strategy should include a recognition that successful implementation will take significant dedication of Project resources.

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
Execution of civil judgments	Three pilot municipal courts working to reduce backlog and improve processes. Additional pilots expected to be added in 2006 or 2007.	Too early to assess impact. Continue implementation in three pilot courts with sustained effort.
Alternative Dispute Resolution	Law on Mediation pending before legislature. Court-annexed mediation program in process of development with Partners Kosova. Details of current implementation strategy vague.	Policy decision to pursue court-annexed mediation in earnest at this time should be up to the KJC and weighed against other priorities. If the KJC approves court-annexed mediation plan, a detailed strategic plan should be developed in consultation with local actors, before significant resources are devoted to implementation.
Audio recording	Ten installed units, in general, appear not to be used for envisioned purpose. Project does not track usage. Courts report need for further training.	Initiative needs a prompt, objective, and thorough reevaluation, including assessment of changes in technology and a method of tracking unit usage. If additional units are introduced into courts, will require sustained effort.

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
Access to texts of laws, regulations and legal decisions	Compendium of criminal law due in October 2006. Other compendia anticipated, but process of development is slow and is pursued against a backdrop of uncertainty and lack of policy ownership over access to texts to laws, regulations, and legal decisions.	<p>Minimal impact.</p> <p>To formulate further recommendation, following issues should be addressed:</p> <ul style="list-style-type: none"> • What is the status of the Official Gazette, and how can it be more effectively issued as a definitive source of law and regulation? • What are the roles of various law-related institutions – among them UNMIK, the KJC, the Ministry of Justice, and even NGOs or the private sector – in providing public access to the universe of laws? • Assuming implementation of CMIS will continue, how will the fact that judges have access to the Internet affect access to laws, regulations, and court decisions?
Notaries	Law on Notaries pending before legislature.	Implementation of law should be managed by donor representing a civil law system.
Records management	Most major activity completed, some implementation continues.	No substantive changes recommended.
Training in legal research	No current initiatives	No measurable impact.
Court security and coordination with security services	No current initiatives	No measurable impact.
Chain of custody and evidence handling	No current initiatives	No measurable impact.
Harmonizing investigative procedures	No current initiatives	No measurable impact.
KSIP technical assistance	No current initiatives	No measurable impact.

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
III. Legal Professionals Act Ethically and Provide Quality Services to the Public		
Establish, train, and manage UNMIK/JIU's Audit Section	A large amount of this work has already been completed.	<p>The current JIU/Audit Section staff is trained to the point where they can conduct audits with strong supervision.</p> <p>Continue to train the audit staff to conduct audits. More importantly continue to work with the audit staff to conduct 7–8 more audits hands on. It is estimated that by 7–8 more audits they will be able to perform the audits with minimal or no supervision.</p> <p>Train audit staff for the future so that when they gain new employees they are able to train new staff themselves without outside assistance.</p>
Supervising work of the Audit Section	This activity is ongoing.	<p>Capacity of Audit Section is developing.</p> <p>Minor management issues should be addressed.</p>
Provide JIU Coordinator capacity-building support for JIU investigators and legal assistants	This activity is ongoing.	<p>The current JIU Coordinator has not been sufficiently trained.</p> <p>NCSC staff should work with the JIU Coordinator to develop his management skills of that unit. This training should offer assistance in developing his ability to offer support to investigators and legal assistants.</p>
Establish and maintain contacts with relevant institutions and actors	This activity is ongoing.	<p>NCSC has established and maintained excellent contact with the relevant institutions and actors.</p> <p>No further recommendations are needed in this section.</p>

Table B-1: Summary of Activities and Outcomes		
Activity	Status	Outcome/Recommendation
JIU internal policies and methodologies	This activity is ongoing.	<p>NCSC has developed the internal policies and methodologies by which the JIU conducts audits and investigations.</p> <p>No further work is needed in this area.</p>
Strengthening the ethics/discipline system	This activity is ongoing.	<p>NCSC has worked with local actors to develop a judicial ethics code. Capacity within KJC to discipline judges developing. Trainings to the judges of Kosovo on ethics have been delivered.</p> <p>NCSC needs to work more with the KJI in developing and delivering ethics trainings. NCSC can provide critical capacity-building assistance to the KJI: either seconding an adviser to the KJI that has experience with institution building of training organizations; or conducting an in-depth assessment of KJI's obstacles and developing methods to overcome them.</p>
Coordinating the delivery of improved ethics training	No coordination work has been done	<p>NCSC has delivered its ethics trainings through the KJI, but they have done little to ensure that donor overlap did not occur with the subjects of the trainings.</p> <p>NCSC should make greater efforts to determine what other donors are offering as ethical training in Kosovo and how to avoid overlap.</p>

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
Judge reappointment process	NCSC formulated the original judicial reappointment draft paper and submitted it to the UNMIK DOJ.	NCSC's draft served as the basis of the model that was chosen for judicial vetting in Bosnia. Judicial vetting process will mostly be conducted by DOJ and other international actors, but NCSC can remain engaged by offering its assistance and experience from Bosnia and from the Judicial Inspection Unit to offer the KJC assistance in the reappointment process.
IV. Public Awareness		
Measuring and improving public understanding of the justice system	Baseline surveys have been completed.	Baseline survey showed the lack of public awareness regarding the judiciary. Follow on surveys should be completed to show progress.
Improving the public's access to justice	NCSC with IREX have done significant work in this area by working on public outreach and improving media outreach.	Outcomes and recommendations are set forth below.
Public outreach	NCSC with IREX have conducted significant work in this area	Brochures and pamphlets in the courthouses have not proven highly effective methods of reaching the public in Kosovo. The town hall meetings were ineffective and too short to be informative. NCSC should switch to TV programs about the justice sector. NCSC should remain heavily engaged in developing the institution of court public information officers.

Table B-1: Summary of Activities and Outcomes

Activity	Status	Outcome/Recommendation
Improving media awareness of the justice system	NCSC with IREX have conducted significant work in this area.	<p>Journalists' reporting on court/justice related issues improved. Media awareness of the justice system improved.</p> <p>Recommend improvements in NCSC's work with media. Trainings can be improved if they are designed in a more proactive way and with student input. Careful selection of trainers should be made. Students should attend actual trials and report on them in class, with peer review sessions available in class.</p>
Create PIO function in courts	Minimal work has been conducted by NCSC in this area.	<p>NCSC has created a handbook for Public Information Officers that was translated both in Serbian and Albanian. NCSC has also developed the TOR's for public information officers.</p> <p>Handbook needs minor revisions. Any further activity will have to work with the public information officers because the Kosovar Government has not approved a budget for these positions.</p>

ANNEX C EVALUATION TEAM WORK PLANS

Annex C
Work Plan for Component I
May 12, 2006

I. Coordinate with other entities

I.1. Various coordination mechanism

- I.1.1. Advisory Group link to DFID Justice Sector Working Group
- I.1.2. Justice Sector Consultative Group (JSECG)
- I.1.3. NCSC recommends establishing an “overarching Coordinating Council to plan and oversee the transition process”
- I.1.4. Others

I.2. Questions

- I.2.1. Who were the participants?
- I.2.2. Who initiated the coordination?
- I.2.3. How was the agenda developed?
- I.2.4. What was the purpose of each of these coordination mechanisms?
- I.2.5. Was this an ad hoc or effort to establish permanent institution?
- I.2.6. What was the expected outcome of the coordination mechanism?
- I.2.7. What products were produced?
- I.2.8. What was the outcome or impact of the coordination mechanism?
- I.2.9. Did the coordination mechanism work?
- I.2.10. What was the role of USAID?
- I.2.11. What was the role of NCSC in the coordination?
 - I.2.11.1. Observer on JSECG
 - I.2.11.2. Drafting briefing papers for meetings

I.3. Methodology

- I.3.1. Interviews with NCSC
- I.3.2. Interview with USAID
- I.3.3. Interview with other participant in the coordination mechanism
- I.3.4. Review of pertinent outputs of the coordination mechanism

2. Development of Judicial Administration Reform Strategy

2.1. Forward plan to build on December 2001 strategy for reform of the justice system

- 2.1.1. Workshops
- 2.1.2. Issues papers

2.2. Develop position papers for USAID/USOP

2.3. Questions

- 2.3.1. Who was charged with developing a reform strategy (e.g., UNMIK DOJ)?
- 2.3.2. What policy papers were produced?
- 2.3.3. Who was the audience?
- 2.3.4. How were these aired?
- 2.3.5. Did they find any traction?
- 2.3.6. What was the role of USAID or USOP in airing the strategy?
- 2.3.7. What was the ultimate “strategy” developed?
- 2.3.8. What was the reason for developing this strategy?

- 2.3.9. Who was formulating strategy for the judiciary at the beginning of the contract, and did this change over time?
- 2.3.10. How did the strategy relate to the local needs/desires of UNMIK DOJ or local entities?
- 2.3.11. How was the strategy aired?
- 2.3.12. Was there much input from Kosovars on developing the strategy?
- 2.3.13. Did the Kosovars “buy off” on the strategy?
- 2.3.14. What models were considered?
- 2.3.15. Why was the Italian/French model rejected?
- 2.3.16. What role did NCSC have in having the final strategy adopted?
- 2.3.17. Who “adopted” the strategy?

2.4. Methodology

- 2.4.1. If workshops were held, go back to one of the places of a workshop and interview or have a focus group
- 2.4.2. Interview current and past heads of UNMIK DOJ
- 2.4.3. Interview MOJ
- 2.4.4. Interview Kosovars who may have been involved in the process
- 2.4.5. Interview other donors who may have been involved in developing strategy or who tried to affect the strategy
- 2.4.6. Interview with NCSC
- 2.4.7. Interview with USAID

3. Implementation of new entities

- 3.1. Assistance to Court Restructuring Working Group
- 3.2. Target entities
 - 3.2.1. KJC
 - 3.2.2. Secretariat
 - 3.2.3. AOC
 - 3.2.4. MOJ
- 3.3. Transition plans
 - 3.3.1. draft operational procedures
 - 3.3.2. comparative approach (Judicial Council analysis)
 - 3.3.3. policy priorities
 - 3.3.4. training – coordination with KJI
 - 3.3.5. IT
 - 3.3.6. Human resources management – assistance in hiring
- 3.4. Questions
 - 3.4.1. What implementation plans were prepared to transfer functions from UNMIK to PISG?
 - 3.4.2. What functions have been transferred from each entity
 - 3.4.3. What functions will be transferred
 - 3.4.4. Was there any training of personnel before transfer was made
 - 3.4.5. Do the new entities have facilities
 - 3.4.6. Do the new entities have any capacity to perform the functions that they are charged with
- 3.5. Methodology
 - 3.5.1. Interviews with current and former UNMIK representatives
 - 3.5.2. Interviews with representatives of new entities
 - 3.5.3. Interviews with NCSC staff

4. Drafting legislation

4.1. Approach

- 4.1.1. “Drafting the many laws relating to the judiciary”
- 4.1.2. NCSC staff will serve on working groups
- 4.1.3. Identify and monitor legislation pertaining to the judiciary

4.2. Specific laws

- 4.2.1. Law on courts
- 4.2.2. KJC regulation

4.3. Implementation

- 4.3.1. Reliance on private law firm
- 4.3.2. Study visits

4.4. Questions

- 4.4.1. Who was the actual scrivener of the text?
- 4.4.2. Who was involved in developing the policies?
- 4.4.3. What was the mechanism?
- 4.4.4. What legislation was the project working on before the end of 2005?
- 4.4.5. How was the legislative agenda set; what were the priorities and who defined them?
- 4.4.6. What models were used?
- 4.4.7. What efforts to build the capacity of local drafters?
- 4.4.8. What language were the drafts?
- 4.4.9. What role did the Kosovars have?
- 4.4.10. Did the legislative initiatives get passed?
- 4.4.11. What plans are there for implementation?
- 4.4.12. Who had access to the draft legislation; were these publicly available?

4.5. Methodology

- 4.5.1. Interview with members of working groups
- 4.5.2. Interview assistance providers
- 4.5.3. Interview with UNMIK DOJ
- 4.5.4. Interview with MOJ
- 4.5.5. Interview with stakeholders

**Work Plan for Component 2:
Administration of Justice**
May 15, 2006

Thorough evaluation of the effectiveness of the role played by Kosovo Justice System Reform Activity in facilitating the improvement of court administration requires a breadth of data—statistical, legislative/regulatory, observational, comparative, and anecdotal—from disparate sources, both within and beyond the court system.

Examination of administrative issues will draw from these various perspectives, with the intent of capturing the most accurate picture possible. Toward the end of the evaluators' visit, an informal round table discussion will be held for the purpose of identifying areas of continued emphasis in the areas of case management, backlog reduction, audio recording, legal publications, and other administrative matters.

Case Management. This inquiry will evaluate the extent to which effective “case management”—the process through which judges and courts oversee the efficient shepherding of cases from the time of filing to the issuance of judgment—is employed in the courts, and how JSRA has contributed to the improvement of case management. Review of case management will include the following:

- Identify and, to the extent feasible, review for content the universe of case management authority and resources: statutes, rules, manuals, forms, handbooks, etc.
- Review sample case histories, for general understanding of events, processes, continuances, and issues that arise in the course of case resolution.
- Review technical assistance and training history in the area of case management.
- Review “take away” resources (training materials, handbooks, computer programs, etc.) prepared for the purpose of improving case management.
- Interview judges who have received technical assistance or training in case management, focusing on the following questions:
 - How, if at all, have your practices changed as a result of TA/training?
 - How, if at all, have the “take aways” been integrated into your work?
 - How might changes in your practices be quantified or characterized?
 - Assignment of case
 - Notification of parties
 - Number of hearings
 - Conduct at hearings
 - Attempts at settlement
 - Policy toward continuances
 - Disposition time
 - Draft/dissemination of judgment
 - Rates of appeal
 - Maintenance and preservation of case record
 - Additional topics
 - What additional assistance or resources are needed in the area of case management?
 - What regulatory or legislative changes are needed, if any, to bolster effectiveness of case management?

- Interview prosecutors or lawyers who work in courts where judges have received training in case management, with an emphasis on the following:
 - How, if at all, have case management practices changed since the time at which the judge(s) received technical assistance or training?
 - How might these changes be quantified or characterized?
 - What additional improvements can be made in the area of case management?

Backlog Reduction. Whether and to what extent case backlog has been reduced, and the role JSRA has played in this area, requires a comparative look at a sampling of case resolution statistics. The evaluation in this area will thus entail the following:

- Review baseline statistics pertaining to unresolved cases, as set forth in JSRA documents and/or other statistics prepared by other donors. Samples should come from various courts and pertain to clearly identified case categories (property disputes, contract disputes, family disputes, etc.).
- Confirm a baseline for comparison, based on JSRA or other samples, or, if necessary, return to court documentation.
- Return to original source(s) of data for purpose of statistical comparison: Over time period since changes have been implemented, how has backlog changed?
- Interview stakeholders: judges, court administrators, lawyers. In general, discussion will focus on following questions:
 - To what do you attribute change or lack of change in court backlog?
 - What additional assistance or resources are needed in the area of backlog reduction?
 - What regulatory or legislative changes are needed, if any, to facilitate backlog reduction?

Time Standards. Regarding the time frames involved for execution of various court functions, the review will focus on the following:

- Identify and, to the extent feasible, review for content, the universe authority and resources pertaining to time standards in case resolution: statutes, rules, manuals, forms, handbooks, etc.
- Review sample case histories, for general understanding of events, processes, continuances, and issues that arise in the course of a case's resolution.
- Review technical assistance and training history in area of time standards.
- Review "take away" resources (training materials, handbooks, computer programs, etc.) prepared for the purpose of improving time standards.
- Interview judges and court staff who have received technical assistance or training in time standards.
 - How, if at all, have your practices changed as a result of technical assistance and training?
 - How, if at all, have the "take aways" been integrated into your work?
 - What additional assistance or resources are needed in the area of time standards?
 - What regulatory or legislative changes are needed, if any, to improve time standards?
- Interview prosecutors and lawyers who work in courts where time standards have changed:
 - How, if at all, have your practices as a lawyer changed as a result of enforcement of time standards?
 - How might changes be quantified or characterized?
 - What additional improvements can be made in the area of time standards?

Judicial Administration. Evaluation of judicial administration—including administration of courts on a province-wide, regional, and local level—will include the following:

- Examine the laws, regulations, policies, and previous reports (including ABA/CEELI Kosovo Judicial Reform Index, Vols. I and II, and more recent documents) pertaining to the various dimensions of judicial administration in Kosovo.
- Visit and conduct interviews pertaining to those institutions that hold primary responsibility for judicial administration, including the Department of Judicial Administration and the Department of Justice, and the role JSRA has played in building the capacity of these institutions.
- Review statistics as they are available pertaining to administrative aspects of the judiciary.
- Review the environment of organizations, individuals, or activities that support effective judicial administration, including lawyers groups, the law faculty, the donor community, and others. Survey participants for their perspectives on judicial administration.
- Review social dynamics relating to judicial administration in Kosovo: Do the affected constituencies of judicial administration perceive a need for change, and, if so, how they are demonstrating this need? Are they effectively lobbying those institutions that can make a change? Are individuals speaking out? Analysis of social dynamics may affect recommendations for the JSRA's final year of activity.

Audio Recording—I0 Pilot Courts. The effectiveness of this pilot program will be evaluated through the following means: court visits; interviews with affected parties; observation of practices; review of equipment, support documentation, and policies and procedures for sustained implementation of practices; and review of statistics pertaining to case resolution times and appeal rates.

Execution of Judgments. Using the IFES enforcement study and roll-out of activities pertaining to improving the state of execution of judgments Kosovo (fall 2004), the effectiveness of this initiative will be evaluated in the following ways:

- Review baseline statistics pertaining to execution, as set forth in JSRA (IFES) documents and/or other statistics prepared by other donors. Samples from various courts, pertaining to clearly identified case categories (property disputes, contract disputes, family disputes, etc.) will be reviewed.
- Confirm viability of baseline for comparison, based on JSRA or other samples, or, if necessary, return to courts for further documentation.
- Return to original source(s) of data for purpose of statistical comparison: Over time period since changes have been implemented, how have execution of judgment rates changed?
- Interview stakeholders: judges, court administrators, lawyers. In general, discussion will focus on following questions:
 - To what do you attribute change or lack of change in execution of judgments?
 - What additional assistance or resources are needed?
 - What regulatory or legislative changes are needed, if any, to bolster effectiveness of execution of judgments?
 - What additional improvements can be made?
 - Do the affected constituencies of execution of judgments (banks, lenders, others) perceive a need for more change, and, if so, how they are demonstrating this need? Are they effectively lobbying those institutions that can make a change?
 - Is the media seizing the issue of execution of judgments as a topic of public concern?

Legal Publications. An environment that supports the rule of law necessarily includes a dynamic universe of publications that examine, explain, analyze, and otherwise address various aspects of the law. Evaluation of this issue will include the following:

- Review the universe of legal publications and a compilation of a list of contributions JSRA has made to legal publications, either through individual articles or stand-alone documents.
- Review anecdotal evidence of how legal publications have had a direct impact on judicial policy and practice or the rule of law generally.
- Interview stakeholders.

ANNEX D PERSONS AND ORGANIZATIONS INTERVIEWED

Table D-1: Individuals Interviewed

Ajdini, Ali	Judicial Inspection Unit	Auditor
Arnal, Isabela	KJC	International member
Avanesyan, Suren	NCSC	Project Director (Washington)
Azemi, Islam	District Court, Gjilan	Court Administrator
Black, David	USAID	Former CTO
Booth, Nick	Department of Justice (UNMIK)	Legal Advisor to the Deputy SRSG for Justice
Borovci, Mentor	Ministry of Justice	Director of Department, Department for Legal Affairs
Chisholm, Donald	NCSC	Legislative Drafting Manager
Deja, Daniel	NCSC	Chief of Party
Demolli, Haki	Kosovo Law Center	Director
Desku, Mule	Ministry of Justice	Acting Permanent Secretary
Dimic, Vlastimir	District Court, Gjilan	Judge
Dormisheva, Katya	Kosovo Judicial Institute	Director
Dumnica, Virgjina	United Nations Development Programme	National Programme Analyst
Fejzullahu, Enver	NCSC	Senior Staff Associate
Ferry, John	NCSC	Consultant
Furnari, John	NCSC	Audit Advisor
Genova, Irena	NCSC	Judicial Vetting Coordinator
Grubic, Tihomir	Judicial Inspection Unit	Audit Trainer
Gruner, Mitch	NCSC	Consultant
Halimi, Naser	District Court, Gjilan	Chief of Archives Unit
Hasani, Enver	Law Faculty, University of Prishtina	Professor, and Member of the KJC
Hasani, Naser	KJC	Statistician and IT Expert
Haxhimusa, Rexher	Supreme Court	Chief Justice
Huruglica, Ymer	District Court, Gjilan Judges' Association	President
Hyseni, Hydajet	Assembly	Chairman of the Legislative and Constitutional Committee, Member of the KJC
Hyseni, Hydajet	Judicial Inspection Unit	Judicial Audit Coordinator
Ismajli, Myrvete	Minor Offenses Court, Gjilan	President
Kabashi, Ismet	Public Prosecutor's Office of Kosovo, KJC	Prosecutor, Member
Katchkatchishvili, Zurab	Council of Europe	Head of Office, Secretariat Office in Kosovo
Kerveshi, Kujtim	Ministry of Justice	First Advisor to the Minister of Justice
Klawoon, Bill	Bearing Point	Deputy Chief of Party
Kolgeci, Bajram	Department of Judicial Administration	Project Manager, CMIS
Krasniqi, Vjollca	Department for International Development	Project on Supporting the Establishment of Ministries of Justice and Internal Affairs
Krivokapic, Jelena	KJC	Head of KJC disciplinary committee, Judge
Kusari, Edita	NCSC	Staff Attorney

Lum, Sarah	United States Office Pristina	Resident Legal Advisor, United States Department of Justice
Maliqi, Sabit	District Court, Gjilan	Chief Prosecutor
Marra, Alessandro	Council of Europe	Human Rights Advisor
McEntee, Martha	ABA/CEELI	Director
McGowen, Henry W., III	Organization for Security and Co-Operation in Europe	Director, Human Rights and Rule of Law
Mentor	Ministry of Justice	
Metaj, Ardita	NCSC	Staff Attorney
Metaj, Rozafa	RTK	Journalist
Monaghan, Thomas	Department of Justice (UNMIK)	Former Director (Telephone Contact)
Moskowitz, Albert	Department of Justice (UNMIK)	Director
Niblock, Scott	UNMIK/Judicial Development Division	Senior International Judicial Inspector
Nikci, Selim	KJC	Member, Judge, Municipal Court
Osmani, Vjosa	Council of Europe	Legal Assistant
Pallaska, Dastid	United States Office Pristina	Legal Specialist, United States Department of Justice
Pashku, Paulin	Kosova Sot	Journalist
Podvorica, Aziz	Municipal Court, Podujevo	President
Rashani, Selvije	Partners Kosova	Program Manager
Rexhepi, Fatmir	Department of Judicial Administration	Head of IT
Ristic, Dragana	Judicial Inspection Unit	Auditor
Roccatello, Anna Myriam	Department of Justice (UNMIK)	Head, Legal Policy Division
Rolando, Elizabeth	Department of Justice (UNMIK)	Head, Judicial Development Division
Schuetz, Michael	Organization for Security and Co-Operation in Europe	Chief, Rule of Law Section, Department of Human Rights and Rule of Law
Simion, Mihaela	Department of Judicial Administration	Senior International Officer
Stromsem, Jan	NCSC	Executive Director, International Programs Division
Szal, Albert	NCSC	Deputy Chief of Party
Toska, Besim	Bota Sot	Journalist
Uka, Nuhi	Municipal Court, Pristina	President
Vrenezi, Agon	NCSC	Staff Attorney
Wickstrom, Elizabeth	Bearing Point	Attorney/Advisor to the President of the Assembly
Xhelili, Shevqet	Municipal Court, Gjilan	Acting President
Ymeri, Fahredin	District Court, Gjilan	Judge
Zhitija, Hilmi	Prosecutor's Office	Chief Prosecutor
(name unknown)	District Court, Gjilan	Judge
(name unknown)	District Court, Gjilan	Judge
(name unknown)	IREX	
(name unknown)	Municipal Court, Pristina	Secretary to Judge
(name unknown)	Partners Kosova	Project Assistant

Name	Organization	Role
McEntee, Martha	ABA/CEELI	Director
Hyseni, Hydajet	Assembly	Chairman of the Legislative and Constitutional Committee, Member of the KJC
Klawoon, Bill	Bearing Point	Deputy Chief of Party
Wickstrom, Elizabeth	Bearing Point	Attorney/Advisor to the President of the Assembly
Toska, Besim	Bota Sot	Journalist
Katchkatchishvili, Zurab	Council of Europe	Head of Office, Secretariat Office in Kosovo
Marra, Alessandro	Council of Europe	Human Rights Advisor
Osmani, Vjosa	Council of Europe	Legal Assistant
Krasniqi, Vjollca	Department for International Development	Project on Supporting the Establishment of Ministries of Justice and Internal Affairs
Kolgeci, Bajram	Department of Judicial Administration	Project Manager, CMIS
Rexhepi, Fatmir	Department of Judicial Administration	Head of IT
Simion, Mihaela	Department of Judicial Administration	Senior International Officer
Monaghan, Thomas	Department of Justice (UNMIK)	Former Director (Telephone Contact)
Booth, Nick	Department of Justice (UNMIK)	Legal Advisor to the Deputy SRSG for Justice
Moskowitz, Albert	Department of Justice (UNMIK)	Director
Roccatello, Anna Myriam	Department of Justice (UNMIK)	Head, Legal Policy Division
Rolando, Elizabeth	Department of Justice (UNMIK)	Head, Judicial Development Division
Huruglica, Ymer	District Court, Gjilan Judges' Association	President
Dimic, Vlastimir	District Court, Gjilan	Judge
Ymeri, Fahredin	District Court, Gjilan	Judge
(name unknown)	District Court, Gjilan	Judge
(name unknown)	District Court, Gjilan	Judge
Maliqi, Sabit	District Court, Gjilan	Chief Prosecutor
Azemi, Islam	District Court, Gjilan	Court Administrator
Halimi, Naser	District Court, Gjilan	Chief of Archives Unit
(name unknown)	IREX	
Ajdini, Ali	Judicial Inspection Unit	Auditor
Grubic, Tihomir	Judicial Inspection Unit	Audit Trainer
Hyseni, Hydajet	Judicial Inspection Unit	Judicial Audit Coordinator
Ristic, Dragana	Judicial Inspection Unit	Auditor
Arnal, Isabela	KJC	International member
Hasani, Naser	KJC	Statistician and IT Expert
Krivokapic, Jelena	KJC	Head of KJC disciplinary committee, Judge
Nikci, Selim	KJC	Member, Judge, Municipal Court

Pashku, Paulin	Kosova Sot	Journalist
Dormisheva, Katya	Kosovo Judicial Institute	Director
Demolli, Haki	Kosovo Law Center	Director
Hasani, Enver	Law Faculty, University of Prishtina	Professor, and Member of the KJC
Borovci, Mentor	Ministry of Justice	Director of Department, Department for Legal Affairs
Kerveshi, Kujtim	Ministry of Justice	First Advisor to the Minister of Justice
Ismajli, Myrvete	Minor Offenses Court, Gjilan	President
Desku, Mule	Ministry of Justice	Acting Permanent Secretary
Mentor	Ministry of Justice	
Xhelili, Shevqet	Municipal Court, Gjilan	Acting President
Podvorica, Aziz	Municipal Court, Podujevo	President
Uka, Nuhi	Municipal Court, Pristina	President
(name unknown)	Municipal Court, Pristina	Secretary to Judge
Avanesyan, Suren	NCSC	Project Director (Washington)
Chisholm, Donald	NCSC	Legislative Drafting Manager
Deja, Daniel	NCSC	Chief of Party
Ferry, John	NCSC	Consultant
Furnari, John	NCSC	Audit Advisor
Genova, Irena	NCSC	Judicial Vetting Coordinator
Gruner, Mitch	NCSC	Consultant
Metaj, Ardita	NCSC	Staff Attorney
Stromsem, Jan	NCSC	Executive Director, International Programs Division
Szal, Albert	NCSC	Deputy Chief of Party
Fejzullahu, Enver	NCSC	Senior Staff Associate
Kusari, Edita	NCSC	Staff Attorney
Vrenezi, Agon	NCSC	Staff Attorney
McGowen, Henry W., III	Organization for Security and Co-Operation in Europe	Director, Human Rights and Rule of Law
Schuetz, Michael	Organization for Security and Co-Operation in Europe	Chief, Rule of Law Section, Department of Human Rights and Rule of Law
Rashani, Selvije	Partners Kosova	Program Manager
(name unknown)	Partners Kosova	Project Assistant
Zhitija, Hilmi	Prosecutor's Office	Chief Prosecutor
Kabashi, Ismet	Public Prosecutor's Office of Kosovo, KJC	Prosecutor, Member
Metaj, Rozafa	RTK	Journalist
Haxhimusa, Rexher	Supreme Court	Chief Justice
Dumnica, Virgjina	United Nations Development Programme	National Programme Analyst
Lum, Sarah	United States Office Pristina	Resident Legal Advisor, United States Department of Justice
Pallaska, Dastid	United States Office Pristina	Legal Specialist, United States Department of Justice
Niblock, Scott	UNMIK/Judicial Development Division	Senior International Judicial Inspector
Black, David	USAID	Former CTO

ANNEX E SURVEY INSTRUMENTS

We have a few questions that we would like to ask of you. The purpose of this questionnaire is to learn more about the process for drafting the law on courts. We will aggregate the answers and not attribute the answers to any one participant in the group. Your candor will assist in developing support for other legislative efforts.

1. Were you an active participant in the deliberations of the working group?	1	2	3	4	5
1= just an observer, 2= not that active, 3= somewhat active, 4= active, 5= very active					
2. How many sessions of the working group did you attend?	1	2	3	4	5
1= none 2= some 3= most 4= almost all 5= all					
3. Were your views fairly considered by the working group?	1	2	3	4	5
1= None of my suggestions were fairly considered 2= Few of my suggestions were fairly considered 3= Some of my suggestions were fairly considered 4= Almost all of my suggestions were fairly considered 5= All of my suggestions were fairly considered					
4. To what extent does the final draft of the law on courts reflect your opinions?	1	2	3	4	5
1= I totally disagree with the contents of the final draft law 2= I somewhat disagree with the contents of the final draft law 3= There are some aspects of the law with which I disagree 4= I agree with most of the contents of the final draft law 5= I totally agree with the contents of the final law					
5. Do you think that the Assembly should pass the law in its present form? Yes No If not, why not?	Y	N			
6. Do you think that the process for drafting this law should be repeated for other major pieces of legislation Yes No If not, why not?	Y	N			

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