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KOSOVO JUSTICE SUPPORT PROGRAM

ANNUAL REPORT, JUNE 2007 – JUNE 2008

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INTRODUCTION

As required under its contract with the United States Agency for International Development (USAID), the National Center for State Courts (NCSC) submits its first annual report for the Kosovo Justice Support Program (KJSP). The report summarizes the results of program activities, identifies challenges, and outlines next steps for the second year of the three-year program.

KJSP seeks to strengthen the justice system in Kosovo under USAID Strategic Objective (SO) 2.2, *More Open and Responsive Government Acting According to the Rule of Law*. Relevant Intermediate Results (IR) and sub-IR are as follows:

| | |
|--|---|
| IR 2.2.2 Sub IR 2.2.2.1 | Legal Framework Ensures Checks and Balances Increased Independence of the Judiciary |
| IR 2.2.3 Sub IR 2.2.3.1 Sub IR 2.2.3.2 Sub IR 2.2.3.3 | Fair and Transparent Administration of Justice Increased Capacity of Legal Professionals More Effective and Efficient Court Administration Increased Access to Justice |

KJSP provides technical assistance and training to the Kosovo justice system through six component tasks:

- (1) Improve the Capacity of the Kosovo Judicial Council to Operate Effectively and Efficiently an Independent Judiciary
- (2) Improve Court Administration
- (3) Improve Professionalism and Ethics of Judges and Court Staff
- (4) Support the transformation of the court system to more effectively represent and serve non-Albanian populations
- (5) Develop Ministry of Justice (MOJ) legal drafting and policy formulation and guidance skills
- (6) Establish and support the organization and critical tools necessary to build an effective Public Prosecutors Service

USAID awarded the KJSP to NCSC on June 18, 2007 (Rule of Law IQC DFD-I-00-04-00176-00, TO 3). KJSP staff included experienced international project managers and subject matter experts, qualified local legal advisors and project implementation specialists. KJSP enlisted a number of local partners to support implementation of year 1 project activities. KJSP also utilized three U.S. subcontractors in the implementation of activities, including Search for Common Ground, Tulane University Public Law Center, and National Conference of State Legislatures. Search for Common Ground was enlisted to assist in the production and broadcast of Public Service Announcements under Task 1; Tulane University Public Law Center and National Conference of State Legislatures provided specialized legislative drafting training under Task 5. In addition to U.S.-based sub-contractors, NCSC enlisted the support of its pro-bono partner, DLA Piper US, LLC, to provide support for the drafting of major laws affecting the justice system in Kosovo.

EXECUTIVE SUMMARY

NCSC is pleased to report progress toward achievement of the ambitious goals and objectives of the Kosovo Justice Support Program (KJSP) in year 1. The program carried out technical assistance and training supporting multiple inter-related program objectives. Close coordination and cooperation with other donors and partners contributed immeasurably to successful delivery of assistance to numerous justice sector institutions, and produced successful operational linkages between those institutions, including the Kosovo Judicial Council, the Kosovo Judicial Institute, and the Ministry of Justice, among others.

Prior to and following the February 17, 2008, declaration of independence of Kosovo, USAID has worked to ensure that judicial institutions are in place and functioning, and that the legal framework ensures judicial independence and impartiality. This has been the case both during the transfer of competencies from UN authority to local control, and throughout the reconfiguration and transfer of UN and EULEX mission competencies, (which remain in a state of transition at the beginning of year 2 of the program). To address the challenges of the fluid political environment and developing legal framework in Kosovo, the approaches to KJSP implementation in year 1 have included the following:

- Incorporating new legal and political developments—A number of draft laws affecting implementation of KJSP are pending approval or have recently been approved. The content of the pending laws, including the Law on Courts, Law on Judicial Council, Law on Prosecutors and Law on Prosecutorial Council will invariably impact program objectives. In addition, the pending judicial and prosecutorial reappointment process may require the reconfiguration of the Kosovo Judicial Council (KJC) during judicial and prosecutorial appointment procedures. KJSP will remain engaged to ensure that assistance is consistent with the emerging legal framework.
- Developing capacity in the face of change—The impending judicial reappointment and vetting processes will result in the turnover of experienced judges and prosecutors. The delay of the vetting itself is equally challenging, as judges and prosecutors grow increasingly reluctant to carry out reform initiatives which may prove controversial. In the KJC, the reappointment may impede the pace and scope of institutional capacity development, and challenge the sustainability of progress within the institution. To mitigate these problems, KJSP has focused on near-term results and hands-on mentoring with KJC leadership and KJC Secretariat personnel.
- Enabling local leadership—The commitment of local leaders is key to the success of KJSP activities. Through technical assistance, training, and mentorship, KJSP's approach bridges institutional officials with operational counterparts, working both with government leaders and with staff in courts and prosecutors' offices. KJSP engages "top-down" and "bottom-up" lines of assistance concurrently, in order to install collaborative working relationships, and build consensus on critical issues which are essential for successful implementation and sustainability of reform. Likewise, KJSP draws on its qualified local staff to develop and deliver much of the legal analysis, policy recommendations, technical assistance and training provided under the project in order to further strengthen and enable local leadership.
- Identifying cross-cutting themes— While project tasks are discrete, KJSP's approach fosters development of common visions, systems, and procedures to enhance reforms within the justice sector as a whole. The project incorporates cross-cutting themes and activities wherever

possible. For instance, KJSP legislative drafting assistance relates to the work of KJC, Ministry of Justice (MOJ), Prime Ministers Office (PMO), and the Assembly, and KJSP has sought to introduce a uniform process to this function. KJSP's basic computer skills training program has proven successful not only for the staff of a pilot prosecution site where it was first developed— It has since been replicated for court staff and judicial inspectors with great success. Similarly, professional ethics, the importance of public outreach, and representative diversity in the judiciary, underlie all reform initiatives, not just individual tasks.

Program highlights in year 1 included the following:

- Established Model Courts Program in Peja and Mitrovica District Court; Gjilan, Ferizaj; and Prizren Municipal Courts; and the Commercial Court. Facilitated on-going court improvement initiatives with support of presiding judges, court staff and KJC Secretariat staff.
- Facilitated local leadership in the drafting of court performance measures, developed jointly between the KJC Secretariat and CAC.
- Provided turnkey technical assistance, training and technology to the Kosovo Judicial Council Secretariat Statistics Division to facilitate improved data collection, analysis, and use of statistics for management purposes.
- Facilitated improved relationships between the courts and major creditors, including PTK and KEK. Negotiated formal disposition of 761 PTK cases filed between 2001 and 2003 in Gjilan MC, leading to a reduction of the backlog by 54%.
- Facilitated production of *Civil Execution Handbook*—the first legal guide wholly produced by Kosovar legal professionals for Kosovar legal professionals.
- Produced and arranged broadcasting of three Public Service Announcements, which focused individually on judicial independence, equal access to justice, and the rights and responsibilities of citizens.
- Facilitated basic and advanced training in the Code of Ethics for judges and prosecutors in partnership with KJI leadership and KJI trainers.
- Delivered multipart Legislative Drafting Training Program for KJC, MOJ and Assembly Legal Officers. Provided advanced training for two MOJ legal officers at the Tulane University International Legislative Drafting Institute.
- Designed and implemented a Prosecution CMIS Pilot Project in Gjilan District, which featured the procurement of computers for the District Prosecution Office and the provision of basic computer skills training for the purpose of enabling the use of the computer-based case management system.

Implementation challenges

The task order that served as the basis for the KJSP workplan was rooted in a number of anticipated future developments that have not come to be—namely that the *Law on Courts* and *Law on Prosecutors* would be in place during the course of year 1; that the judicial and prosecutorial reappointment process and court re-structuring process would have taken place or at least begun by year 1; and that political circumstances surrounding the status of Kosovo would not also entail the withdrawal of many Kosovo Serbs from government institutions. Notwithstanding the language of the task order, KJSP has set forth a number of reform initiatives which have responded to the circumstances at hand, and have allowed the project to continue to progress toward the achievements of its objectives, in spite of uncertainties.

Though the court re-structuring process is not complete and judicial vetting and reappointment has not yet begun, KJSP pressed forward with the Model Courts program, working with district and municipal courts that will inevitably continue under any re-structuring plan. It is worth noting the task order stipulates that 4 additional courts may be added to the program, though not until Kosovo's status is resolved. Though KJSP initially proposed that the four additional model courts were to be dedicated to predominantly minority-serving courts, the Kosovo Serbs have indefinitely withdrawn from the government and continue to maintain parallel institutions.

Taking into account the above program highlights, approaches and challenges, the following report is organized to track the project's tasks and includes each specific sub-task identified in the KJSP annual workplan. The report details KJSP contributions to the justice system in Kosovo in year 1, and includes information on results and impact, successes and challenges. A list of key documents produced under the project, and referenced in the report, is included as Appendix A.

ANNUAL REPORT

TASK 1 – Improve the Capacity of the Kosovo Judicial Council to Operate Effectively and Efficiently an Independent Judiciary

Building on previous USAID assistance to the Kosovo Judicial Council (KJC), activities related to the KJC and the KJC Secretariat in the first year of the Kosovo Justice Support Program (KJSP) shifted from institution building to institution strengthening and capacity building. KJSP has worked closely with several of the KJC Secretariat Divisions to develop internal systems of operation, ensure appropriate allocation and distribution of responsibilities, and instill accountability in work processes. While many significant challenges remain, activities have resulted in considerable improvements.

1.1 Build the KJC’s capacity to draft key laws and regulations establishing the mechanics needed to enforce the rule of law

KJC Capacity: Activities

Three sets of activities were planned under the year 1 work plan: 1) training and technical assistance to improve KJC Secretariat staff capacity to formulate and analyze policy, 2) revision of KJC committee procedures and technical assistance for policy review and implementation, and 3) identification and development of key policies required for the governance of the judiciary.

KJC Secretariat Staff Capacity Building – KJSP supported the participation of KJC Secretariat Legal Office staff in a comprehensive training program to develop legislative drafting skills. The rollout of the training program, offered to both KJC legal officers and Ministry of Justice staff members, among others, is discussed in further detail under the Task 5 section of this report.

KJC Committee Support – KJSP has provided extensive support to KJC Committees during the course of Year 1. One of the main vehicles for support has been mentoring of the KJC Secretariat Legal Office to improve its support of the KJC. Committees received assistance both on administrative processes and on substantive issues. During the second quarter, KJSP initiated a thorough review of KJC Committee procedures, identifying several deficiencies. KJSP has worked closely with the KJC Secretariat Legal Office to address these deficiencies and has made progress in addressing administrative support to the Court Administration Committee and revisions to the internal procedures of the Disciplinary Committee.

| Court Administration Committee (CAC) | Budget & Personnel Committee (BPC) | Legislative & Rules Committee (LRC) | Disciplinary Committee (DC) |
|---|---|--|---|
| <ul style="list-style-type: none"> • Process for planning and preparing CAC meetings improved. • Process for review of audit reports developed and successfully tested with the first two reports. • Workgroup to review and amend Internal Rules of Court Administration (1981) set up. | <ul style="list-style-type: none"> • Initial discussions on ways to improve the judicial budget and personnel system held with the new chairperson of the Committee. | <ul style="list-style-type: none"> • Approach for review of key legislation affecting the judiciary developed and tested with the draft Constitution. | <ul style="list-style-type: none"> • Standard internal procedures for the Committee and rules for conduct of disciplinary appeals drafted. • Checklist of activities for Legal Office developed to improve support to DC. • Recommendations to improve the disciplinary process collected. |

KJSP achieved several milestones in its support to the Court Administration Committee. Working closely with legal and administrative personnel assigned to support the CAC, KJSP assisted in improving the processes for planning and preparing CAC meetings. In recent meetings, support staff has shown improved performance in developing agendas, analyses and summaries of documents. This has enabled the KJSP to play more of a supportive role in the background as the KJC Secretariat staff has taken on greater responsibilities. While significant progress has been made, significant work remains, particularly in developing the skills of primary committee staff and the leadership of committees themselves.

KJSP provided assistance and guidance to the KJC Secretariat and CAC for the development of a process to review audit reports submitted by the Judicial Audit Section. The process relies on a pool of professionals (judges, prosecutors and court administrators) to review audit reports. By drawing from this cross-section of professionals, a wide range of justice system actors will be exposed to judicial audits. KJSP also assisted KJC Secretariat staff in adopting forms and templates to summarize and organize audit report findings and brief the working group. The process was tested with the first two audit reports¹ and proved very effective. Members of the working group felt confident in the process and knowledgeable about auditing. Their recommendations were sound and directed at solving practical problems.

KJSP has also worked on a number of substantive issues with the CAC for policy formulation, court performance management, and implementation of the Strategic Plan and planned restructuring. Three working groups were set up under the CAC to achieve the goals: Working Group on Internal Rules, Working Group on Performance Measures, and Working Group on Case Management.

KJSP has initiated work with the Budget and Personnel Committee on a mid-term project to expand court participation in the judiciary's budget process and improve personnel management systems to align resources more clearly with identified needs. During the third quarter, KJSP worked closely with the Committee's new chairperson to explore ways of improving the judiciary's budget and personnel system and the manner in which the budget is constructed. However, as of this report the new chairperson will not be returning to Kosovo and thus KJSP may have to readdress these issues with KJC and the Committee. The departure of the current chairperson will have a negative impact on the ability of the committee to assume a greater role in the management of the system.

KJSP provided significant support to the Disciplinary Committee (DC)² and the KJC Secretariat Legal Office to develop standard internal procedures pursuant to the applicable UNMIK Administrative Directive on Discipline as well as rules for conduct of disciplinary appeals. (See attachment KJC 1). The drafts have not been reviewed due to the unavailability of the Vice-President of the KJC (also the Chair of the Committee), who has not participated in the KJC or the Committee since the February 2008 declaration of independence. To ensure effective, organized processes for the review of disciplinary cases, KJSP worked with the KJC Secretariat Legal Office on a checklist for activities of the legal officers supporting the DC. The checklist outlines tasks, timeframes, and communication lines with relevant institutions and individuals. The Legal Office has indicated that they plan on developing similar checklists for work with other committees.

¹ JAS Reports "Review of Court Practices Regarding the Verification of Signatures and Certification of Contracts for the Sale of Real Estate" and "Identification and Assessment of Points in the System of Criminal Procedure that Cause the Statute of Limitations to Run in Criminal Cases". Another nine audit reports are still pending for approval at UNMIK DOJ.

² The Disciplinary Committee has proved to be a significant challenge both in process and substance. The initiation of the one-time reappointment process will significantly impact judicial discipline as that process effectively works to suspend the authority of the Committee.

In addition to developing internal procedures, support has been geared towards facilitating the identification of recommendations to revise the UNMIK Administrative Directive on Discipline to clarify and streamline disciplinary procedures. The recommendations stem from problems identified by members of the DC. One area for immediate action is the suspension without pay of any judge or prosecutor charged with a criminal offense, with a provision for compensatory damages if acquitted. Finally, KJSP has provided interpretation and suggested practical solutions on issues arising in disciplinary processes. Two of the issues are: (1) whether the KJC is obliged to hold a hearing when sitting as a second instance panel on appeals against decisions of the DC, and (2) whether the Judicial Inspection Unit is entitled to request an emergency suspension from the SRSG or successor international civil representative without prior notification to the DC. In both cases KJSP worked with the KJC Secretariat legal officers to develop memoranda analyzing applicable rules. (See attachment KJC 2).

Policy Formulation for Governance of the Judiciary – KJSP is supporting the KJC and CAC in developing a number of rules and circulars to regulate key areas of court administration and judicial governance. Activities have focused on regulating court operation, streamlining and standardizing court fees and expenses, adopting rules for the implementation of existing legislation, reviewing draft legislation impacting the judiciary, and developing a framework for the Model Courts Program (MCP).

Internal Rules of Court Operation (1981) updated and revised. Following a review of the laws and regulations governing the judiciary, KJSP assisted the CAC in establishing a working group to draft new rules of internal court operations. The working group is a joint effort of the CAC and the Legislative and Rules Committee. At the request of the CAC, KJSP has started a comparative analysis of rules in the region, and an analysis of the 1981 rules applicable in Kosovo. The analysis is still in process at the end of year 1. A set of recommendations and policy issues for discussions will be submitted to the CAC working group in year 2.

Court fees and expenses streamlined. KJSP has built upon prior work to standardize court fees. Activities were suspended for most of year 1 due to a pending request to the SRSG to authorize KJC to harmonize court fees. The KJC did not feel that it had authority to issue a directive on courts fees absent authorization from UNMIK. That authorization was finally given in April 2008 through UNMIK Administrative Directive 2008/4. A draft circular on court fees has been approved by the CAC and is pending approval by the KJC. (See attachment KJC 3). The new, uniform fees are expected to be approved in July 2008 and to come into force in September. KJSP has also provided support to the KJC Secretariat in developing rules on compensation of experts, witnesses and other professionals involved in criminal and civil proceedings. KJSP facilitated a process to identify policy issues, collect proposals from judges and court administrators, and submit a set of options to the CAC and Legislative and Rules Committee. Draft rules, with a number of outstanding policy issues for resolution, are still in discussion at the end of year 1. These two sets of rules will have tremendous impact on transparency in court operation. They will create certainty and uniformity in proceedings, with parties well aware of the fees and expenses.

Rules for implementation of existing legislation adopted. KJSP has provided technical support and assistance in reviewing primary legislation and drafting secondary legislation to ensure the smooth operation of the judiciary and a more uniform, certain and transparent approach to specific issues. Two examples are the circular for autopsy developed for implementation of the Provisional Criminal Procedure Code and the rules on transfer of responsibilities from the KJC to the Legal Aid Commission (created under UNMIK Regulation 2006/36) which is responsible for free legal representation for indigents in criminal cases.

Legislation reviewed. Three main documents were under consideration during year 1: the new Kosovo Constitution, the draft Law on Courts, and the Draft Law on the KJC.³ KJSP assisted the Legislative and Rules Committee and KJC Secretariat Legal Office in developing comments to the Constitution on behalf of the KJC. KJSP facilitated a review through a process which included broad participation from justice sector stakeholders including the Kosovo Judges' Association, the Kosovo Prosecutors' Association, and the Chamber of Advocates. In coordination with Task 5, KJSP also assisted with the development of the Law on Courts and the Law on the KJC. Both laws are currently under review at the MOJ. As part of that process, KJSP participated in several roundtable discussions with key stakeholders to raise concerns and issues as the group worked through various iterations of the laws. KJSP also worked with UNMIK and offered comment on Administrative Directive 2008/02 concerning the effect of the reappointment process on the administration the judiciary. The current wording of AD 2008/02 presents significant challenges as it does not account for the administrative responsibilities of the KJC during the reappointment process. Finally, KJSP prepared information for USAID regarding the impact of the Constitution's transition provisions on the functioning of the KJC during the reappointment process and during the period of international supervision. (See attachments KJC 4 to 7).

Policy framework for MCP developed. Policies for initial start up and governance structure of the MCP were identified and drafted during the first quarter of the project. KJSP engaged KJC and KJC Secretariat counterparts in the development of selection criteria for Model Courts participants and of the framework of standards to serve as goals for the Model Courts. During the second quarter, KJSP staff assisted in developing and implementing the internal processes by which the CAC will oversee the day-to-day operation of the MCP. Details on these activities are included under Task 2, Model Courts Program.

KJC Capacity: Results, Impact and Proposed Next Steps

The main results of activities focusing on KJC capacity in Year 1 were:

- Legislative drafting curriculum initiated. Attendance of KJC legal office staff has been excellent.
- KJC Secretariat Legal Office has made considerable improvements in the performance of their duties and has demonstrated both willingness and capacity to adopt new methods of work. Support provided by the KJC Legal Office to the KJC Committees improved noticeably. Agendas, analyses and summaries have improved in quality and are prepared in a timely manner. More support is needed to reach longer-term goals of improved technical skills such as analytical thinking, writing and drafting.
- Disciplinary Committee procedures drafted.
- Formal process for full review and revision of Internal Rules of Court Operation initiated. Review of existing regulatory frameworks in the process of being finalized.
- Court fees and expenses standardized.

A number of challenges have impacted the implementation of activities. First, the KJC Secretariat Legal Office has had difficulties in providing quality and professional services to KJC Committees due to their dual role and dual management (with tasks assigned by both the Committees and the Secretariat). This dual role of supporting Committees and serving as the KJC Secretariat legal office has greatly affected its ability to perform effectively and manage workload efficiently. Second, the combination of the impending

³ Originally the Law on Courts was to cover both the operations of the KJC and the operations of the courts. However, KJSP recommended that the two laws be split with the Law on Courts governing structure and general operations of the courts and the Law on the KJC governing the structure and operations of the Council.

reappointment process⁴ and the absence of the Vice Chair of the Council/Chair of the DC since February 2008 have stalled both disciplinary hearings and the approval of the disciplinary procedures. Third, the lack of progress on the legislative framework for the judiciary, especially the continued delays in adopting a Law on Courts, has had an impact on the timeliness of certain regulatory activities within KJC as well as on willingness of stakeholders to address certain issues.⁵ Fourth, internal personnel frictions within the KJC Secretariat at the highest levels have negatively impacted the work of the KJSP. As a result of these internal difficulties, KJSP was not always sure who had final decision-making authority with the Secretariat and spent a significant amount of time trying to harmonize internal frictions.

Next steps will focus on reinforcing the capacities built during year 1. The second part of the legislative drafting program will be implemented in year 2 with the same structure of seminars and on-the-job mentoring. KJSP will also continue to support KJC Committees and the KJC Secretariat on targeted policy-making. KJSP will continue to support the passage of a Law on Courts and a Law on KJC. Upon passage of these laws, the focus of activities will shift to policy-making for their implementation. Activities under this task may be significantly affected by the reappointment process, which at this point would disband the KJC, as detailed under 1.2.2.

1.2 Support the KJC in completing the vetting of sitting judges and prosecutors, and the restructuring of the court system

Vetting and Restructuring: Activities

Five sets of activities were planned under the Year 1 work plan: 1) improvement of the capacity of KJC to conduct thorough evaluations of candidates for judicial office, 2) development of consistent procedures for appointments, transfers, promotion, discipline, and background investigations, notwithstanding the status of the vetting process, 3) recommendations for the distribution of judicial resources and the geographic organization of courts, 4) implementation of administrative infrastructures to support court operations, and 5) implementation of the 2007-2012 Strategic Plan for the Kosovo judiciary.

Vetting Process – Due to delays in launching the reappointment process, no activities were undertaken in relation to the vetting process and the development of evaluation criteria. At the time of this report, the reappointment process, while defined by UNMIK Administrative Directive 2008/2 of January 2008, has yet to be officially launched. The vetting process is anticipated to begin in Fall 2008. KJSP participation in the actual vetting process will be largely limited to assisting with background investigations of applicants for judicial office.

Non-Vetting Appointments, Transfer, Promotion, Discipline, and Background Investigation Procedures – Draft internal procedures for the KJC Disciplinary Committee and disciplinary appeals before the KJC are pending approval. As a result, the development of similar procedures was not initiated, for judicial appointments, transfer, and promotion, which were initially planned for development in the third and fourth quarter of year 1. Similarly, criteria for judicial

⁴ The reappointment process will transfer all disciplinary activity to the IJPC for purposes of reviewing candidates applying for reappointment. The start of the process has been impending for months and has long been a justification for stalled activities as stakeholders are reluctant to start new processes or policy formulation with the sense as a new process is planned.

⁵ For example, although a law on the courts was proposed as early as 2004 and developed under prior projects, key local stakeholders have still not reached a consensus on the structure of the law, the structure of the courts and the qualifications of judges. Thus, the Kosovo judiciary continues to operate under a myriad of laws, rules, regulations and customs, many of which are overlapping and contradictory. Notwithstanding this fact, the Assembly has not adopted a law to regulate the structure of the courts or the operations and authority of the KJC.

candidate background checks were not defined. Delays in these activities are due to (1) delays in launching the reappointment process, (2) the unwillingness of the KJC to entertain these issues absent a legal structural framework for the courts, and (3) the inability of the Appointments Committee to have a quorum to conduct business for more than seven months.

Judicial Resource Distribution and Geographic Structure – Activities related to case weight revision and court restructuring have been delayed based on two reasons: 1) planning for restructuring is untimely until agreement on the court structure,⁶ a prerequisite to the finalization of the draft Law on Courts, is reached, and 2) capacity building of the KJC Secretariat Statistics Division is necessary prior to reviewing case weights formally. KJSP has adjusted its activities accordingly and focused on building the necessary foundation for the use of judicial statistics for management purposes, especially for judicial resource distribution and for a review of the structure of courts geographically.

During the second quarter, KJSP worked with the Head of the KJC Secretariat Statistics Division to identify areas in which the Division needs support in order to improve its capacity to meet the statistical needs of the judiciary, especially in the context of the upcoming court restructuring. Six areas were identified and work completed or initiated in four during the course of the year. SPSS software was transferred to the KJC Secretariat in March 2008. Three training curricula were developed and rolled out on Basic SPSS, Statistics, and Intermediate SPSS, (See attachments V&R 1 to 3).

General caseload and backlog analysis was conducted by KJSP throughout the year. A number of internal reports were compiled on the status of civil and criminal caseload in municipal and district courts. The analysis is being used to inform activities under Task 2. Recent reviews of caseload reports and disposition data from five courts have provided evidence of significant data discrepancies in the various reports submitted to the KJC Secretariat Statistics Division. A quick-impact project to address these discrepancies in the short-term and to develop guidelines for improved, more accurate statistical reporting in the future, will be carried out in cooperation with the KJC Secretariat Statistics Division. It will be launched in July 2008.

| Area of support | Achievements | Challenges |
|---|--|--|
| Revised statistical reports to include case type details. | Successful roll out of new forms to all courts in December 2007. Initial positive feedback from most courts. | Enforcement of new forms, and more generally of statistical reporting requirements, has been uneven. |
| Provide SPSS package and training. | Software provided during third quarter. Training on basic SPSS, statistics, and intermediate SPSS conducted. | Use of the software and its impact on work flow and output remains to be assessed. |
| Improve accuracy of statistical reporting. | Project for statistical report adjustments and guidelines for future reporting to be launched in July 2008. | Difficulties in identifying areas in the process where discrepancies occur are expected. |
| Develop statistical reporting dictionary. | Initial activities to be planned in year 2. | None identified so far. |
| Identify research areas for management use of statistics. | | |
| Review case weights for judges. | Possible options for case weight review outlined. | |

⁶ As of this report, Kosovo authorities have been unable to reach a consensus on the structure of the courts. Rather than collapsing the number of courts, the current draft Law on Courts expands the structure of the courts and creates multiple layers of judicial authority with potential significant expense to the Kosovo Consolidated Budget. (See attachment Re: cost of system) KJSP has recommended that three tiered-court structure with differentiated divisions or chambers. Until consensus is reached by Kosovo officials, the Law on Courts will remain in limbo and the KJSP's ability to assist in making meaningful progress on restructuring limited.

During the third quarter, KJSP worked with KJC Secretariat staff to adopt the use of the weighted caseload formula developed by UNMIK/DOJ for use in making projections regarding minor offenses courts and for use in estimating needs for district and municipal court judges for EU rule of law transition plans.

More generally, KJSP has outlined various options for the review and periodic adjusting of case weights. During the second and third quarters of the project, KJSP and the KJC Secretariat Statistics Division worked with the CAC to initiate a planning process for developing court restructuring recommendations. The Caseflow Management Work Group was set up to 1) review criteria for court restructuring, and 2) review and analyze caseload data to make recommendations on measures to reduce case backlog. After a successful initial meeting in late May 2008 at which two sub-groups for civil and criminal caseload were set up, no work was performed by the work group members and a second meeting was adjourned for lack of quorum. Follow up discussions were held with the Head of the KJC Secretariat Statistics Division on the need to reassess the membership and mandate of the work group, with a view to making recommendations to the CAC on whether to continue the work group as is, modify it or disband it.

Caseflow Management Work Group Members

Ferid Bislimi, Judge, Pristina District Court
Rrahima Elezi, Judge, Prizren District Court
Sebahate Hoti, Judge, Pristina Minor Offenses Court
Haxhi Dërguti, KJA, Presiding Judge, Klina Municipal Court
Agron Zylfiu, Administrator, Prizren District Court
Sadri Krasniqi, Administrator, Kamenica Municipal Court
Isak Shala, Professional Associate, Pristina Municipal Court
Sevdije Morina, KPA, Prosecutor
Iliriana Serreqi, Chamber of Advocates, Attorney
Naser Hasani, Head of KJC Secretariat Statistics Division
Fatmir Rexhepi, Head of KJC Secretariat IT Office
Faton Muslija, Head of KJC Secretariat Legal Office

Administrative Infrastructures – The year 1 work plan envisioned that standard operating procedures would be finalized and implemented in year 1, concerning security, procurement, supply distribution, budget planning, and court staff hiring and discipline. The year 1 work plan also foresaw the development and implementation of procedures to improve communication between the KJC Secretariat and the courts. Only marginal achievements were reached on these activities due to structural challenges within the KJC Secretariat, coordination problems in the leadership of the Secretariat, and shifting priorities. During the first quarter, a decision was made to delay further SOP development in order to use the MCP as a vehicle for testing. With the appointment of a KJC Secretariat Deputy Director in December 2007, the SOPs were reactivated, but there was still no progress towards final approval and implementation by the time of this report. To date, none of the SOPs developed under the prior project and delivered to the Secretariat have been implemented, in large part due to lack of internal staff coordination. In response, KJSP has developed and reached a tentative agreement with the KJC Secretariat on a matrix of activities for year two.

Progress on administrative infrastructures has been hindered significantly by structural challenges within the KJC Secretariat. During the first two quarters of the project, many administrative activities were postponed by the Director due to the lack of a Deputy Director and a general lack of actual autonomy of Division Heads. A Deputy Director started working in early December 2007. Relations between the Director and Deputy Director quickly deteriorated, and by late April 2008 the two were no longer on speaking terms and were exchanging public accusations of mismanagement and misconduct. The situation further deteriorated in June with the resignation of the Deputy Director. The deteriorating relations in the leadership of the KJC Secretariat, combined with the challenges to efficiency presented by the dual role of the KJC Secretariat (as highlighted under sub-task 1.1) and the potential disbanding of

the KJC during the reappointment process, led to KJSP proposing a restructuring of the KJC Secretariat to improve effectiveness of court administration and overall organizational accountability.

Initial plans for project management training have also had to be delayed due to structural challenges within the KJC Secretariat which has forced KJSP to support the Secretariat with day-to-day technical assistance and mentoring. However, some special training was carried out for the Statistics Division, as detailed under Judicial Resource Distribution and Geographic Structure.

One area of successful progress has been the IT sector. More details on these activities are presented under Strategic Plan Implementation.

Strategic Plan Implementation – Initial discussions for implementation and for annual revision of the Strategic Plan were held with the CAC during the first quarter of the project. Development and implementation of an action plan to meet the objectives of the Strategic Plan was initially deferred to a later stage in an effort to avoid redundancy with the MCP and to take advantage of the MCP as a means to test procedures and policies. Indeed, many of the standards identified as priorities for the MCP are similar to the priorities of the Strategic Plan. Attempts at developing a clear action plan for implementation of the Strategic Plan were made in the fourth quarter. Following discussions with the KJC Secretariat Director, KJSP developed a draft matrix of short-term actions which can be carried out to achieve quick progress towards some of the goals of the Strategic Plan. The KJC Secretariat Director has tentatively endorsed the matrix. However, it should be noted that the overall institutional goals of the Secretariat appear more directed to constant planning, (e.g., KJC requested assistance in developing an implementation plan⁷ for the strategic plan, rather than beginning to implement already clearly-defined short-term actions that could be carried out with minimal additional planning).

Despite a lack of momentum on Strategic Plan implementation, two targeted areas have yielded some positive results: IT planning, and performance measurement development. IT Planning Consultant Charles Shapiro traveled to Kosovo in March and June 2008 to address a broad range of IT needs. During the second quarter, the Consultant met with a broad range of stakeholders including judges, court administrators, KJC and KJC Secretariat leadership, and officials involved in CMIS development, to review IT capacity and needs. The Consultant presented recommendations regarding the IT capacity within the KJC and the development and implementation of an IT strategic plan. (See attachment V&R 4).

Challenges facing KJC for CMIS implementation and support

- Lack of resources, including hardware.
- Lack of sufficient, qualified staff to support users, data bases, system security, and software revision and update.
- Sparse use of the CMIS to date.
- No systematic planning for implementation other than delivery of pre-release training.

KJSP also assisted KJC Secretariat IT staff and the CAC in initiating a short-term assessment of KJC Secretariat capacity to implement and support CMIS software, hardware and network infrastructure. The KJC Secretariat clearly lacks the financial and human resources to support full implementation of CMIS or meet other essential IT needs of the judiciary. CMIS software has been available in all courts since January 2008 and the license is to be transferred to KJC by the end of June 2008 at which time

⁷ The Secretariat's desire for assistance in developing an implementation plan for the strategic plan appears to be driven more by considerations of obtaining donor funding for projects rather than implementing the short-term and mid-term actions steps already delineated in the strategic plan.

KJC will assume full responsibility for management and maintenance of the product.⁸ KJSP assisted KJC Secretariat IT staff in developing short-term options and budget estimates for funding needs for CMIS implementation and a corresponding report for the CAC.

There is currently no systematic framework for court performance measurement in Kosovo. In the context of Strategic Plan implementation, and with a view to collect comparable data across courts and over time for planning and management purposes, KJSP launch an initiative in conjunction with local USAID personnel to develop core performance indicators for the courts during the second quarter of the project. The CourTools for Kosovo are modeled after NCSC's CourTools[®]. KJSP staff is working with KJC Secretariat staff and a working group appointed by the CAC to develop and implement what will be the first application of a court performance planning process in Kosovo. The project will provide a series of performance measures by which the KJC and local courts can gauge their progress in key performance areas which are priorities under the Strategic Plan, including, among others: backlog reduction, public access, and the efficient use of resources.

| Performance Measure | Working Group Member | KJC Secretariat Member(s) | KJSP Member(s) |
|---|----------------------|------------------------------------|------------------|
| Court user satisfaction survey | Ramë Gashi | Hyrzeme Tershnjaku, Ajshe Ramadani | Jeta Plakolli |
| On-time case processing | Gani Rexha | Besnik Ramosaj, Naser Hasani | Enver Fejzullahu |
| Cost-effective case processing | Selim Nikçi | Sofie Mulaj, Nazmi Statovci | Gazmend Mejzini |
| Case clearance | Ymer Hoxha | Burim Hoxha, Naser Hasani | Gazmend Mejzini |
| Age of pending caseload | Islam Azemi | Naser Hasani | Enver Fejzullahu |
| Judicial officer and court staff engagement | Gëzim Kolgeci | Arsim Citaku | Jeta Plakolli |
| Misconduct by judges and prosecutors | Ymer Hoxha | Isa Hasani, Faton Muslija | Florije Manaj |

KJSP Performance Measurement Consultant, Ingo Keilitz, traveled to Kosovo three times over the course of year 1 to assist in planning and development of the performance measures. Draft measures have been created by the KJSP. Additionally, two performance measure workshops and leadership workshops were convened on this topic, one for Model Courts (see under Task 2) and one for the working group and KJC Secretariat point persons. (See attachments V&R 5 to 7).

Vetting and Restructuring: Results, Impact and Proposed Next Steps

The main results of vetting and restructuring activities in Year 1 were:

- Turnkey technical assistance and training were provided to the KJC Statistics Division on data collection, analysis, and use of statistics for management purposes. The relationship between KJSP and the Division has been constructive and collaborative, and the capacity of the Division has likewise increased.
- IT planning for the KJC Secretariat and courts progressed in line with the priorities of the Strategic Plan.
- Draft court performance measures developed in a joint effort between the CAC, KJC Secretariat and KJSP.

⁸ The transfer of responsibility for managing CMIS to the KJCS is particularly problematic. The office currently has 9 full-time IT staff to support a potential user base of over 1800 employees. Network and power supplies are unstable, causing regular interruptions in the court's use of the CMIS. Additionally, the EULEX mission will be dependent on the KJCS IT staff to support its operational IT needs. It is the assessment of KJSP that the IT operations of the Kosovo courts are at serious risk due to a lack of human and financial resources. This will necessarily impact the efficiency, transparency and effectiveness of the courts and create limits on the ability of the KJSP to propagate improvements in key areas of the strategic plan.

Activities under this sub-task have been plagued by external challenges. The reappointment process has still not been initiated at the time of this report. Restructuring of the courts remains pending given the lack of progress in adopting a Law on Courts and establishing the structure of the judiciary. Certain committees of the KJC have not been operational for months due to lack of attendance from members which prohibited quorums for conducting business.⁹ These challenges render a number of activities planned in relation to vetting and restructuring untimely. In addition, operational shortcomings within the KJC Secretariat resulted in a tendency to focus on planning rather than implementing, which caused delays in achieving results on Strategic Plan implementation.

Year 2 activities are contingent upon adoption of the Law on Courts and start of the reappointment process. The passage of the Law on Courts is a necessary prerequisite to the development, adoption, and implementation of a restructuring plan for the judiciary. Absent the law, virtually no re-structuring activities can be carried out because there is no consensus on what the court structure should be. It is impossible at this stage to assess when the Law on Courts may be adopted. The reappointment process is currently expected to start in the fall. Support may be provided depending on needs of the reappointment entities. While these two prerequisites are pending, KJSP will continue to utilize opportunities to build the capacity of the KJC Secretariat and Kosovo judicial community to implement and monitor progress on goals of the Strategic Plan. These opportunities will focus on three areas: 1) continued support to KJC Committees for the improvement of internal standard operating procedures, 2) continued support for the development of Kosovo CourTools as a means to track progress of individual courts as well as of the court system as a whole, 3) continued assistance to the KJC Secretariat on Strategic Plan implementation, especially on IT capacity, statistical reporting, and other targeted goals identified as priorities for assistance.

As expressed to USAID in the third and fourth quarter of year 1, KJSP is concerned that the beginning of the reappointment process will have a significant impact on the project. Of most pressing concern is the wording of UNMIK regulations what would effectively eliminate the KJC as a governing body during Phase I of the process with potential continuation of the problem through the conclusion of Phase II. UNMIK AD 2008/02, as currently worded, has the effect of dropping the number of Council members below the threshold necessary to conduct any business except reappointment. Additionally, even after phase I of the reappointment is completed, the AD places the administration of the judiciary in the hands of a body composed by a substantial majority of non-judicial members, potentially jeopardizing the institutional and operational independence of the judiciary.

1.3 Increase public awareness, informed demand for accountability and support for the judiciary

Outreach: Activities

Three sets of activities were planned under the Year 1 work plan: 1) development of a KJC public relations and education program, 2) development of a regular process for KJC to monitor public knowledge and attitudes regarding the judiciary, and 3) development of regulations and procedures regarding public access to court proceedings and records.

KJC Public Relations and Educational Program – Activities in partnership with KJC to develop public relations capacity and education materials have focused on three areas: mentoring of the KJC PIO

⁹ No fewer than two KJC meetings had to be cancelled due to a lack of member attendance. The Appointments Committee did not meet for almost seven months, notwithstanding a significant number of judicial vacancies. The Budget Committee met only once during the year and only after the urging of KJSP.

(especially with regards to press relations), development of KJC educational and information materials, and development of TV-based programs.

KJSP Communications Consultant, Mark West, traveled to Kosovo three times over the course of year 1 to provide support to the KJC PIO. (See attachments INFO 1 to 3). The approach taken by the project has been to work closely with the KJC PIO to design and implement a number of elements of a KJC Communication Strategy.¹⁰ Through the course of the year, the Communications Consultant mentored the KJC PIO on issues such as interview and press conference planning and development and design of public education materials for KJC.

The KJC PIO began to develop professional relationships with members of the press in the second quarter of the project as a first step towards an ongoing education program for journalists.¹¹ Activities included developing a certification process for law journalists covering the work of KJC to ensure easy and secure access and develop a contact database for press releases, hosting a reception for law journalists to build confidence and transparency, and participating in a rule of law roundtable with journalists and law students. Next steps will include professional development seminars with law journalists.

Starting in the second quarter of the project, the Communication Consultant worked with the KJC PIO to discuss proposed education materials and decide on messages, venues, and protocols for distribution of the materials. KJSP immediately began to design print and public education materials as well as KJC website content. By the end of year one the final draft of the first poster in the public education series had been under review by the KJC PIO and Secretariat and production estimates had been collected from local printers. The poster, still pending final approval, was co-created by the Communication Consultant and the KJC PIO following broad input from KJSP staff. The process was effective in enhancing the public education campaign to more accurately reach its intended audience.

Prior surveys and research have shown that television is one of the most powerful education tools available in Kosovo. Working with subcontractor Search for Common Ground, KJSP has successfully developed and broadcast three Public Service Announcements on important themes for the Kosovo justice sector and initiated writing for a six-episode mini-series on justice. Staff and counterparts were actively involved with scriptwriting and production, providing guidance on dialogues, sets and portrayal of cultural traditions.

Public Service Announcements

- The importance of an independent judiciary free of external pressure
- Access to courts with emphasis on minorities
- Citizen rights and responsibilities under the law
(See attachments INFO 7 to 12.)

Focus groups on PSA storyboards were assembled in March 2008 with twenty people ages 18 to 65 to test vital information including understanding of the storyline, central messages and ethnic dimensions, appreciation of the use of different languages, and overall appeal and identification with PSA across cultural lines. (See attachments INFO 5 and 6). The scripts were then finalized and filming took place in

¹⁰ Due to government budget constraints, the hiring of PIO in the five district courts continues to be delayed. The KJC was required to lay-off an additional 26 full-time employees for FY 2008 to comply with IMF budget mandates. Therefore it is unlikely that new staff will be hired any time soon. In light of this, the project has focused on mentoring and training the KJC PIO in order to build her capacity to train judicial spokespersons (existing court staff) designated by the courts. Through the Model Courts Program additional judicial spokespersons will be trained as part of the MCP Communication Strategy.

¹¹ Notwithstanding the PIO's efforts to reach out to the press, the relationship between the KJC Secretariat and the media remains difficult.

Pristina on April 6 and 7 2008.¹² (See attachments INFO 13 to 15). Editing began as soon as filming was wrapped with all post-production completed in April, including music and animation. Three language versions with subtitles were completed by early June 2008.

The objective of the program is to ensure broadcast of the PSA to the widest possible audience in Kosovo. KJSP sought broadcasting outlets to cover all of Kosovo and managed to get free broadcasting. This is a significant achievement given that two of the TV stations (TV21 and KTV) are private companies with no obligation to air PSA for free. PSA broadcast information is included as attachments INFO 17 to 20.

| Station | Characteristics | Broadcast Agreement | Broadcast Start |
|-------------|-------------------------------|--|-----------------|
| RTK | Public TV, national coverage | Free broadcast, several times a day for eight weeks. | 12 June 2008 |
| RTK Serbian | Public TV, national coverage | Free broadcast, several times a day for eight weeks. | 12 June 2008 |
| TV 21 | Private TV, national coverage | Free broadcast, three times a day for eight weeks. | 12 June 2008 |
| KTV | Private TV, national coverage | Free broadcast, twice a day for eight weeks. | 18 June 2008 |
| TV Most | Mitrovica-based private TV | Interest expressed for broadcast of "Citizen rights and responsibility PSA" for fee. | Broadcast TBD |

Design and writing for a six-episode mini-series on justice was initiated in April 2008 with the hiring of a writing team. The series will aim to increase the knowledge of the Kosovo public about the structure and operation of the justice system. This will in turn contribute to increasing public confidence in the legal system and knowledge about citizen legal rights and responsibilities.

Public Knowledge and Attitudes Regarding the Judiciary
 – Two surveys were developed during the course of year 1: a court-user survey and a general public survey. The court-user survey was developed in the second quarter and administered in the third in the Model Courts. Details on the survey are included under Task 2. The general public survey was initiated in the third quarter with the identification of a Kosovo polling agency, Prism Research Group. A questionnaire was developed and finalized in the fourth quarter of the project. (See attachment INFO 21). The survey will be administered throughout Kosovo on a sample of 1,000 respondents of which 200 will represent minority communities. The questionnaire has been shared with USAID and with the KJC and aims to gauge public perception of the courts, the perception of the KJC and other justice sector actors.

- General Public Survey
Thematic Areas
- Trust and confidence in the judiciary
 - Knowledge of the structure of the judiciary
 - KJC and its responsibilities
 - Judicial inspection unit and its responsibilities
 - Exposure to and experience in dealing with courts

Public Access to Court Proceedings and Records – The workplan foresaw activities to develop secondary implementing rules for effective public access to court proceedings and records. Planned activities included developing a nomenclature of publicly-accessible court records and proceedings and rules on access. KJSP faced significant difficulties in reaching a consensus with local counterparts as to what constitutes a public record. Access to court proceedings is greatly hampered by the physical constraints of court facilities, e.g. inadequate courtroom space that requires many proceedings to be conducted in judges' offices and behind closed doors.

Outreach: Results, Impact and Proposed Next Steps

¹² Outdoor scenes were filmed on the main pedestrian street in Pristina. Interiors were filmed in the Institute of Albanology and Faculty of Law.

The main results of public outreach activities in Year 1 were:

- Continued development of KJC outreach. The practical work with the KJC PIO on updating the KJC website, co-design of public education posters, and collaboration on recent public communication workshops have introduced concepts which convey the importance of public perception, public outreach and media relations.
- Three PSA produced and finalized.
- Three PSA broadcast for free, in primetime, on RTK, TV21 and KTV. In combination these TV stations guarantee that virtually every family with a television in Kosovo has had the chance to see the PSAs. Also, RTK agreed to air PSAs during the breaks of the European Football Championship Games—the most watched programs during 2008.
- Six synopses for the mini-series in the process of development.
- Local subcontractor for general public survey identified and questionnaire finalized.

Next steps will build upon achievements made in year 1 to expand both the capacity of the KJC Secretariat's public relations and to develop and roll out awareness programs. KJSP will continue to mentor the KJC PIO and to engage KJC Secretariat in the development of educational materials and programs. Activities with the KJC PIO will be coordinated with the MCP as the participating courts start working on implementation of public communication and access activities. As relate to educational materials and programs, a wide range of activities are planned in order to ensure that the broadest possible audience is reached. Activities will include 1) a poster series, 2) the production and broadcast of a justice-related mini-series as well as of a second set of PSAs, 3) the roll out of a survey of public knowledge and attitudes towards the judiciary, and 4) other activities to be coordinated with counterparts.

TASK 2 – Improve Court Administration

2.1 Model Courts Program

By the end of year 1, the Model Courts Program (MCP) was fully operational. Five courts, in addition to the pre-selected Commercial Court, have been selected for participation and a framework of common standards was finalized.¹³ Starting in the third quarter, KJSP focused on finalizing action plans with each of the courts and on initiating implementation of reforms and coordination meetings of the Model Court Consortium.

2.1.1 Model Courts Program: Activities

Year 1 activities can be divided in two phases. The first two quarters focused on establishing a framework for the MCP by developing a selection process, a governance structure, and a set of core standards for implementation. The last two quarters focused on initiating implementation of the MCP through action planning, assessment and initial implementation.

Framework for the MCP – The first step taken under the MCP was to develop a governing process that included all relevant policy-making stakeholders. KJSP ensured that the KJC, KJC CAC and the KJC Secretariat were fully engaged in developing the selection criteria and court improvement standard framework for implementation of the MCP. The CAC was identified as the main counterpart for monitoring progress. Regular reports on implementation will be submitted to the CAC as implementation fully starts in year 2. At the beginning of the second quarter, two working groups were set up under the CAC to develop selection criteria and agree on court improvement standards. Each working group included representatives of the CAC, judges, court administrators and KJC Secretariat.

Selection criteria: The selection criteria working group finalized criteria for submission and evaluation of applications in October 2007. Criteria were incorporated into a detailed application package distributed to eligible district and municipal court through a series of regional briefing roundtables. (See attachment MCP 3 to 5). 19 out of 27 eligible courts applied. KJSP reviewed applications and proposed five courts for selection to KJC. In December 2007, KJC endorsed the findings and sent its recommendation to USAID. (See attachment MCP 6).

Court improvement standards: The court improvement standards working group agreed on a set of 23 standards drawn from priorities in the KJC Strategic Plan for the Kosovo Judiciary and from international best practices in court administration. These standards address five core areas of court operation: general administration, case and records management, backlog and delay reduction, budget and finances, court communication. Nine core standards were prioritized as the framework for activities under the MCP.

Selected Model Courts

- Commercial Court
- Mitrovica District Court (DC)
- Peja District Court (DC)
- Ferizaj Municipal Court (MC)
- Gjilan Municipal Court (MC)
- Prizren Municipal Court (MC)

MCP Standards

- Administrative responsibilities
- Training of court staff
- Records management
- Backlog reduction
- Time standard compliance
- Procurement /Use of supplies
- Communication
- Security/Access to court
- Open proceedings

¹³ As reported in quarterly reports, the selection of MCP participants was delayed until December 2007 with the concurrence of local USAID officials in order to build greater support for the program at that KJC level.

The Court Improvement Standard package was finalized in October 2007. (See attachment MCP 7).

A number of additional preparatory activities were undertaken during the first two quarters of the project. A general communication strategy for the MCP, which includes internal and external communication protocols for the courts, the development of court information centers, and the use of self-diagnosis court user and court employee satisfaction surveys, was developed in the second quarter. (See attachment MCP 8). KJSP Facilities Consultant, Chang-Ming Yeh, traveled to Kosovo in the second quarter to conduct an initial assessment of court facilities and suggest some area of focus for future renovations under the MCP. (See attachment MCP 9).

MCP teams, composed of one KJSP staff and one KJC Secretariat staff were identified and finalized after selection of the Model Courts. KJC Secretariat staff is identified in attachment MCP 10. Regular liaison meetings are being held on a bi-weekly basis to facilitate information exchanges and support to the Model Courts. Participation of KJC Secretariat liaisons has had varying levels of success depending on the court, ranging from very constructive input in Prizren and Ferizaj MC to lack of interest in Gjilan Municipal Court. The KJC Secretariat liaison for Peja DC has resigned without being replaced.

A Consortium Committee composed of the Presiding Judges and Court Administrators of all the Model Courts was established during the third quarter of the project. The Consortium Committee is a venue for Model Courts leadership to discuss current and new practices and exchange information on successes and challenges with reforms undertaken under the MCP. The first two Consortium Committee meetings were held in March and May 2008 respectively.

Implementation of MCP – Upon selection, each Model Court has identified a group of about six judges and court staff to form the Court Improvement Team in charge of developing action plans and monitoring implementation to achieve the nine standards. The Court Improvement Teams are included in attachment MCP 12. A regular meeting schedule was set with each court, usually every other week. Informal mentoring meetings and interviews are conducted in between formal meetings with KJSP staff in the courts on a weekly basis.

In December 2007, KJSP initiated a general current status assessment for the six Model Courts. KJSP staff trained court staff to conduct file reviews for purposes of collect relevant data. A court user satisfaction survey was conducted by KJSP staff and law interns. The survey records the percentage of court users on a given day who give a favorable rating to the court, with respect to measures of accessibility, convenience of use, and fair, equal, courteous treatment by court staff. The court-user and the court employee satisfaction survey questionnaires are included as attachments MCP 13 and 14, respectively. Only a partial assessment was conducted in Mitrovica DC due to evolving political circumstances in Northern Kosovo which led to the relocation of the court to Vushtrri Municipal Court on February 20, 2008, before the court-user satisfaction survey and the file reviews were conducted. The current status assessment reports were finalized and presented to each court in May 2008. (See attachments MCP 15 to 19).

Current Status Assessment

- Court user satisfaction survey
- Court employee satisfaction survey
- Time to locate case records
- File content reliability
- Clearance rate analysis
- Time to disposition analysis
- Rate of collection of criminal fines

Environmental assessments for each of the Model Courts, except Mitrovica DC, were completed in February 2008. The assessments are the basis for improvements of court facility structures to improve access, staff utilization, and working conditions. The assessments received USAID approval at the end of year 1. (See attachments MCP 20 to 24). Physical facility improvements will concentrate in (1) public

assess and information areas, (2) filing areas with a focus on create single filing stations for the courts, and (3) rectifying the physical storage of court records including archived records, Other changes may be undertaken in the model courts as necessary to improve the general facility and public access to court proceedings.

Action plan templates were developed by KJSP staff during the third quarter of the project. In each court, one point person was assigned for each standard. Prior to finalizing the action plans, KJSP liaisons facilitated a series of discussions both with individual point persons and with the full Court Improvement Teams. Action plans have now been approved in all courts with varying amendments depending on their specificity and areas of focus. The action planning phase was used as an opportunity for mentoring and laying the ground for implementation in Gjilan and Ferizaj MC which explains the more extensive amendments made to the templates. Courts have also identified priority standards in which they will work initially. Action plans are included as attachments MCP 25 to 30. The first activity undertaken in Court Improvement Team meetings for implementation of the standards has been the development of a core Court Mission Statement. All courts, but Mitrovica DC, have finalized a Mission Statement which will be printed for display as part of the public access and communication activities under the action plans.

Several activities were initiated in the fourth quarter for implementation of the action plans. These activities all related to review of practices and activity scheduling to be undertaken under each standard action plan. The specific stage of implementation for each Model Court under each standard is described in the table starting on page 25.

Activities Undertaken in Model Courts for Implementation of Action Plans

- Review of legal framework and current practice in the division of administrative responsibilities between PJ and Court Administrator and proposals for future amendment of the practice partially conducted in all courts except Prizren MC. Questionnaire included as attachment MCP 31. (Standard 1)
- Identification of training needs of court staff partially conducted in all courts. Questionnaire included as attachment MCP 32. (Standard 2)
- Review of legal framework and current practice for records management and case filing initiated in Commercial Court and completed in Ferizaj and Gjilan MC. (Standard 3)
- Assessment of scope and nature of backlog and adoption of backlog reduction plan conducted in Peja DC and initiated in all other courts. (Standard 4)
- Identification of public access and communication needs and activities finalized in the Commercial Court and initiated in Ferizaj and Gjilan MC. Review of availability of court services for minority litigants conducted in Ferizaj and Gjilan MC, more details included under Task 4. (Standards 7 and 9)

Significant training was initially planned for year 1. Low training levels can be explained by two factors. First, selection of the Model Courts was delayed following agreement with USAID and KJC that a more participatory process was needed to ensure transparency and buy-in of justice sector leadership in the selection process. Second, during the action planning process KJSP took an approach which focused on individual mentoring rather than formal training sessions. Two training programs for selected Court Improvement Team members were rolled out in year 1. The court performance measure training was held in March 2008 for Model Courts Presiding Judges, Court Administrators and KJSP/KJC Secretariat liaisons. (See attachments MCP 33). The court communication training was held in May 2008 for Model Courts Presiding Judges, Court Administrators and KJSP/KJC Secretariat liaisons. The workshop covered the legal rules governing court communications, and reviewed access and outreach elements in the context of a court communication protocol. (See, attachments MCP 34 to 36).

Court-based training was initiated at the end of the fourth quarter of the project. The first training program to be implemented was the basic computer skills program for court staff in Prizren MC. Similar activities are expected to be developed in the future as the MCP moves more actively into implementation.

General Assessment of the Model Courts

While all participating courts have displayed willingness to participate actively in the project, levels of engagement have varied. Peja DC, Mitrovica DC, and Prizren MC have chosen to only focus on a limited number of standards in the initial stages; the Commercial Court, Ferizaj MC, and Gjilan MC have been more aggressive in their approach.

Progress in Prizren MC has been slow, due to a very large caseload, but also to a very narrow focus on backlog reduction.

Progress in Mitrovica DC has been hindered by external factors culminating with the relocation of court activities to Vushtrri MC following the February 2008 declaration of independence. Mitrovica DC has not had access to its court building or its records since February. This situation is limiting possible work to the following activities: administrative responsibilities, training plan, and some limited actions on other standards.

The Commercial Court has been an active MCP participant since the beginning, despite health problems of the Presiding Judge. The court administrator has been very engaged and has taken a leadership role during the medical leave of the Presiding Judge since April 2008.

In Ferizaj MC, despite recurrent resistance to change from the Presiding Judge, the Court Improvement Team remains fully engaged and committed to initiating new practices.

In Gjilan MC, the Presiding Judge has shown excellent leadership, not hesitating to work on Saturdays to achieve deliverables agreed to in the Court Improvement Team meetings.

| | Commercial Court | Mitrovica DC | Peja DC | Ferizaj MC | Gjilan MC | Prizren MC |
|---|--|---|--|--|---|--|
| Standard 1: Administrative Responsibilities | Reviewed legal framework and court practice with the court administrator. Activity delayed due to absence of PJ who is on medical leave since April 2008. | Legal framework assessed. Interviews on practice conducted with court administrator and PJ. Draft report on legal framework, current practice, and proposed practice under review by CIT. | Legal framework assessed. A review of the practice will be conducted in July-August 2008 through interviews with the court administrator and PJ. | Legal framework assessed. Interviews on practice conducted with court administrator and PJ. Draft report on legal framework, current practice, and proposed practice in process. | Legal framework assessed. Interviews on practice conducted with court administrator and PJ. Draft report on legal framework, current practice, and proposed practice in process. | |
| Standard 2: Staff Training | Questionnaire on staff training needs in process. | Questionnaire on staff training needs in process. | Questionnaire on staff training needs completed. | Questionnaire on staff training needs completed. | Questionnaire on staff training needs completed. | Questionnaire on staff training needs completed. |
| Standard 3: Records Management | CIT identified series of problems with current records management practice. CIT agreed to develop a central file system, starting with transfer of archived cases to the National Archives to free some space. | Records remain in the Mitrovica courthouse. No actions can be taken. | | CIT agreed that improvements are needed but PJ reluctant to create central file system. Interviews with clerks regarding practices related to court file management conducted. Report planned in July. | CIT agreed that improvements needed and endorsed concept of central file system. Interviews with clerks regarding practices related to court file management conducted. Report planned in July. | |
| Standard 4: Backlog Reduction | CIT decided to focus on execution cases. Initial discussions held. A plan will be developed next quarter. | Most records remain in the Mitrovica courthouse. Some criminal records and registers are with the court staff and are being used to initiate an electronic register. | Backlog identified as a problem for criminal first instance cases. Electronic inventory exists and is being updated regularly. CIT agreed to backlog reduction plan. | Backlog reduction identified as a high priority. Electronic inventories of caseload initiated. Delays can be expected due to recent vacancy of one judge position. | Backlog identified as a growing problem. CIT initiated inventory of criminal and civil caseload. Electronic inventories containing basic register data finalized for civil and criminal cases. Judges expected to record data on case status in the coming weeks. | CIT has agreed to conduct inventory for criminal cases first then civil cases. Criminal case electronic inventory initiated. Inventory of 2000-2003 filings finalized, including data on status of each case recorded by judges. Inventory of 2004-2006 filings initiated. |

| | Commercial Court | Mitrovica DC | Peja DC | Ferizaj MC | Gjilan MC | Prizren MC |
|--|---|--------------|---|---|---|--|
| Standard 5: Time Standard Compliance | No official time standards are available for the Commercial Court. CIT interested in assessing time to disposition for purposes of developing a time standard. | | CIT has decided to address this standard in coordination with standard 4 above. | CIT decided to defer activities until standard 4 assessment conducted. | CIT decided to defer activities until standard 4 assessment conducted. | |
| Standard 6: Procurement and Use of Supplies | | | | | | |
| Standard 7: Public Communication | Plan for set of concrete actions developed jointly with standard 9, see below. | | | CIT appointed a communication coordinator. Identified signage and public boards as possible improvements. Conducted interviews with staff to assess current practice of case information sharing with public. Report planned in July. | CIT appointed a communication coordinator. Identified signage and public boards as possible improvements. Conducted interviews with staff to assess current practice of case information sharing with public. Report planned in July. | |
| Standard 8: Security and Access to Court | Environmental assessment conducted. Facility improvement plans to be developed in year 2. Possible areas include: building of a courtroom, central filing room, and information center. | | Environmental assessment conducted. Facility improvement plans to be developed in year 2. | Environmental assessment conducted. Facility improvement plans to be developed in year 2. CIT agreed that renovation plan should include rearrangement of administrative offices with possible creation of open space for public. | Environmental assessment conducted. Facility improvement plans to be developed in year 2. | Environmental assessment conducted. Facility improvement plans to be developed in year 2. Initial discussions with PJ of Municipal and District Courts held. |

| | Commercial Court | Mitrovica DC | Peja DC | Ferizaj MC | Gjilan MC | Prizren MC |
|------------------------------------|---|--|---------|--|--|--|
| Standard 9: Open Proceedings | CIT made commitment to improve public access and communication. CIT agreed on a plan for short-term concrete actions, including a case electronic database, and improve conditions for public attendance. | | | CIT is coordinating activities with Standard 7. CIT discussed making coordination of the courtroom hearing calendar one of the tasks of the communication coordinator. | CIT is coordinating activities with Standard 7. CIT discussed making coordination of the courtroom hearing calendar one of the tasks of the communication coordinator. | |
| General Achievements | General agreement of the CIT that it has a significant role to play in supporting economic development in Kosovo. | | | Good participation and engagement of all members of CIT. | Good participation and engagement of all members of CIT. Good leadership of PJ who has shown commitment by working periodically on Saturdays. | CIT agreed on detailed assignments and timelines for implementation of priority standards. |
| General Challenges | PJ has been out of the office since April due to health problems. The court administrator is leading the MCP effort, but the absence of the PJ is creating problems for decisions. Lack of space for courtroom and central file system. | Relocation of staff to Vushtrri Municipal Court since the declaration of independence is causing difficulties due to lack of space and lack of access to records which remain in the Mitrovica courthouse. | | PJ has shown resistance in certain areas, including proposal of a central file system. Offices are not located in a manner which facilitates public access or work efficiency. | Lack of space for central file system. | |

2.1.2 Model Courts Program: Results, Impact and Proposed Next Steps

The main results of MCP activities in Year 1 were:

- Five courts selected to participate in MCP with the Commercial Court in a process endorsed by the Kosovo Judicial Council as participatory and transparent
- Activity structure established in all MCP participants. Court Improvement Teams (MCP Teams) established. Action plans adopted in six MCP participants. Standards prioritized for implementation. Point persons appointed for each standard.
- KJC Secretariat participation in MCP established through the appointment of six KJC Secretariat liaisons and the holding of regular meetings between KJSP and KJC Secretariat liaisons. Some challenges remain, however, due to the resignation of the staff person appointed to Peja DC, irregular level of participation by the staff person appointed to the Commercial Court, and the lack of positive participation of the staff person appointed to Gjilan MC. The Director of the Secretariat has also expressed concern that KJSP activities, particularly MCP activities, are taking his staff away from the office too frequently thus hindering his access to staff and their availability for other work assignments. Consequently, he has directed a lower level of participation not only in the MCP but other KJSP activities, including the development of PSAs.
- Continued engagement and willingness to participate expressed by Mitrovica DC despite abatement and relocation of court operations in February/March 2008.
- Buy-in of Court Improvement Teams into a number of reform activities, including the creation of central file systems (Commercial Court, Ferizaj MC, Gjilan MC), the appointment of court communication coordinator (Ferizaj MC, Gjilan MC), and the need to conduct caseload inventories to identify causes of backlog and solutions thereto (all courts).
- Positive results of court user and court employee satisfaction surveys.
- Survey of training needs for court staff conducted or initiated in all courts. This assessment is particularly relevant due to the lack of training offered to court staff in the past. Initial review of the results in Ferizaj and Gjilan MC show interest in records management, case flow, and CMIS.

Challenges—The balance between day-to-day court work and the demands on court personnel of a program like the MCP has been a challenge for KJSP. Bearing in mind that the main activity of courts should always be to adjudicate and resolve cases, KJSP is striving to adjust its activities and tailor its support so that the goals of the MCP can be achieved by participating courts without disruption to their principal work. A number of other challenges also arose in the course of year 1. These challenges are procedural, legal and practical in nature. The main procedural obstacle is the continuing delay in signing the MOU with participating model courts. This is creating a lack of formal structure around the project and could cause problems as implementation starts and courts resist change. Legal challenges include the lack of clear legal framework on key issues of court administration and the related lack of internal accountability lines are leading to conflicting practices between courts, and even within courts. Practical challenges include poor working conditions, the impending judicial reappointment process, and low salaries of judges and court staff, which all affect motivation and engagement. The lack of basic equipment (such as computers) or supplies limits options for introduction of new practices. Limited space availability is limiting possibilities to improve public access. Courtroom space is lacking. Significant space rearranging may be required for creation of central file systems. Finally, the situation in Mitrovica has created a difficult environment for substantial progress in that court. The court is not in a position to work on records management, backlog reduction, and time standard compliance due to the unavailability of court records at this point. Similarly, any activities related to communications, access to court and open proceedings are postponed until the court can relocate into its own court building.

Next steps—Year 2 activities will focus on the continued implementation of action plans in all Model Courts. There will be four main prongs to the implementation. First, KJSP will assist the courts in redefining administrative services, including the relationship between the Presiding Judge and court administrator and file management (standards 1 and 3). Second, KJSP will facilitate the identification of causes of backlog and

delays in case processing and agreement on steps to address these causes while maintaining the new case electronic inventories up-to-date (standards 4 and 5). Third, KJSP will coordinate activities to improve court communications with the public and public access to court services, including through the appointment of a communication coordinator (standards 7, 8 and 9). Fourth, the results of training needs questionnaire conducted in each court will lead to the development and delivery of targeted training programs (standard 2). Initial review in Gjilan and Ferizaj MC shows needs in areas of records management, case flow management, and CMIS. One of the vehicles for delivery of assistance under year 2 will be embedding volunteer court administrators in a three-week quick impact program to mentor local counterparts on a set of discrete reforms. (See volunteer court program proposal included in attachment MCP 37.)

2.2 Civil execution

2.2.1 Civil Execution: Activities

Two sets of activities were planned under the Year 1 work plan: 1) activities to expand and support implementation of strategies developed under the Kosovo Justice System Reform Activity in Kosovo to reduce backlogs in civil execution cases, and 2) activities to support stakeholders in creating a functioning and effective system for execution of civil judgments.

Backlog and Delay Reduction – Backlog reduction activities were suspended during the first quarter of the project in order not to interfere with the initial planning and selection process for the MCP.¹⁴ Discrete activities were restarted in the second quarter in Gjilan MC, Peja MC and Pristina MC.¹⁵ Activities focused on prioritizing old cases (i.e. cases pending for 24 months or more) for disposition and on enhancing existing partnerships with two of the largest creditors, PTK (telephone) and KEK (electricity).

Achievements of the Backlog and Delay Reduction Activities in Gjilan and Peja MC

- Negotiated formal disposition of 761 PTK cases filed between 2001 and 2003 in Gjilan MC. Disposition was recorded in December 2007, leading to a reduction of the backlog (i.e. proportion of cases pending for 24 months or more) by 54%.
- Reached agreement between PTK legal office and Peja MC on how to process and close PTK cases in which the address of the debtor is unknown or incorrect. Joint field work has successfully led to the disposition of dozens of such old cases without appeals from the creditor.
- More effective joint field work between PTK and court clerks on active cases.
- Obtained formal notification by KEK to Peja MC that KEK will no longer pursue the 200-odd remaining cases filed in 2000-2002. Delays have however been recorded in the court closing these cases.

Despite initial efforts to support dialogue between PTK and Pristina MC, continued problems in reaching agreements on how to proceed with old cases were experienced. This, combined with increasing complaints from other courts that PTK is not complying with the obligations set in the Memoranda of Understandings signed in early 2007 and with reports from KEK that no real collection is recorded on their filing, led KJSP to reassess the partnerships between the courts and the main creditors. A new plan to refocus civil execution backlog reduction activities in Model Courts is being developed for the year 2 workplan.

¹⁴ The decision was made to limit court-based activities during the selection process so as to maintain an appearance of objectivity during that process.

¹⁵ Activities in Pristina MC were interrupted early on due to the lack of traction. They were temporarily replaced with an expanded focus on the civil division, see below.

During the course of the year, KJSP conducted a full analysis of civil execution caseload in a sample of four courts: Ferizaj, Gjilan, Peja and Prizren Municipal Courts. The report was finalized in late March 2008 and translated during the fourth quarter. These four courts represent over one-third of the total pending civil execution caseload and are representative of breakdowns across Kosovo. The report is available as attachment ENF 1. The findings of the report were used in the fourth quarter to start redefining support to courts to clear execution caseload more efficiently.

Main Findings from the Civil Execution Caseload Report (March 2008)

- 90% to 95% of all execution requests are filed by an institutional creditor, primarily utilities such as PTK, KEK and local water companies. Unpaid phone bills represent 40% to 50% of all execution requests across Kosovo. 24% of the civil execution caseload is created by courts themselves.
- Only about 20% of judgments in civil contested cases are filed for execution.
- Virtually all outstanding civil execution cases are based on monetary claims. Only about 1% of the total civil execution caseload is based on non-monetary claims.
- 85% of cases are based on claims for €500 or less; 44% on claims for €100 or less.
- About half of the outstanding civil execution caseload is made up of aged, backlogged authentic documents, in majority phone bills.
- The inability to locate the debtor and poor economic conditions disproportionately affect backlogged cases, making successful execution virtually impossible.

Improvement of the Civil Execution System – Activities to improve the civil execution system covered a number of areas: 1) making legal resources available to all actors of the civil execution process through the development and dissemination of a Civil Execution Handbook, 2) developing training capacity and training programs for execution clerks, 3) supporting the reform of the legal framework for execution, and 4) identifying possible reforms to improve the structure of the civil execution system.

All activities planned under the Year 1 work plan were initiated but delays have been recorded for a number of them. Also, the formal stakeholder dialogue on the feasibility of a transfer of execution functions outside of the courts and other structural reforms was not initiated as such. Such a process was untimely due to the existing consensus around the draft Law on Execution Procedures (LEP) which has been in the legislative process from the fall 2007 until its adoption by the Assembly on June 2, 2008. The LEP maintains the current system of execution of civil judgments through the courts.

The first legal resource written by Kosovo legal professionals for Kosovo legal professionals on civil execution procedures was finalized and released in November 2007 in three languages. The Handbook for Practical Implementation of Civil Execution Procedures in Kosovo (“Handbook”) is the result of successful collaboration between local and international experts. It provides a comprehensive overview of applicable procedures for all practitioners involved in execution and will form the basis for the development of training programs for execution staff across Kosovo. (See attachment ENF 2). Following approval by USAID, the Handbook was rolled out to all Kosovo courts, the KJC, and local and international stakeholders based on a distribution plan included as attachment ENF 3. Electronic copies of the forms included in the Handbook were also made available to execution clerks for their daily use. A formal release event was organized in January 2008 and attended by over 50 representatives of the justice sector. Following the event, a number of judges, attorneys, and other stakeholders praised the Handbook as a useful and comprehensive tool to assist them in their work.

Execution Trainers

- Arijana Shajkovci, Prizren MC
- Florim Hasani, Pristina MC
- Isa Shala, Skenderaj MC
- Jonuz Jonuzi, Gjilan MC

Activities to develop and deliver training to execution clerks in the

courts were initiated during the third quarter. Due to the decision of the KJI not to include court staff in their training recipients, execution staff in the courts has never received any formal training. The Civil Execution Specialist, with Civil Execution Training Consultant Patrick Safar, conducted an initial assessment to develop a training approach in March 2008.¹⁶ During the fourth quarter, a core group of execution clerks interested in conducting training was identified. These clerks are young, dynamic professionals from four of the five judicial districts. The clerks participated in the Training of Trainers Basic Course organized under Task 3 in June 2008. They will attend the Intermediate Course in September. Since the Basic Course, they have worked with KJSP on the development of a small questionnaire to be rolled out to all execution clerks in July to identify topics for the first training sessions. (See attachment ENF 4).

KJSP continued to support reforms in the legal framework for execution. A 2005 draft LEP was reactivated by the MOJ in Fall 2007. KJSP submitted extensive comments and suggested amendments in April 2008 to the Kosovo Assembly Committee on the Judiciary and Legislation. (See attachment ENF 5). The Civil Execution Specialist attended the first Committee Meeting and later followed up with the Committee's appointed expert, Judge Ferid Bislimi of Pristina DC, who informed KJSP that he would fully endorse KJSP comments before the Committee. Despite advocacy from the project, the Committee chose not to accept proposed amendments, primarily for reasons of expediency. The LEP was adopted by the Assembly on June 2, 2008 but has yet to be promulgated. While it provides improvements, especially in clarifying the obligations of banks to comply with court orders and in limiting opportunities for debtors to delay execution, the LEP fails to address most of the already well-documented challenges.

Civil Execution Training Consultant Patrick Safar conducted an initial assessment of the need for and feasibility of transfer of execution functions outside of the courts. As mentioned above, it was deemed preferable to keep these discussions informal rather than set up the initially contemplated formal discussion forum due to the legislative activity related to the LEP. Following meetings with key justice sector stakeholders including judges and attorneys who are experts in civil execution procedures, the Consultant provided a report on the timeliness and feasibility of a transfer of execution functions outside of the courts. The Consultant cautioned against rushing towards privatization due to the general lack of prerequisites for a successful transition. He noted that an incremental approach, including an initial focus on professional training and on building hierarchical lines amongst current execution clerks would be more appropriate. The recommendations, included in attachment ENF 6, will be taken into account in Year 2 activities.

Expansion of Activities to Civil Contested Cases – Bearing in mind that the civil execution process is only the last step of a broader civil justice framework, KJSP seized opportunities to support improvements in case processing across the civil contested process during this year. Leadership in Pristina MC requested in late 2007 an expansion of support to the civil division. In response to this request, KJSP worked with the nine judges of the civil division and the Presiding Judge to conduct an assessment of existing caseload, the age and types of cases, and the common causes of interruption, suspension and delay in civil proceedings. All judges responded to a questionnaire which then formed the basis of an action planning workshop organized on June 3, 2008. The questionnaire and an overview of the results are included as attachments ENF 7 and 8. The agenda and core presentation for the workshop are included as attachments ENF 9 and 10. Working with the civil judges, KJSP has finalized an action plan, which includes individual task assignments and deadlines for a set of short-term and medium-term actions to improve case processing in civil contests. (See, attachment ENF 11).

Other miscellaneous activities in the civil area were conducted this year. KJSP provided comments to the Committee on Judiciary and Legislation on the Law on Contested Procedure (LCP) in April 2008. The comments are included in attachment ENF 12. Finally, KJSP participated in several discussions regarding 20,000-odd civil claims which were filed by Kosovo Serb plaintiffs seeking compensation of property damages caused as a result of the 1999 NATO intervention or the March 2004 riots. These cases were filed

¹⁶ Activities related to training were delayed due to necessary postponing of travel by the consultant. Plans for travel in January 2008 and in February 2008 were postponed first due to a USAID request for expansion of the consultant scope of work and then due to timing with the Kosovo declaration of independence.

against KFOR, UNMIK and municipalities and were suspended pursuant to two UNMIK DOJ letters issued in November 2004 and August 2005. UNMIK has recently expressed interest in reactivating these cases. KJSP has worked with UNMIK and with Presiding Judge Haxhimusa, Chairman of the KJC, to identify approaches and possible options to issue recommendations on processing of these cases and provide logistical support to courts. Discussions are still on-going at the end of Year 1. (See attachments ENF 13 and 14.)

2.2.2 Civil Execution: Results, Impact and Proposed Next Steps

The main results of civil execution activities in Year 1 are:

- Partnerships between courts and PTK and courts and KEK reassessed. A new strategy to effective processing of these and other authentic document execution cases will be developed within the MCP in year 2.
- Backlog in Gjilan Municipal Court effectively reduced.
- Civil execution caseload reviewed and analyzed.
- Handbook released and rolled out to all stakeholders.
- Initial steps for the development of a training program for execution clerks by execution clerks taken.
- Opportunities to address challenges in the civil contested process (which ultimately get transferred to the civil execution process once the civil contest is resolved) in Pristina MC seized. Action plan for reducing civil backlog finalized.

The main challenge facing execution activities in year 1 has been timing. The reactivation of the draft Law on Execution Procedures has led to the necessary postponement of intended activities related to stakeholder discussions on structural changes to the system. Moreover, it has become increasingly clear that the necessary prerequisites for an effective transfer of execution functions outside the courts are lacking. Execution agents lack professional skills and a thorough understanding of procedural requirements. Debtors cannot be located. Assets are routinely transferred prior to seizure. The relationship between PTK (the largest creditor) and the courts has deteriorated as PTK has failed to abide by its obligations under the MOU signed in early 2007. A reassessment of the dynamics of court-utility company relationships has proved necessary. As filing levels, especially from utility companies, continue to grow and staff gets reassigned or vacancies remain unfilled motivation amongst execution staff is deteriorating.

Next steps will focus on four main activities. First, KJSP will use the recent data from the civil execution report and its assessment of the state of partnerships with large creditors to redesign backlog activities for Year 2. At a minimum, a new partnership with KEK and activities related to bank compliance with court orders are envisioned in three of the Model Courts. Second, KJSP will continue to support the development of local capacity to develop and deliver training for execution clerks. Working with the team of execution clerks identified to deliver training, the Civil Execution Specialist will support the development and delivery in tandem of a few targeted, concrete courses for execution clerks across Kosovo. Third, KJSP will work with relevant counterparts to explore the possibility of strengthening internal structures within execution units, as a first step for a broader discussion on where execution functions should be located and how they should be organized. Finally, KJSP will continue to develop activities in the civil contested area to address structural and practical obstacles to case processing early in the court process.

2.3 Notaries

2.3.1 Notaries: Activities

Activities initially planned under the Year 1 work plan were not initiated due to delays in adopting the Law on Notaries (LON), which remains pending before the Assembly as of this report.¹⁷ While the LON continues to go through the legislative process, KJSP has been active coordinating with USAID and the Swiss Cooperation Agency to ensure that support for implementation can be immediately provided as soon as the LON is passed and promulgated.¹⁸ Several meetings with USAID and with representatives and experts of the Swiss Cooperation Agency were held in the course of the fourth quarter of the project. A draft implementation plan is ready for finalization as soon as the LON is promulgated. KJSP has also worked, and will continue to work, with relevant MOJ and Assembly counterparts to monitor and support the progress of the LON through the legislative process.

2.3.2 Notaries: Results, Impact and Proposed Next Steps

No progress has been made towards PMP indicators due to delays in the adoption of the LON. No impact to be recorded. Immediate next steps include the continued monitoring of the progress of the LON through the legislative process in order to prepare for supporting the MOJ in implementing the law as soon as it is promulgated.

2.4 Mediation

2.4.1 Mediation: Activities

Activities initially planned under the Year 1 work plan were not initiated due to delays in adopting the Law on Mediation (LOM) and direction from local USAID officials not to proceed with mediation activities at this time.¹⁹ In parallel to the implementation of an LOM, the work plan envisioned working with the KJC on case referral procedures, mediator training and the implementation of mediation in a pilot site. Activities to that end had been initiated under the USAID Justice System Reform Activity. All pilot activities were put on hold pending approval of the LOM. Discussions regarding when and how to restart these activities are documented in two memoranda to USAID, available as attachments MED 1 and MED 2.

At the time of this report, the LOM is still pending in the Kosovo Assembly. While the lack of adoption of the LOM has delayed implementation of planned activities, KJSP has worked, and will continue to work, with relevant MOJ and Assembly counterparts to monitor and support the progress of the LOM through the legislative process. In January 2008, KJSP advisors participated in the LOM working groups and provided comments on the draft law.

2.4.2 Mediation: Results, Impact and Proposed Next Steps

No progress has been made towards PMP indicators due to delays in the adoption of the LOM and the suspension of pilot activities in Gjilan. No impact to be recorded. Immediate next steps include the continued monitoring of the progress of the LOM through the legislative process in order to prepare for supporting the MOJ and KJC in implementing the law as soon as it is promulgated.

¹⁷ Work plan initially envisioned the development and approval of an implementation plan for the LON between the second and fourth quarter, followed by the development of secondary legislation in the third and fourth quarters and the development of a notary examination and public awareness program in the fourth quarter. All the activities will be rolled out into year 2.

¹⁸ Adoption of the LON would be of significant help to the courts by diverting a substantial caseload estimated at some 70,000 filings out of the courts and into the notary system.

¹⁹ Work plan initially envisioned the development an implementation plan and of a public awareness program for the LOM between the third and fourth quarter. Work plan also envisioned working with the KJC on case referral procedures, mediator training and the implementation of mediation in a pilot site. All the activities will be rolled out into year 2.

TASK 3 – Improve Professionalism and Ethics of Judges and Court Staff

3.1 Improve the Capacity of the Kosovo Judicial Institute to Identify and Deliver Training

KJSP supported the Kosovo Judicial Institute (KJI) to increase the quality and effectiveness of training provided to judges and prosecutors in year 1. According to the law on KJI adopted in 2006, KJI is the main judicial training institution in Kosovo providing training for all judges and prosecutors, all candidates for the judicial and prosecutorial positions and all minor offences judges and lay judges. Recently, “judicial collaborators” were added to the KJI training program. KJI by-laws do not provide for the training of court clerks or prosecutorial staff, and KJI has so far demonstrated a lack of institutional capacity and budgetary resources to carry out curriculum geared towards court clerks and staff. As a result, KJSP pursued targets of opportunity to develop more effective training coursework with KJI trainers in year 1, using advanced teaching methodologies and instructional tools. KJSP worked in cooperation with KJI leadership, KJI trainers, and international donors throughout the year to ensure coordination of donor activities and consistency of approach.

KJI Training Needs Assessment—During the first quarter, an assessment of the KJI was conducted to examine the development of training programs for judges, court staff and prosecutors, based on KJI’s articulated needs. KJI was evaluated in accordance with established standards, including: Strategic and Operational Objectives, Participants and Training Programming, Methodology of Training, Policy and Coordination, and the Training of Trainers. The assessment identified notable gaps in the institution’s internal capacity to adequately carry-out its mandate (attachment KJI 1). As a result of the findings of the assessment, KJSP identified and carried out a number of activities to address these shortcomings in year 1.

Observational Study Tour to National Institute of Justice in Bulgaria—In order to build the capacity of the KJI, to introduce new frames of reference, and to lay the groundwork for on-going assistance under the project, KJSP organized an observational study tour for KJI leadership to the National Institution of Justice in Bulgaria (NIJ), a model for judicial training institutions in the region²⁰. The KJI delegation to Bulgaria included: Rexhep Haxhimusa, the Head of the Supreme Court and Member of the KJI Managing Board, Lavdim Krasniqi, the KJI Director, and Raime Elezi, Judge at the District Court in Prizren and Member of the KJI Managing Board. Through the study tour, members of the delegation were able to observe the operation of an effective judicial training institution, to identify best practices, and understand lessons learned relevant in the context of judicial training in Kosovo. The report on the Bulgaria study tour is attached.

Code of Ethics Training, the Training of Trainers & Related Assistance

KJSP focused on addressing curriculum areas which were the most essential to KJI, to maximize impact for KJI with limited resources available under the project. KJSP delivered both basic and advanced modules on the professional application of the Code of Ethics, and a cross-cutting Training of Trainers program, which will serve to increase the effectiveness of training outside the scope of assistance under the project. The design and delivery of these modules utilized both U.S.-based and regional expertise, emphasizing the delivery of practical, case-based fact patterns and interactive exercises to illustrate issues relevant to the everyday concerns of training participants. The Code of Ethics and Training of Trainers Modules delivered are attached.

KJSP also worked with KJI to remedy gaps in their overall training program, targeting the lack of coursework in principles of leadership, management and administration for judges and prosecutors.

²⁰ One of the proposed objectives of study visit was to foster a regional partnership between KJI and NIJ, utilizing NIJ training experts to assist with building KJI internal capacity. NIJ experts have so far been unavailable to participate in the program as anticipated. KJSP remains interested in facilitating linkages between KJI and other organizations and professional associations in the future, especially as international recognition of Kosovo increases and political circumstances normalize.

Similarly, KJSP recognized the need to provide training to the managerial board of the KJI in organizational, managerial and administrative infrastructures. KJSP discussed these training needs with KJI and will continue to develop programming in these areas in year 2, working with KJI and outside the framework of KJI, with the ultimate goal of incorporating curriculum within the KJI once political will exists and financial resources are available for the integration of training programs within the KJI.

Understanding the need to build internal training capacity throughout the justice system, KJSP delivered the TOT program, initially developed for the KJI, to a cross-section of counterparts, including, the KJC, JIU, MOJ, JAS, Legal Aid and Court Liaison and Civil Execution Officers, the Chamber of Advocates and Kosovo Judges Association. An advanced TOT program for the same group of participants will be delivered in year 2.

KJI Initial Legal Education Program/Magistrate School

KJI requested the assistance of USAID and other donors to contribute to the development of curriculum for the initial legal education program (ILEP), scheduled to begin September 2008. KJI provided a list of 35 courses from which USAID, UNDP, UNICEF, USDOJ, EU & OSCE will provide curriculum to be delivered under the ILEP program. KJSP coordinated with UNDP and other donors to avoid duplication of efforts. In year 2, KJSP will contribute to the KJI initial program by providing Code of Ethics curriculum and other courses within the scope of the project's objectives.

In addition to coordination with other donors, KJSP liaised with USDOJ on prosecutorial training and will continue to do so in year 2. KJSP will also work closely with UNDP in connection with the courses being developed, for the reappointment of judges and prosecutors in particular, to ensure consistency in training and mentoring provided to the KJI.

Results and Challenges

Results

- Developed and delivered basic and advanced *Code of Ethics* training modules.
- Developed and delivered *Training of Trainers (TOT)* training modules.
- Established framework for future assistance to the KJI working in collaboration with other donors.

Challenges

- Cooperation between KJI trainers and KJSP advisers is often a challenge due to the schedule of the KJI trainers (sitting judges and prosecutors).
- Lack of timely cooperation from KJI and delays in sharing its strategy, by-laws and internal regulations.
- Delayed donor coordination by KJI, particularly concerning the Magistrate School.
- Lack of the legal framework for KJI to train the courts staff and the staff of the Public Prosecution Offices.

3.2 Develop a Judicial Inspection and Audit Function

Judicial Inspection Unit (JIU)

As a focal justice sector institution, the JIU, currently under UNMIK DOJ umbrella, investigates allegations of judicial misconduct by judges and prosecutors. The proper functioning of the JIU is essential to safeguarding the integrity of the judiciary, supporting the public trust and confidence in Kosovo's justice system. Additionally, the JIU will play an integral role in the reappointment process and must be prepared to make the necessary institutional adjustments to meet the needs of the KJPC.

Training and mentoring activities to increase efficiency and professionalism

KJSP focused its assistance in areas designed to improve the effectiveness and efficiency of the JIU, and increase the overall professionalism of judicial inspectors. In the first quarter, JIU convened a working group with KJSP advisors to discuss solutions to institutional shortcomings, including overall inefficiency, case processing delay and backlog. In addition to creating mechanisms to streamline intake process, and more effectively manage case load, KJSP assisted with investigations and the production of reports, critical to reducing delays and backlog.

KJSP provided on-going technical support to senior and junior inspectors, on-the-job training and mentoring to improve investigative skills and the drafting of reports throughout the year. KJSP delivered formal training, updated the JIU manual on internal rules, and compiled a catalogue of training materials developed by UNDP and JSRAK international advisors. These training materials will be utilized in orientation programs for new staff and continuing education for existing staff. The internal rules training materials are attached.

In the third quarter, in addition to its mentoring role, KJSP successfully completed training of 5 JIU Legal Officers (LO) on complaint intake procedures including interviewing witnesses and drafting written complaints in connection with allegation of misconduct. This training will allow the LO to assume new responsibilities in connection with the intake of complaints during the reappointment process. KJSP followed each training with on-site mentoring and one-on-one training of the LO. Additional training conducted by KJSP for JIU senior and junior inspectors over the year included, Code of Ethics, Time Management Skills, Interviewing Techniques for Complex Complaints, Public Communications and the Training of Trainers. Training materials are attached.

Following an assessment of the UNDP-funded JIU database operability, KJSP determined that IT assistance in this capacity to the JIU was not needed. In response to articulated needs identified by the JIU and KJSP assessment, however, KJSP will provide basic computer skills training to the entire staff to enable them to use the JIU case management system more effectively in their daily work. The training will be delivered to improve the skill-level of JIU staff in advance of the reappointment process scheduled to begin in September 2008. KJSP will continue to provide training in this area in the year 2.

Reappointment Preparation and Workshop

The JIU will face significant challenges meeting the anticipated short deadlines for investigating complaints of misconduct by candidates seeking judicial and prosecutorial positions. It is expected that the JIU will work closely with and report routinely to the IJPC. As part of a series of activities in preparation for the reappointment process, KJSP began assisting the JIU categorize cases for the purpose of establishing timelines for completion of investigative reports to be presented to the IJPC. In year 2, together with other initiatives, KJSP will assist the JIU to finalize these timelines.

KJSP conducted with a one-day forward-planning workshop on the reappointment process. KJSP Judicial Reappointment Consultant, Timothy Hughes, one of the architects of the similar reappointment process carried out in Bosnia facilitated the workshop and planning exercises. In addition to an overview of the reappointment process in Bosnia, KJSP expert assisted the JIU develop its internal strategy for the reappointment process. Attached is the JIU Reappointment Strategy. KJSP will work with the JIU to implement these strategic objectives in year 2.

Public Awareness

As a matter of priority, the KJSP supported the JIU carryout its public outreach activities to increase citizens' awareness of their mandate. In the initial phase, KJSP Communications Consultant, Mark West, conducted a two-day training program for the inspectors, staff and management of JIU aimed at improving their communication and advocacy skills. The work-shop culminated on the third day, with a roundtable

comprised of law students and journalism students interested in the work of the JIU. The roundtable provided a forum for the JIU to test new their communications skills with an audience of stakeholders. Advanced communication skills training was also provided to the JIU Coordinator and the official spokesperson. Attached are the training materials from the workshop.

KJSP provided technical assistance to the JIU in the preparation of a draft information pamphlet on the institution's mandate to be finalized in year 2. KJSP will also provide technical support to the JIU in planning the reappointment public awareness strategy and awareness campaign.

Results, Impact and Challenges

Results

- Reappointment workshop successfully conducted leading to development of the JIU Reappointment Strategy.
- Training of LO to conduct interviews and draft written complaints
- Public Awareness workshop and roundtable effective in developing communication skills of JIU and improving transparency and accountability of the organization.

Challenges

- The JIU has a significant backlog which the institution should strive to resolve before the reappointment process begins. They should, therefore, develop a short-term strategy to investigate the more serious cases of misconduct which may involve candidates vying for reappointment.

Judicial Audit Section

Building upon technical assistance provided to the JAS under the JSRAK program, KJSP continued to provide assistance building capacity to conduct court audits by implementing a train the trainer program. Since newly appointed auditors lack the benefits of extensive training carried out under JSRAK, KJSP assistance focused on developing the internal training capacity of the JAS, striding towards the ultimate objective of achieving institutional sustainability and an independent auditing unit within a larger organization.

Technical Support and evaluation of Audit Reports

KJSP Audit Consultant, Tihomir Grbic, provided technical support to junior and senior auditors to ensure that audits and reports fulfilled audit objectives with precision and clarity. Extensive evaluation of 17 audits in the fourth quarter indicated that audits were successfully completed, with the assistance of KJSP, in full compliance with its Strategic Audit Plan. KJSP also provided mentoring and one-on-one training to the JAS auditors, which resulted in significant improvements to the drafting skills of the auditors, producing well-organized and structured reports.

Internal Training Capacity

In order to build JAS internal training capacity, KJSP implemented a training program identifying 2 senior auditors to take the lead role in carrying out the internal training program. Attached is JAS TOT program delivered by the Audit Consultant. With the impending departure of UNMIK, JAS will be transferred from the UN/DOJ to the KJC in accordance with the Kosovo Constitution. KJSP will provide assistance to both JAS and KJC, as needed, to ensure smooth transition and integration of the Audit Unit to the KJC.

Implementation of Audit Recommendations

KJSP has provided on-going technical assistance to the KJC to begin integration of audit reports into KJC strategic plan, (as discussed earlier in this report). Attached is the KJSP Audit Report Implementation Strategy developed with the assistance of KJSP Audit Consultant.

Results, Impact & Challenges

Results

- Significant progress made in building internal training capacity by implementation of TOT program in JAS
- Completion of Audit Reports in full compliance with the Strategic Plan
- Significant improvement to audit skills reaching audit objectives with precision and clarity, improved testing procedures and drafting skills resulting in better structured, organized findings and recommendations

Challenges

- Adoption of audits reports and implementation by KJC CAC has progressed slowly due to other KJC priorities. KJSP will in year-2 increase support to the CAC and JAS in this area creating a working strategy and mechanisms for implementation, monitoring and follow-up procedures of recommendations made by JAS.

3.3 Institute a judicial code of ethics and well-functioning disciplinary system

KJSP has been working closely with the KJC Disciplinary Committee to identify procedural and process gaps in the disciplinary process relative to judges and prosecutors. An extensive review of the disciplinary system has not been conducted; rather KJSP staff has faced significant challenges with getting the existing process running in a more efficient and effective manner. As to staff, judiciary staff members are considered civil servants covered by Kosovo's civil service law. There is, therefore, little that KJSP staff is able to accomplish relative to the disciplinary system unless and until the judiciary's staff is removed from the civil service law and placed under the KJC directly for all purposes related to discipline and tenure. Whether this should occur is a public policy question.

KJSP staff has been working closely with the Disciplinary Committee to refine the operating procedures of the committee and develop guidelines for legal officers to support the Committee. KJSP has developed several recommendations, which will be provided to the committee and KJC, which will in addition be shared with the UN DOJ and Judicial Inspection Unit. Additionally, KJSP staff is working closely with the Secretariat's legal office to improve committee support and work.

3.4 Develop a sustainable system for distribution of laws/Access to laws by the courts

The Kosovo government Printing office (KGPO) is responsible for printing of the Official Gazette and distribution of laws and regulations. Due to the lack of funds necessary to fulfill these obligations, KJSP anticipated facilitating a grant to the KGPO to print and distribute laws. In the first quarter, however, it was discovered that the KGPO had, the month prior, entered into a contract with a local printer for all its printing needs. As a result, KJSP could not facilitate funding of this pre-existing 3rd party contract, because it had not been the subjected USAID rules and regulations on contractual agreements. As such, KJSP was unable, as envisioned, to provide assistance to the KGPO in connection with the printing and distribution of laws. The contact with the local company expires 7 August 2008. KJSP will consult with USAID to determine what support, if any, should be provided to KGPO in year 2.

TASK 4 – Support the transformation of the court system to more effectively represent and serve non-Albanian populations

Recognizing the importance of representative diversity among the judiciary, especially as it relates to the impartial administration of justice for non-majority populations, KJSP worked to facilitate the continuous representation of minority communities in the court system. In light of political uncertainties associated with Kosovo's final status and the Declaration of Independence in year 1, KJSP took a flexible approach to aid the effective representation of minority communities.²¹ KJSP program objectives under this task have extended not only to representation of ethnic minorities, but also to the representation of women in the justice system. This is in line with USAID/Kosovo's Strategic Plan for 2004-2008 which identifies gender equity as a cross-cutting factor, having a profound affect on Kosovo's development.

To ensure adequate attention to issues affecting minority participation in the justice system, KJSP worked with multiple Kosovo government institutions including the KJC; the Court Liaison Offices Program (CLO) administered by the MOJ; Legal Aid Services (LAS); and other organizations such as the Kosovo Chamber of Advocates (KCA) and the Kosovo Judges Association (KJA). In year 1, KJSP worked to build sustainable, collaborative relationships between these institutions, and to facilitate increased inter-organizational communication to ensure cooperation. KJSP elicited assistance of important civil society organizations to share information pertaining to minority participation in the justice system and to coordinate programming.

4.1 Supporting the KJC to develop and implement strategies to increase the representation of non-Albanian staff in the judiciary and support staff and enhancing court operation in minority areas

KJSP conducted an assessment examining the needs of the KJC/AC in relation to minority representation and services outlined in the Ahtisaari proposal. The role of KJC/AC is to recommend policies, procedures and measures to the KJC to increase the representation of minority population in Kosovo courts. Following the assessment, the project set out to assist the KJC /AC to encourage recruitment, appointment, and retention of minority judges and prosecutors.

In the fourth quarter of year 1, with the encouragement of the KJSP, the KJC/AC held its second meeting, (following a period of inactivity since its inaugural meeting in 2007). At the meeting, KJSP proposed a plan to assist the committee in carrying out its objectives. The KJC/AC agreed to work on amending the overall KJC Strategic Plan to include substantive measures for increasing the number of judges and prosecutors from under-represented communities. The KJC/AC also agreed to an action plan with relevant timelines, with the support and assistance of the KJSP. In order to facilitate this process, the KJSP drafted a concept paper for the KJC/AC, which will guide the process for amending the KJC Strategic Plan. Unfortunately, the vast majority of Kosovo Serb judges and prosecutors have suspended their work within the Kosovo justice system, for a period of time immediately following the declaration of independence. Those who have suspended their participation include the Chairman of the committee, a Serb prosecutor. As a result, KJC/AC activities have been put on hold, pending a decision by the KJC/AC to reconvene and appoint new members.

In response to the suspension of KJC/AC activities, the KJSP approached the Chairperson of the KJC to maintain progress toward increasing representation of non-Albanian staff and enhancing court operations in minority areas. It was agreed that KJC leadership would need to take an active role to ensure

²¹ The political uncertainty following the declaration of independence was a key challenge to KJSP assistance concerning minority participation in year 1, as evidenced by the withdrawal or suspension of participation of the majority of Kosovo Serb judges, prosecutors and Court Liaison Officers. Following the declaration of independence, KJSP focused its efforts on targets of opportunity which have maintained continuity of assistance to the CLOs and the KJC Advisory Committee (KJC/AC). KJSP monitored political developments as they concerned USAID objectives, and reviewed relevant newly-applicable laws, regulations, institutional strategic plans and reports by relevant organizations on an on-going basis.

implementation of the steps outlined in the Ahtisaari Proposal, particularly those related to minority participation and court services in minority areas. An agreement was reached that the matter would be raised at the next KJC meeting, and that the Secretariat would be tasked with drafting an analysis of the policy implications for the court system, including a draft policy paper suggesting the next steps for the KJC. To date, the matter has not been discussed at the KJC meetings despite on-going lobbying efforts by KJSP. In the event that the KJC does not address this issue at their next full meeting, the KJSP prepared an alternative approach to assist the KJC in fulfilling their leadership obligations under the Ahtisaari Proposal via its Court Administration Committee (CAC). KJSP is preparing a package that will include a goal-based assessment of the requirements for the Ahtisaari Proposal, Kosovo Constitution, methodology of the assessment and a questionnaire, to be presented to the KJC/CAC. Following the assessment, steps will be taken in cooperation with the KJC to devise a strategic action plan for substantive measures.

The withdrawal of the most senior Kosovo Serb judge, Jelena Krivokapic, Deputy Chairperson of the KJC and a judge at the District Court in Mitrovica is another example of the impact that political circumstances have had on the progress towards achieving program objectives. Her departure resulted in the suspension of activity within the Disciplinary Committee of the KJC, which she chaired. Judge Krivokapic submitted a notification to the KJC stating that she could no longer perform her duties as a member of the KJC and that she was not in a position to perform her duties as a judge at the Mitrovica District Court or at the KJC. She stated that she was exercising her right from the Joint Declaration to return to the justice system of Serbia. It should be noted that the letter is in the form of a notification and not a resignation.²² The understanding of the KJSP is that Ms. Krivokapic had to submit such a letter under pressure from the president of the parallel court.

A similar notification was submitted by another Kosovo Serb judge in the Gjilan District Court, Vlastimir Dimic, who submitted a request to the KJC to be dismissed. To date, no formal action on the submissions has been taken by the KJC. It is the understanding of the KJSP that other Kosovo Serb judges have not been reporting to work under the KJC, with the exception of two individuals working in the Pristina Municipal Court and Shtirpce Department of Municipal Court.

4.2 Assisting non-Albanian populations to gain access to courts and adequate and effective legal services

Court Liaison Offices (CLO) Program

While fairly knowledgeable of the issues faced by the minority population affecting their access to justice, prior to commencing work under this task, KJSP undertook efforts to acquire the most up-to-date and accurate data on services to minority population, which was provided by the relevant institutions. The first assessment was that of the work of the CLO within the Ministry of Justice's Department of Civil Rights. The mandate of the CLO Program is to enhance access to justice for the minority communities by accompanying minority parties to courts to attend proceedings, filing of documents with court on behalf of minority parties, and providing information on access to courts, as required.

KJSP initiated regular meetings with the Head of the CLO Program and conducted assessment visits to all of its 11 field offices deployed throughout Kosovo. Following the assessment of the CLO Program (CLO), KJSP identified a number of areas requiring improvements. KJSP proceeded to work with the CLO Program to plan and implement strategies to address those concerns. The assessment of the capacity of the CLO Program was completed and contains a number of recommendations to improve performance and services to under-represented communities, (See attachment MIN 1).

The lack of a comprehensive public outreach program to advertise the mandate and services offered by the CLO, in an accurate and user-friendly manner, was given first priority. Accordingly, working closely with

²² The Joint Declaration is an agreement signed between Serbian MOJ and UNMIK, which allows a number of Kosovo Serbs to be employed in *UNMIK courts*, with the Serbian MOJ continuing to pay their social benefits.

the CLO, the KJSP completed and printed a basic pamphlet targeting minority communities. In a simple question and answer format, the pamphlet provided answers to the most frequently asked questions, as reported by the CLOs, and provided very general information on the Kosovo justice system. (See attachment MIN 2). The pamphlets were distributed to the CLOs, Local Community Offices located in minority enclaves, health care centers, as well as other locations frequented by members of the minority community.

Essential to the CLO Program public outreach was the development of their communication skills. This enabled them to effectively convey critical information about the institution to the public, media, community organizations, and justice sector institutions. KJSP provided necessary assistance in this area by conducting a public communication skills 2-day workshop that was jointly attended by the CLO and Legal Aid. (See attachment MIN 3). The total attendance of 41 participants (13 from Legal Aid and 28 CLO staff) with the following breakdown by ethnicity and gender: 21 Kosovo Serbs, 16 Albanians, 1 Turkish, 1 Gorani, 1 Egyptian (RAE) and 1 Montenegro; 13 women and 28 men. In addition to providing training on communication and media skills, the workshop was used as a vehicle to develop public outreach ideas for both institutions whose services complemented each other. In the follow-up workshop, KJSP helped the participants crystallize these ideas into communication strategies for their respective institutions. (See attachment MIN 4).

While the assessment of the CLO Program outlines a number of other recommendations for improving the services and internal organization of the CLO Program, the political developments and security concerns prevented any further progress in implementing these recommendations. Following the declaration of Kosovo's Independence, the vast majority of CLO Program staff essentially ceased working with Kosovo courts, with the exception of the few staff of Kosovo Albanian ethnicity. Consequently, parties requesting transportation to courts received these services from the Kosovo Albanian staff members only.

Initially, the Kosovo Serb staff was instructed to keep a "low profile" until the consequences of the declaration of independence were fully known, including the impact on their security. In addition, various pressures exerted by local communities as well as politicians and government officials from Belgrade prevented the Serb staff from actively working within Kosovo institutions. Additionally, due to unpaid rent, telephone and internet bills by the Ministry of Justice, the CLO Program was denied access by the owners of premises in three of their field offices and has had no internet connection since late 2007.

To date, two of the CLO staff members manning the office in Vrbovac enclave, in Viti municipality, have since resigned, succumbing to pressure exerted from Belgrade. Finally, in the fourth quarter, the CLO Program has not fully resumed its work, but through its mentoring and advisory role, they have re-initiated limited assistance to minority parties seeking access to Kosovo courts with KJSP assistance,

Legal Aid System

In addition to the services of the CLO Program, a very important factor in ensuring access to justice for minority communities is the ability to obtain legal aid services. The Kosovo Legal Aid system was established in 2007, with government funding and a mandate to provide legal aid in civil and criminal matters to all citizens who satisfy the financial eligibility criteria. As a first step, the KJSP conducted a preliminary assessment of the newly established Legal Aid system and organization providing the services. One of the gaps identified during this preliminary assessment was the lack of sufficient measures to provide legal aid to non-Albanian communities. This gap was not intentional, but rather inadvertent, a result of cuts in the budget and posts in the institution. Nevertheless, it severely hampered minority community access to the Kosovo justice system.

To remedy this shortcoming, the KJSP facilitated dialogue between the CLO Program and Legal Aid to identify areas of possible cooperation and mutual assistance that would serve the non-Albanian communities. A formal agreement on cooperation between the CLO and Legal Aid was viewed by KJSP as critical to ensuring equal access to legal services for under-represented communities. To accomplish this

objective, KJSP organized and facilitated the first formal working level meeting between the CLO Program and the Legal Aid Commission aimed at creating a framework for cooperation between institutions. In collaboration with KJSP, representatives from the institutions outlined the proposed format for the agreement, institutions' mandates, and common areas of concern in fulfilling their respective obligations. For example, Legal Aid is presently unable to directly provide legal aid to minority communities living in enclaves due to budgetary and human resources limitations. The meeting was successful in that it was instrumental in building a bridge between two important institutions fostering a spirit of cooperation that did not previously exist. Notwithstanding their specific challenges, cooperating closely and pooling resources will allow both institutions to better fulfill their respective mandates.

It was agreed that the Ministry of Justice and Legal Aid sign a Memorandum of Understanding (MOU) specifying actions to be undertaken by each institution to ensure legal aid is available to minorities. The MOU was drafted with the assistance of KJSP. Due to obstacles faced by the CLO following the Kosovo declaration of independence, the signing of the MOU has been effectively placed on hold. KJSP fully intends to continue encouraging both institutions to finalize the MOU which is in the best interest of Kosovo citizens seeking access to justice and who lack the financial means to do so.

Another area that required attention was the public outreach of Legal Aid staff. As mentioned previously in this report, the KJSP held a joint training on communication skills for the staff of the CLO Program and Legal Aid. The training was also used as an opportunity to develop a communication strategy for Legal Aid. (See attachment MIN 5).

As a second step to public outreach activities, the KJSP, in close cooperation with Legal Aid Coordination Office, developed in close cooperation with Legal Aid Coordination Office, a Legal Aid pamphlet. The format of the pamphlet is similar to that of the CLO Program providing information the most frequently asked "Questions & Answers." The English and Albanian versions of the pamphlet have been finalized, but are still pending the approval of the Legal Aid Commission. The KJSP is hopeful that the pamphlet will be approved by the Commission in year 2 and that its printing and distribution will proceed as planned through District Bureaus, NGOs, municipal offices and courts. Distribution for the non-majority population will also include media, health care centers and other locations frequented by these communities.

Continuing KJSP's collaborative support to Legal Aid, in addition to the two activities described above, KJSP provided assistance to Legal Aid in other spheres of its work. While cooperation between Legal Aid and the Kosovo Chamber of Advocates (KCA) is mandated by law, difficulties exist in its practical application. For example, in the fourth quarter, six separate lawyers from the roster provided by the KCA refused to represent a Legal Aid client. In response, KJSP began working with both Legal Aid and KCA to improve the coordination mechanism between the institutions and will continue in this endeavor in year 2.

In order to strengthen institutional capacity to draft legislation, in cooperation with Task 5, KJSP invited the Legal Aid staff to participate in its Legislative Drafting Program. This initiative will aid the Legal Aid in its obligation to draft primary and secondary legislation and participate in roundtable discussions and public hearings on various justice sector laws. Finally, the KJSP is convinced that the extension of the legislative drafting program to Legal Aid will result in the institution producing and contributing to quality legislation that will benefit all Kosovo citizens seeking access to justice.

Citizen Advisory Boards

In addition to working with relevant institutions, during year 1, KJSP sought to directly engage minority communities. One of the initiatives explored was the establishment of citizen advisory boards involving minority communities, presidents of courts relevant to the community, and the KJC, in order to create a forum for discussing community issues with the Kosovo justice system. The CLO Program welcomed the initiative as an effort to bring the justice system closer to minorities.

The KJSP and the CLO Program jointly visited several predominantly Kosovo Serb communities to determine their suitability for a pilot citizen advisory board. None of the Serb communities to date were suitable, however, a predominantly Kosovo Croat community, Janjevo, expressed their dissatisfaction with the work of the Municipal Court of Lipjan. The KJSP responded by organizing a preliminary meeting between the village leader and the President of the Court. The meeting was very successful and raised a number of court related issues. Agreement was reached that the village leader would assemble a list of cases pending in court, followed by the KJSP's review of the list to identify the relevant court and a subsequent request for a meeting between the village leaders and presidents of relevant courts.

KJSP will continue similar initiatives in year 2, continuing to identify, in collaboration with CLO, areas of cooperation between the justice sector institutions, particularly courts and legal aid system and community leaders in non-Albanian areas.

Mentor Court Program

In order to increase the quality and availability of court services for minority litigants, KJSP recognized the need to work not only with minority communities but also with the court staff themselves. KJSP launched a Mentor Court Program which offers an opportunity to initiate working toward some of the Model Courts Program Standards, with courts which are not part of the Model Courts Program, but may nevertheless serve representative minority communities. The program also offers an opportunity for Model Courts Program participants to feature activities which will enable improvements in minority services within the framework of broader initiatives.

Ideally, the Mentor Court Program will be implemented and monitored by the President of the Court, while the overall assessment of performance will be conducted according to mandatory criteria for access and quality of court services provided under applicable legislation. Each program will be tailored to the participating court. To begin this Program, the KJSP devised a checklist of currently available services for minority litigants and have surveyed three Municipal Courts operating in areas with minority populations, the CLO Program and Legal Aid, as representatives of minority litigants. The checklist includes questions pertaining to the physical access to court services, administrative services and delivery of court services. (See attachment MIN 6). Based on interviews with participating stakeholders, KJSP developed an overview of availability of services to minority litigants, defined by findings and challenges. (See attachment MIN 7).

In the second year of the project, the KJSP will continue working under this program to implement targeted activities which increase court mobility and outreach to non-Albanian populations. KJSP will also develop training modules for judges and court staff to improve areas identified as insufficient through this overview.

In close coordination with the Model Courts Program's activities related to court communication and public access, KJSP has initiated the development of standard forms and brochures to facilitate litigant access to court and to standardize court filings. This initiative is a key element of the Mentor Court Program in that it will bring the court closer to non-Albanian populations. At the end of year 1, this activity remains in the initial drafting stages.

Cooperation with counterparts and other implementers

In order to foster a comprehensive and overarching structure for access to justice for the people of Kosovo, KJSP also initiated discussions with the Kosovo Chamber of Advocates (KCA), the Kosovo Judges Association (KJA) and the Kosovo Prosecutors' Association (KPA). These discussions were conducted with the intent to engage in collaborative efforts with others actors playing a critical role in the justice sector ensuring supplemental initiatives would be undertaken by these professional associations contributing to increased representation and access to justice for minority communities.

With respect to the KJA, although it appointed a Committee for Minorities and Gender, no meetings were held, nor had a mandate been defined at the start of this project. To engage what was an otherwise dormant

committee, KJSP facilitated the Committee's inaugural meeting. The meeting focused on developing its mandate, rules of procedure and discussions on ways to address future program interests related to increasing levels of minority and gender representation in the court system. In the course of these discussions, the KJSP determined that while there was much talk about insufficient representation of minorities in the justice system, there was little data supporting such statements, or knowledge on how to measure representation of minorities.

To address this concern, the KJSP organized and moderated two workshops on Tools for Measuring the Status of Judges from Minority Communities and Women for the Minorities and Gender Committee of the KJA. The purpose of the workshops was to provide the Committee with an opportunity to develop practical tools for measuring the position of judges from minority communities in Kosovo's justice system. The workshop was divided into two parts: the first part was a presentation by KJSP of applicable international standards for identification and protection of rights of minority communities, sections of the Kosovo Constitution that refer to minority communities, as well as the newly promulgated *Law on Protection and Promotion of Rights of Communities and their Members*; the second part was a presentation and discussion on various tools utilized in determining the status of minority judges, including statistical tools and measurement by established attitudes. (See attachment MIN 8).

The participants of the workshop included 5 judges from the Municipal Courts of Klina, Pristina and Peja, 2 judges from the Supreme Court, 1 intern ('praktikant') from the Supreme Court and the administrator of the KJA. The total number of participants was 9, distributed along ethnic and gender lines as follows: 2 Kosovo Serbs, 7 Kosovo Albanians; 7 women and 2 men. At the end of the workshops, the Committee held an impromptu meeting to identify future steps. Their conclusions included keeping statistics on the numbers of judges and the court level assigned, as well as a proposal to conduct research on treatment of women by the justice system.

KJSP will continue working with this Committee in year 2 to build its capacity to conduct research on court practices and various areas that affect access to justice for minorities.

Similarly, the KCA established a Committee on Minorities and Gender, but had not actively engaged in any specific spheres of work to further its objectives. The KJSP initiated a meeting with the Committee to introduce the Program, broadly discussing potential areas of support. The meeting resulted in an agreement that KJSP would assist the Committee develop a strategic plan to increase the number of minority members of the KCA, or alternatively, to ensure that the KCA general Strategic Plan includes substantive measures to increase the number of lawyers from minority communities. Since the ABA/ROLI in Kosovo supports the KCA extensively, KJSP initiated collaborative discussions to avoid overlap and to ensure coordination and synergy between these two programs.

Additionally, the KJSP organized a workshop on Tools for Measuring the Status of Lawyers from Minority Communities for the Minorities and Gender Committee of the KCA, which was similar to the one conducted for KJA. The purpose of this workshop was to provide the Committee of the KCA an opportunity to develop practical tools for measuring the position of lawyers from minority communities. As with the KJA workshop, participants were introduced to the applicable standards for protection of minority's rights followed by an interactive discussion on how to measure the status of lawyers from minority communities by numbers as well as by attitude. (See attachment MIN 9). The workshop was also used as an opportunity to discuss future activities of the Committee. The workshop was attended by 11 members of the KCA Gender and Minority Committee and other members of KCA, with the following ethnic and gender distribution: 3 men, 1 Kosovo Bosnian and 7 Kosovo Albanian.

To date, the KPA has not engaged in any activities connected with minority representation. KJSP will thus work with them in year 2 to set up a body within the association that would focus on issues of minority representation and access to justice.

Results & Challenges

Results

- Kosovo Judges Association and Kosovo Chamber of Advocates convened committees on Minority and Gender Representation, a first for the two main professional associations of the judicial and legal system, as a result of KJSP assistance.
- Public outreach and communication skills among CLO and Legal Aid staff improved through KJSP training. Workshops were attended by 41 staff from both institutions from which 65% were members of the minority communities.
- Public outreach strategies for CLO and Legal Aid were developed in cooperation with CLO and Legal Aid Services.
- Informational pamphlet on court liaison services developed, targeting minority participation in the Kosovo justice system.
- Framework agreement developed to ensure adequate cooperation and inter-agency communication between CLO and Legal Aid.

Challenges

- The declaration of independence of Kosovo and subsequent developments in the political and security arena have impacted KJSP activities, impeding progress in a number of areas as they relate to representation of minorities and minority participation.

Donor Coordination—Throughout year 1, KJSP continued the process of identifying and establishing cooperation with potential partners. To this end, KJSP met with UNDP, UNHCR, International Civilian Office Preparation Team (ICOPT), EU Planning Team, European Commission Delegation in Kosovo, European Centre for Minority Issues (ECMI), Kosovo Law Centre, ICMC (a international NGO working on returns' projects), UNIJA M (an association of NGOs working on return of displaced population and minority communities), UNMIK's Office of Returns and Communities, UNMIK's Senior Advisor on Minorities and RTI.

In year 2, KJSP will continue to maintain and establish new contacts with those organizations and institutions seeking to serve minority communities in order to cultivate and develop areas of cooperation including dissemination of information on the justice system, recruitment of judges, prosecutors and lawyers, and possibly citizen advisory boards.

Next Steps

- Continue working with the KJC and its Advisory Committee to ensure that non-Albanian representation and access to justice remains a high priority in their work by working to ensure that their strategic planning fully examines the present conditions of minorities and subsequent development of substantive measures to ensure improved representation and access to justice.
- Continue working with the Minority and Gender Committees of the KJA and KCA to build their capacity to measure the gender and minority communities' equality in their respective areas with the aim of creating action plans to remedy inequalities that have been identified.
- Continue developing the Mentor Court Program and increasing the capacity of selected courts to improve their access to justice in areas identified as insufficient through the Mentor Court program.

TASK 5 – Develop Ministry of Justice (MOJ) legal drafting and policy formulation and guidance skills

- 5.1 In conjunction with a local institution, develop and support a long-term legal drafting training program; provide tuition support for up to two MOJ legal drafting unit members

KJSP engaged in activities focused on developing the foundations built under JSRAK; providing technical support in drafting key pieces of justice sector legislation, developing and institutionalizing uniform legislative drafting standards in partnership with a local training institution, and serving as an advisor to the Ministry of Justice.

Legislative Drafting Training Program

Beginning in year 1, KJSP developed and delivered a 12-month legislative drafting training program for MOJ, KJC and Assembly legal officers, (a multipart series of training sessions which will be completed in year 2). A local partner, European Centre-Kosovo (ECK), was selected to provide the training beginning in the second quarter. From the second quarter onwards, training curricula have been developed and delivered. Each module includes a two-day seminar followed by a one-day on-the-job mentoring during which the trainers assist the legal officers in the MOJ and KJC to apply the lessons learned in practice. The curriculum was developed following a needs assessment which identified current strengths and weaknesses of the legal officers as well as the skills necessary to perform their duties.

Training focused on the identification of problems, building consensus among stakeholders, the harmonization process of researching existing regulations or laws, and policy formulation. The curriculum modules presented to date are attached. Upon completion of each module, participants were awarded certificates in recognition of formal training in a specific area of legislative drafting. The participation of trainees involved in the legislative drafting program remains consistent, with approximately 25 attendees from the MOJ, KJC and the Assembly attending each session.

Year 1 legislative drafting training included:

- Intro to policy analysis & development
- Development of concept papers
- Main principles of legal drafting
- Formal structure of legal acts
- Language of legal acts
- The drafter as problem solver
- Hierarchy of norms
- The Lawmaking Process – Rules of Procedure

While officers of the KJC are primarily tasked with developing policies, operational procedures and regulations for the courts, it is envisioned that their role will be expanded in the future to also include drafting secondary legislation directly impacting administration of the courts. The decision to extend participation to the staff of the Assembly was based on KJSP efforts to standardize legislative drafting processes across all Kosovo institutions responsible for drafting and reviewing legislation.

Training of Kosovo Legislative Committee

In line with KJSP support for the review and adoption of laws pertaining to the judiciary, KJSP sought to improve the efficiency and workflow of the Legislative and Judicial Committee of the Assembly. KJSP engaged a Legislative Drafting Training Expert, Bruce Feustel, to conduct a one-day training program on “The Effective Legislative Committee” specifically designed for staff of legislative committees of the Assembly. The program was delivered to approximately 25 participants, all members of the legislative committee.

The specialized training for committee staff members, together with the abbreviated version of the training presented to the Chairman and members of the Legislative and Judicial Committee, successfully improved the skills and collaboration required to execute the legislative process. It is clear, however, that further technical support and training for Committee members and staff will be required to improve the overall quality of legislation and the establishment of a uniform legislative drafting process.

International Legislative Drafting Institute training

During the third quarter, KJSP developed nomination criteria and selected two candidates from among the legal officers of the MOJ to attend the 2008 International Legislative Drafting Institute at Tulane University Public Law Center in New Orleans, Louisiana. Program instructors included professors from multiple U.S. Universities, other experts and practitioners. The selected participants attended the institute in the fourth quarter, together with a KJSP Legal Advisor to the MOJ sponsored by NCSC, in support of this program initiative.

The participants received instruction on legislative drafting practices in U.S. State and Federal legislative branches. The Institute organized a special session at the Louisiana Legislature in Baton Rouge. An audio taped session was held in the Committee Meeting Room where all participants could observe the legislative process firsthand. Participants visited both Chambers of the House of Representatives, the Senate and met with high level officials who explained the rules and procedures important to the legislative process.

The International Legislative Drafting Training Program included:

- Use of plain language in legislative drafting
- Drafting criminal penalties
- Election laws
- Compliance with International Trade & Tariff Agreements
- Rule-making processes in administrative procedures
- Governmental Codes of Ethics
- Drafting judicial rules
- Alternative Dispute Resolution Laws

The participants reported that the quality of the training was exceptional and that the lessons learned were directly applicable to their daily work and long-term professional development. They returned eager to share their newly acquired knowledge with their colleagues. As a result, in year 2, KJSP will work with the MOJ to develop a follow-on legislative drafting program based on courses at the International Drafting Institute, and will utilize existing TOT methodology to develop the training skills of returned participants.

5.2 Compile and produce a manual on legal and policy drafting in Albanian and Serbian; and provide assistance on the preparation of commentaries to laws

Manual on Legislative Drafting

The creation of a manual on legislative drafting will assist the government of Kosovo to establish uniform drafting practices. KJSP training curriculum will provide a blueprint and much of the substantive material for the development of the manual. KJSP continues the process of compiling the curricula, refining the language and synthesizing the material for inclusion in the training manual. Significant portions of the draft manual have been organized and edited in year 1.

Technical support and mentoring provided to lawyers of MOJ on justice sector laws, including harmonization of laws

The technical support and mentoring provided by KJSP advisors throughout year 1 were critical to increasing the knowledge and skills of the legal staff of the MOJ. KJSP support included technical assistance in drafting, reviewing, modifying and harmonizing major justice sector laws. KJSP staff frequently worked in

the offices of the MOJ Department of Legal Affairs, shoulder-to-shoulder with the Department Head and the Legislative Policy Division Head. This support will continue in year 2.

During the fourth quarter, KJSP began cultivating a working relationship with the Minister of Justice and her advisors. The KJSP Legislative Drafting Specialist maintains an office among the Ministry's political advisors. As a result, KJSP is able to respond immediately to the needs of the Minister, serve as a link between the legal staff and the Minister's Office, and improve coordination and communication with the Assembly and other stakeholders in justice sector policy and legislation. KJSP maintains cooperative and productive relationships with the Department Head and Division Chief of the Ministry's Department of Legal Affairs.

In addition to working with the Ministry's legal staff, at various junctures in year 1 KJSP worked closely with staff from the Legislative and Judicial Committee in the Assembly, providing technical support and advisory proposals regarding justice sector laws as they proceeded through the legislative process. KJSP frequently attended meetings held by Committees tasked with the review and approval of justice sector laws as they proceeded toward adoption.

DLA Piper Pro Bono Assistance

KJSP enlisted the assistance of pro-bono partner, DLA Piper US, LLC, during the fourth quarter to initiate consensus-building activities with stakeholders concerning the *Law on Courts* and the *Law on Prosecutors*. DLA Piper Partner, Sheldon Krantz, and Pro Bono Associate, Sara Andrews, encouraged stakeholders to move the laws through the legislative process, developing a shared interest in bringing the laws to completion. To that end, KJSP convened meetings with the Minister of Justice, Supreme Court President, Kosovo Judges Association President, Chief Prosecutor, Chamber of Advocates President, Chairman of the Assembly's Legislative and Judicial Committee, Head of UNMIK DOJ's Judicial Development Division, and MOJ Legal Department. The renewed interest developed as a result of the meetings re-initiated movement on both the laws.

Justice Sector Laws

KJSP remained involved with the MOJ in the drafting process of the *Law on Courts* and other related laws throughout year 1. The Minister drafted a new *Law on Courts* and KJSP assisted the legal officers of the MOJ with their review, helping them prepare constructive comments and recommendations for the Minister. KJSP also prepared its own comments regarding the *Law on Courts*, which ultimately became joint USAID/EUPT comments with specific recommendations for revising the law to establish a less complex 3-tiered system of Basic Courts, Appellate Courts and a Supreme Court. While these comments have yet to be incorporated into the draft *Law on Courts*, and were generally not accepted by the Minister or the judges reviewing the draft, KJSP will continue to encourage adoption of the proposed 3-tiered court structure.

The Minister of Justice determined that a *Law on Kosovo Judicial Council* should be drafted separately from the *Law on Courts* and KJSP assisted the MOJ legal officers in separating the provisions into two laws while ensuring harmonization. In the midst of the process, KJSP developed a proposed alternative draft of the *Law on Kosovo Judicial Council* that provided for a more effective committee structure. The Minister is in possession of the KJSP proposal and it is hopeful that the proposal will be accepted and incorporated into the next draft before distribution for public comment.

The Minister of Justice also determined that two separate laws were necessary for the prosecution system and its council. Consequently, KJSP provided on-going drafting support to the MOJ legal officers responsible for drafting the *Law on Prosecutors* and the *Law on the Kosovo Prosecutorial Council*. The laws are expected to be presented to the Minister in July 2008.

The *Law on Forensics* is one of draft laws on the MOJ strategic plan for 2008. During the fourth quarter, KJSP participated in the working group for this law as part its regular mentoring role to the MOJ legal officers. Significant issues were overcome by the working group, included harmonization with the *Law on Autopsies*,

development of clear provisions for transitioning powers previously reserved by UNMIK, and development of provisions for merging existing institutions into a single structure under the authority of the Ministry. The Minister expressed pleasure at having KJSP and the Ministry legal staff participating. The draft *Law on Forensics* is still pending with the Ministry, but will soon be forwarded to the Government for further processing.

The *Laws on Contested Procedures, Non-contested Procedures and Execution Procedures* all successfully moved through the legislative process during the 4th Quarter. The Legislative and Judicial Committee appointed experts to the *Law on Execution Procedures* and the *Law on Non-contested Procedures*. KJSP provided written comments on the *Law on Execution Procedure* and *Law on Contested Procedures*. KJSP continued to work with the committee staff and appointed experts on a strategy for project completion and substantive recommendations for revising the laws.

Additionally, KJSP worked closely with Ministry legal staff to improve the quality of the draft *Law on Mediation*, which was returned to the Assembly and the Legislative and Judicial Committee for review and subsequently forwarded to the Assembly for a second reading.

Cooperation with International Donors on Legislative Process

As part of on-going efforts to assist in the preparation and adoption of quality laws, KJSP liaises with the Assembly and cooperates with the Assembly Support Initiative (ASI). The ASI is a donor coordination initiative involving OSCE, NDI, KJSP and UNDP. The information exchange and regularly organized joint initiatives among participant organizations results in reduced overlap and more effective support of law-making functions.

KJSP involvement with the draft *Law on Notary* significantly increased in the fourth quarter, in cooperation with the Swiss Cooperation Office and experts from the Institut International des Hautes Études Notariales (IHN). This draft law is currently pending in the Legislative and Judicial Committee. KJSP participated in the public hearing held by the Committee in early April, and submitted comments on the draft law. KJSP subsequently arranged for the Legislative and Judicial Committee Chairman to invite the lawyers from IHN who originally drafted the law to return to Pristina and assist in making revisions. KJSP collaboration with the Swiss Cooperation Office, their experts and the Committee on the draft law, continues to date.

Technical assistance on preparation of commentaries provided

All laws drafted by the MOJ legal officers are to be accompanied by commentaries in the form of "Explanatory Memoranda". MOJ legal officers are required to present analyses and opinions on draft laws in public hearings and committee meetings. KJSP has assisted the MOJ legal officers in drafting the explanatory memoranda, including the comments on the *Draft Law on Contested Procedures* presented for public hearing, and the *Draft Notary Law*.

5.3 Provide technical assistance to MOJ legal drafting unit and convene legal drafting roundtables

Roundtables on specific draft laws organized and conducted

Following discussions with DLA Piper Partner, Sheldon Krantz, the Minister of Justice organized and hosted a roundtable discussion on the draft Law on Courts. With the assistance of USAID, the discussion ultimately resulted in a series of high-level working group meetings and a detailed review and revision of the law by critical stakeholders including judges and prosecutors as well as KJSP Advisors, the US Embassy (formerly US Office), USAID and EUPT. KJSP contributed to the dialogue at the roundtable and further still in preparation of written comments. KJSP assisted the Ministry legal staff with several technical and substantive revisions and recommendations for improving both the Law on Courts and the Law on Kosovo Judicial Council. KJSP also helped develop USAID/EUPT joint comments on the draft Law on Courts. It is

likely that similar roundtables will be held in connection with the Law on the Kosovo Judicial Council, the Law on Prosecutors, and the Law on the Kosovo Prosecutorial Council in year 2 of the program.

Results, Impact & Challenges

Results

- Curriculum developed and training delivered, including 8 modules of the legislative drafting training program.
- Curriculum developed and training conducted by NCSL for specialized training for Committee staff in the Assembly.
- Two participants selected and attended the 2008 International Legislative Drafting Institute at Tulane University Public Law Center.
- Development of the draft manual on legislative drafting based on the curricula from the training program. Completion of manual anticipated in year 2.
- Significant progress made on major justice sector laws.
- KJSP cultivation of excellent working relationships with the MOJ legal staff and the legislative staff of the Legislative and Judicial Committee.

Challenges

- The Declaration of Independence created confusion regarding the legal framework for drafting laws further heightened by the adoption of the Constitution. The confusion was especially evident during the time between the adoption of the Constitution and its entry into force in June 2008. Nevertheless, it is unanimously accepted that all draft laws should be harmonized and in full compliance with the Constitution.
- There is ongoing uncertainty and confusion regarding the legal authority of the Government vis-à-vis the various international entities, namely, UNMIK, EULEX and the ICO, as well as the current and future roles of each.
- The unusually high volume of draft laws flowing through the legislative process during the fourth quarter made it especially difficult for KJSP to influence and improve the quality of laws. Resources were spread thin, necessitating prioritization and review of only a limited number of the draft laws.
- The focus of the Government and the Assembly during the fourth quarter was the Ahtisaari-related legislation (a total of 41 different laws). Because the justice sector laws with which KJSP is involved were not part of the Ahtisaari package of laws, they did not receive as much attention from the stakeholders as they otherwise would have.
- Significant policy decisions regarding the structure and management of the court system have not yet been made. This makes it difficult to move forward with a *Law on Courts* or *Law on Kosovo Judicial Council*.

TASK 6 – Establish and support the organization and critical tools necessary to build an effective public prosecutor service

- 6.1 Develop policy and legislation necessary to establish a statutory organization to oversee the work of public prosecutors; support implementation of legislation and development of necessary organizational capacity

PCK Working Group

The Kosovo Judicial Council is the body responsible for managing with the Kosovo judiciary and was designed with the aim of ensuring the independence of the judiciary. Significant powers of control and management of the Kosovo prosecution system were vested in the KJC on an interim basis, until a Prosecution Council was created. The new Kosovo Constitution confirmed the creation of a Kosovo Prosecution Council as the managing body of the prosecutorial system of Kosovo. However, the implementing *Law on Prosecution* has not yet been sent to Parliament.

In cooperation with the U.S. Department of Justice, Council of Europe and European Agency for Reconstruction, KJSP facilitated the creation of a Prosecution Council of Kosovo Working Group (PCK WG), which will help establish the administrative and managerial structures necessary to support a professional public prosecutor service. Particular attention was paid to establishing a Prosecution Council that will govern the recruitment, nomination, training, supervision, discipline, and career development of public prosecutors.

Prosecution Institutional Capacity Index

KJSP staff developed a Prosecution Institutional Capacity Index (See attachment PRO1). The Draft Institutional Capacity Index was created to provide a framework for KJSP assistance to the PCK. The PCK WG reviewed and formalized the components of the index in its second regular meeting. It was acknowledged that this document will not only assist in providing direction for the WG, but it will also provide a measuring tool to evaluate the strength of the prosecution function over time—taking into account the efforts of the WG and KJSP. The WG also agreed that this document will assist them in evaluating the success of the measures the WG undertakes in planning for other activities.

PCK Working Group

Hilmi Zhitia, Chief General Prosecutor
Selim Nikçi, Kosovo Judicial Council
Ismet Kabashi, Kosovo Prosecutors Association
Ramë Gashi, Kosovo Chamber of Advocates
Ymer Huruglica, Kosovo Judges Association
Bedri Bahtiri, Ministry of Justice

Challenges

The PCK WG encountered a number of obstacles that ultimately hampered its effectiveness in year 1, related mostly to disagreement on the structure of the public prosecution service (as a stand-alone institution like the Kosovo Judicial Council, or as an organization administered under the Ministry of Justice). There was also dissent among the members of the PCK Working Group concerning the fact that some representatives of the PCK Working Group were not prosecutors. The dissenting members felt this resulted in improper interference with the prosecution system from outside bodies. These and other problems between various stakeholders resulted in the postponing of most of planned activities until the *Law on the Prosecution* is enacted.

Due to a lack of progress on the *Law on Prosecution*, USAID made the decision to postpone further KJSP activity in connection with the PCK WG.

Next steps

- Contingent upon enactment of the *Law on Prosecution*, stage discussions with PCK WG members on eventual rearrangement of the WG, i.e. replacing current members with new members.
- Develop Rules of Procedure of PCK WG.
- Provide help to the PCK in developing PCK related subsidiary legislation and other documents necessary for efficient functioning of PCK.
- Facilitate Working Group reform initiatives (and sub-working groups) on Performance & Evaluation Standards; Gender and Minority Representation; and Ethics and Discipline.
- Continue Prosecution CMIS Pilot, working with the pilot project in Gjilan, training prosecutors and facilitating the use of the case management system. Expand to other areas.

6.2 Assist in establishing necessary systems to support an effective and professional prosecution function

Case Management Information System (CMIS) Working Group, creation and preparations for the implementation of the pilot project

KJSP created a CMIS Working Group (WG) to implement the tasks of the project. Creation of the Working Group was preceded by intense consultations with main stakeholders, i.e. Office of General Public Prosecution of Kosovo, Ministry of Justice, Kosovo Prosecutors Association and the Kosovo Judicial Council.

The WG adopted a Rules of Procedure document drafted with the help of KJSP, agreed to convene regular monthly meetings, and set the criteria for selection of a prosecution office to host the pilot phase of the CMIS project. These criteria emphasized that the prosecution office should have a low caseload and timely handling of cases, little or nonexistent backlog, and the motivation and willingness to host the pilot project. On these criteria the CMIS WG elected Mitrovica District Prosecution Office to host the pilot phase of the project. However, the deteriorating political situation in the northern part of Mitrovica following the proclamation of independence on February 17, 2008, forced the reconsideration of using the Mitrovica prosecutors' office for the pilot project.

After a meeting of the CMIS Working Group, it was agreed that the pilot project could not take place in Mitrovica and the Gjilan District Prosecution Office was suggested as an option. The CMIS Working Group agreed. KJSP staff paid several visits to Gjilan District Prosecution Office to determine whether this office meets the criteria as set by the CMIS Working Group. KJSP staff found that the Gjilan District Prosecution Office caseload was low and handled in a timely fashion, the backlog was almost nonexistent and both prosecutors and staff were highly motivated and willing to use the CMIS software and to host the pilot phase of the project. A needs assessment of computer hardware conducted by KJSP staff suggested that Gjilan District Prosecution Office needs were similar to those of the Mitrovica District Prosecution Office. The CMIS Working Group agreed in a regular meeting held March 11, 2008, to select Gjilan District Prosecution Office for continuation of the pilot phase of CMIS project.

Implementation of the Pilot Project

CMIS Working Group

Ismet Kabashi, Kosovo Prosecutors Association
Sahit Shala, Ministry of Justice
Agron Gashi, Ministry of Justice
Fatmir Rexhepi, Kosovo Judicial Council
Tefik Dushica, District Prosecution of Gjilan
Shyqri Sylja, Prosecutor
Besim Kelemendi, Prosecutor
Reshat Millaku, Prosecutor
Rexhep Rexhepaj, Prosecutor
Gezim Kollqaku, Prosecutor
Agron Uka, Prosecutor

Selection Criteria for CMIS Pilot Prosecution Office

- Comparatively low caseload
- Timely handling of cases
- Low or inexistent backlog
- Staff's motivation and willingness to use CMIS

CMIS Working Group, with the active assistance of KJSP staff, met the challenges that arose from the relocation of the pilot project from Mitrovica to Gjilan and began implementation of the pilot project. The KJSP staff arranged a demo presentation of the CMIS software for members of the CMIS Working Group. The presentation was made by ProNet, the software development company and enabled members of the CMIS Working Group to see firsthand how the software was designed and functioned. Following the presentation, the CMIS Working Group agreed to appoint a sub-group, including a KJSP staff member, to provide input on which component parts of software warranted revision and refinement. The subgroup drafted a memo containing suggestions and recommendations for those sections of CMIS software that would require further refinement, (See attachment PRO 2). The memo was submitted to the Kosovo Judicial Council, which started working with ProNet to make the recommended changes.

In the meantime, USAID approved a request for equipping the Gjilan District Prosecution Office with the hardware necessary to implement the pilot phase. Deployment of computers and other support equipment was done through a ceremony during which USAID Deputy Director formally delivered the hardware to the Chief District Prosecutor of Gjilan. The Deputy Minister of Justice, Chief Public Prosecutor of Kosovo, President of Kosovo Prosecutors Association, Kosovo Judicial Council Secretariat Director, President of Kosovo Judges Association, other distinguished guests and print media representatives attended the ceremony.

Training on basic computer skills (See attachment PRO 3) and CMIS software use were conducted with Gjilan District Prosecution Office prosecutors and support staff. Basic computer skills training was conducted by KJSP staff in three consecutive modules. All prosecutors and support staff participated in this training, which was followed by CMIS training conducted by a ProNet IT specialist and facilitated by KJSP staff. The training was simulation-based and helped each prosecutor work on a concrete case in CMIS program from the initial stage until completion. It is envisioned that the training will continue during upcoming quarters, i.e. until the end of 2008. During that time period all prosecutors and support staff will use CMIS as a primary tool in their day to day work.

With KJSP assistance, an implementation plan for the pilot phase of CMIS was drafted and then approved by CMIS Working Group (See attachment PRO 4), As were evaluation standards and a questionnaire for the pilot phase (See attachments PRO 5 and PRO 6). ProNet also provided significant input on these documents. These documents were used to monitor and evaluate implementation progress of the pilot phase.

Study Tour

KJSP is researching the viability of staging a study tour to Estonia for CMIS WG members (See attachments PRO 7 and PRO 8). The purpose of the study tour is to introduce CMIS WG members to the management processes and structures of the Prosecution Service of Estonia. It is expected that the experience will not only increase capabilities, but also stimulate implementation motivation of CMIS WG members.

Challenges and Next Steps

Challenges

- Provision of active assistance in software application, database maintenance and IT support in general to Gjilan Prosecution Office.
- Lack of resources and clear strategy from the KJC and/or MOJ to ensure proper maintenance of and support for CMIS and IT infrastructure.
- Unclear delineation of powers over CMIS between MOJ and KJC.
- Expanding CMIS implementation to other prosecution offices in Kosovo.
- Ensure the willingness and motivation of prosecution staff to use CMIS in their daily work.
- Provision of adequate computer equipment for CMIS implementation purposes.

- Provision of minimum standard requirements in case management, like accuracy, timeliness and completeness.
- Application of unified case management standards and workflow by all prosecution offices in Kosovo.

Next steps

- § Facilitate extension of contract for CMIS support during the implementation phase.
- § Continue implementation of CMIS pilot project until the end of 2008. Explore replication of pilot project through USAID and other donors. Use best practices obtained during the pilot project phase from Gjilan District Prosecution Office for year 2 activities. Plan and develop minimum standard requirements, such as accuracy, timeliness and completeness. Monitor and evaluate the progress of CMIS implementation in the selected prosecution offices.
- § Help KJC and MOJ develop a strategy to ensure proper maintenance and support for CMIS.
- § Increase coordination with other stakeholders in the field of CMIS. Maintain cooperation between KJSP and other stakeholders, especially EAR or its successor.
- § Provide basic computer skills and CMIS training for prosecutors and support staff in the prosecution offices identified and selected for KJPS second year program implementation.

CONCLUSION

As the project enters year 2 of implementation, 6 months following the declaration of independence, KJSP will move further from general institutional capacity building and institutional liaison to more immediate, goals and action steps. Notwithstanding the absence of a defined legal framework and continued political uncertainty, KJSP activities in year 2 will maintain a flexible, results-oriented approach, defined by near term goals and quick-impact action steps, in order to remain effective and responsive to Kosovo's fluid political environment. KJSP will continue to provide support in the form of training and mentoring to justice system institutions, while remaining capable to adapt activities to emerging circumstances on the ground. KJSP will also continue to integrate the activities of other donors and implementers to avoid duplication of efforts. As of the writing of this report, KJSP is formulating its year 2 goals based on recommended next steps, to be articulated in the year 2 workplan.