



**USAID**  
FROM THE AMERICAN PEOPLE

**MONTENEGRO**

# Montenegro Rule of Law Assessment

JUNE 2007

JUNE 2007

This publication was produced for review by the United States Agency for International Development. It was prepared by the National Center for State Courts.

# Montenegro Rule of Law Assessment

JUNE 2007

**DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

## **TABLE OF CONTENTS**

<b>I. EXECUTIVE SUMMARY</b>	<b>4</b>
<b>II. METHODOLOGY, OBJECTIVES, AND CHALLENGES</b>	<b>9</b>
<b>III. ASSESSMENT OF THE JUDICIAL SYSTEM REFORM PROJECT (JSRP)</b>	<b>10</b>
<b>IV. DETAILED EVALUATION OF JUDICIAL REFORM</b>	<b>13</b>
<b>1. Independence of the Judiciary</b>	<b>13</b>
<b>2. Legal Framework</b>	<b>15</b>
<b>3. Institutional Development</b>	<b>18</b>
<b>4. Professionalism and Competency</b>	<b>20</b>
<b>5. Infrastructure of the Justice System</b>	<b>22</b>
<b>6. Transparency</b>	<b>23</b>
<b>7. Cultivation of Constituency Relationships and Citizen Access</b>	<b>25</b>
<b>8. Efficiency of the System</b>	<b>26</b>
<b>9. Implementation and Effectiveness of Reform Measures</b>	<b>30</b>
<b>10. Receptivity and/or Commitment to Sustain or Replicate Reform Measures</b>	<b>31</b>
<b>V. CRITICAL ISSUES FACING MONTENEGRO'S JUDICIAL SYSTEM</b>	<b>34</b>
<b>VI. DONOR COORDINATION IN JUDICIAL REFORM</b>	<b>37</b>
<b>APPENDIX A: STAKEHOLDERS INTERVIEWED IN CONDUCTING THE ASSESSMENT</b>	<b>40</b>
<b>APPENDIX B: RECOMMENDATIONS</b>	<b>39</b>
<b>APPENDIX C: DONOR PROGRAMS</b>	<b>48</b>

## I. Executive Summary

### A. Environment

An assessment of Montenegro's judicial reform status requires careful consideration of the political environment within which the country and its justice system have developed. Montenegro's recent achievement of statehood has come on the heels of 17 years of intense geo-political pressures in the region. Ongoing regional turmoil and political pressures have included two Balkan wars, economic sanctions, and a continuous influx of refugees, among other pressures - all of which have taken their toll on the development of Montenegrin institutions. In large part, stability has been maintained by a staunch reliance on existing institutional structures and adherence to the *status quo*. Political legacies inherited from the former Socialist system have been slow to dissipate - in terms of individuals, institutions, and mindsets - and much of the old guard remains. As a result, many of the same mechanisms which have enabled Montenegro's stability have also engendered resistance to change. This has affected reform and modernization efforts across all Montenegrin institutions, including the judiciary.

The government of Montenegro is now faced with the challenges of creating a new constitution, developing new legislation to support this constitution, and demonstrating an independent and strong judiciary. The current political atmosphere is ripe with reform potential due to the convergence of new structures and incentives in political, social, and legislative arenas, as demonstrated by the achievement of membership in the Council of Europe (CoE), on May 11, 2007. In acceding to the CoE, Montenegro has pledged its commitment to the development and implementation of legislation that mirrors European standards. Likewise, it has agreed to formulate a constitution that is harmonious with European human rights and legislative standards. At the same time, a web of insidious influences, including corruption and organized crime, have contributed to inefficiency and institutional weaknesses that continue to challenge modernization and reform within the judiciary. To that end, the sustainability of reform will depend on the institutional capacity to implement and adhere to reform measures.

### B. USAID's Judicial System Reform Project (JSRP)

In the last nine years, USAID programs have made significant strides in strengthening the Montenegrin judicial system. This report provides a detailed analysis of these and other initiatives and offers recommendations for further actions to foster sustainable judicial reforms.

USAID contracted with Checchi and Company Consulting, Inc. in July 2003 to implement a three-year **Judicial System Reform Project** (hereinafter JSRP). The contract was extended by eight months and concluded in March 2007. A three-person team fielded by the National Center for State Courts (NCSC) assessed this project in May and June 2007. At the request of USAID, the team expanded its focus to the justice system as a whole and devoted considerable effort to developing recommendations from a system-wide perspective.

The assessment team received copies of the JSRP's final report, final performance monitoring plan, and other supplementary reference materials. Other information was gathered primarily through interviews with stakeholders from the pilot courts. Interviews conducted during the course of the two-week period in which consultants were in-country indicate that the project produced some important accomplishments in supporting judicial reform, particularly in court efficiency and operations.

Analysis of the project's effectiveness requires an understanding of the challenges of the political environment in which the project operated. Three principal challenges include the following:

- Newly acquired statehood;
- The lack and/or weakness of institutional structures and policy administration bodies needed to implement, manage, and sustain reforms. Examples include a non-functional Administrative Office, a weak Judicial Council to which new appointments are still pending, a Ministry of Justice lacking in organizational competency (and comprised of 15-16 individuals, with only 2-3 in management

positions)<sup>1</sup>, an essentially non-functional Judges' Association, and a Supreme Court President (predecessor to the current incumbent) who did not share the project's reform goals;

- The distraction of the Supreme Court by the scandal in the Administrative Office during the last six months of the project, with personnel under investigation.

The effect of the second factor - weak institutions - was significant. Without solid judicial institutional structure on the Montenegrin side, some essential reforms had no "sticking point" and no administrative/management body to ensure universal implementation and to provide for sustainability. The lack of institutional structure also made it challenging for donors to apply any kind of higher level action or influence. Discreet political pressure from donor nations can often move reform stalemates forward. However, without appropriate structures or policy bodies with which to engage in such discussions, or where the appropriate institutions are weak and ineffective, high-level political engagements rarely have measurable effect. Nevertheless, despite the challenges under which it operated, it appears that the JSRP was able to achieve some tangible improvements within the judiciary. These improvements have the potential to stimulate broad sector reform. Given this exciting potential, further donor support for the judicial sector is needed.

The situation facing Montenegro appears even more critical now than it was in the past. Given the findings and conclusions articulated in what follows, the assessment team strongly urges USAID to reconsider its decision to exit from the rule of law sector in Montenegro. The team also strongly encourages USAID, or other donor organizations, to consider seriously the possibility of continuing judicial reform assistance programming in order to focus on enhanced implementation of the court efficiency programming. This would build on efforts of the prior program and lay a foundation for sustainability of the reform efforts in Montenegro. Additional assistance would allow for the roll-out of programmatic achievements nation-wide. Coupled with an emphasis on providing capacity-building to key judicial institutions, this would foster sustainability of broad sector-wide reform and also counteract organized crime and corruption.

## **C. Key Findings and Conclusions**

### **(1) Now is the critical time for judicial reform.**

While evidence of political will to reform was questionable in the past, it has recently consolidated. However, there are many practical and implementation issues, as well as administrative hurdles, that could tip the scale towards achieving reform or sliding back to the *status quo*. Judicial reform is a top priority. Public frustration with the justice system and the recent fiscal scandal in the judiciary make **now** the time to launch reforms. The Montenegrin judiciary needs an accountability and transparency campaign emanating from the highest levels of leadership. Clear action is needed to build public confidence in the system.

### **(2) Proponents of judicial reform need support.**

Given the challenges as well as the opportunities, Montenegro's judiciary will need support, on all levels, to achieve reform. Almost all interviewees stated that there are only a handful of key players in the judiciary who are reform-minded. These are largely the newer and younger judges. Until now, the more senior judicial leaders, many of whom have been in office since Socialist times, have been slow to accept and implement reforms due to a lack of capacity, inertia, and, often, a lack of political will. With incentives now acting to consolidate political will for reform, there are many pending factors that can drive or hinder reform:

- The reform stance of the current Supreme Court President, who will retire in November 2007 due to age restrictions, and of his successor
- The nature of the Montenegrin constitution
- The judicial system's ability to process and implement the immense volume of new legislation which will follow constitutional ratification
- Donors' ability and willingness to provide Montenegro with practical training and assistance in implementation of new legislation
- USAID's reduction of programmatic support

---

<sup>1</sup> This is among the smallest of the government ministries, some of which contain over 100 individuals, according to the UNDP Advisor for Judicial Reform in the Ministry of Justice.

- The functionality (or continued lack thereof) of the Administrative Office
- Reconstitution of the Judicial Council and whether it is reconstituted according to professional standards of accountability, competency, and transparency
- The handling of the scandal
- The expected formulation of new standards for judicial independence, the selection of judges, and the selection of Judicial Council members

**(3) Judicial reform, like all reform in Montenegro, must be top-down to be effective.**

While the need for bottom-up reform implementation is strong, senior government officials must be on board and endorsing and supporting the reform for it to be effectively implemented on the lower levels. Despite the positive impact of the JSRP backlog reduction program, senior officials have not demonstrated a high level of willingness or understanding of the need to commit resources and to plan for expanding and maintaining this program. The challenge is to motivate these officials to apply resources and implement concrete plans in order to follow through on their judicial reform commitments. The team's interviews indicate that senior stakeholders - the President of the Supreme Court, the Director of the Administrative Office and his supervisors, and the previous Judicial Council - are not in a position to do so at this time.

**(4) Donor coordination is critical.**

The donor community must coordinate its efforts and conceive a collaborative strategic framework in its approach towards Montenegro so that donors have an organized, formal mechanism by which to support reform efforts.

**(5) U.S. programming is viewed positively. The U.S. can apply political pressure for reform.**

Many national and international stakeholders praised USAID initiatives for being more practical than those of other donors. This is not a matter of being more effective than other donors, but reflects a special mandate and approach. USAID programs achieved practical, tangible gains in judicial strengthening through programs that enhance efficiency by creating institutions and legislation to ease the burden of the courts and improve the efficiency of judicial management. Many national and international actors have stated that USAID programs respond quickly and pragmatically to urgent needs and implement results-oriented, technical solutions. The backlog reduction program is a prime example. Montenegrin stakeholders, as well as the European donors, expressed concern that if USAID closes its rule of law programs, no other entity can fill the gap.

Montenegrins have a positive view of U.S.-backed programs, and many key Montenegrin stakeholders feel that continued U.S. support, even at a reduced level, is necessary for the reform process. Many stakeholders both in and out of the judiciary stated that the Americans are extremely influential in Montenegro and that strong, direct suggestions from the U.S. Embassy concerning specific reform elements will have great impact. Symbolic gestures of U.S. support, such as U.S. presence on program boards, offer tangible incentives for continued reform and could encourage compliance by national counterparts.

**(6) Further institutional development assistance is required.**

Assistance in institutional development is imperative to help Montenegro implement the reform measures needed to create a functional, efficient judiciary. Judicial reform has been moving forward, and political will and commitment are growing. However, reform cannot be achieved without an institutional framework or structure that enables the development and oversight of action plans for reform implementation. Internal political machinations have rendered non-functional the two institutions which would normally provide structure and administrative management to the judicial system - the Administrative Office and the Judicial Council. The lack of institutional structure, coupled with the judiciary's dependence on parliamentary control, has crippled the judicial branch. If the Government of Montenegro cannot re-establish an institution with the

authority and responsibility for reform, the team recommends that the international community apply political (not logistical) pressure for the establishment of this institution.

**(7) Implementation of legislation is among the weakest points in the execution of justice.**

Several stakeholders indicated that this problem may be exacerbated in the coming months by the high volume of new legislation. The criminal code is undergoing substantial change. In addition, changes in the civil code are anticipated in response to the new constitution. Many stakeholders indicated that courts are unprepared to implement and enforce such an immense volume of legislation. Educating judges and prosecutors on new legislation and its implementation and enforcement requirements is a critical need. An institutional structure must be in place to carry out an action plan responding to this issue. The action plan needs to reflect the commitment of resources, manpower, trainers; the adoption of curriculum requirements; and the further development of the Judicial Training Center or other suitable training institution. Training must be mandatory not only for judges, but also for prosecutors and administrative court staff. Moreover, compliance measures will need to be more strictly applied.

**(8) Execution and enforcement of judgments is very weak.**

It can take years to receive judgments, particularly on the civil level. Property settlement for a divorce case can take up to nine years.<sup>2</sup> The prime reasons for this are inefficiencies in institutional management and court operations, the improper use of courts as notary services and as bill collection agencies for the utility companies, and an enormous volume of legitimate cases, resulting from privatization issues, business/commercial development, property settlement claims, and other matters.

**(9) The Administrative Office requires more high-level backing and support.**

It is critical that senior stakeholders understand and acknowledge the key role of the Administrative Office. It is also critical to provide this office with the leadership and resources required to make it fully functional as soon as possible. During this period of competency-building and state capacity development, the Administrative Office needs to be operating on all six cylinders. Until now, with very few exceptions, it has not. It must be made the implementing agency for policies and directives of the Supreme Court through the President of the Supreme Court. Additionally, the Administrative Office is the administrative and fiscal center for the entire judicial system. If it remains a low priority and dysfunctional which weakens the ability of the entire court system to operate effectively, efficiently, and fairly, and thus to dispense justice properly. If the Administrative Office is not strengthened, with competent professional leadership, staffing, and other appropriate resources, it will be very difficult for the judicial system to take on its intended role and increase its level of respectability. It will continue to be the weakest of the three branches of government.

**(10) Slow and inadequate implementation of IT systems has hindered reform.**

This was a problem from the very outset of the JSRP, due to government failure to complete the case management software and carry out other necessary steps. The IT network must be established within the courts, and case management software installed. Many stakeholders stated that a functioning court IT system is almost as important as a strong, professional Administrative Office. None of the 15 basic courts or the two district courts is online. Computers supplied to the courts by JSRP, and previously by the European Agency for Reconstruction (EAR), have limited use since they cannot access the internet. There is a plan to launch a network connecting all courts in the justice sector within the next several months, but the implementation of this plan faces several challenges. Previous IT plans have experienced major delays. The staff of the IT office responsible for the country's court systems consists of only one senior manager and three individuals with high school diplomas. The Systemization Act of the Supreme Court, passed two months ago, did not provide funding for the five staff members needed to launch the IT system. Recently, both the senior manager and the office director have come under investigation relating to the scandal in the Administrative Office (which houses the IT department). Thus, it remains unclear if the IT office will be able to launch the network.

---

<sup>2</sup> Resident Director, UNDP

**(11) Sustained engagement is necessary to achieve broad sectoral reform.**

The JSRP made steps towards reform, but would have achieved greater results if program infrastructure had been maintained until national capacity and sustainability measures were in place. The potential for achieving such reform still exists if maintenance measures are quickly put in place. The window of opportunity, however, is quickly closing in direct proportion to the time lapsing after the completion of JSRP activities and workshops.

**(12) Courts need continued, vital assistance to manage the quickly growing caseload.**

Last year, Montenegro had five times more cases filed than in 2000. JSRP achieved success in the pilot courts. If these programs were continued and replicated, they could play a major role in strengthening the entire court system. Unless the successes which have already been achieved are maintained and expanded, with further assistance provided, the lessons from the pilot courts will have little effect and the system will soon be swamped. More specific support to sustain the backlog reduction program as well as broad-based assistance is needed to manage this caseload.

**(13) JSRP's backlog reduction/case management and court administration programs were the highest-impact and most replicable programs.**

These initiatives addressed the primary reason that people are dissatisfied with the courts. Moreover, they have produced dramatic results in terms of reducing backlog and have raised operational and managerial efficiency. For example:

- In just three months, the Kotor Basic Court reduced its backlog by 60% and the Cetinje Basic Court by 36.5%.
- By March 2007, the Kotor Basic Court had implemented 95% of the programmatic case management and administrative recommendations developed with USAID assistance, and the Cetinje Basic Court had implemented 84%.

The backlog reduction program is replicable with almost no cash outlay. A step-by step-manual and materials have been prepared, and judges from every court in the country have already participated in the two-day training that introduced them to the program. However, it took three months of near-daily practical mentoring and coaching to achieve pilot court results, so this program requires an investment of time and one-on-one tutelage. For this program to be effectively rolled out on a national level, judges from the pilot courts would have to be released from their duties to serve as mentors for same-sized courts, and a time investment of three months per court is advisable. Moreover, there is a need for some managerial support, preferably international, to provide strategy management, coaching, technical assistance, and supervision. The window of opportunity is rapidly closing, however, since the lessons learned from the pilot courts will not be fresh much longer.

## **II. Methodology, Objectives, and Challenges**

### **A. Methodology**

The assessment was conducted by two American consultants and one Serbian consultant. The team conducted primary research during a two-week assessment mission in Montenegro. The research modalities included informational meetings with 40 key national and international stakeholders, observational visits to the Kotor and Cetinje Basic Courts, and a review of materials, reports, media sources, and documents provided by stakeholders. Stakeholder consultations focused on the following: (1) stakeholders' assessment of the Montenegrin judicial reform, in general, (2) the impact and results of the JSRP, (3) reform initiatives being conducted by other national and international implementers, and (4) critical needs and weaknesses of the judiciary.

### **B. Objectives**

The objectives outlined in the Consultants' Scope of Work (SoW) and the directives stipulated by the USAID mission staff in Montenegro provide the framework for this report. The overall quality and effectiveness of judicial reform in Montenegro is assessed through an examination of 10 factors that are considered markers or components of judicial reform in emerging democracies:

1. Independence of the judiciary
2. Legal framework
3. Institutional development
4. Professionalism and competency
5. Infrastructure of the justice system
6. Transparency
7. Cultivation of constituent relations and citizen access
8. Efficiency of the system
9. Implementation and effectiveness of reform measures
10. Receptivity and/or commitment to sustain or replicate reform measures

The report assesses each component. The analysis of the impact of USAID-supported program activities places particular emphasis on those activities carried out under the JSRP. The impact and sustainability of JSRP results are assessed in terms of interest, commitment, and resources applied by the Montenegrin stakeholders to sustain or enhance the programmatic results. The discussion of challenges or obstacles that have prevented the achievement of expected accomplishments places particular emphasis on those challenges which continue to hinder the reform process.

### III. Assessment of the Judicial System Reform Project (JSRP)

#### A. Objectives and Activities

The JSRP sought to strengthen the rule of law through improving judicial functioning and efficiency. It was comprised of two components: (1) support for the legal reform process and (2) improvement of court operations. To implement these components, the project provided judicial sector support and assistance in five critical areas:

- **Establishing new institutions** as mandated by Montenegrin law (the Administrative Court, the Appellate Court, and the Administrative Office)
- **Drafting and implementation of new laws** that increase the independence of the judiciary and rationalize, streamline, and speed up the process of adjudicating civil and criminal cases
- **Improving court administration and management practices** to increase efficiency, with special attention to reducing case backlogs and caseload processing time and to promoting quality and timely judicial decision-making
- **Improving physical infrastructure, professional resources, and equipment of the judiciary**, with special attention to information technology, legal resource materials, office equipment, and court facility upgrades
- **Improving public awareness of and access to the courts**, drawing particularly on best practices in the pilot courts with respect to constituency services and information dissemination

The JSRP team provided a variety of technical assistance services (e.g., in backlog reduction, legislative drafting and commentary development, institutional development, workflow management, strategy management, media development, and other functions), in addition to training, renovation support, equipment, study tours, conferences, and materials development and dissemination.

#### B. Assessment

The deliverables or outputs of the JSRP can be divided into three general categories:

- 1. Physical and structural** - The establishment of new institutions and the provision of rehabilitation, including structural refurbishment as well as resource and IT development to enhance the physical capacity of the judicial system
- 2. Competency and accountability development** - The provision of technical, legal, and practical assistance to the Montenegrin judiciary and support agencies, increasing their knowledge, methodologies, tools, and resources to administer their judicial responsibilities more adequately, uphold the law, perform their administrative duties and support functions, and interface more effectively with constituents
- 3. Strategy management development and institutional reform** - The provision of institutional behavioral change assistance to effect broad strategy change in the operational efficiency and management of the court system, including workflow effectiveness analysis and backlog reduction

Many of the program initiatives, tools, institutions, and structures that JSRP developed were successful in providing practical, innovative, and high-impact solutions to long-standing problems that had plagued the justice sector. In this regard, the results of JSRP were positive. The establishment of the Administrative Court and the Appellate Court contributed to significant improvements in system efficiency and operations. The introduction of such initiatives as the backlog reduction program yielded measurable results on the pilot court level, increasing operational efficiency in those courts. Virtually every key justice sector stakeholder interviewed for this report expressed support for the approach taken by this program. Some beneficiaries indicated that the tools and resources that JSRP offered helped them develop hold the potential for expansion to other parts of the justice sector, thus eventually affecting the entire system.

Overall, JSRP made significant steps forward with its backlog reduction and case management program, legislative implementation initiatives, establishment of judicial institutions, competency and accountability development among judicial staff and support personnel, and the media and public relations program.

### ***Sustainability***

The *physical and structural* initiatives appear to be sustainable. The refurbishments have been completed, and new structures (e.g., the Administrative Court, the Appellate Court, and the Administrative Office) have been established. These are largely being maintained and will likely continue to be, though significant challenges remain with respect to the Administrative Office. However, the institutional structures were not functional during most of the time JSRP was operating in Montenegro. Hence, plans and commitments for sustainability were articulated only through conversations with individual actors. These actors changed frequently and/or were distracted with statehood and other issues.

Many of the *competency and accountability* initiatives have raised the bar in terms of adherence to standards and accountability, yet many will also need further monitoring and support to ensure sustainability. In addition, the links fostered between the pilot courts and the media did much to increase public awareness of court reforms, create more transparency, strengthen media professionalism in reporting on the judiciary, and enhance the judiciary's image. The Montenegrin Media Institute continues to use the training provided by JSRP and conducts ongoing seminars on professional media coverage of criminal proceedings.

Some of the most significant results were achieved in *strategy management and institutional reform*. Notable increases in the efficiency of the court system were achieved on the pilot court level.<sup>3</sup> However, this initiative did not realize its full potential for sustainability and replication by national stakeholders. The sustainability challenge is the outcome of several factors, principally constrained resources and time. Despite success at the pilot courts level, the roll-out and sustainability of this program on a national level require significant additional planning and resources. The pilot court successes were not achieved through a training program or a "how-to" guide, but from near-daily tutelage and mentoring over a three-month period near the end of the project. A court operations management expert provided one-on-one mentoring and coaching, following the court presidents, presiding judges, and support personnel through the practical implementation of court operations. Building confidence, providing support and mentoring, and introducing new operational modalities resulted in increased efficiency and reformed institutional behaviors. The pilot courts' implementation of the backlog reduction and case management initiatives achieved the most dramatic results in terms of addressing the most basic and evident inefficiencies at the basic court level, where the public interfaces with the court system. Feedback from court staff as well as national and international implementers suggests that this program effected structural reform in policy management and court operations and improved public perception of and confidence in the courts. It is regrettable that this high-impact program cannot be sustained.

Maintaining the momentum of judicial reform stimulated through USAID programming will require more support until national capacity is more fully developed. It would be a sad waste of capacity if there is no continued support to perpetuate the programmatic benefits and tools developed through these programs. Significantly, these tools hold the potential for reforming the entire justice sector. Continued assistance is needed to ensure a continuum of support to the infrastructure which produced such programmatic accomplishments, until they can be properly sustained. This is particularly critical during the highly-evolving environment in which Montenegro's justice sector is developing, and key to fueling the momentum.

### ***Challenges and Shortcomings***

The lack of functional judicial institutions and policy bodies is a key reason for the weakness of programmatic implementation and sustainability on the national level. Indeed, sustainability of reform requires endorsement and policy management by the appropriate judicial institutions. Lacking such institutions, many of the JSRP initiatives were dependent on the commitment of individuals within the Ministry of Justice (MoJ) and the Supreme Court. Initially, these individuals did not share the same level of commitment to the implementation and sustainability of the programmatic reforms. Later, however, as national momentum for reform grew and significant accomplishments were achieved, commitment from all parties increased. Unfortunately, these

---

<sup>3</sup> While project services focused on two pilot courts, some reforms were introduced to other courts as well.

advances, which could have galvanized the case for national endorsement and sustainability, coincided with the ending of JSRP assistance. At that point, the project was achieving the types of positive results that could have expanded had USAID not already made the decision to exit the rule of law sector.

Despite the effectiveness of the court-media linkages in educating the public about reforms in the pilot courts, as well as a comprehensive information dissemination component of the project many leading national stakeholders were less familiar with the JSRP's mandate or benefits. When queried as to the effects of the USAID programs, especially the JSRP, many key stakeholders were unfamiliar with the breadth and scope of the project and its resulting benefits. For example, an Appellate Judge was aware of the rehabilitation benefits which her office received through the JSRP pilot court program. However, when queried directly about the greatest impacts of the pilot court program and asked if she thought that the program could be replicated throughout Montenegro, she confessed that she could not speak to these issues since her information about the program was only secondhand. Similarly, when queried about the greatest impact of JSRP, the IT Manager of the Administrative Office stated that he thought that the project's primary focus was to implement IT systems in all the courts. These knowledge gaps point to the need for further support around media/public relations.

## IV. Detailed Evaluation of Judicial Reform

For each judicial reform component listed in Section II, this section provides (1) a current assessment, (2) the results, impact, and sustainability of USAID-supported and selected other program activities in strengthening and reforming the component, (3) challenges that have hindered the reform process or the achievement of expected results, and (4) recommendations to sustain the reform or further strengthen the component. Appendix B contains a summary table of recommendations for components 1-10.

### 1. Independence of the Judiciary

#### *Current Assessment*

A combination of factors has resulted in an impotent, inefficient judicial system that is unable to serve the public effectively. Independence encompasses the ability of judicial institutions to function freely and without political involvement or influence as well as the impartial, independent selection of judges, independence of the administrative support institutions, and non-politicized access to budgetary resources. Currently, Montenegro's judiciary lacks independence since Parliament is responsible for or has deciding influence over the selection and hiring of judges (including the President of the Supreme Court), the management and advancement of judges' careers, the judicial sector's budget allotment, and judicial access to resources. This has resulted in a justice system with no control over its administration or management and without direct access to funding to meet its own needs. Most Montenegrins interviewed, both inside and outside the judiciary, agree that independence of the judiciary is one of the most critical issues - if not the most vital challenge - facing the justice sector.

Judicial independence is further hampered by the absence of institutional and administrative structures and bodies. The Administrative Office and the Judicial Council would normally be responsible for administering judicial management policy, representing institutional needs, and fighting for their protection. The Administrative Office is now non-functional, and the Judicial Council is not operational.

The courts are burdened with an enormous case backlog, coupled with an exponential increase in the volume of new cases. In 2006, 260,000 new case filings flooded Montenegrin courts, a five-fold increase since 2000.<sup>4</sup> The number of judges has remained the same, due to both the expiration of appointments to the Judicial Council (responsible for the nomination of judges) in November 2006 and Parliament's inability or unwillingness to act on the issue. Currently, at least 20 judgeships remain vacant, many for quite some time. Instead of reconstituting the Judicial Council through new appointments or appointing the requisite number of judges to better meet the system's increasing needs, the judiciary's working hours have been extended from five to six days per week, over-taxing the existing pool of judges. The procedure for selecting new judges gives Parliament the final selection authority based on nominations received from the Judicial Council. Parliament also influences the selection of individuals to serve on the Judicial Council. Many stakeholders indicated that it has often taken six months to a year for Parliament to fill a single judgeship position. No new judges can be appointed until new Judicial Council appointments are made.

Judicial dependence on parliamentary administration and management, coupled with abysmally low salaries and the public perception that the judiciary is not independent, competent, or professional, opens the door wide for external political factors, favors, and pressures to influence the judicial system. Most stakeholders indicated that they did not believe that the vast majority of judges are likely to accept a bribe. However, individuals, power, and politics can influence the judicial system in other ways. The fact that Montenegro is such a small society has resulted in the prevalence, if not acceptance, of constituents using political leverage and/or business or familial connections to influence judicial outcome. Several stakeholders indicated that "judges know how they are supposed to rule."<sup>5</sup> Many expressed the view that judges are simply pawns of the political system. As one international interviewee stated, "The judiciary has to get permission from the ruling

---

<sup>4</sup> President of the Supreme Court

<sup>5</sup> This sentiment was echoed by many stakeholders, but put succinctly by Alan Carlson, US Political & Economic Counselor for US Embassy in Montenegro.

elite.”<sup>6</sup> These influences have paved the way for a system that is not only responsive to political pressure, but one in which outcome can be manipulated on broader levels. Corruption and organized crime have the most deleterious consequences on the system, but little can be done to root them out as long as the judiciary lacks institutional independence and the necessary executive, administrative, and policy management structures.

The judiciary’s dependence on Parliament also affects the day-to-day efficiency of the court system as well as the quality of justice. If, for example, a Parliament member, or someone related to him or her, is a party in a matter of civil proceedings, judges are sometimes reluctant to impose strict sentences. Subpoenas are often not issued when these individuals fail to appear.

### *Results, Impact, and Sustainability*

For the last nine years, USAID programs have put significant effort into bolstering institutional independence by strengthening the judiciary’s functions and institutions. While many of these measures have enjoyed some success, true judicial independence needs to be addressed by the Montenegrin government. Constitutional changes are needed to establish an independent judiciary with independent access to budgetary resources as well as the ability to select judges independently and to address administrative management issues. Any spot-measure can have only a patchwork effect. Top-down change and independence of the judicial institutions are both necessary before subordinate issues of efficiency, competency, and fairness can be adequately addressed.

Assistance by both the ABA/CEELI program and JSRP has helped strengthen the functioning and efficiency of the system, thereby somewhat enhancing its independence. Both projects assisted national legislators to formulate and implement legislative changes to strengthen the judicial sector. Under the ABA/CEELI initiative, the Judicial Training Center (JTC) was inaugurated for the training of judges and judicial staff as a way to make the judiciary more independent and professional. JSRP supported the establishment of the Administrative Court, the Appellate Court, and the Administrative Office as a means to advance judicial capacity and independence. These structures, particularly the first two, have significantly strengthened the capacity of the justice system. They have had significant positive impact on judicial operations and efficiency. They are also receiving sufficient resources to sustain their impact. Both will likely continue to function successfully and have adequate resources since their impact is so evident.

The establishment of the Administrative Court, in particular, has demonstrated how strong administrative management and operational systems can provide a vastly improved level of service to the public. The Appellate Court has provided a quicker avenue for appeals which previously went to the Supreme Court. This has removed a significant caseload that pressured the Supreme Court, enabling it to focus more on higher level cases. These improvements have strengthened the role and the efficiency of the courts and helped improve public perception of their functioning. They have also enhanced the independence of the courts.

The Administrative Office, however, never became fully functional due to the inability of national stakeholders to provide this institution with the capable and reform-minded management required, or with adequate resources. The Law on Courts established this office as the implementing body for judicial policy, and the office could have had the highest impact in terms of strengthening judicial independence. Current impact is weak, or even negative. The office was improperly established and remains dysfunctional, and is now wracked with scandal.

### *Challenges*

As Montenegro recently joined the Council of Europe, it must now reformulate its legislation and its constitution to meet European standards. European stakeholders cite Montenegro’s lack of an independent judiciary as among the leading critical challenges. The failure of the donor community to have successfully assisted Montenegro in this regard has been assessed as the most critical shortcoming of donor programs in judicial sector.<sup>7</sup>

---

<sup>6</sup> Resident Director of UNDP, Montenegro.

<sup>7</sup> Senior Manager of EAR

The new constitutional draft, the *expert version*, completed the process of parliamentary review on 28 May 2007. According to the Council of Europe, the draft proposes two solutions regarding the judiciary. The first maintains the current situation of parliamentary control over the selection of judges. The second gives the Parliament control over the Judicial Council members who elect the judges. These would appear to be window-dressed continuations of the current, much criticized model of a parliamentary-controlled judiciary. The constitution's handling of judicial independence is a key concern to European stakeholders and will be pivotal in their endorsement of this document. According to the Legal Advisor to the Council of Europe, the Helsinki Commission provided initial feedback on the expert draft that neither of the proposals would be acceptable in meeting the goal of establishing independence of the judiciary. On June 5, 2007, the Venice Commission issued an "interim opinion" that stated: "The provisions on the manner of appointment, dismissal and the career of judges and the functions and composition of the Judicial Council remain at variance with European standards on the independence of the judiciary."<sup>8</sup> The Commission strongly recommended re-examination of the constitutional articles pertaining both to judicial independence and to the selection of judges.

The EAR reports that Montenegro has been provided with clear guidelines for judicial reform which emphatically make judicial independence a priority. European Commission (EC) experts have been working closely with the Government of Montenegro to provide all the necessary recommendations for achieving an independent judiciary. According to the EAR, the recommendations are all in place, and the choice is now in the hands of the Montenegrins as to whether or not they want to comply.

Many Montenegrin stakeholders interviewed indicate that the incentives and conditions articulated by the Europeans are having a positive effect in stimulating political will to achieve judicial independence. However, a number of senior government stakeholders very much oppose judicial independence, arguing that the judiciary is incapable of self-administration. As long as the judiciary is subject to parliamentary control and remains unable to control its own administrative and budget issues, and as long as salaries remain low, the judiciary can hardly achieve the appearance of a competent institution. With more independence, the judiciary would have the opportunity and the authority to rectify many of these issues and thus to raise the competency bar.

### *Recommendations*

- Provide support to the Government of Montenegro to introduce constitutional articles endorsing independence of the judiciary, per suggestion of the Venice Commission.
- Encourage public statements and official support on behalf of the U.S. and/or other governments, even if only symbolic, and consider technical and practical implementation assistance to support the reform process.
- Establish and implement transparent, merit-based criteria for selection of judges.
- Establish and implement transparent, merit-based criteria for selection of Judicial Council members.
- Establish and implement specific, transparent selection criteria for nominating candidates and appointing the President of the Supreme Court.
- Increase salaries and improve working conditions for judges and judicial employees.
- Implement a functional overhaul of the Administrative Office so that it meets the professional and senior policy administration requirements of a judiciary management body.

## **2. Legal Framework**

### *Current Assessment*

Until the new constitution is adopted, the 1992 constitution is in place. However, many of its provisions are highly outdated and are no longer relevant or enforceable. The new constitution must be evaluated and approved by the Venice Commission to ensure harmonization with European legislative and standards and guidelines.<sup>9</sup> Montenegrin stakeholders will have to reformulate those articles which do not sufficiently mirror

---

<sup>8</sup> Interim Opinion on the Draft Constitution of Montenegro, Adopted by the Venice Commission, Plenary Session, Venice, 1-2 June, 2007

<sup>9</sup> Legal Adviser, Council of Europe.

European standards, and new versions will be re-reviewed. The Council of Europe will not directly propose changes, but will continue provide guidelines for the reform process.

It is difficult to determine how long it will take to put a new constitution in place. Many stakeholders say it likely will not happen before September 2007, and perhaps not until March 2008. A significant factor is how long it takes to reformulate articles the Venice Commission has already cited as insufficient in meeting European standards and human rights commitments. Moreover, the Council of Europe has cited the draft constitution as being deficient from a technical standpoint as well as in terms of adequate human rights protection.

Following the adoption of the new constitution, Montenegro will need to harmonize all domestic legislative codes with this framework and with the standards established by membership in the Council of Europe and by the European Court for Human Rights. The terms of Council of Europe accession require that certain aspects of harmonization occur within specific timeframes, usually six months to a year. This will require considerable energy, dedication, and resources. During the last few months, many new working groups have been formed to begin the process of formulating new legislation. The criminal procedure code, in particular, is being substantially overhauled.

Montenegro's legal framework has had to adapt to a rapidly changing environment. The status of the state has changed three times in the last four years, each time increasing state capacity and giving rise to the need for new legislation. The Montenegrins have become quite adept, in the opinion of many stakeholders, in drafting new laws in response to political changes. However, most point out that there are too many legislative initiatives and not enough coordination and strategy management for their implementation. Judges and lawyers across the board, including the President of the Bar Association, indicate that changes in the legislation occur so fast that it is impossible for the judges to understand, absorb, and implement them properly. Some stakeholders have criticized Parliament for not being more judicious in passing new legislation. According to the President of the Niksic Basic Court, much of the current legislation is sufficient. He believes that if it were simply better understood and properly implemented, the judicial system would not have such an acute problem with backlog and inefficiency.

In addition, the adoption of secondary legislation (regulations and administrative procedures) frequently receives insufficient attention. Cases often reportedly travel up the appeals chain unnecessarily as a result of judges' poor understanding or improper implementation of the law.

A related problem, resulting from Ministry of Justice resource constraints, is that there is no organized way to provide updates either hard copy or disc, to judicial implementers on current or new legislation. This prevents judges from knowing all the provisions of the current legal codes and keeping current with the high volume of legislative changes. Some private companies compile electronic versions of Montenegrin law, providing subscribers with regular updates on new legislation. Occasionally, a highly proactive and persistent judge reportedly has been able to obtain these through the Ministry of Justice. When the team inquired about the seemingly nominal cost to burn copies of the legal code on CDs for distribution to all the courts, respondents pointed out that this would not be the best methodology because many (if not most) judges are not computer literate enough to use this kind of tool, and many of the courts do not have computers.

### *Results, Impact, and Sustainability*

USAID programs have had an enormous impact in strengthening the legal framework. JSRP in particular accomplished significant results and has been lauded by international and national stakeholders for contributing to introducing new legislation and strengthening the implementation of existing legislation. JSRP support not only fostered reform through strengthening the legislative code, but also built legislative drafting capacity and competency in the Montenegrin judiciary. The ABA/CEELI program introduced the concept of adding legal commentaries when new legislation is passed, and JSRP continued this practice. Commentaries have proved to be a valuable education and training tool for implementers, particularly for legislation which is wholly unfamiliar in terms of historical legislative context, such as the Law on Criminal Responsibility for Legal Entities.

The Law on Criminal Responsibility for Legal Entities is perhaps the most innovative of the legislation for which JSRP provided assistance. The commentary is expected to facilitate its implementation significantly. It

will be important to monitor the ability of judges and prosecutors to implement this law. JSRP also supported implementation of the Law on the Court, and provided drafting and commentary support for the Law on the Training of Judicial Authorities. ABA/CEELI facilitated the development and implementation of the bankruptcy law. This law has yielded pronounced positive results which are being vigorously sustained.

The impact of JSRP efforts to support the effective implementation of the Law on the Training of Judicial Authorities was discouraging and seemed to lack commitment by the government actors to effectively implement this law. Enormous amounts of effort went into developing a training curriculum to support this law, and while the curriculum was officially adopted by the Judicial Council, the Council appointments expired in November 2006 before the curriculum could be sent to the Parliament. Nevertheless, the Judicial Training Center is operating due to the support of JSRP with a training curriculum in place; however judicial training is not mandatory.

### *Challenges*

Constitutional ratification is expected to lead to an enormous amount of new legislation on which judges will need training. There is no organized systematic approach in place to deal with this challenge.

Some training in response to new legislation has been conducted, on an *ad hoc* basis, through the JTC. Now part of the Administrative Office of the Supreme Court, the JTC plans to continue providing such trainings. According to the President of the Supreme Court, while the JTC has a good program, the program is only partially funded. This would seem a gross understatement. The JTC suffers from extreme shortages of resources, support, and personnel. It only has two full-time staff members, plus a third part-time person. Both full-time staff members have been on leaves of absence for at least a month. Moreover, the JTC has no professional body of trainers to conduct trainings. Trainers who train judges now on new legislation are usually the volunteer, still-practicing judges. As attendance has been voluntary, judges' participation as trainees has depended on willingness, schedule, and availability. This presents obvious challenges to universal knowledge transfer throughout the system. With the volume of new legislation expected to hit the court system, judges will likely be too overwhelmed in their own courts either to go to trainings or to serve as trainers.

The Law on the Training of Judicial Authorities, adopted in April 2006, provides for the mandatory training of judges and prosecutors. However, it has not yet been implemented. Moreover, the bill does not stipulate the type of training judges need, and it is the team's understanding that the bill does not mandate the need for trainings in response to new legislation. This would appear to be a typical example of legislation being passed which is too vague and too ill-understood to be implemented effectively where it is most necessary.

Perhaps the most immediate challenge in terms of legislative change will be responding to the new law on criminal procedures which is currently being drafted. This law will transfer investigative responsibility from the judiciary to the prosecution branch, resulting in an overhaul of the criminal justice system and supporting infrastructure. Educating the judiciary, police, and prosecutors about this law will require enormous amounts of training as well as technical and other support. A similar transition occurred in Austria only after four years of judicial training and infrastructure and technical changes. In Bosnia, judges and prosecutors received four hours of daily training for two years to support the same transition.

Vigorous legislative activity has created an urgent need for judges to be trained in legislation affecting the courts. The JTC is the primary entity to provide this training but is not fully equipped to do so. Until recently, various donors provided many of the training programs. Now that the JTC is a part of the Supreme Court, its ability to procure donor funds is very limited, and it has no dedicated budget line from the Supreme Court. Apparently the JTC must ask the Supreme Court each time it has a need, and requests are evaluated case by case. Together with other resource issues, including staff and trainers, this limits the JTC's capacity to meet the judiciary's training needs.

The Montenegrin judiciary needs an operational strategy to ensure that judges understand and implement changes in the law, before the onslaught of new legislation. Without such a plan, the risk is meaningless legislation passed on to an overwhelmed and ineffective judicial system, leading to backsliding of reforms already achieved.

## *Recommendations*

- Distribute the Montenegro legal code to all courts, preferably electronically, but via hard copy until all courts have computers and all judges have received computer training.
- Distribute monthly updates on new legislation.
- Implement a required training curriculum for judges, prosecutors, and support staff which includes mandatory, regular training on new legislation.
- Seek institutional support and technical assistance to the JTC from donors or national entities that will provide manpower and resources to supplement the lack of government funding.
- Publish all case law and decisions for all courts, beginning with the Supreme Court, disseminate them to all courts, and make them available to the public.
- Implement support and capacity building assistance by regional experts from nations that adopted high volumes of legislation in short time frames.
- Mandate that working groups for the formulation of new legislation include at least one member of the judiciary.
- Publish legal commentaries for each significant new piece of legislation.

### **3. Institutional Development**

#### *Current Assessment*

Not all of the institution-strengthening programs have reaped benefits. Programmatic accomplishments expected from the development of the Administrative Office, the key to the organization of the courts, have been grossly lacking. Despite multiple efforts by JSRP to cultivate its effectiveness and capacity, senior government stakeholders did not provide the professional capacity or other resources required for this institution to succeed. Until recently, there has been no history of an Administrative Office within the Balkan judicial system. Key Montenegrin judicial stakeholders did not understand the office's function and value as the administrative management institution for the judiciary. Also, staff hires were not governed by a merit selection process. JSRP attempted to bolster the Administrative Office by including the staff in trainings and by developing "precepts" or internal operating procedures for the office.

Since policy development is a top-down process in Montenegro, justice reform policy needs to emanate from the upper echelons in order for it to be echoed throughout the system. The sad reality is that some institutions and policy management bodies within the judicial system are too weak to implement or oversee structural reforms, and some are non-existent.

The Ministry of Justice has a staff of only 15-16 individuals, unlike other government ministries which have up to 100 personnel. Being so thinly staffed and under-resourced, it is unable to devote the resources or manpower necessary to navigate the reform process. Lacking a functional Administrative Office and a Judicial Council, reform can only come from individual proponents. Many stakeholders have indicated that there are not enough senior stakeholders in the judicial system who are committed to change. The former Supreme Court President did not appear to embrace the JSRP reform goals. Those who are committed frequently lack sufficient time and resources to invest in the process. While the current Supreme Court President appears more reform-minded, he has understandably been unable to invest sufficient energy into the reform process, due to the demands of statehood and distractions regarding the current scandal.

The Association of Judges is essentially a nonentity in terms of interest and authority among the judges. On 27 April 2007, it held a workshop to develop recommendations to the Parliament for the new constitution. However, the association reportedly invited only 7 of Macedonia's 220 judges to participate. The association was not responsive to JSRP efforts to energize it.

On the other hand, JSRP support did develop the Administrative and Appellate Courts, and these well-functioning institutions contribute to judicial reform.

### *Results, Impact, and Sustainability*

Three institutions (the Administrative Court, Appellate Court, and Administrative Office) were mandated by the Law on Courts in 2002, but were not launched quickly because of lack of resources and capacity. Through JSRP support, the institutions were built, literally, from the ground up, and fully equipped with state-of-the-art technology. JSRP also provided training, knowledge-sharing, resources, and study-visits to the U.S. for personnel of these institutions. The objective was to equip them with the tools, capacity, and understanding to carry out their functions. These institutions, particularly the Administrative Court, have had an immense “value-added” in terms of strengthening the judicial system and making it more efficient.

Many would agree that the lack of success of the Administrative Office was outside of JSRP control. The JSRP team apparently made regular and persistent attempts to ensure its success, but there was no will from the Montenegrin side. However, funding problems and lack of internal capacity to develop the Administrative Office plagued its development from the beginning. The fact that this office remains barely functional after all the programmatic resources and energies applied to its development speaks to:

- Lack of understanding regarding the critical role the Administrative Office must play in establishing and maintaining a viable judiciary.
- Absence of a transparent, merit-based selection system for the director and employees.
- Lack of will on the part of senior judicial stakeholders to provide the senior leadership and support for a strong Administrative Office.
- Failure to pursue vigorously the financial resources necessary to establish a viable Administrative Office.

The Administrative Office was initiated much later than the Administrative Court and thus received less assistance. Nevertheless, if the development of the Administrative Office had been even slightly more successful, most of the other judicial strengthening measures would likely have had a larger impact.

### *Challenges*

The current Administrative Office scandal which has resulted in at least three employees being investigated over alleged missing funds certainly has not helped that office in carrying out its mandates. Also, it has lowered the public’s perception of the courts and raises concerns, in the eyes of some that the courts cannot be allowed to become more independent if they appear so unable to manage themselves.

In the aftermath, there are formidable challenges to restoring the public’s faith in the judiciary at large and in building the capacity and professionalism of the Administrative Office. However, since an effective Administrative Office is an essential driver for judicial reform, strengthening this organization is a high priority. It is especially challenging to address the scandal and rebuild the institution at the same time. The current Supreme Court President has given no indication of willingness to rectify the situation. His term will expire in November, and the new incumbent will face the challenge of assuming a strong, reform-minded stance.

### *Recommendations*

- In coordination with the Supreme Court, develop an immediate implementation plan for overhaul of the Administrative Office in order to develop a new judicial model for restructuring the office as a functional institution.
- Consider contracting with a short-term interim implementation team, preferably with international change-management leadership, tasked to direct and assist specific Administrative Office restructuring activities for the next very challenging 6-12 months.
- Include in the Administrative Office implementation plan a recruitment and staffing system that is well designed, endorsed by senior stakeholders, and in accordance with professional, transparent requirements of competency- and merit-based recruitment. Delay further recruitment to the office until this is in place.
- Undertake a damage control and transparency campaign through constituent outreach and media messages.
- Establish a Judicial Press Officer position, possibly staffed by a judge trained in media issues.

#### **4. Professionalism and Competency**

##### *Current Assessment*

The overall professionalism and competency of courts have been significantly decreasing in recent years because of poor working conditions, the lack of respect afforded to the profession, and abysmally low judicial salaries. Another factor is the public's perception of the judiciary as dominated by Parliament, patronage, and external influence. Experienced judges are leaving the bench for much more lucrative law practices. Some top lawyers earn in a day what judges earn in a month. Many promising young attorneys are not attracted to become judges or prosecutors for the same reasons. The result is a diminished competency base. This weakens the justice system and negatively impacts on its independence. Restoring experience and competency will require a serious professional overhaul, and a raise in standards, salaries, and respect for the profession.

The Judicial Council would normally be responsible for administering judicial policy and setting and enforcing professional standards. However, its mandate expired in November 2006, and as of April 2007, Parliament had not appointed new members. This creates a critical gap in terms of maintaining or raising professional standards. Even the previous council was the subject of stakeholder criticism for lack of competency and initiative. If the council is to represent the judiciary adequately and competently, its own level of professionalism must rise with respect to transparent and merit-based selection.

Mandatory training for all judges is essential for professionalizing the judiciary. Trainings should be well developed, coordinated, and professionally presented. Those judges who choose not to attend mandatory training should be subjected to appropriate sanction procedures.

The professional status of court support staff is also critically low, affecting both capacity and public perceptions of the judiciary. While court secretaries are indispensable to the smooth functioning of the courts, there are no mandatory training requirements or professional qualifications. Salaries are very low, even by regional standards, as is recognition of the pivotal importance of these positions.

In June 2007, Parliament passed a law raising the salaries of judges and prosecutors by 30% in September 2007. Offering a more attractive salary package would appear to boost the judiciary's professionalism. However, the outcome will not be as promising as it appears. The law also releases the judiciary from working six days a week, and the 30% salary raise is largely offset by the loss of increased compensation for working the sixth day. Moreover, the law does not provide salary increases for court secretaries and support staff, who will lose their compensation for the sixth day.

##### *Results, Impact, and Sustainability*

JSRP conducted a number of training programs for judges and for court secretaries on such topics as backlog reduction and case flow management, court and media relations, budget and finance, and information technology.

JSRP also developed capacity among approximately 175 civil servants from over 11 government agencies and ministries who adjudicate administrative hearings. These officials received training in the Administrative Procedures Act so that they could implement administrative law more effectively. JSRP training and seminars have had a sustained, positive effect. First, they increased the efficiency and professionalism of the agencies involved in administrative determinations. Second, they contributed to increasing judicial efficiency by reducing some of the unnecessary case flow and high volume of appeals resulting from civil servants' unfamiliarity with administrative legislation. JSRP civil servant training handbook, created in coordination with the Human Resource Agency (HRA), and curriculum continue to be used. HRA is using the handbook in ongoing training of incoming civil servants.

JSRP organized the first conference and trainings for court secretaries and assisted in launching the first professional association for these staff. The association provides opportunities for members to share work experiences and serves as a forum for future change. This was the first time that any program had

addressed, recognized, and provided training for these professionals. JSRP also created two manuals for court secretaries. These serve as desk references for the step-by-step procedures involved in court operations and management. As the first tangible training tools for these professionals, these manuals introduced the concept of consistency and uniformity to court processes. They were presented to the Supreme Court and adopted as “working manuals” for the court system - a major indicator of impact and sustainability.

JSRP’s extensive work in refurbishing some of the basic courts (primarily the pilot courts, with limited refurbishment to the Podgorica Basic Court and others) has helped add dignity and professionalism to personnel working in those facilities.

Project assistance to the JTC in developing a coherent training curriculum for judges was useful for strengthening the judiciary’s professionalism. However, the curriculum has not been adopted by Parliament or officially implemented, and will soon grow stale. The curricula developed by EAR in 2003 faced a similar fate. While they were official adopted, they were never implemented. Failure to implement the USAID-supported curriculum would be a similar waste of donor resources.

### *Challenges*

- Providing sufficient incentives for judges to offset the salaries earned in private law practice.
- Raising the reputation and credibility of the profession to stem the “brain drain” of judges departing the court system.
- Raising the professionalism of court secretaries and support staff.
- Repairing the profession’s tarnished reputation as catering to patronage by working to ensure that justice is more accurately and fairly dispensed.
- Removing old, non-reform-minded judges from the system.
- Increasing staffing and other resources of the JTC.
- Sharing the experience and training materials gained by those who attended the various training programs with those who were not able to attend.

### *Recommendations*

- Increase incentives for the “best and brightest” young law students to choose judicial or prosecutor careers by offering improved salaries and premises befitting the profession’s dignity.
- Establish professional and performance-based standards and evaluations for the advancement and removal of judges, based on merit and uniformly applied principles.
- Reconstitute the Judicial Council as soon as possible, according to the highest standards of professionalism, competency, and quality of candidates, perhaps drawing on international influence to galvanize support for this issue. Or, consider a Council of President Judges as an alternative.
- Fortify, staff, and provide appropriate resources to the JTC. Develop a training-of-trainers component and include ethics and budget training in the curriculum.
- Facilitate professional recognition of court secretaries and train them in personnel and organizational management, budgeting, case management, and constituent relations.
- Develop training curricula, certification courses, professional associations, and cadet programs for court secretaries, judicial assistants, and administrative staff.
- Engage the President of the Supreme Court in taking a leadership role by supporting and participating in the development and presentation of all future training programs.
- Identify judges who are good communicators and encourage them to undergo training of trainers so that they can become instructors at the JTC.
- Reinvigorate the Judges’ Association.
- Develop a National Judges Conference pursuant to law and/or court rule.

## 5. Infrastructure of the Justice System

### *Current Assessment*

The physical facilities and infrastructure of almost all the court buildings are in very poor condition. Most of the buildings are quite old, with many lacking the very basic functional requirements such as adequate electrical wiring to ensure an uninterrupted power supply. Most of the courts, with the exception of those refurbished by JSRP, are severely deficient in terms of adequate space for conducting hearings. Basic Courts in particular need hearing room space so judges do not have to use their offices for this purpose. Enabling the public to attend court hearings is a very important right to fair and transparent proceedings.

Almost none of the courts have computers, except those which were provided by JSRP. Earlier equipment provided in 2001 by EAR is now obsolete. Moreover, none of the courts are on-line. Despite the absence of a fully installed case management system, the courts that have computers use them for word processing, indexing, and other tasks. The President Judge of the Kotor Basic Court, which does have the JSRP-supplied computers, indicated that his highest priority is obtaining a generator of sufficient capacity to run all computer equipment and other electrical systems during the frequent power outages.

Despite two years of promises by the Administrative Office, the IT system has never been launched. This severely limits the courts' efficiency and functionality. Without access to case management software, it is extremely challenging for courts to manage and track their caseload efficiently. The IT network system was supplied by the Coding company, but apparent contractual misunderstandings regarding the costs of installing the PRIS software have prevented the installation in all the courts. According to the Deputy Director of the Administrative Office, a new contract is pending which will facilitate launching the IT network system and installing the PRIS software. However, it does not appear the IT Department will have the necessary resources to support the networks and software installation before the 2008 budget year, when additional staffing and resources are expected.

### *Results, Impact, and Sustainability*

Extensive refurbishments to the Palace of Justice (housing the Supreme Court) accommodated the Administrative Office, the Appeals Court, and the Administrative Court. While it was deemed extremely important to co-locate these institutions in the Palace of Justice, the space available is not really adequate, and many judicial stakeholders cite this as a serious impediment to their work and to the goal of providing constituent services. However, a move so soon after refurbishment would seem wasteful.

Many interviewees cited the creation of the new Administrative Court as the shining star of the JSRP - a refurbished building, new computers and office equipment, and training in support of a new court institution. The result is a highly successful, efficient, and effective court. The Commercial Court benefited from installation of IT equipment, audio recording, and some building modifications. It had special help establishing a constituent-accessible IT terminal enabling citizens to access the electronic Central Registry of companies. Located in the Commercial Court of Podgorica, constituents can both register their own company and view registration of all companies throughout Podgorica. As soon as a company is registered, the filing is available to everyone in the field. This saves weeks over the old system and prevents duplication.

The new Appellate Court was financed entirely by USAID including office space and all office furniture. Facility improvement projects in the Basic Courts have been extremely well received, important to judges and staff, and a matter of pride to the public. The Niksic President Judge and other judges reported that getting information technology equipment, mainly computers, was extremely useful for operations, even though the case management system software and networks are yet to be installed. The courts use the equipment for basic indexing of cases and word processing. The Minister of Justice and Basic Court representatives cited archives shelving and organization assistance, newly designed file folders, and the filing system as very valuable in improving their workflow and procedures. The Minister of Justice reported that JSRP's Court Facility Study was the first comprehensive survey of all court facilities and was extremely useful in court facility planning, prioritizing budget requests, and allocating resources for court facilities renovation and repair.

In spite of the training provided to the Administrative Office and its IT department, technical/IT support capability and sustainability are relatively low and will remain so, unless and until the IT department obtains additional resources and training so that its staff can support all technical/IT systems and software throughout Montenegro. There is no connectivity within each court or to the Administrative Office.

The lag time in launching a country-wide network has resulted in PCs currently in place in the courts being too old. The original investment did not realize its full return as many of these computers will likely have to be replaced, or at least upgraded, without ever having been adequately used.

JSRP provided training for computer-savvy court employees from each of Montenegro's courts. This resulted in a first line troubleshooting and basic maintenance capability for the courts which could facilitate network launch. However, the impact of training diminishes with every passing month, and the skills gained will be lost if the system is not launched soon. A court-wide computer network system and subsequent installation of the PRIS software are expected soon.

### *Challenges*

- Upgrading the vast majority of court facilities which are still very substandard in terms of physical condition, infrastructure, and lack of comfort for the public and employees.
- Maintaining a professional work environment and attracting quality staff when court infrastructure and facilities are so lacking.
- Getting networks installed and connected, given the lack of professional capability and resources in the IT Department.
- Continuing maintenance capability for the networks and PRIS software, expected soon following a two-year delay.
- Using outdated software.
- Insufficient office space for the Supreme Court and associated offices in the Palace of Justice.

### *Recommendations*

- Place a high priority on installing and launching the courts' IT network so that all judicial stakeholders can access current legal codes and updates, use management software, and access decisions of higher level courts.
- Expand the IT launching contract to include case management software so that software is ready-to-go when the system starts up.
- Facilitate management of system launch by an international IT expert with a strong background in automated court management system design, development, and implementation.
- Professionalize and strengthen the Administrative Office IT Department with individuals who have IT systems managerial experience as well as understanding of and expertise in the court system.
- Ensure that all contractual IT agreements provide courts with possession and maintenance of proprietary rights to the PRIS software.
- Continue the technical trainings that JSRP provided to court personnel who were designated as IT maintenance support for the courts.
- Enhance basic infrastructure at many of the courts, such as sufficient electrical wiring for uninterrupted power supply, generators where necessary, and climate control features.
- Refurbish most of the basic courts to provide adequate space to conduct hearings and for non-judicial staff to serve the public.

## **6. Transparency**

### *Current Assessment*

Montenegro's judicial system has been plagued by a broad lack of transparency. This seems to result more from a lack of efficiency and organization than lack of political will, though the latter may play a secondary role. From the public's standpoint, the entire judicial system is deeply riddled with a lack of uniformly-applied principles, standards, and criteria, pertaining both to how the institution functions and how it handles cases. The lack of transparency is most evident in the following: (1) selection of Judicial Council members; (2) lack of

publication of case proceedings; (3) failure to implement random assignment of cases to judges despite the legal mandate to do so; (4) lack of uniform time standards resulting in lengthy case adjudication and old cases not receiving priority over new cases; and (5) selection and vetting of candidates to serve on working groups that draft legislative initiatives.

The recent Administrative Office scandal has further eroded the transparency of the judiciary. In December 2006, it became public that approximately 400,000 – 500,000 Euros had allegedly disappeared or been embezzled. The Director of the office as well as the Director of the IT Department are under an ongoing investigation. However, there have been no public statements or measures accepting responsibility for the launching of a responsible investigation from the Supreme Court or the Administrative Office, nor have they demonstrated cooperation with such efforts. Also, individuals under investigation have not been dismissed or suspended. The press has given much attention to the scandal and what is widely considered the judicial system's inept handling of it. The press quoted the Chief of Police as specifically naming the President of the Supreme Court as an obstruction to justice, though he later apparently retracted this statement. Nonetheless, the scandal has ignited increased public criticism of the judicial system and has heightened their already-entrenched distrust.

### *Results, Impact, and Sustainability*

The backlog reduction program adds transparency in the pilot courts. The relationship that JSRP fostered between the media and the pilot courts spreads the transparency message. JSRP also helped implement random assignments, which the MoJ measures in its annual assessment of judges. However, the system is not being implemented properly, and figures substantiating the random assignment are known to have been manipulated. Better monitoring would have documented the way in which this marker is being artificially reported. It often has a negative impact on judges' ability to execute their duties fairly and efficiently.

Publication of cases in the Administrative and Commercial Courts has increased transparency.

Training of Administrative Office IT staff and first line court maintenance staff to keep the software running will result in more and better information on how the courts are doing. The Administrative Office has a complaints point which received 1,106 complaints in 18 months, and the Ombudsman's Office received 300 in the same period. While this points to constituent dissatisfaction with the judiciary system, it also demonstrates public awareness of a complaint mechanism.

### *Challenges*

The lack of transparency in the judicial system's handling of the scandal is further eroding public trust, having a negative impact on the judiciary's relationship with the media, and diminishing the programmatic gains which helped build the media's confidence in the judiciary.

### *Recommendations*

- Embark on a transparency and constituency outreach plan through media, press conferences, and town hall meetings to engage citizens.
- Ensure that senior level stakeholders make public commitments to remedy the weaknesses in the court system.
- Ensure that senior individuals at the Supreme Court and the Administrative Office make public statements pledging cooperation with the investigation and providing assurance that appropriate and just action will be taken.
- Establish a Judicial Press Officer or Media Relations Coordinator who interfaces with both the press and the donor community and arranges press conferences regularly.
- Publish all court judgments, particularly those of the Supreme Court, in an electronic library, as well as in hard copy form for distribution to all courts and for citizen access at libraries and in the JTC.

## 7. Cultivation of Constituency Relations and Citizen Access

### *Current Assessment*

Citizens perceive the judicial system as institutionally inept and intrinsically flawed in the execution of justice. The system of patronage by which the courts respond to political and personal influences and pressures is so entrenched and so evident that the public has no confidence in the system to perform fairly and efficiently. In a recent public opinion poll, the justice system was rated among the lowest of all institutional structures in Montenegro, sharing the lowest possible ratings with the police department. While much of this criticism may certainly be warranted, the press has played a significant role in fueling public criticism of the judicial institutions. The scandal, in particular, has been a cause for scathing criticism of the justice sector at large. While media coverage surrounding the scandal and other judicial weaknesses can be a positive factor in fostering transparency and reform, some stakeholders have questioned whether this excessive criticism on the part of the press and the public towards the judiciary is fully deserved.

However, the criticism continues to build and is seemingly fueled by the justice sector's inability or disinterest in using the media as a forum for interacting with its constituency or to orchestrate confidence-building measures. Outside of the citizen outreach during the JSRP media programs, the justice system rarely interfaces with the media. The judiciary rarely, if ever, holds press conferences, nor does it release public statements about its plans or commitments to citizens. The lack of judicial relationship-building through the press, and lack of any official statement regarding or even acknowledging the scandal, has served to further erode public confidence. The President of the Montenegro Media Institute indicated that, on more than one occasion, he has recommended to the Supreme Court and to the Ministry of Justice that the judiciary hire a press officer. The reaction has always been that they would not trust a non-judge to speak to the press about judicial matters. In response, it has apparently been suggested that a judge be groomed as a press liaison person, but there has been no follow-through on this suggestion.

The President of the Supreme Court has demonstrated a commitment to interacting with citizenry, but not by using the media. The President indicates that he personally reviews each and every complaint received by the Administrative Office. In addition, there are regular hours in which citizens can come to the Supreme Court, air their grievances, and receive responses from court personnel. The Supreme Court President reportedly attends these sessions frequently and interfaces directly with the constituents. There is also a feature called "Open Day," when all courts are supposed to receive constituents and respond to their complaints. The Supreme Court President recommended the establishment of this mechanism, but presiding judges have discretion in implementing it. The President Judge of the Basic Court of Podgorica reportedly holds "Open Day" on a weekly basis. This is an exception, with most of the other judges less proactive or engaged with their citizenry.

Hardly any of the courts are accessible to the disabled. Moreover, many are poorly laid out and have limited or no signage except in those facilities supplied by JSRP. Lack of signage or information desks often creates challenges for citizens to locate a particular courtroom. There are no security measures for constituent entry to the courts, nor are there any measures taken to provide protection for witnesses. This is an acute need in view of the growing challenge posed by organized crime in Montenegro. If Montenegro wants to engage citizen action in quelling this challenge, proper measures to foster citizen security and safety are essential.

### *Results, Impact, and Sustainability*

JSRP supported court implementation of many features to facilitate citizen accessibility, such as signage, informational brochures, and kiosks, primarily in the pilot courts. Some other courts received support as well, including the Basic Court of Podgorica which, through JSRP assistance, installed a plasma screen, similar to those seen at airports, informing constituents of the hearing schedule and location.

JSRP provided the support for a national IT technical expert to create a website ([www.sudovi.cg.yu](http://www.sudovi.cg.yu)) for Montenegro's court system. This helps the public understand the judicial system and provides practical information, such as the courts' functions and locations, instructions for filing legal cases, sample forms and documents, and information about the individual judges.

The hope was that the website would have a tremendous and sustained impact in facilitating constituent relations. It was formally launched in September 2005 and turned over to the Administrative Office Technical Department. Since its inauguration, it has received over 12,500 “hits,”<sup>10</sup> but the Technical Department has done nothing since to maintain or update the website. The Technical Director received the tools and training to update the site, but he did not follow through with any updating. JSRP stakeholders report that the IT director received repeated coaching on website maintenance, but he expressed no initiative to address the issue. This is a sad waste of program resources and speaks again to the inability of the Administrative Office to implement, or even sustain, any kind of policy or management functions.

Another JSRP initiative that enhanced transparency and constituent accessibility was assistance to facilitate citizens’ access to the electronic registry of the commercial courts.

### *Challenges*

- Public confidence in the judiciary has been so shattered by recent events that any new measures to enhance transparency may be viewed with public suspicion. The speed and outcome of the scandal investigation will reflect on the judiciary’s transparency.
- Senior stakeholders who do not see the need for transparency measures hamper the judicial system’s willingness to address transparency issues.
- The judicial system’s reticence to interact with the press challenges enhanced transparency.
- Enhanced transparency may require removing or changing the behavior of stakeholders who do not share the commitment to reform.
- Appropriate resources are required to maintain the website.

### *Recommendations*

- Implement interior (and exterior, if necessary) signage in all courts, identifying hearing room locations, schedules, presiding judges, and other critical information.
- Maintain, expand, and continually update the court website to facilitate understanding of the courts’ role in public service.
- Engage civil society and NGOs in judicial reform through debates, round tables, citizen awareness forums, and other mechanisms.
- Continue and expand on JSRP’s media training of the judiciary.
- Engage in media dissemination of lessons learned from pilot court programs.
- Provide customer service training for the judiciary.
- Conduct public opinion polls to better gauge citizen areas of concern and to evaluate the effectiveness of courts’ efforts to enhance accessibility.
- Implement court security infrastructure enhancements.
- Implement court witness protection infrastructure to provide for citizen engagement in combating organized crime.
- Upgrade courts so that they are disability-accessible.

## **8. Efficiency of the System**

### *Current Assessment*

The judicial system suffers from staggering levels of inefficiency, on both macro and micro levels. These inefficiencies result from a number of legislative, organizational, and management factors, including the following:

**Legislative weaknesses give courts jurisdiction of frivolous cases** - Current legislation allows a high volume of frivolous cases to be heard by the courts. Two prominent examples are the use of the courts as notary services and as collection agencies for utility companies. Courts have been allowed to become the forum for utility companies to take collection actions against citizens who fail to make timely payments. These cases, and the endless appeals involved in them, greatly diminish the courts’ ability to apply their resources to adjudicating higher-level cases.

---

<sup>10</sup> “Summary of Project Accomplishments,” Submitted to USAID by Checchi & Company Consulting, Inc.

Up until now, the courts have been the only entities authorized to provide notary services. Thus, any citizen who needs a certified copy of a business license or of university papers, for example, could obtain the official notarized copy only by petitioning the court. New legislation, recently adopted but not yet implemented, establishes a separate notary body outside the court system.

**Deficiency of legal resources, training, and therefore of judicial knowledge** - Judges often have inadequate knowledge of the law. This results both from the lack of systematic distribution of the legal code and the lack of organized training on legislative updates. The consequence is erroneous implementation of the law and cases traveling to appeals due to improper implementation of the law in the first instance. Some judges reportedly are known to delay and postpone cases simply because they lacked legal knowledge to implement the law appropriately.

**Administrative delays in implementing legislation** - Judges' inability to keep current of the law is further hampered by the lengthy delays which typically govern the adoption of new legislation. It is sometimes a year or more between the drafting of a law and its adoption. Sometimes, certain tenets of the law are no longer valid and have to be revised. There are also typically long delays between the adoption of a law and its implementation.

**Lack of efficiency in court administrative proceedings and case management** - Cases are not adjudicated in order of oldest to newest, nor are time standards enforced regarding case processing. Moreover, there is no standardization of court statistics. This results in the inability to identify when a case was filed or to track cases as they move into appeals or to a second instance court. The case number changes each time the case moves. Court regulations currently require judges to transcribe, by memory, their rendition of the proceedings. This is extremely cumbersome from an efficiency standpoint, and opens the door to obvious human error. Moreover, because this exercise is conducted in front of the parties to the case, shrewd lawyers reportedly can manipulate this tedious transcribing process. One lawyer interviewed admitted to providing "coaching" to his client, during the transcribing process, resulting in the defendant retracting or changing previous admissions of guilt as his testimony was being confirmed during the transcribing process. Other civil procedural laws, such as on record-keeping, are cumbersome and unnecessarily lengthen case processing time.

**Responsiveness to political or personal influences** - The judicial system's responsiveness to patronage is perhaps the most serious impediment to the efficiency and quality of justice services. Patronage and other responsiveness to external influences are not easily measurable factors, but can be witnessed in the lack of uniformly applied standards pertaining to the quality and severity of judgments. Virtually all stakeholders interviewed perceived that acute variances seen were attributable to influences of nepotism or political pressures. They indicate that this is particularly evident in criminal cases. Many spoke of a complete failure to implement appropriate judgments in criminal cases, unnecessarily lengthy delays, or arbitrary dismissal of cases due to allegedly insufficient grounds for investigation.

**Lack of enforcement of efficiency measures** - The Montenegrin judicial system has a bailiff system which could help increase the efficiency of the courts, but it is not properly implemented. The subpoena system exists, but is not adequately enforced. Judges are reticent to enforce subpoenas on political leaders, individuals in the government, or people with whom there are business or familial connections. This results in repeated and exhaustive delays in proceedings.

**Non-cooperation from other bodies in the judicial process** - Court proceedings are often delayed due to the inability of related government organizations or agencies to provide requested documents in a timely manner. Examples are tax records, property deeds, and records related to minors.

**Judges' inability or unwillingness to exercise more control over their court** - Judges' inability both to execute justice swiftly and to take more control of their courts and of the hearing process contributes to inefficiency. While other factors may account in part for this phenomenon, judges' behavior is sometimes an independent factor. Judges have been known to seek unnecessary delays or grant groundless postponements, or to lengthen the case by calling the same witness multiple times. Also, judges frequently do not exercise the control and authority over the court which they possess, and they are often reticent to

exercise their right to levy sanctions against parties for non-appearance or against lawyers for being unprepared.

These factors combine to create a judicial system that is almost completely non-functional, in terms of efficiency, effectiveness, and fairness of justice served. Citizens experience excessive and unreasonable delays in the execution of judgments. In addition, there is an enormous volume of appeal cases, due both to poor understanding of the law and to inappropriate use of appeals system.

It is virtually impossible to rectify this myriad of deficiencies, however, in the absence of both resources and a properly functioning administrative institution. Correcting inefficiencies requires both the removal of the judiciary from parliamentary control, so that justice can be more fairly rendered, and the implementation of a comprehensive program of sustained reform measures. Such a program can only be effective if managed and resourced by a strong policy management institution, such as an Administrative Office.

Individual, proactive judges who would like to implement reform and efficiency measures into their own courts are often too overwhelmed to take such initiatives. They are faced with such a high volume of cases that there is simply not enough time to slow down and implement reform measures.

The inefficiencies are seemingly compounded by the courts' extreme adherence to strict quota measures which are applied and enforced by the Supreme Court. Annual assessment of all the lower courts includes an evaluation of court performance as well as the competency and efficiency of individual judges. The President of the Supreme Court then releases the assessment results in press conferences. While this appears to be a sound idea in theory, almost all stakeholders indicated that the assessments are not conducted in a proper or credible manner. The team was informed that the evaluation process is not conducted systematically, nor is the evaluation criteria sound or uniformly applied. In fact, the rating system has been highly criticized as so flawed that it actually fosters further inefficiencies of the system. Because judges are rated by the volume of cases disposed, they will hear "easy" cases first, repeatedly postponing more challenging cases in order to increase their ratings. Moreover, as the rating system is not based on objective criteria, it is reported to be widely manipulated by judges who know how to "play the system" in order to raise their ratings.

There are indications, however, that the efficiency of the judicial system is improving. USAID court management programs have demonstrated that successful outcomes are possible. JSRP's establishment of the Administrative Court has helped foster greater administrative efficiency within the judicial system. Moreover, recent legislative changes have effected small but noticeable improvements in reducing the delays involved in the execution of civil judgments. Further reforms in efficiency will have to take place in order for Montenegro to comply with reforms and commitments as a Council of Europe member. Among the European human rights standards Montenegro pledged to uphold is the right to a speedy trial. Hence, a working group has been recently formed, and legislation to uphold this right is currently being developed.

### *Results, Impact, and Sustainability*

Gains in both the Administrative and Commercial Courts demonstrate what strong leadership coupled with adequate resources can accomplish. The Administrative Court has evolved into a well run, efficient court. By taking the caseload off the Supreme Court, it has dramatically increased system efficiency. In January 2005, it received 850 cases from the Supreme Court and 1,600 new cases, with only three judges. In 2006, there were 1,500 cases pending in total; the court resolved 1,600 cases, indicating that it is ahead of the "backlog reduction curve." As of the team's interview on 15 May, 690 new cases were pending and 750 had been resolved to date.

In some arenas, efficiency is being realized through implementation of good and innovative legislation. The work of ABA/CEELI to streamline bankruptcy proceedings in the Commercial Courts is particularly noteworthy. Montenegro was the first country in the region to implement a reorganization plan for bankruptcy. After 4-5 years implementing the law, the result is a dramatic caseload reduction, and the court is more effective. The Commercial Courts received caseload training as well. Proceedings are three times faster for bankruptcy, with the average length of case reduced from a high of seven years to six months now. This reduction in case life can and will be sustained since it has yielded such positive results in terms of implementers' workload.

The pilot court administration and backlog reduction programs implemented in Kotor and Cetinje Basic Courts were highly successful, demonstrating that courts can increase their efficiency. Digital recording equipment provided to the courts was used typically for more important and serious cases. The Cetinje Court reportedly loaned a recording unit to the Podgorica Court for the “train wreck” cases. There is high public awareness and support for the pilot courts, and the media, invited to observe operations, monitored and reported on progress. Results in these courts can be sustained with minimal additional funding. However, there are 13 more Basic Courts to which the program was distributed but which have not received technical assistance for implementation. The judges in participating basic courts have offered their backlog reduction and case management knowledge and tools to mentor other courts, but this requires the Supreme Court to release them from their court duties and find others to conduct their regular court functions. Senior stakeholders, including the Minister of Justice, President of the Supreme Court, and Presidents of the pilot courts, would support a national roll-out plan.

JSRP provided assistance in promoting mediation to the public particularly in the pilot courts. Mediation is viable but has not reduced case volume in the courts as expected. Continuing promotion and advertisement to the public are needed to reduce resistance to this modality. With donor support, the Ministry of Justice is going to establish a mediation center to further the impact of mediation.

After receiving training on case flow management and other topics, the Podgorica Commercial Court instituted efficient practices such as business license registration and case management systems. After training for postal service workers, service of process/delivery of notifications was 30% faster in the Kotor Basic Court. The postal service administration is now independently supporting service of process training for its employees.

### *Challenges*

- Losing momentum of successful backlog reduction programs by not providing maintenance or support for continuation.
- Failure of other government entities to cooperate and produce requested documents in a timely manner.
- Gaining the endorsement of the Supreme Court President to support, coordinate, and replicate successful initiatives.
- Getting non-pilot courts to buy into a backlog reduction program, begin implementation, and sustain the program over time.
- Strengthening judges' capacity and willingness to enforce case deadlines more aggressively
- Implementing standardization of court statistics.
- Implementing the law which will remove notary and other administrative cases (now estimated at 40% of the caseload) from the courts.
- Regulating the merit of appeals cases.
- Supplying electronic copies of Montenegrin law to all courts, first procuring computers for the courts and then training judges and other court staff to use them.
- Changing public perceptions of the acceptability of mediation.

### *Recommendations*

- Hire the number of judges allowed by law to fill outstanding vacancies.
- Provide a management training program for judges and administrators.
- Encourage judges to exert more control over their courts (e.g., by enforcing deadlines and court orders, dismissing frivolous cases, and using sanctions and penalties as enforcement).
- Provide internet connectivity for all courts that allows judicial personnel to use case management software and to access legislative codes, updates on new legislation, and published decisions.
- Implement and expand the use of audio recording to provide verbatim transcripts, amending current law accordingly.
- Support and facilitate the implementation of the notary law which will remove notary services from the court.
- Support the drafting of legislation to remove utility bills and other administrative cases from the court.

- Change the legislation that mandates hand-transcribing the proceedings following the hearing according to the judge's recollection.
- Conduct a national roll-out of the backlog reduction program, under the leadership and supervision of a Sustainability Manager.
- Develop a Caseload Management Course to establish and mandate organizational standards for case handling (including time standards, uniform numerical standards, uniform color-coded case filing and archiving standards as introduced by JSRP, data collection, data destruction, and management systems).
- Develop a new evaluation procedure for merit-based assessment of judges' performance and court efficiency, using CIPAG European standards.
- Increase awareness of and incentives for use of mediation procedures, strengthen the mediation program, and provide support for the planned mediation center.
- Provide system-wide training for judges, court secretaries, and the National Postal Service in mail notifications.
- Propose collaboration with the OSCE Case Monitoring Project.

## 9. Implementation and Effectiveness of Reform Measures

### *Current Assessment*

When reform measures are implemented and seen to be effective and producing results, Montenegrins are generally keen to adopt them. However, when strategies for reform are presented as a theoretical framework, it has been challenging to obtain Montenegrin endorsement and support for implementation. Montenegrins apparently need tangible evidence that a measure will work before they adopt it. Perhaps owing to the historic legacy of Socialist inertia, reform is slow to be implemented as it implies taking chances and initiating change.

In a top-heavy administration like Montenegro's, implementation of reform measures requires obtaining endorsement from senior government stakeholders. There is a definite tendency towards maintaining the *status quo*, even when the *status quo* is clearly not working. However, disconnect between the people at the top and the implementers at the bottom often meant that senior officials didn't understand how reforms will impact the everyday operations on the lower levels. A prime example is the backlog reduction program. The JSRP team had to plead with and persuade the President of the Supreme Court to relax the strict quota system within the pilot courts just to launch the program.

However, once the program began yielding such success, the senior stakeholders wanted to attend all the press conferences and laud their participation in the program. This presents obvious challenges to introducing new reforms for which results have yet to be experienced. It also explains why knowledge-sharing alone - trainings, handbooks, consultancies - are difficult modalities by which to implement reform in Montenegro. Far more effective are practically - based programs such as the backlog reduction program which involved one-on-one mentoring of judges while they carried out their everyday duties.

### *Results, Impact, and Sustainability*

Related results appear under previous factors in this report. Notable achievements include:

- IT installation at the Commercial Court has vastly increased the effectiveness of the registration system by providing immediate access and avoiding duplicate registrations.
- Court Presidents who did not participate in the JSRP backlog reduction/case management program express willingness to adopt these measures.
- Publishing the proceedings on the Administrative Court level provided the incentive for the Supreme Court to commit to publishing all Supreme Court case proceedings.
- JSRP support to the formation of working groups for new legislation and its assistance to the legislative process have made it easier to form working groups and to pass legislation.
- As a result of new legislation and training, new bankruptcy procedures are more effective.
- The Montenegro Media Institute indicated that the media-judicial coordination seminars and the media training that JSRP provided have had a sustained impact in raising the bar for media industry

standards, particularly in covering criminal proceedings. The quality of reporting on criminal matters is vastly improved.

- Mediation has not been effectively embraced as a reform measure, but is now mandated for divorce.

### *Challenges*

- The lack of functionality in the Administrative Office and the Judicial Council impedes successful implementation of reform measures.
- Appropriate incentives are needed to stimulate knowledge transfer. Knowledge gained from study tours is not always applied, with some participants treating them as a way to visit foreign countries.
- Senior stakeholders need adequate incentives and rationale to implement reforms for which they see tangible rather than theoretical outcomes.
- Fear of change and innovation challenge reform implementation.
- Impetus is needed to get senior stakeholders to apply their own resources in implementing reform measures, based on best practices and results found in other environments. Reliance on the *status quo* instead places the responsibility on the international donor community.

### *Recommendations*

- Establish key alliances with the most senior stakeholders in the MoJ and in the Supreme Court to strengthen their ownership, leadership, and ability to commit resources to carry out reforms.
- The President of the Supreme Court needs to lead or designate a special projects unit for high interest and high priority projects, such as the backlog reduction program.
- Model more reforms using practically-oriented, mentoring-based programmatic initiatives.
- Suggest the implementation of a “pilot program” component of reform initiatives that are poorly understood or endorsed.
- Offer study tours only to those who pledge follow-up commitment to conduct training and share new knowledge gained with peers.
- Conduct further research on successful judicial reform in the Balkans, and use models and implementers from those programs to help Montenegrin stakeholders overcome resistance to change and to spark national incentive for reform.
- Increase resources dedicated to managing and coordinating donor relations and programmatic initiatives by establishing a media and donor relations point person within the MoJ.
- Establish quantitative and qualitative markers for measuring judicial reform, and work with the MoJ to see if these can be adopted into its Judicial Reform Strategy so that there is a basis for measuring progress achieved.
- Mandate regular and periodic assessments of judicial processes and reforms achieved, according to established markers.

## **10. Receptivity and/or Commitment to Sustain or Replicate Reform Measures**

### *Current Assessment*

The Montenegrin stakeholders continually express an interest in and apparent commitment to sustaining judicial reform measures. Yet, these pledges are often not followed by any action in terms of implementation, a formalized plan, or commitment of manpower and other resources. Donors frequently return to check on the status of a pledged reform, only to discover that little has been done. When they make the commitment, stakeholders rarely admit that it may be a challenge to acquire resources to implement the reform. This would somewhat explain the failure to follow through on the commitment.

However, follow-through failure is extremely frustrating for the donor community and would certainly seem to indicate a lack of will to reform. After speaking to a myriad of national and international stakeholders about this matter, the team does not believe that the inability to sustain reforms necessarily indicates resistance to reform. Rather, it probably speaks to a combination of inertia, a legacy of stagnancy regarding change, and the fear that making the wrong decision could cost the loss of job.

In addition, there seems to be a general lack of ability or capacity to move from a commitment, especially if on a theoretical or macro-political level, into action. Many bodies within the judiciary demonstrated the lack of capacity in effectively developing a strategic plan to enact or sustain reform measures. One example is the Administrative Office's reaction to JSRP assistance. Prior to the establishment of the office, JSRP developed some model precepts which involved financial planning, program cycles, terms of reference for all employees, and other functions. These comprised a first step toward functionality and sustainability. JSRP was later informed that the Administrative Office had adopted its own strategic plan. This plan became The Systemization Act of the Supreme Court, but it was a staffing plan only. Upon the Administrative Office's insistence, this plan was passed as law, but the law authorized only the establishment of positions, with no associated funding or planning. To date, the office has been unable to hire the personnel designated in The Systemization Act since the plan does not include budgetary allowance for these positions until 2008.

This is not to say that there is no public policy or management planning capacity among Montenegrins. One significant factor is that many of the people in senior government posts have held their positions since Socialist times when needs for public policy and management planning capacity were less compelling.

### *Results, Impact, and Sustainability*

For all these reasons, it is not surprising that results of efforts to replicate reform measures have been limited. Founded by USAID through ABA/CEELI to meet the vital need for judicial training, the JTC as an NGO was fairly well funded by donors and offered many sound training courses on judicial standards and new legislation. Donor funding supported the creation of a sound curriculum which was officially approved by stakeholders. However, seven years later, these inputs show few results in terms of capacity building. Now part of government, the JTC has limited resources. There is a JTC organization and structure for delivering training programs, and all judicial training is mandatory, but the funding stream from NGOs was vastly diminished. There is also a need for additional, experienced professional staff as well as other resources for coordination and delivery of the large amount of training needed, particularly related to new legislation. Despite two serious efforts in the last four years to establish national judicial curricula by parliamentary action, no curricula have been adopted by the parliament to date, however as early noted a judicial training center and curricula is being used.

The President of the Supreme Court endorsed the backlog reduction program as effective. The program has generated results, and representatives of several courts who participated in a national workshop of judges expressed interest in receiving assistance to implement the program. However, senior stakeholders have not committed the manpower and other resources to facilitate program replication.

Reform measures have apparently best been replicated when there are perceived incentives or threats. Some speculate that the implied threat of privatization was the real driver behind the postal service's energetic implementation of training to its delivery staff. Following a conference with Montenegrin stakeholders which heralded privatization of the postal service for greater efficiency, the service quickly initiated its own reforms. The privatization model might be applied to other areas of the judicial system to galvanize and replicate additional reforms.

Some initiatives have produced more sustainable results. For example, the Montenegrin Media Institute continues to use the training provided by JSRP and maintains ongoing training seminars on professional media coverage of criminal proceedings. As another example, the Presidents of both pilot courts served as trainers for the national conference on the backlog reduction program, and both individuals have offered to serve as mentors in other courts to roll out the backlog reduction program.

### *Challenges*

- While the President of the Supreme Court has endorsed the replication of the backlog reduction/case management program, he has not applied resources or endorsed a replication action plan. Such a plan would have to allow pilot court presidents to leave their current duties for several months in order to mentor new courts.
- Replication requires backing up the commitment with dedicated manpower and other resources as well as a strategic framework for achieving replication.

### *Recommendations*

- Provide for U.S. political and diplomatic assistance, and sometimes influence of senior embassy personnel, in forging mutually agreed upon institutional plans for reform replication.
- Encourage relationship-building and confidence development on a personal level with senior stakeholders to bolster their capacity to implement the replication.
- Prior to engaging in programmatic initiatives, urge beneficiaries to sign MOUs or other instruments that reflect commitment of budget, manpower, logistical support, and other resources to sustain the initiative.
- Work with senior stakeholders, providing them necessary technical assistance through one-on-one coaching and mentoring, to develop precepts, management cycle plans, and action plans where possible to build capacity for replication.
- Provide more consistent and vigorous support to measure and monitor the implementation of replication plans.
- Include in the strategy replication planning process an appropriate number of lower-level program implementers so that those responsible for practical implementation can identify potential glitches.
- Establish a coordination body comprised of government, donor, and NGO stakeholders to increase and sustain replication programs.

## V. Critical Issues Facing Montenegro's Judicial System

The next six months to a year will perhaps be the most critical time ever for Montenegro in terms of judicial reform. There are a number of key issues now hanging now in limbo whose outcome could have enormous positive or negative effects on the over-arching justice system matrix. These issues are as follows:

<b>Current and Upcoming Impacts on Judiciary</b>	<b>Timeframe of impact</b>	<b>Possible negative outcome</b>	<b>Possible positive outcome</b>	<b>Factors involved in achieving positive outcome</b>	<b>Other Possible Drivers and Influencing Factors</b>
<b>1. New Constitution</b>	Estimated timing of ratification: Sept. 2007- Mar. 2008	Current draft that keeps the judiciary under Parliament	Draft modified to create a stronger and more independent judiciary	Internal and external political pressure, especially from those who want to join Europe	Council of Europe Venice Commission Helsinki Commission
<b>2. New Supreme Court President</b>	Mandate expires in November 2007 due to age restrictions	Is <i>status quo</i> -minded and achieved judicial reforms decline	Is reform-minded and able to create a stronger and more efficient judiciary	Discreet political pressure from the donor and international communities	Unclear: New constitutional guidelines, if constitution is established Judicial Council, if established International community
<b>3. High Volume of New Legislation</b>	Most likely for at least next three years	Serious implementation problems	Introduces greater justice and efficiency to the system	Will bring the legal framework up to European standards, eventually	Adequate support to train the judicial administration on how to implement new legislation
<b>4. Change of Criminal Code from Prosecution-Based to Investigation-Based</b>	Working group now completing the drafting process, implementation could take 2-3 years based on experience of neighbor countries	Serious implementation problems	More rigorous dispensing of justice, particularly in the justice system's ability to effectively deal with organized crime	Will overhaul the entire criminal justice system Will be need for intense and sustained legislative and procedural training	High need for intense and sustained legislative and procedural training

<b>5. Scandal in the Supreme Court Administrative Office</b>	Impacting the system now and will continue until damage control and/or retribution measures are implemented	Complete loss of public confidence in the judicial system already occurring	Opportunity to regain public trust and confidence if proper restorative measures are undertaken	Critical stakeholders taking responsibility and embarking on a campaign of accountability and transparency	Key MoJ and Supreme Court stakeholders at Press Officer could be useful, but the Ministry itself needs to take responsibility.
<b>6. Phasing out of USAID RoL/ Judicial Assistance</b>	March 2007 through present	Diminished returns on programmatic benefits due to lack of sustaining measures already occurring	Many elements are having a large impact and are being sustained: Administrative Court, success of Commercial Court, legislative strengthening	Possible USAID continuance or other donor involvement in sustaining programs, particularly the backlog reduction and case management Infrastructure, investment, and commitment of national stakeholders towards sustainability.	The ability and interest of AID to re-launch programs or of other donors to pick them up Getting senior national stakeholders onboard and committed to program sustainability
<b>7. Continued lack of a new appointments to the Judicial Council</b>	November 2006 through present	No body to select new judges, no selection of judges during the hiatus, increased pressure on judicial system	Development of better, more transparent selection criteria, both for the Judicial Council and for judges	Continued pressure by EC and other members of the international and donor community to establish transparent selection criteria	Incentive measures Establishing a provisional Judicial Council Assistance in drafting legislation to make this legally feasible.
<b>8. Non-functionality of the Administrative Office</b>	Since the time it was established	Continued lack of policy administration body and institutional structure to implement management and reform	The current scandal and non-functionality pave the way for the office to be disbanded and re-constituted professionally	Increased understanding by senior stakeholders of the function and potential efficiency gains from this office	President of the Supreme Court International and donor communities

<b>9. Continued lack of IT in Courts system</b>	Unclear when this will resolve	Continued and increased inefficiency of the courts	No positive outcome	Consolidation of political will and application of resources to make this a priority	Replacement of persons in the IT department with professional system managers Assistance from an international court system IT manager
<b>10. National implementation of backlog reduction and case management program</b>	Not currently planned	No negative impact	Could help galvanize overarching judicial sector reform	Expertise in JSRP management and programmatic implementation of court efficiency models	Technical expertise of implementers Success in court management efficiency modeling and in building trust and confidence among judicial stakeholders and Court Presidents

## **VI. Donor Coordination in Judicial Reform**

### ***Current Assessment***

The Government of Montenegro's coordination efforts with other donors in the judicial reform arena has been extremely weak, in terms of both quality and effectiveness. The Ministry of Justice has been known to "shop around" and approach donors about needs for which there is already pledged assistance from another organization. Donor organizations have expressed frustration and embarrassment in discovering that another donor was on board and providing assistance for the same project to which they had pledged their support. In the opinion of some donors interviewed, this is a breach of the code of professionalism and transparency which should govern donor assistance. It diminishes the respect for and seriousness of donor relationships. This not only has a negative impact on meeting the critical needs faced by the judiciary, but also provides a compelling disincentive for some to offer further assistance.

Moreover, the MoJ has not made effective efforts to foster regular coordination meetings. The few donor meetings that the MoJ has organized have been *ad hoc* and usually in response to a particular issue. There is no donor relations point person within the Ministry, and it is usually the Minister himself, or his deputy, who liaises directly with current or prospective donors. There is also no formal mechanism for obtaining current information about judicial needs and the cooperative efforts being undertaken by the donor community to support the Ministry of Justice. The result is a complete lack of organization and harmonization of efforts, in addition to knowledge gaps and program overlap. When the team queried donors about whether they had taken it upon themselves to organize communications and coordination meetings, the response was that such efforts are undertaken when appropriate. Because Montenegro is a small country, the donors are often aware of the activities of their in-country counterparts through their own communications networks.

This lack of professional and coordinated effort on the part of the MoJ in dealing with the donor community seriously hampers both the impact and effectiveness of assistance efforts. The team's interviews with individuals inside the MoJ and with those who are supporting capacity development suggest indicate that the MoJ's inability to deal effectively with donors is a result of their very weak capacity - in terms of human and financial resources - and not one of ill-will. However, the absence of an organized approach prevents meeting current challenges or accomplishing future goals. Montenegro faces daunting immediate challenges. Three of the most vital are: (1) successfully implementing all the legislative and judicial requirements to meet European standards, (2) reforming the judiciary and court operations to meet the expected volume of legislative changes more effectively, and (3) equipping the judiciary with the capability to respond more aggressively to growing organized crime.

If Montenegro wants assistance in achieving these tasks, it needs to establish an organized coordination strategy for donor relations. This strategy should include designating a donor liaison point person within the MoJ, conducting regular donor and embassy meetings, and implementing some kind of information and reporting strategy which would include information dissemination and communications about current activities, accomplishments, and needs. Currently, UNDP is providing support to the MoJ to achieve some of these goals, but outcomes of this capacity-building have been slow to materialize. UNDP plans assistance to the MoJ in developing an action plan for implementing the government's Strategic Framework for Judicial Reform. This plan could provide a framework for better donor coordination.

### ***Future Changes to the Donor Assistance Strategy***

In 2008, the donor strategy will completely change for countries aspiring to join the EU. Up until now, the European Commission provided assistance through the CARDS Program which was implemented through EAR. In 2008, this kind of assistance will be replaced by a new modality in programming called Instrument of Pre-Accession (IPA). Under the IPA modality, all responsibility will fall on the Government of Montenegro for procuring support to the accession process. There will be a budget of IPA funds on which accession candidate countries can draw. Each government ministry of the candidate nation will be able to apply for a budgetary allotment to help it implement the reforms needed to comply with European standards regarding EU accession. This will place a much greater responsibility on the Government of Montenegro to demonstrate

management, accountability, and liability in terms of handling the reform process. However, many stakeholders have expressed their fear that Montenegro is not ready for this level of independence. In the opinion of more than one donor, Montenegro has not yet demonstrated the required degree of administrative competence to manage IPA funds and to formulate and implement the required project management cycles.

### **Key Donors**

The following table illustrates the principal focus of judicial reform assistance provided by five key donors. Appendix C describes the programs of these donors, past, current, and planned, in detail.

Donor	Focus of Judicial Reform Assistance
OSCE	Capacity building, competency development, and legislative drafting Engaging the public in judicial reform and independence of the judiciary Mediation Drafting new criminal procedures legislation Court monitoring
UNDP	Transitional justice Capacity development Support to the Commission for Coordination of EU Assistance in Montenegro Reform of legislation pertaining to misdemeanors Free legal aid
CoE	Legislative drafting
EAR	Judicial training and training center development Materials and publications Information technology Prison improvement Probation
Foundation Open Society Institute (FOSI)	Judicial training and training center development Legislative strengthening Legal training for journalists

## Appendix B: Recommendations

The following table summarizes the recommendations for all 10 components of judicial reform discussed in detail in Section IV.

<b>Component</b>	<b>Recommendations</b>
<b>1. Independence of the Judiciary</b>	<p>1a. Provide support to the Government of Montenegro to introduce constitutional articles endorsing independence of the judiciary, per suggestion of the Venice Commission.</p> <p>1b. Encourage public statements and official support on behalf of the U.S. and/or other governments, even if only symbolic, and consider technical and practical implementation assistance to support to the process.</p> <p>1c. Establish and implement transparent, merit-based criteria for selection of judges.</p> <p>1d. Establish and implement transparent, merit-based criteria for selection of Judicial Council members.</p> <p>1e. Establish and implement specific, transparent selection criteria for nominating candidates and appointing the President of Supreme Court.</p> <p>1f. Increase salaries and improve working conditions for judges and judicial employees.</p> <p>1e. Implement a functional overhaul of the AO so that it meets the professional and senior policy administration requirements of a judiciary management body.</p>
<b>2. Legal Framework</b>	<p>2a. Distribute the Montenegro legal code to all courts, preferably electronically, but via hard copy until all courts have computers and all judges have received computer training.</p> <p>2b. Distribute monthly updates on new legislation</p> <p>2c. Implement a required training curriculum for judges, prosecutors, and support staff which includes mandatory, regular training on new legislation.</p> <p>2d. Seek institutional support and technical assistance to the Judicial Training Center from donors or national entities that will provide manpower and resources to supplement the lack of government funding.</p> <p>2e. Publish all case law and decisions for all courts, beginning with the Supreme Court, disseminate them to all courts, and make them available to the public.</p> <p>2f. Implement support and capacity building assistance by regional experts from nations that adopted high volumes of legislation in short time frames.</p> <p>2g. Mandate that working groups for the formulation of new legislation</p>

	<p>include at least one member of the judiciary.</p> <p>2 h. Publish legal commentaries for each significant new piece of legislation.</p>
<p><b>3. Institutional Development</b></p>	<p>3a. In coordination with the Supreme Court, develop an immediate implementation plan for overhaul of Administrative Office in order to develop a new judicial model for re-structuring the AO as a functional institution.</p> <p>3b. Consider contracting with a short-term interim implementation team, preferably with international change-management leadership, tasked to direct and assist specific AO restructuring activities for the next very challenging 6-12 months.</p> <p>3c. Include in the AO implementation plan a recruitment and staffing system that is well-designed, endorsed by senior stakeholders, and in accordance with professional, transparent requirements of competency- and merit-based recruitment. Delay further recruitment to the AO until this is in place.</p> <p>3d. Undertake a damage control and transparency campaign through constituent outreach and media messages.</p> <p>3e. Establish a Judicial Press Officer position, possibly staffed by a judge trained in media issues.</p>

<p><b>4. Professionalism and Competency</b></p>	<p>4a. Increase incentives for the “best and brightest” young law students to choose judicial or prosecutor careers by offering improved salaries and premises befitting the profession’s dignity.</p> <p>4b. Establish professional and performance-based standards and evaluations for the advancement and removal of judges, based on merit and uniformly applied principles.</p> <p>4c. Reconstitute the Judicial Council as soon as possible, according to the highest standards of professionalism, competency, and quality of candidates, perhaps drawing on international influence to galvanize support for this issue. Or, consider a Council of President Judges as an alternative.</p> <p>4d. Fortify, staff, and provide appropriate resources to the JTC. Develop a training-of-trainers component and include ethics and budget training in the curriculum.</p> <p>4e. Facilitate professional recognition of Court Secretaries and train them in personnel and organizational management, budgeting, case management, and constituent relations.</p> <p>4f. Develop training curricula, certification courses, professional associations, and cadet programs for Court Secretaries, judicial assistants, and administrative staff.</p> <p>4g. Engage the President of the Supreme Court in taking a leadership role by supporting and participating in the development and presentation</p>
---	---

	<p>of all future training programs.</p> <p>4h. Identify judges who are good communicators and encourage them to undergo training of trainers so that they can become instructors at the JTC.</p> <p>4i. Reinvigorate the Judges Association.</p> <p>4j. Develop a National Judges Conference pursuant to law and/or court rule.</p>
<p><b>5. Infrastructure of the Justice System</b></p>	<p>5a. Place a high priority on installing and launching the courts' IT network so that all judicial stakeholders can access current legal codes and updates, use management software, and access decisions of higher level courts.</p> <p>5b. Expand the IT launching contract to include case management software so that software is ready-to-go when the system starts up.</p> <p>5c. Facilitate management of system launch by an international IT expert with a strong background in automated court management system design, development, and implementation.</p> <p>5d. Professionalize and strengthen the AO IT Department with individuals who have IT systems managerial experience as well as understanding of and expertise in the court system.</p> <p>5e. Ensure that all contractual IT agreements provide courts with possession and maintenance of proprietary rights to the PRIS software.</p> <p>5f. Continue the technical trainings that JSRP provided to court personnel who were designated as IT maintenance support for the courts.</p> <p>5g. Enhance basic infrastructure at many of the courts, such as sufficient electrical wiring for uninterrupted power supply, generators where necessary, and climate control features.</p> <p>5h. Refurbish most of the basic courts to provide adequate space to conduct hearings and for non-judicial staff to serve the public.</p>
<p><b>6. Transparency</b></p>	<p>6a. Embark on a transparency and constituency outreach plan through media, press conferences, and town hall meetings to engage citizens.</p> <p>6b. Ensure that senior level stakeholders make public commitments to remedy the weaknesses in the court system.</p> <p>6c. Ensure that senior individuals at the Supreme Court and the AO make public statements pledging cooperation with the investigation and providing assurance that appropriate and just action will be taken.</p> <p>6d. Establish a Judicial Press Officer or Media Relations Coordinator who interfaces with both the press and the donor community and arranges press conferences regularly.</p> <p>6f. Publish all court judgments, particularly those of the Supreme Court, in</p>

	<p>an electronic library, as well as in hard copy form for distribution to all courts and for citizen access at libraries and in the Judicial Training Center.</p>
<p><b>7. Cultivation of Constituent Relations and Citizen Access</b></p>	<p>7a. Implement interior (and exterior, if necessary) signage in all courts, identifying hearing room locations, schedules, presiding judges, and other critical information.</p> <p>7b. Maintain, expand, and continually update the court website to facilitate understanding of the courts' role in public service.</p> <p>7c. Engage civil society and NGOs in judicial reform through debates, round tables, citizen awareness forums, and other mechanisms.</p> <p>7d. Continue and expand on JSRP media training of the judiciary.</p> <p>7e. Engage in media dissemination of lessons learned from pilot court programs.</p> <p>7f. Provide customer service training for the judiciary.</p> <p>7g. Conduct public opinion polls to better gauge citizen areas of concern and to evaluate the effectiveness of courts' efforts to enhance accessibility.</p> <p>7h. Implement court security infrastructure enhancements.</p> <p>7i. Implement court witness protection infrastructure to provide for citizen engagement in combating organized crime.</p> <p>7j. Upgrade courts so that they are disability-accessible.</p>
<p><b>8. Efficiency of the System</b></p>	<p>8a. Hire the number of judges allowed by law to fill outstanding vacancies.</p> <p>8b. Provide a management training program for judges and administrators.</p> <p>8c. Encourage judges to exert more control over their courts (e.g. by enforcing deadlines and court orders, dismissing frivolous cases, and using sanctions and penalties as enforcement).</p> <p>8e. Provide internet connectivity for all courts that allows all judicial personnel to use case management software and to access legislative codes, updates on new legislation, and published decisions.</p> <p>8f. Implement and expand the use of audio recording to provide verbatim transcripts, amending current law accordingly.</p> <p>8g. Support and facilitate the implementation of the notary law which will remove notary services from the court.</p> <p>8h. Support the drafting of legislation to remove utility bills and other</p>

administrative cases from the court.

8i. Change the legislation that mandates hand-transcribing the proceedings following the hearing according to the judges' recollection.

8j. Conduct a national roll out of the backlog reduction program, under the leadership and supervision of a Sustainability Manager.

8k. Develop a Caseload Management Course to establish and mandate organizational standards for case handling (including time standards, uniform numerical standards, uniform color-coded case filing and archiving standards as introduced by JSRP, data collection, data destruction, and management systems).

8l. Develop a new evaluation procedure for merit-based assessment of judges' performance and court efficiency, using CIPAG European standards.

8m. Increase awareness of and incentives for use of mediation procedures, strengthen the mediation program, and provide support for the planned mediation center.

8n. Provide system-wide training for judges, court secretaries, and the National Postal Service in mail notifications.

8o. Propose collaboration with the OSCE Case Monitoring Project.

<p><b>9. Implementation and effectiveness of reform measures</b></p>	<p>9a. Establish key alliances with the most senior stakeholders in the MoJ and in the Supreme Court to strengthen their ownership, leadership, and ability to commit resources to carry out reforms.</p> <p>9b. The President of the Supreme Court needs to lead or designate a special projects unit for high interest and high priority projects, such as the backlog reduction program.</p> <p>9c. Model more reforms using practically-oriented, mentoring-based programmatic initiatives.</p> <p>9d. Suggest the implementation of a “pilot program” component of reform initiatives that are poorly understood or endorsed.</p> <p>9e. Offer study tours only to those who pledge follow-up commitment to conduct training and share new knowledge gained with peers.</p> <p>9f. Conduct further research on successful judicial reform in the Balkans, and use models and implementers from those programs to help Montenegrin stakeholders overcome resistance to change and to spark national incentive for reform.</p> <p>9g. Increase resources dedicated to managing and coordinating donor relations and programmatic initiatives by establishing a media and donor relations point person within the MoJ.</p> <p>9h. Establish quantitative and qualitative markers for measuring judicial reform, and work with the MoJ to see if these can be adopted into its Judicial Reform Strategy so that there is a basis for measuring progress achieved.</p> <p>9i. Mandate regular and periodic assessments of judicial processes and reforms achieved, according to established markers.</p>
<p><b>10. Receptivity and/or commitment to sustain or replicate reforms</b></p>	<p>10a. Provide for U.S. political and diplomatic assistance, and sometimes influence of senior embassy personnel, in forging mutually agreed upon institutional plans for reform replication.</p> <p>10b. Encourage relationship-building and confidence development on a personal level with senior stakeholders to bolster their capacity to implement the replication.</p> <p>10c. Prior to engaging in programmatic initiatives, urge beneficiaries to sign MoUs or other instruments that reflect commitment of budget, manpower, logistical support, and other resources to sustain the initiative.</p> <p>10d. Work with senior stakeholders, providing them necessary technical assistance through one-on-one coaching and mentoring, to develop precepts, management cycle plans, and action plans where possible to build capacity for replication.</p>

- |  |  |
|--|--|
|  | <p>10e. Provide more consistent and vigorous support to measure and monitor the implementation of replication plans.</p>   |
|  | <p>10f. Include in the strategy replication planning process an appropriate number of lower-level program implementers so that those responsible for practical implementation can identify potential glitches.</p> |
|  | <p>10g. Establish a coordination body comprised of government, donor, and NGO stakeholders to increase and sustain replication programs.</p>   |

## Appendix C: Donor Programs

### A. ORGANIZATION FOR SECURITY & CO-OPERATION IN EUROPE (OSCE)

#### Recent Justice Sector Activities:

##### ***Capacity-Building, Competency Development, and Legislative Drafting***

OSCE has been working for several years on reforming the judiciary, with specific emphasis on competency development, capacity building, and improving criminal legislation and implementation. In cooperation with the Ministry of Justice, OSCE drafted the text of the *Judicial Rules of Procedures*. This was the first inclusive publication to list and explain all judicial and court regulations. However, it was 1.5 years before the government formally adopted the regulations. In 2004, following their adoption, OSCE and JSRP held a joint initiative, conducting workshops for presidents of the courts, judges, secretaries/court administrators, intake officers, and other officials connected to the court system. The workshops trained participants on the practical implementation of the new rules with specific focus on random case assignment and the publication of new decisions. Between 2003 and 2004, OSCE also provided assistance in legislative drafting and implementation, in concert with Council of Europe and sometimes the Foundation Open Society Institute (FOSI), mainly in the area of criminal legislation.

In 2005, OSCE and JSRP embarked on another joint initiative to provide support for drafting the “Liability of Persons Charged with Criminal Acts” bill which was subsequently adopted by Parliament. Following Parliament’s adoption of mediation legislation in 2005, OSCE helped the Government of Montenegro introduce the first-ever mediation program through the establishment of a pilot program for mediation within the Podgorica Basic Court. Together with the Council of Europe, OSCE organized a round table to increase judges’ and prosecutors’ awareness and understanding of the mediation process.

##### ***Engaging the Public in Judicial Reform and Independence of the Judiciary***

In 2006 and 2007, OSCE hosted three public debates on independence of the judiciary, and the relevance of this issue in the adoption of the new constitution. These debates introduced the public to the issue of constitutional guarantees for the independence of the judiciary. The debates included representatives from the justice sector and Parliament as well as civil society leaders and media personnel. The debates resulted in increased awareness among civil society about the issue of an independent judiciary and how independence is linked to court efficiency in rendering quick and impartial decisions.

##### ***Mediation***

In late 2005, OSCE was successful in assisting the Basic Court in Podgorica to launch a mediation program. As the largest court in Montenegro (in terms of registered cases), this court was designated the “pilot court in Montenegro for Mediation” within the EU CARDS Regional Judiciary Project. Mediation is expected to address five areas: (1) family matters, (2) out-of-court settlements, (3) non-contentious matters (e.g., succession disputes), (4) insurance disputes, and (5) labor disputes. Currently, the primary focus is developing mediation within the realm of family law. It was recently mandated that all couples seeking divorce must now go through mediation proceedings.

OSCE has helped establish the first formalized training for mediators, largely for judges, social workers, and practicing attorneys. A person can become a licensed mediator following the completion of this four-week course. In cooperation with the Judicial Training Center, OSCE also financed a study visit for mediators to The Netherlands where the use of mediation within the justice system is quite advanced. An Association of Mediators has now been formed, headed by the President of the Podgorica Basic Court.

#### Current and Future Activities

##### ***Drafting New Criminal Procedures Legislation Mandating Prosecutors Investigation***

OSCE will continue providing assistance for drafting the new Criminal Procedure Code which adopts the model of prosecutorial investigation. This new legislation is extremely significant since it will structurally change - if not overhaul - the entire system of criminal proceedings and the way criminal cases are handled. By moving the investigative responsibilities from the judicial side to the prosecutor side, the justice system will be more effective in handling criminal cases, particularly serious cases involving corruption and organized crime. However, the legislation is very complex and will require an entire overhaul to the system of criminal proceedings.

OSCE emphasizes that, following the adoption of this legislation, there will be a tremendous need for training, support, resources, and technical assistance in order to implement the significant structural changes this bill entails. In Bosnia, when this same legislative change was implemented, mandatory training was provided for judicial and prosecutorial personnel, every day for four hours over a two-year period. When this legislation was implemented in Austria, it took four years to create the systemic changes to support the bill and to complete the training requirements.<sup>11</sup> OSCE views the structural and training requirements needed for the implementation of this bill to be one of the most pressing resource challenges that the Ministry of Justice faces. So far, the Swedish government has expressed interest in helping with funding, but immense support and resources will likely be required from a variety of sources in order to meet this need.

### ***Continued Support for the Mediation Program***

OSCE will continue to support the Mediation Pilot Program and will provide a support staff person to the Association of Mediators. In addition, OSCE will continue working with the Ministry of Justice to expand the use of mediation. The MoJ recently met with several donors who are interested in supporting and expanding the mediation program, including Save the Children UK, GTZ, and the Austrian government. GTZ is interested in expanding mediation to meet commercial needs, and Save the Children UK has pledged assistance to funding the use of mediation in family matters. OSCE and *Save the Children UK* will work with the MoJ to launch a National Mediation Center in the coming months.

The mediation modality is a new concept for Montenegrins. Also, Montenegrins in general tend to feel that justice can only be rendered within the context of the courtroom. Thus, there have been some challenges to the acceptance of mediation. OSCE will continue to provide practical trainings for lawyers to help them understand the incentives provided by mediation. OSCE plans to hold two additional seminars this year for lawyers to improve their understanding of the efficacy and usefulness of the mediation modality.

### ***Court Monitoring Program***

In May of 2007, OSCE, in cooperation with the Montenegrin courts, launched its "Court Monitoring Program" for the purpose of conducting a thorough assessment of how the courts work. The program is slated to run for 18–24 months, through funding from the Dutch and Luxembourg governments. The program will assess and evaluate very specific programmatic markers regarding courts' just and transparent functioning. The nature and scope of this assessment are unprecedented. Previous assessments have generally been conducted on the political level, in the form of measuring compliance with signed commitments. However, this assessment will focus on analyzing and reporting on the practical ways in which courts process criminal cases. The focus will be on monitoring the very serious cases, such as those dealing with corruption, organized crime, and egregious human rights violations. However, in order to fully ascertain court functioning, average cases such as theft will be monitored as well. The program will mainly monitor cases in the Basic Court of Podgorica and the two district courts of Podgorica and Bijelo Polje, but other courts can be monitored as well. The expected outputs of the program are: an in-depth assessment of how the court system handles criminal cases, increased transparency of court functions and operations, and the empowerment of civil society to be involved in the process.

---

<sup>11</sup> Legal Advisor, OSCE

## **B. UNITED NATIONS DEVELOPMENT PROGRAM (UNDP)**

### **Recent and Continuing Justice Sector Activities:**

UNDP has been working as a partner to facilitate Montenegro's institutional and judicial reform and to assist in the transition to a modern, sustainable European state since 2004.

#### ***Transitional Justice Program for Montenegro***

This program was initiated on a regional level in 2004, with a focus on the following components: (1) Justice for War Crimes - prosecution of those convicted; (2) Truth Seeking; (3) Reparations; and (4) Institutional Building. Work in the first three components was completed on the regional level in June 2007. The fourth component remains the most vigorous program in UNDP's justice sector portfolio.

#### ***Capacity Development Program (CPD)***

This is a joint initiative of the Government of Montenegro, FOSI, and UNDP. The main objective is to build capacities in the central government of Montenegro to meet its strategic priorities for reform. This initiative was launched in 2004 and continues to be successful in supporting the capacity of the MoJ by providing assistance in:

- Institutional development and capacity building—assistance in conducting operational activities
- Legislative drafting—helping coordinate the formation of working groups for new legislation and collecting comparative legislation from other models to establish best practices
- Coordinating the activities and support of the international community and NGOs
- Supporting the Ministry's judicial reform strategy

UNDP's assistance in support of the MoJ's judicial reform strategy has been the most vital and intensive, particularly in recent months. The strategy was developed by the Ministry as a framework for developing and achieving the reforms necessary for EU accession. UNDP supported the development of the strategy, including funding EC experts who provided consultative and structural guidance for the framework's harmonization with European standards. The strategy is currently being reviewed by the Government of Montenegro and is expected to be officially adopted in June or July 2007.<sup>12</sup> Following adoption of the strategy, UNDP will provide assistance to the MoJ to develop an action plan for achieving and implementing the strategy's objectives. Action plan development is expected to begin in July 2007, and the hope is to complete by October or November 2007. An international expert will be employed to assist on this program, beginning September 2007.

- ***Support to Meet EU Accession Goals***

UNDP helped the MoJ implement the judiciary component of the CARDS 2003 Program ("Establishment of an Independent, Reliable and Functioning Judiciary, and the Enhancing of the Judicial Co-operation"). UNDP also supported the MoJ by obtaining information and expertise from EC headquarters about programs that are available for member and accession candidate countries. UNDP has forged a knowledge-sharing relationship between the MoJ and the EC's TAIEX Unit in Brussels. This resulted in the development of workshops conducted by TAIEX for representatives from the Ministry of Justice, judges, and prosecutors.

- ***Support to the Commission for Coordination of EU Assistance in Montenegro***

UNDP is assisting the GoM to establish and implement the functions of the permanent Commission for Coordination of EU Assistance. This commission will be responsible for obtaining and managing the EU pre-accession funds which will become available through the IPA Program in 2008. UNDP assistance supports organizational and human resource capacity development, building relationships, and providing training and IT support to the Commission and to the MoJ's IPA focal point.

---

<sup>12</sup> UNDP National Program Coordinator and Advisor for Judicial Reform in Ministry of Justice

## Future Activities

UNDP will continue implementation of the CPD. Moreover, the first three components of the Transitional Justice Program, which were completed on a regional level in June 2007, will be re-launched on regional and national levels in late 2007 or early 2008. UNDP is also seeking donor funds to support the following three programs they wish to implement:

- ***Reform of Legislation Pertaining to Misdemeanors***

Currently, there is significant discrepancy in the way that misdemeanors are handled. Several different bodies are responsible for the adjudication of these offenses, including municipal authorities, the Council for Misdemeanors (for second-instance misdemeanors), and specialized judges who are assigned exclusively to handling misdemeanors. There is no harmonization now in how these bodies process misdemeanors and execute judgments, and new legislation is needed to address this issue. The proposal that UNDP has formulated would involve an analysis of the current situation in terms of gathering information on how misdemeanors are handled by the various adjudicating bodies. UNDP would then support the formation of a working group to draft new, more effective legislation. Following the adoption of the law, UNDP would support its implementation, at least in the initial stages.

- ***Introduction of Free Legal Aid***

Citizens can obtain legal aid for criminal matters, but currently, there is no established system that provides *pro bono* legal aid for civil matters. UNDP wants to support adoption of the model law which was drafted by the Swedes, in concert with the Helsinki Commission. The proposal will fund the adoption of the legislation, subsequent training on the law, and support services for implementation.

- ***Expansion of the Transitional Justice Model***

UNDP's Transitional Justice program was previously conducted on a regional level. UNDP is now seeking to expand this model to the national level.

In addition, in summer 2007, UNDP will provide an expert advisor for one month to help the MoJ develop an action plan for implementation the Strategic Framework for Judicial Reform. This action plan will guide the implementation of judicial reform over the next 3-5 years to meet priorities established by the Government of Montenegro.

## C. COUNCIL OF EUROPE (CoE)

### Recent and Continuing Justice Sector Activities:

- ***Legislative Drafting Assistance***

The CoE provides limited practical assistance on developing draft legislation. In the past, the Council has sent experts from the EC to observe and support the working groups which formulate legislation. The CoE has also organized public debates pertaining to pending legislation. These debates have involved NGO leaders, civil society experts, and CoE experts. The outcome of these debates has been an increased awareness and engagement on the part of civil society regarding the reforms that must be achieved.

Currently, the CoE is providing assistance to the drafting process for the law entitled "Protection of Rights to a Fair Trial in a Reasonable Time" by offering written commentary and opinions on the first draft. The CoE will organize a round table in the coming weeks for fostering discussion of this law.

## **Future Activities**

The Council of Europe will continue to focus in judicial reform on: (1) ensuring that the draft constitution meets European standards, with specific attention to the independence of the judiciary; (2) improving accessibility; (3) implementation of the human rights treaties to which Montenegrin is a signatory; and (4) assistance to and monitoring the development and implementation of new legislation that conforms to European standards.

## **D. EUROPEAN AGENCY FOR RECONSTRUCTION (EAR)**

### **Recent Justice Sector Activities:**

EAR has been working in the area of judicial reform since 2001 under the authority of the EC. From 1999 to 2003, EAR provided technical assistance to the Judicial Training Center to develop sustainable curricula, based on a needs assessment for training judges, and also procured legal texts for courts. In the same period, EAR implemented a two-phase program that provided equipment for the MoJ. Phase I supported the MoJ's IT strategy to create a modern information system. This included hardware for the MoJ, judicial bodies, and penitentiaries in Podgorica and Bijelo Polje, as well as training for technical staff and users. Phase II focused on developing MoJ software functions and establishing an IT unit in the Supreme Court. Between Phases I and II, EAR procured 280 computers.

In 2003, EAR supported the JTC by implementing 18 seminars/round tables addressing criminal and civil legislation issues; delivering training on legal terminology in English in nine courts involving more than 150 participants; organizing two study visits to gain familiarity with EU standards and procedures; supporting training seminars for the drafting of Extra-litigation Procedures and on the new Law on the Execution of Civil Judgments; organizing a round table on the new Montenegrin Rules of Court; and facilitating the preparation and distribution of materials, working papers, case studies, and bulletins to Montenegrin judges including two publications (Collection of Presentations from Round Tables on New Montenegrin Civil Procedure Code and Law on Execution of Civil Judgments and Collection of forms on the Execution of Civil Judgments of the Republic of Montenegro). Curricula created in the framework of the previous assistance project were reviewed and adopted, and joint training was delivered with the Council of Europe and USAID. EAR helped facilitate the JTC move into new premises, built with 2004 funds in co-financing with the Municipality of Podgorica.

An ongoing EAR project is providing improved and extended facilities and infrastructure at Spuz Prison for accommodating an additional 140 prisoners. The project is also supporting the enforcement of custodial sentences and the respectful treatment of prisoners, in accordance with prescribed safety, security, and discipline requirements, as well as ensuring that prison conditions do not infringe upon human dignity and offer meaningful treatment programs and activities for inmates.

Another ongoing program is a joint initiative with Council of Europe to introduce probation service in Montenegro as an alternative sanction and to facilitate the re-integration of prisoners into society.

## **Future Activities**

EAR continued involvement in the judicial reform arena remains unclear as specific programming has not been approved by the Member States. While the modality of implementation on the part of EAR, or on the part of the EC delegation, remains undefined, future programming will follow IPA 2007 guidelines.

## E. FOUNDATION OPEN SOCIETY INSTITUTE (FOSI)

### Recent Justice Sector Activities:

While FOSI engages primarily in the realm of civil society, it has been also involved in facilitating judicial reform, often in joint initiatives with other bodies. FOSI has been active in the judicial reform arena by providing assistance in (1) building the body of legal knowledge; (2) upgrading the law clinics at University of Podgorica; and (3) legislative strengthening, including revising and strengthening criminal legislation code.

Some of these programs were conducted as joint initiatives with the ABA/CEELI program.

#### ***Support for the Establishment and Functioning of the Judicial Training Center***

With ABA/CEELI, FOSI was a joint founder of the JTC in year 2000. This was the first legal training center in Montenegro. FOSI was a major donor to the JTC training programs, sponsoring all initial and in-service training programs which were conducted by the EAR.

#### ***Legislative Strengthening***

FOSI has worked to support the drafting of a variety of judicial reform legislation and regulations. These include the regulations on internal organization of the prosecution, the law on notaries, and the law on court fees. In 2004, FOSI financed working groups for drafting the Criminal Code and the Criminal Procedure Code, in cooperation with OSCE. In a joint project with OSCE, FOSI also sponsored two round tables on the implementation of the revised Criminal Code and the Criminal Procedure Code in June 2005. In cooperation with JSRP, FOSI supported the preparation of the Law on Criminal Responsibility for Legal Entities by financing both the legislative drafting process and the support to the working groups. FOSI also provided capacity-building to prosecutors.

### Current and Future Activities

FOSI's contribution to judicial reform is currently focused on strengthening awareness and implementation of human rights standards and laws. FOSI provides capacity-building to NGOs, improving their ability to assess, report on, and implement human rights standards. However, FOSI has also remained active in judicial education and training.

#### ***Access to Education Program: Judicial Training***

Since 2005, FOSI has been working in cooperation with the Council of Europe, OSCE, CEDEM, Aire Centre from London, and the JTC to provide legal training seminars for judicial representatives. Participants have included judges, court administrators, lawyers, prosecutors, and related judicial personnel. There have been three seminars in the past two years, with plans to conduct two more in the coming months. Each seminar has been devoted to understanding and implementing a specific article of the European Convention on Human Rights.

#### ***Legal Training for Journalists***

In April 2007, FOSI helped launch a distance-learning program, in cooperation with the Montenegro Media Institute (MMI), which builds journalists' capacity to cover legal proceedings. This is a follow-on program to the JSRP initiative that also worked through the MMI to provide legal training to journalists, specifically to improve their reporting on criminal proceedings. The program that FOSI and MMI have initiated builds upon the JSRP trainings by offering similar legal training to journalists, but using the distance-learning modality. The program is a 15-day internet course that trains journalists in the techniques of accurate and effective coverage of criminal proceedings.