

Multi Donor Trust Fund for Justice Sector Support in Serbia (TF071444)

Annual Report 2012

May, 2013

World Bank

Poverty Reduction and Economic Management

Europe and Central Asia



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1. INTRODUCTION

This is the fourth Annual Report of the Multi Donor Trust Fund for Justice Sector Support (MDTF-JSS) in Serbia. The report outlines recent political, economic and justice sector developments and outcomes, presents risks to achieving intended development outcomes and reports on implementation progress during the period between January and December 2012. The report also outlines key expected deliverables for 2013. Financial information for calendar year 2012 is included in Annex 1.

The MDTF-JSS was established during 2008 to support Serbia's EU accession process. The Trust Fund became effective in early 2009. The Trust Fund aims to strengthen aid effectiveness and donor coordination in Serbia's justice sector through implementation of a coordinated work program, financed by pooled financial contributions from Serbia's development partners.

The MDTF-JSS was initially established as a World Bank-executed facility. During 2010 the trust fund was amended to become a hybrid facility that is jointly executed by the World Bank and the Serbian Ministry of Justice as it became clear the trust fund could better achieve its objectives through execution of activities by the beneficiary as well as by the Bank.

The following donors have made a total contribution of approximately USD 8.7 million to the MDTF-JSS: DFID (GBP 800,000), the Kingdom of Spain (EUR 490,000), the Kingdom of Denmark (EUR 333,000), Switzerland (USD 1,090,000) the Kingdom of Norway (EUR 250,000), the Kingdom of the Netherlands (USD 300,000), Slovenia (EUR 100,000) and the Kingdom of Sweden (SEK 31,000,000). Switzerland decided to increase its contribution to the Trust Fund in 2011 by an additional CHF 500,000. After fulfilling its contributions in full and with satisfaction of the outcomes and reporting on activities, the Kingdom of the Netherlands ended its cooperation with the Trust Fund during 2011.

The European Union Delegation in Serbia will contribute to the Trust Fund during 2013. The EU Instrument for Pre-Accession (IPA) Management Committee approved IPA funding for Serbia during 2011 and will join the MDTF-JSS through an IPA funded contribution in early 2013. The total funds for the EU contribution will be EUR 2 million.

Given the additional contributions by donors, a delay in implementing Recipient-executed activities, demand by the Ministry of Justice for further assistance and with donor consent, the closing date of the of the Trust Fund was extended by four years from December 31, 2011 to December 31, 2015.

The main activities of the MDTF-JSS in 2012 included the following:

- A Mid-Term Review of the MDTF-JSS;
- Advisory services to the Ministry of Justice and the Judiciary provided through individual consultants in the areas of anti-corruption, EU integration and development aid effectiveness;
- Support to the Ministry of Justice to develop the next Justice Sector Strategy;
- Ongoing analysis of the Criminal Chain Process;
- Development of an ICT Strategy for the Justice Sector;
- Several workshops, seminars and learning events on topics relevant to Serbia's justice sector reform efforts;
- Technical assistance provided by the Reform Facilitation Unit and Project Implementation Unit within the Ministry of Justice to implement Recipient-executed activities;
- On-going support to the organization of the Partners' Forum;

- Ongoing development of the MDTF-JSS web-site (www.serbiامتdfjss.org) established to improve outreach and increase public awareness of justice sector reforms and of MDTF-JSS program activities;
- Full time Access to Justice advisor in Belgrade assisting the MOJ in the development and delivery of a law regulating free legal aid;
- Full time program coordination in Belgrade.

The Trust Fund has generally delivered in 2012 what was agreed at Management Committee meetings and indicated in the Annual Report for 2011.

2. KEY DEVELOPMENTS

EU Accession

The EU has praised Serbia for progress in a number of reforms and for demonstrating a high degree of consensus in making EU integration a strategic priority. During 2011, crucial progress towards EU candidacy was made. Key findings of the EU opinion on Serbia on meeting the political criteria included:

“Serbia has a comprehensive legal and institutional framework for the rule of law and the protection of human rights and minorities, which overall corresponds to European and international standards. Key pieces of legislation were adopted in recent months in line with European standards in the areas of electoral law, financing of political parties and relations between the parliament and independent regulatory bodies. A far-reaching judicial reform has been undertaken. A review process, meant to address initial shortcomings in the re-appointment procedure for judges and prosecutors, is underway. The legal and institutional framework for the rule of law is comprehensive, including in the areas of the fight against corruption and organised crime where initial results were achieved. There are however a number of gaps in the implementation of this legal framework on which Serbia will need to build up its efforts.”¹

The Commission’s recommendations included a need to fill gaps in the implementation of its legal framework, to achieve “further significant progress in improving relations with Kosovo” and to improve steps towards establishing a functioning market economy.

In October 2011 the Commission recommended that Serbia should gain candidacy status for EU membership and that Serbia would be ready to start accession negotiations as soon as further good progress is made.

In December, 2011, the EU delayed until March 2012 a decision on the membership status of Serbia. The Serbian government adopted an updated National Programme for the Integration of Serbia in the European Union for the period 2008 – 2012, in January, 2012. On 1 March 2012, on the basis of the Commission Opinion on Serbia’s membership application adopted on 12 October, 2011, the European Council granted Serbia the status of candidate country. The opening of accession negotiations will be considered once the Commission has assessed that Serbia has achieved the necessary degree of compliance with membership criteria.

Economic Outlook

¹ European Commission, Press Release, Memo MEMO/11/693, “Key Findings of the Opinion on Serbia”, October 12, 2011.

The global economic downturn has had a serious impact on Serbia. Real GDP declined by 1.8% in 2011, remained flat in 2012, and is projected to rise 3% in 2013, with unemployment at 23.9% in 2012 with projection to remain unchanged in 2013². According to the 2012 evaluation of the judiciary from the European Council for the Efficiency of Justice (CEPEJ), based on 2010 data, spending on the judiciary was 0.66% of GDP per capita, which is higher than most countries in the region, with a regional average of 0.35% and a median of 0.30%³.

The European Commission has recommended that in the mid-term, Serbia must restructure its economy so that it may cope with competitive pressures and market forces, stating that: “High budget deficits have constrained the effectiveness of the macroeconomic policy mix. Labour market conditions deteriorated sharply with rising unemployment. There is a need for urgent and decisive consolidation measures, backed by systemic reforms of the public sector, in order to restore public finance sustainability.”⁴

Justice Sector Reform in 2012

During early 2012, in the run-up to the Parliamentary election, activities slowed down, resuming during the summer. A new coalition government comprised of SNS, SPS, URS and two minor parties took office in July, 2012. The Ministries of Justice and Public Administration were merged, and a new Minister of Justice and Public Administration (MOJPA) and two State Secretaries were appointed. Meanwhile, Prime Minister Ivica Dacic of SPS pledged to accelerate the EU agenda of reforms and the opening of accession negotiations. During 2012 the government adopted new implementing legislation on regulatory impact assessment and drafted a number of laws aimed to further align domestic legislation with European standards and requirements.

The EU Progress Report 2012 found that, “Serbia has made little progress on judicial reform”. The report highlighted that recommendations of the Venice Commission and constitutional changes need to be adopted to reduce the growing case backlog, in particular cases breaching the right to trial within a reasonable time.⁵

However, the European Commission found that progress was made in aligning legislation, policies and administrative capacity with EU standards, highlighting the positive progress made in the areas of company law, intellectual property rights, statistics and customs union.⁶

Changes to the Judicial System and Budgets

In March, 2012, administration of the court budget and prosecutorial services were transferred to the High Judicial Council (HJC) and the State Prosecutorial Council (SPC). IT services, capital expenditures and courts administrative staff funding remain within the control of the MOJ.⁷

Court and Public Prosecutors Office structure

The Law on the Organization of Courts and the Law on Seats and Territorial Jurisdiction of Courts and the Offices of Public Prosecutors Offices were passed in 2009. These laws provided a framework for the new network of courts and prosecution offices that became effective as of January 2010. While the previous court structure consisted of the municipal, district, commercial, high commercial, Supreme Court and Constitutional Court, the 2009 network reforms created a court structure

² World Economic Outlook, Chapter 2: Country and Regional Perspectives, International Monetary Fund, April, 2012.

³ European Council for the Efficiency of Justice: www.coe.int/cepej.

⁴ European Commission, Serbia 2012 Progress Report, accompanying the document “Communication From the Commission to the European Parliament and the Council, 2012, Enlargement Strategy and Main Challenges 2012 – 2013”, 2012, p. 25

⁵ Ibid, p. 9.

⁶ Ibid.

⁷ Ibid, p. 10.

consisting of basic courts, higher courts, appellate courts, administrative court, commercial courts, the high commercial court, the supreme court of cassation and the constitutional court. One additional major change was that magistrate courts and higher magistrate courts became an integral part of the court structure, whereas before the magistrate courts were part of the executive branch.

With respect to prosecution services, a similar re-organization was established through the December 2009 adoption of a set of laws including the Law on the Public Prosecutor Office and Law on Seats and Territorial Jurisdiction of Courts and the Offices of Public Prosecutor Offices, passed by the Serbian Parliament in December 2009. The prosecution services mirror the new court structure and are divided into basic, higher and appellate prosecution offices, with special departments for war crimes and organized crime.

After the initial slow start at the beginning of 2010, the functioning of the new court network normalized and is today properly functioning. However, the closure of a number of smaller (municipal) courts raised concerns among many experts that these closures have negatively affected access to justice for Serbian citizens, as well as court and prosecutor efficiencies. In criminal matters hearings can take place only at court seats, whereas in civil matters hearings can take place in the court units. Some lawyers and citizens commented that this new change has an impact on the overall cost of justice and its efficiency. Initial reports from HJC show that a smaller number of judges are able to produce the same or in some cases even better results than under the previous court structure.⁸ However this finding is solely based on the court statistics provided by the case management software AVP and does not take into account financial aspects of court restructuring.

By mid-2012, the network efficiency question was further complicated by a set of July 2012 Constitutional Court rulings effectively reinstating hundreds of previously dismissed judges and prosecutors. Faced with this sudden obligation to return judges and prosecutors to their prior status, the new coalition government announced plans in September 2012 to revisit the current court and prosecutor network. By year's end, the government presented a new set of laws related to court and prosecutor office networks which, if passed, will essentially re-open a significant portion of the sites closed in 2009. However, at the time of writing this report, there is still no final decision on the future outlook of the new court network. It is expected that the MOJPA will present their draft for the parliamentary debate in the second half of 2013.

During 2012 the HJC and SPC introduced amendments to the disciplinary system. The HJC introduced a disciplinary prosecutor and commission and the SPC adopted rules on disciplinary procedures and liability. The EU Progress Report, 2012, noted short-comings in the system, highlighting that the SPC rules fail to meet European standards and the body has not established a track record of investigating and imposing penalties in disciplinary cases.⁹

High Judicial Council, State Prosecutorial Council and General Election of Judges and Prosecutors

The Law on High Judicial Council and the Law on the State Prosecutorial Council passed in 2009 provided a legal basis for better autonomy and helped to guarantee judicial and prosecutorial independence of two independent governing bodies within the judiciary, the High Judicial Council (HJC) and the State Prosecutorial Council (SPC). The newly formed councils assumed responsibility for the court and prosecutorial systems that included, among other duties, the responsibility for the election and promotion of judges and prosecutors, and thus played a key role in justice sector developments since 2010.

The laws on public prosecutors and judges reduced the number of judges and prosecutors to align with the new court structure and provided for a re-appointment procedure for all judges and prosecutors implemented in 2009 and became effective from January, 2010. The total numbers of

⁸ HJC reports (in Serbian only) on court performance are available at: www.vss.sud.rs/izvestaji/

⁹ European Commission, Serbia 2012 Progress Report, op. cit. p. 10.

positions in the judiciary was reduced by approximately 23%, and according to the law, all judges and prosecutors were to be re-elected through open competition based on worthiness, qualification and competence. The EU Serbia 2010 Progress Report voiced “serious concern” regarding how reforms to the justice system, including the reappointment process, have been implemented:

“However, major aspects of the recent reforms are a matter of serious concern. The reappointment procedure for judges and prosecutors was carried out in a non-transparent way, putting at risk the principle of the independence of the judiciary. The bodies responsible for this exercise, the High Judicial Council and the State Prosecutorial Council, acted in a transitory composition, which neglected adequate representation of the profession and created a high risk of political influence. In addition, not all members had been appointed to either of the councils. Objective criteria for reappointment, which had been developed in close cooperation with the Council of Europe’s Venice Commission, were not applied. Judges and prosecutors were not heard during the procedure and did not receive adequate explanations for the decisions.”

In 2011, the HJC and the SPC had to go through an election process of their members since the initial composition of both the councils was only valid through the end of 2011. Upon the completion of this election process, both councils reviewed all appealed decisions of the previous councils, in accordance with a Constitutional Court ruling issued in late 2010. This revision process was further hampered by the arrest of one member of the HJC, indicted for serious corruption in late 2011, and the resignation of another member of the HJC who publicly talked about political pressure on members of the HJC in the process of revision.

During the first half of 2012, international observers and the EU urged the HJC and the SPC to continue the review process in a transparent manner and in line with previously adopted guidelines for revision. Upon agreement with the Councils, EU Delegation monitors were invited to observe the Councils’ process of addressing the due process and transparency shortcomings highlighted in 2010 by the Constitutional Court and the EU Progress Report.

Despite Councils attempts to correct these deficiencies, by July 2012, the Constitutional Court issued a pair of decisions overturning the findings of the 2011 review process, and revoking the decisions of the HJC and SPC on judges and prosecutors who had appealed the decision not to re-appoint them. The Constitutional Court directed the two Councils to offer to reinstate all affected parties to these suits within sixty days finding that the HJC did not act impartially and failed to make decisions with a requisite quorum, while the SPC placed an unfair burden of proof on prosecutors, and made assertions not based on facts, which could not be challenged.

New Judicial Services

Following the Laws on Enforcement and Security and Public Notaries, which became effective in May, 2011, new bailiff and notary services were introduced in 2012, with private bailiffs sworn in and first round of notaries passed notary exam in May, 2012. It is anticipated that the introduction of bailiff services will lead to a reduction in the case back-log of enforcement cases. Since insufficient number of candidates passed notary exam¹⁰ the implementation of the Law on Public Notaries was postponed until October 2013.

Free Legal Aid Law

After Serbia’s draft free legal aid was completed and presented for public debate in December 2011, further key stakeholder debates were held in the first half of 2012. However, government plans to pass this legislation ahead of the May 2012 election period did not come to pass. The delay of the law’s passage in the first half of 2012 is attributable to an ongoing constitutionally-charged debate about whether non-bar legal professionals (i.e. municipal free legal aid (FLA) lawyers, specialized Civil

¹⁰ The Law on Public Notaries envisages creation of the Notary Chamber. In order for this to happen first 100 notaries have to pass the notary exam and they have to be confirmed by the MOJPA.

Society Organizations, Legal Clinics) should be eligible to receive government funds to represent indigent defendants before Serbia's courts. Failure to resolve this issue hampered the government's ability to complete a Bank-supported cost analysis for the draft Free Legal Aid law during the first half of the year.

In the second half of 2012, the newly formed government reconfirmed its intention to complete FLA legislation, and expressed interest in conducting a fiscal impact analysis of FLA with World Bank support in 2013. Although more urgent pieces of justice sector legislation¹¹ took priority in the second half of 2012, this legislative exercise provided newly appointed MOJPA officials an excellent opportunity to orient themselves to the challenges of FLA delivery, and to work with the Bank's Access to Justice Advisor and the RFU in considering how various procedural laws¹² may be adjusted to increase government "FLA provider" options for the delivery of legal services, and to enable Serbia to better protect indigent defendants' rights to early access to legal representation which continues through all stages of criminal proceedings.

Civil and Criminal Procedure Codes

In September 2011, new Civil and Criminal Procedure Codes were adopted. The new Criminal Procedure Code passed the investigation of alleged criminal acts to the prosecutorial service, which initially applied only to organized crimes and war crimes. The Judicial Academy, with support from the Department of Justice and the OSCE, initiated a training program for all judges and prosecutors on the new Criminal Procedure Code. However, the new Criminal Procedure Code has been heavily criticized by some judges and prosecutors, and the new government formed a working group in September 2012 to amend the new Code. The working group proposed a number of changes to the new Code which triggered the MOJPA to request prolongation of the full implementation of the Code until the amendment process is completed. As a result, the Special Prosecutor for Organized Crime and the Special Prosecutor for War Crimes continue to operate under the new Code, however full roll-out to all courts and prosecutors offices is postponed until October 1, 2013.

Parallel to the amendments to the Criminal Procedure Code, the MOJPA has initiated changes in the Criminal Code. With support from the OSCE, the Department of Justice and the EU, MOJPA proposed several changes which have been approved by the Parliament. The biggest change relates to Article 359, which deals with the abuse of power. The new Criminal Code provides a better definition of the abuse of power, particularly in the case of abuse of public servants.

The Civil Procedure Code aims to streamline civil procedures and to increase the efficiency of the judiciary and came into force in February, 2012. In September 2012, MOJPA formed a workgroup to review current Civil Procedure Code. Though several significant amendments are expected to affect the jurisdictions of various courts, and current limits placed on a party's right to choose counsel, an amended draft of this law was not completed during the 2012 reporting period.

Other Laws

A number of laws are currently under the process of amendment. It is anticipated that two packages of laws will be amended and submitted for governmental approval as a priority of the Ministry of Justice and Public Administration. In particular, these laws include: the Law Amending and Supplementing the Criminal Code; the Law Amending and Supplementing the Law on Seizure and Confiscation of the Proceeds from Crime; Law Amending and Supplementing the Criminal Procedure Code; Law Amending and Supplementing the Civil Procedure Code; the Law Amending and Supplementing the Law on Enforcement and Security; the Law Amending and Supplementing the Law on Non-Contentious Proceedings; the Law Amending and Supplementing the Law on

¹¹The MOJPA attended to the urgent task of returning judges and prosecutors to work, and drafting amended court network laws that are expected to expand the network in order to improve citizen access to justice, and to better accommodate the returning judges and prosecutors.

¹²The new government invited the Bank's Access to Justice Advisor to join new working groups responsible for amending the current Civil Procedure Code and the Criminal Procedure Code.

Mediation; the Law Amending and Supplementing the Law on Public Prosecutors' Offices, the Law Amending and Supplementing the Law on Courts; the Law Amending and Supplementing the Law on Organization of the Court; the Law Amending and Supplementing the Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices; the Law on Misdemeanors; the Law on Free Legal Aid; the International Privacy Law; and, the Law on General Administrative Procedure.

Case Back-log

A back-log of cases continues to be a problem, and has not been resolved by the adoption of the new court network. The case-load between courts continues to vary significantly. Although the backlog was reduced slightly in 2011, it remained at 3.34 million cases at the start of 2012.¹³

The Judicial Academy

In line with the National Judicial Reform Strategy, the transformation of the Judicial Training Centre was initiated with adoption of the Law on Judicial Academy in December 2009. The Law on the Judicial Academy was amended in 2011 to strengthen the merit-based approach to selection of future judges and prosecutors. The completion of a pre-service training program is now a general precondition for the appointment of basic court and misdemeanor judges and deputy basic prosecutors. The third intake of students was initiated in 2012.

International Partners in the Justice Sector

Beside the MDTF-JSS the main international partners in justice sector reform in Serbia are the EU Delegation (through the Instrument for Pre-Accession Assistance), the OSCE, USAID and the Embassy of Norway and GiZ.

The EU Delegation has contributed €5.5 million of IPA funds, to continued support in justice sector reform. The EU Delegation in Serbia is expanding its project portfolio in the justice sector and it is envisaged that they will join the MDTF-JSS in 2013.

OSCE activities in 2012 were focused on strengthening the capacities of the HJC and SPC, support to the Anti-Corruption Agency and prison reform. In addition, the OSCE was active in reform of the Serbian security sector with focus on the police. The OSCE is also working with the Judges Association and the Association of Public Prosecutors. During 2012 the OSCE provided expert advice to the MOJPA and to working groups created by the MOJPA to amend key legislation related to the Serbian justice system,

USAID has continued to deliver the Judicial Reform and Government Accountability Project, which is a 5-year project aimed at improving Serbia's rule of law, judicial efficiency, independence and integrity and the openness and accountability of government operations overall. The project will promote reduced opportunities for corruption in some government institutions and increased detection of corruption. The project has two components: the first component - focused on support to the Minor offence Courts - will help make the administration of justice more efficient, transparent and responsive to the needs of court users, and to increase public awareness about these improvements. The second component will help strengthen the capacity of Serbia's Independent Agencies and civil society to promote open, accountable and efficient government; to fight corruption and poor administrative practices; and to generate public demand for, and participation in, good governance.

In partnership with the consultancy company IMG, the Kingdom of Norway in 2010 funded a project on "Improving the Delivery of Justice in Courts in Serbia". This project was focused on improvement of court efficiency, information sharing through info kiosks and infrastructure improvements. Based on the results achieved through implementation of this project the Kingdom of Norway has awarded an additional contribution of 4 million EURO to IMG to continue, and to expand project activities during 2010-2013. The project focuses on enhancing the quality and performance of Serbian courts,

¹³ European Commission, Serbia 2012 Progress Report, op. cit., p. 11.

support the development of the juvenile justice system and strengthening the capacity of the High Judicial Council.

The Legal Reform Project, implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), focuses on the major challenges to Serbian legal reforms: improvement of the overall legislative process; implementation of the reformed laws and the popularization of legal provisions, particularly in the field of civil and commercial law. The project will last until 2018.

3. RISKS

The MDTF-JSS was originally classified as a high-risk project for two primary reasons: (1) a concern that the coalition government could put at risk political stability, and (2) a concern that the Ministry of Justice (later the Ministry of Justice and Public Administration) lacked implementation capacity.

Political stability and EU- accession

The Serbian Government formed in 2008 experienced a period of relative political stability and has made significant progress towards achieving official EU Membership candidate status, including liberalization of the visa regime. In March 2012, on the basis of the Commission Opinion on Serbia's membership application adopted on 12 October 2011, the European Council granted Serbia the status of candidate country. The accession process is regarded as having had a positive effect in encouraging the Serbian authorities to give continued attention to justice sector reforms, which has been highlighted as a sector requiring further development by the EU. After elections in May, 2012, a new coalition government was formed in July 2012. The new government has expressed its commitment to pursue Serbia's EU membership and to accelerate the process of European integration.

Capacity in the Ministry of Justice and Public Administration

Understaffing continues to be an issue in the Ministry of Justice and Public Administration. The Reform Facilitation Unit, established in 2011 and funded by the MDTF-JSS has contributed to reduction of this risk. However, the overall capacity to coordinate, prioritize, resource, and implement a multi-year justice sector strategy remains weak. The Mid-Term Review found that, "Critical weaknesses were correctly identified. The MDTF-JSS adequately identified the need to strengthen institutional capacity, resource management, and aid coordination of the MOJ and the Ministry of Finance (MOF) as pre-requisites for further actions in the medium-term. Together with the strengthening of the legal and institutional environment, these were the primary areas of focus of the MDTF-JSS."¹⁴

All in all, the MDTF-JSS continues to be classified as a "high risk - high reward" project.

4. OUTCOMES

The outcomes framework for the MDTF-JSS is set out in the Project Memorandum from late 2008.

¹⁴ Serbia MDTF-JSS Mid-Term Review, World Bank, August, 2012, p. 7.

MDTF-JSS Results framework - Development Objective and Outcome Indicators

Development Objective	Outcome Indicators	Use of Outcome Information
<p>Facilitation of the acceleration of Serbia's European Union integration process pertaining to the justice sector.</p> <p>[This will be done by supporting (i) strengthening institutional capacity; (ii) the improvement of justice sector performance and (iii) increased aid effectiveness.]</p>	<ol style="list-style-type: none"> 1. Updated NJRS, Implementation Plan and NJRS results framework together provide a satisfactory basis for tracking and reporting progress on justice sector performance 2. Periodic stakeholder surveys show improved private sector and public ratings for justice sector efficiency and performance 3. Increasing share of justice sector ODA is on-budget 4. Strategic outreach and monitoring and evaluation (M&E) arrangements are institutionalized so as to track and report justice sector reform progress and impact 	<ul style="list-style-type: none"> • Overarching framework for justice sector performance and progress reporting. • Faster disposition of cases and reduction of case backlogs indicate increased efficiency and access to justice. • More effective management of justice sector resources – human, financial, physical and IT

There has been good overall progress in achieving the development objective of acceleration of Serbia's European Union integration, which is the key development objective to which the Trust Fund is contributing. Significant progress was made in meeting the political criteria, including a comprehensive legal and institutional framework for the rule of law and the protection of human rights and minorities, which overall corresponds to European and international standards on the gradual completion of the legal framework and refinement of the institutional set-up of the judiciary.

5. PROGRESS REPORT

During 2012, the main activities included ongoing advisory services to the Ministry of Justice on justice sector reform, anti-corruption and international cooperation, training and knowledge sharing on specific elements of the justice sector reform agenda, including Access to Justice and the technical support provided by the Project Implementation Unit (PIU) and the Reform Facilitation Unit (RFU) to the Ministry of Justice.

The Trust Fund continued to provide analytical input including through support for the development of the next Justice Sector Strategy, analysis of criminal case processing, completion of the Justice Sector Public Expenditure and Institutional Review.

Project Implementation Unit (PIU) and Reform Facilitation Unit (RFU)

The PIU is comprised of a Procurement Specialist, a Financial Specialist and the Head of the PIU, Assistant Minister Backovic. The PIU provides oversight and administrative support to ensure the effective day to day functioning of the RFU. The RFU, comprising up to eleven core support personnel, is responsible for contributing to the achievement of the Government's reform goals. The MDTF-JSS funds the long term consultants and legal experts working within these two units. Together, these teams provide expert advice, recommendations and technical assistance to the Ministry of Justice and the Judiciary. Tasks include drafting of technical and policy notes and papers,

input to strategic planning, facilitation of aid coordination and effectiveness, project design and implementation, and the procurement of all client-delivered goods and services described in the MDTF-JSS Program Framework.

Mid-Term Review

An independent team assessed the progress in the implementation (by the Bank and the Ministry of Justice) of the MDTF-JSS to achieve the Project Development Objective. The goal of the Mid-Term Review (MTR) was to assess the progress on the implementation of the Program Framework and the activities currently being delivered. The team reviewed the relevance of the Program Framework in light of the main challenges facing the justice sector and in its delivery of services in Serbia, and identified institutional constraints to achieving results. In addition, the MTR team made recommendations aimed at improving results in the implementation of the MDTF-JSS.

In summary, the MTR found the focus of the MDTF-JSS remains highly relevant as, “as the justice sector is of particular importance in Serbia’s EU accession process. The newly appointed government has expressed its intention to accelerate the process of EU membership that was initiated by the preceding administration. All key stakeholders within the justice sector have underscored the importance of delivering sound technical assistance during this critical period. Moreover, donors have expressed their commitment to continue their support to Serbia’s EU accession process in relation to justice issues.”¹⁵

However, the MTR found the overall impact made by the MDTF-JSS to be “modest”:

“While the MDTF-JSS has supported a series of activities of great relevance in the context of justice sector reform, it is unclear how effectively it has contributed to setting the foundations of Serbia’s EU accession process. A lack of government focus has hindered the potential impact of the various outputs supported under the MDTF-JSS.”¹⁶

The MTR Report found that the success of activities has been delivered with “various levels of impact.”, while the most successful impact has been made on activities that have been delivered with close cooperation between the World Bank and the MOJ, including: (i) the Case Management System; (ii) development of the new Justice Sector Strategy (2013 – 18); (iii) support to Access to Justice activities; and, (iv) development of the ICT Strategy.¹⁷

In addition, the MTR highlighted that:

“There are concerns, however, that, although some of the activities/outputs carried out by the Bank are highly relevant to the judicial reform and the accession process, the MOJ may not fully perceive their value and, therefore, is not using them as inputs to further sector reforms.

- *Judicial Public Expenditure and Institutional Review (JPEIR)*: The objective of the JPEIR was to contribute to the strengthening of the performance of the judiciary in Serbia through more efficient and effective use of financial and human resources. Accordingly, the review aimed to provide input to the design of the next phase of reform of the Serbian judiciary and thereby facilitate Serbia’s EU accession process. The audience for the review was a group of key actors driving judicial reforms, including elected decision makers, officials in the MOJ and the High Judicial Council, state prosecutors, civil society representatives, and international partners. Unfortunately, while the Bank presentation of the JPEIR was completed in September 2011 and the results were shared with the MOJ, the MOJ has not yet authorized its dissemination.

¹⁵ Serbia MDTF-JSS Mid-Term Review, World Bank, August, 2012, p. 7.

¹⁶ Ibid, p. 16.

¹⁷ Ibid, pp. 17 – 18.

- *Public Perception Survey on the Judiciary*: The Public Perception Survey on the Judiciary was conducted by a reputable local polling consultant firm and constituted a major logistical undertaking. However, the results have not been widely disseminated. Even more worrisome, it appears that it was not considered as an input in the preparation of the MOJ's communication strategy, which was one of the MDTF-JSS activities executed under the responsibility of the MOJ.¹⁸

The MTR made the following general recommendations aimed at enhancing MDTF-JSS effectiveness: (i) continue the engagement under the MDTF-JSS while acknowledging that engagement in the justice sector is by nature complex, long-term and risky, (ii) recognize that the future of the MDTF-JSS is largely going to be determined by the new government, in respect of its response to justice sector reform and EU accession, (iii) be strategic and adopt a problem-solving approach, (iv) ground MDTF-JSS support on sound sector knowledge, including both political and technical analysis, and, (v) develop reliable data and effective M&E systems, (vi) address coordination and capacity aspects, in particular the coordination gap between the Bank- and MOJ-executed components, enhancing the effectiveness of the Reform Facilitation Unit, and enhancing long-term capacity building of MOJ staff, (vii) enhance the MDTF-JSS governance structure, including strengthening use of the Partners' Forum and ensuring the needs of all key stakeholders are met, including the High Judicial and State Prosecutor Council, (viii) the approach to be taken by the MDTF-JSS should reflect actual government support.

The MTR placed particular emphasis on the MDTF-JSS playing a central role in supporting the implementation of sector-wide justice reform activities with an EU-accession focus and in providing an adequate framework for the 2012-2017 Judicial Reform Strategy (NJRS), noting:

“...as it currently stands, the NJRS 2012-2017 could more adequately be defined as a strategic framework. It could further develop its operationalization, including the preparation of an NJRS Action Plan (comprising a well-defined set of priorities, costing analysis, implementation timetable), a Results Framework (i.e., indicators and targets) and a supporting M&E system, as well as the assignment of implementation responsibilities among the various actors.”¹⁹

The MTR recommended that if the environment is favorable, effective implementation and monitoring mechanisms proposing to establish implementation arrangements that would equally represent the MOJ and the two independent Councils should be established as follows:

“NJRS Coordinating Committee - This coordinating committee would be responsible for overall coordination and oversight of the implementation of the NJRS Action Plan. It would be self-standing (i.e., outside the orbit of the MOJ and the two Councils), and constituted by one representative from each of the key institutions (i.e., the MOJ, the High Judicial Council and the State Prosecutorial Council, and perhaps even the Supreme Court of Cassation and the Republic Prosecutor's Office). Each institution would nominate a high-ranking public servant and the other two institutions will speak for or against the appointment. The MDTF-JSS Management Committee could act as an arbiter in case that no agreement is reached. It would be desirable to include a fourth member from the EU Integration Office. Also, it could also be considered to include a representative from the MOF to coordinate aspects related to the transfer of budget responsibilities to the Councils.

NJRS Technical Secretariat- This technical body would provide technical support to the NJRS Coordinating Committee, being responsible for the technical aspects of implementation. It would consist of five to six full-time senior MOJ staff or consultants, each of them being focused on the implementation of one of the NJRS pillars. They would be responsible, among other things, for establishing and providing technical support to working groups responsible for

¹⁸ Ibid, p. iv.

¹⁹ Ibid. p. 23.

specific activities, fostering their representativeness and broad participation. In addition, the NJRS would be responsible for preparing the Partners' Forum meetings.

Independent Monitoring Mechanism -It is recommended that independent monitoring on the progress of the NJRS Action Plan be conducted regularly, reporting results to the Partners' Forum and, if possible, to the Prime Minister.²⁰

The full recommendations of the MTR can be found in Annex 2.

1. Institutional Capacity

The objective of this sub-component is to facilitate capacity-building – within in the Ministry of Justice, the judiciary and the Ministry of Finance - to design, coordinate and implement judicial reform and modernization programs.

Ongoing advisory services

Throughout 2012, the RFU has provided advisory services to the Ministry of Justice related to various aspects of European Integration, including application of different International Conventions, and EU Directives and Resolutions.

Advisory services were provided to facilitate Serbia's progress towards candidate status for EU accession, including legislative activities, regional cooperation and bilateral agreements, the fight against corruption, judicial independence and impartiality of the courts and the prosecution service, donor-funded projects, legal harmonization, information technology, drafting reports on Serbia's reform progress to the European Commission and providing critical inputs to the process of harmonizing Serbia's legislation with the *Acquis Communautaire*. All support was in the form of facilitation and advisory services and not related to legal drafting and actual implementation.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3) “Strengthening regional cooperation in the fields of mutual legal cooperation and assistance, especially in issues pertaining to organized crime and anti-corruption” and the corresponding indicator – “Reports prepared and endorsed by Government and relevant bodies monitoring /assessing regional cooperation in issues pertaining to organized crime and corruption” and “Objectives set for implementation of the National Strategy for Combating Corruption are met, in accordance with the agreed timelines”.

EU Integration

The RFU has continued to support the Ministry of Justice and Public Administration in the process of harmonization of the legislation of the Republic of Serbia in line with the *Acquis Communautaire*, analyzing relevant EU Directives and Regulations, and International Conventions, relevant to the Law on Civil Procedure, the Criminal Procedure Code, the Criminal Code and the Law on Seizure and Confiscation of the Proceeds from Crime, the Law on Enforcement and Security and the new Law on Mediation. In addition, the European Integration Office was provided with translation services in support of legislation related to the *Acquis Communautaire*. The RFU also provided analysis and reports on visa liberalization for Western Balkan countries and on activities in the areas of anti-corruption, organized crime money laundering. A report on the status of implementation of the Government's Action Plan to meet the recommendations from the EU's Annual Report for 2012 on Serbia's progress towards EU accession was provided.

Analytic support was provided to the Serbian Integration Office to prepare the National Programme for the Adoption of the *Acquis* (NPAA), 2013 – 2016, with coordination provided to the MOJPA on Chapter 23 (Justice and Fundamental Rights on full harmonization of national legislation and planned

²⁰ Serbia MDTF-JSS Mid-Term Review, World Bank, August, 2012, p. 23.

legislation over the next three years. In accordance with the NPAA, the National Programme for Integration of Serbia into the EU (NPI), electronic data base of laws and by-laws was updated.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3) “Objectives set for implementation of the National Strategy for Combating Corruption are met, in accordance with the agreed timelines” and, (ii) “Expediting the adoption of relevant International Conventions, and EU Directives and Resolutions in Serbia, and their inclusion into Serbian legislation” and the corresponding indicator - “Relevant and appropriate international conventions and treaties included in Serbia’s legislation and implemented”.

International Cooperation

The RFU assisted in the development of institutional capacity within the MOJ in the field of international co-operation, with a special focus on strengthening regional cooperation and assistance in matters related to organized crime and corruption. The RFU assisted and advised the relevant decision-makers in the MOJPA in monitoring the work of international organizations and international obligations in the areas of MOJPA competence, assisted in monitoring implementation of OSCE and Council of Europe programs.

This work has supported delivery of activities outlined in the Program Framework (Annex 3) (i) “Strengthening regional cooperation in the fields of mutual legal cooperation and assistance, especially in issues pertaining to organized crime and anti-corruption” and the corresponding indicator – “Reports prepared and endorsed by Government and relevant bodies monitoring /assessing regional cooperation in issues pertaining to organized crime and corruption” and “Objectives set for implementation of the National Strategy for Combating Corruption are met, in accordance with the agreed timelines” and, (ii) “Expediting the adoption of relevant International Conventions, and EU Directives and Resolutions in Serbia, and their inclusion into Serbian legislation” and the corresponding indicator - “Relevant and appropriate international conventions and treaties included in Serbia’s legislation and implemented”.

National Judicial Sector Strategy

At the request of the Ministry of Justice, the MDTF-JSS is facilitating the process of development of the next Justice Sector Strategy. The Ministry of Justice identified the MDTF-JSS as the key driver to assist in this process, which will replace the 2006 NJRS. Advisory services have been provided to assist the Ministry of Justice to develop the new 2013 – 2018 Strategy, which incorporates and builds upon the achievements made since 2006 and the enhanced capacity of judicial institutions. The preparation of the new Strategy started with a review of the 2006 Strategy and the Council of Europe’s report “Support to the Reform of the Judiciary in Serbia in the Light of Council of Europe’s Standards,” which reviewed the state of implementation of the 2006 NJRS plus a number of other documents. The MDTF facilitated development of the Strategy based on consultations with representatives of the Ministry of Justice, the High Judicial Council, the State Prosecutorial Council, the Judicial Academy, the Judges and Prosecutors’ Associations, the Bar Association, and law faculties. Comments from the European Union and international partners were also elicited.

The World Bank’s MDTF Team, with RFU support, prepared a draft text of the new National Judicial Reform Strategy. The document was provided to the Ministry of Justice and in May 2012 for final amendments and clearance. The Ministry employed a phased approach; the first step would be to get governmental approval of the strategy and in the second phase the Ministry would work on the preparation of an Action Plan. In the later stage the Ministry would present the new Strategy together with an Action Plan to the Parliament and would seek their endorsement of the whole package.

Due to the elections and the later change in the Ministry of Justice leadership, this process was not completed and new the Ministry began preparation of a new Strategy again in the Fall of 2012, using the draft prepared by the MDTF as a starting point. The Ministry of Justice and Public Administration leads the process with limited participation from the HJC, the SPC, the Supreme Court of Cassation

and the Republic Prosecutors Office. The Judges Association and Association of Public Prosecutors also have limited participation in the preparation of this strategy.

The EU, USAID, the World Bank and other international partners are supportive of the idea to have a new Justice Reform Strategy which will show direction in the next mid-term period. These international partners have raised a key issue with MOJPA regarding the good practice of stakeholder participation in its re-drafting of the Strategy to ensure that the process is both iterative and consultative amongst all justice stakeholders. Such a process would encourage the partners to not only provide comments on certain directions or actions, but also to participate in formulating and designing targeted assistance.

All MDTF-JSS outputs, including the JPEIR, the Council of Europe reform status assessment, the IPSOS justice sector perceptions survey, and other studies were used in development of the strategy.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3): “Strategic framework for the second phase of justice sector reform in Serbia” and the corresponding indicator – “Recommendations of strategy note on future cooperation with multilateral and bilateral development partners implemented and reflected in appropriate related documents”.

Component 2: Resource Management and Aid Coordination

The objective of this sub-component is to facilitate justice sector leadership to strengthen justice sector resource management and aid coordination.

Judicial Public Expenditure and Institutional Review (JPEIR)

The Judicial Public Expenditure and Institutional Review (JPEIR) was finalized in the first quarter of 2012. The World Bank team presented key findings to the Ministry in April and to the HJC and SPC in May. This analysis has been used as one of the key reference documents in preparation of the new Judicial Reform Strategy and has been widely used by the USAID Separation of Powers Project in their work with budget planning. In addition, the MDTF-JSS Coordinator made a presentation of the JPEIR and resource mobilization to the MOJPA working group tasked to revise the existing court network in Serbia. During the debate in the Parliament on the working group proposal for the new court network, Judge Skero referred to the JPEIR analysis as a key document which provides information about budget execution and HR planning in Serbian courts. Based on the success and results from the JPEIR, the World Bank offered to the MOJ, HJC and SPC to conduct an analysis of the Cost Drivers and Effectiveness Review of the Court and Prosecutorial Network.

Court Operational Cost Drivers and Effectiveness Review

This review focuses on resource deployments, staffing and case characteristics to identify Serbian court cost drivers in the restructured court network, and will be followed with a qualitative expert assessment of individual court practices to identify, and seek further, improvements in court operations. The two-fold objective is to: (1) assess recent trends in expenditures, costs and service performance in light of the restructuring of the court network; and (2) to inform decisions on further efficiency gains in resource deployments across and within the courts of Serbia in terms of effective staffing mixes, effective operating resource mixes, distribution of case loads and composition across court locations, budget allocations across court locations and good practices in court management.

However, even though the MOJ, HJC and SPC agreed to share data needed for such analysis, the MDTF Team did not receive data in time to complete the proposed analysis during 2012. In the meantime, MOJPA’s decision to review and substantially revise the court and prosecutorial network during 2013 has substantially diminished the potential value of such an analysis. The World Bank MDTF team will therefore propose to the new management in the MOJPA and HJC to conduct this analysis in 2014 when the new network is established.

Partners' Forum

Two Partners' Forums, focused on development of new Justice Reform Strategy, were organized in 2012. The Partners' Forum is a mechanism led by the Ministry of Justice and Public Administration. The MDTF-JSS provides support to the Ministry in organizing the Forum.

The objective of the Partners' Forum is to facilitate Serbia's EU justice sector integration process and strengthen the performance of the justice sector by providing a forum for program- and results-based policy dialogue between key stakeholders on: (a) justice sector reform, institutional strengthening and modernization; (b) justice sector performance management and performance improvements; (c) improving justice sector aid coordination and effectiveness; and (d) monitoring and reporting on reform progress and impact.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3) "Action plan to implement the recommendations of the Justice Sector Public Expenditure and Institutional Review (JPEIR), realized under the Bank- executed part of the MDTF-JSS" and the corresponding indicator – "Action plan finished and adopted by the MOJ senior management".

Component 3: Legal and Institutional Environment

The objective of this sub-component is to facilitate the strengthening of the legal and institutional environment for the judiciary.

Justice Sector Policy

The RFU has continued to support selected issues relating to justice sector reform and the modernization process in Serbia by delivering recommendations and advisory services to the Ministry of Justice and Public Administration. International Cooperation assistance by the RFU was provided in the adoption of the Serbian Report for the Third Evaluation Round of GRECO; coordination of the implementation of Chapters 3 and 4 of UNCAC in Serbia; and in improving cooperation between Serbia and EUROJUST. In addition, to strengthen regional cooperation in the field of mutual legal cooperation and assistance pertaining to organized crime and corruption, the RFU provided inputs for the new National Anti-Trafficking Strategy, the new National Action Plan on Combating Violence against Women and the improvement of the status of minorities in the judiciary, presented during the Council of Europe Expert Mission on Minorities (July, 2012).

Review of the Criminal Chain Process (RCCP)

In accordance with the MDTF-JSS judicial reform agenda, the World Bank neared completion of a Review of the Criminal Case Process (RCCP) in Serbia during 2012. The final RCCP product will provide recommendations for improvements to allow for efficient coordination and smooth handling of criminal cases by several legal and social institutions responsible for enforcing criminal law and to ensure an effective response to the needs of victims, witnesses, and alleged offenders. This review is also needed in light of Serbia's new Criminal Procedure Code (CPC) and as part of Serbia's efforts to accede to the EU.

The first phase of the RCCP - a legislative mapping and overview of both the current and the new Criminal Procedure Codes - was completed in February 2012. Final drafts of 12 separate criminal process maps were reviewed and approved by the World Bank's Local Expert Advisory Group. The maps were delivered to the MOJPA, the Free Legal Aid Law working group, and to the Judicial Academy in March 2012 and are intended to support the training of current and future judges and prosecutors. The process maps and the accompanying narrative report illustrate the current and new criminal case processes as they are required to be implemented by law.

After completion of Phase 1 of the RCCP, the more time consuming Phase 2 of RCCP began with the contracting of a locally-based firm commissioned to conduct comprehensive field research at three agencies (police, prosecutor, courts) in seven separate RCCP sites.²¹ The RCCP team completed field work during the July to September 2012 period. The field data collected by RCCP staff included statistics from AVP software, a series of court, prosecutor and police interviews, and case file reviews of randomly-selected cases from each of the sites. The study also relied upon annual statistics of the three agencies from the years 2010 and 2011.

Upon reviewing the data during the Fall of 2012, the RCCP team delivered preliminary findings to key government stakeholders including members of the new government's CPC working group. A draft final report was delivered to the Bank for review in late 2012.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3) "Assessment on the implementation status of the prosecution reform" and "Action plan and recommendations for expediting and strengthening the process of prosecution reform" and the corresponding indicators – "Assessment finalized, published and findings reflected in the action plan for expediting and strengthening the process of prosecution reform" and "Action plan finalized, published and under implementation".

Component 4: Judicial Facilities and Infrastructure

The objective of this component is to facilitate the acceleration of the systematic modernization of the court and prosecutorial network; strengthen the resourcing, operations and management of the physical and IT facilities of courts and prosecutor offices; and facilitate the assessment of impact on users' access and satisfaction.

ICT Strategy for the Justice Sector

After a slow start, caused by the changes in the Ministry after the election, this activity has picked up and will be finalized by May 2013. This activity is managed by the MOJPA and the Bank team provides support and expert advice. AAM, a firm from Hungary, has been selected by the Ministry to assist in preparation of this strategy. The preparation is in its final stage; the penultimate report, which contains an outline of the strategy, is now with the MOJPA who will provide comments by April 15, 2013.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3): (i) "Successfully concluded implementation of the Case Management System in courts of general jurisdiction", (ii) "ICT modernization strategy for the justice sector in Serbia" and (iii) "Action plan for implementing key information system-related initiatives in the justice" and the corresponding indicators – (i) "The implementation is concluded and the staff in courts of general jurisdiction have received the appropriate training", (ii) "ICT modernization strategy is prepared, in close cooperation with relevant stakeholders and partners", and (iii) "Action plan for implementing key information system-related initiatives is prepared" and "Action plan finalized, published and under implementation".

Component 5: Outreach, Monitoring and Evaluation

The objective of this sub-component is to institutionalize strategic outreach, monitoring and evaluation arrangements to track and report progress on justice sector reform progress, and impact.

²¹ RCCP sites include all courts, prosecutor offices and police stations located in Belgrade, and 6 other cities throughout Serbia (Subotica, Uzice, Nis, Novi Pazar, Vrsac, Zajecar), as well as organized crime agencies in Belgrade.

Communications Strategy

The RFU supports activities related to the media and public outreach and has begun to conduct research activities towards the preparation of a communication strategy for Serbia's justice reform that aims to increase public awareness on the Judiciary and all aspects of the justice sector reform process. A Draft Communication Strategy for the Ministry of Justice was drafted by the RFU in December, 2011, with a second version updated in January, 2012. The RFU assisted the MOJPA in providing comments at the request of the European Integration Office on the Draft IPA Communication Strategy for communicating funds and projects funded from Instruments for Pre-Accession to the general public.

Outreach Programs

Several outreach activities to increase public awareness and participation in the activities of the MOJPA, were held during 2012, including: two –day retreat on the new National Judicial Reform Strategy (January), gathering stakeholders from relevant bodies, institutions, organizations, and donors to discuss further development of the draft Strategy; MOJPA-hosted visit of UNODC experts (September) to review implementation of the UN Convention against Corruption; a series of roundtables across Serbia organized by the UNODC in October on the treatment of victims of trafficking in human beings during trials.

Web portal

In order to improve outreach and increase public awareness on MDTF-JSS program activities in Serbia, a dedicated web portal was launched in 2009. The portal is being used to disseminate information about MDTF-JSS events and share knowledge products produced by the World Bank and partner agencies on the justice sector. The web site has recorded high traffic but the MDTF team seeks to increase usage. For this purpose the web site will be redesigned so it is more user friendly. This activity will be completed in first half of 2013. It is available in Serbian and English versions at www.serbiamdftjss.org.

These activities have supported delivery of activities outlined in the Program Framework (Annex 3): (i) "Communications strategy for Serbia's justice sector, aiming to increase public awareness on the Judiciary and strengthen cooperation and collaboration with key national stakeholders", and (ii) "A media campaign to raise awareness on the justice sector reform in Serbia"– (i) "Communications strategy for Serbia's justice sector drafted", and (ii) "Media campaign prepared, launched and implemented".

6. Access to Justice

Support to reform of the Free Legal Aid System

Having commenced support to the FLA law drafting process in 2011, a full-time Senior Justice Sector Specialist has continued to oversee delivery of advisory services to the MOJ on Access to Justice issues during 2012.

In the wake of a MDTF-funded study visit to the FLA Commission in The Netherlands in September 2011, a series of three FLA Law drafting retreats in the Fall of 2011 resulted in the completion of a draft Free Legal Aid (FLA) Law in November of 2011. Heavily influenced by good practices implemented in The Netherlands, the draft FLA Law was immediately posted to the MOJ website, and presented by the MOJ at a public debate in December 2011. Although the draft FLA Law was generally well-received by key stakeholders, and by the Council of Europe²² in a report issued in

²²The Council of Europe report recommended a broader definition of 'eligible legal aid provider' beyond the bar association, advocated for a decentralized FLA administrative body independent of the government with

February 2012, the MOJ also reviewed considerable comments and concerns²³ from key stakeholders such as bar associations, CSOs, and municipalities. From January to May 2012, in an effort to improve the legislation further, the MOJ hosted a series of round-tables for key stakeholder groups where concerns were further discussed, and solutions presented, considered and frequently incorporated into the current draft.

Although the MOJ's positive response to the public's interest in the draft FLA law raised public awareness and input into the current draft FLA Law, this well-founded extension of the public discussion made it impossible for the government to present the draft FLA Law to Parliament prior to its early Spring recess, and the onset of the 2012 election period. The change in government in July, and the new government's subsequent prioritization of weaknesses in the court network laws and key criminal and civil procedural laws, effectively resulted in the languishing, and effective dissolution, of the prior government's FLA Working Group. Similarly, pre-election government interest in inviting Lithuanian FLA authorities to present their streamlined, less expensive version of the Netherlands FLA approach were set aside for the remainder of 2012, with the hopes of re-exploring the Lithuanian approach in 2013.

Despite this general setback to the ultimate passage of a FLA Law in 2012, this delay in the law's passage has allowed for some productive FLA-related dialogue to transpire which should ultimately lead to the passage of a more sustainable, efficient piece of legislation. First, a frank discussion with key FLA stakeholder groups on the issue of defining "FLA provider issue" has led the new government to recognize the FLA quality and cost-savings opportunities which lay in broadening the definition of legal aid provider beyond the bar association, to include other non-bar legal professionals, whether they are employed in municipal legal offices, in CSO's specialized in providing legal aid to vulnerable communities, or in law school legal clinics. Second, the 2012 FLA debates have awakened the new government to weaknesses in the current Criminal Procedure Code with respect to its obligation to offer indigent defendants access to an attorney throughout a criminal proceeding, and particularly in its early stages. Avoiding this potential violation of fair trial standards established by the European Court of Human Rights (ECHR), will help the new government in its stated goal of reducing the frequency of cases filed by its citizens before the ECHR. In addition to these issues, the protracted period taken to draft the FLA law may also allow the new government to consider various FLA delivery mechanisms considered as good practice in EU states which were considered unnecessary, or too costly by the prior government.

6. KEY PLANNED DELIVERABLES FOR 2013

Following the activities undertaken in 2012, the following key deliverables are expected in 2013.

ICT Strategy for the Justice Sector

During 2012 the development of an ICT Strategy for the Justice Sector was largely completed. The objectives of the activity are to facilitate decisions on ICT investments in the Serbian Judiciary that are made strategically to maximize efficiency and effectiveness gains and to reduce overall investment costs. The activity does so by:

- Providing an ICT assessment that contains a diagnosis of the needs of the Judiciary in relation to Software, Hardware and Personnel requirements and establishes the Strategy,

authority to control quality of FLA delivery, and cautioned against undue administrative costs incurred during overly complicated beneficiary identification processes.

²³Stakeholder concerns centered on the definition of 'eligible legal aid provider' in the draft law. While bar associations continue to advocate for a monopoly over representation in all FLA cases, municipalities, CSO's and legal clinic representatives claim that including non-bar legal professionals (holders of law degrees and bar exam) will drive down costs, and not have a negative impact on quality.

Objective and an Action Plan that permits the development and implementation of the systems.

- Developing a 5-10 year roadmap that determines the sequence for implementing specific information systems, with the end goal of delivering the most valuable information system at the earliest time possible in the most cost-effective manner.

This activity will be finalized in the first half of 2013.

Court Operational Cost Drivers and Effectiveness Review

This analysis was proposed to the MOJ, HJC and SPC in 2012 but unfortunately did not materialize. With the introduction of the new court network, which is one of the priorities for the MOJPA and the Councils, the need for such analysis is even higher. The MDTF Team had first round of discussion with the MOJPA and HJC about this and tentatively it has been agreed to start with data collection for this analysis in September 2013, once the new court network is up and running.

This comprehensive analysis will be delivered in stages: (i) aggregate analysis, (ii) court level quantitative analysis, and (iii) court level qualitative analysis. An expert review will entail a detailed study of the operating procedures and resource deployment of courts which have been identified as particularly effective and will allow the identification of Serbian best practices and should serve as a template of practices that might be emulated in other Serbian courts to improve system-wide operations.

Review of the Criminal Chain Process

The RCCP will be completed during the first half of 2013. Prior to publication, the final draft of the RCCP will be shared with the MOJPA, the HJC, the SPC, and the MOI for comment. Upon publication, the Bank anticipates a series of round table events focused on RCCP findings in cooperation with the government. Such events will need to take into account the current government's recent decision to delay CPC implementation in the courts of general jurisdiction, as well as government intentions to further amend the CPC in 2013.

Justice sector performance and service delivery survey

The Perception of Justice Survey was completed in 2011. It was designed in a way to provide baseline data against which the Serbian justice authorities will be able to measure progress of justice reform. The MDTF plans to do a follow-up survey in first half of 2014. The work around preparation for the survey and updating questionnaires will start in the last quarter of 2013.

Access to Justice

Technical assistance provided by the Senior Justice Sector Specialist to the Ministry of Justice to support the Serbian authorities to develop, coordinate and manage access to free legal aid concluded in January 2013. This support may recommence in the second half of 2013 when the government is expected to re-focus legislative attention on the draft law on FLA's passage, which will trigger the need to establish FLA regulatory regimes, FLA training, and FLA outreach reactivate the legislative, as contemplated by the MDTF-JSS Program Framework.

National Judicial Sector Strategy

In cooperation with other international partners and Serbian justice stakeholders, the MDTF will continue to support preparation of the new Justice Reform Strategy. This support will entail analytical work and expert advice, with emphasis on institutional arrangements, M&E, performance measurement, resource mobilization and reporting. Within this, and in line with new Judicial Reform Strategy, the MDTF will start preparation of mechanisms for sector wide approach interventions.

Annex 1: Financial Information for 2012

WORLD BANK REFERENCE

Multi-Donor Trust Fund for Justice Sector Support in the Republic of Serbia (Successor of TF071171)
(WORLD BANK REFERENCE 71444) – Multi Donor Fund

Expressed in United States Dollars

	01/01/2012 to 12/31/2012
Receipts (Note 1)	
Cash Contributions	1,308,673.36
Investment Income (Note 2)	30,088.14
Total Receipts	1,338,761.50
Disbursements (Note 1)	
Project Disbursements	
Disbursement to Grantee	(297,317.50)
Direct costs Disbursed by WBG	
Staff costs	(195,640.59)
Consultant fees	(483,771.92)
Associated overhead costs	(13,896.95)
Travel expenses	(117,366.21)
Airfare rebate	13,496.58
Equipment costs	0.00
Media workshop	(20,205.82)
Contractual services	(4,000.00)
Total Direct Costs Disbursed by WBG	(821,384.91)
Total Project Disbursements	(1,118,702.41)
Non-Project Disbursements	
Administrative fees (Note 4)	(36,811.20)
Total Non-Project Disbursements	(36,811.20)
Total Disbursements	(1,155,513.61)
Excess of receipts over disbursements / (disbursements over receipts)	183,247.89
Fund Balance	
Beginning of period	4,116,140.24
End of period	4,299,388.12

WORLD BANK REFERENCE

Multi-Donor Trust Fund for Justice Sector Support in the Republic of Serbia (Successor of TF071171)
(WORLD BANK REFERENCE 71444) – Multi Donor Fund

TRUST FUNDS FINANCIAL REPORT

Status	Beneficiary	VPU/Div	Project Type	TTL Name
ACTN	Serbia	ECSP4	Main Fund	Mr. Edgardo Mosqueira

Pledge Details by Donor

Donor	Currency	01/31/2012 to 12/31/2012	12/02/2000 ate of inception) to 12/31/20
SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)	SEK	0.00	31,000,000.
UNITED KINGDOM - DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (DFID)	GBP	0.00	800,000.
NETHERLANDS - MINISTER FOR EUROPEAN AFFAIRS & INTERNATIONAL COOPERATION	USD	0.00	300,000.
NORWAY - MINISTRY OF FOREIGN AFFAIRS	EUR	0.00	250,000.
SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)	EUR	0.00	400,000.
SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)	CHF	0.00	500,000.
DENMARK - ROYAL MINISTRY OF FOREIGN AFFAIRS	EUR	0.00	333,000.
SPANISH AGENCY FOR INTERNATIONAL DEVELOPMENT COOPERATION	EUR	0.00	490,000.
SLOVENIA - MINISTRY OF FINANCE	EUR	0.00	100,000.

Contribution Details by Donor

Donor	Currency	01/31/2012 to 12/31/2012	12/02/2000 ate of inception) to 12/31/20
SWEDISH INTERNATIONAL DEVELOPMENT COOPERATION AGENCY (SIDA)	SEK	0.00	31,000,000.
UNITED KINGDOM - DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (DFID)	GBP	0.00	800,000.
NETHERLANDS - MINISTER FOR EUROPEAN AFFAIRS & INTERNATIONAL COOPERATION	USD	0.00	300,000.
NORWAY - MINISTRY OF FOREIGN AFFAIRS	EUR	0.00	250,000.
SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)	EUR	0.00	400,000.
SWISS AGENCY FOR DEVELOPMENT AND COOPERATION (SDC)	CHF	0.00	500,000.
DENMARK - ROYAL MINISTRY OF FOREIGN AFFAIRS	EUR	0.00	333,000.
SPANISH AGENCY FOR INTERNATIONAL DEVELOPMENT COOPERATION	EUR	0.00	490,000.

SLOVENIA-MINISTRY OF FINANCE	EUR	0.00	100,000.
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WORLD BANK REFERENCE

Multi-Donor Trust Fund for Justice Sector Support in the Republic of Serbia (Successor of TF071171)
(WORLD BANK REFERENCE 71444) – Multi Donor Fund

TRUST FUNDS FINANCIAL REPORT

Notes:

1. This statement is prepared on the modified cash basis of accounting. Transactions subsequent to this statement date are recorded in the period in which they occur.
2. Investment income is not credited to any trust fund where the daily fund balance is less than USD equivalent \$5,000.
3. Other Direct costs (where applicable) represent all disbursements incurred prior to July 2000.
4. Administrative fees are charged in accordance with the administration agreement(s). Administrative fees are generally charged to the trust fund in the same month in which contributions are received, however for administrative purposes, collection of fees may occur in the month following receipt of the contribution.

PART V - Conclusions and Recommendations for the Project

Based on the lessons learned worldwide in Bank-supported justice initiatives and the implementation experience during the first half of the life of the Project, several recommendations are offered to enhance its effectiveness.

I. Continue the engagement under the MDTF-JSS

It is important to continue to move forward by factoring in that justice initiatives are, by nature, complex, long term and high-risk.

- **Implementation risks are high.**
The MDTF-JSS implementation environment is very complex and risks of implementation obstacles are substantive.
- **Despite the potential risks, the endeavor is worthwhile.**
The focus of the MDTF-JSS on Serbia's justice issues is highly relevant not just in the context of EU accession, but also for the country's overall development.
- **Major actors have reiterated their commitment.**
The new government has expressed its commitment to accelerating EU membership. Also, all donors have underscored the importance of delivering sound technical assistance to support Serbia's EU accession process in relation to justice issues.
World Bank involvement is highly justified in relation to its own mission and has the potential to provide a substantial value-added.

II. The future of the MDTF-JSS is largely going to be determined by the new government

The new government's agenda with respect to both justice sector reform and EU accession will be a key in determining the future role of the MDTF-JSS. There are two main potential scenarios:

- **Favorable scenario.**
The new government might place a high priority to both justice reform and the EU accession process and, as a result, the MDTF-JSS might be regarded as a valuable instrument to support both priorities. In such scenario, the MDTF-JSS could play a central role in supporting the implementation of sector-wide justice reform activities with an EU-accession focus.
- **Less favorable scenario.**
In the eventuality that there is no substantial improvement in the current implementation environment, the MDTF-JSS should then identify more modest windows of opportunity where tangible progresses are more likely to be achieved.

III. Adopt an strategic, problem-solving approach

- **Once the EU joins the MDTF-JSS, there is an opportunity to sharpen the focus on EU-accession and to adopt an overall strategy that is consistent with the new government's level of support.**

It is important to put forward a sound strategy for short-term support fully consistent with the Project's PDOs. This strategy needs to reflect the government's level of support and EU priorities.

In this regard, it is more recommendable to adjust the MDTF-JSS rather than adding EU priority activities to the existing list of outputs programmed under the Project. In view of the limited resources (both finance- and time-wise) as well as the limited technical and institutional capacity within Serbia's justice sector, the ultimate success of the MDTF-JSS depends on the effective identification of strategic priorities that can be adequately addressed within the Project.

IV. Ground MDTF-JSS support on sound sector knowledge and political analysis

- **There is an urgent need for the rapid delivery of analytical work.**
Analytical inputs need to be delivered in an expedient fashion in a manner that can be used in the decision-making process. In view of these constraints, it is proposed to carry out a "Rapid Assessment and Action Plan" (RAAP) to identify priority areas for improvement within Serbia's justice system with the objective of enhancing its overall performance. The RAAP methodology, which is being successfully implemented in Latin America at the sub-national level, can provide a much needed balance between technical soundness and expediency that is required to move forward with the MDTF-JSS in particular and the NJRS in general.
Likewise, it is important that results from the JPEIR are disseminated among key stakeholders. The possibility of applying the similar JPEIR methodology to the new court system should also be taken into consideration, as it would allow a comparison between the "before" and "after" at the aggregate level.

Likewise, the Perception Survey has established a sound methodology and a baseline to measure the perceptions of the various stakeholders on the performance of Serbia's justice sector. It could be interesting to give continuity to this task as a way to track the evolution of perceptions over time. However, this decision should be ultimately be subject of a cost-benefit analysis, since there are other perception surveys available with a similar scope.

- **Explore alternative manners to deliver technical assistance.**

It is important to identify alternative mechanisms for need-based technical assistance that balance methodological soundness with expedience. For example, retainers with consultant firms could be set in place to conduct *ex-ante* impact analysis of proposed legislations, which, although mandated by law, is not always done due to lack of technical resources within the MOJ.

- **Explore alternative ways to promote the findings of analytical work.**

It is also recommendable to find other mechanisms to disseminate preliminary findings from the MDTF-JSS supported analytical work prior to the MOJ's final approval, such as white papers.

- **While technical aspects are a necessary input, they are not sufficient.**

It is important to take into consideration the political economy aspects of the reform when defining both strategic and operational aspects of MDTF-JSS future implementation.

V. There is an urgent need to develop reliable data and effective M&E systems

Adopting an evidence-based, data-driven approach is critical for the effectiveness of the MDFT-JSS, including:

- **Fine-tune or redefine the Project Results Framework.**

It is important to focus on PDO-related outcomes rather than on outputs at the activity level. In this regard, the original Results Framework provides a good starting point. However, it can be improved by identifying a set of quantifiable intermediate outcomes. In addition, it might need to be updated to reflect the strategy to be agreed with the incoming authorities and the EU. For example, it would be positive to involve key stakeholders (e.g., MOJ, EU, the two Councils), in the redefinition of the MDTF-JSS Results Framework and the identification of KPIs as a way to enhance ownership.

- **Monitor progress.**

An M&E system needs to be established as a way to monitor progress and to early identify potential obstacles.

- **Given the limited resources and the magnitude of the Project objectives, it is critical to avoid duplications and coordinate efforts.**

For example, it is necessary to rebuild the Results Framework using indicators and targets that are included in the NJSR Action Plan. Likewise, the MDTF-JSS M&E should build upon that of the NJRS.

- **Promote an evaluation culture.**

There is consensus among key stakeholders within the justice sector as well as the donor community on the need to assess the impact of the reforms in order to identify areas of potential improvement.

VI Coordination and capacity aspects need to be addressed

- **A strong field presence is a necessary but not a sufficient condition.**

The slow performance of the Project at the beginning denotes the importance of ensuring close coordination between the field- and the DC-based teams.

- **The coordination gap between the Bank- and MOJ-executed components needs to be bridged.**

For the MDTF-JSS to make a meaningful contribution, coordination between the two executing entities needs to be improved. The successful experiences in Access to Justice and development of the new NJRS are good illustrations of how effective coordination can be achieved by providing customized technical assistance.

- **It is also important to enhance the effectiveness of the Reform Facilitation Unit (RFU).**

The RFU has the potential to be a valuable asset, as it provides much needed technical resources to the MOJ during a particular demanding period. Enhanced Terms of Reference to ensure that RFU staff focuses on reform-related activities that are aligned to the priorities identified under the MDTF-JSS rather than day-to-day, as well as regular reporting of activities and outcomes to the MDTF-JSS Management Committee could greatly improve its effectiveness and give visibility to its contribution.

- **Long-term capacity building of MOJ staff needs to be a top priority.**

While the RFU can help fill the existing technical gap within the MOJ, the ultimate challenge is to build a critical mass of qualified civil servants within the MOJ. Budgetary restrictions, as well as the lack of a comprehensive HR strategy, are challenges to be addressed.

VII. Governance mechanisms need to be revisited

- **Governance mechanisms envisioned for the Project, in particular the Partners' Forum, have to be either re-activated or re-designed.**

If they are re-activated, it is also important to clarify who is responsible for calling these meetings. If that responsibility relies on the client, a stronger client commitment needs to be ensured. Also, it would be important to include in that body a representation of

prosecutors and judges.

- **The MDTF-JSS has to serve the needs of all key stakeholders, including the High Judicial and State Prosecutor Councils.**
The Bank has to ensure a sustained dialogue not just with the MOJ but with the two Councils as well. In an eventual favorable environment, their status as key partners would be reflected in the institutional arrangements and governance mechanisms. In an eventual less favorable scenario, the Bank should continue its “shuttle diplomacy” role to improve communication between the main justice stakeholders by acting as an intermediary between the parties and finding areas for gradual consensus.

VIII. The approach to be taken by the MDTF-JSS should reflect actual government support

The MDTF-JSS in the eventuality of a favorable scenario

In the eventuality of a favorable scenario for the Project, the MDTF-JSS could play a central role in supporting the implementation of sector-wide justice reform activities with an EU-accession focus.

- **The 2012-2017 NJRS provides an adequate framework for sector-wide MDTF-JSS support**
The NJRS has a sector-wide approach that embeds EU-accession related activities and, as such, is consistent with the approach being suggested by the EU for all sectors. It has adequate ownership on the part of all key stakeholders in the justice sector and is supported by the donors.

It should be noted, however, that as it currently stands, the NJRS 2012-2017 could more adequately be defined as a strategic framework. It could further develop its operationalization, including the preparation of an NJRS Action Plan (comprising a well-defined set of priorities, costing analysis, implementation timetable), a Results Framework (i.e., indicators and targets) and a supporting M&E system, as well as the assignment of implementation responsibilities among the various actors.

- **Implementation arrangements suggested for the 2012-2017NJRS**

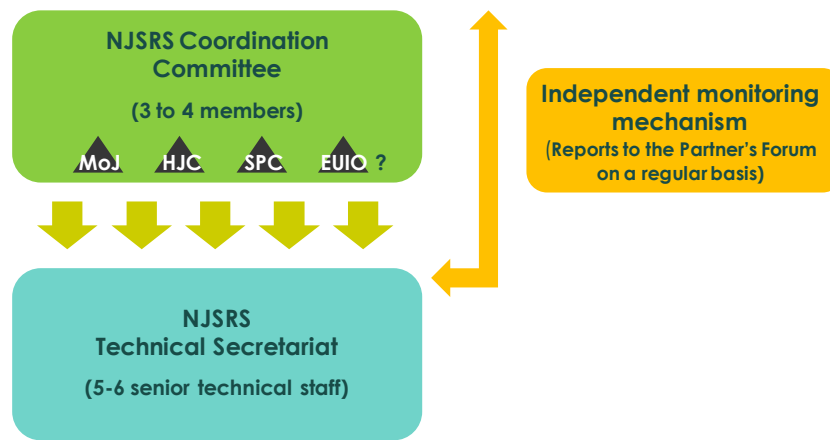
The successful implementation of the NJRS Action Plan, and consequently that of the MDTF-JSS, will ultimately depend to the establishment of effective implementation and monitoring mechanisms. The complex institutional relationship between the MOJ and the two independent Councils requires an approach in which all three entities are equally represented. The implementation arrangements proposed are as follows:

NJRS Coordinating Committee- This coordinating committee would be responsible for overall coordination and oversight of the implementation of the NJRS Action Plan. It would be self-standing (i.e., outside the orbit of the MOJ and the two Councils), and constituted by one representative from each of the key institutions (i.e., the MOJ, the High Judicial Council and the State Prosecutorial Council, and perhaps even the Supreme Court of Cassation and the Republic Prosecutor’s Office). Each institution would nominate a high-ranking public servant and the other two institutions will speak for or against the appointment. The MDTF-JSS Management Committee could act as an arbiter in case that no agreement is reached. It would be desirable to include a fourth member from the EU Integration Office. Also, it could also be considered to include a representative from the MOF to coordinate aspects related to the transfer of budget responsibilities to the Councils

NJRS Technical Secretariat- This technical body would provide technical support to the NJRS Coordinating Committee, being responsible for the technical aspects of implementation. It would consist of five to six full-time senior MOJ staff or consultants, each of them being focused on the implementation of one of the NJRS pillars. They would be responsible, among other things, for establishing and providing technical support to working groups responsible for specific activities, fostering their representativeness and broad participation. In addition, the NJRS would be responsible for preparing the Partners’ Forum meetings.

Independent Monitoring Mechanism -It is recommended that independent monitoring on the progress of the NJRS Action Plan be conducted regularly, reporting results to the Partners’ Forum and, if possible, to the Prime Minister.

. Figure 6. Proposed NJRS implementation arrangements



The MDTF-JSS in the eventuality of a less favorable environment

It is important to ensure results even in a potentially more problematic implementation environment.

As discussed earlier, the current implementation environment is particularly difficult and complex. While a window of opportunity might open with the appointment of a new Justice Minister and the initiation of Serbia's accession process in the coming months, it is also possible that the current conditions remain largely unchanged.

If that is the case, it is important that, despite unfavorable implementation conditions, tangible results are still achieved in order to both avoid reputational damage and pave the road for future reforms. In this regard, it is recommended to identify areas of opportunities that meet the following criteria:

- i) high recipient ownership;
- ii) high implementation capacity; and
- iii) that are largely technical with low political implications.

There appear to be several potential “windows of opportunity” in areas identified as critical by other evaluation studies. More importantly, some of them are already included in the EU's *Project Fiche* and will be supported under the MDTF-JSS once the EU joins as a donor. Some of these “windows” include:

▪ Strengthening of human resources

There is an opportunity to support the expansion of training through the Judicial Academy, which has a demonstrated capacity to provide training throughout the country.

Some of the potential topics may include court administration and management, budget planning and execution, EU law and legal principles, and the new criminal and civil procedure codes.

As pointed out by the lessons learned, it is particularly important to move beyond the traditional focus on the training of justice sector staff, and pay greater attention to the challenge of supporting a cadre of people who have the authority and capability to lead reforms. This may require supporting change management training for those in leadership positions at justice institutions.

Providing technical support to the professional associations of bailiffs and notaries, as well as offering training to its members, could contribute to a more efficient judiciary.

▪ Core public sector management

Core public sector management expertise, like budgeting, financial management, and human resources are critical for improving the performance of any state institution.

Strengthening resource management is particularly important in the case of the newly formed Councils in order to assure that they are going to be capable to manage their resources effectively. For example, budget management is a new area of responsibility where there is currently little institutional expertise. Providing technical assistance to the two councils (particularly the State Prosecutor Council) on budget planning and execution would be a high-impact, well defined area of intervention.

Core public sector management expertise can also be applied to the court system with the objective of reducing backlogs. From the perspective of process reengineering, enhancing the efficiency of the case management is no different than enhancing that of the budget process.

▪ Data-driven M&E systems

As correctly identified at preparation, EU accession negotiations will require having data-driven information, not just to show current judicial performance but to track improvements and monitor potential performance targets.

While more data is now available as a result of the implementation of the CMS, there is still substantial room for improvement in ensuring data quality. Moreover, there is great potential to use these data to enhance the overall performance of the court system.

Likewise, in light of the controversy surrounding the reelection of judges and prosecutors, introducing performance data and meritocratic principles into budgeting and human resources management can help to enhance not just efficiency but also accountability and transparency in the sector.