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COMBATING CORRUPTION AND STRENGTHENING RULE OF LAW IN UKRAINE UNDER THE MCC TCP

**YEAR 2 WORK PLAN
JUNE 1, 2008 TO APRIL 30, 2009**

REVISED

**A Task Order Under the Rule of Law IQC
Contract No. DFD-I-05-04-00171-00**

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INTRODUCTION

CONTRACT BACKGROUND

On May 22, 2007, USAID/Ukraine awarded the Combating Corruption and Strengthening Rule of Law in Ukraine (UROL) under the Millennium Challenge Corporation Threshold Country Program (MCC TCP) task order to Chemonics International under the International Rule of Law Service Indefinite Quantity Contract (IQC). The implementing consortium, led by Chemonics International, includes Blue Law LLP. USAID/Ukraine appointed Oleksandr Piskun as cognizant technical officer (CTO) on June 15, 2007. The task order is fully funded with the resources of the Millennium Challenge Account and will be implemented according to the framework of the Millennium Challenge Account Threshold Program for Ukraine. This is the second annual work plan for the MCC task order, and covers the period from June 1, 2008 to April 30, 2009. This work plan closely follows the Government of Ukraine (GOU) Implementation Plans regarding Components 2.1, 2.2 and 2.4 of the MCC Threshold Program, which were revised and submitted to the CTO in April 2008.

PROJECT OVERVIEW

The UROL MCC task order is designed to assist Ukraine in its effort to: 1) implement a registry of court decisions; 2) develop and implement a uniform random case assignment system in selected courts; 3) establish an effective and transparent process of judicial appointment and disciplinary procedures; and 4) create an operating system for administrative courts in the regions. This will be done under three activity areas designated as Registry and Case Assignment (Component 2.1), Selection and Discipline of Judges (Component 2.2), and Support for Administrative Courts (Component 2.4).

ROLE OF THE PROJECT

RESULTS FRAMEWORK

The results framework in the approved Performance Monitoring and Evaluation Plan represents how we have tied the Threshold Country Program activity areas under Judicial Reform to our project objective, "Reduced corruption and strengthened rule of law." We plan to achieve five expected results through our proposed activities. Expected results are: 1) More consistent application of the law; implementation of computerized random case assignment; 2) Creation and functioning of testing mechanism for candidate judges; 3) Creation and functioning of disciplinary mechanism for judges; 4) Well trained administrative judges; and 5) Effective communication between administrative courts. Together, these expected results will lead to improvements in the efficiency and transparency of the three activity areas, contributing to reduced corruption and strengthened rule of law. This results framework provides a foundation for planning and performance monitoring, allowing each activity to link to a specific result and each result to be measured by unique indicators.

LINKAGES TO OTHER PROJECTS

The project works in close coordination with other international and local programs working in the justice sector such as those supported by the Council of Europe, the World Bank, the Organization for Security and Cooperation in Europe (OSCE), the Commercial Law Center, and others to create synergies and maximize applied resources, to consolidate messages to Ukrainian counterparts and to avoid duplication of efforts. Under the judicial testing component, the project has shared strategies and experiences with the Ukrainian Standardized External Testing Initiatives (USETI) Project implemented by American Councils (ACCELS) under MCC TCP Component 5, “Combating Corruption in Higher Education.” Additionally, the project has assisted the MCC civil society program implementer Promoting Active Citizen Engagement in Combating Corruption in Ukraine (ProACTION) in designing public surveys on judicial corruption under MCC TCP Component 1. Coordination with MCC TCP Component 3 implementers from the United States Department of Justice is maintained through UROL’s hosting of monthly ROL Implementers Meetings, and has resulted in collective approaches to codes of ethics for judges, court staff and civil servants.

COORDINATION

The project will work closely with USAID, the U.S. Embassy and the Millennium Challenge Corporation to advance and maintain a constructive dialogue between the United States Government and Government of Ukraine (GOU) on critical anti-corruption and judicial reform measures. The consensus-building and participatory dynamic that has characterized UROL activities to date will continue to be employed under UROL MCC.

DETAILED WORK PLAN

ACTIVITY 1: REGISTRY AND CASE ASSIGNMENT

OBJECTIVE, RANDOM CASE ASSIGNMENT. The primary objective of automated random case assignment is to eliminate the potential for subjective influence and manipulation in how cases filed with courts are distributed among judges for processing. Random case assignment also allows courts to balance workloads among judges by employing weighted case analysis, which considers the complexity of cases assigned versus the number of cases assigned.

OBJECTIVE, REGISTRY. The primary objective of the enhanced, automated national registry of court decisions is to improve on the module for electronic upload released by the State Judicial Administration (SJA), and make it seamless with other case management functions. If and when the SJA equips courts with the infrastructure to access the Internet, the national registry may provide a useful information resource for judges wishing to research their decisions.

ACCOMPLISHMENTS, RANDOM CASE ASSIGNMENT. The project has identified seven pilot courts in which to implement, test, and validate automated random case assignment. Chief judges and key staff in these courts support automation efforts and have agreed to lead the change process involved in carrying them out. The project has formed a Pilot Court Advisory Group with court-level, Supreme Court and SJA representation. Tenders for hardware and software to support the registry and random case assignment have been issued and evaluated; in addition, one follow-on tender for Case Management Software (CMS) has been issued. The original software tender will provide for full case management functionality (including random case assignment and electronic uploading to the registry) in courts that have automated no functions, such as the Pechersky Trial Court of Kyiv. The follow-on CMS tender will create stand-alone modules for random case assignment and electronic decision uploading for courts that have installed their own case management software, or do not wish to undertake implementation of a full CMS. Licensing for these stand-alone modules will be furnished to the SJA so that they may deploy the modules to other courts, and incorporate the modules into their own, forthcoming case management software. This follow-on tender was developed in response to SJA reactions to the evaluation process during the original software tender. Finally, the project has begun work with the SJA to define system requirements and identify resources for implementing a statewide CMS.

ACCOMPLISHMENTS, REGISTRY. The project completed an assessment of the State Registry of Court Decisions and made recommendations for its improvement. The SJA has released to all courts a module for electronic uploading of decisions to this registry, which however does not work seamlessly with the various, automated case management systems in the courts. Working with the same seven pilot courts and software solutions addressed above, project-supported software for the registry is designed to fully and seamlessly integrate the SJA module with both new and existing CMS systems.

CHALLENGES. Installing equipment in the pilot courts is six to nine months behind schedule due to: 1) delays in completing a USAID-mandated independent verification and validation process for planned information technology procurements; 2) the relatively low scores received by the winning bidder of the case management tender in the evaluation process, and the consequent release of a second, unforeseen tender; 3) the time involved in negotiating a subcontract with the winning hardware and software vendors; and 4) courts' lack of understanding of the workload requirements to implement CMS. The State Judicial Administration's current support for automated case management is driven by their desire for statistical reporting rather than day-to-day process improvement, and reflects ongoing needs to communicate the fundamental benefits of automation to the SJA and help manage their relationships with pilot courts and other judicial entities. In addition the project has encountered needs beyond its original scope, including procuring appropriate licensing for the State Registry of Court Decisions and existing equipment in the pilot courts.

The project's low burn rate in the first year allows some flexibility to address these needs, but spending needs to be carefully monitored, and the procurement process must be carefully managed. The project also needs to communicate clearly with the State Judicial

Administration to ensure that pilot court software can be integrated into SJA systems when they are introduced. Delays encountered to date are actually reinforcing the project's close cooperation with the State Judicial Administration and other counterparts, potentially putting the project's technology solutions in a better position to be sustained beyond the life of the project.

KEY ACTIVITIES. Key activities under this task include:

1. ENHANCED NATIONAL REGISTRY OF COURT DECISIONS. This activity will comprise our efforts to: (i) complete the tender for the stand-alone module for electronic decision uploading; (ii) complete negotiations and subcontracting with vendors to install additional hardware and software for the registry; (iii) procure and install hardware and software in the pilot courts (five general jurisdiction courts and two administrative courts); (iv) identify faculty and prepare curriculum to train court staff on how to use the software and maintain the registry; (v) designate court staff for, conduct and evaluate training programs; (vi) launch a public/media information campaign about the registry; and (vii) conduct public hearing(s) to assess the registry's functionality/usefulness.

2. AUTOMATED RANDOM CASE ASSIGNMENT. This activity will comprise our efforts to: (i) complete the tender for the stand-alone module for random case assignment; (ii) complete negotiations and subcontracting with the winning vendors; (iii) procure and install CMS software for all pilot courts*; (iv) fine-tune the standards for data entry within current case management instructions; (v) develop user manual(s) for court staff; (vi) identify faculty and prepare curriculum to train pilot court staff in the effective utilization and replication of the random case assignment system; (vii) designate court staff for, conduct and evaluate training programs; (viii) recommend system upgrades; (ix) conduct an event sharing lessons learned and best practices on the pilot court experience; and (x) create a nationwide implementation plan for additional courts.

RESOURCES. The Deputy Chief of Party will lead both efforts, assisted by the Court Automation Specialist to troubleshoot software issues and an IT Specialist to troubleshoot hardware issues in the pilot courts. Both efforts will be bolstered by a core group of support staff working through the established institutional framework of the State Judicial Administration and its regional affiliates, judges and staff in the pilot courts, and local subcontractors, as well as short-term expatriate and Ukrainian experts. Short-term expatriate experts from state court systems in the United States and one or more European countries, such as Slovakia or Bosnia, are anticipated to assist with fine-tuning the functionality of the automated registry and case assignment systems and with advising on the implementation of a management information system.

EXPECTED RESULTS FOR ACTIVITY I. Results for this activity include:

* These are the same pilot courts envisioned for implementing the electronic uploading of cases to the national registry as described in Key Activity 1. CMS installation at the Pecherskyi Trial Court in Kyiv will be completed by September, while installation at the Donetsk trial and appellate courts will be completed by November, and installation at the Ivano-Frankivsk trial and appellate courts will be completed by January.

- Implementation of an enhanced and accessible database of Ukrainian court decisions and the means for generating them in electronic format that has been effectively piloted in seven courts and is ready for installation in other courts.
- Implementation of an automated random case assignment system that has been effectively piloted in seven courts and is ready for broader implementation.

ACTIVITY 2: SELECTION AND DISCIPLINE OF JUDGES

OBJECTIVE. The primary objective in establishing an effective system for merit-based judicial appointments in Ukraine is to promote transparency, independence, impartiality, and competence within the selection and discipline processes and for the judiciary as a whole. Tasks under this activity involve improving and automating judicial examinations, and revising procedures and developing new mechanisms for judicial discipline.

ACCOMPLISHMENTS, JUDICIAL DISCIPLINE. The project completed an analysis of the judicial discipline process containing a detailed mapping of steps as well as recommendations to: 1) streamline filing procedures; 2) develop written guidelines, standards and criteria governing each step of the process; and 3) develop an electronic case tracking system to provide real-time information about the status of complaints to authorized parties. One outcome of this analysis is a pilot project with Kyiv Oblast, supported by the territorial SJA office, to test a new judicial complaint form that consolidates three previous forms for logging the complaint, transmitting the complaint, and reviewing the complaint. The pilot will be conducted in three district courts, the Kyiv Oblast appellate court, and the territorial SJA office, with accompanying monitoring and evaluation being provided by one or two NGOs. Key members of the Council of Judges support the project's planned pilots for streamlining and automating the judicial complaint process, as well as a planned, pilot judicial examination. New guidelines for the complaint process have been captured in a manual and reviewed by a Working Group for Judicial Misconduct. A short-term expert has also prepared technical specifications for automated tracking of judicial misconduct complaints, which will employ software for the creation, management, storage and retrieval of the standardized form; and which contains requirements for a national, judicial complaints database.

ACCOMPLISHMENTS, JUDICIAL TESTING. A Judicial Testing Working Group of government and international partners has formed to provide direction for the pilot testing of the new judicial examination, which will be conducted in Donetsk in June. In addition, key members of the Council of Judges support this judicial examination pilot. The High Qualifications Commission (HQC) approved new regulations on judicial testing in April 2008. These now have to be approved by the Council of Judges to be binding. The Congress of Judges has authorized the Council of Judges to approve new regulations on competitive selection; however, details as to who conducts and administers the judicial examination system must be clarified first.

Project-supported Ukrainian experts have improved the testing methodology of the examination, which includes a set of 800 questions of varied difficulty, and their work

has been reviewed by the Supreme Court. In the Donetsk pilot, the same set of 100 questions will be given to every test taker, improving the Ukrainian experts' opportunity to assess the validity of the exam. To prepare to automate the test and create a database to store examination questions, the project has issued a tender for developing technical specifications. The project received one bid whose initial review is satisfactory.

CHALLENGES. Work under Component 2.2 is seven to nine months behind schedule due to: 1) time taken to determine the final leadership and legal authority for conducting judicial testing among the Academy of Judges (AOJ), SJA, and the HQC, which has been ceded to the AOJ; and 2) the construction of a new AOJ building, which is expected to be completed by September 2008, and which will house the new judicial testing center. UROL MCC has revised The GOU Implementation Plans to reflect the new timeframes. As decided by the Judicial Testing Working Group, original plans to implement judicial testing in five regional centers have been revised to focus on the national center at the new AOJ building. The Working Group agreed to one testing center because it was estimated that not more than 300 candidates per year would be tested and better test security and administration is possible with just one center. Finally, some of the automated solutions for the judicial complaint process present legal hurdles, such as ensuring the legality of electronic signatures. The project will continue to engage its working groups to provide ongoing recommendations and guidance concerning changes to regulations and legal frameworks.

KEY ACTIVITIES. Key activities under this task include:

1. MERIT-BASED JUDICIAL APPOINTMENTS. This activity will consist of: (i) monitoring and advocating for Council of Judges approval of regulations on competitive selection of judges.

2. JUDICIAL TESTING. This activity will consist of: (i) piloting the revised judicial examination in Donetsk with the HQC, AOJ and the OSCE; (ii) improving the test design and content per expert recommendations from the pilot test; (iii) revising test guidelines and procedures accordingly, as well as the methodological requirements and test design; (iv) developing an informational bulletin to allow judge candidates to adequately prepare for the exam; (v) conducting a tender for hardware and software for the national testing center; (vi) procuring and installing hardware and software for the national testing center; (vii) developing a reference manual for test administrators; (viii) identifying faculty and preparing a curriculum to train staff on the automated testing system; (ix) designating appropriate staff for training on the automated testing system; (x) conducting and evaluating a training program on the automated testing system, and modifying the training curriculum if necessary; (xi) conducting the first biannual test under the new system and monitoring the testing of judges; (xii) preparing an assessment report with recommendations on the testing system; (xiii) conducting a roundtable on the testing system; (xiv) reviewing the practice of testing and undertaking necessary fine-tuning based on the report and roundtable discussion; and (xv) conducting the second, biannual test under the refined system.

3. JUDICIAL DISCIPLINE. This activity will consist of: (i) conducting a pilot project in the territorial SJA office for the Kyiv region to test the standardized complaint form; (ii) evaluating pilot project results and making changes to the complaint form as necessary; (iii) designating staff responsible for maintaining an automated case tracking system for judicial complaints; (iv) preparing terms of reference for automated case tracking in the Kyiv territorial SJA office; (v) conducting a tender to provide hardware and software based on the terms of reference; (vi) procuring and installing hardware and software in the territorial SJA; (vii) developing a resource manual on policies and procedures for the territorial SJA staff; (viii) enhancing a webpage hosted by the State Judicial Administration to publicize the territorial SJA's activities and actions; (ix) identifying faculty and developing a curriculum on judicial discipline; (x) designating members and staff of the territorial SJA for training programs; (xi) conducting and evaluating a training program on judicial discipline for staff of the territorial SJA, and modifying the training curriculum if necessary; and (xii) conducting a public discussion on judicial discipline.

RESOURCES. The Judicial Testing and Discipline Advisor will lead these efforts, assisted by the Judicial Testing and Training Specialist. Major counterparts include the State Judicial Administration, the Council of Judges, the High Qualifications Commission, the Kyiv regional qualification commission, the High Council of Justice, and the Academy of Judges. Short-term expatriate and Ukrainian experts are anticipated to help assess the pilot judicial exam, to develop the database to store questions for judicial testing, and to help automate the use of the judicial complaint form. NGO representatives will be engaged to monitor and evaluate the pilot project testing the new complaint form.

EXPECTED RESULTS FOR ACTIVITY 2. Results for this activity include:

- Promotion of legal and regulatory framework for merit-based judicial appointments.
- Creation and functioning of a testing mechanism for candidate judges.
- Creation and functioning of a disciplinary mechanism for judges.

ACTIVITY 3: SUPPORT FOR ADMINISTRATIVE COURTS

OBJECTIVE. The primary objective in supporting administrative courts is to ensure that these venues—providing for citizens' interaction with the government over issues such as pensions and social benefits, taxes, and property rights-- operate in a transparent, professional and efficient manner. Especially in light of the fact that the most common complaint against administrative courts before the European Court of Human Rights is the untoward delays in reaching decisions, the project works to address delays through training and with new automated case management tools. Training and information technology activities are designed to address the ability of new judges to carry out their tasks, and the ability of the administrative courts to stay informed and communicate effectively with each other.

ACCOMPLISHMENTS, WELL-TRAINED ADMINISTRATIVE JUDGES. The project has trained over 127 administrative court judges and staff in the substance of applicable laws including the case law of the European Court of Human Rights, their practical application, the

substance of adult learning, and the specifics of new procedures contained in the Administrative Adjudication Code. A comprehensive training needs analysis survey of administrative judges was completed in cooperation with the High Administrative Court (HAC), and a formal Administrative Judges Training Working Group has improved cooperation among the OSCE, the Academy of Judges, and the High Administrative Court in providing training for administrative court judges and judge candidates at all levels. The project has developed detailed materials for trainings and additional materials cataloguing the experience of other states with experience in similar administrative adjudication regimes. Such training allows judges to stay abreast of new developments in the law, and to understand how existing practice delimits administrative jurisdiction from commercial and civil jurisdiction.

ACCOMPLISHMENTS, EFFECTIVE COMMUNICATION. The Kharkiv Circuit Administrative Court and the Kharkiv Administrative Court of Appeals are participating in the pilot court program to effect random case assignment and electronic uploading to the national registry of court decisions. Hardware for the two courts was included in the hardware tender under Component 2.1. To better monitor the status and progress of cases between the district and appellate courts, the project has agreed to work through a vendor with the pilot courts to develop an integrated case management application that will electronically transfer case file information. The project is in discussions with the HAC and its preferred vendor to determine the appropriate case management system.

CHALLENGES. Cooperation between the HAC and the SJA is weak. The project's earlier plans to sole-source a software application allowing the electronic transfer function to the HAC's chosen vendor have met with strenuous objection from the SJA, who retains ultimate responsibility for equipping administrative courts outside of Kharkiv with similar applications. Again the project is redoubling its efforts to work out a solution for the administrative courts that involves the SJA and accomplishes the networking objective in a way that both parties can agree to. The project has already received a commitment from the HAC to work with the SJA to address these issues.

KEY ACTIVITIES. Key activities under this task include:

1. WELL TRAINED ADMINISTRATIVE JUDGES. This activity will consist of: (i) continuing to identify and provide comparative information on international experience in administrative court systems to the HAC; (ii) assessing training impact through case tracking data, as well as assess the regional impact of training and the penetration of training to lower courts; (iii) working to verify and evaluate the adequacy of training compared to the leading European models of administrative justice; (iv) continuing to train administrative court judges and judge-candidates and upgrade their skills, revising the curricula and target groups as consistent with the assessments; (v) continuing to monitor, analyze and assess developments in administrative case law; and (vi) updating, modifying, producing, and disseminating 1,000 copies of a resource manual on administrative law and justice.

2. EFFECTIVE COMMUNICATION BETWEEN ADMINISTRATIVE COURTS. This activity will consist of: (i) continuing to consult with the SJA and HAC to identify an agreed-upon network

solution providing automation support for administrative courts; (ii) conducting a tender to develop the identified network solution, or using an existing solution employed under Component 2.1; (iii) procuring and installing the necessary hardware, software, and other services and materials to implement the integrated network; (iv) identifying faculty and developing a curriculum for a training program to promote the effective utilization of the integrated network; and (v) designating staff, delivering and evaluating the training program, and modifying the curriculum if necessary.

RESOURCES. The (part-time) Administrative Law Advisor will lead both efforts, assisted by a second part-time advisor and an Administrative Law Specialist. Experienced and skilled judges of the administrative courts will play a critical role in training fellow judges, as well as in identifying the areas of the new administrative justice regime in need of further clarification and explanation. Judges and legal professionals from other countries with similar administrative justice systems will also be used to share the benefits of their experience. Short-term expatriate and Ukrainian experts are anticipated to assist in curriculum development and review, preparation of comparative materials, identification and analysis of issues under the new code, and updating of resource materials.

EXPECTED RESULTS FOR ACTIVITY 3. Results for this task include:

- Well-trained administrative court judges with heightened sensitivity to human rights issues.
- Effective communication among administrative courts regarding status and progress of cases at all levels.

REPORTING REQUIREMENTS

COST INFORMATION IN WORKPLAN. Estimated monthly funding requirements are included in Annex A with the workplan timeline. While this information is based on proposed activities outlined in the workplan, including short-term level of effort and major procurements, the figures are estimates. Updated expenditure information will be included in quarterly reports.

QUARTERLY REPORTS. Under this work plan, the UROL team submits quarterly progress reports highlighting program activities and issues from the present quarter as well as plans for the upcoming quarter. Additionally the program will report on MCC/Ukraine Threshold Country Plan indicators. Quarterly reports will be due to the CTO of the project within five days of the end of each quarter.

PERFORMANCE MONITORING AND EVALUATION PLAN. We propose clarifications on definitions and changes to targets for our two Component 2.1 indicators, reflecting delays encountered by the project as explained above. Clarifications are presented in Annex B.

FINANCIAL REPORTING. Financial data for this MCC-funded activity will be tracked and reported separately and will be included in quarterly progress reports.

LOE UTILIZATION REPORT. A level-of-effort utilization table will be submitted to the CTO quarterly as part of progress reporting. The table will list the amount of person-days of LOE utilized to date, as well as LOE expended during the reporting period.