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USAID/Serbia Separation of Powers Program Evaluation

Final Report

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USAID/SERBIA SEPARATION OF POWERS PROGRAM EVALUATION

FINAL REPORT

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ACRONYMS

COP	Chief of Party
COTR	Contract Officer's Technical Representative
EU	European Union
EWMI	East West Management Institute
GGM	Good Governance Matrix (USAID/Serbia)
HCC	High Court Council
HQ	Headquarters
IMG	International Management Group
IQC	Indefinite Quantity Contract
JRGA	Judicial Reform and Government Accountability Program
M&E	Monitoring and Evaluation
MDTF	Multi-Donor Trust Fund
MOF	Ministry of Finance
MOJ	Ministry of Justice
NGO	Nongovernmental Organization
OSCE	Organization for Security and Co-operation in Europe
PMP	Performance Management Plan
PBMP	Performance Based Monitoring Plan
SI	Social Impact
SPP	Separation of Powers Program
TO	Task Order
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USDOJ	United States Department of Justice
WB	World Bank

EXECUTIVE SUMMARY

The Separation of Power Program (SPP) is a five-year program designed to help Serbia move closer to European Union accession by strengthening the division of power and authority more equably among Serbia's three branches of government. SPP is implemented by the East-West Management Institute (EWMI), and has three components, formally known as Tasks. The first two focus on judicial reform, while the third focuses on reform of Serbia's parliament, the National Assembly. SPP began in August 2008. The two judicial Tasks are scheduled to end in August 2013, while the parliamentary Task was due to end in December 2011.

In the fall of 2011, Social Impact (SI) was selected by USAID/Serbia to conduct a mid-term evaluation of SPP. The evaluation team began its work in October, gathering preliminary information regarding the operation of SPP and the judicial reform environment in the Republic of Serbia through contacts with the USAID/Serbia Democracy and Governance Office staff, the EWMI headquarters and SPP field office, and through review of program documents and other documentary evidence regarding judicial reform activity. The team began its on-site work on October 24, 2011.

Despite significant environmental challenges, SPP has had a substantial impact in advancing key aspects of the National Judicial Reform Strategy, particularly in improving the efficiency of the judiciary through its work on the implementation of professional court management and on case management and delay reduction. While progress on actual implementation of the HCC's responsibility for independent judicial budget development and implementation has been stymied by HCC's singular focus on the judicial reappointment process, the necessary tools for implementing the budget transfer are in place.

SPP will meet the majority of its program objectives. It is the opinion of the evaluation team, however, based on information collected through interviews with SPP staff, other international organizations, and the HCC President, that there is a substantial risk that the program will not meet its performance objectives relating to implementation of the budgeting process. This is due to the HCC's primary focus on the process of reelecting judges.

SPP has established substantial credibility with local counterparts, including the courts, the judge's association, the MOJ, and other international donor organizations.

A summary of the team's findings follows:

Finding 1 – Judicial reform legislation enacted in 2008, in general, provided the basis for implementing budgetary and efficiency reforms. However, the legislation fell short in not transferring budgetary authority for capital investments for the judiciary and did not go far enough in granting the HCC authority over other key administrative issues such as human resource management and information technology.

Finding 2 – The basic requirements for implementation of the judicial reform objectives of SPP were either in place as of the implementation of SPP or in the final

stages of adoption. During the course of the program, SPP has identified changes that would enhance the capacity of SPP and local counterparts to implement program objectives. Some of these changes have been implemented (changes to the Book of Court Rules, and the addition of provisions to procedural codes), while other changes are pending. Legislative changes that have not been made will not preclude SPP from achieving its performance objectives.

Finding 3 – The judicial re-appointment process has consumed the capacity of the HCC and has limited the development of its capacity to address other critical management responsibilities.

Finding 4 – SPP-EWMI staff have established positive and productive relationships with local counterparts in the judiciary. SPP and its staff are highly regarded and recognized as a source of support for positive change. This is a positive facilitator for the capacity of SPP and USAID to successfully implement change.

Finding 5 – Similarly, SPP has developed informal and formal relationships with other international assistance programs. These have helped in ensuring coordination and, where possible, leveraged USAID efforts in support of judicial reform.

Finding 6 – Despite the environmental challenges faced by SPP in implementing program objectives, SPP has had a positive impact on advancing key judicial reform priorities.

Finding 7 – Prioritization and allocation of SPP program resources between Tasks, and the balance of short term consultants and long term program staff have been appropriate, in view of the program development cycle and the level of effort required to accomplish program objectives. Environmental challenges, such as the reorganization of the courts and the inability of the HCC to give priority to developing its management infrastructure and budgeting capacity, have negatively affected timetables for achieving program results and have resulted in a modest loss of efficiency in use of program resources. SPP has sought to mitigate the impact of these environmental challenges.

Finding 8 – Changes proposed for indicators in the Performance Based Monitoring Plan relating to cases pending, case processing, and institutional development are appropriate, in light of environmental challenges. However, the definition for the proposed indicator for case processing rate should be changed.¹

Finding 9 – Despite the lack of engagement by the HCC, SPP has made significant progress in developing the framework and tools necessary for the HCC to take on its authority for developing and implementing the judicial budget. However, it appears unlikely that the HCC will be able to develop and advocate directly for its budget by the end of SPP in 2013. This is again due to the HCC's focus on the reelection of judges.

¹ In a recent communication to USAID dated 15 February 2012, SPP has indicated agreement with the proposed modifications.

Finding 10 – The collaborative strategic planning effort, despite initial resistance from the HCC leadership, was successful in developing a comprehensive three-year strategic plan that was adopted by the HCC in early 2011, and favorably reviewed by the newly constituted HCC in September 2011. Prospects for expanding the strategic plan to cover a five year planning window in the coming year appear to be positive, given the support for the plan from the HCC President.

Finding 11 – Significant progress has been made in developing and implementing professional court management. Seven court managers are in place in key court locations, and six more positions will be hired in the near future. As a result of SPP activities to develop criteria for deployment of court managers, a staffing plan has been approved by the MOJ. Under the plan, 13 additional courts qualify for deployment of court managers, resulting in a total of 26 court managers.

Finding 12 – SPP has made progress in implementing backlog reduction and case management, despite interruption of its work with initial pilot courts due to the implementation of the new court network.

Finding 13 – Parallel activities of SPP relating to caseload management and delay reduction at the national level have increased the capacity of the courts to improve case processing efficiency and implement backlog reduction programs, and have helped build a consensus that increased case processing efficiency is not only desirable, but achievable. In addition, changes proposed by SPP and incorporated in the Book of Court Rules will improve the random and equitable assignment of cases.

Finding 14 – The approach to supporting the development of a weighted caseload formula is well conceived, and appears to be strongly supported by HCC. Successful implementation of the tool will require additional technical assistance to the HCC and its administrative office staff, which could be provided by SPP staff.

Finding 15 – Implementation by the MOJ of the automated case management system in Basic and Higher Courts will significantly improve workload reporting for those courts. This will enhance the capacity of the courts and the HCC to actively manage workload, monitor performance, and assess resource requirements.

Finding 16 – SPP public outreach and education efforts have been primarily limited to activities to promote support and understanding for activities relating to court efficiency, and assistance to courts in developing website content. Support for the development of media communications plans at the HCC and perhaps selected courts, and the development of system-wide policies relating to openness of HCC and court records and proceedings will be required to achieve performance targets. These activities are programmed in SPP's year four work plan.

The evaluation team has developed five recommendations for USAID and SPP:

Recommendation 1 – SPP and USAID should continue to press the HCC to complete hiring of HCC budget staff, to enable orientation and training of staff in preparation for the potential transfer of budget authority in early 2012.

Recommendation 2 – Both the HCC President and the Minister of Justice have apparently expressed concerns regarding the transfer of outstanding judge budget “debt” at the time of transfer of budget authority, according to the team’s interviews. SPP should investigate the legal requirements for handling outstanding debt to determine if there are alternatives to transferring the debt.

Recommendation 3 – SPP and USAID should capitalize on the success and popularity of case management and delay reduction efforts by aggressively pursuing adoption of a National Backlog Reduction Strategy by the HCC, and highlight the adoption and implementation of the strategy in current efforts to publicize successes of the case management/delay reduction.

Recommendation 4 – SPP should work with the HCC to develop staff capacity for analysis of case management data and for application of weighted caseload data to enable the HCC to actively manage caseload through temporary and long term shifts in judicial and staff resources, to support measurement of court performance, and to support the budget planning process.²

Recommendation 5 – SPP should work with HCC, MOJ and pilot courts to improve the quality of case management statistical reporting through the automated case management system, including the development of a reporting manual, the development of a training curriculum for court staff responsible for reporting tasks, and protocols for periodic statistical audits. Ensuring the availability of reliable caseload data will directly support efforts to improve overall case management at the local and central levels.

² SPP has indicated its agreement with this recommendation and plans to build this work into SPP’s Year 5 Work Plan.

I. PURPOSE OF THE EVALUATION

The Separation of Powers Program is a multi-year program which was implemented in August 2008 and is scheduled to end in August 2013. SPP has three components, including:

- Task 1: Develop the judiciary's capacity to allocate, acquire and manage the judiciary's resources.
- Task 2: Assist the judiciary in making the administration of justice more efficient, transparent, and responsive to the needs of its users.
- Task 3: Develop the capacity of the National Assembly to become a truly deliberative body capable of acting in the public interest and conducting oversight/monitoring of all government operations.

The focus of this formative evaluation is the judicial reform components under Tasks 1 and 2. Task 3 of SPP was to conclude in December 2011. The evaluation is designed to:

- identify the program's successes and challenges in reaching its goals,
- determine if the program will meet its objectives and the benchmarks of the program's Performance Based Monitoring Plan (PBMP), and
- provide recommendations regarding the program operation and activities in the future.

The specific questions are outlined in the Evaluation Scope of Work, which is included in this report as Appendix A.

The Performance Objectives for the Separation of Powers Program are as follows:

TASK 1: Develop the Judiciary's Capacity to Allocate, Acquire and Manage Resources

No.	PERFORMANCE OBJECTIVE
1	After four years, the budget and finance office and judicial leaders prepares an integrated budget for all courts.
2	After five years, budget and finance staff and judicial leaders deal directly with the Ministry of Finance in budget preparations/negotiations.
3	After five years, substantial progress is noted for Factor 10 (Budgetary Input) of the Judicial Reform Index. ³
4	After four years, the judiciary has adopted five- and 10-year development plans.

³ Factor 10 of the Judicial Reform Index, developed by the American Bar Association Rule of Law Initiative (ABA/ROLI) is defined as follows:

“Factor 10. Budgetary Input: The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.”

(ABA Rule of Law Initiative 2001)

**Task 2: Assist the Judiciary in Making the Administration of Justice More Efficient,
Transparent and Responsive to the Needs of Its Users**

No.	PERFORMANCE OBJECTIVE
5	After two years, a career track for court managers/administrators is in place, and the authorities have approved a plan for placement of court administrators throughout the court system.
6	After three years, trained professional court administrators/ managers are working in key positions.
7	After four years, additional trained court administrators/managers are working within the system.
8	After five years, all the positions identified in the plan for placement of court administrators have been filled.
9	After four years, the average number of cases pending for more than two years has been reduced, and the average number of cases pending for more than four years in select courts has been reduced.
10	After five years, the average case processing time in selected courts has been reduced. [15]
11	After five years, substantial progress is noted for Factor 28 (Case filing and tracking systems) of the Judicial Reform Index. ⁴
12	After five years, substantial progress is noted for Factor 18 (Case Assignment) of the Judicial Reform Index. ⁵
13	After four years, a significantly lower percentage of users of select courts report offering and paying bribes to the judiciary and court personnel.
14	After four years, and even more after five years, there is greater openness of court proceedings and information about court operations, increased support for judicial independence and reform, and reduced perception of corruption in the courts.

⁴ Factor 28 of the Judicial Reform Index, developed by the American Bar Association Rule of Law Initiative (ABA/ROLI) is defined as follows: “Factor 28. Case Filing and Tracking Systems: The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.” (ABA Rule of Law Initiative 2001)

⁵ Factor 18 of the Judicial Reform Index, developed by the American Bar Association Rule of Law Initiative (ABA/ROLI) is defined as follows: “Factor 18. Case Assignment: Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.” (ABA Rule of Law Initiative 2001)

II. METHODOLOGY

In order to assess the impact of SPP, the team's approach was to focus on four key categories of information which would allow for evaluation of progress towards achieving the performance objectives for Tasks 1 and 2, and to form the basis for recommendations addressing the future activities of SPP.

Those key areas included:

- **Baseline Information.**

To provide a baseline for analyzing the management and impact of SPP, assess the potential for achieving program objectives, and identify opportunities for future program initiatives, data was gathered to establish the status of the judiciary, its leadership and administrative capacity, current planning and policy making processes, the effectiveness of judicial administrative processes, and expectations of the judiciary and key stakeholders for positive judicial reform.

- **Intervening Events and Environmental Factors.**

Any effort to implement systemic changes will be affected by the environment. The judiciary, regardless of its developmental stage, is affected by other branches of government and its stakeholders. The judiciary is interdependent with other branches of government and often external organizations. Accordingly, any initiative to provide reform support to the judiciary will be affected by environmental factors (for example, program initiatives of other donors, the capacity and/or willingness of the judiciary to accept change, etc.).

- **Administration of SPP.**

SPP is managed by the East-West Management Institute (EWMI) with annual work plans which describe activities planned to meet the objectives of SPP established by USAID. A Performance Based Monitoring Plan (PBMP) has been established to measure progress against the program objectives, and results are monitored via reporting against the Performance Management Plan (PMP) in quarterly and annual program reports. However, annual work plans and the PMP are based on certain assumptions, and subject to environmental risks (i.e. availability and cooperation of counterpart leaders and staff; adoption of laws, regulation, rules, etc.; availability of local resources).

- **Institutional Changes and Opportunities.**

Assess program impact on the progress of improving the independence and efficient operation of the judiciary to date through the identification of achievements in improving the functioning of the judiciary (in relation to articulated program objectives), and extent to which those improvements were the result of SPP activities conducted by EWMI. Identify opportunities for changes to the program approach to enhance effectiveness of planned activities towards

achieving program objectives and other opportunities for improving the independence and efficiency of the judiciary.

The availability of reliable and useful statistical data relating to caseload and caseflow proved to be elusive. The consensus of SPP staff and key personnel from other international donors is that caseload data available for 2008 and prior years is highly unreliable, except in the case of commercial courts.⁶ Reports are not available for 2009, due to the focus on implementation of the new court network. For 2010, reports are available from basic and higher courts from the newly implemented automated case management system.⁷ SPP and Ministry of Justice (MOJ) staff concur that the data reporting has improved with the use of the automated case management system. However, reliable data did not begin to become available until June or later in 2010, as courts completed entry of pending cases. Since courts only entered cases that were pending or that had been disposed but not archived, historical data is not available for trial courts from the automated system.

The majority of the information regarding the status of the judiciary at the outset of SPP and the progress of SPP activities was collected through document review and through interviews with SPP – EWMI staff, MOJ staff, court presidents and key staff of a selection of appellate, higher and basic courts,⁸ and other international donors and assistance organizations. Information regarding the persons and organizations interviewed and the references consulted are outlined in Appendix C.

⁶ An automated case management system was installed in the commercial courts several years ago. The caseload and caseflow data for commercial courts was generated from the case management system.

⁷ This system used by the commercial courts was adapted for use in basic and higher courts, and was subsequently installed throughout the year in 2010.

⁸ The evaluation team visited with court presidents and key staff in the Belgrade First Basic Court, the Belgrade Higher Court, the Nis Basic Court, the Nis Higher Court, the Novi Said Basic Court, the Novi Sad Appellate Court, the Subotica Basic Court, and the Subotica Higher Court.

III. JUDICIAL REFORM ENVIRONMENT

Significant Activities and Changes in the Judiciary – 2006 to Present

National Judicial Reform Strategy

In May of 2006, the Serbian Parliament adopted a National Judicial Reform Strategy (NJRS) that set the stage for significant judicial reform in ensuing years. This came after several years wherein progress in creating an independent and effective judiciary had stagnated, despite the enactment of several laws designed to create a more independent and efficient judicial system.⁹ The NJRS identified the weaknesses in the judicial system, set out principles and goals for reform, and elaborated a strategy for implementation.

The key principles are articulated as follows:

“An effective justice system is based on four key principles: independence, transparency, accountability, and efficiency, which provide the framework for the design, development and organization of all judicial institutions. A judicial system that is fully responsive to the interests of all citizens will seek to further these key principles at every stage of the development of the judiciary and the law.

This Strategy, which focuses on Serbia’s court system, will apply these guiding principles to achieve:

- a judicial system that is independent;
- a judicial system that is transparent;
- a judicial system that is accountable; and
- a judicial system that is efficient.

Through the implementation of these principles, the Strategy will facilitate the EU association process for the Republic of Serbia by ensuring respect for the standards and norms set for the performance of judicial functions in relevant international documents.”¹⁰

The NJRS provides for the judiciary to become an independent branch of government, autonomous in a scheme of separation of powers between the executive, legislative and judicial branches. To achieve this goal, NJRS envisions that through the High Court Council (HCC), the judiciary will exercise independent budget authority¹¹ and will have independent policy and rule making authority in order to “...improve the effectiveness of case management and court performance...”¹²

⁹ The five laws adopted included the Law on Judges, the Law on Public Prosecutors, the Law on the High Judicial Council, the Law on the Organization of Courts, and the Law on Seats and Districts of Courts and Public Prosecutor’s Offices, Official Gazette of Serbia, n 63/2001.

¹⁰ (National Judicial Reform Strategy 2006), p.4

¹¹ (National Judicial Reform Strategy 2006), p.10

¹² (National Judicial Reform Strategy 2006), p. 11

The NJRS further calls for transparency (open judicial selection, promotion, discipline processes, access to court proceedings and decisions, public outreach and participation), accountability (performance standards, improved case management, effective use of resources), and efficiency (improved access to services, training and education for judges and staff, and modernization of the organization of courts – the “court network”).¹³

Judicial Reform Legislation

In November 2006, the new Constitution was adopted, providing for government “...based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.”¹⁴ The Constitution reinforced the independence of the judicial branch, establishing the current member of the HCC, and its authority to guarantee the “...independence and autonomy of courts and judges,” and its role in the selection of judges.¹⁵

In 2008, the Serbian National Parliament adopted a package of judicial reform and anti-corruption legislation, in order to meet EU and Council of Europe standards and set the stage for meeting requirements for EU accession. The judicial reform legislation addressed many of the objectives of the NJRS, and included provisions that were designed to strengthen judicial independence and efficiency. The package included the Law on the High Court Council, the Law on Court Organization, the Law on Judges, the Law on the Seats and Territorial Jurisdiction of Courts and Offices of Public Prosecutors, and amendments to the Law on Misdemeanors.

The Law on the High Court Council established the Council as a principal manager of the judiciary, with a key role in the appointment, discipline and removal of judges. It established the authority of the HCC to independently develop, advocate for, and administer the budget, a key factor in assuring judicial independence. It also provided that the Council have a leading role in the development and approval of initial training for judges and in-service training for judges and court staff, that it adopt a code of ethics, that the Council should provide opinions on legislation affecting the judiciary and that the Council should take actions to implement the NJRS, to the extent of its legal authority.

The law also provided generally that the Council was responsible for judicial administration, but the provision is limited: “– perform affairs of the judicial administration within its remit;...”¹⁶ The provision implies that the HCC is limited in its role to those things which are explicitly authorized by law and other activities which are necessary to carry out its explicit legal mandates.

The Law on Court Organization created 34 Basic Courts, 26 Higher Courts, and four Appeals Courts, and provided for commercial courts, an administrative court, and the Supreme Court of Cassation. The Law also moved the Misdemeanor Courts into the judiciary. Based on provisions of the Law on Court Organization, and on the Law on the Seats and Territorial Jurisdiction of Courts and Offices of Public Prosecutors, and amendments to the Law on

¹³ (National Judicial Reform Strategy 2006), pp. 12-19.

¹⁴ Constitution of the Republic of Serbia, 2006, Article 1

¹⁵ Constitution of the Republic of Serbia, 2006, Articles 153 and 154.

¹⁶ Law on the High Court Council, Official Gazette of the Republic of Serbia No.116/08, 2008, Article 13

Misdemeanors, a new court network was planned, which called for significant reductions in the number of court locations, judges, and staff. The new network was implemented in January 2010.

Judicial Re-Appointment Process

In 2009, the HCC undertook a re-appointment process for all judges. The HCC, particularly the President of the HCC, Nata Mesarovic, has referred to the re-appointment process as an “election process,” based on the fact that the court reorganization envisioned in the Law on Court Organization constituted the creation of new courts, requiring new judicial appointments.¹⁷ More than 800 judges were not re-appointed. The re-appointment process became highly controversial, drawing substantial criticism from the judges and the European Union. In its 2010 progress report, the Commission of the European Communities said that the re-appointment process lacked transparency and did not employ objective criteria, and that the composition of the HCC was transitory and did not have adequate representation of the profession. The Commission was critical of the fact that judicial candidates were not interviewed, and did not receive adequate explanations for the HCC’s decisions on appointment.¹⁸

A flurry of appeals and constitutional complaints were filed with the new Constitutional Court by aggrieved judges. In March 2010, the Constitutional Court ruled in favor of the judges in one case. Although the decision was apparently later reversed on procedural grounds, the controversy surrounding the appointments did not abate.

In December 2010, the Law on the High Court and the Law on Judges were amended, providing for appeals regarding the election of judges to go to the High Court Council first, prior to being appealed to the Constitutional Court. This amendment was made in part to expedite the process of review of the complaints filed by judges not re-elected (which otherwise would have had to be reviewed by the Constitutional Court).

The new members of the HCC were elected and began their duties early in 2011. The review of complaints of judges not selected during the 2009 appointment process is the top priority of the HCC. During the team’s interviews with local judges and international donor organizations watching the process, it is estimated that the review of these complaints is between half and two-thirds complete. In the team’s interview with HCC President Mesarovic, they were unable to obtain a more precise estimate.

High Court Council Organization and Development

Despite the efforts of international donors, little has been accomplished in the development of the management infrastructure of the HCC. Based on the observations of all of the international donor organizations with whom the evaluation team spoke, the limited progress is due in large part to the singular focus on completing the judicial re-appointment process. However, many observers cite other variables and believe, notwithstanding the priority of resolving the critical issue of judge re-appointment, that progress toward developing the management infrastructure and key capacities of the HCC could be made, particularly with expert support from donor organizations.

¹⁷ Interview with Srdjan Svircev, WB - MDTF

¹⁸ (Commission of the European Communities 2010), p 10.

Other frequently mentioned variables intruding on the development of the HCC organization and capacity included:

- **The lack of permanent, qualified staff.** Although 49 positions have apparently been authorized for the HCC (including 13 staff for the Sector for Material and Financial Affairs, proposed by SPP), only a small number have been filled. Based on the team’s discussions with SPP staff and representatives of the EU and the World Bank, the majority of the staff that have been hired, both to permanent positions and on a temporary basis, have devoted the majority of their time to providing staff support for the re-appointment process.
- **Reluctance of the “temporary” HCC to bind its successor.** The initially appointed “elective members” of the HCC were appointed by the prior Council. Those members were replaced by direct election, pursuant to 2010 amendments to the Law on the High Court Council. While the new members of the HCC began their duties in April 2011, the majority of their time has been focused on the re-appointment process, and they have not been “engaged” to pursue other HCC mandates to a meaningful degree.
- **Lack of a full-time permanent Secretary.** The first person hired for the position reportedly resigned after only three months in the position. On an interim basis, the General Secretary for the Supreme Court of Cassation served as the General Secretary for the HCC, while continuing to hold her position at the Supreme Court. She recently left the interim position, returning full time to her position at the Supreme Court. At the present time, the Advisor for International Cooperation is serving as interim General Secretary.
- **Organizational management style.** All observers agree that the approach to management has been centralized. There has been little delegation of authority to date to either staff or the members of the HCC, at least as to issues outside the re-appointment process, including the development of structures and processes for ongoing appointment, performance evaluation, and discipline functions. Part of this is due no doubt to the all-consuming nature of the appointment review process. However, based on the discussions of the team with observers, it is also a matter of the personal leadership style of the HCC President, and her drive to finally conclude the re-appointment process. The President’s commitment of time to judicial re-appointment precludes her ability to focus on developing the HCC’s capacity to address other HCC management responsibilities.

That is not to say that the HCC has not taken some key steps important to the progress of judicial reform. For example, the HCC approved a three-year strategic plan in early 2011. While the approval came from the “temporary” HCC, HCC President Mesarovic later arranged for a review of the strategic plan by the permanently elected HCC members later in the year. Ms. Mesarovic, in the evaluation team’s interview with her, indicated that the strategic plan’s adoption was informally approved by the “new” HCC. She further indicated that the prior formal decision approving the plan remained valid and in force, and that accordingly no new formal decision was required.

The adoption of the strategic plan is a significant element for the development of the HCC. It provides a vision for the future of the organization, specific goals for achieving that vision, and prioritized activities required to achieve those goals.

In late 2010, the HCC approved a systemization plan for the HCC budget office, called the Materials and Financial Affairs Sector, and in early 2011 formed a Court Budget and Finance Working group, charged with reviewing the Budget and Accounting Policy and Procedures Manual developed by the Separation of Powers Program.

In June 2010, the HCC formed a work group to develop case weights to allow for estimation of the need for judicial positions and to form the basis for evaluating resource requirements and performance. After preliminary weights were developed with assistance from SPP, the HCC authorized a project to validate the weights through a timekeeping exercise in selected courts. Data collection in the selected courts began on November 1, 2011 and is scheduled to last for three months.

Implications of the Judicial Reform Environment for the Separation of Powers Program

Successful institutional reform of social and governmental systems requires high level commitment to change from the status quo, a shared commitment to and vision for the change(s) among institutional leaders and key stakeholders, realistic strategies for implementation of the change(s), the availability of human and material resources, continuous monitoring of implementation activities, adjustments to implementation strategies as needed, and continuous internal and external communications.

The context of judicial reform in developing countries is often dynamic. A variety of factors affect the context in which judicial reform must take place in developing countries, and those factors may vary from place to place. They include, for example, the interdependency of the judiciary with other branches of government and the extent of support from those branches in terms of commitment of resources and action to ensure necessary legislative and policy reforms; the availability of country resources and the availability of resources and expert technical support from international donors; the capacity and engagement of local judicial leaders, judges and staff; and the status of social and physical infrastructure.

The environmental context of judicial reform in the Republic of Serbia since 2006 is positive in many respects. There has been high level political support from the executive and legislation branches for implementing judicial reform, as evidenced by the development of the National Judicial Reform Strategy (NJRS) in 2006, and the adoption of legislation to facilitate key features of the reform in 2008. Legislation enabling the implementation of a more independent, accountable and transparent judicial branch was passed in 2008, and amended in 2010. There has been strong international support, both in terms of resource commitment and the availability of expert assistance. The physical infrastructure in the Republic of Serbia (for example, roads, information network capacity, and postal service) appears to be adequate for supporting the logistical needs of the judicial system. Resources are also adequate, at least in comparison to other European countries and countries in the region, though it appears that there is a critical disparity in the alignment of available resources with needs, both in terms of geography and workload.

Unfortunately, the context for implementation of change has been hampered in some key respects. Implementation of the strategy envisioned in the NJRS has been haphazard. No single entity, including either the judiciary or the Ministry of Justice, has taken leadership in crafting and

executing a reasoned, comprehensive implementation plan. As a result, implementation of reforms has been uneven, uncoordinated, and poorly planned. In particular, implementation of the new network has not been well planned, and appears to have been implemented without sufficient time for preparation and planning at the local level, and without sufficient attention to requirements for changes in resource allocations. Consequently, some courts are not sufficiently staffed with judges and support personnel, while others do have adequate resources. Some courts are in adequate facilities, while others have inadequate facilities to accommodate the workload demands and personnel.

For the Separation of Powers Program's priorities, many of the environmental pre-conditions for progress were present at SPP's inception in 2008. The NJRS articulated the need for independence of the judicial branch, and in particular the key area of the development of the judicial budget and the management of fiscal resources. The NJRS also identified the management of caseload, accountability, transparency, performance management and the improvement of court administration as priorities. As noted above, legislation was enacted to enable a strong and independent role for the judiciary in the oversight of the budget; and for the independent appointment, promotion and transfer, and discipline of judges. There was strong philosophical and practical support from the international community for these judicial reforms.

However, as noted below, the repercussions of the implementation of the court reorganization created considerable challenges for SPP. Similarly, difficulties encountered in the reappointment and the attendant controversy created even greater challenges for SPP in supporting the implementation of the HCC's new budgeting responsibilities.

IV. FINDINGS AND CONCLUSIONS

Cross-Cutting Issues

Finding 1 – Judicial reform legislation enacted in 2008, in general, provided the basis for implementing budgetary and efficiency reforms. However, the legislation fell short in not transferring budgetary authority for capital investments for the judiciary, and did not go far enough in granting the HCC authority over other key administrative issues such as human resource management and information technology. Neither of these shortcomings, however, has had a significant impact to date on the ability of SPP to achieve performance objectives. SPP’s analysis of current law and budgeting practices highlighted the limitations on the budget authority of the HCC. Reportedly, the issue is addressed in the draft revision of the National Judicial Reform Strategy.

As previously noted, the legislative package adopted in 2008 grants independent authority for the judiciary to develop and implement the judicial budget. However, authority for capital investments has been reserved to the Ministry of Justice.¹⁹ In order for the judiciary to effectively manage the budget to achieve its strategic priorities, it must have the capacity to align all budgetary resources. Otherwise, for example, the HCC might determine that a particular court requires additional staff and financial resources, but it might be constrained from making that commitment if the plan for capital investment does not provide for necessary facilities and other capital expenditures (including, for example, IT investments). Further, the current budgeting process envisions that the judicial operating budget, once HCC has assumed its budgeting role, will continue to be subject to review by the MOF. This could potentially limit the actual budget independence of the judiciary as a separate branch of government.

Similarly, the lack of authority for management of the judiciary’s human resources could create critical misalignment of priorities. While the judiciary might plan for and budget for increases or decreases in human resources in a particular court or program, that budget plan cannot be implemented unless complementary changes are implemented in the level and type of human resources committed to that court or program.

Finally, while the Law on the High Court Council provides authority for court administration, and for implementation of tasks relating to the National Judicial Reform Strategy, that authority is limited to those issues which are within its statutory mandate, or “remit.”²⁰

¹⁹ The authority of the HCC over the judicial budget is limited to “overhead,” or operating expenses: “The Council shall: ...propose the volume and structure of budgetary funds necessary for the work of the courts for overhead expenses, and oversee disbursement of funds in accordance with law;” Law on the High Judicial Council, Article 13.

²⁰ “The Council shall:

- ...
- perform affairs of the judicial administration within its remit;
- ...
- perform tasks in respect of the implementation of the National Judicial Reform Strategy within its remit;...

Law on the High Judicial Council, Article 13.

Authority over a key component of court administration, for example, the development of the Book of Court Rules, is left to the Ministry of Justice.

In view of the status of implementation of the budgeting capacity of the HCC, and the limited capacity of the HCC at the present time, these shortcomings do not appear to have had a significant impact on the ability of SPP to achieve program performance objectives.

Ironically, as discussed later in this report, the continued authority of the MOJ in the development of the Book of Court Rules has thus far been a facilitating factor, given the status of the HCC. The MOJ Judicial Affairs Sector has been supportive of SPP's efforts in backlog reduction and prevention, and in the introduction of professional court managers. Guidelines for implementing backlog reduction and prevention plans have been incorporated into the Book of Court Rules, and Court Manager positions have been authorized for 13 courts to date, and at least 13 additional courts qualify for introduction of the position.

Finding 2 – The basic requirements for implementation of the judicial reform objectives of SPP were either in place as of the implementation of SPP or in the final stages of adoption. As noted above, a key law was the Law on the High Court Council, which established the Council as a principal manager of the judiciary. Other key laws included the Law on Court Organization, the Law on the Seats and Territorial Jurisdiction of Courts and Offices of Public Prosecutors, and amendments to the Law on Misdemeanors. Internal court rules were also in place at the time that SPP commenced. These laws and internal regulations are adopted by the Ministry of Justice after consultation with the HCC and the Supreme Court of Cassation and provide the foundation for achieving program results. During the course of the program, SPP has identified changes that would enhance the capacity of SPP and local counterparts to implement program objectives. Some of those changes have already been implemented (changes to the Book of Court Rules, and the addition of provisions to procedural codes), while other changes are pending. Legislative changes that have not been made will not preclude SPP from achieving its performance objectives.

The principal laws enabling successful pursuit of SPP's performance objectives are the Law on the High Court Council and the Law on Court Organization, adopted in 2008. These laws provide for the authority of the HCC regarding the development and implementation of operational budget of the judiciary, oversight of judicial appointment, discipline and performance evaluation, implementation of guidelines on the internal organization of courts, and implementation of activities in support of the NJRS. These provisions form the basis for Task 1 activities with the HCC on implementing its budgeting authority, and establishing strategic plans for the judiciary.

The two laws also provide for the authority of the HCC for oversight of training for judges and court staff, HCC's responsibility for reporting on the activities of the judiciary to the other branches of government and to the public, and provide for the authority and responsibility of the president judges for court administration at the court level. These provisions form the basis for SPP activities relating to Task 2, including the development of professional court administration and the required training, implementation of case management and backlog reduction best practices in selected pilot courts, and support for improved transparency and public information regarding the work of the courts.

In an assessment of the current budgeting process and requirements for implementation of an effective judicial budget development and management process, SPP consultants identified the need for changes to the Law on the High Court Council to ensure the independence of the budgeting process by providing for direct presentation of the judicial budget request to the Parliament.²¹ No legislation has been advanced to address this concern, or concerns noted previously regarding the limitation of the HCC's authority to oversee only the judicial operating budget. However, based on the evaluation team's discussions it appears that these issues may be addressed in the revised NJRS. As noted in Finding 1, the impact of these limitations on the HCC's budgeting authority has not been a factor to date due to the delays in transferring authority for the budget authority to the HCC.

Several changes in law or internal court rules that would facilitate performance objectives under Task 2 relating to improvement in court efficiency have been identified by SPP during the course of the program. These changes have either been implemented in legislation or an agreement has been reached to make the needed changes. The changes include:

- Institutionalization of the court manager position and role in court administration. Amendments have been made to the Book of Court Rules recognizing the court manager position (Article 73). Agreement has been reached with the MOJ to include provisions in the Law on Court Organization to recognize the court manager position and the role of the court manager. However, drafting of any changes to the Law on Court Organization has been deferred by the MOJ until completion of a World Bank study of the effectiveness of the recent court reorganization.
- Provisions were added by MOJ drafters to the revisions of the civil and criminal procedure codes that reinforce efficient case management, based on recommendations of SPP and its experience with pilot courts (such as early case conferences in civil cases and expedited processes for service of court documents).
- Provisions mandating backlog reduction programs for courts with high backlogs have been added to the Book of Court Rules (Article 12).
- Provisions requiring equitable and random assignment of caseload were drafted with the assistance of SPP and included in the Book of Court Rules (Article 49).

As noted previously, there are other legislative changes which would facilitate the development of the judiciary's capacity to allocate, acquire and manage resources (Task 1), and assist the judiciary in improving the administration of justice (Task 2). Those include:

- Changes to the law providing for the HCC to assume responsibility for capital investment planning and budgeting (in addition to changes providing for direct submission of judicial budgets to the Parliament).
- Changes providing for a shift of responsibility for human resources planning and allocation to the HCC. This would allow for alignment of financial and human resource planning and allocation, which is critical to the ability of the judiciary to manage and allocate resources based on workload priorities in courts.

²¹ An Assessment Of The Current Budget Process And Financial Management Procedures In The Courts, Ministry Of Justice And The Ministry Of Finance, USAID – SPP, Belgrade, March 2009.

- Changes to provide greater responsibility to the HCC for oversight of court administration in trial courts. Current law provides some limited responsibilities for court administration to the HCC, mostly related to establishing policy, developing training programs, public information and reporting, and other central functions. Other responsibilities are reserved to the MOJ, and there is overlap (for example, both the MOJ and HCC collect statistics on workload from the courts, and counting criteria for these statistics differ). Minimally, an effort is needed to clarify the responsibilities of the HCC and MOJ for court administration in law, in order to avoid duplication of effort, avoid conflicts in policy (such as differing reporting requirements), and improve the effectiveness and accountability of the administration of courts.

These changes are not critical to achieving SPP performance objectives, but they would facilitate progress towards those objectives. Given the HCC's inability to focus on its budgeting responsibility and general management infrastructure, it is unlikely that these changes could be effectively implemented in the near term.

Finding 3 – The judicial re-appointment process has consumed the capacity of the HCC and has limited the development of its capacity to address other critical management responsibilities.

As noted above, the HCC's initial effort to conduct a re-appointment for all judicial positions in the new court network was widely criticized, and led to approximately 1,500 formal complaints to the Constitutional Court from over 800 former judges who were not re-appointed during the process. Subsequently, the law was changed to provide for filing of appeals regarding the appointment of judges first with the HCC itself, with review of decisions on those appeals going to the Constitutional Court.

The HCC is now engaged in reviewing the files of judges who were not re-appointed. The activity is a top priority, and has crowded out meaningful engagement of the HCC and its leadership on other key issues, such as the development of criteria for appointment, criteria and procedures for performance evaluation and discipline, development of staffing requirements and organization generally and with respect to its budget responsibilities, and so on.

The HCC has not delegated responsibility for other key priorities. As noted previously, the reluctance to delegate some responsibility for developing capacity for other management responsibilities has been hampered not only by the volume of work required to review re-appointment appeals, but also by the turnover in the membership of the HCC and the lack of a permanent General Secretary (it should be noted, however, that the interim General Secretary detailed from the Supreme Court until July of 2011 was highly regarded by SPP staff and representatives of other international donor organizations). However, it is also clear, based on the team's fact finding, that a "top-down" leadership style has precluded meaningful delegation of responsibility.

The exclusive focus on the re-appointment process and the inability to delegate authority within the HCC has had a negative impact on the ability of SPP and other international donors to engage the HCC in collaborative work to implement key judicial reforms.

Finding 4 – SPP-EWMI staff have established positive and productive relationships with local counterparts in the judiciary. SPP and its staff are highly regarded and recognized as a source of support for positive change. This is a positive facilitator for the capacity of SPP and USAID to successfully implement change.

It is clear from the team’s discussions with local counterparts that SPP and its staff are recognized as a valuable source of support in implementing judicial reform improvements. The evaluation team received positive feedback on the specific work products of the program, such as training materials, procedure manuals, draft rules, etc. This is also true regarding the interactive, collaborative approach taken by SPP in the implementation of its activities. In addition, several of the acting court presidents and MOJ personnel commented in very positive terms about the competence and energy of SPP personnel.

The MOJ Judiciary Sector Budget staff have worked with SPP staff in the development of revised budgeting procedures for the courts to be implemented when the shift of responsibility for the judicial budget takes place, and in the development of supporting software to ensure that the procedures and software are compatible with Republic of Serbia budgeting procedures. This will facilitate the implementation of the budgeting function by the HCC when that responsibility is shifted from the MOJ to the HCC.

SPP’s collaborative work on the development of the Court Manager position and backlog reduction has facilitated counterpart ownership of the reforms, leveraging the results of program initiatives. For example:

- The MOJ Assistant Minister for the Judiciary (who is chair of the working group for the Book of Court Rules and the principal drafter of laws relating to the judiciary) is a strong advocate for the implementation of the Court Manager Position. She supported the inclusion of the Court Manager position in the Book of Court Rules, and advocated with the MOF for establishing the position at an executive level, ensuring the ability of eligible courts to recruit qualified candidates. The MOJ has endorsed criteria for implementation of the Court Manager position, and has included it in its staffing plan. The MOJ Assistant Minister has indicated that her office has begun consulting with existing Court Managers in the development of proposed laws and court rules.
- The Director of the Judicial Academy is very positive about the results of efforts to develop local trainers on court management, the results of the initial court manager training, and the curricula developed for advanced court management training. Local trainers and other local experts are developing additional modules for the court management training that will address specific procedures unique to public sector management in the Republic of Serbia, such as procurement and civil service procedures.
- Implementation of a backlog reduction program by a court president has been included as a requirement in Article 12 the Book of Court Rules in any court where “... the annual activity report that there is a large number of unresolved cases...” The provision is based on the work of SPP on backlog reduction in pilot courts. The MOJ

has included guidelines for the development and implementation of a backlog reduction program, which were developed by SPP in an annex to the rules.²²

Supervision officers from the MOJ Judiciary Sector review statistics relating to backlog when reviewing court operations and use SPP backlog reduction program guidelines in making recommendations to court presidents regarding case management.

- The Acting Court President of the Novi Sad Appellate Court has hosted meetings of courts in the Novi Sad region to discuss case management and the implementation of backlog reduction programs in those courts. SPP staff have participated in those meetings at the Acting President's request, to provide guidance on implementation of backlog reduction programs. In his oversight management role for the courts within the appellate region, the Acting President has identified backlog reduction as a priority, based on the results achieved in SPP backlog reduction and backlog prevention pilot courts. According to the Acting President (and SPP Task 2 staff), case management has also been a topic of discussion with Acting Presidents of other Appellate Courts at their meetings.

While not enough in itself to assure completion of program goals, the trust established with local counterparts will have a positive impact on the potential for additional progress towards SPP performance objectives for the remainder of the program. The independent activity of counterpart judges and staff to implement backlog reduction and prevention, and to deploy and engage professional court managers, is an important step towards institutionalization of these judicial reforms. It also impacts positively on the continuing ability of the USAID Democracy and Governance Office to advance positive reform in the justice sector.

Finding 5 – Similarly, SPP-EWMI staff have established positive and productive relationships, both informal and formal, with other international assistance programs. This has helped in ensuring coordination and, where possible, leveraging of USAID efforts to support judicial reform.

SPP has maintained informal contacts with other international programs throughout the life of the project, based on the team's discussion with SPP staff and international donor organizations. This is particularly true for interaction with the EU, World Bank, Organization for Security and Cooperation in Europe (OSCE) and the International Management Group, programs which have significant judicial reform programs focused on HCC development, judicial discipline court management. This was reinforced in the team's interviews with those organizations that were familiar with and informed about SPP activities. There was particular support for the efforts to develop case backlog reduction and case management best practices, the implementation of professional court administration, and the development of the weighted caseload formula. Other donors look forward to using these initiatives to inform their own future activities, the development of a new National Judicial Reform Strategy, and to identify and implement changes to the legal framework for the justice system. More recently, SPP has been in contact with the Judicial Reform and Government Accountability Program (JRGAP), which began its operations earlier this year.

In the past year, SPP began hosting quarterly progress meetings with other international donors. Each organization provides a summary of activities for circulation prior to the meeting.

²² Court Rules of Procedure, Article 12, Ministry of Justice, Belgrade, 2009

This allows participants to focus discussions during the meeting on questions arising from the summaries and on points of interaction and common interest.

Key interactions are summarized below.

- The EU has a significant presence in the Republic of Serbia, and has provided significant support and resources for judicial reform in support of the National Judicial Reform Strategy. Much of its initial focus was on the development of a legal framework for judicial reform that would facilitate EU integration. Subsequently, the EU developed a program for supporting the implementation of the HCC, and assisting the HCC in meeting its mandates regarding budget independence, judicial appointment, performance and discipline, developing regulations and laws regarding the judiciary, and judicial efficiency improvements. The EU focused its HCC support priorities on the HCC institutional infrastructure and development of criteria and procedures for judicial reappointment. Though its mandate included the development of an independent budgeting capacity, the EU deferred to SPP in that area. Unfortunately, the EU's HCC support program ceased most program activities in late 2009, and formally terminated the program in early 2010. The termination of the EU program has left a gap in the development of the HCC's overall management capacity. Given the priority focus of the HCC on judicial appointment, it is difficult to assess the impact on the implementation of the HCC budgeting capacity. However, the EU is now developing a strategy for support of judicial reform and efficiency (which will include renewed support for HCC institutional development). Reportedly, components of the program will be grounded in the experiences in pilot courts to improve case management and will incorporate the use of the case weighting formula currently under development and the work of SPP on developing budgeting processes.²³ While it is anticipated that there may be some overlap between the strategy and SPP program initiatives, the EU anticipates no problem in coordinating implementation activities with SPP.
- The OSCE focus for the judiciary is on transparency and supporting the HCC in the implementation of independent and transparent judicial appointment, performance and discipline processes. At the present time, OSCE believes that HCC is overwhelmed with the judicial reappointment process, limiting the ability of the HCC to focus on developing adequate infrastructure and procedures to meet its mandates. However, OSCE staff believe that efforts to improve case processing have had a positive practical impact in pilot courts, and that the success has generated judicial support for backlog reduction. The OSCE is providing support for the development of judicial evaluation criteria and procedures. OSCE staff intend to meet with SPP to determine how the weighted caseload approach may be used to support judicial performance evaluation and accountability.
- The IMG is working on providing assistance to the HCC in the development of the disciplinary process, a complaint handling process (focused on complaints about the courts in general, and not on the actions of specific judges), and the implementation of automation for the HCC complaint and discipline process. Although a working group

²³ Because the strategy was still in draft stage, EU representatives were not able to provide a copy of the strategy.

has been formed, there has been little progress due to the focus of HCC on the re-appointment process. The IMG is also implementing a program in southern regions to rehabilitate court facilities.²⁴ The IMG has coordinated with SPP in the selection of sites for renovation, both to ensure coordination of efforts and to help identify sites with need and capacity.

- The World Bank is the steward for the Multi-Donor Trust Fund (MDTF), which provides substantial support for judicial reform planning and implementation. Currently, an updated National Judicial Reform Strategy is in development with MDTF support. Reportedly, the revised plan makes use of the work of SPP to develop HCC's budgeting capacity, including recommendations for changes to the law to expand the responsibility to include capital investment.²⁵ The strategy will also reinforce the need for implementing procedures for allocating (and reallocating) judicial, human and financial resources based on concrete workload criteria, such as the weighted caseload formula currently being developed by SPP. The MDTF is also sponsoring a study of implementation of the new judicial network, to determine its efficacy and efficiency.

Finding 6 – Despite the environmental challenges faced by SPP in implementing program objectives, SPP has had a positive impact on advancing key judicial reform priorities.

The environment in which SPP has operated has presented significant challenges. The substantial changes in the organization of the judiciary, though they appear to have been well conceived, were implemented hastily and without sufficient planning. Similarly, the related effort of the re-appointment of judges was implemented without sufficient preparation due to pressure to complete the process in synchronization with court reorganization. The effort to implement a nationwide automated information system in the new basic and higher courts was remarkably successful from the evaluation team's observation, given the abbreviated implementation window, but the effort added to the overload on courts resulting from the implementation of court reorganization.

The singular focus of the HCC on completing the re-appointment process and the “top down” management style stymied implementation of the transfer of budget authority and the implementation of a strategic budget process. In addition, it may preclude the full implementation of that objective during the program, but SPP has successfully, in collaboration with its counterparts, developed the tools necessary for implementation.

In addition, despite having to re-initiate its work with pilot courts on backlog reduction, SPP has:

- assisted the pilot courts in improving court efficiency and reducing backlogs;
- developed tools for improved case management and delay reduction that have been deployed at the national level; and

²⁴ IMG previously provided support for facility renovation in several courts.

²⁵ The draft strategy is not currently available for public review and comment. After internal comments are received from justice sector entities (including the HCC), the draft strategy will be circulated for public comment.

- assisted with generating consensus for improved case management and delay reduction.

Finding 7 – Prioritization and allocation of SPP program resources between Tasks, and the balance of short term consultants and long term program staff have been appropriate, in view of the program development cycle and the level of effort required to accomplish program objectives. Environmental challenges such as the reorganization of the courts and the inability of the HCC to give priority to developing its management infrastructure and budgeting capacity have negatively affected timetables for achieving program results and have resulted in a modest loss of efficiency in use of program resources. SPP has sought to mitigate the impact of these environmental challenges.

During the first two years of the program, SPP made greater use of short term expatriate consultants particularly to conduct assessments of current management procedures and infrastructure, to assist with strategic planning, to develop court management training curricula, and to train local trainers. As these initial activities were completed and program focus shifted to implementation activities, reliance on short term consultants has been reduced. SPP's first Chief of Party was a judge with considerable experience and expertise in the design and implementation of case management programs, which reduced reliance on short term consultants for the design of the case delay reduction and case management activities. As SPP increases its focus on support for public information and education during year four of the program, it will rely initially on a short-term consultant to assist in providing training and developing guidelines for implementation of communications plans for the HCC and the courts.

Though delays by the HCC in implementing its staffing have delayed the transfer of budgeting responsibility, SPP has focused its resources on the development of tools that will be necessary for supporting the budgeting process – including the development of adjustments to budgeting software for use by courts and the HCC, and the implementation of procedures for budget development and financial management in collaboration with a working group of judges, court staff and MOJ staff.

The creation of the new court network at the beginning of 2010 resulted in the need to “start over” on implementation of pilot courts for backlog reduction and case management. However, the experience working with initial pilot backlog reduction courts, the availability of a Chief of Party with considerable case management program experience, and the designation of some pilot courts which included prior courts helped to ameliorate the potential cost impact of re-initiating case management pilot courts.

Finally, while the evaluation team did not have sufficient information to undertake a detailed analysis of the division of staff resources between Tasks 1 and 2, the allocation between the two sets of performance objectives appears appropriate given the nature of the activities. While developing the budgeting and planning capacity of the HCC involves substantial expertise and development of detailed procedures, the focus of the activity is centralized. Implementation of the budgeting process will require participation of all courts, but the approach in each will be substantially identical. Work on improving the effectiveness and efficiency of court administration requires working directly with the courts (specifically, the pilot courts), and the environmental circumstances of those

courts vary widely. This fact, and the multiple performance objectives of Task 2, require a greater commitment of resources.

Finding 8 – Changes proposed for indicators in the Performance Based Monitoring Plan relating to cases pending, case processing, and institutional development are appropriate, in light of environmental challenges. However, the definition for the proposed indicator for case processing rate should be changed.

As noted above, the HCC has not taken the steps necessary to successfully recruit and appoint staff for its budget department (MFAS), despite its approval of the organization and staffing plan in 2010. Until those staff are hired, progress in staff development, finalization of work procedures, and planning for future organizational needs cannot be expected. HCC President Mesarovic has recently indicated that hiring budget staff will be pursued as a priority with the goal of completion as early as December. The evaluation team believes that target is overly optimistic; however, if hiring can be accomplished early in 2012, measurable progress can be made. The proposal to shift the targets by one year is reasonable.

The reorganization of the courts in 2010 has had significant repercussions for SPP in its work with pilot courts. Because original Municipal and District pilot courts were absorbed into larger Basic and Higher Court units, pilot courts were reselected. The organizational change also required that the organization of caseload reporting be changed for alignment with the new court units, making prior caseload baseline data obsolete. The proposed change would create a new baseline aligned with the new court organization and data reporting.

A change in the indicator for cases pending over two years would provide for the use of a ratio of the baseline, allowing for easier analysis.

The definition for the case processing rate in the proposed changes should be modified. Currently, the case processing rate is calculated by dividing the number of cases closed during the reporting period by the number of new cases filed (cases registered) during the reporting period. This is an appropriate measure of the effectiveness of case management, showing whether courts are able to dispose of cases at the rate at which they are received.

We suggest that the definition be adjusted to read as follows:

“Case processing rate: The number of cases closed in a calendar year divided by the number of cases filed (registered) during that year, excluding execution of judgment cases.”

Task 1 – Develop Judiciary’s Budgeting and Management Capacity

Finding 9 – Despite the lack of engagement by the HCC, SPP has made significant progress in developing the framework and tools necessary for the HCC to take on its responsibility for developing and implementing the judicial budget. However, it appears unlikely that the HCC will be able to develop and advocate directly for its

budget by the end of SPP in 2013, largely because of its predominant focus on the reelection of judges.

SPP has been able to develop key components necessary for the implementation of the HCC budgeting responsibility. SPP conducted a preliminary assessment of the budgeting process in year one of the project. SPP subsequently undertook an assessment of court spending to determine if there were areas of potential savings in court expenditures, but this activity had to be discontinued due to the unavailability of adequate court expenditure information.

SPP also procured budget software that will allow courts to develop their budget requests in compliance with budget instructions (from the MOJ currently, and eventually from the HCC), and submit those budget requests electronically. The HCC would be able to use the software to consolidate budget requests, makes changes as necessary, and submit the entire judicial operating budget directly to the Ministry of Finance (MOF). Training in the use of the software was provided to most of the courts (125 of 129 courts). Theoretically, this software could be used in submitting the budget to the MOJ until the budget responsibility is transferred; however, the MOJ budget office has expressed a reluctance to implement in the absence of express authorization from the HCC.

SPP, in collaboration with a budget workgroup established by the HCC at SPP's request, has developed policies and procedures for use by the HCC's Material and Finance Sector (MFAS). The procedures are comprehensive and will serve to guide both the MFAS and the courts when implemented. Though final comments from some work group members were still pending, the development of the procedures was collaborative, with substantial input from work group members during the drafting process. Even without final comments, the procedures could be implemented as they are now constituted. As with any policy and procedure manual, adjustments can and should be made as implementation experience dictates.

Finally, SPP developed a systemization plan for the HCC's budgeting staff in late 2010. The organizational plan called for 13 budget and finance positions within the MFAS, three internal auditors reporting directly to the HCC General Secretary, and one procurement position. After extensive consultation with HCC leadership, the HCC adopted a plan in December 2010 which included 12 positions within the MFAS, one internal auditor position and one procurement officer.

Despite repeated encouragement from SPP, the HCC has not completed staffing of the MFAS. At the present time, according to SPP, only one position has been filled, and that person has been detailed to the MOJ Budget Office for "on-the-job" training. The HCC indicated its intention to conduct an internal recruitment from MOJ, MOF, and the courts initially to fill the positions. Thus far, the HCC reportedly has identified three or four persons within the MOJ Budget office who will be transferred at the time of transfer of budget authority. HCC President Mesarovic, during the team's interview with her, indicated that two additional staff have been identified or appointed (contrary to earlier information that only one position had been filled). She also indicated that a new internal recruitment was to be commenced the week following the team's interview (4 November 2011), and that it was her intention that the staffing of the MFAS be completed in December. The team requested a list of employees appointed to date and those identified for transfer, but as of the date of this report, they have not received this information.

In September 2011, a decision was made to delay transfer of the budget authority from MOJ to the HCC until after the 2012 budget is approved. This means that the final opportunity for implementing the HCC budget capacity will be for development of the 2013 fiscal year budget. In view of the fact that little progress has been made to date on staffing the HCC budget office, the opportunity for implementing the budget process within the HCC is disappearing rapidly. Although the “meat” of the budget development process for 2013 will begin in the latter part of 2012, the first milestone in the budgeting process is the development of budget projections in March of the year preceding the budget year. The best scenario for full implementation of the budgeting process would be to have the MFAS staff hired and trained by March 2012, and in the alternative, to have staffing and training completed by mid-2012.

Given the failure of an internal recruitment to yield positive results to date, it appears unlikely that a second internal recruitment will complete the staffing requirements for the MFAS. External recruitment, if required, will likely consume more time than an internal recruitment. In view of the lag in efforts of the HCC previously to staff the office, it is highly unlikely that the office can be staffed by December. It is difficult to predict when full staffing could occur, since even when staff are on board, some time will be required to orient and train them.

In light of the budget development cycle and the uncertainties regarding staffing the MFAS, there is considerable risk that the HCC will not be able to fully implement its responsibility to develop a judicial budget for the 2013 budget year, despite SPP’s success in developing the necessary tools to support the budgeting process.

We note that, during the development of the final report, a decision was reportedly made to transfer budget authority as of January 2012. Members of the HCC SPP Advisory Committee met with SPP staff and indicated that the HCC would form a standing Budget and Finance Committee pursuant to SPP’s earlier recommendation, and that additional financial staff will be in place in early January. They further indicated that a Deputy HCC Secretary General would be hired soon. SPP staff have staged resources to provide training and support should the HCC be successful in forming the Budget and Finance Committee and getting HCC staff resources in place. These are encouraging developments, but the risk remains high that HCC will not be able to meet the target of developing and advocating a judicial budget for the 2013 fiscal year.

Finding 10 – The collaborative strategic planning effort, despite initial resistance from the HCC leadership, was successful in developing a comprehensive three-year strategic plan that was adopted by the HCC in early 2011, and favorably reviewed by the newly constituted HCC in September 2011. Prospects for expanding the strategic plan to cover a five year planning window in the coming year appear to be positive, given the support for the plan from the HCC President.

The strategic planning initiative undertaken by SPP was originally planned to begin earlier in year two of the project, but was delayed given the HCC focus on re-appointment.

After consultations in the first part of the program year with the HCC President, SPP prepared and delivered a presentation on the strategic planning process in June 2010 (unfortunately, the HCC President was not present). The HCC agreed to undertake strategic planning, and after considerable difficulty in getting commitments regarding the logistics and timing of the initial

planning meeting and regarding pre-meeting preparations, the strategic planning process was initiated in late 2010.

Despite initial resistance, the HCC became engaged in the development of the plan, and a three year plan was formally adopted in early 2011. Immediately after the approval of the plan, the new elective members of the HCC began their tenure. Subsequently, in September, SPP presented the strategic plan to the “new” HCC.

According to the team’s discussions with SPP, the strategic plan was favorably received. This perception was verified in later discussions with HCC President Mesarovic and SPP Liaison Work Group Chair Judge Aleksandar Stojiljkovski. However, while SPP requested, and expected to receive, a formal written decision from the “new” HCC, Ms. Mesarovic indicated to the evaluation team during its interview that a new decision was not required, as the prior decision continued to be valid.

Despite apparent early misgivings about the strategic planning process, Ms. Mesarovic was very positive about the process undertaken to develop the plan and the resulting strategic plan. As with other priorities, however, there appears to have been little in the way of concrete action on the part of the HCC to implement its provisions, with the exception of those activities directly supported by SPP (such as the development of weighted caseload, delay reduction and case management activities).

As the re-appointment process comes to a close in 2012, there will be an opportunity to revisit the plan, assess the status of the activities identified to support the plan and make amendments, including extension of the plan to 2015. Given the support of the plan from the HCC generally and the HCC President, it appears very likely that this can be accomplished in year four of the project.

SPP staff believe it is unlikely that HCC President Mesarovic or other HCC members would be willing to commit to the development of a longer range plan (10 years) and the evaluation team concurs. While Ms. Mesarovic was positive about the current strategic plan, she also pointed out that plan implementation would require considerable time and resources, and that the current National Judicial Reform Strategy was under review and likely to be replaced with an updated strategy next year. Furthermore, the mandate of elective members of the HCC is limited to five years, and this may lead to reluctance to plan for a ten year window.

Task 2 – Improving the Effectiveness of the Administration of Justice

Finding 11 – Significant progress has been made in developing and implementing professional court management. Seven court managers are in place in key court locations, and six more positions will be hired in the near future. As a result of SPP activities to develop criteria for deployment of court managers, a staffing plan has been approved by the MOJ. Under the plan, 13 additional courts qualify for deployment of court managers, resulting in a total of 26 court managers for the courts.

The court manager position was created and formally established through the Book of Court Rules in 2009. The MOJ subsequently approved inclusion of the court manager position in court staffing plans in selected courts. The first court manager was hired in the Higher Court in Belgrade. As of the date of this report seven court manager positions have been filled, with six more scheduled to be hired in the near future.

In collaboration with the Judicial Academy, orientation training on key court administration issues was developed and delivered to the seven newly hired court managers. The orientation program was sound and was highly rated by the participating court managers. The Judicial Academy has incorporated the orientation program into its programs. With the assistance of SPP, local trainers employed by the Judicial Academy have been trained to deliver the training modules.

A comprehensive and well-designed curriculum for advanced court administration training was developed by SPP. In collaboration with the Judicial Academy, additional modules that will focus on management issues specific to the Serbian context, such as procurement, are being developed. The training will be a valuable asset to improving the professionalism of court management in the courts, not only for court managers but also for other administrative staff in the courts. The training will also be valuable for improving the capacity of current and future HCC administrative office staff.

Criteria for deployment of the court manager position were developed by SPP in collaboration with a court administration working group. After consultation by SPP staff with the MOJ Assistant Minister for Judicial Affairs, the MOJ adopted the criteria to develop a long term staffing plan. Under the plan, 13 additional court manager positions will be established for qualifying courts.

Late in program year 3, the court administrator working group developed a career development framework for court managers, with the assistance of SPP, and a model recruitment, hiring and performance evaluation plan for court managers.

In the evaluation team's conversations with acting court presidents in courts that have hired court managers, the feedback on the introduction of the position, and the support provided for development of the court manager position, was extremely positive. In each such court visited, the value of the position was readily acknowledged, with acting court presidents in particular acknowledging that professional court managers are far better trained and equipped to handle management support functions. The only concern voiced by either acting court presidents or the current court managers was the need to reinforce the status, responsibility and authority of the position through inclusion of language in the Law on Court Organization. The MOJ has indicated a willingness to make amendments to the Law, but has said that no amendments to the Law on Court Organization will be considered until an assessment of the new court network is completed early next year.

Based on discussions with court managers and acting court presidents, the specific duties of court managers vary from court to court, depending on the level of the courts and the size and location of courts, on the court's specific priorities and staffing. In all courts, responsibility for "stovepipe" management functions (budget and finance, procurement, logistics, facility operations and maintenance, etc.) have been assigned to the court managers, though the significance and time commitment for these functions varies across courts. Duties related to caseflow management in

most courts have remained largely with court secretaries and judges. While all court managers and acting court presidents have stressed the need for further institutionalization of the position by inclusion in the Law on Court Organization, several of the court managers also stressed the need to leave enough flexibility to allow adjusting the position to the specific needs of the court.

While inclusion of the court manager position in law and regulation will reinforce the institutionalization of the position, it is important to allow courts to make adjustments in the duties of court managers, based on their need. Even though the administration of courts is driven by uniform principles articulated in law and regulations (such as the Book of Court Rules), courts' management needs are based on size, location and jurisdiction. Further, as courts become more involved in the development of modern case management systems and managing the performance of courts, court managers will prove to be valuable in the development, execution and monitoring of performance. Furthermore, the implementation of strategic, needs based budgeting will demand continuous monitoring of caseload and other court performance areas.

Finding 12 – SPP has made progress in implementing backlog reduction and case management, despite interruption of its work with initial pilot courts due to the implementation of the new court network. Measurement of results of the backlog reduction and delay prevention efforts are difficult to measure statistically at the present time, in view of the availability of reliable trend data and the fact that court organization has changed the make-up of court units, thus rendering baseline data from 2008 unusable in tracking changes in caseload and caseload. However, data from the original pilot courts, and from pilot courts selected after implementation of the new network, indicate successes in many of the courts, either in reducing backlogs or improving efficiency in case management for case types selected for intervention. It appears very likely that SPP will be able to achieve a reduction in backlog for most pilot courts participating in the program by the end of current year, and that average case processing time can be measurably reduced by the end of the program in participating courts.

At the beginning of the program, SPP selected five courts for the introduction of backlog reduction: the 2nd Municipal Court of Belgrade, the Municipal Court in Nis, the Municipal Court in Vranje, the Novi Pazar District Court, and the Subotica Municipal Court. The selection was based on criteria designed to ensure inclusion of a variety of court environments. Case management training was provided to court teams, and each court, with assistance of SPP staff, developed individualized backlog reduction plans, focusing on specific types in each of the courts. While the pilot courts experienced some early successes, the work on backlog reduction plans was largely derailed late in 2009 as courts prepared for implementation of the new court network in January of 2010.

In view of the reorganization of the courts, SPP was forced to start over with the implementation of backlog reduction efforts. During early 2010, SPP began a new pilot court recruitment and selection process, culminating in the selection of five new backlog reduction pilot courts (Vranje Basic Court, Nis Basic Court, Subotica Basic Court, Novi Pazar Basic Court, and the Belgrade Basic Court) and five case management pilot courts (Cacak Basic Court, Vrsac Basic Court, Uzice Basic Court, Sremska Mitrovica Basic Court, and Subotica Higher Court).

Again, SPP conducted training for teams from each of the pilot courts, and teams developed project implementation plans and submitted them for review and comment by SPP staff in June (with the exception of the Belgrade Higher Court, which did not submit a plan until September). SPP staff subsequently visited each of the courts in July to discuss implementation issues and provide technical assistance.

Again, despite the relatively short time frame since implementation of the new pilot programs, many of the courts have noted progress, either in reducing backlog or increasing the efficiency of case processing. Unfortunately, a number of the courts were also hampered by misalignment of staff and judicial resources, and unexpected increases in inflow of cases. Those intervening variables, and the lack of consistently reliable data, have hampered the ability to measure pilot court outcomes.

During 2010, the MOJ introduced an automated case management system to all basic and higher courts. The system, developed and successfully implemented earlier in commercial courts, was tailored to meet the needs of the basic and higher courts, and rolled out to all basic and higher courts during the year. While the system is able to provide quarterly and annual case load reports and additional case management reports, reliable data was not available from the system until later in 2010, when courts were able to enter all pending cases. Given that disposed, archived cases have not been entered to the system, and given the changes to court organization, the system is not able to provide historical trend data for caseloads prior to 2010. Analysis of data reported to HCC for 2010 and the first six months of 2011 indicate inconsistencies between the reported number of cases pending at the end of 2010 and the reported number of cases pending at the beginning of 2011 (See Appendix D). This inconsistency is most likely due to continued efforts by courts to “catch up” on entry of cases, and shortcomings in data reporting procedures and training.

However, the analysis also reflects an overall trend towards higher clearance rates for courts generally and for many of the pilot courts. Since clearance rates are based on reported filings and dispositions, these data should not be significantly affected by “catch up” data entry efforts noted above.

Despite these difficulties, many of the pilot courts have had success in increasing the efficiency of case management as evidenced by higher disposition rates per judge and clearance rates exceeding 100% for case types selected, and in reducing backlog in selected case types (Based on data reported by those courts to HCC, and reviewed by SPP staff).

The evaluation team visited with acting court presidents in the Nis Basic Court, and the Subotica Basic and Higher Courts. In each court, acting presidents were positive about the case management and delay reduction efforts in their courts and credited the support of SPP with contributing to the success of their efforts. The acting president of the Novi Sad Appellate Court, who joined our meeting with the acting presidents of the Subotica Basic and Higher Courts, expressed his view that SPP staff were very helpful in caseload management and delay reduction efforts not only for the pilot courts themselves, but in support for efforts on the part of the Novi Sad Appellate Court to implement similar initiatives in other courts within the appellate district.

Finding 13 – Parallel activities of SPP relating to caseload management and delay reduction at the national level have increased the capacity of the courts to improve case processing efficiency and implement backlog reduction programs, and have

helped to reach a consensus that increased case processing efficiency is not only desirable, but achievable. In addition, changes proposed by SPP and incorporated in the Book of Court Rules will improve the random and equitable assignment of cases.

In addition to focused efforts in the pilot court, SPP developed a draft National Backlog Reduction Strategy in response to the high priority placed on backlog reduction by the MOJ, and in support of HCC's identification of backlog reduction and prevention as a strategic priority. The HCC initially indicated that its workload relating to the re-appointment process precluded consideration of the strategy. However, the HCC has recently requested that SPP make a presentation of the draft strategy at an upcoming HCC meeting.

Based on its experience in working with the pilot courts, SPP developed guidelines for case management and delay reduction programs which have been incorporated in the Book of Court Rules by the MOJ.

SPP recommendations relating to effective case management techniques were incorporated by MOJ in changes to the new criminal and civil procedure codes (such as early case conferences in civil cases, and expedited processes for service of court documents).

Finally, efforts to publicize the successes in selected pilot courts have served not only to provide tools to all courts for implementing case management and backlog reduction, but to help create a growing consensus that progress in court efficiency is desirable and achievable. In October, a short video summarizing pilot court experiences with case management and delay reduction was shared with attendees of the judicial conference. According to SPP, the response to the video was positive, and resulted in a number of courts requesting assistance from SPP and directly from pilot courts for implementation of similar programs. At the same conference, HCC President Nata Mesarovic praised USAID support for implementation of case management and delay reduction programs, and went on to highlight courts with positive records in managing delay (Ms. Mesarovic also highlighted those courts with poor performance as well).

While the impact of these activities is not immediately measurable in caseload statistics, they are valuable steps increasing the capacity for addressing case management and delay reduction. If the current momentum can be sustained, it is highly likely that a positive impact will be measurable beyond the pilot courts themselves within the next few years. In order for these efforts to have maximum long-term impact, it will be important to continue public dialogue about successes in reducing delay (including ensuring that courts are recognized for their efforts), and for the HCC to add its leadership support for improving case management efficiency. The first obvious step is the adoption of a National Backlog Reduction Strategy.

Finding 14 – The approach to support the development of a weighted caseload formula is well conceived, and appears to be strongly supported by HCC and the work group appointed by the HCC to develop the formula. Assuming that the formula can be developed successfully after completion of the time study currently underway, the weighted caseload formula will be a valuable tool to support needs based budget development and allocation, and to support the HCC's capacity to oversee case management by providing an objective method of aligning judicial resources with workload. However, successful implementation of the tool will

require additional technical assistance to develop procedures for use of the formula and to develop the capacity of the HCC administrative office staff to apply the formula and analyze the results.

The HCC created a work group in mid-2010 to develop the weighted caseload formula. With support from SPP, the work group and its sub groups used a Delphi (expert) approach to define categories of cases for weighting, identify key case type events, and agree upon the amount of judicial time required for case events. The working group also developed a plan for a time study to be conducted in a cross section of courts to validate the standards developed by the work group.

The time study was inaugurated on the first of November 2011, and is scheduled to run for three months.

When the weighted caseload formula is finalized and approved, it will be necessary to develop procedures for its use. For example, in order to facilitate the use of the formula as a budget and resource planning tool, it will need to be applied annually to inform the budget development and allocation process (after some experience, it is possible that the interval could be extended to every two years, depending on the volatility of new case filings). If the weighted caseload formula is to be used as an active case management tool, procedures should be developed that provide for continuous application of the formula as caseload data is received and analyzed, in order to allow for temporary reassignment of judges as necessary to address temporal fluctuations in workload. SPP Task 2 staff could provide technical assistance and mentoring to HCC staff assigned to workload analysis.

It is possible that the weighted caseload formula could be used as the basis for establishing performance standards for courts and judges. While a weighted caseload formula can provide objective information to inform the development of standards, it is not, by itself, an adequate tool for establishing and implementing performance standards. It is designed to be a resource management tool. Additional work will be needed to develop performance standards and procedures for measuring performance.

Finding 15 – Implementation by the MOJ of the automated case management system in Basic and Higher Courts will significantly improve workload reporting for those courts. This will enhance the capacity of the courts and the HCC to actively manage workload, monitor performance, and assess resource requirements.

As noted earlier in the report, the MOJ's roll out of the automated case management system during 2010 was very ambitious, and from information available was remarkably problem-free. Data available from system-generated reports was incomplete early in 2010. As the year progressed, and courts were able to complete entry of pending cases and disposed cases that were not yet archived (this includes primarily disposed cases where enforcement has not occurred), data became complete and reporting improved. While the system will not be able to provide extensive trend data for several years, it is able to meet current reporting requirements and provides the tools necessary for courts to manage their caseloads.

The system's reporting capability will also permit the HCC to monitor caseload and actively manage resources in response to temporary and long-term changes in case filings. When the weighted caseload formula is approved, the availability of current and accurate caseload data will

increase capacity to actively manage caseload fluctuations, and will enhance the capacity of the courts and the HCC to project resource needs for budget development.

SPP has been working with pilot courts to assist them in generating system reports for monitoring results of case management and delay reduction initiatives. To date, pilot courts are able to generate required quarterly, semi-annual, and annual reports. The system also has the capacity, however, to generate additional reports that will increase the capacity to monitor case management and diagnose potential case management problems. For example, the system is capable of generating reports reflecting average age of cases at disposition, average age of pending cases, and can generate exception reports (listing cases that have been pending for longer than a specific period of time, for example). As court staff become more knowledgeable about the system's reporting capabilities, these reports can be generated for use by court presidents and judges to improve case management processes and identify backlogged cases for action.

Implementation of the automated systems in basic and higher courts, and the increasing ability of court staff to make use of system reporting utilities, reflects substantial progress for Factor 28 (case filing and tracking systems) of the judicial reform Index.

Finding 16 – SPP public outreach and education efforts have been primarily limited to activities to promote support and understanding for activities relating to increased efficiency of the courts, such as the development and implementation of professional court management, and case management and delay reduction. In addition, SPP has provided some assistance to local partners in the development of content for the court websites. In order to have a measurable impact on openness and greater understanding of court operations, and to generate public support for judicial independence and reform, a more aggressive approach will be required, including support for the development of media communications plans at the HCC and perhaps selected courts, and the development of system-wide policies relating to openness of HCC and court records and proceedings.

As noted above, SPP outreach activities have been limited to date to technical assistance to selected courts in web site design, and to publicizing selected activities aimed at improving court efficiency.

Though the HCC has hired a public relations advisor, it appears from the evaluation team's discussions with SPP staff that the advisor's public relations role has been limited to drafting press advisories at the direction of the HCC, mostly related to the HCC's work on re-appointment. Although SPP has attempted to establish communications with the advisor, the efforts have been unsuccessful to date.

The HCC strategic plan includes the development of a communications plan in order to facilitate the goal of increased confidence of the public in the judiciary. SPP has included support for the development of a strategic plan in its work plan for year four. The work plan also includes support for the development of policies relating to the openness of HCC and court proceedings and records. Based on the team's discussion with SPP staff, public outreach consultant Mark West will be available early in the year to begin working with SPP in support of plan development.

Both initiatives face the uncertainty of HCC's ability and willingness to engage in these initiatives, given its continuing focus on the re-appointment process. However, the priority given to public outreach in the HCC's strategic plan and the fact that HCC has hired a public relations advisor mitigates that risk.

While it is unlikely that measurable progress can be achieved by the end of year four on public perceptions of the courts or to substantially increase support for judicial reform, it is reasonable to assume that progress can be made in increasing the openness of HCC and court proceedings and records, and that by year five there will be measurable impact on the public understanding of courts and on public support for judicial reform.

V. RECOMMENDATIONS

Recommendation 1 – SPP and USAID should continue to press the HCC to complete hiring of HCC budget staff, to enable orientation and training of staff, in preparation for the potential transfer of budget authority in early 2012.

If staff are available and receive training in early 2012, it is possible that the HCC can be prepared to implement the critical components of the budget preparation process in later 2012. The initial step in the budget preparation process is the development of three-year budget plans in March, according to the MOJ budget office. It is unlikely, even with an expedited hiring process, that HCC staff will be in a position to undertake this early activity. However, since three of the current MOJ budget staff members are planning to transfer to the HCC, problems arising from lack of direct HCC involvement in this part of the budget process could be mitigated.

Recommendation 2 – Both the HCC President and the Minister of Justice have apparently expressed concerns regarding the transfer of outstanding judge budget “debt” at the time of transfer of budget authority, according to the evaluation team’s interviews. SPP should investigate the legal requirements for handling outstanding debt to determine if there are alternatives to transferring the debt.

According to the team’s discussions with SPP staff, budget accounting is handled on a cash accounting basis (although there are indications that this will be changed in the future), meaning that bills unpaid at the end of a fiscal year are carried forward into the next budget year. While the exact process for retiring the debt is unclear, based on information available to the evaluation team at the time of this report, it appears that there is a process for charging payments against the debt to a budget entity’s budget in ensuing years.

If a means can be found to eliminate the possibility that the current outstanding debt will be transferred, it will remove a potential barrier to implementation of the budget transfer, and will level the field for HCC implementation of a transparent budget process.

Recommendation 3 – SPP and USAID should capitalize on the success and popularity of case management and delay reduction efforts by aggressively pursuing adoption of a National Delay Reduction Strategy by the HCC, and highlight the adoption and implementation of the strategy in current efforts to publicize successes of the case management/delay reduction.

As noted earlier in this report, pilot court level and national level progress in implementing improvements in case management and delay reduction not only hold promise for improvements in court efficiency, but they have garnered considerable support from courts, the MOJ, the HCC and international donor organizations (in particular, the World Bank MDTF staff and EU representatives).

The adoption of a National Backlog Reduction Strategy will not only sustain progress in this area and further institutionalization of best practices, it will engage the HCC in leadership of a key component of judicial reform.

Given the favorable comments of the HCC President at the October Judicial Conference regarding SPP's efforts on delay reduction, and her recent request for SPP to present the draft National Backlog Reduction Strategy prepared by SPP, there appears to be an opportunity for HCC approval.

Recommendation 4 – SPP should work with the HCC to develop staff capacity for analysis of case management data and for application of weighted caseload data to enable the HCC to actively manage its caseload through temporary and long term shifts in judicial and staff resources, to support measurement of court performance, and to support the budget planning process.

The development of the weighted caseload, the potential implementation of a National Backlog Reduction Strategy, and the implementation of needs-based budgeting will require the development of the capacity of HCC staff to conduct more sophisticated analyses of workload data. This implies not only the collection and manipulation of statistics, but also an understanding of how workload should be interpreted to actively manage caseload (for example, to identify and diagnose potential case management problems), to identify and propose solutions for temporary, short term fluctuations in workloads, to analyze trends in order to inform resource planning efforts, and to assist courts in the use of data from the automated case management systems to support individual court programs for case management improvement and delay reduction plans.

Recommendation 5 – SPP should work with HCC, MOJ and pilot courts to improve the quality of case management statistical reporting through the automated case management system, including the development of a reporting manual, a training curriculum for court staff responsible for reporting tasks, and protocols for periodic statistical audits. Ensuring the availability of reliable caseload data will directly support efforts to improve overall case management at the local and central level.

The introduction of a system-wide automated case management system for Basic and Higher courts provides an invaluable tool for improving the timeliness, reliability, and consistency of case management data to support more efficient case processing. The system is new, however, and was implemented very rapidly. The focus of training, understandably, was on day- to- day operation and use of the system. Guidance to court staff and central staff on the reporting functions of the system is important to ensure that system data can be reliably used for workload management. Further, periodic audits of system reports should be conducted to ensure data reliability and identify possible problems with system reporting programs and the use of those programs by staff.

APPENDICES

APPENDIX A: Evaluation Statement of Work

C.1 BACKGROUND

The Separation of Powers Program is a five-year program designed to help Serbia move closer to European Union (EU) accession by strengthening the division of power and authority more equably among Serbia's three branches of government. The Separation of Powers Program (SPP) is implemented by East-West Management Institute, and has three components, formally known as Tasks. The first two focus on judicial reform, while the third focuses on reform of Serbia's parliament, the National Assembly. SPP began in August 2008. The two judicial Tasks are scheduled to end in August 2013, while the parliamentary Task is due to end in December 2011.

SPP is designed to help Serbia move closer to European Union (EU) accession by strengthening the division of power and authority more equably among Serbia's three branches of government, and to meet EU concerns about the need for greater judicial independence and efficiency. SPP was also designed to comply with judicial independence and efficiency goals of Serbia's Judicial Reform Strategy (JRS), which was adopted in May 2006. The total estimated value of SPP activity was \$10,493,230, of which approximately \$7,000,000 is dedicated for judicial reform.

The National Assembly approved the Judicial Reform Strategy (JRS) in May 2006, and a new Constitution was adopted in a referendum held in October of the same year. Court and ministry officials alike saw the adoption of the Constitution and the JRS as marking a new beginning for Serbia's judiciary. The ambitious goals of the JRS and its implementation plan included the establishment of an independent, transparent, accountable and efficient judicial system. Achievement of these results would occur by gradually transferring most management authority for the courts from the Ministry of Justice (MOJ) to a new High Court Council (originally known as the High Judicial Council). The strategy envisioned creation of an administrative office to assist the High Court Council, which would include an independent budget office, and the placement of professional court managers throughout the judicial system.

Judicial reform laws passed in December 2008 instituted a new court network that took effect January 1, 2010. This reorganization included the creation of four courts of appeal, an administrative and Supreme Court of Cassation. It also included the long-discussed merger of the misdemeanor courts into the Serbian court system, and forced the relocation of many staff and files which further slowed the work of many courts. The law creating the new High Court Council (HCC) (originally known in English as the High Judicial Council) also was adopted in December 2008.²⁶ It required the HCC to appoint a whole new judiciary in the course of 2009, to start work January 1, 2010. While the Law on the High Court Council transfers most responsibilities for the day-to-day running of Serbia's courts from the Ministry of Justice to the High Court Council, the legislative deadlines for transferring that authority have not been met due to organizational complications created by the judicial appointment process and the new court network. Controversy over the judicial appointments and the recent decision for the HCC to revisit all of those decisions has left the very understaffed HCC with little time to consider any other issues.²⁷ For instance, the staffing plan of

²⁶ The Law on the High Judicial Council can be found at <http://www.mpravde.gov.rs/en/articles/legislation-activities>.

²⁷ For additional information about the aftermath of the appointment process, see the [Serbia 2010 Progress Report](http://www.europa.rs/upload/documents/key_documents/2010/Rapport%20SR%20TO%20PRESS%20CONF%2008) at http://www.europa.rs/upload/documents/key_documents/2010/Rapport%20SR%20TO%20PRESS%20CONF%2008

the HCC's Budget Office was not approved until December 2010. The HCC Budget Office has yet to be formed, and no budget activities have been transferred from the MOJ to the HCC. The MOJ is also planning to lead the formulation of a new, multi-year strategy for the judiciary during 2011, and it is not clear what role, if any, the HCC will play in that process.

Despite these difficulties, judges and judicial staff have been very supportive of the work of SPP, and actively participated in SPP's many working groups and its backlog reduction and case processing pilot courts.

SPP is a performance-based contract with Performance Objectives that correspond to each Task. The first Task of SPP helps Serbia's new High Court Council (HCC) assume responsibility for almost all judicial operations, through the establishment of a budget and strategy planning function for the HCC. The second Task focuses on improving court efficiency by training and placing a new class of professional court managers throughout the system. SPP also works on reducing case backlogs and improving case processing times, both of which are key concerns of the EU.

The components of USAID funded assistance to the judiciary are:

Task No. 1: Develop the judiciary's capacity to allocate, acquire and manage the judiciary's resources by providing assistance to:

1. Equip the judicial branch to acquire, allocate and manage the judiciary's resources in both the short and long term through the establishment of a budget and finance function and adoption of appropriate rules and procedures.
2. Assist other relevant agencies to implement the transfer of budget, finance and strategic planning functions for the judiciary to the judiciary.
3. Equip the judicial branch to develop and implement its own vision and strategic plans to strengthen the rule of law, increase public trust and confidence in the courts, and promote judicial independence, impartiality, accountability and efficiency.
4. Equip the judicial branch to manage, plan, implement and/or monitor discrete projects and programs, including those funded by donors or other Serbian agencies.

This project is not expected to provide all the assistance necessary to cover all operations of the Administrative Office or the HCC and its staff. However, since SPP is the first long-term donor-funded program addressing these issues, the contractor shall be prepared to provide encouragement, training and technical assistance to develop the initial plans of the HCC and establishment of the Administrative Office or their equivalents, insofar as the plans relate to the judiciary's budget, finance and strategic planning functions. The contractor also shall be prepared to suggest and encourage improvements in these plans and their implementation as work proceeds.

Task No. 2: Assist the judicial branch in making its administration of justice more efficient, transparent and responsive to the needs of its users by providing assistance to:

1. Establish and implement a staffing, recruitment and training plan for court administrators/managers, including its long-term financing

.11.pdf, and the August 2010 Council of Europe report entitled, "**SUPPORT TO THE REFORM OF THE JUDICIARY IN SERBIA IN THE LIGHT OF COUNCIL OF EUROPE STANDARDS**"

2. Establish a career track for court administrators/managers.
3. Establish a training program for the judiciary that will equip the judiciary to manage courts more efficiently, transparently and responsively.
4. Have the first generation of court managers/administrators at work in the Administrative Office and the courts after four years.
5. Reduce backlogs and improve case processing times in select courts and implement plans to reduce backlogs and improve case processing times in courts throughout Serbia.

Performance Objectives:

No.	PERFORMANCE OBJECTIVE
	TASK 1: DEVELOP THE JUDICIARY'S CAPACITY TO ALLOCATE, ACQUIRE AND MANAGE RESOURCES
1	After four years, the budget and finance office and judicial leaders prepare an integrated budget for all courts.
2	After five years, budget and finance staff and judicial leaders deal directly with the Ministry of Finance in budget preparations/negotiations.
3	After five years, substantial progress is noted for Factor 10 (Budgetary Input) of the Judicial Reform Index.
4	After four years, the judiciary has adopted five- and 10-year development plans.
	TASK 2: ASSIST THE JUDICIARY IN MAKING THE ADMINISTRATION OF JUSTICE MORE EFFICIENT, TRANSPARENT, AND RESPONSIVE TO THE NEEDS OF ITS USERS
5	After two years, a career track for court managers/administrators is in place, and the authorities have approved a plan for placement of court administrators throughout the court system.
6	After three years, trained professional court administrators/ managers are working in key positions.
7	After four years, additional trained court administrators/managers are working within the system.
8	After five years, all the positions identified in the plan for placement of court administrators have been filled.
9	After four years, the average number of cases pending for more than two years has been reduced, and the average number of cases pending for more than four years in select courts has been reduced.

10	After five years, the average case processing time in selected courts has been reduced.
11	After five years, substantial progress is noted for Factor 28 (Case filing and tracking systems) of the Judicial Reform Index.
12	After five years, substantial progress is noted for Factor 18 (Case Assignment) of the Judicial Reform Index.
13	After four years, a significantly lower percentage of users of select courts report offering and paying bribes to the judiciary and court personnel.
14	After four years, and even more after five years, there is greater openness of court proceedings and information about court operations, increased support for judicial independence and reform, and reduced perception of corruption in the courts.

SPP contract was amended in March 31, 2010 to add funding for additional expatriate assistance. Originally, the program was to have a local deputy chief of party/Task 1 leader who would become the chief of party at month 40 of the project. However, SPP was not able to find a qualified local expert to fill the role of Task 1 leader on a permanent basis: an expatriate deputy chief of party who is scheduled to become the chief of party at month 40 joined the project in January 2010, and an expatriate expert has been leading Task 1 since January 2010, although he is scheduled to leave the project in June 2011.

Other judicial reform programs in Serbia

SPP is one of two USAID judicial reform programs. It is the only program of any donor currently working with the High Court Council. The “ECO” project, a 2-year project funded by the European Union, worked with the HCC on establishing the Administrative Office. That project started late 2008 and suddenly ended in the beginning of 2010. It has not been replaced.

Assistance from the European Commission/European Union has provided many courts with hardware, software and other equipment. Several donors have also worked on institutional strengthening of the Judicial Training Center. As of January 2010, the Judicial Training Center became the Judicial Academy, which receives institutional strengthening assistance from the Government.

The Multi-Donor Trust Fund for Justice Sector Support (MDTF), coordinated by the World Bank, has done a series of studies about judicial operations and is providing funding for some expert staff at the Ministry of Justice. SPP also consults with the Organization for Security and Co-Operation in Europe (OSCE), and the United Nations Development Program (UNDP), although their activities do not bear directly on those of SPP.

Norway has supported a court reform program in Serbia since 2007, through the International Management Group. During 2010, it helped 20 basic courts work on approximately 200 activities to improve the performance of courts. Over the next three years, Norway also plans to assist the High

Court Council develop disciplinary standards and processes for judges, continue work on improving court performance, and supporting development of the juvenile justice system.

In May 2011, USAID/Serbia awarded a new five year contract for the “Judicial Reform and Government Accountability Project”: the judicial portion of the program would work primarily with the Misdemeanor Courts and, to a lesser extent, with the Administrative Court.

C.3 OBJECTIVES

The purpose of this activity is to conduct an external formative evaluation of USAID/Serbia’s support for judicial reform under Tasks 1 and 2 of the Separation of Powers Program, including project efforts and achievements in Serbia from August 14, 2008 until the date of the evaluation. The results will be used to document programmatic successes and challenges, to determine if the program will achieve its Performance Objectives and the goals of SPP Performance-Based Monitoring Plan, and to provide guidance and recommendations for the program moving forward.

C.4 STATEMENT OF WORK

The Contractor will provide USAID/Serbia with a formative evaluation of the results planned and achieved under the Separation of Powers Program (SPP), implemented by the East-West Management Institute from August 14, 2008 until the date of the formative evaluation. The product of this evaluation will be a report that discusses any shifts in the operational environment from program inception in 2008 to the present (including an examination of the political will to reform the judiciary), and the impact to date of SPP’s work on Tasks 1 and 2. In identifying the impacts of SPP, the Contractor should consider the operating environment as well as the approach of EWMI and the relationships that the Implementing Partner has with Serbian counterparts. To the extent possible, the Contractor should disaggregate resources by task when examining what has been achieved by EWMI, and analyze the relationships between achieved result and resources (cost).

In evaluating the impact/results achieved by SPP in Serbia, questions and issues that should be answered include, but should not be limited to, the following:

Overview:

1. How much progress towards its Performance Objectives under Tasks 1 and 2 had SPP achieved as of the date of the evaluation?
2. How were resources allocated to accomplish results? How were USAID resources distributed among the two tasks and initiatives under those tasks? To what extent were the distribution appropriate and the resource levels (overall and by objective) sufficient to achieve the desired results?
3. What changes to SPP’s Performance-Based Monitoring Plan had SPP made by the date of the evaluation and why?
4. Which of its Tasks 1 and 2 Performance Objectives will SPP **not** achieve by August 2013, and why not?
5. How and to what extent did EWMI engage and coordinate with other USAID, USG, and donor funded agencies in country? How were these relationships, as well as resources of other USAID partners leveraged to achieve results? How were results affected by this cooperation and coordination?

6. How hand to what extent has the delay in establishing both the initial and “permanent” HCC and the delay in establishing an Administrative Office for the HCC affected SPP’s work?
7. What impact, if any, has the 2009 judicial reappointment process and its aftermath had on program implementation and the accomplishments of results under Tasks 1 and 2?
8. What impact, if any, has the adoption of the package of judicial reform legislation in December 2008 had on the ability of SPP to achieve results under Tasks 1 and 2?
9. What impact, if any, has the implementation of the new court network as of January 1, 2010, had on the ability of SPP to achieve results under Tasks 1 and 2?

Policy and Legal Framework:

1. What legislative, policy, and regulatory environment existed at program inception? Has the environment changed as of the date of the formative evaluation? If so, how?
2. Which legislative, policy, and regulatory changes/reforms were or are necessary for achievement of SPP Performance Objectives? At what point was the need for these changes/reforms identified by USAID or SPP (program design, program inception, during implementation, etc.)?
3. What legislative, policy, and regulatory changes/reforms, which would have positively impacted SPP results, have not occurred? Which changes/reforms still must occur for SPP to achieve its Tasks 1 and 2 Performance Objectives?

Program Impact (Legacy Issues):

1. What changes to the functioning of the HCC and Serbia’s courts have been institutionalized due to assistance provided by SPP, what has been the impact of these changes, and which other changes are mostly likely by the end of SPP?
2. What changes to the functioning of relevant government organizations have been institutionalized due to assistance provided by SPP, and what is the impact of these changes?
3. What other legislative, policy, and/or regulatory reforms can reasonably be credited to SPP?

APPENDIX B: List of Documents Consulted

- ABA-CEELI. COMPARATIVE OVERVIEW OF THE BASIC PRINCIPLES RELATED TO THE JUDICIARY.* Rep. Belgrade: American Bar Association, 2007. Print.
- ACCOUNTING POLICIES AND PROCEDURES.* Rep. Belgrade: USAID Separation of Powers Program, 2011. Print.
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APPENDIX C: Persons and Agencies Contacted

NAME	POSITION	INSTITUTION
Mr. Milenko Djuricic	Court Manager	Belgrade First Basic Court
Judge Tanja Sobat	Acting President	Belgrade First Basic Court
Judge Zorica Bulajic	Deputy Acting President	Belgrade Higher Court
Mr. Zoran Aleksic	Court Manager	Belgrade Higher Court
Ms. Aleksandra Brašić	Court Secretary	Belgrade Higher Court
Mr. Srdjan Majstorovic	Deputy Director	EU Integration Office
Ms. Sanja Mrvaljevic Nisavic	Head of the Department for Justice, Freedom and Security	EU Integration Office
Ms. Mirjana Cvetkovic	Legal Officer	EU Mission
Mr. Mike Falke	Project Leader	GIZ Legal Reform Project Serbia
Judge Aleksandar Stojiljkovski	Member	HCC
Judge Nata Mesarovic, President of the Supreme Court of Cassation	President	HCC
Ms. Jelisaveta Zdravkovic	Advisor for International Cooperation and Projects	HCC
Judge Mladen Nikolic, Former HCC Group	Chair	HCC Court Budget & Finance WG
Ms. Branka Trifkovic, Head of the Material and Finance Affairs Department in the Commercial Appellate Court	Member	HCC Court Budget & Finance WG
Ms. Majda Krsikapa, Advisor at the Supreme Court of Cassation	Former HCC Secretary General	High Court Council
Mr. Aleksa Ognjanovic	Project Manager	IMG
Mr. Halvor Gjengsto	Program Manager	IMG
Appellate Court Judge, Omer Hadziomerovic	Deputy President	Judges' Association
Mr. Nenad Vujic	Director	Judicial Academy
Ms. Helena Surlic	Head of the Department for Supervision in Judicial and Misdemeanor Bodies	MoJ
Ms. Jelica Pajovic	Assistant Minister for Judiciary	MoJ
Ms. Milena Lakic	Head of the Budget Department	MoJ
Ms. Vesna Kovacevic	Head of the Human Resources and Analytical Sector	MoJ
Judge Sasa Boskovic	Acting President	Nis Basic Court
Judge Ivan Bulatovic	Acting President	Nis Higher Court
Mr. Dragisa Vujanac	Court Manager	Nis Higher Court

NAME	POSITION	INSTITUTION
Judge Slobodan Nadrljanski	Acting President	Novi Sad Appellate Court
Ms. Dragana Djukic	Court Manager	Novi Sad Appellate Court
Judge Vidoje Mitric	Acting President	Novi Sad Basic Court
Ms. Tatjana Pakledinac	Court Secretary	Novi Sad Basic Court
Ms. Zorica Stajic	Court Manager	Novi Sad Basic Court
Mr. Marco Bonabello	RoL Department Manager	OSCE Mission to Serbia
Mr. Sinisa Milatovic	Legal Adviser on Judicial Reform	OSCE Mission to Serbia
Judge Ken Stuart	Former Chief of Party	SPP
Mr. Milan Nikolic	Staff Attorney	SPP
Mr. Nikola Vojnovic	Deputy Task Manager	SPP
Mr. Patrick Wujcik	Chief of Party	SPP
Mr. Slobodan Saric	Deputy Task Manager	SPP
Ms. Monika Lajhner	Outreach and Media Officer	SPP
Ms. Sonja Prostran	Task Manager	SPP
Judge Rozalija Tumbas	Acting President	Subotica Basic Court
Judge Ferenc Molnar	Acting President	Subotica Higher Court
David Raymond Lewis	Resident Legal Advisor Chief, Criminal Justice Reform Program	U.S. Department of Justice OPDAT
Ms. Marijana Santrac	Senior Legal Specialist	U.S. Department of Justice Criminal Division
Susan Kosinski Fritz	Mission Director	USAID
Ms. Milena Zivkovic	Project Management Assistant	USAID Democracy & Governance Office
Rob Force	Senior Rule of Law Advisor	USAID Democracy & Governance Office
Susan Kutor	Director	USAID Economic Growth Office
Mr. Miodrag Bogdanovic	Monitoring and Evaluation Specialist	USAID Program Coordination & Strategy Office
Timothy Donnay	Director	USAID Program Coordination & Strategy Office.
Ms. Olivera Puric	Assistant Resident Representative	United Nations Development Program

APPENDIX D: Caseload Statistics [under separate cover]

For more information, please visit
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