

PRIVATIZATION OF STRATEGIC ENTERPRISES PROJECT

COURT COMPONENT: HELPING CREATE A MORE EFFICIENT JUDICIARY IN HANDLING COMMERCIAL LITIGATION, BANKRUPTCY, AND LIQUIDATION

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INTRODUCTION

This is a time of great change and great challenge for the courts in Bosnia & Herzegovina. The courts are being restructured. All judges are being reviewed and are subject to reappointment. New Commercial Divisions will be created at First Instance Courts as part of the restructuring process. Many new laws are being drafted for imminent enactment or promulgation. Training programs have been conducted and more are planned. Pilot programs are planned in the hope of implementing some of the recommendations for court reform and improvement. The changes have been generated because of serious problems within the court systems, especially with inefficiency and frustratingly long proceedings which have seriously impaired the climate for economic recovery and growth.

In an attempt to address the current situation, take advantage of opportunities that are being created, and accelerate the court improvement efforts on a broad front, the following recommendations are being made to USAID for consideration:

- Anticipate the unique opportunity being created by the appointment of court presidents at every court in the country by planning a management course for the newly selected court presidents and the court administrators who have to become the leaders and the agents of change in the court reform/court improvement effort.
- In conjunction with a limited number of other key organizations create a working level **Coordinating Council** to plan the management course for the new court presidents but also to oversee a sustained effort to effect changes within the courts through a carefully structured program of broad court administration improvements and the implementation of specific case management techniques.
- Use the services of a **Case Management Working Group** consisting of judges and court administrators to tailor a case management program based on articulated case management techniques for implementation within the courts of Bosnia & Herzegovina.
- Create other subgroups to help in the implementation of key elements within the case management program: a **Court Visitation & Assistance Working Group** to visit individual courts after suitable training sessions to help the courts overcome implementation problems and a **Forms Working Group** to review all of the present court forms and design a new standard packet of forms for use in the courts.
- Seek the assistance of qualified training groups or organizations to plan and offer training programs on case management techniques and on the new Commercial Laws for the judges who will staff the Commercial Divisions.
- The **Coordinating Council** should discuss, formulate, and make specific recommendations on a national policy for Automation Implementation in the courts to stop the present unorganized, non-standard, fragmented automation efforts.
- The **Coordinating Council**, possibly in conjunction with the Ministries of Justice should monitor the case management efforts at the individual courts and should suggest or recommend other procedures over time to try and sustain the overall court improvement effort.

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SUMMARY OF RECOMMENDED ACTIONS

- ✓ Form a working level group of representatives from key court reform/improvement entities—the **Coordinating Council**—to plan and oversee a comprehensive approach to court improvement efforts over the next three years.
- ✓ **Coordinating Council** begins to plan a management styled course for newly appointed court presidents and court administrators with emphasis on how to achieve timeliness and efficiency in the courts. Course to be offered as judicial reappointment process concludes later in the year. See **Attachment A**—Course Curriculum.
- ✓ **Coordinating Council** forms a **Case Management Working Group** consisting of judges and court administrators to assist in planning the management workshop for court presidents/administrators. Focus is on how to tailor a case management approach to the Bosnian courts. See **Attachment B**—Case Management Model.
 - Delineate all case events.
 - Standardize data entry format
 - Discuss adoption of Docket sheets and the elimination of case registry books. See **Attachment C**—Sample Docket Sheet.
 - Create standard time frames for case events based on the Codes of Civil Procedure.
 - Develop three case processing tracks for Simple/Expedited, Standard, and Complex cases.
 - Draft sample Case Management Orders for use at the Preparatory Hearing to control caseload. See **Attachment D**—Case Management Order.
 - Plan for staff to monitor scheduling orders and flow of cases.
 - Anticipate staff's involvement in follow-up action to monitoring Case Management/Scheduling Orders.
 - Discuss the imposition of appropriate sanctions for serious delinquency
- ✓ **Coordinating Council** recommends/urges the adoption of Internal Court Guidelines to the court presidents as part of the management workshop. Guidelines are intended to maintain court discipline and keep cases moving.
- ✓ **Case Management Working Group** is asked to review the present data collection process and make recommendations on how statistics and reports can be improved.
- ✓ **Coordinating Council** includes the collection and use of data in the management course for court presidents and court administrators on how to make management decisions and assign resources based on current information.
- ✓ **Working Group** is asked to draft a list of non-judicial functions that could be delegated to qualified staff from the judges. Session on delegation is to be included in the program and discussion at the court president management seminar.
- ✓ Importance of communication in an organization is included as a discussion topic for court presidents at management seminar.

- ✓ **Working Group** is asked to draft a “how to” outline on a New Judge Orientation program for presentation to court presidents.
- ✓ **Coordinating Group** asks ABA/CEELI (or other training group) to design a series of case management workshops for First Instance judges on how to use case management techniques. The work of the **Case Management Working Group** would be incorporated into the curriculum of the workshops.
- ✓ **Coordinating Group** asks ABA/CEELI (or other training group) to plan a series of workshops for the judges of the new Commercial Divisions. Course to concentrate on relevant substantive and procedural laws to ensure prompt, knowledgeable handling of all commercial litigation. Training for trustees is anticipated.
- ✓ **Coordinating Group** convenes a one day workshop for all Second Instance court presidents on court administration and case management plans as soon as feasible after appointment of Second Instance court presidents.
- ✓ **Coordinating Council** sends an Inventory Survey (See **Attachment E**) to the court presidents of all First Instance courts where a Commercial Division will be created to create a data base on existing equipment in these courts.
- ✓ Three management workshops for new court presidents and court administrators are conducted in late 2003 and early 2004.
- ✓ ABA/CEELI offers two workshops on relevant commercial laws for the judges in the Commercial Divisions. Judges from Second Instance courts are also invited to attend the Commercial Law Workshops so that both First Instance and Second Instance judges understand the new laws.
- ✓ Early in 2004 ABA/CEELI or other training group begins to offer Case Management Workshops for First Instance judges. Case Management Workshops should begin shortly after the final Management Seminar for court presidents and court secretaries.
- ✓ **Coordinating Council** creates a **Court Visitation and Assistance Group** to visit individual courts and offer assistance in the implementation of a court wide case management program.
- ✓ **Coordinating Council** develops a standard equipment package for all courts with initial implementation in the First Instance courts with a Commercial Division. All automation implementation is subject to national guidelines to prevent divergent proliferation and fragmentation. See **Attachment E**—Equipment Inventory Survey.
- ✓ Court presidents are urged to adopt specific strategies for the reduction of backlogs in all courts by 25% within six months after the adoption of a Backlog Reduction Plan. Bulk Dockets are recommended as one means of attacking small claims backlog cases.
- ✓ **Coordinating Council** checks with IJC on status of Book of Rules revision and update.

- ✓ Court presidents are urged to vigorously use provisions in new Code of Civil Procedure on authorized delivery methods and to monitor delays at the early stage of each case.
- ✓ Court presidents are urged to suggest and recommend the aggressive use of Default Judgments and Dismissal for Failure to Prosecute to clear out inert cases. Summary Judgments should be considered as another case disposition method in appropriate cases.
- ✓ **Coordinating Council** should create a **Forms Working Group** with the task of reviewing all existing forms and drafting a series of standard forms for use in the courts in the future. Early attention should be directed at forms that will be used in the Commercial Divisions.
- ✓ Each court president is strongly urged to quickly adopt a random case assignment system.
- ✓ Court presidents are urged to explore ways to delegate non-judicial tasks from judges to qualified staff. The list of suggested tasks generated by the **Case Management Working Group** should be sent to each court president. Preliminary examination of newly filed complaints by legal assistants rather than by judges should be suggested as a task that can be delegated to legal staff.

BACKGROUND

There have already been a number of previous studies and assessment reports on the court systems in Bosnia & Herzegovina. The Independent Judicial Commission (IJC) has recently completed two very thorough reports—*Restructuring The Court System* and *Justice in due time*—that were heavily relied on in preparing this report. In addition to the extensive judicial reform work that IJC conducts, the United States Agency for International Development (USAID) has funded a number of previous court studies and court improvement projects including a just completed Rule of Law assessment. The American Bar Association/Central and East European Law Initiative (ABA/CEELI) is engaged in a wide variety of legal training, law drafting, and court improvement efforts. DFID and GTZ, two other international donor organizations, are currently involved in enterprise or company registry reform and bankruptcy modernization. All of these court and law reform projects, studies, reports, and on-going efforts have an impact on the focus of the court component of the larger Privatization Of Strategic Enterprises project which is part of an even larger effort to create a better business and commercial growth climate for a stronger national economy with more jobs and more opportunities for economic growth.

Rather than reassess and revisit the courts that have already been assessed and visited in previous projects most of the findings and many of the recommendations of the prior court work have been adopted in structuring this report, particularly the information in the IJC *Restructuring The Court System* and *Justice in due time* reports. Contact was made and discussions were held with a limited number of judges, court staff, ministry staff and private sector participants to update or verify current perspectives but heavy reliance was made on

prior relevant reports due to project time constraints and an emphasis on accelerating the commercial law environment improvement efforts.

PRESENT LEGAL ENVIRONMENT

Two far-reaching and critically important legal reform processes are underway. The number of First Instance courts is being reduced by about 33% from a total of 78 First Instance courts to 46 courts with six branch courts or additional locations for periodic court settings. The number of First Instance judges is being reduced by approximately 25% from 654 judges to 492 judges. Additional court and judge reductions are contemplated at the Second Instance level and possibly at the Supreme Courts but those further reductions will require legal/constitutional changes before being implemented. The second dramatic legal reform is the review and reappointment of every judge in the country at the First Instance—Municipal and Basic Courts—the Second Instance—Cantonal and District Courts—and at the Supreme Courts of both the Republika Srpska and The Federation. As part of the judicial vetting and reappointment process every court president will also be subject to selection and designation as court president. These two processes—court and judge reduction and judge review and reappointment including the selection of court presidents—have created a degree of uncertainty and some apprehension among the judges. The court restructuring and judge reappointment processes have begun in early 2003 and are expected to take until late fall or the end of the year to complete.

There are other changes underway that will also have dramatic effects on the courts. A number of new laws have been drafted and are proposed for enactment within the coming months. New Codes of Civil Procedure, new Bankruptcy and Liquidation laws, new Laws on Enforcement and Laws on Execution, new laws on enterprise registry, and other laws will either be adopted by the entity assemblies or will be promulgated by the High Representative within the coming months. As part of the court restructuring process that is outlined in the IJC's *Restructuring The Court System* Report, the jurisdiction of selected First Instance courts is being expanded to cover all civil cases "including all types of commercial cases" which will involve the transfer of commercial litigation, bankruptcy, and liquidation cases from the Second Instance courts to the First Instance courts. In the planning and formulation stages of this shift, there was a debate on whether separate Commercial Courts should be created as has been done in other countries or whether new divisions or separate specialized commercial departments should be formed in selected First Instance courts. It was decided to form Commercial Divisions in the designated Municipal Courts for handling commercial litigation. The impact of this shift in jurisdiction will be felt more in the Municipal and Cantonal courts of the Federation than in the Basic and District courts of Republika Srpska because the Basic courts in Republika Srpska already handle some commercial cases including bankruptcy cases but the Basic courts will also be impacted.

All judges and particularly the judges at the designated First Instance courts with expanded commercial case jurisdiction will need training in the new laws and new procedures. ABA/CEELI has already conducted a number of training programs in various locations for both judges and lawyers on the proposed new Civil Procedure Codes and the significant changes that should occur once these laws are enacted. Plans are being discussed about a similar round of training programs on the draft commercial laws once the relevant legislation is enacted and after the judicial reappointment process is completed. Court presidents will then have to select the judges who will serve in the new Commercial

Divisions. For the Commercial Divisions to succeed, judges who are selected to serve in these specialized divisions will need to be well trained in both the relevant substantive and procedural laws and will need adequate administrative support so that commercial litigation of all kinds can be processed without delays. The business and investor communities must have confidence in the courts' ability to efficiently handle commercial cases. They can not afford to experience frequent delays and costly, needlessly protracted proceedings.

The present court environment in Bosnia & Herzegovina is very fluid with many changes now underway or coming in the near future:

- a new, streamlined court structure,
- newly appointed judges and court presidents throughout the country,
- numerous new laws, court procedures, and operational guidelines,
- the formation of new Commercial Divisions in selected First Instance courts,
- a variety of training programs on the new laws, procedures and court structures.

The IJC is proceeding with Phase II of its court reform effort with the selection of three pilot courts to implement and test some of the many recommendations for change contained in the *Justice in due time* report. Phase II is subject to donor funding and the completion of some of the many changes so that actual implementation and testing can begin. It is hoped that those new techniques and reforms which are successful in the three pilot courts can then be transported and applied in other courts in both entities in a third phase of the IJC's restructuring and reform efforts. The problem confronting the Privatization of Strategic Enterprises project is how to accelerate the court improvement efforts, particularly regarding the formation of the new Commercial Divisions and the preparation of the judges who will serve in those specialized departments.

AN ALTERNATIVE AND CONCURRENT APPROACH

A UNIQUE OPPORTUNITY

As the IJC *Justice in due time* report succinctly points out, "***timeliness is consistently undervalued***" or simply ignored by judges, court staff and lawyers. Litigants, however, not only want "justice," fairness, equality before the law but they want justice rendered *within a reasonable period of time and for an affordable cost*. Many of the proposed new laws, particularly the new Civil Procedure Codes, have been drafted with the express idea that time is important and procedures must be expedited to improve the performance and the perception of the court system. As noted, ABA/CEELI has conducted numerous training sessions for judges and lawyers in the proposed new procedural framework but...

Will judges effectively use the "new tools" and enforce schedules and deadlines?

Will lawyers comply with court imposed deadlines or will business in the courts largely proceed as usual with only marginal gains in efficiency?

The judicial reappointment process is underway with the hope that newly appointed judges will be committed to a new, higher set of expectations and performance standards but...

Will the newly appointed and reappointed judges be focused on timeliness and consistently apply the provisions in the new laws to expedite caseload?

Pilot programs are planned to demonstrate new approaches and new techniques but...

Will successes be realized and spread to other courts quickly enough before bad habits, inertia, and fragmentation set in?

Will a new attitude and a new focus be initiated and sustained from the early days of the reconstituted judicial system?

How is the emphasis on **timeliness** and **efficiency** to be delivered and the focus sustained?

The most critically important element in the reconstituted court system will be how well the court presidents perform in managing the courts. The court presidents, assisted by a well trained cadre of court administrators, have to be the agents for sustained change and reform within the courts. The newly appointed court presidents must not be allowed to define the role of the court president on a court by court basis. The enhanced, expanded role of the court president as executive officer of the court and manager for the future must be presented to the new appointees with specific functions defined and techniques or approaches shown and taught to them. To take advantage of the opportunity that is being created with the appointment of a nationwide group of newly selected court presidents, a carefully formed **Coordinating Council** or planning group is needed to begin work on a course that defines what it means to be a court president in 2004 and beyond. A radically different approach is needed in preparing this course for court presidents (and court administrators) from the usual methods used in training judges. The course for court presidents, and quite probably for court administrators, is **a course for judicial managers**. While certain areas of substantive and procedural law may be included in the sessions, the emphasis should be on **management**:

- giving direction and guidance to others,
- producing results by a deadline,
- setting goals,
- utilizing resources,
- identifying and addressing problems, and, most important,
- focusing on timeliness and efficiency in a court setting by processing and resolving cases promptly.

Justice is not being sacrificed for efficiency but justice is being defined to include efficiency/timeliness as a vital element within the concept of justice. Court presidents with the assistance of capable court administrators must understand and be committed to achieving prompt justice or justice within a reasonable time.

Attachment A to this report is a working draft of a curriculum that could be refined and developed by a newly formed **Coordinating Council** for training court presidents shortly after the appointment process is completed or even while the process is still underway if multiple course sessions are offered. In addition to the enhanced role of the court president, the future role of the court secretary/court administrator must also be included in the management training. Neither court presidents nor court secretaries have received any

guidance or training in the past in the most critical aspects of their positions of leadership within the courts. The court president and the court administrator must be considered as a **management team** with a well thought out division of management and administrative duties. The proposed course should be designed as a joint program for both court presidents and their court secretaries/administrators. **If real reforms are to be initiated and sustained within the courts, where is the necessary leadership going to come from if not from the court presidents and the court administrators?**

However the court president and court administrator course might eventually be structured, the points to be realized by key parties (USAID, IJC, MOJ, ABA/CEELI) in the judicial reform effort are:

- 1) A unique opportunity is being created with the nationwide selection of new court presidents.
- 2) A management course for court presidents and court administrators should be designed in the coming months to take full advantage of this opportunity.
- 3) The course should be designed to challenge the court presidents and court administrators to function in a new fashion with an emphasis on using techniques and procedures that will achieve greater efficiency in case processing and disposition. **Time is important.** Excuses, delays, and inefficiency won't be accepted.

FROM THE MACRO TO THE MICRO

COURT ADMINISTRATION & CASE MANAGEMENT: A SYSTEMATIC APPROACH

What is “court administration” and “case management”? These terms are widely used by many people but are rarely or only vaguely defined. Both terms include many elements. Certainly a course designed for court presidents and court administrators on how to manage all aspects of how a court functions is a big picture, court administration approach. Court administration involves all aspects of how a court functions, how it is organized, who performs specific functions (both judges and staff), and, most importantly, how cases are processed and resolved because the primary function of a court is to resolve cases. Case management focuses on the specifics of how cases are processed and resolved but like the term “court administration” there are a number of elements that constitute “case management.” Unfortunately, most judges adopt a passive mentality when appointed to the bench and usually regard themselves as being subject to the legislature for the promulgation of laws and the appropriation of money or resources; subject to the executive branch (Ministry of Justice) for policy formulation and internal operating guidelines as well as liaison with the legislature; and subject to the number and nature of lawsuits filed with the court and the behavior of parties and attorneys. This generally passive mentality hinders a court's ability to manage its caseload. Case management requires that a court collectively adopts an affirmative, activist approach to case management where the judges assert control over the case process, enforce discipline within that process, and focus on the timely and efficient rendering of justice in all cases brought before the court. If a passive attitude and mentality prevail among the judges then effective case management will simply not occur and cases will linger in the court system much longer than what is necessary or acceptable to the public who

want reasonably prompt justice. In the commercial sector, businesses, banks, and investment firms cannot afford to absorb the additional costs that poorly run courts inflict on a society and the economy of that society. Investment money and business talent will flow elsewhere. Judges have to understand the negative impact and the high cost of court inefficiency.

Attachment B to this report is a document entitled “Case Management Model” which sets forth twelve steps to an affirmative case management approach. In preparing for the reconstituted Bosnian & Herzegovinan court systems that will emerge in 2004, various approaches can be used in trying to implement specific case management techniques: training programs, pilot projects in selected courts, reports with recommendations. The court presidents and court administrators must become familiar with case management techniques. Incentives may have to be devised to get individual courts to try some combination of these techniques. The **Coordinating Council** that has been suggested to plan a course for new court presidents and court administrators should include detailed case management segments in the course curriculum as has been recommended in the curriculum outline. In addition, ABA/CEELI or other qualified teaching organizations should be asked to offer a series of case management workshops for First Instance judges and court administrators. Particular emphasis should be placed on early training for those judges who are selected for the First Instance Commercial Divisions. While case management training is important for the judges selected to serve in the Commercial Divisions, these techniques are not limited to only specialized divisions or certain categories of cases.

Court presidents and regular judges need to understand that case management is **not** limited to what court staff do in maintaining case files or recording case events or in the use of computers in a partially or fully automated case processing system. While trained staff do perform certain key functions within a case management system and computers are a powerful and useful tool, judges have to be fully engaged in and committed to **managing cases** which necessarily involves a focus on timeliness during all phases or stages of a case from case initiation to final disposition. This “conversion process” from a business as usual, passive approach to setting time limits and monitoring and enforcing compliance with court deadlines is a difficult undertaking. A judge directed affirmative case management approach will probably be resisted or viewed with great hesitation by most judges and court staff when first introduced. What is involved is not only utilizing new procedures and techniques but changing long ingrained court culture. The court presidents and court administrators need to be the prodders, the cheerleaders, the teachers, the enforcers so that the case management process moves forward.

WHERE TO BEGIN; HOW TO START

Some entity needs to organize and oversee the process of implementing a case management system within the courts of Bosnia & Herzegovina. The Ministries of Justice should probably be contacted and involved although the decentralized Cantonal system in the Federation poses special problems. I suggest using the proposed **Coordinating Council** as the entity to introduce and implement this process. I further recommend that the **Coordinating Council** form a **Case Management Working Group** consisting of five judges and three court secretaries to meet regularly under the direction of the **Coordinating Council** and begin addressing and designing the elements for a Bosnian case management system. The principles and the techniques need to be tailored to local culture so that these new procedures will be properly understood and effectively implemented. Even though the

judicial appointment process is ongoing, the **Case Management Working Group** should be formed and convened so that the process begins and a work product is produced for subsequent use in both training and implementation efforts. Two key questions must be considered and addressed:

- 1) How can the concept and the techniques of case management be introduced into the two entities' court systems on a fairly wide basis but particularly in the sixteen courts that will have Commercial Divisions (ten Municipal Courts, five Basic Courts, and the Basic Court in Brcko District)?
- 2) What about the Second Instance courts that will be involved in and affected by both court administration changes and the introduction of specific case management techniques?

The court presidents, judges, and court administrators of the Second Instance courts must be included in any implementation plan or serious problems will quickly develop if this important group is not included and their participation is not encouraged. The present appeal process is part of the delay problem afflicting the courts. Second Instance court presidents are very important participants in this effort to reform and improve the performance of the courts.

STEP 1. Event Delineation; Standardized Entry Format.

The **Case Management Working Group** should be convened under the direction of the **Coordinating Council** and given a series of specific tasks. The first task would be to identify the individual steps or possible events in the civil case process with a subset of identified steps or events in bankruptcy and liquidation proceedings. Each step or event should be identified and listed:

- Complaint filed,
- Judge Assignment,
- Preliminary Examination or Screening by Judge,
- Service on Defendant(s) obtained (how many attempts),
- Response filed,
- Standard Motions or Pleadings identified,
- Preparatory Hearing set,
- Preparatory Hearing held,
- Possible Referral to Mediation Procedure,
- Entry of a Case Management/Scheduling Order (suggested),
- Types of Evidence Requests identified,
- Witness Appearances,
- Document Introduction (filing with the court),
- Main Hearing scheduled,
- Main Hearing held,
- Interim Decisions,
- Final Judgment,
- Appeal filed (if any),
- Disposition on Appeal.

This limited sample list is only an example of the process that must be carefully gone through by the **Working Group**. A second part of this task is to agree to a standard entry format for each event. For this task, a computer programmer should be included in the discussion to advise the **Working Group** on a protocol that can later be easily adapted for computer entry. Even in a strictly manual case processing system, all steps or events should be identified and defined with a standard recording protocol to ensure the accuracy of statistical and management data that may be generated and to be able to mark and measure time periods between separate events. The standardized list of case events will be used in training programs and will be disseminated to all courts as the format to follow in data entry.

The question of automation is naturally going to arise, especially from courts that already have some computers or automation equipment and are using that equipment in various ways. Automation is a related but separate discussion but this event delineation/standard entry protocol exercise will be a very useful pre-automation step and will help expedite any automation conversion efforts. One very serious problem that is apparent within the courts that have some limited automation is the fragmented, diverse way the computers are being used and the lack of any standards on creating data bases or developing operating software. Automation demands a standardized, uniform method for entering data.

Another very important question that the **Working Group** will need to address early in its deliberations is the possible elimination of various court registry and index books in which case information is now manually recorded and the conversion to a summary docketing system using a standard docket sheet format. **Attachment C** to this report is a sample docket sheet on which almost all case data can be recorded. The sample can be revised to include other party and case data. The docket sheet presents a summary history of the case and enables a viewer to quickly determine the status of a case and what events are scheduled. Docket sheets are used in many jurisdictions in place of the older practice of recording case information and events in a series of different case registry ledgers or books. Conversion to a summary docketing system is inexpensive but some may argue that the conversion should be directly from the existing multiple registry/index book system to an automated data base system once minimal automation equipment is available, properly configured, and properly utilized. The question of introducing and using a summary docket sheet system in the courts should be presented to and discussed by the **Working Group** as an alternative manual data entry method to the present, seemingly quite cumbersome multiple registry book system. The **Coordinating Council** and the **Working Group** have a number of policy or strategy questions to consider and decide in formulating a case management implementation strategy.

STEP 2. **Standard Time Frames.**

Based on the new laws that are proposed (notably the Civil Procedure Codes) and which should be adopted in the near future, the **Working Group** should establish a series of practical time frames in which events in the civil case process should ideally occur. For example:

- Receipt of Complaint, opening new case file, assignment to judge—one day;
- Initial examination by judge or legal staff—three days;
- Correction of Deficiencies in Complaint—fourteen days;
- Delivery of Correct and Complete Complaint to Defendant(s)—30 days;
- Receipt of Response—30 days;

- Setting of Preparatory Hearing after Receipt and Review of Response—3 days;
- Preparatory Hearing—30 days;
- Possible Referral to Mediation Proceeding--???
- Required pre-hearing filings (experts' reports, documents)--???
- Main Hearing--???
- Decision/Judgment rendered--???

This partial list has to be expanded by the experienced members of the **Working Group**. Separate time frames for a bankruptcy proceeding, liquidation, and other commercial litigation need to be developed. These time frames in which case events should occur put all participants on notice and begin to set expectations rather than having an open ended process with no clear expectation for closure of the case. Much more discussion will have to be devoted to setting reasonable time frames but the time frames should be realistic and should be goals to be observed by the parties and the court in the context of each case. Other time frames can be developed for other categories of cases. The goal is to introduce both the concepts of timeliness for all case events and final closure of the case early in each case.

STEP 3. Case Differentiation; Processing Tracks.

There are many different types of cases with varying degrees of difficulty. A “one size fits all” approach does not work in the legal arena. The number of parties involved in a case, the number of issues or claims that are raised in the lawsuit, and the degree of difficulty of the legal issues in the lawsuit will require different time frames for final resolution. A competent jurist should be able to make a fairly accurate assessment of the complexity of a case after an initial review of the pleadings. The **Working Group** needs to recognize and address this reality. The **Working Group** also needs to examine the provisions in the draft Civil Procedure Codes concerning the Preparatory Hearing. Two specific tasks should be requested.

The first task is to discuss three broad categories of case difficulty—expedited, standard, and complex—and develop a separate case processing track for each category of case:

- an A Track for rather simple cases that should be able to be disposed of within (?) months;
- a B Track for standard cases that should normally be able to be disposed of within (??) months; and
- a C Track for complex cases that can be expected to take longer than (??) months to resolve.

An upper limit should always be set for how long a complex case is expected to take and the case schedule should be tailored to the closure deadline. The time periods are all subject to determination by the **Working Group** but three different case processing tracks need to be developed for simple, standard and more complex civil litigation. Commercial litigation can be more involved than standard civil litigation so special tracks should be devised for commercial cases but with the same approach: a processing track with realistic time frames for simple, standard and complex business litigation. Bankruptcy is a special procedure and a separate track(s) should be developed for the sequence of events that occur in bankruptcy cases. The **Working Group** will have to decide the appropriate time frames for the various case processing tracks and whether different set of tracks will be needed for

different categories of cases. The point, however, is that every case should be assessed and placed in an appropriate case processing track early in the process so that all participants have the same expectations regarding the processing and disposition of the case.

The second task in this step of devising a case management system is to discuss the concept and develop examples of comprehensive **Case Management Orders** that would be issued by the judge in every case at the conclusion of the Preparatory Hearing. The Preparatory Hearing is at the core of any good case management system. The future course of the case should be determined at the Preparatory Hearing. The judge's assessment of the case (not on the merits but on the procedural and administrative needs of the case) based on a review of the pleadings and discussion with the parties should be set forth in a **Case Management/Scheduling Order** that governs all future events in the case. People may argue that not every future event can be foreseen but most major future case events can and should be anticipated, especially if the parties and their attorneys come to the Preparatory Hearing prepared to discuss the case and are forthcoming with the evidence to be presented and any witnesses that will be called upon to testify at the Main Hearing. The judge must impress upon the parties and the attorneys that all necessary steps must be taken in advance of the Main Hearing so that the Main Hearing can go forward as scheduled and the case gets resolved within the time frame established in the **Case Management/Scheduling Order**.

The judges on the **Working Group** need to thoroughly discuss how the Preparatory Hearing should be conducted under the provisions of the proposed Civil Procedure Codes. **Attachment D** to this report is a draft **Case Management/Scheduling Order** that can be used as a sample to design several realistic sample orders for subsequent presentation to court presidents and judges in the use of these orders as a case management tool to control the flow of a case. Court presidents will need to urge the adoption and regular use of **Case Management/Scheduling Orders** along with a firm commitment by the judges to enforce the orders. Frequent continuances resulting in resetting the Main Hearing will greatly weaken the effectiveness of **Case Management/Scheduling Orders**. The schedules should be realistic and allow the parties and their attorneys adequate time to prepare for the Main Hearing but *the schedules must be observed and enforced*.

STEPS 4, 5, & 6. Monitoring; Court Action; Consequences For Non-Compliance

After a case processing schedule has been established, the schedule must be monitored or cases will "drift" and no efficiency will be gained. The responsibility for monitoring case schedules would normally be delegated to the court staff. There are training issues that need to be addressed as well as what methodology will be used to actually monitor compliance with case scheduling orders. In an automated data system, reports can be generated that list all "overdue" events. In a manual event recording system, a calendaring system must be devised and utilized so that compliance can be regularly checked. Even when a stay of proceedings is entered, such as a collateral case affected by a bankruptcy proceeding, there should always be a future status check date. Schedules should never be left open ended. There should always be some next scheduled event, deadline, or automatic check date until the case is finally disposed of. Court presidents and court administrators will have to "engineer" how the monitoring will occur by training and possibly reorganizing staff.

When delinquencies are noted, one of two actions can be taken by the staff. A reminder or inquiry could routinely be sent to the delinquent party with a new deadline for

corrective action or the case can immediately be referred to the assigned judge for instructions on what action (imposition of sanctions or fine) should be taken. The schedules must be enforced but it is possible to allow some limited latitude so long as the overall case management schedule is not affected or altered. Interesting policy decisions will have to be made. Court presidents cannot allow too much latitude to be granted or the schedules will lose all meaning and the time gains in processing cases will be lost. The degree of leniency/strictness will have to be carefully monitored.

Delinquencies must be taken seriously and schedules must be enforced. The **Working Group** needs to devise and recommend what consequences should be imposed depending on the seriousness of the non-compliance. The proposed Civil Procedure Codes refer to consequences to be imposed but other than in the Contempt of Court section penalties or sanctions don't seem to be specified. A fine from 100 to 1000 KM can be imposed on someone "who has abused the rights recognized by this Law through his/her civil actions." Civ. Pro. Code Art. 403. Similarly, a person who insults the court can be fined from 100 to 1000 KM. Art. 404. Failure to inform the court of a change of address can result in a 100 to 1000 KM fine. Art. 405. Those who try to thwart the delivery of a writ can be fined as can a summoned witness who fails to appear. Art. 406 & 407.

Should monetary fines be imposed for delinquencies to ensure compliance?

Will judges impose authorized sanctions in asserting their control over the case process?

Will judges, at least at the same court, be consistent in imposing sanctions for delinquencies and non-compliance with court orders?

These questions and the policy to be followed should be discussed by the **Working Group** during its deliberations and by court presidents in appropriate forums such as a management training course. Court schedules without enforcement will quickly become useless.

STEP 7. Internal Court Guidelines.

There is both external and internal discipline to be followed in an effective case management system. As well as asserting control of the case process and imposing schedules to be followed and deadlines to be met, the judges must exercise internal control. Credibility will be lost if the judges do not exercise self-discipline and consistency. The reason why model or template case tracking schedules are suggested is so that there is consistency in handling similar types of cases. Judges cannot take weeks to perform a task that should be completed in days. When motions are submitted to the court by the parties, judges must review and rule on the motions promptly. When a new case is filed and assigned to a judge the initial review must be accomplished quickly so that corrections can be made or so the case can proceed by delivery to the defendant. Hearings should be set promptly. Continuances must be tightly limited. Firm, consistent policies must be followed concerning the timely admission of evidence and the appearance of summoned witnesses so that the case can proceed in an orderly fashion. Internal court guidelines are needed and the court president must play the role of overseer or enforcer. If a judge is experiencing serious problems, the court president should be prepared to intervene and provide appropriate assistance. The court

president must insure that reasonable internal court discipline is maintained. This sensitive role involves far more than seeing that each judge meets his or her monthly quota of cases.

The importance of having internal court guidelines and the role of the court president in enforcing these guidelines should be discussed at any program for court presidents. The court presidents must understand the “different hats” that they must wear in guiding and managing the court. Managing the courts in 2004 and beyond can not be “business as usual.”

STEP 8. Data Collection; Statistics; Reports

In the present multiple registry book, manual data entry and record keeping system, gathering data is a cumbersome, labor intensive and time consuming effort. Statistics are generally looked upon as drudgery. In most courts, only the statistics that have to be generated for required reports are produced because of the effort involved. In a modern, well managed court, the court president and the court administrator should regularly review a range of court data and discuss what actions might be required to improve court operations. Data collection and statistics generation are much more difficult in a manually maintained system but steps can be taken to improve a manual data gathering process. Automation is an enormous help if the court has a good software program and minimal automation equipment that is properly configured.

The difficult questions of what data should be collected and how the data can and should be utilized should not be ignored. We live in the “Information Age.” Without relevant, current data we can’t fully comprehend the problems an entity such as a court faces or how best to address those problems. As part of the management training for court presidents and court administrators the subject of statistics and reports should be explored. There are experts in this field who can teach efficient methodologies even in a manual record system. Number or letter codes and color coding systems can be employed to ease the data collection effort. The event delineation process and standardized entry format discussed in STEP 1 and the use of a standard Docket Sheet for recording case events (also presented as an option in STEP 1) would be helpful tools in improving data collection for statistical reports.

STEP 9. Court and Case Management Decisions.

Part of the training to get court presidents and court administrators to think as managers and problem solvers involves fostering a different attitude and a different perspective on not only how data is gathered and how reports are produced but how data can be used to manage the court. In talking with both judges and administrators at the courts, both groups tend to have a negative attitude toward statistics, particularly the administrators because of the time and effort involved in data collection. No one indicated that data other than what was required to submit in reports was kept. There was no indication that resources (people and equipment) are shifted within the court in response to increased or changing case data. (It is interesting to note where computers are placed and how they are used in courts that have some automated equipment.) There is little, if any, effort to track the age of cases other than the fact that cases fall into the “Backlog” category if they are not resolved within an annual reporting period. The Ministries of Justice and the court presidents need to be involved in a provocative discussion on statistics, reports, and management decisions so that a different approach can be followed in the future. Getting change in this area is a very difficult

challenge. There is also a dangerous but ill-founded belief that automation will virtually solve all of the data collection and statistics generation problems.

STEP 10. Delegation of Ministerial Functions

It has been noted in numerous reports that judges often spend time on functions that seemingly could be delegated to trained staff members. The **Working Group** should be asked to address this problem. The **Working Group** should be asked to compose a specific list of non-judicial tasks that judges now perform that could be delegated to a qualified staff member. The judge members and the administrator members of the **Working Group** may have different ideas as to what constitutes “judicial work.” Certainly, from a non-Bosnian perspective, it would appear that judges should be involved in the company/enterprise registration process on a limited, by exception only basis. The initial review of new complaints could be handled by legal staff (non-judges) and only referred to a judge if a problem was noted. By systematically going through the case process (STEP 1) the **Working Group** should be able to identify various tasks that can at least be considered for delegation to staff.

Any list of suggested duties that can be delegated to staff should be presented to and discussed with court presidents and court administrators at the management training course. To be effective, there needs to be more than a list of possible functions that could be transferred or delegated. There needs to be a strategy for effecting the delegation and transfer. This process will involve training so that both judges and staff feel comfortable with the delegation of duties. Judges will have to be available to answer staff members’ questions. The court presidents should involve other judges in this program of shifting ministerial functions from judges to trained staff. Any transfer should be structured on a phased basis over several months so that the change is not too much too soon. In time, other duties or functions that were not originally on the list might be transferred from judges to staff. In addition to the issues of training and phasing, the issue of pay and staff morale will have to be addressed. Staff already resent the large differences in pay between judges and staff. If more duties are shifted to staff without some additional compensation, there may be increased resentment and a lack of cooperation in this administrative restructuring process.

STEP 11. Court Meetings; Communication

Oftentimes some of the simplest solutions are overlooked in solving problems. Meetings can be a bane to some people’s lives but well conducted meetings can be a way to share information, get valuable feedback or suggestions, make people feel included, and make sure that everyone understands what the goals are and what the plans to achieve those goals are. The internal organizational procedures followed at courts differ widely. Some court presidents meet with the judges on the court regularly, although sometimes infrequently. Other court presidents rarely convene court meetings or don’t share much information with the judges. I have heard a variety of comments on court practices from the limited number of judges I have been able to meet. It is important to stress the importance of good communication with the court presidents and with the court administrators. Plans have to be shared. Questions have to be answered so that doubts and confusion can be minimized. Other means of communication, such as a newsletter or a bulletin board, might be used to maintain a flow of information, especially when a period of substantial change is underway.

The **Coordinating Council** definitely needs to include a session on the Art of Effective Organizational Communication in a management course for court presidents and court administrators. If open communication is not part of the culture, efforts need to be made to change the culture and foster communication.

Limited communication is not only a problem internally at the courts. Many of the international agencies that are studying and assessing the courts share very little of their analyses and recommendations with the courts being studied and the participants who are frequently interviewed. If local buy-in and active support for reform and significant changes are being sought, the international community can do a much better job in sharing information and soliciting more input from local participants.

STEP 12. New Judge Orientation.

Two new Judicial and Prosecutorial Training Institutes have been created with plans to offer training to both new judges and more experienced judges. How effective the Training Institutes will be cannot be determined at this early stage. Even if the Training Institutes had a developed history and a respected track record, each court should be encouraged to develop a structured and tailored new judge orientation program for that court. Some may ask what judge orientation has to do with court administration and particularly case management. The answer is that the good practices that may be developed at a court, the culture of excellence and timeliness that should be developed, the practical wisdom gained from years of experience on the bench, a feeling of collegiality and support among colleagues, and an initial framework within which to operate can all be conveyed through a well designed new judge orientation program. New judge orientation programs can be a powerful tool in building a well focused case management philosophy at a court. Every court president and court administrator should be “tasked” or strongly urged to design and implement such a plan at their respective courts. A “how to” session on designing a New Judge Orientation program should be part of the oft recommended Management/Leadership course for court presidents and court administrators. In terms of building for the future and not losing what may be gained through hard work in achieving certain goals, a methodology is needed to “enculturate”—not indoctrinate—new judges as they join the bench. Experienced judges who have been on the bench can offer useful information both on substantive law and procedural practices. The court president and court administrator should both be involved in the orientation program. The program should be structured—not haphazard or ad hoc. Carefully selected judges should be asked to address specific subjects in their meetings with each new judge.

Another new judge policy that needs to be adopted and followed is **not** to allow existing judges to dump the oldest and most problematic cases on the new judges. A court president can control the cases transferred or assigned to a new judge. Judges should not be allowed to escape responsibility for poorly managed cases by transferring the oldest cases to the newest judges who don’t have the experience or know-how to initially manage more complex litigation.

SIX MONTHS--SIXTEEN MONTHS--THIRTY-SIX MONTHS.

Court reform and restructuring are big tasks. Many different people and organizations in Bosnia & Herzegovina are working in the field of judicial reform and court improvement. The Independent Judicial Commission (IJC) under the auspices of the Office of the High Representative (OHR) has taken the lead in court restructuring and reform but coordination and continuity among the various participants are real time, real world problems. With so many different participants and so many different studies and plans there is a continuing danger of piecemeal approaches and fragmentation within the court reform/improvement area. There is a good deal of informal, ad hoc communication and information sharing but the process is somewhat haphazard with an ebb and flow depending on current participants and their relationships. That is why the formation of a **Coordinating Council** with working representatives from the key court reform/improvement organizations is very important. A group with a long term, big picture perspective is needed to design and guide the effort that will be needed over the next three years. Even if some of the individuals change over time, a coordinating entity with a master plan can work to ensure continuity and the phased implementation that is needed for any large project to succeed and be sustained.

A SUGGESTED WORK PLAN/SCHEDULE

May—November, 2003

- Continuation of the court restructuring and judicial appointment process.
- Adoption/Promulgation of new, harmonized laws in Federation and Republika Srpska.
- Formation of a **Coordinating Council** with working members selected from IJC, USAID, Ministries of Justice, and possibly other entities to be determined. There should be a limited number of permanent members of the **Coordinating Council** but the membership can be supplemented as work progresses with temporary additional members. Begin efforts to design a management/leadership training course for newly appointed court presidents and court administrators.
- Formation of a **Case Management Working Group** (under the guidance of the **Coordinating Council**) consisting of approximately five judges and three court secretaries to begin work on a tailored Bosnian case management implementation plan. The **Working Group** will be given a series of specific tasks in designing case management techniques and suggestions for implementation in the courts. A software programmer should be hired as a technical advisor to the **Working Group** to advise the members on questions with automation applications.
- Request ABA/CEELI or other competent training organizations to use work product of the **Working Group** in designing workshops for judges on the use of case management techniques to expedite caseload.

- Request ABA/CEELI or other competent training organizations to design/plan substantive course workshops on the new business related laws for judges who will be selected for the new Commercial Divisions. Training for trustees should be anticipated. A training organization for trustees should be identified.
- Once all of the Second Instance court presidents are designated by the High Judicial and Prosecutorial Councils, the **Coordinating Council** should invite all of the newly designated Second Instance court presidents to attend a one day meeting where the work and the plans of the **Coordinating Council** on court administration and case management are explained to the newly appointed Second Instance court presidents. This meeting is intended to seek the Second Instance court presidents understanding of and support for the comprehensive court administration and case management improvement efforts.
- **Coordinating Council** sends an Inventory Survey (See **Attachment E**) to the sixteen First Instance courts where a Commercial Division will be created and the sixteen Second Instance courts where appeals in commercial litigation will be decided to learn what equipment the relevant courts now have.

November 2003 to March 2005

- **Coordinating Council** conducts the first of three management/leadership workshops for newly appointed court presidents and court administrators. (Mid November to early December depending on the status of the judicial appointment process.) The first targeted group would be the court presidents and administrators from the courts where Commercial Divisions will be formed—both First Instance and Second Instance courts.
- Second and third management/leadership workshops for newly appointed court presidents and court administrators should be offered early in 2004 as soon as the judicial appointment process is completed and suitable arrangements can be made.
- ABA/CEELI offers the first of two workshops on the relevant commercial laws for the judges in the newly formed Commercial Divisions. Both First Instance and Second Instance judges from courts handling commercial litigation should be invited to the workshops. (February—March, 2004)
- **Coordinating Council** sponsors a series of workshops on case management techniques to be used in expediting caseload. ABA/CEELI or another competent training organization should be asked to present the case management workshops. Ideally, these workshops should occur in the early months of 2004 so that most courts are using similar case management techniques by July 2004. The work of the **Case Management Working Group** should be incorporated into the case management workshops. The workshops should be “how to,” practical sessions.
- **Coordinating Council** should contract with the software program advisor to the **Working Group** to design a case processing/case management software program for use in the courts. The timing will depend on fund availability and the progress in other areas of the comprehensive court administration/case management effort.

- **Coordinating Council** should form a **Court Visitation & Assistance Group**. This new group should be formed by May of 2004 and should begin to visit courts and offer assistance in implementing the case management techniques. The purpose of this group is not to review or assess but to offer assistance by suggesting or showing how certain procedures should be organized or how techniques can be used to implement the case management plan. The **Court Visitation & Assistance Group** might consist of one representative from the **Coordinating Council**, two court presidents who have shown strong support for using case management techniques, one of the more accomplished court administrators, and a technical advisor or court expert.
- Visits to courts continue to help reach “critical mass” when virtually all courts are using case management techniques and judges and court staff are focused on and committed to the timely disposition of all pending cases.
- Automation is introduced into courts as funds become available but on a controlled basis according to national standards. (See Automation Section, infra.)
- Introduction of Mediation procedure as alternative dispute resolution option.

March 2005 and Beyond

- Continued expansion of automation in the courts but under supervision. At some point the role of the **Coordinating Council** should gradually reduce and the role of the Ministries of Justice (entity level if not at the national level) should increase in coordinating court activities, particularly with automation expansion where a fragmented, disjunctive implementation policy will waste the efficiency gains to be derived from automation.
- Training for Bankruptcy trustees by competent training organization. Trustee training may occur earlier if funding is available and a suitable training course is designed. A competent corps of trained trustees will be needed as more bankruptcy proceedings are filed.
- Reduction of pending case backlogs. (See Backlog discussion, infra.)
- Changes in certain laws based on first year of experience with the new laws.
- Adoption of additional procedures and techniques as case management philosophy becomes widespread: use of summary judgments, default judgments, dismissal for failure to prosecute, bulk dockets.
- Expansion of mediation procedure in disposing of cases.

OTHER TOPICS, OTHER PROBLEMS, OTHER SOLUTIONS

TOPICS

1. AUTOMATION. In the 21st Century, automation has to be included in the consideration and planning for any large project, especially one involving large amounts of data. In addition to computers and peripheral information technology equipment, standard office support equipment is needed in a “modern” office. The IJC *Justice in due time* report addressed many of the automation related issues facing the courts in Bosnia & Herzegovina: a wide disparity in what equipment is in the courts and in how the limited amount of automation equipment is being used; different types of equipment and incompatible software development; very limited use of computers in a case management application; frequent use of computers only for word processing applications; no uniformity in the procurement of hardware or in the development of software. The IJC report recommends a minimum level of equipment in all courts with more equipment in larger courts due to a higher case volume.

Concentrating on the sixteen First Instance courts that will have a Commercial Division, the following cost projections are made for providing these courts with a minimum level of equipment to sustain an efficient operation. An equipment survey should be conducted to learn what equipment each court now has and whether the software that is being used is compatible with other courts:

Mid-range copier.....	7000 KM
(feeder should be included; sorter is optional but preferred)	
Fax machine.....	1500 KM
(cheaper machines are available but reliability is sought)	
Computer Work Station	Approximately.....1300 KM
(if bought in volume the price would be lower)	
Printer	1200 KM
(cheaper printers are available; mid range is desired)	
Server for networking	1400 KM
(networking should be included for multiple stations)	
Monthly support & service contract.....	800 KM
(will vary depending on location and # of units)	
Internet Service.....	800 KM
(possibly optional but should be planned & budgeted)	

A minimum of three computers per court is recommended with the larger courts having five to seven computers devoted to case processing data and case management. Phone lines, extra furniture, and a scanner are not included in this cost projection. Some existing equipment may be part of the final configuration at each court and would reduce the actual cost if compatible and useable for the purposes intended. Some price reduction would be gained by volume purchasing if the procurement were tendered as one or two bid packages. The cost per court would range from 16,300 KM for a smaller court to 21,500 KM for a larger court handling commercial cases. There is computer equipment being used in the company registry at most of the Second Instance courts where the company registry work is presently handled. Additional

costs may be included depending on the disposition and use of existing company registry computer equipment.

2. **BACKLOGS; BULK DOCKETS.** Once again, the IJC *Justice in due time* report has an excellent section on the backlog problem and has listed several effective strategies for dealing with this widespread, troublesome problem. The subject of how to eliminate backlogs should be included in any court president training program. Court presidents have to focus attention and resources on the problem. All of the judges have to be involved in addressing the issue of aging cases that are not “moving” toward disposition. As the IJC report recommends, each court needs to create a list of all of the backlogged cases, analyze the list, and begin to divide the list into different categories because different actions will begin to remove cases from the list and progress can be noted. “Dead” cases should be dismissed and cases where the parties want to pursue a court resolution should be given a schedule to follow. Each court should establish a goal of reducing all backlogged cases by 25% within six to eight months with the effort to continue after the initial period. Another strategy would be to place all of the small claims cases on the backlog lists on a series of Bulk Dockets where judges schedule large numbers of cases at ten minute intervals for a brief hearing and an immediate resolution.
3. **BOOK OF RULES.** I believe that the IJC is presently engaged in drafting an updated Book of Rules. The **Coordinating Council** should check and coordinate efforts with the IJC if such a project is underway. There should be one overarching Book of Rules for all of the courts in Bosnia & Herzegovina or two virtually identical Book of Rules for the two entities. The challenge of implementing an effective case management system will be greatly impeded if the governing Book of Rules on internal court operations is not in harmony with the new procedures being advocated. If the Books of Rules are not being overhauled and updated, then immediate attention should be directed at this project. As the IJC *Justice in due time* report recommends, the Book of Rules should state general operating guidelines or principles and leave a considerable amount of discretion to the individual courts on how to organize and run the court’s internal operation. The effort to update and harmonize the Book of Rules will be complicated in the Federation because of the Cantonal Ministry of Justice structure.
4. **DELIVERY/SERVICE OF PROCESS.** In the past, large amounts of time have been lost during the court process because of frequent, long delays in being able to serve the defendant with the complaint and with the subsequent service of pleadings and court papers on the participants. The proposed new Code of Civil Procedure addresses some of the problems that have plagued the courts and the parties. New provisions should provide a more effective system for more quickly obtaining service. Article 335 of the draft Code of Civil Procedure authorizes the use of a “legal person registered to commence delivery activities.” I don’t know how long it will take for private delivery services to become available but this option should help speed up the delivery process. A stiff fine can be imposed under Article 405 on a party who fails to notify the court of a change of address. Except for the delivery of the complaint, the parties will be authorized to deliver all other pleadings to the adverse party. Art. 352. Court presidents and court administrators need to monitor this area closely because it is often overlooked by the court or “tolerated” because of limited resources or a feeling that nothing could be done by the court to effectively address the lack of timely

delivery problem. The new provisions of the draft Civil Procedure Code should be used aggressively. The court president may have to enlist the assistance of one or two judges to help monitor the delivery process and any continuing problems that persist.

5. **DEFAULT JUDGMENTS, SUMMARY JUDGMENTS, DISMISSAL FOR FAILURE TO PROSECUTE.** A default judgment when a defendant fails to respond to a complaint is clearly authorized in Article 179 of the draft Code of Civil Procedure. Apparently, even though default judgments have been authorized in the past, limited use has been made of this procedure. Conversely, if a plaintiff fails to prosecute his/her case, a show cause order or some suitable form of notice should be used by the court to notify the plaintiff that the case will be dismissed if no action is taken within a specified period of time. A court cannot permit inert cases to indefinitely remain on its docket of pending cases. Either a case moves forward or is disposed of by an appropriate procedure. Court presidents have to advocate the aggressive use of such procedures to keep cases moving or to clear the court's docket of dead cases. In many jurisdictions, a judge is authorized to decide a case on the basis of the pleadings when the law is clearly in favor of one party and further proceedings would only be time consuming. The proposed Code of Civil Procedure does not have a provision on the use of Summary Judgments but this procedure might be suggested in any future amendments to give the courts another tool in managing the pending caseload.
6. **FORMS.** Form management was not specifically mentioned in the case management discussion but event delineation and standard entry protocol are related to form management. As pointed out in *CASE TRACKING AND MANAGEMENT GUIDE*, a publication of the Center For Democracy And Governance (Sept. 2001), in poorly administered courts, there is no control over form design and use within the courts. "The resulting lack of common data elements and formats undermines the cohesion of the court information base." "If a document submitted by an attorney (or party) is not prepared according to a common methodology or on a standard court form, the document may omit critical information or court staff (or judges) may have to analyze the document to determine how it should be processed." Errors or delays frequently result. This weakness limits the effectiveness and utility of a manual document tracking system and defeats computerization which depends on uniformity and standardization. Thus, not only are event delineation and standard entry protocol important goals to achieve but there needs to be an effort to standardize the many forms used by the courts and the many pleadings and other papers (other than exhibits or original documents submitted as evidence) that are filed with the courts.

Normally, the Ministry of Justice might be expected to promulgate standard forms or formats for pleadings and other papers that are filed with the courts but given the multiple Ministries of Justice this task might best be assumed by the **Coordinating Council** with an assist from the **Case Management Working Group** or another new working group, a **Forms Working Group** that would be assigned the task of reviewing all existing forms and drafting a standard set of forms for use in all of the courts. Forms management definitely needs to be discussed by the **Coordinating Council** and a strategy needs to be devised on how to get control of and manage forms use in the future. Either a separate **Commercial Forms Working Group** might be formed to begin work on the forms to be used in the Commercial Divisions of the First Instance courts or the **Forms Working Group** should be assigned the task of

designing standard commercial/bankruptcy forms as a priority first task. Another option would be to hire a consultant to review all existing forms and draft a standard set of new forms in consultation with judges and court administrators before any new forms are adopted and promulgated.

7. **RANDOM CASE ASSIGNMENT.** A troublesome practice that is followed in many Bosnian courts is the assignment of newly filed cases by the court president to individual judges. This practice is needlessly time consuming of the court president's time but also can create problems of manipulation, favoritism, or the appearance of bias and influence on a case's outcome. This practice can be rather easily changed and some courts have already adopted other means of case assignment to assure the random assignment of cases. There are a number of techniques. First, case assignments should be handled by the Court Secretary/Administrator's office. Neither the court president nor another judge should be involved except under special circumstances. One technique is to create a deck of cards with the various judges' names written on each card. Each judge's name would appear on a prescribed number of cards. The deck would be thoroughly shuffled and would be kept in a secure drawer or box. As each new case is filed and must be assigned to a judge, a card would be drawn from the deck and the case would be assigned to the judge whose name appears on the card. Separate decks can be created for different categories of cases. In some courts, depending on the size of the court or on the number of judges assigned to a particular category of cases, each judge is assigned a digit or digits by random draw for the month and all cases ending in the digit or digits of a judge are assigned to that judge. The random digit assignments should be changed periodically to avoid manipulation by wiley practitioners.

In an automated system, a computer programmer can create decks where the cases are randomly assigned to the judges by the computer. In either a manual or automated random case assignment system, the court president should be involved only if there is a problem or special circumstances that warrant consultation. Judges might provide the court administrator with a confidential list of parties whose litigation the judge should not be involved in because of personal or economic interests.

8. **REVIEW OF COMPLAINTS FOR DEFICIENCIES.** Instead of the current practice where newly filed complaints are assigned to a judge for preliminary examination before delivery to the defendant, the preliminary examination might be assigned to a legal assistant for initial review and a determination if there are deficiencies that need to be corrected before the case can proceed. If no deficiency is found, the case would be randomly assigned to a judge and the complaint and any attachments would be delivered to the defendant. If the legal assistant discovered a deficiency, the case could be referred to the court president or a "duty" judge who would be required to review the complaint and determine if there was a deficiency that required correcting. If the judge concurred, the complaint would be returned to the plaintiff for correction within a specified period. This suggested use of court legal staff would be one example of delegating functions from judges to qualified staff. The court president will have to decide the most efficient use of resources at the court.

CURRICULUM FOR COURT PRESIDENT TRAINING

Organizational Structure and Theory

Presentation by a management specialist on how organizations are structured and how they function as a collective entity.

Court Organization and Management

Follow on presentation by an experienced court manager on how a court can be organized for effective use of all of its resources—personnel, equipment, facilities, and procedures--and how management principles can be applied in a court setting with multiple judges and a support staff.

Discussion: Court presidents need a more developed understanding of court administration and their role as court leader. This subject needs to be explored in some detail so that court presidents can perform their jobs and lead their courts more effectively. An enhanced role for the court administrator/court secretary needs to be addressed. The court president should regard the two positions—court president and court administrator—as a management team. An effective division of duties and responsibilities must be worked out.

Personnel Management

Presentation by a Human Resources specialist on a range of personnel issues and approaches. Hiring, dismissal, discipline, benefits, personnel policies are topics for presentation and discussion with attending court presidents. (Sessions should be interactive.)

Discussion: Even though human resource management and staff development may not have been subjects that court presidents were concerned about in the past, some introduction to typical personnel related issues should be presented to the presidents. Staff morale affects productivity and the working atmosphere at the court. Presidents should be aware of and concerned about personnel issues because these issues impact on the operation of the court. Judges and court presidents frequently avoid or ignore personnel related issues to the detriment of how the court functions.

Budget Preparation & Fiscal Management

Presentation by a Financial Management Analyst on how to prepare a budget, how to monitor ongoing financial activity at the court, and how to ensure proper expenditures and assure accountability for receipts and disbursements.

Discussion: The court presidents need a basic understanding about fiscal management and responsibility. They will have to rely on trained professionals for performance of daily tasks but they should be given enough fiscal training to understand how to plan an annual

budget, how fiscal oversight can be maintained by having periodic reports prepared for their review, and how to establish checks within the financial operation to prevent fraud and illegal expenditures. The concept of budget decentralization should be presented to the presidents so that they understand the greater flexibility under such a system and the greater responsibility that they would inherit under even a partially budget decentralized system.

Statistics and Management Reports

A session on the importance and effective use of good statistics and sound management reports should be a separate topic so that court presidents learn how to use available information (or request better information) to be able to make good management decisions at the court.

Discussion: The collection and presentation of valid data is very important in making good decisions and formulating policy and practice in addressing various issues and problems facing the courts. Judges need to be taught how to evaluate data because in too many instances the data is incomplete or not really relevant to court operations. One example of a significant weakness in current statistics is the inability to readily measure the age of pending cases and the elapsed time between different key events in the case cycle. Presidents and court administrators are required to produce specified reports that all courts in a category are required to generate. In addition, internal management reports may be designed and generated on a regular basis to monitor the flow of the court's caseload, developing or emerging problems, or comparisons among judges that are not sent to a national or entity level repository for publication.

Case Management Techniques

The concept of case management should be defined and explained to the court presidents. Specific techniques should be presented to show court presidents how individual cases can be managed and how entire caseloads can be broken down and monitored. An experienced court manager should define what case management means and how an effective case management program can be implemented.

Discussion: Why is case management so important? Because most cases take *too long* and cost *too much* to resolve in the courts. Courts should certainly be concerned about the quality or fairness of justice rendered but also with the length of time it takes to decide cases and the cost to the parties. The elements of time and cost must be factored into the equation of how the court system is evaluated/perceived in terms of resolving disputes within a civilized society. Court presidents must be committed to avoiding delays by utilizing a court managed, judge directed case management system. Closure or finality for each case must be anticipated and enforced in every case. Courts must abandon the open ended, lawyer dominated process of slow case progression and eventual but not speedy resolution. Case schedules must be used to set the expectations of all participants (parties, lawyers, court staff and judges) early in the court process and continuances must be virtually eliminated.

Planning For and Implementing an Automation Program

An automation specialist who has court experience should explain to the court presidents what to expect in preparing for the eventual conversion from a manually maintained case processing system to an automated case management system where relevant statistics can be readily generated and other reports can be obtained by proper manipulation of the data base.

Discussion: Court presidents must understand what steps must first be taken to improve and standardize a manual case management system. Next an automation specialist needs to explain how to properly prepare for the conversion to an automated case management system from a well organized, properly documented manual operation. Case events must be identified and defined with a standard data entry protocol/format for use in an automated system. Existing reports must be identified and evaluated so that reporting needs are known. Future data reporting and management needs should be anticipated so that software programs are designed with flexibility to meet changing court needs.

New Judge Orientation and Mentoring

A session should be devoted to showing court presidents how to structure an orientation program for all newly appointed judges. The new judge orientation program should be designed to welcome new judges to the court and to help them function more effectively as a judge from the beginning of their tenure on the court. More experienced judges can be used as mentors for a continuing period of new judge transition.

Discussion: Relatively few courts have an effective, well structured new judge orientation program. Each new judge should be given a series of well organized briefings by carefully selected experienced judges on substantive law topics, procedures to note and use, practices that should be avoided (being soft and granting continuances freely), the internal organization of the court, and useful tips gained from actual experience on the bench. The initial orientation program should be supplemented by a longer period of judge mentoring in which designated experienced judges will be available to meet with new judges and guide them as they gain experience and confidence.

Staff Development and the Effective Use of Staff

A session should be presented on the importance of upgrading staff capabilities so that non-judicial but significant tasks can be delegated by judges to properly trained staff.

Discussion: To avoid delays and bottlenecks at the judge's desk, staff should be used whenever possible to handle non-judicial but court required functions. To be able to delegate tasks that judges have traditionally handled, there needs to be a goal of training and upgrading staff. In addition to existing practices, staff should be incorporated into the case monitoring process where deadlines are checked and corrective actions promptly initiated when required events do not occur. There are related issues that will surface and should be anticipated and addressed at the program such as improved compensation for staff assuming more responsibility and functioning at a higher level to improve overall court efficiency. The court presidents should be introduced to the concept of staff development and subsidiary issues that will arise.

Professional Training for Judges

Even with limited resources and tight budgets, court presidents must strive to provide training opportunities for judges on a continuing basis. Presentations might be offered by the newly created Judicial Training Institutes and by organizations that have organized and presented training programs to judges such as ABA/CEELI.

Discussion: There are a number of ways that training can be provided. Court presidents must be aware of various resources and how to use them or encourage their judges to use them. In addition to formal training courses, there are written materials, videos and newer forms of technology by which training can be provided at the courthouse. Computer training should be offered, especially for older judges who may be intimidated by new technology or who have never had prior exposure to the use of computers. In-house discussion among the judges of new laws, procedures, and rules should be utilized. Presidents should be lobbyists and advocates for professional enhancements for the judges on their courts.

Strategic Planning; Issue Identification

A separate, possibly closing session on long range or strategic planning should be presented to the court presidents: How to prepare for and shape the future.

Discussion: Courts and judges cannot afford to consider themselves as passive entities subject to the whim or dictates of other forces. Judges can shape their futures to some extent by planning, by adopting policies and procedures that produce anticipated results, by working toward shared goals, and by identifying and addressing issues rather than letting issues and problems hit them blindside. Court presidents have to be convinced that part of their role is helping to shape the future in positive ways. Automation has already been mentioned and certainly should be anticipated for eventual inclusion in the daily operation of the courts. Appropriate steps should be taken to prepare for the transition from a manual to an automated system. Budget decentralization was briefly mentioned. Certainly court presidents should anticipate handling more financial responsibility in the future. Changes should be anticipated in the business/commercial field. Special units or divisions may be created at some courts, e.g., a Commercial Division, an Administrative Review Unit. Court presidents should be thinking about future developments and participating in the discussions that will shape these policy and organizational decisions.

Substantive Law Topics

In addition to the suggested court administration and case management topics that have been outlined, sessions at a court presidents' conference might be presented on various substantive law topics, particularly on recently adopted laws. Law professors or those who were involved in drafting the laws should be asked to be presenters at the conference. A decision would have to be made whether it would be appropriate to combine a substantive law program, applicable for all judges, with a program primarily directed at the court presidents as court leaders and managers.

Format Issues for Court President Conference

Discussion: In addition to formal presentations by qualified speakers, each session should include a discussion period. I suggest that a different panel of court presidents be selected to engage in a dialogue with the presenter following each formal address or presentation. A skilled facilitator will be needed to guide the discussion and solicit input from the panel members and eventually from the general audience. For some of the ideas that will be presented to sink in, the court presidents will need to discuss the topics and some of the problems that will be faced and some of the consequences of effecting change in court practice and court culture. The panel discussion/dialogue periods will be very important because the court presidents will need to see in practical terms how some of the new ideas and techniques can be implemented at their individual courts. It will also be helpful if the court presidents realize that their efforts will be part of a much broader effort to improve court administration, case management, and overall court efficiency throughout Bosnia and Herzegovina.

Conference organizers might want to consider a final session with all of the court presidents where an open discussion on the merits of the topics presented would be candidly discussed and the problems and possibilities for future implementation would be discussed among the conference participants. The goal is for every court president to leave the conference not only with a new conceptual framework but with a number of specific ideas for implementation at the individual courts.

Ideas for Consideration and Possible Implementation

- Regular court meetings with all court judges to review policies and discuss court operations.
- Regular meetings with court administrator if not already being held to review court operations.
- Meeting with court administrator to discuss personnel policies at the court.
- Meeting with court administrator and financial officer to review and discuss current budget and fiscal practices and possible new financial procedures with new monthly or quarterly reports if not being produced.
- Possible appointment of another judge to assist in financial oversight as Financial Liaison.
- Possible appointment of a committee/working group of judges and court administrator to review all reports and statistical gathering process with goal to produce a report on recommending changes to improve statistics and data gathering. Produce a list of all current reports, dates due, to whom submitted.
- Separate meeting with the court administrator and court registrar on existing reports and data gathering techniques.
- Special meeting with all judges to discuss the implementation of a court wide case management plan. Possible formation of a working group of judges to work on implementation of a case management program for all newly filed cases. Discussion on liaison and communication with the Bar of any new case management program.
- Discussion with court administrator on automation program at the court. Possible involvement of one or more interested judges to participate in automation preparation plan.
- Formation of a working group to design a structured new judge orientation program. Also, the working group should discuss and make recommendations for a mentoring program as a follow-on effort to the initial new judge orientation.

- Discussion with other judges and court administrator on how to train and upgrade staff and begin process of delegation of some functions from judges to staff members. A Training Group may have to be formed to work with selected staff on how to handle newly delegated tasks.
- At a court meeting the president should raise the topic of judge training and how the court can provide training opportunities and support judicial training. A discussion group might be formed to meet periodically to review and discuss newly adopted laws or new rules and procedures.
- The court president might choose to share with the other judges at a court meeting some of the ideas that were presented and solicit the judges comments and input on various initiatives or on the formation of new divisions or units at the court.

Discussion: Court presidents need to be introduced to how courts function as an organizational entity. The court must be regarded as a collective, integrated entity that requires guidance. The president's role as court leader needs to be explored. Different management styles can be presented and discussed. How things get done and how information and direction are communicated within an organization should be presented to and discussed with the court presidents. How meetings and other forms of communication can be used as organization building tools should be covered in this section.

ATTACHMENT 1-B

CASE MANAGEMENT MODEL

The following steps define the basic components of a **case management system** and should be reviewed by a court that is interested in implementing or improving its case management efforts.

1) **Event delineation; Standardized entry format.**

All significant case events/milestones/markers in the case process for each case process or type of case, e.g., civil, criminal, bankruptcy, family, from the initial filing to final disposition must be identified and clearly defined. After being identified and defined, the individual pieces of case information (events) must be put into a standardized entry format so that accurate data can be generated from the court's records based on standard data.

2) **Standard time frames and published case schedules.**

Standard time frames must be set for each event to occur in a case. The case schedules should be publicized and made available to the bar and the public. Time frames help establish the expectations of all participants in the court process. The process is not open ended but from very early in the process a closure date should be set and anticipated by all participants. The goal is to achieve case disposition in a reasonable period of time.

3) **Case differentiation with applicable case schedules or processing tracks.**

Different categories of cases must be determined based on either case type or the anticipated degree of difficulty in resolving the case based on the number of parties or the issues and the complexity of the legal issues. Appropriate case processing time frames or processing tracks (A Track for expedited cases; B Track for standard cases; C Track for complicated cases) must then be established for each category of case. Time frames should be tailored to the reasonable needs of the case. Attorneys may offer input on the time frame for the case but the final decision on the case schedule depends on the judge's determination of the appropriate time to resolve the case.

4) **Active Court Tracking or Monitoring.**

The Court must actively monitor the scheduled case events and must enforce compliance with case deadlines or milestones. Cases must not be allowed to "drift." There should always be a next known date that triggers a review or check on the status of the case. Open ended schedules lead to needless delays that can and should be avoided.

5) Affirmative court action taken during case processing.

Reminders must be sent or inquiries must be made by the Court (Clerk/Secretary's office) to a delinquent or non-complying party with a specific time period in which to respond and comply with the court's schedule.

6) Consequences for non-compliance.

Sanctions must be uniformly imposed for non-compliance or serious delinquency. A party should be given a reasonable period of time to take corrective action but the case should move forward or be dismissed or summarily resolved. Attorney and parties must respect the Court's resolve in efficiently processing cases and not permitting avoidable delays.

7) Internal court guidelines.

The Court needs to adopt internal guidelines for court actions in cases, e.g., setting hearings, limiting continuances, controlling the admission of evidence, issuing orders or decisions, promptly responding to motions and reasonable inquiries. Discipline must be applied not only to attorneys but internally at the Court or respect for and confidence in the Court's policies will be greatly diminished.

8) Collection and review of case management data.

Case data and statistics must be collected and regularly reviewed and discussed for appropriate court action. Data should not be collected only to satisfy required reports but should be used to manage the Court's operation. Data should be reviewed and discussed by the court president and court secretary and shared with the other judges to maintain an awareness of the Court's status and any problems facing the Court.

9) Court and case management decisions based on review of case data.

Management decisions on the use of court resources, including judge and staff utilization and how the court is organized to resolve cases, must be based on case data: filings, dispositions, pending caseload, age of cases, disposition times, etc.

10) Delegation of ministerial functions to court staff.

Judge time should be used to review and adjudicate cases. Ministerial duties should be delegated, whenever appropriate, to properly trained and qualified staff and overseen by a judge with a limited expenditure of judge time. A Court should examine its current practices and identify tasks or procedures that might be transferred to staff after proper training or preparation to effect the transfer.

11) Court meetings; Communication.

Court meetings should be held on a regular basis, at least once every three months (4 times a year) and probably more frequently. Monthly court meetings with all of the judges are recommended. The judges should meet to review and discuss court

operations, backlogs, needed resources or changes in policy or procedure, and anticipated changes that might be implemented.

12) New Judge Orientation.

Every court under the supervision of the court president or chief judge should develop a structured orientation program for each new judge appointed to the bench. Experienced judges should be carefully selected to meet with new judges on specific topics so that each new judge has the benefit of the experience gained from judges who have been on the bench and can offer useful information both on substantive law and procedural techniques. The court administrator should participate in the new judge orientation program providing each new judge with background on court practices and policies.

USE OF AUTOMATION

Automation is a tool that can be effectively used in implementing an effective case management system but automation requires a high degree of standardization. Case events must be defined and standard entries must be made (Step One) for a computer system to be able to monitor case events and produce useful reports and generate accurate statistics on the pending caseload. Poorly defined case events and non-standard entries will greatly reduce the benefits to be derived from a well-designed, automated case management system. A good automated system should significantly reduce the amount of time that is required to monitor cases and generate reliable statistics or produce a variety of reports.

The term “case management” assumes that a court has adopted an activist approach in affirmatively *managing* the court’s caseload. Attorneys are expected to comply with deadlines and court orders. Sanctions must be imposed or consequences occur for non-compliance. Judges have to agree to follow internal court guidelines in taking timely court action. There must be both internal and external court discipline. Information must be gathered and used to monitor and manage caseload. Uniform policies must be followed to send a single, clear message to the bar that cases will be processed and adjudicated efficiently, without delay. Judges and court staff must be taught to think of the court as a system with interactive and interdependent parts that need to be coordinated. Corrective action must be taken once problems are identified to eliminate or ameliorate the impact of developing problems. Because a court is usually a large, interactive entity (multiple judges and staff) regular means of communication must be used to keep all participants informed of court policies, procedures, and problems.

ATTACHMENT 1-C

[DOCKET SHEET – TO BE PROVIDED SEPARATELY]

ATTACHMENT 1-D

CASE MANAGEMENT ORDER

SARAJEVO MUNICIPAL COURT/BANJA LUKA BASIC COURT

Anna Vukovanovic, Plaintiff

Vs.

Case No.: P 03 4153 975

Admir Sebic, Defendant

SCHEDULING ORDER

Pursuant to the Code of Civil Procedure of (FBiH or RS) and the case management policy of this Court and based on a review of the pleadings submitted to the court and discussions held with the parties and their counsel at the Preparatory Hearing,

Municipal/Basic Court Judge

IT IS HEREBY ORDERED that the following schedule shall apply in this case and will be modified only upon a showing of exceptional circumstances:

SCHEDULING PLAN

1. This case has been assigned to Track B, (Standard).
2. All motions for additional parties or amendment of submitted pleadings shall be filed no later than:
3. The parties shall disclose all facts on which claims are based no later than:
4. The parties shall disclose all witnesses, including expert witnesses and provide copies of relevant reports to the court and other parties not later than:
5. The parties shall produce and exchange all documents to be presented at the main hearing no later than:
6. Any motion or request for security or for production of additional evidence shall be filed no later than:
7. This case shall be referred to the Mediation Procedure on _____ and that reference shall terminate on _____ unless this Court receives a request for extension signed by both parties before the termination date.
8. Any motion for summary judgment or judgment on the pleadings must be submitted not later than:

ORDER RELATING TO THE MAIN HEARING

1. This case is set for hearing on Monday, 8 September 2003 commencing at 9 am.

2. The issues to be discussed by plaintiff include:

The issues to be discussed by defendant include:

3. The evidence to be presented by plaintiff includes:

The evidence to be presented by defendant includes:

4. The persons to be summoned to the main hearing by the plaintiff include:

The persons to be summoned to the main hearing by the defendant include:

Failure to comply with any part of this order may result in the imposition of sanctions.

Date:

ATTACHMENT 1-E

**INVENTORY OF COURT EQUIPMENT
FOR
DESIGNATED MUNICIPAL/BASIC COURTS**

COURT:

NUMBER OF JUDGES:

NUMBER OF COURT STAFF:

NUMBER OF TELEPHONES AT COURT:

NUMBER OF TYPEWRITERS:

MANUAL:

ELECTRONIC:

COPY MACHINE: YES NO

WITH FEEDER YES NO

WITH SORTER YES NO

FAX MACHINE: YES NO

NUMBER OF COMPUTERS:

WHERE ARE COMPUTERS LOCATED?

HOW ARE COMPUTERS BEING UTILIZED?

WORD PROCESSING:

TEMPLATES/MACROS

DOCUMENT PRODUCTION

OTHER EQUIPMENT USE BY THE COURT:

Task 10- Technical Assistance in the Establishment of a Separate Commercial Division within the Relevant Municipal Courts

Estimated Costs for Recommended Activities

RECOMMENDATION 1

Form a **Coordinating Council** composed of mid-level working representatives from a limited number of key organizations—OHR/IJC, USAID, MOJs, ABA/CEELI—to act as a planning, resource management, oversight (direction and guidance) and monitoring entity for all court related activity in Bosnia & Herzegovina. The composition of the **Coordinating Council** is crucial to the success of all subsequent efforts.

COST: Nominal. Personnel will come from mid-level managers of existing organizations with a track record of a practical, cooperative, communicative approach unless a technical advisor is hired for the initial organization of the **Coordinating Council** and for assistance in drafting a more detailed multi-year project schedule.

RECOMMENDATION 2

The **Coordinating Council** immediately begins work on planning a Management Seminar for newly appointed court presidents and court administrators as the first step in a continuing, multi-year court reformation project. Management Seminars will be offered at the conclusion of the judicial reappointment process. At least two and possibly three seminars should be planned for most of the newly appointed court presidents and administrators.

COST: \$22,000 for short term management experts to assist the **Council** in planning a course curriculum and identifying qualified management experts to serve on the faculty for the management course. \$5000 per expert (3), \$15,000 plus travel expenses, \$7000.

RECOMMENDATION 3

Council develops a three year comprehensive court improvement plan and schedule for implementation using Commercial Law Reform Project resources and non-project resources. One of the **Council's** prime objectives is to have a master plan approach and coordinate all available resources in a sustained effort to effect positive change within the courts. A catalog/list of all known court related projects should be compiled by the **Council**.

COST: Nominal depending on use of technical advisors to assist the **Council** in formulating a three year comprehensive court improvement plan based on IJC's *Justice in due time* report and the recommendations and schedule outlined in this RECOMMENDATION list of action items.

RECOMMENDATION 4

Coordinating Council forms a **Case Management Working Group** consisting of approximately five (5) carefully selected judges and three (3) court administrators to assist the **Council** with several key tasks:

- Help prepare the Case Management segments of the Management Course for court presidents and court secretaries and a subsequent series of Case Management Workshops for 1st Instance court judges by tailoring specific case management techniques to the Bosnian courts. Topics and tasks will include: delineating civil case events, promulgating a standard data entry protocol, designing a suitable standard Docket Sheet for replacement of the various case registry/ledger books, drafting standard civil case processing times, drafting different case processing tracks, drafting a companion set of Case Management Orders for use with the different case processing tracks, planning for greater staff use in case monitoring efforts, discussing and advising on the imposition of sanctions for failure to comply with court orders and schedules.
- Review the present data collection and report generation process and make recommendations on how statistical reports and management data use can be improved in the courts.
- Draft a list of non-judicial functions that can be delegated by judges to qualified staff members.
- Draft a suggested outline of a New Judge Orientation program to be developed and used at each court as part of a new judge's initial training.

COST: Travel budget for a series of meetings (probably in Sarajevo) for the **Case Management Working Group** (eight members suggested) to meet and address assigned case management development tasks. Estimate ten (10) two day trips at approximately \$2240 per meeting--\$140 per day x 2 = \$280 x 8 members x 10 meetings = \$22,400.

RECOMMENDATION 5

Coordinating Council hires an Information Technology Advisor to work with the **Case Management Working Group** on event delineation and data entry protocol and with the **Coordinating Council** on developing country wide standards for the type of hardware and software to be used in the courts. The Information Technology Advisor can assist the **Council** on how to structure any tender for purchase of equipment and design of case processing software.

COST: Information Technology Advisor for a six (6) month initial period at \$2,000 per month--\$12,000.

RECOMMENDATION 6

Coordinating Council checks with IJC on the project to revise and update the Books of Rules which provide internal operating guidelines for the courts and shares information on case management plans to assure a similar, cohesive approach.

COST: No cost since IJC is proceeding with Book of Rules revision project. However, proper coordination is very important so that the courts receive coordinated, clear directives.

RECOMMENDATION 7

Request by **Coordinating Council** to ABA/CEELI or another competent training organization to design a series of Case Management Workshops for 1st Instance court judges

using the work product from the **Case Management Working Group** on adapting specific case management techniques to the Bosnian courts.

COST: No initial cost. ABA/CEELI or other group will seek funds for the expenses involved in conducting a series of Case Management Workshops in various locations throughout the country in 2004.

RECOMMENDATION 8

Request by **Coordinating Council** to ABA/CEELI or another competent training group to design a series of Commercial Law Workshops for the judges who will be appointed to the 1st Instance courts Commercial Divisions. The workshops should cover the various newly enacted commercial laws and revised procedural laws but also some non-legal topics should be included on modern business concepts and practices, financial concerns in a free market economy, and the courts' role in a free market economy. A select group of businessmen and bankers should be invited to participate in the Commercial Law programs and present and discuss their concerns with the Commercial Division judges.

COST: No initial cost but the training entity will seek funds for the actual seminars that will be held after the completion of the judicial reappointment process, the selection of new court presidents, and the formation of the Commercial Divisions with the designation of the judges who will serve in the Commercial Divisions.

RECOMMENDATION 9

Coordinating Council invites all newly appointed 2nd Instance court presidents (District, Cantonal, & Brcko Appellate—16 presidents) to a one day workshop and briefing on plans for the Management Seminars that will be offered to all court presidents upon the completion of the judge reappointment process and further plans for a sustained, multi-year coordinated court improvement effort involving training programs, the implementation of case management techniques in all 1st Instance courts, the implementation of a standardized automation program, the formation and operation of specialized Commercial Law Divisions at selected 1st Instance courts, and a revised statistics and report generation effort. It is very important to gain the support of the 2nd Instance court presidents as allies in this comprehensive court improvement effort.

COST: All sixteen (16) 2nd Instance court presidents should be invited to the one day overview workshop on court administration and case management efforts. At least one night's lodging and travel and meal costs should be budgeted. The workshop should be conducted by the members of the **Coordinating Council**. Estimated cost: \$2240 for lodging, meals, travel reimbursement (140 x 16). Meeting site to be furnished by hotel.

RECOMMENDATION 10

Coordinating Council sends an Inventory Survey form to the sixteen 1st Instance court presidents where Commercial Divisions will be created to create a data base on existing equipment in these courts.

COST: Nominal. Cost of mailing form to sixteen courts.

RECOMMENDATION 11

In the revised and reduced Bosnian court structure there will be nineteen (19) Basic Courts and five (5) District Courts in the RS, and twenty-seven (27) Municipal Courts and ten

(10) Cantonal Courts in the Federation. There is also a Basic Court and an Appellate Court in Brcko District. A base of sixty-three (63) court presidents (not including the Supreme Courts or the Constitutional Courts) will be created under the new court structure. In addition to the 63 court presidents, there will be a similar base of 63 court administrators, creating a combined pool of 126 court managers who should receive **court and case management training**. With the help of a small group of management specialists and the advice from a training group like ABA/CEELI, the **Coordinating Council** should plan and design a four or five day course for the newly appointed 1st and 2nd Instance court presidents and court administrators (RECOMMENDATION 2). The course should be ready for presentation as soon as the judicial reappointment process is completed in late 2003 or early 2004. At least two (2) and possibly three (3) sessions should be offered so that the number of attendees would range from 40 to 60 president/administrator attendees per session depending on whether two or three sessions are offered. The work of the **Case Management Working Group** on case management techniques should be incorporated into the course curriculum.

COST: Estimate between \$175,000 to \$180,000 for conducting two or three management training courses for most new court presidents and court administrators. Lodging & meals calculated at \$140 per day per attendee for five days. Travel reimbursement is budgeted at \$100 per attendee with the anticipation that there will be two or more traveling together. Faculty fees are estimated at \$3000 per faculty member with seven (7) faculty slots budgeted (\$21,000). An additional \$15,000 is budgeted for faculty travel. Calculation for 60 attendees (two course sessions):

60 attendees at \$140 per day for five days =	\$42,000.
Travel reimbursement at \$100 per attendee=	\$ 6,000.
Faculty fees--\$3000 x 7	= \$ 21,000
Faculty travel	= \$ 15,000
Miscellaneous expenses	= \$ 1,000
	TOTAL= \$ 85,000 for 60 attendees

A second management course would cost another \$85,000 for an additional 60 attendees. A \$5,000 contingency fund for each session should be budgeted for an estimated total of \$180,000 for two management course sessions for all court presidents and court administrators. If lower amounts are expended for the management seminars, the money can be transferred to other training or project costs. A first class program should be planned and presented to have maximum impact on the court presidents and top administrators.

RECOMMENDATION 12

Under the guidance and auspices of the **Coordinating Council**, ABA/CEELI or another qualified training group offers two focused Commercial Law workshops on the newly enacted bankruptcy, liquidation and business related laws for the judges who are selected to serve in the Commercial Law Divisions at the 1st Instance courts. It would be wise to invite 2nd Instance judges to the Commercial Law Workshops so that the 2nd Instance judges will also be familiar with the new laws and the concerns of the business and banking communities. The 2nd Instance courts will handle the appeals from the 1st Instance court decisions and must be well versed in the applicable laws.

COST: There will be sixteen (16) 1st Instance courts (including Brcko) where Commercial Law Divisions will be located. All commercial law litigation including bankruptcy and liquidation and company registry operations will be directed from other 1st Instance courts to the sixteen (16) courts with Commercial Law Divisions. The IJC has recently made

Commercial Law Division projections based on their data analysis of caseloads and the revised numbers of judges at the reconstituted courts. The IJC forecasts the following total number of judges at a court with the number of Commercial Law Division judges in parentheses.

Republika Srpska: Banja Luka—33 (8), Bijeljina—18 (1), Dobož—10 (2), Sokolac—9 (1), Trebinje—6 (1). Total for RS: 76 judges, 13 Commercial Law judges (17%).

The Federation: Bihac—19 (3), Orasje—5 (1), Tuzla—28 (6), Zenica—21 (5), Gorazde—5 (1), Travnik—14 (2), Mostar—17 (2), Siroki Brijeg/Ljubuski—5 (1), Sarajevo—75 (10), Livno—5 (1). Total for Federation: 194 judges, 32 Commercial Law judges (16.5%).

The IJC Commercial Law Division projections include Commercial Civil Cases (Ps/Gs), Small-claim Commercial Civil Cases (mals), Bankruptcy Cases (St), and Regular Liquidation Cases (RL/L). Specifically, not included in the projections are the Commercial Enforcement Cases (lp) and the company registry related work which according to the restructuring plans will come under 1st Instance Commercial Law Division jurisdiction. Brcko District is also not included in the projection with its thirteen (13) Basic Court judges and three (3) Commercial Law Division judges. A potential pool of at least forty-nine (49) 1st Instance Commercial Law judges can be anticipated and this number may be on the low side because of the Commercial Enforcement workload, the Company Registry workload, and the likelihood of an increased number of Bankruptcy and Liquidation proceedings in the future.

Anticipating a minimum of two three day long Commercial Law Seminars for the projected minimum number of Commercial Law Division judges (49), a growth or contingency factor of 20% adding another 10 judges, and the participation of two judges from each of the 2nd Instance courts (32 judges including Brcko), we arrive at a potential Commercial Law attendee pool of 91 judges. The cost projection for the two Commercial Law seminars would be:

46 attendees per session at \$140 per day for 3 days	= \$19,320
Travel reimbursement at \$100 per attendee	= \$ 4,600
Faculty fee of \$3000 per for 5 faculty	= \$15,000
Faculty travel estimated at \$2000 each	= \$10,000
Miscellaneous program expenses	= \$ 2,500
TOTAL estimated program costs	= \$51,420

Two Commercial Law training workshops should be scheduled as early in 2004 after the formation of the Commercial Law Divisions at the sixteen (16) 1st Instance courts. The total projected costs for two Commercial Law training programs is \$102,840. Costs will vary depending on the size and the fees charged by qualified faculty. Daily per diem charges may be reduced if acceptable hotel facilities can be obtained at a lower daily rate. The cost projection is for budget planning purposes.

RECOMMENDATION 13

In early 2004, upon the completion of the judicial reappointment process and after the management training for all newly appointed court presidents and court administrators has been completed, ABA/CEELI or another qualified training organization will offer a series of five (5) **Case Management Training Workshops** for 1st Instance judges. There is a potential pool of 492 judges in the reduced 1st Instance judicial pool. The goal is to “reach” as many of the 1st Instance judges as possible and train them in specific case management techniques. The work of the **Case Management Working Group** will be incorporated into the

curriculum so that the Case Management techniques can be introduced and explained in the context of the Bosnian courts operating under the new Civil Procedure Codes.

COST: For budgeting purposes, approximately 75% of the pool of 1st Instance judges will be included in the cost projections:

75 judge attendees per session at \$140 per diem x 2 ½ days	= \$26,250
Travel reimbursement at \$100 per attendee	= \$ 7,500
Faculty fees at \$2000 per faculty x 3	= \$ 6,000
Faculty travel costs at \$1800 per faculty	= \$ 5,400
Miscellaneous program expenses	= \$ 3,000
TOTAL estimated program costs	= \$48,150

Five (5) separate **Case Management Workshops** are budgeted for a total projected cost of \$240,750. Additional costs will be incurred if more attendees than the 75 per session are accommodated or if more than five workshops are conducted. It is very important to get a majority of the 1st Instance judges introduced to and using sound Case Management techniques so that the court culture changes and the judges assert control of the case process and focus on timeliness, efficiency and closure. These goals have to be clearly stated to all of the judges and the court presidents and court administrators have to be the ones to guide, assist, and monitor case management implementation efforts.

RECOMMENDATION 14

The **Coordinating Council** forms a **Court Visitation Assistance Group** to visit individual courts and provide assistance in implementing case management techniques and addressing and resolving problems afflicting the court. The Group should consist of two respected and capable court presidents, a respected court administrator, a representative from the **Coordinating Council** whenever feasible, and occasionally a technical expert if a special situation or problem exists. The **Court Visitation Assistance Group** would spend two or three days at a court meeting informally with the judges and staff members in an attempt to provide help in implementing new court procedures and getting both judges and staff fully trained in how to operate in a new proactive case management environment.

COST: Assuming that the **Court Visitation and Assistance Group** might be asked or invited to visit a dozen courts within a four or five month period and then the “demand” might drop off, an amount of \$5000 should initially be budgeted for anticipated travel costs for court visits. Depending on the interest in receiving some assistance and the availability of Assistance Group members to participate in the court visits, additional money might have to be reprogrammed into the Court Visitation account at a later date.

RECOMMENDATION 15

The **Coordinating Council** creates a **Forms Working Group** to review all existing forms used in the courts and to produce a uniform new set of forms for use in all Bosnian courts. The **Forms Group** needs to examine what information is needed, how it should be formatted and presented to the court, and how court files can best be maintained for ease of use while a case is pending before a court.

COST: The **Forms Working Group** should consist of three (3) judges and three (3) administrators who can assemble, gather and analyze existing forms and then design standard new forms after a couple of meetings. A budget of approximately \$5000 is estimated depending on the number of Working Group members and their respective locations in terms

of distance traveled: six (6) members at \$140 per day for three (3) two (2) day meetings equals \$5040 for the **Forms Working Group's** meeting needs.

RECOMMENDATION 16

AUTOMATION

What's involved?

How to proceed.

Help required.

Configuration.

Estimated costs.

RECOMMENDATION 16

AUTOMATION

What's involved?

- Developing a comprehensive automation plan.
- Getting reliable technical guidance.
- Adopting standards for uniformity.
- Reviewing and "cleaning up" the manual system.
- Determining what automation equipment is being used and how it is being used.

How to proceed.

- Form an Automation Working/Review Group to address the automation conversion process.
- Hire a qualified technical consultant to guide and direct the planning process.
- Delineate events and standardize data entry procedures in the manual system. Use the work of the **Case Management Working Group**.
- Determine what you want the automated system to be able to do: generate reliable data, generate various reports, monitor events, create standard documents/forms, edit text.

Help required.

- A knowledgeable, technical consultant who understands both hardware and software needs and who can write a tailored software program.
- A Planning or Control Group that exercises management control over the automation process so that there is cohesion, compatibility and shared goals.
- Competent technical staff who can manage and maintain the system as it comes on line and maintenance and support contracts for ongoing technical assistance.

Configuration—Equipment and software for a basic office system.

- Copier—one or two per court depending on size of court.
- Fax machine—one per court.
- Networked computer work stations—number depends on size of court.
- Printers—number depends on the number of work stations at court.

- Server for networking—network required for efficiency.
- Support and service contract—support must be available for problems.
- Internet service/access—for research, linkage with larger network.
- Appropriate furniture--for ease of access and use of equipment.
- Tailored software--to make the system work the way the courts need in order to operate effectively.
- Training--for judges and staff on computer use.

Estimated Costs

• Mid-range copier(s).....	7000KM
• Fax machine.....	1500KM
• Networked computer work stations.....	1300KM
• Printers.....	1200KM
• Server (networking).....	1500KM
• Service contract (monthly).....	800KM
• Internet access (monthly fee).....	800KM
• Furniture.....	Varies
• Software (countrywide application).....	275,000KM
• Computer training (judges and staff).....	125,000KM

Preliminary cost estimates are very difficult to calculate with the number of variables involved in developing and acquiring automation. The per unit cost will be affected by the number of units purchased. A large acquisition for all courts will generate significant savings. The final number of courts to be included in an automation program and the equipment purchased and placed at individual courts based on the size of the court will affect the total project costs. Service contracts are very important but the cost will vary depending on the location of the court and the ease of getting to the court by the service provider. Furniture is listed but no cost is included because of variations from court to court. The individual courts may have to supply the needed furniture. Networking has been included for every court and should be retained as part of building an entity wide or even a national court network.

Two other major cost factors are included in the budget estimate: software development and computer training. The importance of both of these components in automation conversion is frequently overlooked or undervalued. The Bosnian court system (collective concept) needs a comprehensive, tailored software program for the long term efficiency of court operations. While the temptation will be to find and use off-the-shelf software in the courts, the special needs of the courts require a tailored software package based on the specific needs of the Bosnian court system. For the strongly recommended case management system to be successfully used on a sustained basis, automation will be needed to help monitor case schedules. For reliable statistical information to be generated and management reports to be generated without an excessive amount of time or energy, a well designed software program will be needed in the courts. Automation is based on uniformity and standardization and a single, comprehensive, tailored software program is the best way to achieve the full benefits of using automation.

The second factor which should not be overlooked or left out of the budget is a computer training program so that both staff and judges know how to use the equipment and the software that manages the computer equipment. Court staff need to be shown how the programs and the equipment work for full and effective use. Computer training is an ongoing need but training should be provided with the initial installation for judges and staff so that proper use is made of the resources being provided to the court. Also, it is important to make

sure that the computers will be used for the reason the equipment is provided, not for the personal use by one or two judges or one or two staff members with limited functions.

COST SUMMARY FOR COURT COMPONENT - COMMERCIAL LAW PROJECT

RECOMMENDATION
COST

1. Form a Coordinating Council	Nominal
2. Begin work on a Management Seminar	\$22,000
3. Develop a comprehensive, multi-year plan	Nominal
4. Form a Case Management Working Group (Travel)	\$22,400
5. Hire a Technology Advisor	\$12,000
6. Check with IJC on Books of Rules	No Cost
7. Initiate planning for Case Management Workshops	No Cost
8. Initiate planning for Commercial Law Training Workshops	No Cost
9. Meeting/briefing for 2 nd Instance Court Presidents	\$ 2,240
10. Conduct Equipment Inventory Survey	Nominal
11. Management Seminars (2) for Court Presidents/Administrators	\$180,000
12. Commercial Law Training Workshops (2)	\$102,840
13. Case Management Training Workshops (5)	\$240,750
14. Court Visitation Assistance Group (Travel)	\$5,000
15. Forms Working Group (Travel)	\$5,000
	SUBTOTAL: <u>\$592,230</u>
16. Automation:	
25 courts at 34,300KM = 857,000KM	
15 courts at 37,500KM = 562,500KM	
6 courts at 41,900KM = 251,400KM	
Software Program.....	275,000KM
Computer Training	125,000KM
Total.....	2,070,900 KM divide by 1.8
	\$1,150,500
COURT COMPONENT REQUEST/ESTIMATE.....	<u>\$1,742,730</u>

ATTACHMENT 3

Task 10- Technical Assistance in Streamlining Business Laws and Regulations in Place for Privatized Companies to Enter the Market and to Exit the Market:

COMPANY REGISTRY

Originally, a review of the Company Registry operations in the courts was included in the Privatization of Strategic Enterprises Project Task Order. The 2nd Instance courts have the jurisdiction to oversee the Company Registry work. The registration process was described as cumbersome and time consuming and, therefore, a concern for the commercial environment in Bosnia. The project team became aware of a separate project being conducted by the British organization, DFID, to streamline the company registry process from a fourteen (14) step procedure to seven (7) steps. The project team also became aware of the IJC recommendation in its *Restructuring The Court System Report* to include the Company Registry operation in the shift of commercial law jurisdiction from the 2nd Instance courts to selected 1st Instance courts. In discussions with IJC about the court restructuring process, representatives informed the Privatization project team that the original recommendation to shift the Company Registry to the new Commercial Law Divisions in the 1st Instance courts had not been followed. Company Registry jurisdiction and oversight responsibility will not be included in the jurisdiction of the new Commercial Law Divisions in the 1st Instance courts.

In light of the fact that DFID is addressing a streamlining and restructuring of the Company Registry operation in an ongoing project and a decision has been made not to move this function from the 2nd Instance courts to the 1st Instance courts where Commercial Law Divisions will be created, the question of how much project time should be devoted to Company Registry related work was discussed with the ERO section at USAID. The project team was instructed not to devote any more time to the Company Registry but to concentrate on other elements in the Privatization Task Order.