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THE STATE JUDICIAL ADMINISTRATION OF UKRAINE: STRUCTURAL ASSESSMENT AND RECOMMENDATIONS

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Introduction

This Assessment was undertaken by the USAID Ukraine FAIR Project at the request of the leadership of the State Judicial Administration (SJA). The assessment coincides with the ten-year anniversary of the establishment of the SJA in 2002. Originally established as the equivalent of a government ministry by the Cabinet of Ministers to oversee and provide administrative and technical guidance and assistance to Ukraine's far-flung network of trial and appellate courts, the political status of the SJA as a legal entity was formally transferred in 2010 from the Cabinet of Ministers to the supervision of the Congress of Judges and the Council of Judges of Ukraine in the judicial power.

Section I of the Assessment focuses on the current organizational structure and functions of the SJA. It commences with a short historical narrative of the creation of the SJA and the purposes it was designed to serve. It then examines the headquarters office of the SJA by department, describing current staffing levels and official functions. It then turns to SJA regional or territorial offices, summarily examining their role and function of providing varying levels of service and support to the courts in their geographic jurisdiction depending on court type. Section I concludes with a brief review of the five State Enterprises attached to the SJA as quasi-commercial adjuncts created by the Council of Ministers to provide specific categories of goods and services to the courts and to judicial and support staff. Given the burgeoning significance of information technology for the trial and intermediate appellate courts, the Assessment focuses its review on the State Enterprise Information Court Systems.

Section II of the Assessment focuses on identifying and analyzing select issues and challenges that emerged from the structural review of these three components of the SJA: the central SJA, the regional SJA offices, and the State Enterprise Information Court Systems. Each issue/challenge is separately described and analyzed, and many include recommendations for the SJA, Congress of Judges, and Council of Judges of Ukraine to consider. Because the time spent in actual interviews was limited to seven business days, the level of detail the Assessment covers is necessarily limited. Several recommendations suggest more meticulous follow-up reviews to examine in more detail what the key issues are and how they might most effectively be addressed.

Section III of the Assessment briefly discusses implementation of the recommendations, noting that institutional change in an environment of limited resources imposes challenges beyond those one normally associates with the challenge of modernizing large and widely dispersed organizations. It urges the creation of a representative Task Force to explore what priority to attach to the recommendations and to implement them over time in a rational process, a primary goal of which must be sustainability of the changes over time.

The Assessment's orientation is practical and its recommendations are crafted to suggest what the SJA's leadership might consider to further strengthen the organization, enhance its professional stature, and foster greater institutional independence in the judicial power.

Given the constrained time frame for conducting interviews and delving into myriad details regarding the SJA on both the central and regional office levels, the content of this assessment may include errors in some of the recorded details. Readers are asked to identify any such errors and to notify Mr. Sergey Suchenko of the USAID-Ukrainian Fair Project so they can be acknowledged and corrected.

Section I Authority, Role and Functions of the State Judicial Administration

A. Short History of the SJA

Ukraine's State Judicial Administration (SJA) was established in 2002 in accordance with Paragraph 16 of Article 106 of Ukraine's Constitution and Article 125 of the Law on the Judicial System of Ukraine pursuant to Presidential Decree 780/2002 dated 29 August 2002. Eleven years earlier, on 24 August 1991, the Verkhovna Rada had confirmed the Act of Independence, precipitating the collapse of the Soviet Union and creation of the independent Ukrainian state. The new government expanded the jurisdiction of its courts over the next decade in response to emerging public demand in the young democracy for meaningful dispute-resolution options and the effective administration of justice. Increased caseload growth taxed the existing institutional framework. The government responded by appointing additional judges and staff; it did not anticipate at the time the burgeoning infrastructure requirements for managing, administering, and funding this expanding court system. Neither did it foresee the need to commence with planning and budgeting for additional court facilities to accommodate increasing litigation activity. Insufficient revenue allocations and poor budget management in some regions resulted in courts prematurely exhausting their funding and involuntarily suspending operations and withholding salary disbursements for judges and staff. The crisis was exacerbated by deficient accounting practices and procedures, leaving administrative staff unable to accurately project accurate balances in court accounts and satisfy unpaid financial obligations. Emergency legislation hastily enacted by the Verkhovna Rada and Presidential decrees in the mid-1990s in an effort to respond to the crisis had marginal impact because much of the damage had already been sustained.

Creation of the State Judicial Administration (SJA) in 2002 reflected a more reasoned and disciplined long-range response to this lack of administrative capacity. Locating the SJA directorate's authority within the frazzled, unstable and evolving framework of the court system made little sense, so it was placed under the supervision and oversight of the Cabinet of Ministers. Functionally, the SJA would oversee, facilitate and monitor the efficient administration of the country's far-flung system of courts. Although not referred to in title as a formal ministry, the SJA would exercise ministerial power to address critical court system needs. To that extent, it was intended to serve as the equivalent of a courts ministry.

Prior to creation of the SJA, oversight and provision of administrative support services to the courts fell in part to Ukraine's Ministry of Justice through its central and territorial offices. It also fell in part on the shoulders of chief judges who, following the prevalent organizational model of Continental Europe, were tasked with dual roles -- serving simultaneously as their courts' senior judicial officers and leaders *and* chief administrative officers. Responsibilities associated with the latter included managing all non-judicial functions associated with courts as organizations, including human resources, case records/archives, finance and budget, automation, facilities, security, transportation, and planning, among others. Juggling these administrative responsibilities while performing to their judicial functions often resulted in administrative bottlenecks and operational delay, in part because few chief judges had training or experience as administrative managers; they learned by doing, not an effective learning model without competent mentors. In addition, most clerical staff had little, if any, relevant professional training and experience in the science and mechanics of court administration.

The new State Judicial Administration was centrally headquartered in Kyiv but, mimicking other government ministries, included 27 regional or territorial offices, one in each of Ukraine's 24 oblasts, the Autonomous Republic of Crimea, and the Kyiv and Sevastopol Municipalities. Where possible, these regional offices were located within existing court facilities in regional headquarter cities to facilitate close contact, assistance, and oversight for key administrative operations. Once in place and operational, they provided relief and support for general jurisdiction trial court chief judges, many of whom were otherwise overwhelmed by crowded dockets, inexperienced new judges, and an impatient public. With the SJA's administrative support, chief judges were better positioned to concentrate on their leadership and adjudicative roles.

The new Central Office of the SJA assumed the key role in drafting and implementing new regulations that established a new national regimen of administrative practices and procedures primarily for Ukraine's 600-plus general jurisdiction first-instance courts. Exempted from its more detailed purview were the commercial courts and all intermediate appellate courts, all of which would continue to largely self-manage administrative activities, including budgeting and financial management. When the new tier of administrative trial and appellate courts was created in 2006, they were accorded the same level of self-management as the commercial courts.

SJACO responsibilities included preparation of the consolidated budget for all judicial system courts and shepherding this budget through the various stages of review by the Ministry of Finance, the Cabinet of Ministers, and the Verkhovna Rada. Although representatives of judicial system governance organizations such as the Congress of Judges and Council of Judges of Ukraine had consultative roles, the SJA functioned as the judicial system's primary budgetary agent and liaison with the Cabinet of Ministers

and the Verkhovna Rada. From a comparative perspective, delegating primary judicial system budgeting functions to a ministry of justice was, until recently, common practice by governments in Continental Europe and elsewhere. Ukraine's delegation of that function to its new State Judicial Administration outside of the justice ministry umbrella and under the supervision of the Cabinet of Ministers was exceptional, reflecting the government's recognition of the court system both as a major separate component.

By 2010, the judicial system had stabilized and matured. On 2 July 2010, Ukraine's President signed into law the far-reaching Law of Ukraine No. 2453-VI "On the Judiciary and the Status of Judges" ("Law") which, among other key measures strengthening the institutional independence of the judicial system, effectively (i) transferred the oversight and supervision of the SJA from the Cabinet of Ministers to the Congress of Judges, and (ii) relocated the SJA as a legal entity from the government to the judicial power. The Law also effectively transferred all SJA regional or field offices to the judicial power. The Law renews the SJA's role as the primary budget advocate and liaison for the judicial system in negotiations with the Cabinet of Ministers and the Verkhovna Rada.

This transfer represented a significant victory for the judicial power by strengthening its institutional independence. However, it also resulted in the SJA forfeiting its ministerial status and the authority implicit in that status. Moreover, the transfer occurred during the height of the global economic downturn, and given the austere economic outlook and precipitous downswing in government revenues, fairly significant staffing reductions were mandated, leaving the residual staff depressed and tasked with additional responsibility. On 2 October 2010, the Council of Judges approved Regulation No. 12 (Reg-12), *On the State Judicial Administration of Ukraine*, which elaborated the SJA's role and functions. Day-to-day SJA oversight and supervision would fall to the Council of Judges, the designated agent of the Congress during the interim periods when it is not in session. On 5 April 2011, the SJA approved Order No. 82, Regulation *On the Territorial Offices of the State Judicial Administration of Ukraine*, which elaborates the role and functions of the SJA's territorial offices.

Overall, the conversion from ministerial to judicial power status has been a difficult one. SJA's Deputy Director indicated that the central office has experienced 60-70% turnover in the past two years. Some staff members were terminated for substandard performance. Others moved to positions in the newly created high courts. Still others moved to the High Qualifications Commission. Staff turnover in some SJA departments has been as high as 90%. This depletion of experienced SJA staff and their replacement with new inexperienced personnel has created challenges as department heads have struggled to recruit, orient and train new staff.

B. Scope of the SJA's Overall Responsibility

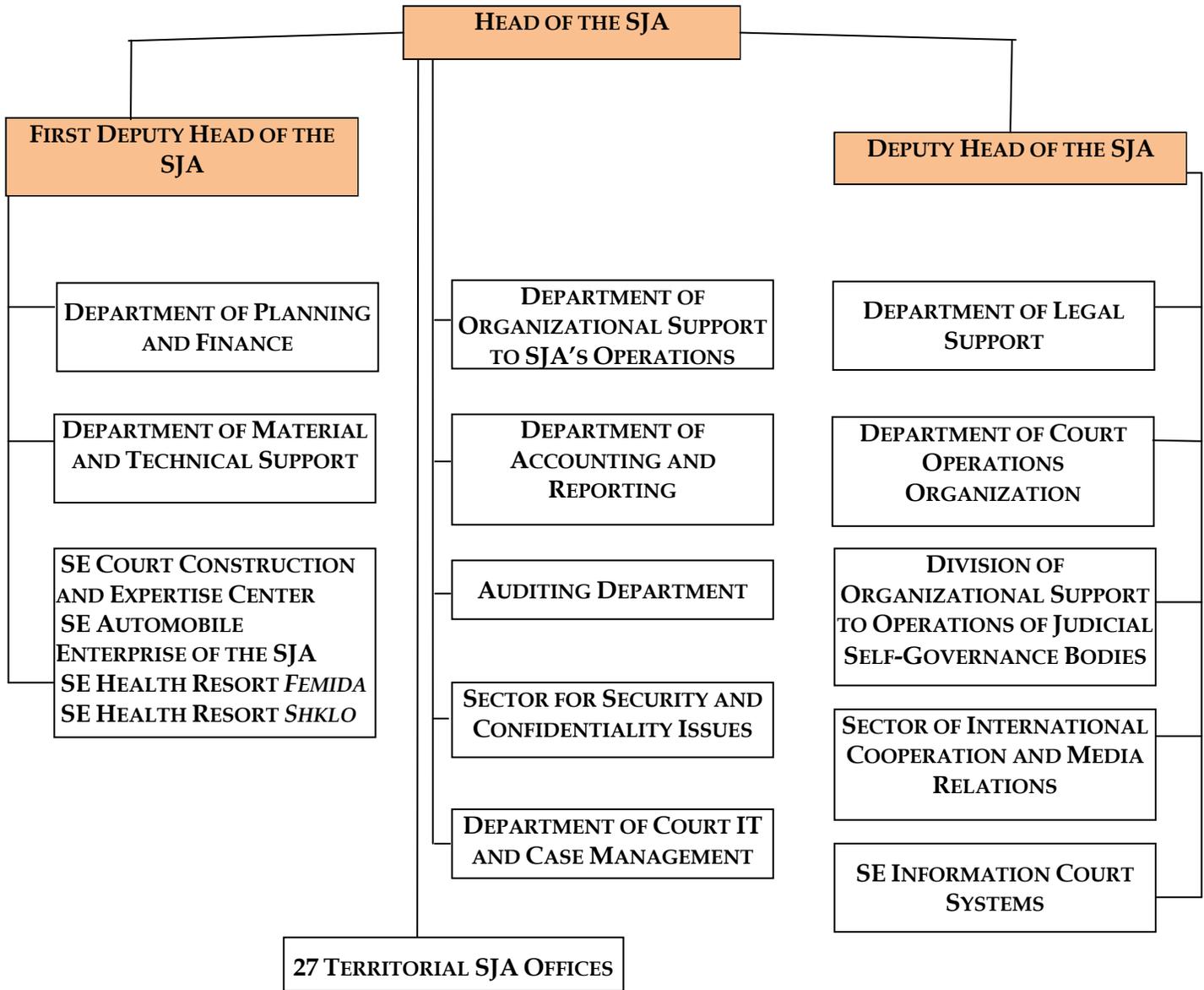
Ukraine's State Judicial Administration is responsible for the provision of a variety of supervisory, administrative and operational support services to a judicial system that comprises in excess of 750 separate courts arranged in four tiers and broadly dispersed throughout the geography of a large country. This assortment of courts is populated by a workforce that comprises approximately 7,800 judges and 34,000 support staff. The Verkhovna Rada recently approved a new criminal procedure code whose provisions include establishing the judicial office of investigative judge. Most of the new code's key provisions, including a modified criminal investigation process in which this new category of investigative judge will play a key role, become effective on 19 November 2012. Ukraine's Council of Judges estimates the number of new investigative judge positions entailed by these provisions at 1,700, effectively increasing the size of Ukraine's existing judiciary by a factor of approximately 22.5% to a total of 8,500 positions. How many additional support staff will be required to assist these new investigative judgeship positions is unclear; given the current ratio of judges to staff at approximately 1:4.35, rough projections anticipate an increase in new staff positions in the neighborhood of 3,000 to 5,000. The legislation implementing the new criminal procedure code made no provision for additional resources to secure courthouse facilities, IT hardware, or furnishings to accommodate these new positions.

C. Organization and Structure of the SJA

The SJA comprises two major organizational components: the *central or headquarters office* (SJACO) located in Kyiv and a network of 27 *field offices* (SJAFO) located throughout the country, one in each of the 24 Oblasts or regions, two in the Kyiv and Sevastopol municipalities, and one in the Autonomous Republic of Crimea. The SJACO's Head of the Department of Organizational Support to SJA's Operations indicated the SJACO currently is staffed at 151 employee positions and the SJAFOs are staffed at 544. For this baseline analysis, we look first at the organizational functions and responsibilities of the SJACO, then those of the SJAFOs.

A third and peripheral organizational component of the SJA are the State Enterprises that are attached to it. These state enterprises are a holdover of the socialist government framework operative in Ukraine during the years it comprised part of the Soviet Union. Established under the authority of the Cabinet of Ministers for various organs of government, they serve as quasi-commercial organizations designed to facilitate the efficient acquisition of competitively priced goods and services in a manner that short-circuits the often lengthy, involved, and bureaucratic processes that govern transactions between government and private-sector businesses. They are discussed below.

SJA ORGANIZATIONAL CHART



The primary purpose of the SJACO is to facilitate the efficient and effective administration of justice in the courts of the Ukraine. Successfully achieving that purpose anticipates working closely with and supporting chief judges and chiefs of staff through the provision of goods, services, advice, and expertise in key areas of non-judicial operations and activities. Although courts primary functions are to administer justice through the fair resolution of disputes and the fair adjudication of charges of wrongdoing, they effectively can perform those functions only if the necessary underlying operating conditions are satisfied. These conditions include fundamentals such as office and courtroom space, electrical power, ventilation/heat/cooling, and

running water. They also include the production and maintenance of court records, notification of litigants, appearance and protection of witnesses, computer systems support, and trained and qualified court support staff, judges, and security personnel.

Globally, court systems vary broadly in the manner in which they deliver such services. More modern, advanced, and well-funded systems tend to decentralize and delegate the provision of such services to the individual court level, ensuring that they provide the resources necessary to enable court officials to deliver them. Less-advanced systems with more restricted resources tend more to centralize the delivery of such services leaving their courts dependent on a centralized provider often within the government such as a justice ministry. Ukraine's current system includes the SJACO as a centralized provider within the judicial power and assisted by its network of field offices which reduce the bureaucracy and de-personalization element. The major functions and services provided by the SJACO include the following:

1. Finance and Planning Department

The SJACO's organization includes four major financial management functions: accounting, auditing, budget, and finance. Macro finance and budget functions are located in the Department of Planning and Finance under the supervision of the First Deputy Head of the SJA. Accounting and auditing are located in their own departments, both under the supervision of SJA's Head.

The Department of Planning and Finance comprises 21 staff positions distributed into four divisions: Methodology and Analysis Division, Financial Support for General Jurisdiction Courts, Financial Support for Administrative and Commercial Courts, and Operations Support. The positions are occupied by candidates with university degrees and prior experience in law, accounting or economics/finance. The Department is charged among other tasks with managing the judicial system's annual budget process cycle. That cycle commences with receipt by the SJACO of two letters from the Minister of Finance in the late winter/early spring. The first and earlier letter specifies a financial ceiling on total court system budget requests for the coming year. Any amounts requested above and beyond that ceiling must be thoroughly justified, and there are no guarantees that they will be approved. The Finance Ministry then follows up with a second more detailed letter that sets ceilings for the individual budget object classes or categories. Following receipt of these letters, the SJACO then notifies the SJAFOs of the ceilings so they can factor them into their budget request preparation cycle using standard budget request forms.

Non-SJAFO-affiliated courts are directed by the Department to assess their requirements and anticipated expenditures for the coming fiscal year utilizing the same budget request forms. This requirements-assessment process is driven largely by statistical data derived from caseloads that SJAFO or court accountants plug into formulae to ensure consistent application of the criteria. The general jurisdiction trial courts submit their budget requests to the SJAFOs which consolidate them into regional

requests and forward them to this Department. All other courts individually prepare their requests and forward them directly to this Department. Submissions may be followed by visits to the Department by SJAFOs or court accountants to present their justifications for increased budgets and/or funding requests for special projects. The Department then prepares a consolidated budget request for the entire judicial system, mindful of the thresholds established by the Minister of Finance. That consolidated requests then is sent to the Finance Minister for review and adjustment as deemed appropriate. The Finance Minister then forwards it on to the Cabinet of Ministers for review and adjustment as appropriate. A consolidated request including all government ministries and offices along with the judicial power requirements is then forwarded to the Verkhovna Rada. Once the judicial system budget has been approved, the Department monitors its execution throughout the fiscal year.

Because there is no national automated budget preparation and execution software application, the budget preparation and execution processes entail considerable manual work.

2. Accounting Department

The SJACO's Accounting Department is managed by the Chief Accountant. It comprises a staff of 11, all of whom are university-level accounting graduates. The Department comprises two divisions of five staff each, the Accounting Division and the Reporting Division. The Accounting Division performs all accounting functions of the SJACO. The Reporting Division works with all SJAFOs and non-SAJFO-affiliated courts by receiving, reviewing, and consolidating their finance and accounting reports. Overall, the Accounting Department is charged with accounting for all judicial system expenditures and for reporting those expenditures to a variety of executive and legislative power ministries and offices. It also receives, reviews, and consolidates accounting reports from the five State Enterprises associated with the SJACO. The Chief Accountant is responsible for supervising circa 150 chief accountants in the SJAFOs and in all commercial, administrative, and intermediate appeals courts and for ensuring the accuracy of their reports. Although most have accounting degrees, the low salaries for these field positions do not attract the most qualified and experienced accountants, thus it is not unusual for SJAF0 and court reports to contain errors which the Department must identify and correct.

Although automated accounting applications are utilized to consolidate field reports, the judicial system still does not have a unified automated accounting and reporting system. As a consequence, SJAF0 and court reports are submitted either in manual format or several varieties of incompatible electronic formats, substantially complicating and protracting the task of reviewing, correcting, and consolidating them into cohesive national reports.

3. Auditing Department

The SJACO's Audit Department comprises 14 staff, including the head, organized into three divisions: Audit Division with five staff; Financial Controls Division with five staff; Public Procurement with three staff. The Department's Audit Division is responsible for auditing all 27 SJAFOs and all courts except the three High Specialized Courts and the Supreme Court which are audited by the Minister of Finance. The Division also is responsible for auditing the five State Enterprises of the SJACO. The Division conducts financial audits and management-efficiency audits pursuant to national standards which are promulgated and made available to all courts and SJAFOs. Pursuant to regulations, external audits must be conducted in all SJAFOs and courts every three years and must be documented in reports that include findings and recommendations. Court financial audits also are required each time a new chief judge is appointed. Extraordinary audits also may be conducted at the request of an appropriate authority. The Division's responsibilities extend to ensuring that recommendations are implemented and enforced. The Department's Public Procurement Division conducts tenders for SJACO and SJAFO procurements.

4. DEPARTMENT OF ORGANIZATIONAL SUPPORT TO SJA'S OPERATIONS

This is one of the SJACO's larger departments. Its staffing comprises 18 positions tasked with a variety of administrative functions that are distributed among four divisions.

- The Mail and Orders Division handles all incoming and outgoing correspondence relating to outside government and other organizations with which the SJACO has formal relationships, such as the Office of the President, the Cabinet of Ministers, etc. It also handles all official orders and assignments issued by or directed to the SJACO Head. Six positions are assigned to these functions.
- The Human Resources Management Division handles human resource functions for officers and employees of the SJACO and heads and deputy heads of the SJAFOs. It is authorized to appoint and dismiss chiefs of staff and deputy chiefs of staff of the intermediate courts of appeals of which there are 100. It is staffed with five positions.
- The Organizational Support Division's functions include planning for and supporting all general meetings of SJACO's management; developing and implementing organizational planning; and managing all official events and celebrations. Five positions are assigned to these functions.
- The Analytical Division monitors access to public information; collects and compiles statistical data on the operations of the SJACO and SJAFOs and prepares reports on those operations; and works with other SJACO and SJAFOs offices to design and develop unified data collection systems. The purpose of these unified data collection systems is to create a more efficient model for collecting and consolidating data generated by the SJAFOs. As is the case with governments in many of the former countries of the Soviet Union, the Ukrainian

government in general and the court system in particular share a legacy of collecting, consolidating, and reporting large quantities of data which are distributed to a variety of government and legislative power offices. Two positions are assigned to this Division.

5. Department of Organizational Support to Operations of Judicial Self-Governance Bodies

This Department comprises 13 staff positions. All current incumbents have university undergraduate law degrees. Currently the Department is not subdivided into divisions although its head indicated that specialization was under consideration for the future. The Department provides legal and other forms of support for three self-governance bodies:

- Congress of Judges
- Council of Judges of Ukraine
- Council of Judges of General Jurisdiction Courts of Ukraine

The Department head anticipates that eventually his office also will support the Council of Judges of Administrative Courts. Services for the Council of Judges of Commercial Courts is provided by legal support in the High Commercial Court, although the Law on the Judiciary and Status of Judges tasks the Department with supporting all councils.

The support provided by the Department takes various forms:

- Receiving and processing public complaints regarding the governance bodies. The Department may respond on its own or draft responses that are sent to the subject body for review and approval. Alternatively, after reviewing the complaints, it may pass them on to the relevant judicial body such as the High Qualifications Commission or the High Judicial Council
- Meeting with citizens who request an audience to discuss complaints/issues
- Providing administrative and logistical support relating to self-governance body meetings such as:
 - Drafting agendas
 - Preparing and sending invitations
 - Compiling drafts of meeting minutes and decisions
 - Drafting correspondence

6. Legal Department

The SJACO's Legal Department comprises 17 staff positions, all of which are filled by employees with undergraduate law degrees. The Department is subdivided into four divisions tasked with the following functions:

- Receive, review, and process all citizens' applications/complaints/petitions relating to the SJACO and its functions. Under Ukrainian law, the subject

agencies must formally respond to all such citizen's communications. The nature of the correspondence varies widely; those over which the Department has no jurisdiction are routed elsewhere.

- Represent the SJACO in court proceedings to which it is a party. For example, judges initiating legal action to compel judicial salary increases would file their suit against the SJA.
- Represent the SJACO in its legally prescribed interactions and relations with official bodies in the national government and Verkhovna Rada and with local governments. This is similar to the general counsel function.
- Assist Cabinet of Ministers and Verkhovna Rada representatives in drafting new legislation or amending of existing legislation that affects the SJACO and the judicial system.

7. Department for Organization of Court Operations

This Department comprises 11 positions and is subdivided organizationally into two divisions: Human Resources Division and Training Division, each of which currently has five positions attached to it. Human Resources has broad system-wide responsibilities for staffing functions in all of Ukraine's trial and intermediate appellate courts. In the general jurisdiction, administrative and commercial trial courts, the Division is assisted by the human resource officers in the SJAFOs. In all intermediate appellate courts, it works with designated court HR personnel whose qualifications and expertise vary, a casualty of low salaries in field offices. The magnitude of the Division's workload is reflected by the total staffing in Ukraine's courts which, as noted earlier, currently comprises 7,800 judges and circa 34,000 support personnel. The Division's responsibilities encompass the following:

- Classify court support positions pursuant to national civil service regulations and standards that cover government employment
- Determine the appropriate numbers of judges and staff to accomplish the workload of the courts
- Develop standard position descriptions for general and specialized positions in the courts
- Calculate judicial salaries and vacation days based on complex formulae
- Ensure the maintenance of accurate personnel files
- Process and justify motions prepared by the Minister of Justice for increasing the number of judicial positions
- Receive, review, process, and consolidate reports from the SJAFOs and individual appellate courts. Prepare reports on the status and deployment of judicial system human resources.

The Division's workload will spike over the next several months when, pursuant to implementation of the provisions of the new Criminal Procedure Code which authorizes the creation of a new category of judicial position – investigative judge. As

noted earlier, the number of new positions in this category is estimated at 1,700. Those new judicial positions also will require a minimum of several thousand new support staff positions.

The Training Division's responsibilities extend to all judicial and support personnel in the trial and intermediate appellate courts in Ukraine. Its ability to provide effective and comprehensive judicial and support staff training curricula is constrained by modest budget allocations for logistical support and by the small number of staff who comprise the Training Division. Division training efforts are supplemented through cooperative programs sponsored and paid for by international rule of law projects such as those funded by the USAID-FAIR Project, the European Union, and select West European governments.

8. Material and Technical Support Department

The Material and Technical Support Department comprises seven employees. Its responsibilities focus on the construction, maintenance, repair and monitoring of court facilities in use throughout the country. Of the seven employees, one is an architect and one is an engineer. Five of the seven have experience and training in facilities construction; the other two have experience and training in economics. Most of the Department's work comprises tedious and bureaucratic tasks such as preparing routine letters and other formal written communications with a variety of agencies and bureaus on the national, regional, and local levels. Staff maintain current status inventories of all buildings. They also assist the courts with technical advice. Where funding is available, Department staff initiate and monitor major construction and repair projects. The Department relies on the SJAFOS for assistance in facilities-related matters on the regional level, although of persons in the field offices designated to provide such assistance, only two have a technical background and experience in construction.

The judicial system's inventory of court facilities nationwide totals 764 buildings. Most are owned by the national government. Some are owned by local municipalities and leased at nominal rates. Approximately 10 are privately owned and house administrative courts. Of the 764 buildings, only 154 are classified by the Department as in relatively good condition. The remaining 610 all require repairs and renovations of various kinds ranked from minor to major. Of the 764, only half provide some type of handicapped accessibility. Some are in such poor condition that they are unsafe or fall below minimum standards for government use; the courts assigned to them have been relocated indefinitely into leased privately-owned or other space in the absence of funds to effect the costly repairs and renovations they require; a typical example is the appellate administrative court in Dnipropetrovsk.

Department staff inventory the required repairs and renovations on an annual basis, then prepare estimates of the costs and forward these to the Department of Planning and Finance for inclusion in the SJACO's consolidated annual budget submission. Annual funding allocations average 5-6% of what is requested. In 2009, the Department

received no facilities funding for the fiscal year. In 2010, the allocation was 2% of the request. In 2011, it was 3.5%, and in 2012, it was 5%.

Although the SJACO has a State Enterprise for Court Construction and Expertise, no mention was made either of it in discussions with or of any support it provides to this Department. To the extent that this assessment is followed by more detailed and focused assessments the role and function of this State Enterprise should be reviewed in some detail.

9. Court Statistics Division in the Department of Court IT and Case Management

The Court Statistics Division comprises nine positions and is tasked with functions that include maintaining and analyzing court and case statistics for all trial and intermediate appellate courts in the judicial system. It also is responsible for national administration of court archives and for coordinating the generation of case statistics through the automated case information management system designed, implemented, and maintained by the SJACO's State Enterprise Information Court Systems (ICS). The Division's responsibilities include the design and promulgation of all court system forms utilized to collect and report statistical data. Statistical data generated by the courts and the SJAFOs are sent to and consolidated by the Division into national reports on an annual, semi-annual, and special-request basis for distribution within the judicial system as well as to the Ministry of Statistics, Attorney General, Ministry of Justice, Verkhovna Rada, National Security and Defense Council, National Ombudsman, and others. In addition, the Division handles numerous requests for statistical information from academics from a variety of universities and institutes. The Division is assisted on the regional level by the SJAFOs whose staff collect and consolidate statistical data from individual trial courts in their jurisdiction.

The function of collecting and consolidating court statistics is unnecessarily complicated by the lack of standard reporting formats and protocols and by different automated systems operative in different categories of courts. The ICS automated case management system which has been implemented in all courts general jurisdiction courts was designed to generate electronic case statistical data for transmission to the SJAFOs for consolidation, then forwarded to the Division for national consolidation. To date, the system largely fails to do so on the individual court level. In the Kyiv City SJAFO, for example, only one of the ten general jurisdiction district courts has been able to use that system to generate an accurate electronic report for the current reporting time frame. All other Kyiv City general jurisdiction trial courts continue to prepare manual reports, then enter that data into an Excel-based spread-sheet system comprising multiple tabs – 20 for civil cases and nine for criminal cases – for example. Once these data are entered into the Excel tabs, they are transmitted to the SJAFOs for regional consolidation. The regional Excel-based data are then transmitted to the SJACO Statistics Division for national consolidation. The administrative and commercial courts, by contrast, utilize a different ICS-developed case management

system which is not compatible with the system in use in the general jurisdiction courts, thus data generated by them requires special processing and handling by the Division. Although the data are generated electronically by the administrative/commercial courts case management application, staff at the SJACO Statistics Division frequently have difficulty producing accurate consolidated reports from those courts and require onsite technical assistance from ICS specialists. This process is further complicated by hardware and software issues. The computers and operating systems relied on by Statistics Division staff to generate and process statistical data are old, slow, and outdated. When compiling data, staff often try one computer which fails, then move to another and sometimes to a third to assess which one can best handle the processing functions. Moreover, the software system developed by ICS for use by the Division in consolidating statistical data does not recognize Excel-generated general jurisdiction court data so it cannot be integrated electronically with the data from the administrative and commercial courts, requiring time-consuming manual processing which diverts staff from other important functions.

10. IT Division in the Department of Court IT and Case Management

The IT Division of the Court IT and Case Management Department is authorized five positions. Candidates for positions are required to be university graduates. This Division's responsibilities include the following:

- Oversee the operation and maintenance of the National Register of Court Decisions
- Oversee development and implementation of the Unified Database of State Authorities
- Oversee development and implementation of the Register of Legal Entities and Entrepreneurs
- Oversee operation, maintenance, and improvements to the automated case information management systems deployed in Ukraine's courts
- Advise courts on the procurement and disposition of all technology-related hardware, including computer systems, digital court recording systems, and internet-based video conferencing
- Prepare the court system's annual budget request for technology-related hardware
- Publish all SJACO policy decisions and directives on the court system's national website
- Ensure compliance with the Law on Personal Data on all court databases
- Oversee implementation of the criminal justice video-conferencing system in court facilities and detention centers/prisons to facilitate video-based court proceedings
- Monitor the development and implementation of ICS IT projects

- Oversee the preparation of contracts for transferring IT equipment – for example from the judicial system to detention centers – and tenders for procurement of IT goods and services

Based on these responsibilities, two assumptions emerge. The first is that this Division has a critically important policy-making role when it comes to strategically developing and deploying information technology throughout the judicial system and Ukraine’s framework of trial and appellate courts. The second is that this Division is staffed with IT professionals, most of whom have advanced university degrees in IT systems, electrical engineering, systems analysis, or similar which would qualify them to oversee both the management and the technical aspects of the judicial system’s potentially enormous IT enterprise. Surprisingly, neither assumption is true. The Division’s policy-making role with regard to the enterprise is rather limited; its functions turn out to be more administrative and clerical in nature than managerial and technical. Of the current staff, none has an IT degree; the Division Head has a degree in public administration. The Division Head conceded that virtually all technical activities and projects draw for their specialized IT expertise on the staff of the State Enterprise ICS with whom Division staff work closely. Indeed, on major projects such as the design, testing, and implementation of the automated case information management system and the court/detention center video-conferencing project, ICS appears to assume the strategic roles of technical leader and policy maker. The IT Department’s role, by contrast, appears to be largely one of administrative and clerical support for ICS.

11. International Department

The SJACO’s International Department comprises three multi-lingual members reduced from four in 2012, and it has two primary functions. The first is stimulate and facilitate international cooperation and exchanges with judicial and justice systems in other countries. The second is to serve as a conduit of information for the public and to promote knowledge and understanding of the courts and their functions with the media and the public. It also serves informally as the SJACO’s press office and media liaison. Currently, it does not actively reach out to the media, although it has participated in several joint efforts over the years with USAID and European Union funding and support to facilitate communication and understanding with the public and the media. It also has co-sponsored joint efforts to train judges and court staff in how to improve relations with the media. Plans are in effect to create a Press Center for the Judiciary subject to funding.

D. Court-Supervision and -Support Roles of the SJA’s Territorial Offices

As noted, the SJA’s organizational framework includes 27 field offices currently comprising 544 employees who are tasked with (i) providing a variety of administrative and operational support functions, and (ii) overseeing and managing key administrative functions as set forth below. The SJAFOs are subordinate to the SJACO.

They exist to facilitate the SJACO’s court support role on the local level by providing services, expertise, and supervision. Although maintaining a network of 27 field offices entails a not unsubstantial expense for the SJACO, having SJA representatives more immediately available to local courts in each Oblast generally helps to facilitate greater efficiency, responsiveness, and access than would be the case if all support and supervision interactions emanated centrally from Kyiv. The issue of whether to maintain this network of field offices is largely a practical and pragmatic one. Could the services provided by the SAJFOs be handled more efficiently with equal or greater expertise and less bureaucracy on the individual court level? Or could those services be provided centrally by the SJACO with greater efficiency, greater expertise, and less bureaucracy. One of the issues addressed in this analysis is whether the types of services and support currently provided by the SAJFOs makes practical sense.

The number and size of the courts supported by each SAJFO varies. The SAJFO Donetsk, for example, supports 55 courts scattered over a broad geographic area and varying in size from larger urban courts to very small rural courts in more isolated sectors of Donetsk Oblast. By comparison, the Kyiv City SAJFO supports urban 10 courts in a small geographic area; however, the combination of judges and staff of those ten courts numbers over 1,000 reflecting their location in a largely urban environment.

Collectively, the 27 offices provide this direct support and supervision to 665 first-instance general-jurisdiction trial courts located throughout the country. In addition, they provide indirect support at lesser varying levels to the remaining circa 100 administrative, commercial, appellate and high courts in the system. Two key areas of support are financial management and automation. The financial-management related support they provide varies by type and level of court, as reflected in this table:

COURT TYPE	NUMBER	BUDGET SUPPORT	ACCOUNTING SUPPORT	PROCUREMENT SUPPORT	AUTOMATION SUPPORT
Supreme Court	1	Internal ⁱ	Internal	Internal	Internal/ICS ⁱⁱ
High Court	3	Internal	Internal	Internal	Internal/ICS
Commercial Appeals Court	7	Internal	Internal	Internal	Internal/ICS
Administrative Appeals Court	9	Internal	Internal	Internal	Internal/ICS
General Jurisdiction Appeals Court	27	Internal	Internal	Internal	Internal/ICS
Commercial Trial Court	27	Internal	Internal	Internal	Internal/ICS
Administrative Trial Court	27	Internal	Internal	Internal	Internal/ICS
General Jurisdiction Trial Court	665	SJACO	SJACO	SJACO	SJACO/ICS

1. Financial Management

As is shown in the above table, the SJAFOs provide direct financial management assistance to all of the general-jurisdiction trial courts. This assistance includes managing their budgets, handling their accounting such as paying their bills and tracking their expenditures, and authorizing their procurement activity. The accounting function also required the SJAFOs to track government ownership of all tangible government assets, such as equipment and furniture, and to account for its status. Of 24 staff authorized for the Kyiv City SJAFo, 25% or six positions are assigned to these functions. Interviews conducted by one of the authors with chief judges and chiefs of staff at two Kyiv City general jurisdiction trial courts in 2011 revealed discontent with these financial management support arrangements; interviewees expressed they would prefer being able to manage their own budgeting and procurement. Relying in the SJAFo entailed occasional delays in procuring urgently needed repairs, supplies, components such as print cartridges, etc. Since that time, the Kiev City SJAFo head has been replaced with a dynamic and innovative official with experience in both the public and private sectors. In a more recent interview with the chief judge of Kyiv's largest general jurisdiction trial court, she indicated that she was grateful for the financial management support because it diminished her administrative burdens. The interview schedule for this baseline analysis did not include the option of interviewing chief judges or chiefs of staff of first-instance general jurisdiction courts dependent on other SJAFOs.

2. Court Automation

Court automation plays an increasingly important role in the strategic efforts of the Ukrainian courts to improve their operating efficiency. As with financial management support, the SJAFOs provide court automation support to all first-instance general jurisdiction courts, but they do so primarily through the SJACO's State Enterprise Information Court Systems, the organization, role, and functions of which are described in a separate section later in this analysis. The SJAFOs do not appear to devote key staff positions to court automation support.

3. Human Resources

The SJAFOs also provide direct human resource assistance to the first-instance general jurisdiction trial courts. Such assistance includes HR salary and benefits administration, records maintenance, leave tracking, reporting, recruiting, interviewing, discipline, and other related HR functions. HR staff in the SJAFOs also develop and conduct training programs for judges and staff in the courts assigned to them. Although it makes practical sense from an efficiency perspective to regionalize HR administrative support for medium and small courts given high turnover which otherwise would have to attach HR functions to positions already assigned multiple functions, whether similar efficiencies are achieved using that model for large metropolitan courts is increasingly being questioned when the HR work individually generated by them is sufficient to warrant one or more full-time employees.

4. Statistical Reporting and Analysis

SJAFO staff collect, maintain, and consolidate a variety of types of first-instance general-jurisdiction court and case statistical information. Using Microsoft Office Excel, they prepare and submit on a recurring schedule periodic statistical reports to the SJACO. SJAFO staff also conduct analyses of these case data and, based on unsophisticated workload formulae, establish simple staffing levels for the courts in their jurisdiction. The data also are analyzed to inform decisions on the procurement of goods and services using antiquated formulae developed by the SJACO. Staff will occasionally visit courts assigned to their SJAFO to verify the statistical data recorded in the reports.

Although the automated trial court case information management system developed by the ICS and implemented in the courts was designed to collect, process, and format case-related court productivity statistics for electronic transmission to the SJAFOs, such functionality has not yet been achieved. The Kyiv SJAFO confirmed that to date, only one of its courts, a pilot court for the automated application, has been able to electronically generate accurate case statistical information reports from its automated system; the first report covers activity for the first half of calendar year 2012. The remaining nine trial courts continue to produce their reports manually. Given the work generated by these statistical reporting and analysis functions, the Kyiv SJAFO has assigned three of its 24 staff members to the statistical unit. Presumably, the majority of SJAFO-serviced courts will continue to provide manually produced reports for the foreseeable future.

5. Court Facilities

As noted above, the Ukrainian courts utilize 764 facilities nationwide to serve the public and adjudicate cases. The great majority of such facilities are utilized by the first-instance general jurisdiction trial courts, and SJAFO staff are responsible for working with those courts to ensure their maintenance but, in addition, to oversee and assist with construction and renovation projects. They also provide similar support to the administrative, commercial, and intermediate appeals courts. This is another area in which courts are prohibited by regulation from employing technical experts such as architects or facility engineers, thus they are dependent on the SJAFOs and the SJACO for the requisite expertise and guidance. Although there is a State Enterprise for Court Construction and Expertise, none of the SJAFO officials mentioned either their use of or professional working relationship with this State Enterprise. Neither, for that matter, did any judges interviewed by the Author.

6. Legal Services

SJAFOs also perform a variety of legal services for the courts assigned to them. Of its 24 person staff, five positions are allocated to this function in the Kyiv City SJAFO. Those services include:

- Representing the SJA in court cases in which it is a party to the proceedings, for example, when a judge who has been disciplined for judicial misconduct contests the decision;
- Preparing and enforcing contracts and other legal agreements entered into by the SJAFO for goods and services;
- Responding to complaints lodged by the public or the bar against courts, judges or staff of the courts or the SJAFO;
- Cooperate and otherwise work with local government entities on matters relating to courthouse facilities, properties, and other administrative matters.

E. SJA State Enterprises

The current SJA organizational chart (SJAOC) sets forth the framework according to which its statutory functions are distributed and the reporting structure operates. The SJA Head and his two deputy heads are each tasked with managing discrete groups of functions. For the two deputies, those management functions are complicated by what are referred to as state enterprises, an organizational holdover from Soviet-era government models in which the state deploys quasi-commercial enterprises under its control to facilitate the delivery of select categories of goods and services. Such “enterprises” are authorized to engage in competitive free-market activities to a limited degree but also function within the framework of government organizations subject to constraining regulations.

The tradeoff, under rules and regulations established by the Cabinet of Ministers, authorizes them to function as discrete monopolies which providing goods and/or services to the government entities to which they are contractually bound while short-circuiting or by-passing many of the bureaucratic requirements with which private-sector firms are required to comply. The State Enterprise for Court Construction and Expertise assists courts with planning, designing, and executing facility construction, renovation, and repair projects authorized in the budget. The State Enterprise for Automobiles facilitates court access to vehicles for transporting judges, staff, litigants, witnesses, experts, and guests. The State Enterprise Health Resorts facilitate judicial and staff access to government-owned health-care facilities pursuant to Paragraph 25 of Reg. #12 which directs the SJA to “provide within its authority medical care and health resort support to judges, including retired judges, court staff, take measures on providing them with decent accommodation.” The State Enterprise Information Court Systems (ICS) supports court automation efforts in a broad variety of initiatives ranging from hardware and software support and maintenance to the design and delivery of specialized automated case-management information systems, from provision of electronic recording of court proceedings to management and operation of the state

register of court judgments. A more recent initiative being handled by the ICS is the acquisition and installation of video-conferencing equipment in courtrooms and detention centers/prisons to permit electronic court proceedings in criminal matters. Relying on two-way transmission via secured Internet connections, the technology eliminates the cost and security risks of physically transporting defendants and inmates to and from courthouses. Because of the increasing importance of information technology and related services for court operating efficiencies, this Assessment focuses its inquiry into the State Enterprises on the ICS. However, similar detailed inquiries should be conducted at some future time into all SJA State Enterprises.

The efficiencies obtained by the SJA's ICS utilization for IT services are compromised by the complex contracting arrangements with which ICS must comply in order to provide its services. Instead of entering into a single umbrella contract with the SJACO, ICS contracts separately each year with each of the 27 SJAFOs to provide the services it offers to the first-instance general jurisdiction courts. It also contracts separately with each of the following courts each year:

- 27 regional intermediate appeals courts
- 27 administrative courts
- 27 commercial courts
- Nine intermediate appeals administrative courts
- Seven intermediate appeals commercial courts

Beyond these annual contracting requirements with 132 separate legal entities, ICS also enters annually into contracts with the central SJA to manage the systemwide register of court decisions, maintenance of the case information management statistics application, and other IT-related services. ICS has simplified its contracting process with the territorial SJA offices and individual courts by establishing billing standards using formulae based on the number of filled judicial positions in a court and projected median workload levels generated by those positions and the court staff who support the judges. Notwithstanding the overhead costs reflected in this contracting process which are built into the rates he charges, the current director of the ICS maintains that the costs to the court system of utilizing these negotiated bundled support-services contracts are substantially lower than they would be were individual courts required to secure such services on the open market. No studies appear to have been undertaken by the SJACO or any government auditing watchdogs to confirm that assertion. In that connection, it is not clear why the legal contracting team at central SJA has not devised a more rational process whereby all services provided by ICS are incorporated into a significantly smaller number of annual contracts, thereby reducing the enormous paperwork burden of both organizations.

Section Two

Analysis and Recommendations for Consideration by the SJA Leadership

This section of the Assessment analyzes the SJACO and SJAFOs from a variety of perspectives and offers recommendations for consideration by the SJA and judicial system leadership bodies. The recommendations are prompted largely by two intersecting considerations. The first is oriented toward improving the administrative efficiency of the SJA to more effectively serve its enormous immediate constituency of judges and supporting staff, thereby, in turn, enabling them to more competently serve Ukraine's citizens when they seek justice. The second is oriented toward improving the professionalism of the SJA as a key government support organization charged with improving and enhancing the performance of the Ukrainian judicial system; enhancing the professionalism of the SJA will, in turn, heighten the professionalism of judges and court staff resulting in a higher standard of justice administration for Ukraine's citizens.

Realignment of the SJACO's Structural Framework

The author analyzed the SJACO organization from a variety of perspectives., including the management reporting framework and whether the existing distribution of functions reflected maximum organizational efficiency. The results of that analysis, informed by interviews with all major SJA department heads, suggest that discrete adjustments and additions to the existing structure have the potential to improve its efficiency and to maximize its effectiveness. Recognizing the resource constraints under which the SJA operates, the author does not anticipate that all or even most recommendations will be implemented immediately. Strengthening and increasing the professionalism of the SJA's structural framework will take time and should be informed by careful deliberations among senior SJA managers with representatives

from the courts and senior judicial system leaders. Those objectives also should be supported by sustainable increases in resources over time. The proposed adjustments and enhancements are laid out below.

Finance, Budget, and Accounting

These functions all relate to the organization's overall financial management and budget planning activity, and they should be grouped together as separate departments under the management and oversight of one SJA senior-level executive, not two as is currently the case. The financial audit function also falls within financial management but in best practice organizations, it reports directly and privately to the organization's CEO. For purposes of reference, Appendix II to this report is an organizational chart of the Administrative Office of the United States Courts which was created in 1939 and is functionally similar to the SJA. Note that all financial and budget management functions are located in a larger Office of Budget and Finance with a dedicated Assistant Director at its helm.

RECOMMENDATION: That the SJACO leadership consider realigning the current distribution of the financial management functions of finance, budget and accounting under either the SJA Head or the Deputy Director. Organizing these functions collectively under one single rather than two separate management oversight frameworks will serve to promote greater unity and efficiency in matters relating to overall functionality, policy making, support framework, and command structure. The audit function should remain under the direct supervision of the SJA Head for purposes of maintaining its integrity, confidentiality and independence.

Legal Support and Assistance

Under the current organizational framework, two separate departments handle legal affairs and support for the SJA: the Department of Legal Support and the Department of Organizational Support to Operations of Judicial Self-Governance Bodies. Both Departments handle complaints from a variety of sources but directed to separate organizations as noted in Section I. The Department of Legal Support, in addition, serves as the SJACO's inhouse advisory counsel on all legal matters. It also serves as the legislative liaison, drafting text for prospective laws and facilitating their progress with representatives in the other branches of government. It also serves as the SJACO's legal representative in court proceedings where the SJA is a party.

RECOMMENDATION: That the leadership of the SJACO consider restructuring how these various legal support functions are organized pursuant to the following proposals:

- *Consolidate all processing of complaints received by or referred to the SJA into a single Citizen Complaints Division within the Department of Legal Support, including those currently processed by the Division of Organizational Support to Operations of Judicial Self-Governance Bodies.*
- *Assign to this Citizen Complaints Division the following major objectives:*
 - *Working with the legal support sections of the SJAFOS develop a plan for the gradual decentralization of complaints processing from the SJACO to the*

SJAFOs. This may entail amending existing laws governing citizen complaints against the judicial system to provide for their resolution on the territorial level by judges committees attached to the territorial courts of appeals. Under this model, complaints against judges in individual oblasts would be processed by the regional SJAFOs and resolved either by their legal sections or by these new judges' committees. Adjudication of most of these citizens complaints on the regional level would serve to empower the regions and enhance judicial independence on the regional level. It also would diminish the burden on the SJACO of responding to and processing complaints.

- Working either with the ICS and the SJACO IT Division or with an outside IT contractor, develop a plan and lay the groundwork for an automated complaints receipting and review software application. This application would transform the current paper- and labor-intensive burden of manually reviewing complaints on paper to a more efficient electronic system that would permit those filing complaints the option of completing a standard complaint form online, certifying it, and transmitting it electronically to the Division or, in the future, to the appropriate SJAFO. Once in place, the application would be available on the judiciary's national website. Supplemental evidence, where necessary, could be sent by mail or delivered in person.
- Commence the process of drafting a judges' handbook on judicial misconduct that is based on the substance of legitimate complaints submitted to the SJA. The purpose of this handbook would be to alert judges as to the categories of misconduct that provoke citizens to lodge complaints against them and to advise them as to how to avoid such misconduct. Its purpose would be educational and be based on existing judicial conduct standards.
- Create a new Office of General Counsel or equivalent whose functions would include the following:
 - Serve as the SJACO's resident legal counsel responsible for advising senior management on legal issues and questions
 - Serve as the SJACO's legal representative in all court and related proceedings in which it is a party
 - Serve as the expert advisor to judges and court system managers on all matters relating to judicial and staff ethics, codes of conduct, and conflicts of interest.
- Transfer all legislative liaison work currently performed by the Department of Legal Support to a new Legislative Affairs Office as described below.

Strategic and Long-Range Planning and Assessment Office

As described elsewhere in this assessment report, Ukraine has made a enormous investment in human and other capital in a system for the administration of justice. Interviews conducted by the author reflect an vast public-sector enterprise comprising more than 40,000 judges and staff largely consumed with day-to-day operations and the administration of justice in an environment of limited resources, excessive bureaucracy, limited training opportunities, marginally functional automated national case information applications, and growing caseloads. Given these constraints, the primary

organizational focus of the SJACO and the SJAFOs is responding to the support requirements generated by those day-to-day operations and the infrastructure within which they are conducted. A critical organizational component lacking in the SJACO organizational structure is an office dedicated to positioning the forward trajectory of this massive system and establishing and monitoring its progress toward strategic and long-range goals and objectives that have been harmonized with its overall mission and vision. The benefits to having such an office are myriad. Primary among them is having in place professional experts and mechanisms for working with SJA and judicial system leaders to establish plans and to measure progress toward the attainment of those plans' strategic and long-range objectives. Creation of such an office will help to facilitate the transformation of the SJACO from an institution which currently is primarily reactive in character to one in which it is primarily proactive.

RECOMMENDATION: That the SJA senior leadership consider establishing a small permanent Strategic and Long-Range Planning and Assessment Office staffed by two professionals with expertise in strategic planning and assessment. This new Office would be responsible for working with senior SJA and judicial system leaders to develop and assess the implementation of strategic and long-range plans for the judicial system, complete with measurable goals and objectives.

Verkhovna Rada Affairs/Liaison Office

Transfer of the SJA from the government to the judicial power did not sever all of the organization's ties to the government. The SJACO continues to remain subordinate to the Minister of Finance and the Cabinet of Ministers for its capitol and operating budget allocations, notwithstanding its status as a judicial power organization. As the SJA seeks to diminish those ministerial controls by transferring the control of its budget authority directly to the Verkhovna Rada, it will need to establish and build successively stronger and closer relations with the members and staff of legislative committees that oversee the judicial system and control the budget allocation process. Experience suggests that a productive approach to building such relations is to establish a dedicated legislative affairs office of experienced and higher-level specialists with experience and expertise in legislative relations, legislative drafting, public-sector lobbying and related disciplines.

RECOMMENDATION: That the SJACO leadership consider establishing a new Verkhovna Rada Affairs/Liaison Office and assign to it all functions related to interacting in a positive and proactive manner with key members and staff of the Verkhovna Rada. The responsibilities of this office would include the following:

- *Promoting the interests and needs of the judiciary from the perspective of funding requirements and pursuing the effective administration of justice. This essentially comprises an ongoing program of keeping staff and members informed of the judicial system's funding priorities*

- *Seeking legislation that promotes the institutional independence of the judicial system and the SJA, including elimination of the role of the Ministry of Finance and the Cabinet of Ministers in decisions affecting the judicial system's budget*
- *Informally proposing, offering drafting and research assistance with, and reviewing legislation that will impact the judicial system*
- *Remaining current on a daily basis of all new and ongoing legislative initiatives relating to the judicial system and alerting the SJA leadership to important developments, particularly those that may require intervention by judicial system leaders. SJA leaders, in turn, will be able to keep informed leaders of the Congress of Judges and the various councils of judges.*

Media Relations and Public Outreach Department

The SJACO's International Department, in addition to serving as the international liaison for the SJA and Ukraine's trial and appellate courts, also is tasked with key domestic functions. Those include serving as the SJACO's media relations and public outreach offices. These domestic functions are of critical importance. Ukraine's judicial system shares with its Eastern European and Central Asian neighbors an embedded and stubborn legacy of public mistrust and lack of confidence in the integrity of its courts and judges and the quality of its justice. These negative perceptions are often fueled by a jaundiced media following a long tradition of mistreatment, censorship, and manipulation by prior regimes. Overcoming this legacy anticipates an ongoing proactive campaign to recast courts, judges and institutional justice in a more positive light. Such campaigns have been successful in countries where judicial systems initiated calculated efforts to improve transparency, stimulate interactive dialogue between judicial officers and press representatives, and develop public education initiatives to facilitate understanding of how courts work. The International Department, with a staff of three, is insufficiently resourced and lacks the professional experience to effectively take on these roles.

RECOMMENDATION: That the SJACO leadership consider establishing a new permanent Media Relations and Public Outreach Office. This would be a small office with a staff of two to three professionals whose expertise and professional experience include successful public outreach programs, improved media relations campaigns, and the strategic use of survey instruments and social media to inform and discretely intervene in public sector environments. Following a period of careful strategic planning and consultations with the various stakeholders, the office would establish a regular schedule of media briefings, an active agenda for stimulating public interaction via social media, and public outreach programs. It also would actively solicit support and assistance from credible international NGOs in the design and conduct of media awareness seminars throughout Ukraine in which judges and chiefs of staff receive training in how to proactively manage and interact with the media to improve the quality and substance of reporting on the courts. It also would structure interactive dialogue between key representatives of the judicial system and the media on how to jointly improve public understanding of the courts and heighten public expectations of judicial integrity and transparency.

Applied Research and Analysis Function

As described elsewhere in this assessment report, Ukraine has made a huge investment in human and other capital in its system for the administration of justice. One means of maximizing the country's return on such an investment is to commit a small proportion of available resources to ongoing research and analysis into practical matters affecting the operation and administration of the system. That research might address whether specific proposals to improve the system are reasonable by testing and evaluating them in controlled environments, how best to deal with and respond to chronic court operational issues in sustainable ways, by assessing the impact of experimental procedural rules changes, by creating and evaluating pilot programs to determine their potential for improving the administration of justice, etc. The SJACO does not currently have in place such an operative function staffed by professionals. Although the mandate of several departments calls for analysis, issues with inadequate staffing, demanding workloads, and lack of qualified researchers and analysis preclude them from responding accordingly.

RECOMMENDATION: That the SJACO leadership consider establishing a small office dedicated to conducting applied research on judicial and court system related matters. Of key importance is that such an office be staffed with individuals professionally qualified to conduct applied empirical and practical research in organizational environments such as persons with Ph.D. degrees in disciplines such as statistics, program evaluation, psychology, and public administration.

Judicial System IT Enterprise Management and Policy Making

The role and significance of information technology in the management and operations of large government enterprises increases as more powerful machines and increasingly sophisticated applications emerge. Ukraine's judicial system is no exception. With 34,000 support staff and 7,800 judges, soon to be increased by several thousand additional positions with implementation of the new criminal procedure code, a strategic objective of the all judicial system leadership should be the tactical deployment of information technology in a manner that maximizes the productivity and the efficiency of the workforce and the transparency of the system. In modern organizations, strategic, enterprise-wide decisions regarding the acquisition and deployment of information technology are made internally at the highest levels. Those decisions are informed by the judgment, expertise, and experience of seasoned professional IT managers and executives who are a part of the senior management team. The SJACO does not include a senior-level, internal IT expert management component. Instead, it appears based on interviews to rely exclusively for its strategic IT planning, policy development and decision-making on the advice and guidance of the ICS management and technical teams. Moreover, this arrangement appears to be satisfactory to SJA's leadership. However, there is reason for concern about this arrangement. As a State Enterprise, ICS has a five-year contract with the SJACO to provide a comprehensive schedule of IT goods and services. As a quasi-commercial company, ICS's incentives, in addition to providing such goods and services, include

earning a profit and, presumably, stimulating the growth and influence of the enterprise. That profit incentive may not always be compatible with the goals and objectives of the SJA to maximize the value of and the return on its enormous investment in the national IT enterprise for Ukraine's more than 700 courts.

Best practices in large enterprise-level modern organizations anticipate that the acquisition of specialized contractual services, such as IT support, is driven by strategic plans. Those plans have been carefully crafted and refined by the internal leadership team, and the objectives of those plans are correlated with other non-IT objectives in pursuit of the overall organization mission and vision. Those IT objectives are formulated with the assistance of technical experts *within* the organization rather than employees of a contracting services company. A contractor's objectives will never completely coincide with those of the organization with which it has a contractual arrangement. To that extent, modern business practice anticipates that the enterprise organization establishes the vision and enabling objectives on its own, then identifies and engages contracting services as appropriate to implement those objectives and provide technical advice in the process. Best-practice principles mandate that the leadership of the enterprise organization defines, directs, and monitors the design and implementation processes.

The arrangement at the SJACO diverges from this best practice model. Based on interviews with the leadership and several department heads, the judicial system management appears to have ceded control of its IT enterprise to the ICS. There is within the SJACO organizational framework no internal senior-level group of IT professionals who direct the judicial system strategic IT planning, development, implementation, and policy-making initiatives at the enterprise level. Neither is there a bona fide IT Department staffed with professionally trained and experienced IT specialists who develop systemwide IT requirements, review them with other relevant department heads, and craft appropriate plans and objectives for review and approval by SJACO's senior management. Instead, those functions appear to have been delegated to ICS.

This finding draws no inference that ICS is engaged in any inappropriate or improper activity; that is for auditors to determine. What it does suggest, however, is that the SJACO senior leadership has relinquished a key component of its organizational authority and leadership mission to a subordinate external partner whose functions and support role the SJACO should be actively managing and directing, not just passively monitoring. This arrangement effectively compromises the SJACO leadership's independence by defaulting to the ICS the role of leading, defining, and managing the IT enterprise. This default is an outcome of the SJACO having no internal IT function with sufficient professional and technical experience and expertise to either (i) proactively direct and manage the judicial system's IT enterprise, or (ii) critically and independently direct, assess, and supervise the ICS. Without such a function in the

form of an appropriately configured and staffed IT Department or other internal organizational entity, the SJACO thereby transfers to the ICS its own responsibility and authority for the enterprise-wide deployment of IT. Although, as noted in Section I, the SJACO organizational framework does include what is nominally described as an IT Division in the Court IT and Case Management Department, the qualifications of Division staff members do not meet even the minimum requirements of a professional IT function.

RECOMMENDATION: That the leadership of the SJACO consider creation of a separate high-level IT Department comprising a minimum of four or five higher-level IT experts in various specialties. The existing IT Division could also be intergrated into this new Division. The functions and authority of this new Department would include independently monitoring and assessing and eventually directing all current project and other IT efforts of the ICS to ensure greater accountability and quality control over the SJACO's broad IT enterprise mandate. The management team of this new Department would also advise and inform the understanding of the SJACO's leadership team of issues and problems. It also would participate in high-level planning and stragegy sessions in which the SJACO leadership and various judicial leadership groups define the long range strategies and objectives for the IT enterprise for Ukraine's courts. It also would participate in senior leadership sessions organized to define and update existing IT policies and procedures.

Direct Reports of the SJA Head

Each SJAFO is under the direction of a territorial department head, all of whom according to the SJACO organizational chart report directly to the SJACO Head in Kyiv. Along with the First Deputy and Deputy Heads of the SJACO, the SJACO Head has 29 managers who report directly to him. That number far exceeds the best practices model which advises restricting the number of direct reports to a CEO. Earlier this year, the *Harvard Business Review* reported that over the past 20 years the CEO's average span of control, measured by the number of direct reports, has doubled and stands at nearly ten today.ⁱⁱⁱ Reducing the number of direct reports to the SJACO Head to a more manageable number pursuant to best practices in organizational senior-level executive management will serve improve his effectiveness as the organization's chief executive officer. Rather than having all SJAFO office heads report directly to the SJACO Head, it may make sense to divide the 27 SJAFO heads as direct reports among the members of a new second tier of the SJACO senior management team. Reducing the number of direct reports will enable to SJA Head to minimize distractions and focus more time on his key strategic responsibilities of leading the organization, setting and maintaining its course, and monitoring the pursuit and achievement of its short- and long-range plans and objectives. No damage to coordination necessarily follows on the SJAFO management side if the SJAFO heads report to a high-level team of regional administrators rather than the SJA. The concept has worked well for decades in a comparable arrangement in the U.S. federal judicial system. The keys to its success are

outstanding client service, equal distribution of resources, and the discretion to make exceptions where exigent circumstances demand it.

First Deputy Head of the SJA

Although this position normally would function as the alter-ego of SJA's Head or his second-in-command, the current incumbent was not included in any of the high-level meetings with the Assessment Team. Neither did he participate in any of the interviews with department heads listed under his supervision. To the extent that this position was created for reasons other than facilitating the executive-level management structure, upon the retirement or transfer of the current incumbent, the SJA leadership might consider at some point in the future consolidating the positions of First Deputy Head and Deputy Head of the SJACO and realigning supervision of the departments under them.

RECOMMENDATION: That the SJA leadership consider, when the current First Deputy Head of the SJA retires or otherwise vacates his position, consolidating his position into the Deputy Head of the SJA, effectively converting what now are two senior executive positions into one.

Establishing Strategic Controls over the Impact of Legislative Initiatives

Ukraine's Verkhovna Rada recently enacted a new Criminal Procedure Code scheduled to go into effect on 19 November 2012. Its provisions include creation of a new judicial tier of approximately 1,700 investigative judges to be integrated into the first-instance general jurisdiction courts. These new judgeships will inevitably be accompanied by additional support staff positions, and the SJAFOs will be required to assist the courts to which they are assigned locate space and purchase equipment and furnishings to accommodate them. The legislation does not provide for any budgetary supplemental to fund such procurement.

This is the third occasion on which the Verkhovna Rada has passed legislation significantly impacting the judicial system without any provision for supplemental funding to accommodate such impact. The first was creation of the administrative courts framework which added a new tier of specialized administrative trial and intermediate appellate courts throughout the country. The second was creation of the new framework of three high courts positioned above the intermediate courts of appeals and the Ukrainian Supreme Court. In all three instances, the legislation did not include provisions for supplemental appropriations to handle the burdens of (i) locating, arranging, and funding the leasing or acquisition of facilities, (ii) purchasing requisite furniture and furnishings, and procuring IT and office equipment; instead, those resource burdens were left to the SJACO and the SJAFOs to negotiate. Although the Verkhovna Rada may include in the legislation a time frame that provides the judicial system with a preparation period, the specified period is often too short to permit activities such as (i) the acquisition of facilities and furnishings; (ii) the

procurement of equipment; (iii) the orientation training of judges and staff; (iv) the orientation and training of the legal community; and (v) the orientation of the general public. Failure to include appropriate time frames inevitably creates frustration and confusion as the judicial system leadership scrambles to implement the legislation.

RECOMMENDATION: That the leadership of the Congress of Judges, the Judicial Council of Ukraine, and the SJACO jointly and formally approach the leaders of the Verkhovna Rada tasked with overseeing the judicial system and its funding to request drafting and passage of legislation requiring the legislative power to initiate the following process anytime it begins serious consideration of legislation affecting the judicial system:

- 1. That the leadership of the judicial system receive notice of such prospective legislation*
- 2. That it be given a minimum of three weeks to analyze and document the impact of such legislation in terms of (i) the additional costs and other resources implementation of its provisions will require, and (ii) the amount of time it will take to successfully prepare the judicial system, the practicing bar, and the public for the proposed changes. This documentation should take the form of a formal legislative impact statement for submission to the chair and members of the Verkhovna Budget Committee prior to passage of the legislation*
- 3. That the Verkhovna Rada be required, upon passage of the legislation, to take into account the implementation costs documented in the legislative impact statement and include them in the total funding appropriation provided for in the legislation*

The federal judicial system of the United States initiated such legislation several decades ago, and it was approved by the Congress, the legislative power of the U.S. Government. The Congress has continued to honor the process with the consequence that important new initiatives for the federal judicial system are always fully funded and that sufficient implementation time is factored into the effective dates at the time the legislation is approved to enable the judicial system to fully prepare itself, the legal profession, and the public.

Data Collection, Consolidation and Reporting

One of the Ukrainian Government's Soviet-era legacies is an excess of data generation, collection, consolidation and reporting. The SJACO and SJAFOs participate in this legacy; staff expend considerable limited resources on the production of a variety of statistical and other types of reports, both for internal and external distribution to a number of outside agencies and offices. It is typical in organizations for data collection and reporting legacies to persist over years, sometimes decades, without being assessed as to either their utility or value. Staff interviews also revealed that various departments are required to spend considerable time engaged in preparing correspondence and otherwise responding on paper to trivial and insignificant administrative matters and bureaucratic requirements. They expressed a strong preference for eliminating many of these requirements, thereby freeing their time to focus on more important and necessary matters. Having just completed its ten-year

anniversary mark, the SJA is a prime candidate for such an assessment process relating to its myriad data collection, consolidation, and reporting functions and other bureaucratic correspondence and form-filling. These officious requirements contribute little to the overall mission of the SJACO and, in the larger scheme of things, are unessential and inefficient.

RECOMMENDATION: That the SJACO leadership consider establishing a small SJA task force to compile a list of all reports prepared by various SJACO departments both for internal and external distribution. For each report, the list should include the average length, all recipients, and the delivery format – paper or electronic. Once the list is complete, the task force might be enlarged to include representatives from the Cabinet of Ministers, the Verkhovna Rada, and other organizations which frequently receive SJACO reports. The task force would then review the lists and the distributees, with sample reports where appropriate, to determine which of them merit the time and effort invested in their production and which do not. Those that the task force agrees are no longer essential should be summarily discontinued. The task force might also review existing reports to determine which can be reduced and simplified. The task force might also review other bureaucratic correspondence, form-filling, and related requirements identified by department heads as time-intensive but of marginal value with an eye toward eliminating them as well.

SJACO Staffing

The structural organization of the SJACO is relatively straightforward as depicted in its organizational chart. Functions are distributed among a framework of discrete departments. Generally, department heads have relevant experience in the operational areas their functions serve. They also have university-level degrees. Ukrainians generally are aware that attaining higher education is a minimum requirement for entry into the professions. Indeed, national statistics reflect that a growing percentage of Ukrainians with university degrees are unable to find positions in their chosen field because of a surplus of credentialed candidates. This oversupply works to the advantage of the government because notwithstanding the low salaries associated with civil service positions, government departments and agencies receive applications from and are able to hire degreed candidates anxious to secure employment. Not infrequently, they are overqualified for the positions they accept. The challenge for the SJACO in this buyer's market is identifying prospective candidates for key positions whose educational qualifications match those of the positions for which they are being considered. Interviews with department heads indicate that in many instances, that is not the case. Various SJACO departments are staffed wholly or largely by lawyers, a number of whom are in positions whose responsibilities would be better served by persons with degrees in relevant disciplines. The assumptions on the basis of which such hiring decisions are made should be carefully re-examined.

Another major challenge is insufficient staffing. Interviews with SJACO department heads and SJAFO management consistently pointed out the need for increased staffing.

More often than not, current staffing allocations are insufficient to handle SJACO department and regional office workloads as specified in Regulations #12 and #82. These staffing deficiencies are exacerbated by the following factors:

- **EXTENDED POSITION VACANCIES:** Below-market salaries result in high position turnover rates; as soon as incumbents have minimal experience in their positions, they look for higher salaries elsewhere. This revolving door phenomenon has counter-productive consequences for continuity of operations as senior staff must frequently set aside time to orient, train, and mentor a succession of new employees. In addition, new state-wide regulations require that all candidates for government positions be subject to comprehensive security checks. This results in authorized positions frequently remaining unfilled for six to nine months.
- **MATERNITY LEAVE POLICIES:** Generous government benefits permits women who have children extended maternity leave for six months to a year or longer during which their positions must remain open.

As a consequence, a department already short-handed because of insufficient numbers of allocated positions may be further handicapped because one or more allocated positions are vacant. When either a department or field office is significantly understaffed, the consequences for the SJA as a support organization may mean that critical, time-sensitive court requirements are not being addressed and that the effective administration of justice risks being compromised. Examples of departments with insufficient staffing include the following:

Audit Department

Given the requirement that each court and each SJAFO be audited, reported, and monitored in three-year cycles, the head of the Audit Department would be better equipped to adequately respond if four regional audit offices could be established in four quadrants of the country - north, south, east, and west. For example, an office located in the Donetsk SJAFO could assist with onsite audits of the 50-plus courts in Donetsk Oblast and those of the neighboring oblasts. This would permit the central Audit Department to more aggressively and comprehensively address financial mismanagement issues and problem areas; design and conduct training of chief judges, chiefs of staff, and technical staff; prepare and maintain a comprehensive internal financial controls handbook for electronic distribution to all SJAFOs and courts, and prepare the general jurisdiction trial courts for the eventual decentralization of finance, budget, and accounting functions from the SJAFOs to the individual court level. It would also permit the Audit Department's Procurement Division to design and conduct training for (i) financial and procurement staff in the commercial, administrative, and intermediate appeals courts on how to conduct tenders and prepare procurement contracts for goods and services, and (ii) general jurisdiction trial court staff on the

procurement basics for the eventual decentralization of procurement functions to the individual court level.

RECOMMENDATION: That the SJA leadership consider enhancing the existing staff of the Audit Department with sufficient trained auditors to staff four small regional offices in strategically located and existing SJAFOs to enable it to more consistently pursue its mission.

Department for Organization of Court Operations

As described in Section 1, this Department provides human resource administrative support for 7,800 judicial officers, soon to increase by another 1,700 new positions, and for circa 34,000 court support staff, also soon to increase by several thousand, distributed in over 700 courts. These numbers reflect an enormous investment by the Ukrainian Government and its citizens in the human capital devoted to the administration of justice. Best practices in modern public-sector management anticipate that government leaders are cognizant of such investments and that they structure their organizations, create learning opportunities, and build proactive work environments to ensure that they earn maximum returns on that investment. Successful returns on investments in human capital are measurable, and key measures include maximizing productivity, service, and performance. To achieve such returns, public-sector organizations rely on competent and professional human resource administration systems staffed by experienced and trained executives and informed by ongoing empirical research, work-measurement studies, productivity analyses, and workplace monitoring performed by highly qualified specialists. They also ensure that there are direct correlations between the professional competencies – both in expertise and experience – required for the achievement of the organization’s strategic and long-term objectives *and* the competencies in expertise and experience of individuals who are recruited by and invited to join the organization. Where such correlations are indirect and imprecise, the organization’s capacity to achieve its objectives is weakened and its effectiveness compromised.

In Ukraine’s youthful democracy, such notions of public-sector excellence are slowly emerging. Lack of funding and other resources combined with the legacy of prior regimes’ decades of administrative mismanagement of judicial system human capital have disadvantaged the SJACO in its efforts to reach for and attain modern best-practice standards. Only five authorized positions staff the Human Resources Division and another five staff the Training Division. Although the Department is supported by the human resource support officers in the 27 SJAFOs, this level of central office staffing for that quantity of human capital barely suffices to ensure completion of the most basic human resource functions. By limiting its human resource support commitment to a staff of five, the SJACO essentially precludes the Human Resource Division from engaging, for example, in comprehensive workload and workforce assessment and analysis studies, the outcomes of which would serve to improve how human resources are acquired, oriented, trained, motivated, and compensated. Because the effective

deployment of the court system's human resources is not based on modern principles such as performance management and maximizing productivity through study and experimentation, the judicial system's return on its enormous investment in human capital is necessarily limited, both in its judicial and staff components. The current system encourages a mindset that focuses much more on reacting and responding and much less on anticipating, building and initiating. In addition, modest government salaries also preclude the SJACO from attracting and appointing highly competent human resource professionals with enterprise-level expertise in how to build cadre of highly competent human resource professionals and specialists who can be strategically deployed to maximize the judicial system's investment in human talent to administer justice and to manage and operate Ukraine's vast network of courts.

RECOMMENDATION: That the SJACO leadership consider supporting an in-depth analysis of court system judicial and staff workforces to analyze how effectively they are being utilized and what measures might be taken to maximize their competence, performance, and productivity. This analysis also should review and provide detailed recommendations on how the Human Resources and Training Divisions should be expanded and staffed with professional specialists to reflect modern best practices in the effective administration and deployment of human capital. Such an analysis must be conducted within the context of the resource limitations which encumber the SJACO leadership. However, it also must forcefully detail how failure to more constructively and proactively deploy this enormous investment in human capital will continue to foster high turnover, dampen creativity and innovation, and produce lack-luster results.

Materials and Technical Support Department

As described in Section I, this Department currently is staffed with seven positions and is responsible for the 764 physical facilities in which 34,000 court staff and 7,800 judges administer justice for Ukraine's population. That reduces to more than one hundred court facilities per employee, an almost impossible task given the current state of disrepair of most facilities and notwithstanding the assistance provided by SJAFO personnel assigned to facilities, most of whom have neither relevant experience nor training. At a minimum, the Department's professional staff should be increased by a factor of at least two and ideally five who, among other responsibilities, would be deployed to analyze how courthouses are utilized under these trying conditions and to advise and train SJAFO and court personnel in facilities related matters, including preparation of a comprehensive court facilities management handbook/manual for distribution to all SJAFOs and courts. Given the looming crisis in the growing inventory of deteriorating facilities and the increasingly prohibitive costs of restoring and maintaining them, the SJACO should place within the Department a senior-level official whose primary functions would include serving as the facilities liaison with designated Verkovna Rada committee staff members. The functions of this new position would be not only to advise and update the committee staff regularly on the deplorable physical conditions in numerous court facilities throughout the country but also to invite them to tour select facilities and to meet with designated chief judges to

learn first-hand the environmental conditions under which some courts are compelled to administer justice on behalf of their constituent citizens.

RECOMMENDATION: That the SJACO leadership consider upgrading both in size and in level of specialized expertise the staff of the Materials and Technical Support Department to better enable it to:

- *Track the existing inventory and condition of the judicial system's inventory of facilities*
- *Improve the competence of SJAFO personnel in facilities related matters through training and publications*
- *Develop close working relationships with Verkhovna Rada representatives to seek special appropriations to repair and renovate the existing inventory of damaged and deteriorating facilities*
- *Convert the orientation of the Department from one of priority-driven reaction to worst-case interventions to a proactive cyclical facilities maintenance program*

Court Statistics Division of the Department of Court IT and Case Management

The Statistics Division of this Department is allocated nine positions. As of September 2012, of the nine, two positions are vacant. Another two are filled with inexperienced interns who have not yet completed their probationary period. Another position is temporarily vacant because the incumbent is on extended maternity leave. Essentially, then, only four of the nine positions are currently active with trained and experienced staff. Even if all nine positions were active, current staffing levels for this key function would be inadequate.

Resource requirements for court systems are typically driven by key statistical indicators. For that reason, modern results-oriented leaders typically place great priority on ensuring that their statistical reporting conveys clearly, forcefully, and visually their systems' workloads and staffing requirements. Innovative leaders seek to tie other resource requirements to statistical data where feasible.

The kinds of statistical data that are collected and the manner in which those data are compiled, analyzed, and presented can differ significantly, depending on the level and quality of the experts employed by the court system leadership to manage those functions. Moreover, their persuasive capacity can vary greatly depending on the expertise and creativity with which the data are presented and the visual impact they have. Where a statistical records office is staffed with a minimum number of generalists as opposed to specially trained and experienced experts, the statistical profile presented to law makers and political leaders in charge of budget allocations may simply reflect raw data which may not reflect the more subtle and complex aspects of case management and processing. The primary qualification requirement for staff employed in the Statistics Office is possession of an undergraduate degree in law, the reason being that they must understand the law in order to design statistical information-gathering

forms. More modern and sophisticated court systems, by contrast, hire an assortment of specialists such as Ph.Ds. in the statistical sciences and criminal justice, for example, who are able to develop sophisticated statistical profiles and analyses of the work required both by judges and support staff to process different case types. These profiles and analyses are shared with lawmakers to persuasively argue for increases in resources dedicated to improving the quality of justice administered by a nation's court system. A USAID-FAIR Project specialist is currently developing a sophisticated case-weighting system that, when implemented, will provide the SJACO with much more accurate information regarding how much judicial time is required to process various types of cases and enable it to devise case-weighting formulae with which to project what quantities of judges are required to process court caseloads. Implementation of this system will represent a great leap forward, but SJACO officials must understand that maintenance of such a system and deployment of the tools required for its use require qualified professional staff who are fairly compensated.

RECOMMENDATION: That SJACO leaders review and consider upgrading the number and qualifications of the staff employed in the Statistics Division to improve the quality and sophistication of how statistical data are compiled and presented to reflect the resource needs of the court system. The review should include requiring candidates for key positions to have formal training and experience in statistical models, analysis and presentation. For example, the Director of the Statistics Division of the Administrative Office of the U.S. Courts in Washington, D.C. has a Ph.D. in statistics but had extensive experience at the U.S. Department of Justice prior to his appointment at the Administrative Office. To the extent that the SJACO leadership follows through with this recommendation, its capacity to attract qualified candidates will be contingent upon its ability to offer them competitive salaries.

IT Division of the Court IT and Case Management Department

As noted in Section I, the IT Division is authorized five positions. Although all five staff members have university degrees, none of the five has a degree in an IT-related discipline even though the Division's responsibilities include a number of court-system IT responsibilities for which technical training would appear to be a mandatory requirement. In the absence of professionally qualified and experienced in-house IT staff, IT Division employees work closely with *and are dependent upon* the technical knowledge and expertise of the State Enterprise ICS staff. Essentially, the SJC as a whole, both in its central and regional offices, has no professional in-house IT capacity. Instead, the organization relies virtually exclusively for its IT expertise, planning advice, services, procurement and policy guidance on a quasi-commercial enterprise. In addition, it grants to that enterprise the license to handle software development, implementation, and maintenance for all major proprietary court-system applications in over 700 courts.

To the extent that the SJA is solely dependent on the ICS for all of these IT advice and support functions, the SJA leadership fundamentally digresses from best public-sector organizational practices by essentially ceding control of its IT enterprise, as is detailed

earlier. This is a potentially dangerous position for the SJA. If, for example, ICS were to engage in a major business undertaking on its commercial side and fail in that undertaking, it might be saddled with significant debt or other obligations that might entail it having to divert resources from its SJA support function in order to survive. Alternatively, it could be subject to a lawsuit whose judgment found it responsible for significant damages for which it was ordered to pay, compromising its ability to continue to function as a business entity. In these and other hypothetical scenarios, the ICS's capacity to support the SJA and the entire court system as is now the case could possibly be compromised. The consequences for the SJA and its court IT-support role would be serious precisely because of this absence of a professional in-house IT capacity.

RECOMMENDATION: That the SJACO leadership consider developing and initiating a three- to five-year plan to enlarge and substantially upgrade the professional qualifications and expertise of its inhouse IT resources. This plan might include creating an entirely new IT Department with separate specialized divisions. Creation of this new department overtime would eliminate the SJA's current virtually complete dependency on the ICS. It would build within the SJA's internal organizational framework a highly qualified and professionally competent IT function that, for the first time in the SJA's history, would be capable of supervising, directing, and monitoring the work of the ICS and holding it responsible, for example, when major software applications it produced failed to meet the specifications and requirements specified by the SJA.

SJACO IT Hardware and Software Issues

Supplemental to the need to upgrade the number and professional qualifications of the staff in select department is the urgent need to provide certain departments and divisions with modern computer systems. Perhaps the best case in point is the Statistics Division. The Division currently relies for its automated statistical calculation, processing, and consolidation tasks on a small assortment of aging PCs using old operating systems and platforms as detailed in Section I. The functionality of this equipment is so marginal that serves as much to hinder as than advance the important work with which this Division is tasked. It is self-defeating on the part of the SJA to expect the Division to perform sophisticated analyses of court and case statistics that can be utilized to petition for additional resources on automated equipment that should have been recycled and replaced years ago. Similar hardware issues hinder the work in other SJACO departments and divisions.

A related need is to conduct a systematic national analysis of software compatibility issues. Interviews with SJACO department and division heads and with SJAFO leaders revealed numerous instances in which different types of courts were utilizing different types of software applications to transmit electronic data to the SJACO. Because the data generated by these applications is not compatible and cannot be integrated to produce consolidated reports electronically, SJACO staff have no choice but to reduce some of the electronic data to manual format, then re-enter it into a compatible

electronic format. These conversion processes are painstaking and time-consuming, and in today's automated environments with open-source software, such incompatibilities should be addressed and eliminated to facilitate efficiency and productivity. Given the insufficiency of staffing in key departments and divisions, staff should not be wasting their time manipulating data manually because of archaic incompatible systems. To the extent that such incompatibility is a function of systems designed by the ICS, its leadership should be directed to give high priority to remedying it.

The productivity and sophistication of a several SJACO departments and divisions could be increased by deploying commercial off-the-shelf specialized software applications in fields such as computer-aided facilities design, statistics, accounting, budget management, and procurement management. Where such applications are available only in English, relevant staff could be trained to utilize them.

RECOMMENDATIONS:

- (1) That prompt attention be given to replacing PCs and servers in use by staff of the Statistics Division and staff in other key departments and divisions with powerful new desktops and servers to enable them to work more efficiently and improve their productivity.*
- (2) That the SJACO leadership consider mandating the ICS within six months or less to redesign the statistics modules of the general jurisdiction and the administrative and commercial case information management systems to produce statistical data that are technically compatible, permit integration, and can be combined and consolidated to create systemwide reports. The leadership should make it clear that in this day and age it will not accept automated statistical data from separate systems designed by the ICS which are incompatible and require time-consuming manual integration. If the ICS is incapable of responding with an integrated system within the designated time frame, the SJACO should solicit outside vendors to undertake and complete the tasks.*
- (3) That the SJACO leadership consider acquiring other specialized software applications for key departments and divisions to facilitate increasing their efficiency, productivity, and sophistication.*

Emergency Funding to Reduce the Backlog of Deteriorating Court Facilities

The failure to commit sufficient funds to repair and renovate court facilities is a recipe for disaster; it already is precipitating a backlog crisis as buildings continue to deteriorate for lack of repairs and the aggregate costs of restoring them continue to rise. Without a special appropriation to address this growing inventory of substandard facilities, the number of uninhabitable buildings will continue to mount and the total costs of restoring them will continue to snowball. Staff report that in some courthouse facilities, judges and staff voluntarily initiate maintenance and repair projects on their own, using personal funds.

Because the constraints on funding are so severe, the department has been compelled to institute a stark priority ranking; funding urgency is given first to facilities with conditions ranked as a danger to judges, staff, and the public; second to those which are only partially completed and exposed to the elements; and third to those that require repairs to the roof or heating systems. The lack of funding and the demands of the priority ranking essentially preclude the Department from implementing a cyclical maintenance and repair program to maintain and preserve the facilities. Instead, staff are constantly in crisis mode. Staff note that the Department was more successful in securing funding and ensuring facilities maintenance with less bureaucracy when the SJACO and SJAFOs were attached to the Cabinet of Ministers, another of several indicia suggesting that the transition of the SJA from government to judicial power status resulted in diminished authority and increased bureaucracy.

The Verkhovna Rada must be briefed that the Department's current inability to address such court facilities emergencies in a timely manner has negative implications beyond Ukraine's borders. One persuasive example to be noted is as follows. The chief judge of the Sherchenkivskyi District Court in Kyiv oversees 38 judges in a courthouse that has only six functional courtrooms. Because the demand for courtrooms dramatically exceeds the supply by a factor greater than 6:1, judges who need to conduct criminal proceedings are compelled to postpone them for want of courtroom space. As a consequence, criminal proceedings are delayed and defendants remain in detention for extended periods – sometimes as long as two or three years – before their cases are heard. Increasingly, these detainees are filing lawsuits alleging human rights violations based on extended detention charges with the European Court of Human Rights (ECHR), and that court is granting judgments against the Ukrainian Government. Although a larger facility with more courtrooms has been located for the court, funding is not available to complete the construction renovations and repairs. The facilities crisis for this court will deepen when the provisions of the new Criminal Procedure Code take effect in November 2012 and a number of new criminal investigative judge positions are allocated to the court. The chief judge reported that she has space neither to accommodate them nor the additional support staff they will require.

RECOMMENDATION: That a small contingent of senior leaders from the Congress of Judges, the SJACO, the Council of Judges of Ukraine, and the Ukrainian Supreme Court request an audience with the Verkhovna Rada Budget Committee and present to it a summary of the critical funding requirements for major repairs and improvements to the court system facilities most in need of repair. The presentation should be accompanied by a PowerPoint presentation with pictures that illustrate the severity of the problem. The judicial contingent should be prepared to request a set amount for a special funding supplemental separate and apart from the annual court system budget.

Transfer of Select SJAFO Functions to the Individual Court or SJACO Level

The 27 SJAFOs are staffed with 544 permanent positions compared to 151 in the SJACO. Although current SJACO staffing levels may be justified by the existing functions assigned to the SJACOs, interviews with SJAFO staff suggest that some of their functions should be delegated to individual general jurisdiction district courts. For other functions, the SJAFO middle-man role could simply be eliminated by having individual courts interact directly with the relevant SJACO departments. This is an area in which efficiency improvements can be undertaken to reduce the need for staff at the SJAFOs. Some of the positions saved could then be transferred to the SJACO to help alleviate chronic shortages in some departments and to staff new positions in new offices and departments proposed in this assessment.

- **FINANCIAL MANAGEMENT:** One area comprises finance, budget, accounting and procurement functions. The administrative and commercial trial courts and all appeals courts already handle their own financial management functions. The larger district courts may be in a position where the chief of staff, after completing appropriate training, to have court staff handle some and eventually all of those functions. All courts in Ukraine enjoy the status of legal entities which entitles them to manage their own financial affairs.
- **STATISTICS:** Another area comprises court and case statistics. If the automated case management system were functioning as it should, all general jurisdiction district courts would generate their court and case statistics and transmit them electronically directly to the Statistics Division in the SJACO. If the automated case management system's statistical module were functioning as it should, Statistics Division staff could electronically compile the statistics from individual courts into a combined statistical report covering all general jurisdiction trial courts. This would eliminate the intermediate step of requiring the district courts to submit their statistics to the SJAFOs where they are compiled on a regional basis, then forwarded to the SJACO.
- **COURT FEES:** Another area is court fees. Under the current system, persons or other legal entities filing cases in the district courts must leave the courthouse pay their court assessed fees at an authorized bank or post office and return to the court with a receipt of fees paid. Some litigants prepare and submit counterfeit receipts, thus as a protective measure, the SJAFOs are required to maintain fee separate payment records. If existing laws/regulations governing payment of such fees could be amended to permit the district courts to collect and account for the fees, it would eliminate this cumbersome and customer unfriendly requirement to pay the fees elsewhere and eliminate the need for SJAFO involvement. This would entail developing an automated application for entering and accounting for fee payments. Responsibility for the collection and accounting of fee payments would rest with the court chiefs of staff and be regulated by a system of internal controls and processes set forth in a manual prepared by jointly by the Departments of Planning and Finance and Accounting

and Reporting. An alternative solution here is to introduce the use of electronic kiosks in the courthouse lobby that would permit litigants to pay court fees without the direct involvement of court personnel.

- HUMAN RESOURCES: Another area is responsibility for human resources. Again, the administrative and commercial trial courts largely handle their own human resources. The larger general jurisdiction trial courts could absorb human resource functions under the supervision of the court chiefs of staff with proper orientation and training once procedures and controls are instituted. This would reduce the need for SJAF0 involvement. Eventually, all general jurisdiction trial courts would take over this role from the SJAF0s.
- PROPERTY ACCOUNTABILITY: Another area is accountability for court property, including furniture and equipment. Currently, the SJAF0s are accountable for all tangible court property, including furniture, copiers, computers, servers, and video-conferencing equipment. They are required to prepare annual inventories in each court that include (i) an itemized list of all items, and (ii) a description of the condition of the item. This is a function that, with minimum training, can be transferred to individual courts, thus eliminating the travel and other costs associated with the SJAF0s performing it.

Transferring these and other responsibilities from the SJAF0s to individual courts is contingent in part on the development and refining of national IT applications that are used to (i) record and manage data on the local level, (ii) transmit it electronically to relevant departments at the SJACO where it would be (iii) integrated and compiled into accurate national reports for electronic distribution. *As of 2012, there are no such functional applications that enable such electronic recording, management, transmission, integration, and compiling in any of the SJACOs major data collection and reporting functions such as finance, budget, accounting, human resources, statistics, etc. As a consequence, the SJACO is compelled to expend enormous quantities of human capital across the spectrum of these functions using a variety of inefficient manual and automated procedures to organize and integrate data into accurate national reports. This is unacceptable in today's highly automated environments and reflects a drain on SJACO resources that is no longer tolerable. The SJACO leadership should impose ultimatums on the ICS to debug, streamline, and integrate its family of applications to produce reliable and accurate data for electronic compilation at the national level. To the extent that it is unable to meet the requirements of those ultimatums in a timely manner, the SJACO leadership should aggressively pursue other options.*

Employee Morale

As a general note, a number of the interviews conveyed a collective sense of low employee moral. This low moral was not expressed directly but, rather, reflected in descriptions of issues facing key departments, and lack of resources to address them, and a sense of hopelessness that conditions are unlikely to change. The interviews revealed that a number of departments are primarily in reactive rather than proactive mode in how they approach their specific areas of responsibility. Research studies have

repeatedly shown that low employee morale accompanied by a lack of empowerment often have a corrosive effect on organizational health and productivity. Where resource constraints preclude the option of creating material incentives, innovative organizations seek other means by which to improve low morale such as structured programs that involve employees in organizational brain-storming and related sessions in which challenges to the organization are raised and collectively discussed with an emphasis on creative solutions. Quite apart from the activity, such sessions frequently have the salubrious effect of empowering employees and increasing their commitment to the organization. Embarking on a program of organizational restructuring should be accompanied by efforts to assess and, where necessary, improve employee morale.

RECOMMENDATION: That the SCACO leadership consider bringing in an organizational health consultant to assess relative levels of SJA employee dissatisfaction and concern and propose relevant steps senior management might take to improve employee outlook and confidence

SECTION III IMPLEMENTATION

To the extent that the SJACO leadership deems these analyses to be on target and the recommendations indicative of the future direction in which the SJACO and/or SJAFOs should be moving, there will be significant interest across Ukraine’s broad judicial community in how the recommendations or appropriate variations of them will be implemented. Such interest may extend to the Cabinet of Ministers and to the Verkhovna Rada.

To ensure broad support for such implementation, the SJACO leadership might consider creating a national task force to approve, plan, and guide the process. Because the SJA to varying degrees serves most of the constituent elements that comprise the national judicial system, the assurance of support for any of the changes proposed in this Assessment is likely to be greater where such a task force includes a cross-section of proactive judicial system representatives.

Although the task force should be chaired by the SJA Head and include four or five other senior-level SJA executives, it might also include the First Deputy of the Supreme Court and outgoing Chair of the Judicial Council of Ukraine who has interest in and commitment to effective court management and administration. It might also include a representative chief trial court judge and chief appeals court judge as well as a trial court chief of staff and an appellate court chief of staff. It also might include a senior leader of the Congress of Judges. Having a member of the Verkhovna Rada committee that oversees the judicial system would be of great benefit. It also is important that at least one of the court representatives on the task force be familiar with IT and the functionality of the several proprietary automated applications currently deployed in the trial courts. Ideally the task force should not include more than ten members. In the beginning, this task force might convene every four to six weeks while the change agenda is being considered and determined.

The author also proposes that early in this process, a study tour be arranged for a small group of senior-level SJACO and select SAJFO heads to travel to the United States for a week-long in-depth review of the organization and functions of major court system administrative support offices on both the federal and the state level. Such a study tour might include two days of presentations and discussions with leaders and key staff of the Administrative Office of the United States Courts and the Research Division of the Federal Judicial Center. The remaining time would be spent visiting state court administrative offices such as those in New Jersey, New York and Utah. Time permitting, it also would be instructive for the group to visit the National Center for State Courts and Courtroom 21 in Williamsburg, Virginia.

ⁱ Throughout this table, “internal” signifies that the court handles that function on its own without support from either the SJACO or the SJAFOs.

ⁱⁱ Information Court Systems, the SJA State Enterprise that provides automation support to Ukraine’s courts.

iii “How Many Direct Reports?” by Gary L. Neilson and Julie M. Wulf, *Harvard Business Review*, April 2012.

APPENDIX I

TABLE OF SJA AND OTHER OFFICIALS INTERVIEWED

NAME	TITLE	ORGANIZATION
Honorable Yaroslav Romaniuk	First Deputy and Chairman	Supreme Court of Ukraine and the Council of Judges of Ukraine
Ruslan Kyrylyk	Head	State Judicial Administration
Volodymyr Pivtorak	Deputy Head	Central Office, State Judicial Administration
Oleksandr Simonovskyi	Department for Organizational Support and SJA Operations	Central Office, State Judicial Administration
Oleksandr Leshenko	Department Head, Organization and Audit Efficiency and Finance	Central Office, State Judicial Administration
Halyna Somko	Chief Accountant, Department of Accounting	Central Office, State Judicial Administration
Fedir Sherchuk	Department Head, Material and Organization Support	Central Office, State Judicial Administration
Oleksandr Iranchenko	Department Head, Organization and Operation of Courts	Central Office, State Judicial Administration
Antonina Polischuk	Court Statistics	Central Office, State Judicial Administration
Yaroslav Pokotylo	Department Head, Planning and Finance	Central Office, State Judicial Administration

Yul'ya Federova	Department Head, Representing the Interests of the SJA in Courts	Central Office, State Judicial Administration
Olena Ignatehenko	Assistant, Department of International Relations	Central Office, State Judicial Administration
Volodymyr Darydenko	Department Head, Organizational Support for Operations of Judicial Self- Governance Bodies	Central Office, State Judicial Administration
Zenoviy Kholodniuk	Department Head	Kyiv City Territorial Office, State Judicial Administration
Svitlana Sherchenko	Deputy Department Head	Kyiv City Territorial Office, State Judicial Administration
Mariya Melnikova	Human Resources Officer	Kyiv City Territorial Office, State Judicial Administration
Larisa Belko	Chief Accountant	Kyiv City Territorial Office, State Judicial Administration
Serhiy Zalyvniuk	Head, Legal Department	Kyiv City Territorial Office, State Judicial Administration
Anatolii Lokhor	Head, Regional Technical Assistance Office	State Enterprise Information Court Systems Kyiv Regional Office
Tetiana Polishchuk	Deputy Head of Material and Technical Support	Central Office, State Judicial Administration
Viktor Koshchynets	Head, Department of Legal Support	Central Office, State Judicial Administration
Oleksandr Ivanchenko	Head, Department for Organization of Court Operations	Central Office, State Judicial Administration
Iryna Perebyinis	Head, ID Division, Department of Court IT and Case Management	Central Office, State Judicial Administration
Nataliya Lukyanchuk	Head, Civil Service Division, Department Court Operations Organization	Central Office, State Judicial Administration

Bogdanhov	Head, State Enterprise Information Court Systems	Attached to Central Office, State Judicial Administration
Honorable Olena Milinshenko	Chief Judge	Sherchenkivskiy District Court, Kyiv City
Honorable Borodiy Vasil Mykolayovych	Chief Judge	Podil District Court, Kyiv City (December 2011)
Honorable Mamontova Irina Yuriyivna	Chief Judge	Obolon District Court, Kyiv City (December 2011)

APPENDIX II

