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Sida Decentralised Evaluation

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# Evaluation of the Project “Improving Judicial Efficiency” (Bosnia and Herzegovina)

Final Report



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**Final Report**  
**September 2015**

**Marijana Trivunovic**  
**Vera Devine**

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The views and interpretations expressed in this report are the authors' and do not necessarily reflect those of the Swedish International Development Cooperation Agency, Sida.

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# Abbreviations and Acronyms

|         |                                                                                                               |
|---------|---------------------------------------------------------------------------------------------------------------|
| BAM     | Bosnian Convertible Marka (BiH national currency)                                                             |
| BC      | Basic Court                                                                                                   |
| BiH     | Bosnia and Herzegovina                                                                                        |
| CMS     | Case Management System                                                                                        |
| Domstol | Judicial Administration of Norway                                                                             |
| EC      | European Commission                                                                                           |
| EU      | European Union                                                                                                |
| EUD     | Delegation of the European Union (also referred to as DEU in project documents)                               |
| EUR     | EURO                                                                                                          |
| FBiH    | Federation of Bosnia and Herzegovina                                                                          |
| HJPC    | High Judicial and Prosecutorial Council                                                                       |
| IPA     | Instrument for Pre-Accession Assistance                                                                       |
| IT      | Information Technology                                                                                        |
| JEP     | Judicial Efficiency Project                                                                                   |
| KM      | Konvertibilna Marka (Convertible Marka – alternative abbreviation for BiH currency)                           |
| KODIFEL | Konverzija u Digitalni Format i Elektronska Obrada (Conversion into Digital Format and Electronic Processing) |
| MC      | Municipal Court                                                                                               |
| RS      | Republika Srpska                                                                                              |
| RTV     | Radio and Television                                                                                          |
| SCJE    | Standing Commission for Judicial Efficiency                                                                   |
| Sida    | Swedish International Development Cooperation Agency                                                          |
| USD     | US Dollar                                                                                                     |

# Preface

This report presents the findings of the evaluation of the “Improving Judicial Efficiency Project”, implemented by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The project is co-funded by Sweden and Norway. The evaluation has been commissioned by the Swedish Embassy in Sarajevo, and has been carried out by Indvelop Sweden. The purpose of the evaluation was to assess the outcomes of the project against its initial objectives, and to guide the Swedish Embassy with regards to a future project in the judicial reform sector.

The team consisted of evaluators Marijana Trivunovic and Vera Devine (Team Leader); Anna Liljelund Hedqvist was project manager for the assignment, and Dr Ian Christoplos conducted quality assurance. The evaluation was conducted between May and September 2015.

# Executive Summary

In May 2015, the Swedish Embassy in Sarajevo/ Bosnia and Herzegovina (BiH) commissioned Indevelop to conduct an evaluation of the Improving Judicial Efficiency Project (JEP). This project is co-financed by Sweden (with approx. 3.8 MEUR) and Norway (approx. 4.5 MEURO), and is implemented by the High Judicial and Prosecutorial Council (HJPC), the state institution overseeing the judiciary and in the lead of judicial reforms in BiH. The project's stated objective is to improve the efficiency of courts in BiH to ensure that users of the judicial system get their cases resolved in a shorter time.

The key objectives of the evaluation are:

- To provide the Swedish Embassy in BiH/Sida with an assessment of the outcome and impact of the Improving Judicial Efficiency Project and
- To inform the ongoing discussions regarding a possible second phase of the project, including what theory of change should underpin such a project, and what objectives and implementation arrangements should be considered.

In terms of the JEP's funding modality, it is a hybrid: it has characteristics of a highly integrated stand-alone project (financial reporting is traced separately by donor), but has also many characteristics of a basket fund. The Terms of Reference (ToR) for the evaluation are, however, structured in a way that treats the Swedish contribution to the JEP as a stand-alone project. This has meant challenges in the way a number of the evaluation questions could be answered.

Because of the fact that the project represents but a small segment of a range of donor efforts in support of judicial reform in BiH underway for over a decade, results achieved can be attributed to Swedish support only to a limited extent. Attribution is further complicated by the fact that project reporting is not structured in a standard results chain that clearly distinguishes inputs (activities) on the one hand, and outputs and outcomes on the other. The reporting almost exclusively focuses on the outcome level (i.e. the performance of courts), making it difficult to track and appraise results and lessons learned at the levels below. Financial reporting is cost, rather than activity-based, limiting the scope for a value-for-money assessment of the JEP. A difference in opinion between the HJPC and the evaluators persists on what the baseline for the evaluation was to be. HJPC convincingly argue that their level of reporting was agreed with the donor, and had remained in principle undisputed to date. The evaluator's task is, however, to provide a comprehensive assessment of the project, which was not possible by looking only at the outcome level. The evaluators have therefore, for the purpose of accountability, extended the original results framework to account

for activities and outputs that were not originally included, but that the project worked on.

The JEP is aligned with relevant national strategies, in particular the Judicial Reform Strategies and the obligations stemming from the Structured Dialogue on Judicial Reform between BiH and the EU. In fact, the project has made a direct contribution to the formulation of these strategies and the Dialogue recommendations. JEP is also aligned with the previous and the current Swedish reform cooperation strategy, and the funding modality as well as the imperative on donor coordination and orientation toward objectives resulting from BiH's EU accession ambitions are reflected by the project.

Gender and non-discrimination, Swedish cross-cutting strategic priorities, have not been taken forward by the project.

The choice of HJPC as the implementing agency for the JEP has been apt—it is one of the very few state institutions accepted by both entities. Strengthening the institution, and through the project, the legitimacy of the judiciary, is key in strengthening the overall legitimacy of the state.

Overall, the evaluation finds that the JEP has made a contribution to increasing judicial efficiency in BiH. During the consecutive years covered by the project (2011 to date), there has been a reduction in the backlog of non-utility civil cases in the courts of first instance, and in accordance with the indicators set by the project. HJPC has, with JEP-funding, instituted backlog reduction plans against which individual judges and court performance is being monitored. These plans and monitoring mechanisms have also made the courts more accountable. At the time of the evaluation, the ratio of clearing of old cases (pre-2011) to incoming cases suggested that courts were able to resolve a greater number of cases than there were incoming cases, albeit it is too early to establish this as a trend that will continue in the future. Between spring 2013 and autumn 2014, JEP had made available 160 temporary staff to the project's target courts in Mostar, Tuzla, Sarajevo, Modriča, Zvornik, and Prijedor. A thorough analysis of the impact of this boost in human resources and the increase in the performance of the courts throughout that period has not been undertaken, however, court presidents have identified this support as the most significant benefit of the JEP. However, it is clear that a temporary injection of additional staff does not provide long-term solutions to the chronically underfunded judiciary system in BiH.

The project has also made progress on increasing the number of court settlements, and has successfully lobbied for legislation to ease the Federation court system of inheritance cases by transferring those to notaries.

Results have been mixed on other parts of the JEP. Results have been disappointing on the promotion of out-of-court mediation, as well as on conducting outreach activities to court users and where the quality of the activities was somewhat poor. Signifi-

cant resources are being spent on servicing SOKOP, a software system which is intended to aid the management of utility (TV; electricity; water etc.) cases (accounting for the biggest backlog in the overall court system), provided they are used by both the courts and the utility providers. Uptake has been very uneven—while SOKOP is being used across Republika Srpska, it is used in only one location in the Federation (Zenica). The prospect of this changing in the near future are modest. In the medium term, a more systemic solution to the utility cases, as well as to the enforcement process in general, will have to be found, and although this is acknowledged by many—including the HJPC which has through JEP made a number of proposals for alternative set-ups outside the courts system—the prospects of such a solution materialising are slim at the time of the evaluation, and raising questions as to how long donors should be contributing to a system that offers no long-term solution.

## Recommendations

### To HJPC

- The evaluators recommend that the work that has started in the archives in Mostar, Zvornik, and possibly Sarajevo be finalised. This should be possible with relatively modest funds and would provide closure on these activities.
- With regards to out-of-court mediation, future efforts in this area might benefit from a more in-depth understanding of the motivations and interests of potential users of mediation services, and tailoring the project activities accordingly.
- With regards to management training, a possible way forward may be to consider the feasibility of integrating mandatory seminars on the topic within the curriculum of the Centre(s) for Judicial and Prosecutorial Training (*Centar za edukaciju sudija i tužilaca*), with a view towards the sustainability of the efforts.
- HJPC should reach out to relevant NGOs/civil society organisations that deal with free legal aid to harness their insight into perceived inefficiencies in the court system. This should help HJPC to design meaningful activities that improve the service orientation of the judiciary, within the ongoing and for a future project. Partnership with such organisations could also prove useful in translating the gains made in the past years on judicial efficiency to a wider public. Appropriate assistance on conceptualising and implementing activities would be essential, and will need to be budgeted for.
- Risk analysis for a future project should be improved and should be reflective of the opportunities and obstacles posed by the political situation in the country.
- Moving forward, it would be advisable to further strengthen HJPC's analytical capacity to move to the next level of data analysis to better understand the factors that influence judicial efficiency and court performance, or the effectiveness and efficiency of specific inputs/interventions, and to adjust efforts accordingly.

- In a future project, the costing for specific budget items could be improved. For example, temporary staff allocated to courts might be willing to provide services for a lower reimbursement than in the JEP.
- HJPC should start working on conceptualising meaningful outputs that establish a link to achieving some of the key Swedish cooperation priorities, in particular with regard to gender and non-discrimination.

#### To the Swedish Embassy

- Sweden should consider funding another project with the HJPC, which has proven to be a highly competent implementer, and whose mandate provides it with the authority and legitimacy to work on judicial efficiency. A future project with the HJPC would also be a contribution to strengthening the legitimacy of the state of BiH.
- In terms of the funding modality, a future project should provide greater clarity as to whether it is a stand-alone project, or a basket fund. As a result, there would be clearer expectations and obligations in terms of what HJPC needs to report and in which form.
- A future project must have a results framework that is more reflective of best practice, in particular with regards to a detailed representation of the results chain leading to the outcome level. This is important for accountability and for learning purposes.
- A future project should be more consistently aligned with Swedish cooperation priorities, and the Swedish Embassy should follow up on HJPC's pursuing these (this concerns gender and non-discrimination).
- Given the ring-fenced mandate of the HJPC and the resulting limits on what the institution can achieve on bringing about some of the systemic changes that are needed to increase judicial efficiency and judicial reform, Sweden will need to engage in an even more vocal dialogue at the political level with the BiH authorities as well as through its EU membership. Sweden is one of the few remaining donors in the country, giving it additional weight and significance.

# 1 Introduction

## 1.1 THE ASSIGNMENT

In May 2015, the Swedish Embassy in Sarajevo/BiH commissioned Indvelop AB to conduct an evaluation of the Improving Judicial Efficiency Project (JEP). This project is implemented by the High Judicial and Prosecutorial Council (HJPC), the state institution overseeing the judiciary, and in the lead of judicial reforms in Bosnia and Herzegovina (BiH). The key objectives of the evaluation, according to the Terms of Reference (see Annex 1), are:

- To provide the Swedish Embassy in BiH/Sida with an assessment of the outcome and impact of the Improving Judicial Efficiency Project and
- To inform the ongoing discussions regarding a possible second phase of the project, including what theory of change should underpin such a project, and what objectives and implementation arrangements should be considered.

JEP is co-financed by Sweden and Norway in a set-up that has both characteristics of a highly integrated stand-alone project on the one hand, and a basket fund between the two donors, on the other hand. The ToR for the JEP (see Annex 1) have structured this assignment in a way that treats the project as a stand-alone effort rather than a basket fund. It is asking for a discussion of specifically the Swedish contribution, including the efficient use of Swedish funds, and the Swedish value-added of complementing a multi-donor funded reform programme through the HJPC (see also discussion below on “Limitations”).

Judicial reform in BiH is receiving a considerable amount of international donor support. The ToR specify that the focus of the evaluation is, however, ring-fenced to the Swedish/Norwegian contribution, i.e. that it should not be a discussion on the overall level of reform in the sector.

## 1.2 METHODOLOGY

The work of the evaluators consisted of desk review; in-country data collection; and triangulation and analysis of information leading to the drafting of the draft final evaluation report, as follows:

The evaluators conducted a desk review of selected project documents during the inception phase (May 2015) and, to some extent, during the in-country data collection work, which took place from 15 to 19 June 2015. The amount of documents made available by the HJPC was considerable. Given the time and resource limits of this evaluation, the evaluators were not in a position to scrutinise all of them in detail. The evaluators conducted over 25 face-to-face interviews with stakeholders in BiH (see

Annex 4), including HJPC JEP staff; representatives of the target courts; the Swedish Embassy and Sida (including a Skype interview with the former project manager at the Swedish Embassy); and third party stakeholders (other donors/international organisations; think tanks; and relevant NGOs). A small number of interviews was conducted by telephone.

The HJPC assisted the evaluators during the planning and realisation of the field work in BiH, through the provision of transport and staff accompanying the evaluators on field trips (HJPC staff were, however, not present in any of the meetings the evaluators had with stakeholders); this assistance is gratefully acknowledged. During the report-writing stage, the evaluators have been in regular contact with the HJPC JEP team, in particular with requests for further data or clarification, which were provided swiftly.

Given the complexity of the JEP and the challenges, for evaluation purposes, posed by the Project Document (see below), the focus of the inception phase was on re-constructing a results framework that would fully embrace the range of outputs and outcomes that the project worked on, and which the evaluators considered was more extensive than was reflected in the Project's own framework. This alternative results framework was presented to the Embassy and to HJPC as the baseline against which the evaluators proposed to conduct their in-country data collection work. HJPC provided detailed comments on the inception report, and in particular to the proposed alternative results framework. It was clear from these comments that there were differences in opinion between the HJPC and the evaluators about the legitimacy of the alternative results framework as the evaluation baseline, considering that the Swedish part of the JEP has been implemented for three years and where the initial framework was not challenged by the donor. The evaluators find that at the end of the evaluation process, the difference in opinion persists. However, it is worth pointing out that the underpinning rationale for re-constructing the JEP's results framework was to have a baseline that would allow the evaluators to identify, discuss, and appraise the entire spectrum of activities carried out by the project. This was something that was not possible to do by using the Project's framework alone, but which was necessary to ensure full accountability for the funds spent.

The Inception Report including HJPC's comments is provided in Annex 2 to this evaluation report—in order to account for HJPC's views, which could not be incorporated into the Inception Report, but also to provide a detailed picture of why and how the initial framework was reconstructed by the evaluators.

Responding to restricted availability of Swedish Embassy staff, a de-briefing took place during (rather than at the end of) the in-country data collection phase, on 14 June 2015. While HJPC staff attended, the evaluators conducted an additional de-briefing, via Skype, with the HJPC on 29 June 2015.

The draft final report was submitted to the Swedish Embassy on 8 July 2015. The Embassy circulated the draft report to relevant stakeholders (which reflects a change from the ToR, where the responsibility to do so was with Indevelop) for comments by 11 September 2015. Comments were received from HJPC, and they have been accounted for in a response matrix. The final evaluation report was submitted to the Swedish Embassy in Sarajevo on 25 September 2015.

### 1.3 LIMITATIONS AND CHALLENGES

The evaluators faced a considerable number of limitations and challenges during this evaluation.

First, the JEP is a hybrid between a stand-alone project and a basket fund. This is important in evaluation terms, as a number of questions posed in the ToR would not typically be asked during the evaluation of basket funds. This concerns, for example, those questions that specifically seek to trace and assess the Swedish contribution, including value-added and efficiency of use of Swedish resources. This suggests that the Swedish Embassy looks at the JEP rather as a stand-alone project, and the evaluators have approached the evaluation as they would a project evaluation. Considerable unease exists, however, with such an approach, as significant parts of the assessment throughout the report would change if one were to discuss JEP solely as a basket fund.

Second, as will be discussed in detail in the below section setting out the parameters of the project, re-constructing a results framework that could serve as the agreed baseline for the evaluation was a key challenge.

JEP is the continuation of a decade of donor-funded projects in the area of judicial reform in BiH, including projects implemented by HJPC. JEP has many features of a basket fund of Swedish and Norwegian funds, and JEP's design precedes the Swedish contribution—Sweden “joined” an ongoing project, many of the cornerstones of which had already been set by Norway earlier. While Sweden did have influence on a number of core issues, such as the way in which the indicators of the project were set, it remains difficult, for third-party evaluators, to fully disentangle some of the issues conclusively (and were JEP officially a basket fund project, a number of these issues would not arise). A key concern here is the use, on the one hand, of highly sophisticated quantitative indicators at the level of the two general outcomes set in the initial Project Document. On the other hand, however, as will be shown below, the JEP worked in a considerably greater number of outcome areas, for which neither quantitative nor qualitative indicators were set, but which are not reflected in the results framework used by the project. For accountability purposes, these outcomes have, however, to be examined during an evaluation. Both donors—Norway and Sweden—were in agreement with the JEP being accountable for and reporting only on the two outcomes according to the original results framework, and this is leading to a situation where the evaluators are probing issues that the JEP was never challenged on before by the donors.

Related, while a great deal of data exist in relation to judicial performance—and the project team has provided additional data and analysis at the request of the evaluators—the complexity of judicial performance precludes simple/simplistic analysis. As will be noted in the report, to truly understand performance trends and the relationship between inputs and outputs and outcomes, a much more sophisticated examination of data is needed.

Third, financial aspects of the JEP could also not be conclusively ascertained in response to one of the questions in the ToR (“Assess whether the Swedish resources have been utilised efficiently.”). The evaluators have tried to determine the amount of Swedish funds that were spent on specific JEP activities. However, HJPC financial management does not hold a breakdown of expenditure in a format that would allow such an assessment. It is clear that the HJPC Finance Department could have kept records of the Swedish monies in this way—but they were never asked to do so, and the evaluators argue that the effort potentially involved for HJPC in retroactively establishing the Swedish-money-per-activity flow is not justified at this stage. However, a future project should consider setting up such a system early on, and through which the specific Swedish contribution could be tracked. This would help, *inter alia*, to come to more substantiated conclusions on efficiency. In order to remove any possible ambiguity it is worth highlighting that the HJPC Finance department would not have a problem tracking the money if the donor asked them to do so. As mentioned previously, if JEP were explicitly a basket fund, these would not be issues as such as basket funds don’t earmark contributions in the same way as stand-alone projects.

Overall, while the two donors joining forces seems to have provided considerable benefits (as will be discussed below) in particular for HJPC, if one looked at JEP as a stand-alone project one would stand to conclude that this has contributed to uncertainties in terms of accountability. If JEP is considered a basket fund, then again, this is less of a concern.

Fourth, there is an unresolved issue with regards to what the HJPC considers to have been their obligations to tackle the issue of vulnerable groups and gender. The March 2011 Embassy-internal “Appraisal of Intervention” suggests that a couple of specific outputs (an “access to justice analysis” that includes a gender dimension; and “concrete evidence on case management as it relates to vulnerable groups, including Roma and women”) would be produced by the project, and these outputs are reflected in the Project Document. However, the project did not work on these outputs, and HJPC holds that they were *not* to be dealt with in the scope of the project.<sup>1</sup> It has not been

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<sup>1</sup> See Assessment of Intervention, 7 March 2012. Document supplied by the Swedish Embassy.

possible for the evaluators to establish at what point and why these outputs were dropped, nor whether there was a formal agreement on this.

Fifth, and depending again on whether JEP is considered a stand-alone project or a basket fund, attribution is a key challenge. The project was set up in such a way that staff salaries “rolled over” from one donor to the other in the course of the project. This had already been flagged in the inception report, and where it was agreed that the evaluation would look at the results of the JEP overall, i.e. including the Norwegian contribution, despite the evaluation being commissioned solely by the Swedish Embassy. The evaluators tried to get in touch with stakeholders from the Norwegian side of the project, albeit without success. Attribution is difficult also because a number of activities that are part of JEP have started considerably earlier than the ongoing project; this concerns in particular SOKOP, which was developed prior to 2010, and where JEP funds the salaries of seven staff (accounting for 25% of the overall staff salaries funded by the project).

The evaluators encountered a number of other limitations. Among these is the loss of institutional memory due to a turnover of staff, not only at the Swedish Embassy (where the evaluators were able to talk to the current and the previous project manager), but also among other key stakeholders, in particular the Delegation of the European Union. Also, the beginning of the holiday season in BiH made itself felt in the number of stakeholders that were approached but were not available to meet the evaluators during their in-country data collection.

## 1.4 BACKGROUND OF JUSTICE SECTOR REFORM IN BIH

The overall objective of the project “Improving Judicial Efficiency in Bosnia and Herzegovina” (JEP) is to ensure that users of the judicial system in BiH will have their cases resolved in a shorter time. This objective encompasses a much wider set of issues. Judicial inefficiency is more than an inconvenience for citizens and an obstacle for doing business. It can also constitute a breach of human rights derived from Article 6 of the European Convention on Human Rights, which specifies the right of individuals to a fair trial within a reasonable time. This right is also reflected in the Constitution of BiH,<sup>2</sup> and the constitutional courts in the countries have handed down several decisions in recent years entitling individuals to compensation from the State as a result of slow processing of their cases in court.

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<sup>2</sup> ECHR is implemented directly in BiH according to the Constitution article II, paragraph 2 (Project Outline p. 7).

The Improving Judicial Efficiency 2012-2016 Project Outline further notes that the challenge of slow processing judicial cases is more acute in countries in transition from socialism to a market economy and from a totalitarian system to democracy. Uncertainty created by these multiple transitions gives rise to additional legal conflicts, and transition states tend to experience a greater inflow of court cases (such as a considerable number of employment/labour-related cases, as well as property cases) than consolidated market democracies. The challenge is even more complex in post-conflict settings, where there are also numerous complicated civil and criminal cases arising from the conflict. All the above challenges apply for Bosnia and Herzegovina in particular.

#### *Judicial inefficiency and case backlog*

According to the Improving Judicial Efficiency 2012–2016 Project Outline, as of 31 December 2010, the total number of unresolved cases in BiH was 2,036,124.<sup>3</sup> Of these, approximately 1.5 million were utilities-related cases (non-payment for water, garbage collection and heating) and unpaid radio-television (RTV) subscriptions. The backlog of cases has been an ongoing topic in BiH’s negotiations on accession to the European Union. In its most recent, 2014 Progress Report, the EU states that “Overall, there was little progress in the area of judicial system reform.[...] Measures to reduce the backlog of cases have successfully started, but the backlog remains high, with a large number of unpaid utility bills cases that need to be addressed with structural solutions as a matter of urgency.”<sup>4</sup> The Report also points out that despite some progress on judicial reform, “[...] sustainability still needs to be ensured with proper planning and relevant funding from competent domestic authorities.”<sup>5</sup>

The issue of judicial efficiency has also been an ongoing concern of the Structured Dialogue on Judicial Reform between EU and BiH, of which the High Judicial and Prosecutorial Council (HJPC)—the state institution in the lead for judicial reforms in BiH and the implementing agency of the Project—is a member:

*“...the importance of tackling in effective and timely manner the backlog of cases. In this regards, specific legislative measures to address utility cases shall be finalised as soon as possible and be implemented systematically, prioritizing the most affected courts throughout the country. Additional measures should also be consid-*

<sup>3</sup> The estimated population of Bosnia Herzegovina as of 30.06.2013 is 3,831,555 according to the national Agency for Statistics, <http://www.bhas.ba>.

<sup>4</sup> See 2014 EU Progress Report on BiH, p. 20 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-bosnia-and-herzegovina-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf)

<sup>5</sup> Ibid.

*ered to unload courts from cases that can be transferred to other institutions (e.g. notaries). ”*

Indicating the importance of solving the problem of inefficiency and backlogs, this issue was again addressed in the second set of recommendations of the Structured Dialogue. The following recommendations were issued:

*“On the backlog of cases, the European Commission:*

- *Encourages the High Judicial and Prosecutorial Council of BiH (HJPC) to continue its initiatives to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernisation of buildings.*
- *Recommends that a set of measures be put in place to decrease the huge influx of cases of unpaid utility bills, such as, removing the processing of utility cases from courts, transferring the non-judicial part of their enforcement to private or public enforcement agencies, and transferring non-contested inheritance cases to notaries.*
- *Recommends that a plan for the introduction of a functional system for in-court and out-of-court mediation throughout BiH be prepared on the basis of the preliminary assessment conducted by the HJPC.”*

The HJPC reports having contributed to the elaboration of the above recommendations, and that this contribution had been informed by their work on the implementation of the JEP.

National strategies reflect similar concerns. The BiH Justice Sector Reform Strategy<sup>6</sup> defines a number of key objectives for the justice sector relating to efficiency, effectiveness, alignment with EU standards, accountability, and to ensure the rule of law.

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<sup>6</sup> The strategy was created through a joint effort between the ministries of justice of the State of BiH, the entities, and cantons, as well as Brčko District Judicial Commission and the HJPC. It is the result of a highly participatory and consultative process that encompassed key justice sector institutions of Bosnia Herzegovina, including representatives of professional associations of judges and prosecutors, bar associations, association of mediators and NGOs. Its aim is to provide a strategic framework for addressing key issues within the justice sector over a five year timeframe (2008 to 2012). A new Strategy for 2014 to 2018 is still in its draft phase, but, according to the HJPC (which significantly contributed to the drafting of the strategic objectives), echoes similar issues as the previous Strategy.

Consequently, the HJPC Strategy also aims to achieve increased efficiency of courts and prosecutors' offices, with backlog reduction set as the first strategic objective.<sup>7</sup>

## 1.5 THE JUDICIAL EFFICIENCY PROJECT

### 1.5.1 Financial Envelope

The Judicial Efficiency Project has been running since 1 September 2011, and was initially solely funded by the Government of Norway. Norway and Sweden reached a co-financing agreement in 2012, and Sweden participates in the project since November 2012. Current Swedish funding is expected to end in June 2016. **Sweden's financial contribution to the JEP is approximately 3.8 MEUR**, while Norway was contributing, from 1 September 2011 to 31 May 2015, approximately 4.5 MEUR (of which 3 MEUR were for infrastructure investments).

From the Swedish budget, 1.186 MEUR<sup>8</sup> of the funding goes to financing staff to work on the delivery of the project objectives (20+). As was discussed in the above section on "Limitations", attribution is a key challenge this evaluation faced. This includes the gaining of full clarity on the financial allocations to staff working on the project as well as on another, related IPA-funded project.<sup>9</sup> The evaluators understand that staff was initially funded by the Norwegian contribution, as well as in part by IPA for those salaries that concerned specifically the IPA project. Additional staff was hired as the Swedish contribution was received, and in order to cover staff that work on the extended activities that were financed by Sweden. Two staff (the Deputy Head and the Head of Project) who were initially paid from EU IPA funds have, since November 2013 and February 2014, respectively, been funded through the Swedish contribution. From 1 June 2015 onwards, the Swedish contribution to the project also pays for the staff that was previously funded by Norway. 1.484 MEUR were budgeted for the procurement of goods and services. This budget position covers the payment of salaries of temporary staff that had been deployed to the JEP's target courts in Sarajevo, Tuzla, Mostar, Modriča, Zvornik, and Prijedor between spring 2013 and autumn 2014 and which during that time counted some 160 staff (law school graduates who had not passed the bar; court couriers; archive staff).

The remainder of the funds under this position went to purchase IT equipment for the target courts. The remaining funds, approximately 1.2 MEUR, have been allocated to infrastructure works and operational costs, whereby infrastructure works mainly re-

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<sup>7</sup> Project Outline, p. 8.

<sup>8</sup> Data derived from the August 2014 Financial Report from HJPC to Sida

<sup>9</sup> This is in no way to imply that there have been irregularities of any sort.

late to the technical specifications needed to carry out bigger works that have been or will be funded by the Norwegian and IPA contributions, and thus complement the Norwegian and EU contributions in this aspect.

### 1.5.2 JEP Objectives; Intervention Logic; and Re-constructed Results Framework

The **project's stated objective** is to improve the efficiency of courts in Bosnia and Herzegovina (BiH) to ensure that users of the judicial system get their cases resolved in a shorter time.

The issue of inefficiency is seen as a fundamental deficiency in the functioning of the judicial system overall, which impairs court system users in having legal conflicts settled so that they can carry on with their regular life and business (i.e. in realising their human rights), and which negatively impacts society as a whole by undermining the development of a functional economy to create jobs and prosperity (i.e. in state-building objectives). An efficient judiciary is also a fundamental requirement for accession to the European Union (the EU integration objectives). The evaluators interpret these stated factors as the **impact-level project objectives**.

The existence and continued accumulation of a considerable backlog of cases is identified by the JEP as the main challenge in improving judicial efficiency, and the project's main interventions focus on that issue. The Improving Judicial Efficiency 2012–2016 Project Outline (which is the key project document) highlights in particular the immense volume of cases relating to utility (electricity, water, sewage) payments and radio-television (RTV) subscriptions, which, in the baseline study conducted in 2011, constituted 75% of the overall backlog of over 2 million unresolved cases.<sup>10</sup> **Addressing the backlog of utilities-related cases was therefore identified as a main specific objective (outcome)**. In addition to systemic solutions that address the utility/RTV cases overall, the project also defines a special target with the Municipal Court of Sarajevo, where approximately half of the volume of the utility/RTV backlog for the entire country is concentrated, and where these cases constitute 94% of the court's entire backlog.

**Table 1. Statistics concerning unresolved utility cases as of end 2011**

| Unsolved utility cases in BiH - 31/12/2011 |      |                          |
|--------------------------------------------|------|--------------------------|
| 778.761                                    | 49%  | Sarajevo Municipal Court |
| 804.592                                    | 51%  | Other courts             |
| 1.583.353                                  | 100% | Total                    |

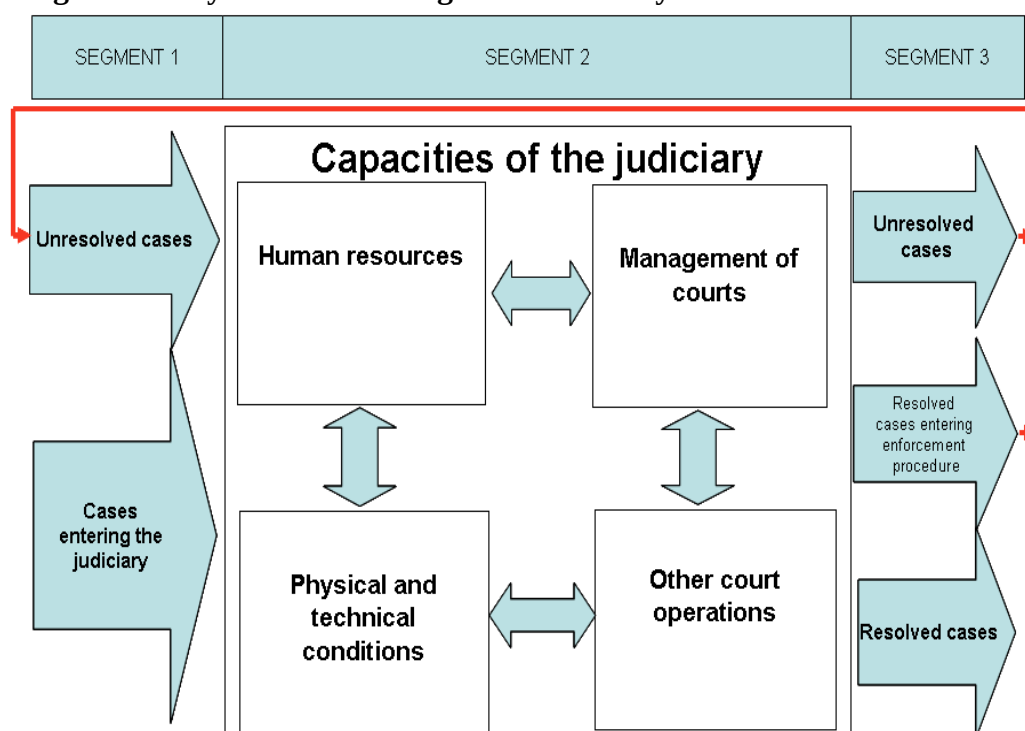
<sup>10</sup> Improving Judicial Efficiency 2012-2016 Project Outline p. 12. The figures date from 31 December 2010, which was the last date that accurate statistical data was available for the preparation of the Project Proposal.

| Unsolved cases in Sarajevo Municipal Court - 31/12/2011 |      |               |
|---------------------------------------------------------|------|---------------|
| 51.515                                                  | 6%   | Other cases   |
| 778.761                                                 | 94%  | Utility cases |
| 830.276                                                 | 100% | Total         |

Source: Improving Judicial Efficiency 2012-2016 Project Outline p. 47.

The project further identified **factors that affect court efficiency and effectiveness overall, beyond the utilities cases**. The logic is represented in the following diagram defined in the Justice Sector Reform Strategy of BiH, reflecting the different stages in the logical flow of cases through the courts.<sup>11</sup>

**Diagram 1: Key factors affecting court efficiency and effectiveness**



Source: Improving Judicial Efficiency 2012-2016 Project Outline p. 29.

The **first segment** is the caseload, which comprises both the existing backlog of unresolved cases requiring further consideration by the court and the incoming new cases entering the court for the first time.

The **second segment** involves the capacities of the courts to handle these incoming cases, and where there is a particular emphasis on the methodology that courts use to

<sup>11</sup> Project Outline, p. 29.

resolve cases<sup>12</sup>, which consist of four main components: human resources, management of courts, physical and technical conditions, and other court operations. **All of the core activities of the project fall under this second segment of work.**

The **third segment** relates outputs of the judicial process, consisting of either fully resolved cases or cases re-entering the system. The latter include unresolved cases (which effectively stay within the system and contribute to the backlog), and cases that have been resolved but require further action in connection with enforcement of judicial decisions that have not been complied with. Both are represented as re-entering the system at segment 1.

JEP aims to affect change in all three segments in order to achieve a reduction in the backlog of non-utilities cases, which is also defined as a main project objective (outcome). HJPC as the implementing agency of the JEP has pointed out on various occasions during the evaluation process that due to the institution's mandate, it only has direct influence on segment 2. While the evaluators agree that in particular for segments 1 and 3, there are a number of external factors that impact the reform potential, there is still a need to measure the results from activities pursued by the project under these segments.

The project **focuses on the ordinary first instance courts** because they account for the vast majority of the problem. In addition to systemic changes that are to be applied across the judicial system, the project also defines two special targets for more sustained support in applying the envisioned systemic reforms. These are the Municipal Courts in Mostar and Tuzla, which have some of the highest backlogs in the country, and where focused operational support is complemented by the facilities' refurbishment.

Courts in Modriča, Zvornik and Prijedor were identified as experiencing similar acute challenges and were during JEP implemented earmarked for similar support. The project aims to apply the lessons learned from these interventions to other courts, pending available time and resources.

The overall project logic is defined (explicitly and/or implicitly) in the following manner:

### **Overall project goal (impact)**

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<sup>12</sup> The emphasis on the methodological approach to resolving cases is informed by considerations such as the need to avoid only working on new cases that would then have an impact on the age structure of the backlog, or the efficiencies that could be created by categorising similar cases and then enabling courts to resolve more cases.

- Development of a functional economy to create jobs and prosperity
- Accession to the European Union
- Citizens' improved ability to realise their human rights (the right to a fair trial within a reasonable time)

**Overall objective (outcome):**

Improved efficiency of courts in Bosnia and Herzegovina (BiH).

**Outcomes and outputs:**

*Outcome 1. Improved efficiency of non-utility cases in all first instance courts in BiH through increased capacities of the HJPC to manage the judiciary more efficiently, including monitoring of the work of the courts*

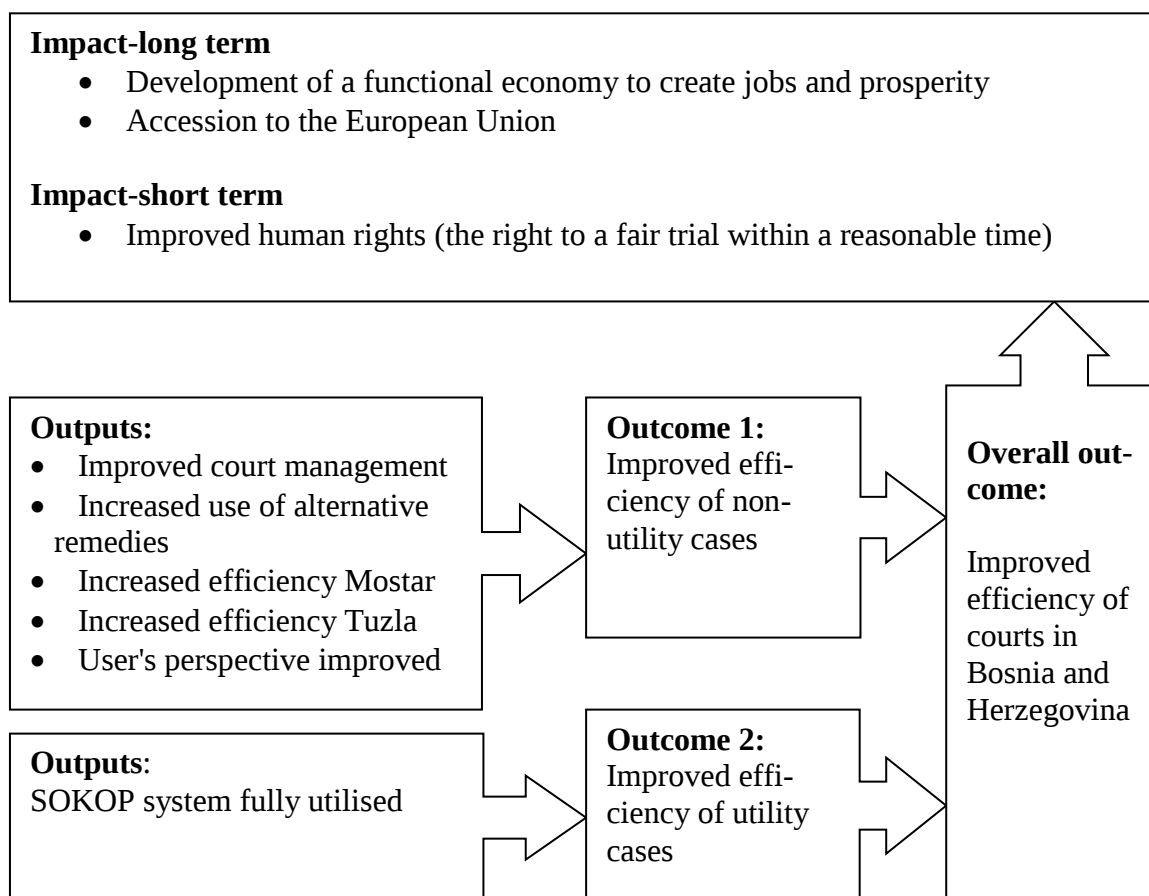
Outputs:

- Improved management of courts
- Increased use of court settlement and out-of-court mediation (alternative remedies)
- Efficiency of Municipal Court Mostar increased
- Efficiency of Municipal Court Tuzla increased
- User's perspective [improved]

*Outcome 2. Improved efficiency of utility and RTV cases in courts in BiH*

Outputs:

- SOKOP system [a tailor-made system for the electronic processing of large batches of utility and RTV cases] fully utilised

**Diagram 2: Project results framework as per JEP Project Document**

For the most part, this framework is logical and internally consistent. The evaluators find that the emphasis on backlog figures as performance indicators is commendable, as it is the ultimate functioning of the courts due to the project investments that are of primary interest.

Project reporting focuses on the outcome level, with insufficient detail to inputs/outputs for a more extensive analysis at those levels. In fact, there appears to be some confusion between outputs and outcomes in the project results framework indicators: outputs are, by definition, linked to inputs; outcomes should be a reflection of performance that includes other possible influences beyond the project inputs— this is precisely what renders attribution more difficult as one moves up the results chain (i.e. from outputs to outcomes to impact). Considered from this perspective, a number of the defined “outputs” are actually lower-level outcomes. This observation would apply to outputs “improved court management” and “increased efficiency Mostar/Tuzla”, where a number of different project inputs (additional staff, some material support, improved management practices, etc.) all contribute to improved performance that is being tracked. While the evaluators commend that there is a focus on the “big picture” (something that is too often missing), valuable lessons on how activities and outputs have contributed to outcomes get lost with this approach.

An additional minor deficiency of the results framework relates to the defined output “users perspective”. First, the output is not defined as an objective: it is not clearly stated whether the aim is to track, analyse “users’ perspective” or perhaps improve users’ perceptions of the judiciary. Second and related, no indicators were defined for this output until two years into project implementation. The ambiguity makes it impossible to ascertain from the results framework alone whether this component is intended as an output (e.g. consisting of measures to capture the users’ perspective) or an outcome (i.e. users perceptions of the judiciary should be positively influenced by improved efficiency). As will be discussed in more detail later, the component attempted to address both.

## 2 Findings

### 2.1 RELEVANCE

The project is fully aligned with both (2008-2012 and the draft 2014-2018) BiH Justice Sector Reform Strategies, and which reflect priorities stemming from BiH's EU accession process. The HJPC was involved in the drafting of the previous and draft Justice Sector Reform Strategies, as well as the EU-BiH Structured Dialogue on Justice Sector Reform, and the project specifically tackles areas that were identified in these policies.

With regards to alignment with the Swedish strategic priorities for cooperation with BiH, the JEP is relevant for both the previous (2011 to 2014) country strategy<sup>13</sup> and the current Results Strategy for Sweden's Reform Cooperation with Eastern Europe, the Western Balkans and Turkey for the period of 2014-2020.<sup>14</sup> With regards to the country strategy, the JEP falls under the "Democracy, human rights and gender equality" priority, and where the objective was to contribute to "[a] public administration at central and local level with an improved ability to deliver on the requirements of EU integration and on citizen rights as well as the emergence of a more pluralistic society containing strong democratic actors". The strategy highlighted that Swedish assistance would be specifically aligned with the national Justice Sector Reform Strategy, and that assistance would be provided in coordination with European Union efforts and efforts of other donors.

The choice of the HJPC as the implementing partner is highly relevant. HJPC is one of the few state institutions recognised by both entities. Enabling HJPC to implement much needed reforms contributes to its strengthening as an institution; judicial efficiency will also contribute to an increase in the legitimacy of the judicial system, thus also strengthening the legitimacy of the state—and which has to be considered one of the central issues in BiH today.

The Swedish cooperation strategy also specifically highlighted that support would increasingly be using national institutions and systems to implement such assistance, thereby laying the ground for the basket fund modality chosen by the project. The

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<sup>13</sup>

[http://www.swedenabroad.com/ImageVaultFiles/id\\_7153/cf\\_347/Strategy\\_for\\_development\\_cooperation\\_with\\_Bosnia\\_a.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_7153/cf_347/Strategy_for_development_cooperation_with_Bosnia_a.PDF)

<sup>14</sup>

[http://www.swedenabroad.com/ImageVaultFiles/id\\_21032/cf\\_347/Results\\_strategy\\_for\\_SWE\\_reform\\_cooperation\\_in\\_UKR.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_21032/cf_347/Results_strategy_for_SWE_reform_cooperation_in_UKR.PDF)

evaluators find that the choice of HJPC as the implementing partner for this project is apt, and in fact, without alternatives. HJPC is the *only* state institution that is able to exercise controls over courts, including the use of disciplinary measures against judges, for example if they fail to complete their workplans.

The 2011-2014 Swedish Strategy contained a number of cross-cutting issues, including gender equality, corruption, and the environment. As discussed in the “Limitations” section above, a number of discrepancies exist with regards to the JEP’s taking these issues forward. The least problematic of the cross-cutting areas is environment – the Project Document provided a convincing analysis on how the project might contribute to environmental outcomes through the reduction in the use of paper through introduction of digitalisation of cases.<sup>15</sup> Eventually, however, digitalisation largely remains an ambition yet to be fully pursued. Further, the infrastructure work to which the Swedish funds contributed were clearly carried out with energy efficiency considerations being one of the priorities (double-glazed windows in court buildings; cavity wall insulation).

With regards to corruption, the evaluators can identify clear relevance of the project to reducing corruption by increasing accountability and transparency in court management processes and systems (even though HJPC itself does not necessarily identify a link between the project activities and how they might contribute to a reduction in corruption).

With regards to gender and non-discrimination, this is an area that remains unresolved. While the Embassy’s internal project assessment<sup>16</sup> and the Project Document suggested that gender and non-discrimination would be dealt with, HJPC maintains that this was not part of their brief, despite provisions in the Project Document containing some specific ideas that could have been taken forward, such as the systematic collection of gender and ethnicity data through using already existing, however currently not used compulsory, functions of the CMS.<sup>17</sup> The current co-operation strate-

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<sup>15</sup> There is, of course, an environmental dimension to the issue of utility cases by proxy, i.e. the fact that stricter enforcement of utility bill payment will eventually lead to less usage of electricity, gas, and water. While this should be a consideration for Sweden, it has not been a stated outcome of this project and in any case could not have been, given that this is outside of the HJPC’s mandate and remit.

<sup>16</sup> “A user perspective has been incorporated to ensure that the perspective of all users, including those that are more vulnerable, are recognized. Discrimination within the judiciary is not very well documented and it is expected that this project will contribute to a better understanding of the situation by providing concrete evidence on case management as it relates to vulnerable groups, including Roma and women. [...]” “A thorough assessment of the different conditions and opportunities for men, women, boys and girls has not been done in BiH. This is a problem not just for this project but for all interventions in the justice sector. A key activity that will be carried out by the project is an access to justice analysis. It is expected that this analysis will contribute to a deeper understanding of the gender dimension and eventually contribute to design improvements.” (From the Appraisal of Intervention, March 2012)

<sup>17</sup> “Until now the HJPC has been focusing on court users as a generic group and it has only to a very

gy is even clearer on the need for cooperation programmes to contribute to gender equality, non-discrimination, and corruption, and a future project would need to be more convincing in taking these issues up (and seeing them through).

## 2.2 EFFECTIVENESS

The project contains several components which tackle different challenges affecting overall judicial efficiency in BiH. The project has defined indicators relating to a number of specific challenges that the project addresses, as well as overall outcome indicators of judicial efficiency on the whole, to which each of the project components contributes in part.

The evaluators have found that, due to the incomplete results framework, the defined project indicators do not sufficiently reflect on the performance of all project aspects. This report will therefore look beyond the formal results framework and attempts to capture results that are not formally tracked, to the extent this is possible.

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limited extent cared for the special needs of vulnerable groups. The main reason for this is that the general problems facing the judiciary are so overwhelming that it has little time left for focusing on specialized problems. It is also probably the case that the judiciary only to limited extent are aware of the special needs of certain users of the courts, such as religious minorities, ethnic minorities, poor people, Roma, children, women etc. Members of such groups may have special needs that the courts could cater for if it had been aware of them but by its ignorance the courts may deny these groups equal access to justice.

One aspect of providing equal access to justice for vulnerable groups is to prioritize certain case types for fast track processing. This is regulated in the legislation but it may be timely to review the current legislation in relation to the situation on the ground and recent development of international standards. It should also be considered whether certain already prioritized case types should be prioritized higher or lower and how this could be done.

Vulnerable groups regularly have limited financial resources and may often not have access to lawyers who can represent them. Thus, another simple effort could be to develop standard forms for common legal transactions which may increase the ability of people to use the justice system and secure their rights. On the same note the judiciary could develop easy to understand brochures for cases where vulnerable groups are commonly involved.

Another aspect could be the data which are registered about the users of the courts in the Case Management System (CMS). To achieve a better understanding of the shifting needs of specific groups of court users it may be necessary to register more information regarding the users of the courts than is currently done (gender, ethnicity, income, profession, education etc). This may however be problematic in relation to data protection legislation.

In addition to the focus on judicial efficiency in general the Project will therefore seek to map the needs of access to justice for vulnerable (potential) court users in BiH and increase the understanding within the judiciary for how these needs can and should be met. It may be said that this represents a first step in applying a more specialized efficiency standard for courts in BiH. This activity will be initiated by an analysis that considers relevant issues further and proposes concrete activities to be undertaken by the judiciary and the Project." (Original Project Document, pp. 77).

### 2.2.1 Overall outcome:

The outcome indicators, last revised in May 2015,<sup>18</sup> were defined as follows:

1. Average age of unresolved non-utility civil cases
2. Number of unsolved solvable civil non-utility cases (with the exception of enforcement cases) initiated in 2011 or before will be reduced by 90%
3. Number of unsolved solvable civil non-utility cases (with the exception of enforcement cases) initiated in 2013 or before will be reduced by 70%

While the project tackles the issue of non-utility civil cases and utilities cases separately, the focus of the indicators is on the processing of non-utility civil cases. The logic of the indicators is sound, as improved efficiency in the processing of utility cases would result in more resources that could be devoted to processing of non-utility cases, which are the primary concern of court users. Performance according to the defined indicators stands as follows:

**Table 2. Performance on project outcome indicators**

| Indicator                                                                                                                                    | Baseline | Target         | Results | Results | Results |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------|---------|---------|---------|
|                                                                                                                                              | 2011     | 2016           | 2012    | 2013    | 2014    |
| Average age of unresolved non-utility civil cases                                                                                            | 887 days | -5% (843 days) | 824     | 794     | 797     |
| Number of unsolved solvable civil non-utility cases (with exception of enforcement cases) initiated in 2011 or before will be reduced by 90% | 201,397  | 20,140         | 105,135 | 50,602  | 26,660  |
| Number of unsolved solvable civil non-utility cases (with exception of enforcement cases) initiated in 2013 or before will be reduced by 70% | 185,852  | 55,756         | n/a     | 185,852 | 88,657  |

The indicators reflect key concerns and objectives: the duration of court processes, which have been identified as the primary concern of court users, and a clearance of the backlog of the oldest cases. The limitation of the last two indicators, however, is that it does not address a possible accrual of a new backlog of more recent cases, which would result in a return to the original starting point in a few years' time. It

<sup>18</sup> Indicators for all project segments have been revised a number of times during project implementation. For the most part, the revisions have not undermined the quality of information available to assess the project. Where concerns exist, the issues are noted in the relevant sections that follow.

would have therefore been useful to include an indicator(s) that reflect the overall volume of cases in the judiciary with a comprehensive rate of clearance.

A second question arising from the analysis of these and other indicators (to be discussed in detail in relevant sub-sections below) concerns how the targets were calculated. Project staff reports that this was done on the basis on an analysis of performance in the previous years, with the aim of raising expectations in line with new efficiency instruments, such as backlog reduction plans and other project inputs. The evaluators recognise the complexity of court operations and the difficulty of making direct input-output calculations; nevertheless, it would be appropriate to include some explanation of why the targets were deemed appropriate.

Reporting strictly on performance according to project indicators, there is a positive trend overall. Some stagnation is observed on indicator 1 in 2014, although the target was already reached in year one of the project. There are also strong prospects for reaching targets for indicators 2 and 3 (reducing the backlog of the oldest cases), if the current rates are sustained.

Looking beyond the project indicators, the project staff have provided statistics on the overall volume of cases (case flow) in the judiciary for the project duration, noted in the table below.

**Table 3: Case flow 2012-2014**

| Court       | Number of Judges | Number of unsolved cases at the beginning of the period | Number of incoming cases throughout the period | Overall amount of cases dealt with during the period | Number of solved cases during the period | Number of unsolved cases at the end of the period |
|-------------|------------------|---------------------------------------------------------|------------------------------------------------|------------------------------------------------------|------------------------------------------|---------------------------------------------------|
|             |                  | I                                                       | II                                             | III = I + II                                         | IV                                       | V = III – IV                                      |
| <b>2012</b> | 1,177            | 471,345                                                 | 499,218                                        | 970,563                                              | 494,457                                  | 476,106                                           |
| <b>2013</b> | 1,185            | 464,638                                                 | 509,721                                        | 974,359                                              | 519,232                                  | 455,127                                           |
| <b>2014</b> | 1,204            | 449,815                                                 | 428,756                                        | 878,571                                              | 472,112                                  | 406,372                                           |

The table allows for a “broad-stroke” analysis of the trends in judicial performance overall. Some initial observations stand as follows:

- a relatively small fluctuation in the number of judges: 2.3% increase
- consistent increase in the rate of resolved cases compared to inflow: (2012: -1%; 2013: 1.9%; 2014: 10%)
- consistent reduction of the overall volume of unresolved cases: 2013: 4% reduction compared to 2012; 2014: 10% reduction compared to 2012)

The rates of reduction exceed the rates of fluctuation of numbers of judges, suggesting increased productivity overall and suggest a positive, if slow, trend toward a backlog reduction overall.

### 2.2.2 Performance on defined project outputs

Beyond the overall outcome, the project was further segmented into several components, presented in the sub-sections that follow.

#### 2.2.2.1. Reduction of cases in the judicial system

##### **Output: Increased use of court settlement and out-of-court mediation**

The project promoted the application of non-judicial remedies, such as the transfer of inheritance-related cases to notaries, but principally court settlement and out-of-court mediation as a means to reduce the in-flow overall.

##### ***Transfer of non-contested inheritance-related cases to notaries***

The project conducted a small number of activities to lobby for the adoption of relevant draft legislation at the level of the Federation of BiH, so that non-contested inheritance cases would be dealt with by notaries. According to HJPC figures, this would reduce the annual caseload of courts in the Federation, by 30.000 cases. While the new legislation has been in force in the FBiH since 2015, its implementation is marred by disagreements between the Chamber of Notaries and the Ministry of Justice relating to the fees that notaries can charge for their services. The evaluators have not explored this issue during their in-country work with respect to the RS. However, HJPC information provided on the draft evaluation report suggests that the dynamics there might be different given that the costs of notaries are higher than parties engaging in a court procedure.

##### ***Court Settlement***

The practice of Court Settlement was promoted principally through communication with judges (primarily through target courts, where results have been tracked), such as through issuing instructions and holding seminars on how the use of this mechanism could be further advanced, as well as pamphlets for court users.

The approach has been effective insofar that there is a documented increase in the use of this mechanism, as demonstrated by the project indicators presented in Table 4 below:

**Table 4: Performance on project-defined indicators for court settlements**

| Indicator                                            | Baseline | Target | Results | Results | Results |
|------------------------------------------------------|----------|--------|---------|---------|---------|
|                                                      | 2011     | 2016   | 2012    | 2013    | 2014    |
| Number of court settlements before the target courts | 712      | 1,000  | 789     | 955     | 1,266   |

There has been a steady increase in the number of court settlements before the target courts and by the end of 2014, the annual performance already exceeded the target for 2016. The result is therefore assessed as very satisfactory in relation to the target at this (correctly identified) **output** level, although at an **outcome** level, it cannot be concluded that the achieved increase contributes significantly to a reduction of the overall court burden (i.e. overall volume of cases).

It has been reported that the main reason for initially low application of this mechanism was lack of familiarity by judges and concerns about the possible compromise of judicial neutrality by engaging with parties directly. The seminars are reported to have successfully addressed those concerns with positive results. This suggests that it would be useful to continue with similar efforts to promote court settlement throughout the court system of BiH. While the total numbers of cases redirected toward court settlement is rather small, considering the challenges of the existing backlog, any relief to the case inflow is a positive contribution.

### ***Out-of-court mediation***

By contrast to court settlement, out-of-court mediation was less successful. This type of mediation is a relatively new institute in BiH, with citizens/court users insufficiently familiar with the process. While an Association of Mediators has been in existence for over a decade, the application of this approach is still rather modest.

The project promoted out-of-court mediation by advising parties bringing cases to court on the possibility of using the mechanism and information about its functioning, and covering the (considerable) costs of the proceedings.

The efforts did not result in the anticipated increase of mediated cases, however. Table 5 below demonstrates that the project targets are unlikely to be met during the project duration.

**Table 5: Performance on project-defined indicators for out-of-court mediation**

| Indicator                                                                  | Baseline        | Target    | Results       | Results | Results |
|----------------------------------------------------------------------------|-----------------|-----------|---------------|---------|---------|
|                                                                            | 2011            | 2016      | 2012          | 2013    | 2014    |
| Number of disputes referred to out-of-court mediation in the target courts | 11 (estimation) | 500 total | not available | 10      | 21      |

The result is assessed as very unsatisfactory at both the **output** and **outcome** levels.

The table above presents the project targets agreed upon as part of the project results framework, but it should be noted that the cases tracked represent only the disputes *referred to* out-of-court mediation, and not the actual number of out-of-court proceedings that have taken place as a result of the efforts. Figures on mediation proceedings

that have actually taken place is even lower, with only 8 cases actually resolved through mediation.

This evaluation identified a number of factors that have contributed to this poor result. One, citizens are insufficiently familiar with the mechanism, which creates a level of resistance and distrust in its effectiveness as a remedy. Two, and related, citizens appear to prefer that conflicts be settled through authoritative institutions, namely courts. Three, at first glance the cost of mediation is relatively high compared to standard court fees, although such a superficial ‘calculation’ does not take into account the possible accumulation of court and attorney fees that are typically accrued over time, particularly in settings where a civil dispute lasts on average 797 days.<sup>19</sup>

It remains unclear why this project segment performed so poorly. While the methodology of case selection appears sound (it has been reported that the project had promoted mediation in commercial cases or other cases involving commercial entities), the experiences of individual mediators consulted--some of whom have quite sizeable portfolios of cases--indicate that it is possible to generate more interest than has been achieved by the project. This suggests that there are other dynamics relevant for promoting mediation (duration of the campaign, timing, content and medium of the message, etc.) which the project did not get right, but the evaluators lack the basis for making firmer conclusions.

#### 2.2.2.2 Court management

##### **Output: Improved management of courts**

While a focus of this project had been on target courts, a number of activities concerned court management overall. The objective is expressed through a single indicator relating to the implementation of backlog reduction plans (Table 6 below), which has been instituted by the HJPC as an obligation for all courts that have a backlog.

**Table 6: Performance on project-defined indicators for backlog reduction plans overall**

| Indicator                                            | Baseline | Target | Results | Results | Results |
|------------------------------------------------------|----------|--------|---------|---------|---------|
|                                                      | 2011     | 2016   | 2012    | 2013    | 2014    |
| Percentage of realisation of backlog reduction plans | 62%      | 90%    | 66%     | 73%     | 80%     |

<sup>19</sup> Figure reported for 2014 in the project Results Summary.

The emphasis of this project component is on backlog reduction plans, as well as the accompanying quotas for individual judges, as key management tools for promoting judicial efficiency overall. Noted activities supported by the project include the development of revised guidelines for drafting backlog reduction plans, assistance to courts in developing such plans, and the development of additional functionalities in the CMS for monitoring performance. It bears highlighting that, although it is not possible to capture these efforts as a stand-alone activity since it constitutes one of the core functions of the HJPC, the oversight exercised by the institution over the performance of Court Presidents was identified as key in promoting discipline in the observance of the obligations.

The reported performance on this indicator is very satisfactory in relation to the target, with an increase of 7% per annum. If this rate of increase is sustained (even if it decreases slightly), there is a high probability that the project-end target will be reached. As elsewhere, the evaluators lacked the possibility to assess independently whether the target has been appropriately defined, however.

Considering the productivity of judges in absolute (and less refined) terms, the evaluators have compared the number of judges with the rate of case processing provided by the project team and initially displayed as Table 3 above. Table 7 below is derived from that table and includes only the numbers of solved cases compared to the numbers of judges:

**Table 7: Absolute productivity of judges 2012-2014**

| Year | Number of Judges | Number of resolved cases during the period | ratio cases/judge | % change from previous year |
|------|------------------|--------------------------------------------|-------------------|-----------------------------|
| 2012 | 1,177            | 494,457                                    | 420               |                             |
| 2013 | 1,185            | 519,232                                    | 438               | 4%                          |
| 2014 | 1,204            | 472,112                                    | 392               | -11%                        |

Interestingly, this calculation shows a decline of 11% in the number of solved cases per judge from 2013 to 2014 after an initial increase of 4% from 2012-2013. As there has been a change in methodology in the formulation of the backlog reduction plan for 2014 with an emphasis on the oldest (and more challenging/long-lasting) cases, the decrease in productivity in absolute terms should **not** be construed as a decline in performance. The methodology has remained intact for 2015 and a comparison of figures calculated on this basis will be more meaningful for years 2014 and 2015. As a final observation, it bears mentioning that the present monitoring mechanism should be integrated in the system of performance assessment of individual judges and courts, and the evaluators have been advised that this is indeed the case. The is-

sue of judicial performance assessment is addressed by other projects within the HJPC and has therefore not been subject to the present evaluation.

### 2.2.2.3 Target courts (*non-utility cases*)

Target courts selected for JEP are the courts experiencing the greatest challenges with the backlogs. In that respect, they are courts in most need of assistance, and on one hand, the project efforts were intended as a “one-off” investment to, presumably, clear the backlog and achieve sustainable operations moving forward. The target courts are also presumably intended as “pilot” efforts to test specific measures to improve efficiency in the long-term (e.g. through business process re-engineering), which could then be promoted throughout the judicial system.

There are several project activities relating to target courts. Among them are efforts to promote alternative dispute-resolution mechanisms, the performance of which is assessed separately above. Another set of activities relates to the output “users perspective” which is also discussed separately below.

The bulk of other activities in target courts relate to increasing the efficiency of operations and backlog reduction through two main types of support: advisory management/support services to Court Presidents, and additional staff.

The first type of support includes the provision of additional analytical support (data generated through the CMS that displays individual judges’ performance on a number of variables, including typology of cases) as well as court performance overall according to similar criteria, and advisory services by Target Court Project Officers. Advisory services also included business process review and re-engineering, for instance for more efficient processing of typologically-similar cases, or exploring hybrid-post options to increase efficiency and reduce costs. The project additionally provided material support in the form of shelves (for filing case briefs) and stationery, for which the courts did not have sufficient resources.

The second direction includes the support of additional staff for a limited period of time (from April 2013 to March 2015.) to increase productivity and thus tackle the backlog. It bears reminding that the target courts are those with the largest backlogs and greatest efficiency challenges, and are also the courts where refurbishment was supported by other project donors (primarily Norway). The efforts aimed at creating synergies among a broader scope of actions to increase efficiency.

Two target courts were initially defined in the project proposal: Mostar and Tuzla. At the next stage, three additional target courts were approved for inclusion: Modriča, Prijedor and Zvornik.

In terms of results assessment, the project log frame established three to four output indicators each for the initially-selected target courts, Mostar and Tuzla. There are no defined indicators/targets and related isolated performance reporting for the remain-

ing three target courts. Project staff have explained that this is due to the fact that the three target courts in question did not have a specific typology of cases that required concentrated attention, and that their performance objectives are therefore the same as that for all other courts in BiH, namely objectives/targets set in backlog reduction plans. Considering that these target courts received special support from the project, however, **the evaluators find that it would have been advisable to set some specific objectives/targets relating to the assistance that had been provided, and to report accordingly.** Following the evaluators' field visit, however, the project team had compiled statistics on the performance of remaining target court. Some of these will be presented and assessed below.

This project component is also an example of where the results of specific inputs/activities to support the target courts are not tracked through related outputs, with indicators and reporting focusing only at the outcome level. That said, it must be acknowledged that it would have been difficult to isolate the various inputs and related outputs, particularly the time invested and quality of advisory support to the courts. The outcome-level performance of the courts, therefore, is a composite picture, influenced by a number of variables (particularly human resource variations) beyond the project inputs alone.

#### ***Performance on project indicators***

The indicators and performance of target courts in Mostar and Tuzla are presented in Tables 8 and 9 below.

**Table 8: Performance on project-defined indicators for Mostar**

| Indicator                                                                                                                                    | Baseline | Target                                            | Results | Results | Results |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------|---------|---------|---------|
|                                                                                                                                              | 2011     | 2016                                              | 2012    | 2013    | 2014    |
| Number of unsolved solvable civil non-utility cases (with exception of enforcement cases) initiated in 2013 or before will be reduced by 70% | 14,787   | 4,436                                             | n/a     |         | 12,900  |
| Number of unsolved labour disputes initiated in 2011 or before will be reduced by 85%                                                        | 5,214    | 782                                               | 4,505   | 3,357   | 1,382   |
| Number of unsolved land registry cases                                                                                                       | 4,418    | Court to be current with its caseload by mid-2013 | 795     | 260     | 376     |

|                                                  |                            |                                                        |                          |            |                        |
|--------------------------------------------------|----------------------------|--------------------------------------------------------|--------------------------|------------|------------------------|
| Percentage of Backlog Reduction Plan realisation | 61%<br>(6620 solved cases) | 100% or no obligation to create Backlog reduction Plan | 78 % (9332 solved cases) | 77%(4.806) | 82%(2857 solved cases) |
|--------------------------------------------------|----------------------------|--------------------------------------------------------|--------------------------|------------|------------------------|

**Table 9: Performance on project-defined indicators for Tuzla**

| Indicator                                                                                                                                    | Baseline                 | Target                                                 | Results                  | Results    | Results                 |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------------|--------------------------|------------|-------------------------|
|                                                                                                                                              | 2011                     | 2016                                                   | 2012                     | 2013       | 2014                    |
| Number of unsolved solvable civil non-utility cases (with exception of enforcement cases) initiated in 2013 or before will be reduced by 80% | 10,744                   | 2,149                                                  | n/a                      |            | 3,346                   |
| Number of unsolved solvable civil non-utility cases (with exception of enforcement cases) initiated in 2011 will be reduced by 100%.         | 32,711                   | 0%                                                     | 21,788                   | 3,768      | 1,279                   |
| Percentage of Backlog Reduction Plan realisation                                                                                             | 57 % (2864 solved cases) | 100% or no obligation to create Backlog reduction Plan | 58 % (3774 solved cases) | 70%(8.169) | 78% (5858 solved cases) |

**Analysis of indicators**

The performance indicators offered by the project are at first challenging to follow for observers outside of the judicial system, reflecting in part the complexity of assessing judicial performance.

For instance, the last indicator in both Mostar and Tuzla “Percentage of Backlog Reduction Plan realisation” concerns the rate of realisation (execution, fulfilment) of the Backlog Reduction Plan for the court in question, rather than the reduction in the backlog as such. Backlog Reduction Plans are formulated on the basis of several technical variables such as the typology of cases, and they prioritise the oldest cases

in the system. In the end, Backlog Reduction Plans are proportional to the resources available to a court, namely the number of judges and supporting staff, rather than the challenge presented by the backlog as such.

To illustrate the point above using Tuzla as an example, the volume of the backlog of non-utility cases reported for Tuzla at the end of 2011 was 39,009.<sup>20</sup> Therefore, the annual performance captured by the indicator (in 2012: 3,377 solved cases and 58% plan realisation rate; in 2013: 8,169 cases solved and 70% plan realisation rate; in 2014: 5,858 cases solved and 78% plan realisation rate) represents 8.66%, 20.94%, and 15.01%, respectively, of cases in the *originally noted* backlog.<sup>21</sup>

Court performance is inevitably limited by capacity, primarily personnel, and hence the proposed indicator represents a valid measure of court **productivity** within existing capacity constraints. Considering that the project emphasis is on increasing efficiency, the evaluators find the choice of this indicator appropriate and meaningful. Further considering that Backlog Reduction Plans are formulated to prioritise oldest cases, it is also a meaningful reflection of efforts to tackle the backlog challenge as well.

Other indicators relating to target courts are appropriate in principle, with the emphasis on processing types of cases where greatest need is identified, for instance land registry, labour disputes, and enforcement cases in Mostar, and oldest cases in Tuzla. Due to a revision of indicator 1 (in both Mostar and Tuzla) from considering the volume of unresolved cases older than 5 and 3 years, respectively it is not possible to assess trends in this category, nor predict whether targets may be reached by project end.

A limitation in the definition of the age-related indicators is that the point of reference is a given year: indicators 1 and 2 in both target courts concern cases initiated prior to 2013 and 2011, respectively. (The indicators were initially defined in terms of “cases older than X years”). The present indicators do not permit assessing performance on the oldest cases until project end, nor can they reflect any new backlog potentially being created. Nevertheless, as the emphasis for this project component is on the courts’ oldest cases, the indicators remain appropriate.

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<sup>20</sup> Calculated on the basis of data presented in Project Outline, section 13.1.3 “The backlog situation in Tuzla Municipal Court”, Table: Extract from the Statistical information on backlog in MC Tuzla – comparing information from years 2006 to 2011, p. 70.

<sup>21</sup> This is a somewhat simplified illustration to highlight the difference between Backlog Reduction Plan fulfilment and actual reduction of the backlog. The actual volume of the backlog shifts from year to year, increasing or decreasing based on the volume of inflow of new cases, numbers of judicial personnel, etc.

Taken together, it should be noted that the indicator definition and targets reflect an aim to reduce the overall backlog faced by the target courts rather than to clear it completely. Again, absent documentation about how the targets were set, the evaluators are unable to comment on the pros and cons of the decisions made, for instance, whether it may have been overall more effective to provide more sustained support to fewer courts and clear the backlog there, rather than to disperse assistance over a greater number of target courts for more dispersed and more modest gains in each.

### ***Performance analysis***

Performance on the defined indicators stands as follows.

#### **Mostar:**

On indicator 1 (“Number of unsolved non-utility cases initiated in 2013 or before”), the data available to evaluators at the time of the field visit and draft report writing stood at 12,900 at the end of 2014, representing a 12.8% reduction achieved in the first year. If the same volume of cases had continued to be solved in the subsequent years, the projected volume of unresolved cases would be approximately 9,100, representing roughly only a 38% reduction in the original backlog, against the target 70%, which would constitute unsatisfactory performance.

Following the Inception Report, however, the project team reported that the number of cases as of June 30, 2015 stood at 6,635. This represents a drastic reduction of the backlog in only 6 months: a 63% reduction from the volume in place at the end of 2014 and a total of 45% of the original backlog. If the trend were to continue, it appears that the target would be reached during 2015, which constitutes very satisfactory performance against the project targets. While such numbers are certainly positive, the far more important are the questions that emerge in response: (a) what factors account for such dramatic changes in performance, and (b) can they be sustained and extended/replicated in other localities? These questions will be addressed more thoroughly in a following section.

On indicator 2, (“Number of unsolved labour disputes initiated in 2011”), progress has been very satisfactory in relation to the target, with clearance rates of 14%, 22%, and 38% of the original backlog volume for years 2012-2014 respectively. Even if the rate were to decline to 27% in the current year, the backlog will be cleared. There are very strong prospects that the target for this indicator will be reached.

On indicator 3 (“Number of unsolved land registry cases”), the target for the complete clearance of the backlog by mid-2013. While the project team reports that the backlog has actually been cleared by the end of 2014, the reporting on indicators does not make this clear. The figures reported reflect a new inflow of cases rather than the backlog, and this should be explicitly noted for monitoring purposes. Confusion aside, the performance on this indicator appears to be very satisfactory.

On indicator 4 (“Percentage of Backlog Reduction Plan realisation”), productivity is on the rise in 2014 at 82% compared to 78% and 77% in 2012 and 2013, respectively, and up over 20% from the baseline. Initially, the evaluators did not see a basis for anticipating a dramatic rise in productivity—particularly as the engagement of additional staff had taken place primarily during 2014 and ended mid-2015. However, the project team reported that as of 30 June 2015, MC Mostar realised 57 % of its Backlog Reduction Plan (against the target of 50% for the first half of the year). Such performance bodes well that the Backlog Reduction Plan will be close to fulfilled by the end of the year (accounting for summer holidays). Year-end numbers will be more telling and, as noted in connection with indicator 1, nevertheless, there is basis for expecting that backlog reduction targets may be reached and hence performance is rated as satisfactory in relation to target.

As with new data relating to indicator 1, the evaluators have been offered no explanation of factors that influence such dramatic changes in performance.

#### **Tuzla:**

On indicator 1 (“Number of unsolved civil non-utility cases initiated in 2013”), 69% of the backlog was cleared in the first year, representing 86% of the project target. Such a result suggests high prospects for meeting or exceeding the set target, and performance is rated as very satisfactory in relation to target.

On indicator 2 (“Number of unsolved civil non-utility cases initiated in 2011”), the rate of case clearance slowed considerably after the first two years of the project, from 33% and 55% of the original backlog volume in 2012 and 2013 respectively, to 8% in 2014. That said, even at half the 2014 rate, the backlog will be cleared by the end of 2015. There are strong prospects of reaching the target already in 2015 and performance on this indicator is accordingly assessed as very satisfactory in relation to targets.

Finally, on indicator 3 (“Percentage of Backlog Reduction Plan realisation”), the productivity rate has been increasing from the baseline 57% in 2011 to 58%, 70% and 78% from 2012-2014 respectively. While additional personnel were no longer provided as of mid-2015—suggesting that there is no basis for projecting a significant jump in productivity levels—the project team reported that as of 30 June 2015 the rate of reduction was already at 53%, exceeding the mid-year target of 50%. As with MC Mostar above, the performance on this indicator must be assessed as satisfactory, with same questions about explanatory factors as above.

#### **Performance in the remaining 3 target courts**

No results indicators or targets have been defined by the project for target courts in Modriča, Prijedor and Zvornik, and hence no performance reporting has been done for the donors. Internal reports do exist on the performance of those courts, and the project team provided the relevant data to the evaluators following the field visit.

Among the information provided, this report highlights that which is most relevant to the issue of backlog reduction.

The first indicator to consider is the one highlighted throughout the project, which is the rate of realization of the backlog reduction plans. The three target courts' performance is noted in comparison with the national average as well as the performance of target courts Mostar and Tuzla.

**Table 10: Percentage of realisation of backlog reduction plans in all target courts**

| court/year       | 2011<br>(baseline) | 2012 | 2013 | 2014 |
|------------------|--------------------|------|------|------|
| Modriča          | 73 %               | 60 % | 63 % | 73 % |
| Prijedor         | 81 %               | 77 % | 77 % | 71 % |
| Zvornik          | 45 %               | 48 % | 64 % | 67 % |
|                  |                    |      |      |      |
| National average | 62 %               | 66 % | 73 % | 80 % |
| Mostar           | 61 %               | 78 % | 77 % | 82 % |
| Tuzla            | 57 %               | 58 % | 70 % | 78 % |

Note: The figures for the national average, Mostar, and Tuzla were reported on as the project indicators, and noted in this Report in tables 6, 8, and 9 above.

The performance pattern of the remaining 3 target courts differs slightly from Mostar and Tuzla. Courts in Modriča and Prijedor both show a decline in performance from 2011 to 2012, and Prijedor does not manage to sustain its rates, declining even further as of end of 2014. In Modriča and Zvornik, the rates continued to improve, with considerable jumps in Modriča from 2013 to 2014 (10 percentage points) and in Zvornik from 2012 to 2013 (16 percentage points).

Recalling the rather significant shifts in the realization rates in Mostar and Tuzla reported by the project team as of 30 June 2015, the evaluators are reluctant to draw firm conclusions on these three target courts' projected performance by project end, although we would suggest that there is an overall positive trend.

Other data provided by the project team supports such a conclusion, such as, for instance, rates of case clearance in these target courts. By "net clearance rates" we consider the number of resolved cases versus (minus) the number of new cases that have entered the system during a given period. If the net figure is positive, it means that the backlog is being reduced.

The net clearance rate figures are complemented by "inflow" figures (i.e. new cases) to provide some context for possible shifts in performance.

**Table 11: "Clearance rate" figures**

| Court | 2011 | 2012 | 2013 | 2014 |
|-------|------|------|------|------|
|-------|------|------|------|------|

|          | # new  | “net”      | # new  | “net”      | # new  | “net” | # new  | “net”        |
|----------|--------|------------|--------|------------|--------|-------|--------|--------------|
| Modriča  | 5,916  | -591       | 6,065  | <b>102</b> | 5,923  | -485  | 6,031  | <b>1,079</b> |
| Prijedor | 10,992 | <b>566</b> | 11,839 | <b>926</b> | 13,056 | -76   | 14,147 | <b>354</b>   |
| Zvornik  | 5,252  | -1,056     | 4,787  | -518       | 5,074  | -10   | 5,033  | <b>788</b>   |
|          |        |            |        |            |        |       |        |              |

Note: The number of judges and “expert associates” (*stručni saradnik*) in the courts has remained constant in Modriča (10) and Prijedor (17) during the period 2012-2014: 10; in Zvornik, the number was reduced from 9 in 2012 to 7 in 2013-14.

In Modriča, with fairly constant rates of new cases, performance varies significantly from year to year, with a considerable improvement from 2013 to 2014. Prijedor shows rather positive results overall (with a decline in 2013) despite an increasing influx of cases, even, *nota bene*, during periods of 2011 and 2012 when no additional staff were provided. In Zvornik, the trend is consistently positive even with a reduction in personnel from 2012, but remained insufficient to stay abreast of the inflow until 2014. The above figures do not offer conclusive evidence on performance trends, and the considerable jumps noted in Mostar and Tuzla as of 30 June 2015 suggests that further improvements may well be possible.

### ***Additional staff***

Target courts were provided with additional support staff, ranging from law graduates who provided substantive support to judges in processing cases, to administrative staff and “dispatchers” to expedite court functioning overall and the enforcement process. Initially, there was no specific analysis of outputs relating to additional staff, but the evaluators requested additional data in view of the considerable proportion of the Swedish budget (1.3 million EUR/ 35%) the activity represents.

Project staff consequently provided the evaluators with information in connection with performance of courts that received additional staff as part of project activities. Data was provided for the courts in Mostar and Tuzla, but it bears reminding that additional personnel was engaged in all six target courts (including MC Sarajevo). The analysis here should therefore be viewed as indicative only.

There is little doubt that the engagement of this assistance has had a positive effect on the volume of processed cases—in certain instances, the performance of individual judges is two- or three-fold the period where there was no such support.<sup>22</sup> The evalu-

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<sup>22</sup> Aside from statistical data, evaluators have found that the representatives of target courts have reported greatly valuing the project efforts, particularly the additional staff. Court presidents highlighted the value of “expert associates” who assisted judges in preparation of cases for adjudication.

ators have focused on data on the realization of judicial “norms” (quotas), which account for such variations in the judicial portfolios such as the type/complexity of a given case.

Even with this data, however, the picture remains unclear. Looking at the overall/average performance of judges who have received support in Mostar and Tuzla, a number of questions emerge in connection with the observed fluctuations in performance, which are not explained by the present data.

**Table 12: Average percent realisation of the norms in target courts Mostar and Tuzla**

| Court  | Period before additional personnel | Periods during engagement of additional personnel |              |          |              |
|--------|------------------------------------|---------------------------------------------------|--------------|----------|--------------|
|        |                                    | Jan-Apr 2013                                      | May-Dec 2013 | 2014     | Jan-Mar 2015 |
| Mostar | 2012<br>99.57 %                    | 128.56 %                                          | 260.54 %     | 152.65 % | 142.62 %     |
| Tuzla  | 134.16 %                           | 106.60 %                                          | 152.85 %     | 147.02 % | 132.20 %     |

Presumably, the total percentage of realization of the norm would be the sum of columns 3 and 4, which would mean some 389% for Mostar and 259% for Tuzla. Interestingly, the rates fall dramatically for 2014 (when additional personnel was in place) to be brought back up to nearly the 2014 annual level in the first quarter of 2015.

The dramatic fluctuations remain unexplained, yet it would be precisely this level of analysis that might offer important insights on the factors that influence judicial performance beyond additional personnel. Further, the data cannot be fully interpreted without comparison with the performance of judges who did **not** receive such support.

#### ***Other support to target courts***

The additional analytical support provided by HJPC was also highlighted as valuable, as there is insufficient capacity in the courts to conduct that level of analysis of the data produced by CMS. The additional analysis—for instance, monthly reports for individual judges on their oldest cases—is seen to have been useful in strengthening court management practices, in particular in shifting the focus to areas where performance needs were greatest.

With performance data based on the project indicators, as well as additional data considered in this report showing anything but a clear correlation between inputs (esp. additional personnel) and outputs, the value of these other forms of project assistance becomes increasingly intriguing. As noted above, the dramatic shifts in performance that are reflected in the indicators suggests that there other factors at play—possibly

project-related, possibly external. At present, there is no basis for assessing them, however.

Views were mixed as regards the value of the various training seminars offered by the HJPC. While some Court Presidents and Secretaries found that new information and skills were imparted to assist them in more effectively managing their courts, others suggested that they did not need nor want training that was provided outside the accredited training courses offered by the judicial training centres. The sample of judges interviewed is too limited to reach definitive conclusions about the effectiveness of the seminars, and a survey of the participants, which could be easily administered by the HJPC in electronic form, would be beneficial in assessing their value and in planning future training activities.

Returning to the big picture, it has been reported that enforcement cases are the greatest challenge for the judicial system in terms of being the most time-consuming part of the process in connection with collecting awarded damages. Courts are required to make a number of inquiries to different institutions (banks, land registry, tax authority, etc.) on the financial assets of defendants before dispatching bailiffs to record movable assets that could be seized in order to settle the damages.

The project has produced a set of recommendations for reforming the system towards an extra-judicial debt collection model that would greatly reduce the burden on the BiH courts, particularly as concerns utility cases (which constitute 75% of the overall judicial backlog), but also in connection with “ordinary” civil cases. Moving to such a model is a political decision, however, beyond the mandate of the project or the HJPC more generally.

Interim measures to simplify the required financial asset verification, such as direct links to various institutions databases, have been reportedly explored by an earlier judicial efficiency project, but the process is complicated by restrictions (posed by legislation regarding the protection of personal data) on the use of the unique personal identification number. It has been reported that legislative changes would be required to realise even the proposed interim changes, which, again, is a political issue, and beyond HJPC’s mandate.

A decisive improvement in judicial efficiency in BiH would necessitate progress on either of the above enforcement reform options, and would require donor engagement at the policy dialogue level, beyond technical and material assistance provided through the present project.

#### 2.2.2.4 *Use of SOKOP Extended*

A considerable proportion of the project was devoted to extending the use of SOKOP (“Softver za komunalne predmete”, Special Software System for Processing Utility and Enforcement Cases) throughout the judicial system. The software system allows

for more efficient (in particular, bulk) processing of utilities cases, easing the burden on the courts..

The full potential of SOKOP is realised when both courts and utility companies use the software, and complaints/cases are initiated and resolved electronically, producing what is expected to be tremendous savings in data entry and processing labour, as well as postal costs. Thousands of cases can be processed by courts nearly automatically, as there are typically no substantive legal issues that require consideration. Project activities accordingly included reaching out to utility companies to voluntarily adopt the system, and assisting both them and the related courts in implementing them when agreement had been reached. The project also supported the ongoing refinement of the system, as well as the transition from KODIFEL to SOKOP in the Municipal Court Sarajevo.

The results of the first set of activities were tracked through the following project indicators:

**Table 13: Performance on project defined indicators for SOKOP**

| Indicator                                                                                    | Baseline | Target                                                     | Results | Results | Results |
|----------------------------------------------------------------------------------------------|----------|------------------------------------------------------------|---------|---------|---------|
|                                                                                              | 2011     | 2016                                                       | 2012    | 2013    | 2014    |
| Number of first instance courts that are using SO-KOP-Mal solution to process utility cases. | 2        | 20                                                         | 9       | 11      | 14      |
| Percentage of utility cases that are processed through SOKOP-Mal                             | 10%      | 33% (or 80% if Sarajevo MC enters all it's cases in SOKOP) | 20.4%   | 24.3%   | 29.3%   |
| Percentage of cases processed through SOKOP-Mal resolved using the system                    | 0.16%    | 25%                                                        | 8.6%    | 25.4%   | 38.4%   |

The performance on the defined indicators is satisfactory overall, with indicator 3 already exceeding its target. At the current rate of progress, there are very good prospects that the target will be met for indicator 2, while target on indicator 1 can be reached if the current rate of implementation is sustained. It is useful to recall that 2014 was the year that additional personnel had been provided to five target courts, however, the end of this assistance should not significantly impact the overall performance of the total of 56 first instance courts in BiH.

As elsewhere, the evaluators are unable to assess whether the targets were set appropriately as there has been no rationale provided on this point. Furthermore, while the

indicators demonstrate that SOKOP is being deployed in more courts in BiH and that the percentage of cases processed through SOKOP is growing, it would be more instructive to see the percentages of cases processed in SOKOP only in the courts where it has been installed, rather than as an aggregate figure that includes courts that do not use SOKOP.

The **Municipal Court Sarajevo** was a project target court with the focus on the reduction of the utilities-related backlog, in particular, the migration from its existing software system KODIFEL to SOKOP. At the time of the evaluation field visit, the transfer of data between the systems was being tested for any data loss or other difficulties.

No specific indicators have been defined for activities related to the Municipal Court Sarajevo, although the target for indicator 2 does refer to it. While the reporting on indicators does not distinguish the Municipal Court Sarajevo's contribution to the statistics, considering that the migration to SOKOP has not taken place, we conclude that at present, the figures reflect the percentage of cases excluding Sarajevo. Similarly to other target courts, there are no indicators or data in the annual reports to the donors regarding the results produced by the additional personnel, and although internal quarterly reports do exist, data has not been included even in the internal comprehensive analysis.<sup>23</sup> As already noted, the scope of this evaluation prevents micro-data mining of internal project reporting, hence there is no basis to assess the project contribution to the Municipal Court Sarajevo in connection with the utilities cases backlog.<sup>24</sup>

Overall, two main challenges remain to realising the envisioned benefits of the SOKOP system. One is the slow accession to the system by the utility companies themselves. The second is the enforcement (debt-collection) process, which would remain a highly time-consuming responsibility of the courts unless/until an external debt-collection system is put in place.

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<sup>23</sup>Internal memo, Informacija o provedenoj aktivnosti angažmana dodatnog osoblja za pružanje podrške u ciljnim sudovima Projekta unapređenja efikasnosti pravosuđa, 2.04.2015.

<sup>24</sup>One specific project contribution that is recorded is the provision of additional staff to assist the Municipal Court Sarajevo in organising its archive depot. This input was not tracked through defined indicators nor is the value of the investment easily quantifiable, although the ability to locate and reference old cases when needed surely positively impacts court proceedings. The archive work is not entirely finished, however, and there is some question whether without further input (particularly on digitalising the archive), the existing human and space capacities will be able to meet future challenges. Similar issues affect the courts in Zvornik and Mostar, where JEP provided support to the archives which was, however, left unfinished.

As already discussed, the second (enforcement process) aspect rests on a political decision that does not hold immediate positive prospects. The first aspect does appear to be in the power of the HJPC and courts to influence, at least in part. The largest utility user of SOKOP is Radio-Television of Republika Srpska (RTRS), the entity's state broadcaster. They have reported a number of technical difficulties in using the system, which can be addressed by the project. The project team maintains that the present level of support is sufficient, and the evaluators were unable to independently assess the issue beyond noting that there exists a difference in opinion between the user (RTRS) and the service provider (HJPC project team). Whatever the case may be, the present situation is such where the user does believe that the SOKOP system fully addresses their needs. If the HJPC wishes to alter this perception, it may be useful to further consider the challenges experienced by the user and how these may be more effectively addressed, because at present, their impact on effectiveness is considerable: the thousands of cases that could be processed nearly instantaneously between the RTRS and the Municipal Court in Banja Luka, for instance, are delayed and projected efficiency gains unrealized. In addition, the example does not serve as a particular incentive model for other utility companies that are reluctant to embrace SOKOP.

A further challenge relates to staffing. A number of courts representatives met by the evaluators report that after the departure of additional personnel provided by the project, there is a shortage of staff to continue with the manual input into the system. As a result, the backlog of utilities cases is not being tackled.

The evaluators conclude that SOKOP is still a considerable way away from solving the challenge of the utilities cases backlog (75% of the total backlog) of the BiH judicial system. That said, there appears to be no obvious alternative: even in the absence of a cost-benefit analysis of processing cases through SOKOP versus through CMS or manually (in jurisdictions where utilities cases may not be as significant as burden as in, e.g. MC Sarajevo), the benefits of automatisation appear significant.

One final remark regarding the challenge of utilities cases that SOKOP aims to address. There is a social welfare dimension involved in the pursuit of utilities cases that is not being sufficiently considered. A certain—and quite plausibly considerable—proportion of utilities delinquents represent the poorest segments of society in BiH who simply cannot afford to pay their bills. In the entity Republika Srpska, the bulk of “utility” cases concerns mandatory radio-television subscriptions, required regardless of whether one actually consumes state broadcasting. Certainly a proportion of delinquents are individuals who avoid paying bills because of a lack of enforcement, and it has been reported (though not in statistical terms) that following a more sustained deployment of bailiff to record movable property subject to collection in households, the rates of overdue utilities payment have increased. However, to pursue the objective of judicial efficiency and a reduction of the backlog of utilities cases without considering the unintended negative consequences on the poorest members of

society is problematic, particularly for donors like Sweden who are guided by poverty reduction concerns overall.

#### 2.2.2.5 *Users' perspective*

The overall project emphasis on more efficient non-utility civil cases already reflects a concern with court users' needs: this is the category of cases that of greatest concern for citizens.

The project, however, presumably intended to move further. The starting point for the project component was the poor perception of the judicial system among BiH citizens, and the recognised need to improve this perception. In response, the project supported a user survey in two target court locations (Mostar and Tuzla) to better understand the actual user views, and a number of outreach activities to present results of ongoing reforms and to better acquaint citizens with the work of the courts more generally.

This project component is the least developed one, as reflected first of all in the fact that no indicators were developed at project start. One indicator ("Percentage of citizens that believe that judicial system provides a fair trial") was finally developed only in the third year of the project, but it does not actually address the efficiency issue that has been identified as the primary concern of citizens, nor the main focus of the project. In addition, the data for reporting on the indicator is derived from the project-implemented surveys; only one survey has been carried out to date, establishing a baseline, and there is no data at present to reflect possible trends. A second survey is planned for 2016.

Further, while the activities defined under are not inappropriate, they reflect only a partial approach to the identified challenge. There has not been an incisive effort to consider the ways in which the judiciary may become more responsive to citizen needs and concerns, and thus improve its legitimacy.

It would have been perfectly reasonable to state openly that the HJPC does not have experience in this area, and then to design the project component to meet the identified needs. There are many comparative examples (e.g. the UK) of how courts and state institutions more generally strive to be a *service* to their users, providing for instance easily-understandable information on court procedures, among a multitude of other approaches. Many national NGOs also routinely receive complaints/requests for assistance from citizens on issues touching the judiciary, which could be another invaluable source of information about the challenges citizens face and how courts might be more responsive to them. Such considerations have been entirely absent from this project. For project segments such as these, assistance should be offered with exploring such models and shaping project activities in a more meaningful manner.

Project staff report that a significant result of this project component concerns increasing the openness and transparency, and effecting a change in mind set within the target courts and the HJPC itself. They note that there have been increases in the amount and quality of information posted on web sites and in communication with the public and the media. However, there is only limited reporting on these activities and insufficient basis to assess the stated results.

A final set of issues regarding this project segment concerns some discussion in the initial project document about vulnerable groups, in particular mapping “the needs of access to justice for vulnerable (potential) court users in BiH and increase the understanding within the judiciary for how these needs can and should be met” (Project Outline, section 14, p. 77). The activities have been limited to some questions in the survey conducted under this component, contrary to expectations set by the Swedish Embassy (quoted above).

## 2.3 EFFICIENCY

Efficiency of this project is considered at three levels: in terms of project management; the rate of implementation of activities; and from the perspective of value-for-money.

Project management is the area where efficiencies are most visible. The HJPC Secretariat has managed various donor contributions to ensure that activities continue without interruption across various donors’ project cycles. For instance, there are a number of activities where the first two years of project activities are supported with Norwegian funds while the last two years from Swedish funds. Similarly, Swedish funds are used to produce technical documentation for refurbishment works that will be funded by IPA funds. IPA funds, in turn, support the work of staff who are conducting analytic work for court management in general, as well as target courts (an activity of the present project) in particular. This approach has led to highly effective donor coordination, a maximisation of available resources, and considerable synergies between the different projects. At the same time, as noted elsewhere, the lack of clarity on whether JEP is a stand-alone project or a basket fund modality has made the attribution of specific donor inputs to outcomes a considerable challenge. It has also obscured the HJPC in-kind contribution to project activities, as permanent HJPC staff (e.g. head of the Finance Department, other administrative staff, etc.) contribute to the implementation of donor projects as well.

The pace of implementation (and related budget execution) has been broadly on track, with most significant delays and blockages relating to obstacles external to the project. The project has responded well some external factors, namely the catastrophic 2014 floods that damaged a number of court buildings and so compromised their operations. The HJPC proposal (approved by Sweden) to reallocate some project funds (approx. EUR 35,000) to address the challenge was appropriate and timely.

The far greater challenge has been the lack of support on legislative/policy initiatives such as the creation of an external debt collection agency, but also minor procedural amendments that would create efficiencies in the processing of cases. Political instability (disbanding of the cantonal government of Sarajevo) and the lack of responsiveness of the Steering Board for Reduction of Utility Cases in Sarajevo Canton to adopt the Rules of Procedure have also undermined progress on reducing the utility case backlog in that locality.

The reality of the political situation in BiH is such that these types of obstacles are a common risk in projects implemented in the country. The evaluators find that this category of risk was therefore underestimated in the initial project Risk Analysis (the risk defined as “Legislative and policy environment not aligned to support judicial efficiency” was rated medium, 2 of 4). The unsupportive political environment has had an important negative impact on reducing both the potential effectiveness and efficiency of the project, and not only in connection with the utilities-cases but also other civil cases with regard to enforcement. The challenge identified here reminds of the limits of purely technical solutions particularly in complex political contexts, and the need for more policy-level engagement, which is beyond the mandate of the implementer.

For the most part, it is not possible to assess the efficiency and value-for-money of specific activities because the project budget is cost- rather than activity-based. The one exception to this challenge relates to the additional personnel provided to target courts: this cost is set off as a separate and significant budget line, representing 35% of the total Swedish budget. The results achieved through the provision of additional staff have not been quantified, however. The evaluators have requested that data be provided on outputs/outcomes obtained for inclusion in the final report. A considerable number of stakeholders have suggested that the monies for the temporary staff could have stretched out for much longer, had an appropriate analysis been undertaken to identify what incentives there are for people wanting to work in the courts, and which are in many cases non-monetary (work experience that counts towards the final judicial exams for example).

The evaluators would also have liked to conduct an efficiency calculation with regard to SOKOP, but this has not been possible. It is an initiative that has been in development over a number of years and across project cycles, and related costs are distributed over several lines including project staff, consultancy services, additional staff in target courts, and perhaps others. The cost of the clearly defined SOKOP unit within the Swedish contribution to the project is EUR 260,000, the bulk of which was unspent at the end of the last financial reporting period (August 2014). This suggests that the funds are to be applied for the last two years of the project, i.e. that the amount covers only two years of SOKOP team costs. The total cost of SOKOP implementation must be multi-fold. A further consideration here is that at the moment, 9 people are working on SOKOP, only two of which are IT people, while the remaining 7 staff are lawyers dealing with legal aspects of utility cases. Given that the uptake for

SOKOP is very low, in particular in the Federation, it can be assumed that should the system be rolled out significantly across courts and utility companies, the need for legal staff would increase dramatically. While SOKOP may be the only way forward in terms of tackling the challenge of utilities cases in BiH—the evaluators did not identify a viable alternative apart from the long-term vision of an external enforcement agency, which would then benefit from the SOKOP system—it would nevertheless be useful to have a clear picture of the costs involved.

One final category of project activities raises efficiency concerns: those relating to public outreach and visibility in particular. Promoting out-of-court mediation produced remarkably weak results, raising questions about whether they were sufficiently well conceived to address the challenge of popularising a little-known mechanism. The efficiency here is in doubt even if the cost of the activity and its proportion of the budget are minor.

Similar issues arise in connection with efforts to improve public perception of the judiciary (“users’ perspective” activities). While activities to promote transparency and improved communication with the media and the public is fully on target (as well as a low-cost/high efficiency investment), radio jingles and even posters and brochures promoting the judicial efficiency *project* will not produce the intended outcomes and are therefore inefficient by definition. To be clear, this evaluation does not suggest that public outreach efforts are inefficient *per se*—on the contrary; the emphasis here is on their *quality*. Future efforts in this direction would become far more efficient by investing additional resources to obtain the services of a PR specialist to help define the target audience, the topics to be addressed, the format of the content, and the medium of the message.

## 2.4 SUSTAINABILITY

As highlighted throughout the report, attribution of results to JEP has been a particularly challenge, and one that also affects the evaluators’ ability to assess sustainability. What can be said with a degree of certainty is that the JEP supports HJPC’s work on developing and institutionalising processes, rules and functionalities that do affect judicial efficiency in the short-term, and are likely to continue in the medium to long-term.

There are objective reasons for the slow progress on judicial efficiency – BiH remains a poor country. At the same time, it is clear that without a significant shift in the political will to develop the judiciary as a genuinely independent pillar of the state, and where this translates into a considerable increase in the funding made available to the system, as well as into finding systemic solutions to resolve some of the long-known problems causing the clogged up courts system (i.e. utility cases), the overall pace of judicial reform will be very slow indeed. For the international donor community this means that at the speed of current reforms, projects similar to JEP could be needed for the foreseeable future—something that might be difficult to justify to the domestic public in absence of a clear perspective of improvement. The scale of the problem is

probably aptly illustrated by the fact that JEP funds provided not only a welcome injection of additional, if temporary, support staff to a number of courts, but that funds were also used to purchase stationary (envelopes) for which no monies were available from the state budget. At the time of the evaluation, there is little prospect that any state institution is likely to expand its capacities to match the level of donor support in the short or medium term.

If donor support were substantially reduced, this would imply the risk that without further projects, staff would leave, and that much of the HJPC Secretariat capacity would be lost. Much data analysis is still done manually, and this, too, could be lost without continued donor support.

With regards to some of the specific results discussed in the earlier parts of the report, it is uncertain whether the gains made are sustainable. With regard to the influx of cases versus the clearance of cases, the data suggests that the overall clearance rate is consistently above the influx, if only slightly so; however, as the influx is unpredictable, this ratio might not be stable.

There is scope to incorporate some of the training currently being offered by the JEP (management training in particular) into the mainstream training curriculum offered by the Training Centres for Judges and Prosecutors, and which would increase their sustainability beyond the JEP's duration.

The SOKOP system is not sustainable (i.e. cases will accumulate) unless there is a significant uptake by the utility providers of this system. As discussed in the “efficiency” section, a greater uptake might pose considerable funding challenges given the numbers of legal staff that are needed to support it. In the medium to long-term, it is clear that a systemic solution has to be found for the utility cases; SOKOP could be transferred, too.

If the envisioned systemic solutions can be won—including on the enforcement process, particularly of the utility cases—the outcome could be transformative. The labour savings that would be realised from (a) processing utilities cases electronically, in bulk, and (b) expediting the enforcement process and/or transferring it to an external agency stand to be significant, and the resources could be redirected to fund other material and human resources that are limited in many of the courts. No projections have been made in this direction, but such calculations would be rather useful in making more palpable the prospective benefits of the envisioned reforms.

## 2.5 IMPACT

It is too early to detect any project impact, although it will be interesting to see if user perceptions have changed due to outreach activities in target courts (a second survey in target court locations is foreseen before project end). It remains to be seen whether the forthcoming, autumn 2015, EU Progress Report will note any positive changes.

As far as the average duration of court processes has been reduced to 797 days from the 2011 baseline of 887 days, it can be said that the present efficiency improvement efforts have contributed toward citizens' improved ability to realise their human rights in terms of the right to a fair trial within a reasonable time. To what extent this right is realised is case-specific: the reasonableness of the length of proceedings has to be assessed in the light of the circumstances of the case including its complexity, the behaviour of the applicant and the relevant authorities, etc., and cannot be determined on this basis of average duration, however.

## 2.6 OTHER DONORS' PLANS AND CONSIDERATIONS FOR A FUTURE PROJECT

The evaluators have identified only one judicial reform initiative outside those managed by the HJPC: the USD 9.4 million USAID Justice Project in Bosnia and Herzegovina, implemented by Millennium DPI Partners, and projected to last from September 2014 to September 2019. The project consists of three components. The first aims to assist prosecutors' offices to efficiently and effectively prosecute corruption and organised crime through the introduction of new management and performance systems, and through the development of a specialised anti-corruption unit in the BiH Federal Prosecutor's Office (a unit mandated by a 2014 Anti-Corruption law). A second component seeks to strengthen the ability of the judiciary to combat corruption through technical assistance to internal judicial oversight mechanisms, in particular the High Judicial and Prosecutorial Council and the Office of Disciplinary Counsel. The final component is most relevant in connection with the present Sida efforts, and focusing on measures to improve efficiency in the enforcement of legal judgments. The work involves activities with selected courts to streamline procedures and reduce case backlogs and to promote necessary legislative changes. It also aims to develop the capacity of court enforcement agents (bailiffs).

The final component complements and builds on JEP efforts to date. The project has established effective communication and cooperation with the HJPC, which minimises potential concerns that next phases of the JEP might duplicate efforts. Considering the challenge of the enforcement process, there are likely many opportunities for additional engagement on this issue beyond the USAID investment.

### 3 Conclusions

The evaluators conclude that the efficiency of courts has increased through the establishment of backlog reduction plans, and through a strengthened monitoring system, holding the courts accountable for their performance. The backlog of civil cases in courts has been reduced, and backlog reduction plans and their monitoring systems are on track. The JEP has made a contribution to this. There is anecdotal evidence that the payment discipline for utility bills has increased and that this, too, is a contribution of JEP. Court settlement as an alternative method of dispute resolution has increased.

Other output areas that JEP has contributed to have been less successful. This includes the promotion of out-of-court mediation, and outreach activities. SOKOP will only be successful if there is a significant jump in the uptake of the system by utility companies, in particular in the Federation, where so far Zenica is the only successful example of the usefulness of the system.

Sustainability of most of the gains made is uncertain. While processes and rules will remain beyond the project, it is too early to tell whether the current favourable ratio of clearance of old cases versus the number of incoming cases constitutes a trend. The maintenance of SOKOP takes up a considerable amount of resources, but it is clear that the current model, even if it were to reach greater coverage across courts and utility providers in BiH, is not the complete solution. A more efficient system for enforcement of judgements needs to be found outside the scope of this project. Almost all areas that JEP is working on at present require a shift in political will (reflected, inter alia, in bigger budgetary contributions to the judiciary) to make a significant leap forward. At the time of the evaluation, there was no prospect of this happening.

With regards to delivery aspects of the JEP, the evaluators find that clarity on the funding modality would help to manage expectations on what HJPC should be reported on and what should not. HJPC would seem highly competent to implement a basket fund; this, in turn, would remove a number of reporting expectations, such as tracing funds per donor.

## 4 Recommendations

### To HJPC

- The evaluators recommend that the work that has started in the archives in Mostar, Zvornik, and possibly Sarajevo be finalised. This should be possible with relatively modest funds and would provide closure on these activities.
- With regards to out-of-court mediation, future efforts in this area might benefit from a more in-depth understanding of the motivations and interests of potential users of mediation services, and tailoring the project activities accordingly.
- With regards to management training, a possible way forward may be to consider the feasibility of integrating mandatory seminar on the topic within the curriculum of the Centre(s) for Judicial and Prosecutorial Training (*Centar za edukaciju sudija i tužilaca*), possibly through mandatory seminars on the topic with a view towards the sustainability of the efforts.
- HJPC should reach out to relevant NGOs/civil society organisations that deal with free legal aid to harness their insight into perceived inefficiencies in the court system. This should help HJPC to design meaningful activities that improve the service orientation of the judiciary, within the ongoing and for a future project. Partnership with such organisations could also prove useful in translating the gains made in the past years on judicial efficiency to a wider public. Appropriate assistance on conceptualising and implementing activities would be essential, and will need to be budgeted for.
- Risk analysis for a future project should be improved and should be reflective of the opportunities and obstacles posed by the political situation in the country.
- The present levels of data collection and analysis undertaken by the HJPC under the IJEP is exemplary, and the efforts appear to be making an important contribution to furthering court management practices and improving efficiency of target courts. However, at present the data raises additional questions about factors that influence judicial efficiency, and there is no analysis of the relationship of inputs to outputs or the value-for-money of specific activities (inputs). For future project, it would be advisable to strengthen analytical capacity in this direction, in order to further improve operations.
- In a future project, the costing for specific budget items could be improved. For example, temporary staff allocated to courts might be willing to provide services for a lower reimbursement than in the JEP.

- HJPC should start working on conceptualising meaningful outputs that establish a link to achieving some of the key Swedish cooperation priorities, in particular with regard to gender and non-discrimination.

#### To the Embassy of Sweden

- Sweden should consider funding another project with the HJPC, which has proven to be a highly competent implementer, and whose mandate provides it with the authority and legitimacy to work on judicial efficiency. A future project with the HJPC would also be a contribution to strengthening the legitimacy of the state of BiH.
- In terms of the funding modality, a future project should provide greater clarity as to whether it is a stand-alone project, or a basket fund. As a result, there would be clearer expectations and obligations in terms of what HJPC needs to report and in which form.
- A future project must have a results framework that is more reflective of best practice, in particular with regards to a detailed representation of the results chain leading to the outcome level. This is important for accountability and for learning purposes.
- A future project should be more consistently aligned with Swedish cooperation priorities, and the Swedish Embassy should follow up on HJPC's pursuing these (this concerns gender and non-discrimination).
- Given the ring-fenced mandate of the HJPC and the resulting limits on what the institution can achieve on bringing about some of the systemic changes that are needed to increase judicial efficiency and judicial reform, Sweden will need to engage in an even more vocal dialogue at the political level with the BiH authorities as well as through its EU membership. Sweden is one of the few remaining donors in the country, giving it additional weight and significance.

# Annex 1 Terms of Reference

## **Terms of Reference – Evaluation of the Judicial Efficiency Project in BiH implemented by the High Judicial and Prosecutorial Council (2012-2016) and exploring ideas for future cooperation with the High Judicial and Prosecutorial Council in the Rule of Law, Justice sector area in Bosnia Herzegovina**

### **Background**

BiH's prospects to eventual EU candidacy status is linked to the Government's ability to implement national reform strategies, laws, regulations and EU standards that are related to the Stabilization and Association Agreement, particularly regarding judicial reforms.

Judicial reforms lies under the responsibility of the BiH High Judicial and Prosecutorial Council (HJPC), the national level judicial institution in existence since 2004. There is a need to continually strengthen the strategic management within HJPC to facilitate the implementation of the judicial reforms. Political will for reforms within the HJPC leadership is high and there is considerable support across the institution. HJPC has identified the following main areas of reform actions in the next 3-5 years:

1. Efficiency of judicial proceedings in administrative and civil cases (particularly commercial cases) which continues to restrict the right to “a fair trial within reasonable time”
2. Efficiency of enforcement cases (a very high number of enforcement cases is requiring a strategic solution, i.e. deployment of IT solutions, advocating further legislative changes regarding transfer of enforcement from the courts...)
3. Improving the status and position of vulnerable groups in court proceedings (further professionalization of court staff, training of judges and court staff in cooperation with relevant NGOs, training of judicial police)
4. Improving material conditions of courts for processing cases where juveniles and disabled are in contact with judiciary (protecting witnesses, access for people with disabilities)
5. Combating judicial corruption (the courts and prosecutors' offices do not have codes of conduct on integrity, and no strategies for fighting corruption within the judicial institutions)

The government has also in recent years taken several steps to fight corruption, where corruption within the judiciary is still widespread and where the judiciary does not have the confidence of the wider community.

International support is crucial to the judicial reform efforts in BiH and also to the HJPC itself. The recent entering into force of the Stabilization and Association Agreement with the EU has resulted in positive momentum for continued and stronger EU support. The Govern-

ments Justice Sector Reform Strategy (JSRS) is currently waiting to be adopted by the Republika Srpska government after having been adopted by Federation BiH and Brcko District governments. The EU has conditioned already approved 14.8 MEUR budget support to the adoption of the Strategy among other Recommendations coming out of the Structured Dialogue process in Justice Sector. The EU also funds 3 technical assistance projects, through the HJPC (IPA 2012 and 2013). IPA II programming is not operational yet.

The US (USAID and the US Embassy) also provides significant assistance in the justice sector. USAID has a new 10 MUSD 5 year programme in the justice sector which is just starting.

There are a number of other countries as well delivering additional support. Norway is a key partner to Sweden in this sector, as we co-finance two projects. Switzerland also has plans for new projects in judiciary.

#### --Current Swedish Cooperation

Sweden's current portfolio in the judicial sector is based on three projects.

1. -With the HJPC, project called Judicial Efficiency
2. -With UNICEF, project on Juvenile Justice, or Justice for Children
3. -With the Council of Europe Development Bank, project on the construction of the first BiH level high security prison for perpetrators of war crimes and organized crimes

HJPC manages three projects including the Swedish financed. From IPA 2012/2013, it is the "Consolidation and Further Development of the Judicial Communication and Information System" (3.6MEUR)

Norway is funding the HJPC with more than 6.6MEUR including judicial efficiency, human resources management and war crime database project. Switzerland is funding a project strengthening prosecutorial capacities (3.1MEUR)

The Swedish supported HJPC's Judicial Efficiency Project main goal is to improve efficiency, i.e. assist first instance courts in BIH to handle civil case backlogs, and resolve cases in shorter time. The project is 33MSEK Nov. 2012- June 2016 and has 6 main outcome objectives (three of which relate to unpaid utility bills and the other three related to all other unresolved non utility cases) all quantitatively focused on meeting specific targets concerning improvement in efficiency of the system.

Sweden is currently in the process of dialogue with HJPC how and what the future of the sector will be and if there is a continued need for support. It should be noted that Sweden is highly respected donor by HJPC and has been there in the past with several projects which have been successfully implemented over the years.

### Aim of the assignment

The purpose of the assignment is to provide Embassy/Sida with information and knowledge regarding the outcome and effects of the Judicial Efficiency project in its last year of activities (the project ends June 2016).

The evaluation report will contribute to the strategic decision making within Embassy concerning a potential Judicial Efficiency phase II project, at present only in an idea stage, in terms of intervention logic, content and co-operation arrangements. The report will also contribute to the decision making and continued dialogue with HJPC on developing a concept note.

Furthermore, the focus of the assignment is to establish, the outcome and the effects of the Swedish funded project rather than the entire sector reform. However, both direct and indirect effects of the Swedish funded project need to be considered and, on a general level if possible, possible gaps in current international support to BiH identified (in the area of strengthened rule of law and judicial systems and related results in the strategy)

The evaluations shall follow the basic principles contained in Sida's Evaluation Manual (Looking Back, Moving Forward, Sida, 2004). The evaluation contract will be managed by Embassy of Sweden in Sarajevo using Sida Framework Agreement.

### Scope of work

From a project evaluation perspective, the consultant's assignment will be to:

1. Assess the performance of the Judicial Efficiency project in relation to stated objectives. What is the outcome and what are the effects of the project?
2. Assess the relevance and Swedish value added of the project design chosen with the Sweden funded project complementing a multi donor funded reform programme through HJPC. Is this funding modality approach still relevant? What are the lessons learnt from the project in this respect? What collaboration and co-ordination arrangements were applied and how well did they function?
3. Establish the extent to which the steering documents for the Sweden-funded project contain sufficient detail in terms of specific activities to be undertaken, targets and sources of verification?
4. Assess whether the Swedish resources have been utilized efficiently? Was the timing of the support appropriate given the progress made in the overall reform? Would alternative approaches and methods have been more cost-effective?
5. To the extent possible, comment on prospects on achieving a level of ownership and sustainability of the of the structures and systems related to the Swedish intervention.
6. Establish the extent to which cross-cutting issues (gender equality, environment) have been considered during project implementation?

From a broad sector perspective (as it related to a continuation of Judicial Efficiency thru HJPC) the consultant's assignment will be to:

7. Identify and briefly describe on-going reforms managed by HJPC and including the present status and major problems in these reform areas
8. Identify and briefly describe donor support and future plans in these reform areas
9. Identify strategically important unmet needs and priority areas for Swedish support and draft tentative goals for Swedish support to be achieved 2020.
10. Conduct a broad assessment of specific risks for success in the identified areas for future Swedish support and if relevant, possible risk mitigation efforts

The consultants are expected to conduct the assignment in an independent manner and with limited support from Sida and the Embassy.

### Activities

The assignment may be split into several phases. Phase 1 (Inception) is suggested as an inception period for the assignment and will comprise start up, initial desk research, interviews and planning. The evaluation will be conducted in a participatory manner that allows for the main project partners to comment on the terms of references, inception report and, at finally in the last stages the draft conclusions of the evaluation. The consultants will review all relevant documentation including decision-memos and agreements, project steering documents, periodic reports as well as technical reports of relevance for the evaluation assignment. The consultant is also expected to review relevant government plans and literature. The inception period should not exceed 45 calendar days.

A draft inception report should be sent to Embassy/Sida for discussion/approval before proceeding into next phase.

During Phase 2 (Implementation), the consultant is expected to visit BiH in order to carry out the assignment. Activities the consultant is to undertake include interviews with relevant cooperation partners and other key persons such as government officials (national and sub-national), other donors including EU/EUSR, CoE, OSCE, UNDP, and relevant bilateral donors, relevant NGOs etc. The consultant should keep in regular contact with Embassy/Sida during the implementation of the assignment and meet with the Swedish embassy at the beginning and end of the visit to BiH. The consultant should be prepared to present its initial findings in a seminar in BiH. If appropriate and by invitation of the Embassy, representatives of the partners and donors may participate.

During Phase 3(Reporting), the consultant is expected to write the analytical paper and submit it in draft for discussion to Embassy/Sida. Comments are expected to be received within 20 days. Distribution of the draft report is proposed to be done by email by consultant to recipients jointly agreed with the Embassy/Sida. Should the Embassy prefer to distribute the report to relevant stakeholders, this should be clarified in advance.

### Reporting and timing

The draft final report will be produced in English and suggested not to exceed 50 pages, excluding annexes, and will be structured according to the format for Sida evaluation. The final report will be quality assured, proof read and ready for online publication (not print).

A preliminary time plan is proposed as following:

- inception period including desk research April 10-May 10
- submission of draft inception report May 25
- telephone conference with Embassy May 29
- acceptance of inception report June 1
- field visit to BiH June x to ??
- submission of draft final report September xx?
- comments on draft final report September xx
- submission of final report October 5

### Budget

Total budgeted days are estimated up to ca. 40 days and/or a budget ceiling of 500 000 SEK.

The consultant must have relevant academic education, documented experience of working with and/or reviewing donor (preferably Sida) support to rule of law, judiciary sector and issues including gender mainstreaming, experience of having conducted at least two similar assignments, and very good knowledge of English.

The evaluators must be independent of the evaluated activities and have no stake in the outcome of the evaluation.

### Invoicing

The Consultant may invoice 30% of the assignment budget when the inception report has been approved by Sida. The remaining may be invoiced after the final report is approved.

# Annex 2 Inception report with comments from HJPC

## Evaluation of the Judicial Efficiency Project in Bosnia and Herze- govina

### INCEPTION REPORT

Vera Devine

Marijana Trivunovic

1 June 2015

Indevelop Sweden AB

## Abbreviations and acronyms

|         |                                                                                                               |
|---------|---------------------------------------------------------------------------------------------------------------|
| BAM     | Bosnian Convertible Marka (BiH national currency)                                                             |
| BC      | Basic Court                                                                                                   |
| BiH     | Bosnia and Herzegovina                                                                                        |
| CMS     | Case Management System                                                                                        |
| Domstol | Judicial Administration of Norway                                                                             |
| EC      | European Commission                                                                                           |
| EU      | European Union                                                                                                |
| EUD     | Delegation of the European Union (also referred to as DEU in project documents)                               |
| EUR     | EURO                                                                                                          |
| FBiH    | Federation of Bosnia and Herzegovina                                                                          |
| HJPC    | High Judicial and Prosecutorial Council                                                                       |
| IPA     | Instrument for Pre-Accession Assistance                                                                       |
| IT      | Information Technology                                                                                        |
| JEP     | Judicial Efficiency Project                                                                                   |
| KM      | Konvertibilna Marka (Convertible Marka – alternative abbreviation for BiH currency)                           |
| KODIFEL | Konverzija u Digitalni Format i Elektronska Obrada (Conversion into Digital Format and Electronic Processing) |
| MC      | Municipal Court                                                                                               |
| MSEK    | Million Swedish Krona                                                                                         |
| RS      | Republika Srpska                                                                                              |
| SCJE    | Standing Commission for Judicial Efficiency                                                                   |
| SEK     | Swedish Krona                                                                                                 |
| Sida    | Swedish International Development Cooperation Agency                                                          |

## Executive Summary

This inception report outlines how the evaluation of the project “Improving Judicial Efficiency Project in Bosnia and Herzegovina” will be operationalised. The project—core support co-funded by Sweden and Norway—is being implemented by the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina (BiH). The Swedish contribution to the project is 33 MSEK for the time span between November 2012 and June 2016. The assignment has been commissioned by the Swedish Embassy in Sarajevo and pursues two objectives:

- To contribute to accountability and learning by assessing the results achieved by the project against its stated objectives; and
- To provide a contribution to the discussion on the financing of a possible second stage of the project beyond mid-2016.

The focus of the inception phase has been on establishing a baseline against which the project will be evaluated. This was necessitated by the fact that none of the available essential project planning and reporting documents fully reflect the intervention logic; theory of change; and logical framework. Before taking the assignment forward, it is essential to agree among HJPC, the Swedish Embassy, and the evaluators on this reconstructed baseline as the starting point for the evaluation.

The inception report outlines the scope and methodological approach to the evaluation, and discusses to what extent the evaluation questions proposed in the Terms of Reference can be answered based on the insight gained during the inception phase. Specific concerns exist with regards to the questions around the efficiency in the use of Swedish funds—the financial data available do not allow for an assessment on whether the project represents value-for-money.

## Introduction

In May 2015, the Swedish Embassy in Sarajevo/BiH commissioned Indevelop AB to conduct an evaluation of the Improving Judicial Efficiency Project (JEP). This project is co-financed by Sweden and Norway, and is implemented by the High Judicial and Prosecutorial Council (HJPC), the agency in the lead for judicial reforms in BiH.

The key objectives of the evaluation, according to the Terms of Reference (see Annex 3), are:

- To provide the Swedish Embassy/Sida with an assessment of the outcome and impact of the Improving Judicial Efficiency Project and
- To inform the ongoing discussions regarding a possible second phase of the project, including what theory of change should underpin such a project, and what objectives and implementation arrangements should be considered.

Judicial reform in BiH is receiving a considerable amount of international donor support. The Terms of Reference (ToR) specify that the focus of the evaluation is, however, ring-fenced to the Swedish/Norwegian project.

The purpose of this inception report is to ensure that all stakeholders (the Swedish Embassy in BiH, HJPC, and Indevelop AB) are in agreement with the interpretation and operationalisation of the evaluation (based on the ToR). This report is intended to be a tool for clarifying expectations between the evaluators (Indevelop AB) and the users (the Swedish Embassy in Sarajevo/BiH and the HJPC) of the evaluation. Any adjustments made to the content of the ToR in this inception report will take precedence over the content of the original ToR once the inception report is approved by the Swedish Embassy in BiH.

The inception report has been prepared on the basis of an initial desk review of documents that had been made available to the evaluators by the Swedish Embassy in BiH and by the implementing organisation, the HJPC, by 21 May 2015. While a short telephone conference was held with the Embassy on 12 May 2015, no formal interviews were conducted during the inception phase.

The inception report will first define the scope of the review and will set out the evaluators' understanding of the JEP, including its objectives; theory of change; and intervention logic. It will then assess the evaluability of the evaluation questions suggested in the ToR, and it will propose a small number of additional evaluation questions that will be addressed by the evaluation. Finally, the inception report will describe the approach and methodology of the evaluation.

## Assessment of the scope of the evaluation

### CONTEXT OF JUSTICE SECTOR REFORMS IN BIH

The overall objective of the project Improving Judicial Efficiency is to ensure that users of the judicial system in Bosnia and Herzegovina (BiH) will have their cases resolved in a shorter time. This objective encompasses a much wider set of issues.

Judicial inefficiency is more than an inconvenience for citizens and an obstacle for doing business. It can also constitute a breach of human rights derived from Article 6 of the European Convention of Human Rights, which specifies the right of individuals to a fair trial within a reasonable time. This right is also reflected in the Constitution of Bosnia and Herzegovina<sup>25</sup>, and the constitutional courts in the countries have handed down several decisions in recent years entitling individuals to compensation from the State as a result of slow processing of their cases in court.

The Improving Judicial Efficiency 2012-2016 Project Outline further notes that the challenge of slow processing judicial cases is more acute in countries in transition from socialism to a market economy and from a totalitarian system to democracy. Uncertainty created by these multiple transitions gives rise to additional legal conflicts, and transition states tend to experience a greater inflow of court cases than consolidated market democracies. The challenge is even more complex in post-conflict settings, where there are also numerous complicated civil and criminal cases arising from the conflict. All the above challenges apply for Bosnia and Herzegovina in particular.

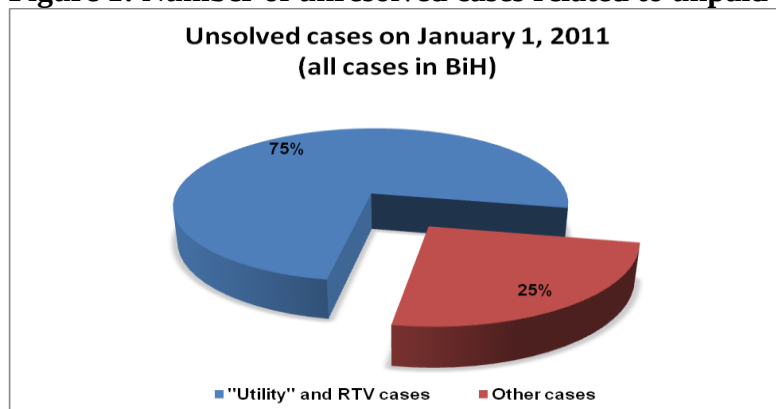
#### *Judicial inefficiency and case backlog*

According to the Improving Judicial Efficiency 2012–2016 Project Outline, as of December 31, 2010 the total number of unresolved cases in BiH was 2,036,124.<sup>26</sup> Of these, approximately 1.5 million were utilities-related cases (non-payment for water, garbage collection and heating) and unpaid radio-television (RTV) subscriptions.

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<sup>25</sup> ECHR is implemented directly in BiH according to the Constitution article II, paragraph 2 (Project Outline p. 7).

<sup>26</sup> The estimated population of Bosnia Herzegovina as of 30.06.2013 is 3,831,555 according to the national Agency for Statistics, <http://www.bhas.ba>.

**Figure 1: Number of unresolved cases related to unpaid utility bills/RTV subscriptions**

Source: Improving Judicial Efficiency 2012–2016 Project Outline p. 12.

Considering these figures, it is to be expected that inefficient case processing would be an issue to receive national and international attention, by the European Commission (EC) in particular. The EC 2009 Progress Report on the criteria for EU candidature status emphasized that: “*The backlog of cases remains a major problem for the judiciary*”.<sup>27</sup> The 2005 document outlining the European Partnership with BiH recognized it as a priority, requiring that BiH “*...make progress in dealing with the backlog of cases before the courts.*”<sup>28</sup>

More recently, the issue of efficiency and backlog resolution was addressed in the first set of recommendations resulting from the Structured Dialogue between BiH and the EU. Specifically,:

*“....the importance of tackling in effective and timely manner the backlog of cases. In this regards, specific legislative measures to address utility cases shall be finalized as soon as possible and be implemented systematically, prioritizing the most affected courts throughout the country. Additional measures should also be considered to unload courts from cases that can be transferred to other institutions (e.g. notaries).”*

<sup>27</sup> “Progress towards meeting the economic criteria for accession: the assessments of the 2009 progress Reports”, European Commission, Directorate-General for Economic and Financial Affairs. P. 28

<sup>28</sup> Proposal for a Council Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina [SEC (2005) 1422], Brussels 9 November, 2005 COM (2005) 555, section 3.1

Indicating the importance of solving the problem of inefficiency and backlogs this issue was again addressed in the second set of recommendations of the Structured Dialogue. The following recommendations were issued:

***“On the backlog of cases, the European Commission:***

- *Encourages the High Judicial and Prosecutorial Council of BiH (HJPC) to continue its initiatives to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernisation of buildings.*
- *Recommends that a set of measures be put in place to decrease the huge influx of cases of unpaid utility bills, such as, removing the processing of utility cases from courts, transferring the non-judicial part of their enforcement to private or public enforcement agencies, and transferring non-contested inheritance cases to notaries.*
- *Recommends that a plan for the introduction of a functional system for in-court and out-of-court mediation throughout BiH be prepared on the basis of the preliminary assessment conducted by the HJPC.*
- *Encourages all stakeholders to organise a regional workshop for the exchange of good practices on the reduction of the backlog of cases, as well as on the execution of criminal sanctions.”*

National strategy guidelines reflect similar concerns. The BiH Justice Sector Reform Strategy<sup>29</sup> defines a number of key objectives for the justice sector relating to efficiency, effectiveness, alignment with EU standards, accountability, and to ensure the rule of law. Consequently, the HJPC Strategy also aims to achieve increased efficiency of courts and prosecutors’ offices, with backlog reduction set as the first strategic objective.<sup>30</sup>

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<sup>29</sup> The strategy was created through a joint effort between the ministries of justice of the State of BiH, the entities, and cantons, as well as Brčko District Judicial Commission and the HJPC. It is the result of a highly participatory and consultative process that encompassed key justice sector institutions of Bosnia Herzegovina, including representatives of professional associations of judges and prosecutors, bar associations, association of mediators and NGOs. Its aim is to provide a strategic framework for addressing key issues within the justice sector over a five year timeframe (2008 to 2012).

<sup>30</sup> Project Outline, p. 8.

Most of these Structured Dialogue recommendations and national policy priorities are reflected in the Judicial Efficiency Project as key objectives, and the project accordingly places particular attention to the reduction of the backlog.

## BACKGROUND OF THE PROJECT

The Judicial Efficiency Project (JEP) has been running since 1 September 2011, and was initially solely funded by the Government of Norway. Norway and Sweden reached a co-financing agreement in 2012, and Sweden participates in the project since November 2012. Current Swedish funding is expected to end in June 2016. Sweden’s financial contribution to the JEP is 33 MSEK (approximately 3.8 MEUR), while Norway was contributing, from 1 September 2011 to 1 September 2014, approximately 4.5 MEUR (of which 3 MEUR were for infrastructure investments).

The JEP provides core support to the HJPC. 1.186 MEUR<sup>31</sup> of the funding goes to financing staff to work on the delivery of the project objectives; 1.484 MEUR are budgeted for the procurement of goods and services; and the remaining funds are allocated to infrastructure works and operational costs. The overall project management unit is provided by an EU-funded IPA project (see below).

In accordance with initial agreements between Norway, the Swedish Embassy in Sarajevo, and HJPC, the JEP’s *narrative* reports do not distinguish between the Norwegian and the Swedish contributions, except for a limited number of activities that are specifically funded by either donor (for example the cooperation with the Judicial Administration of Norway, Domstol). In other words, narrative reporting is done jointly for both donors. However, *financial* reporting is available in disaggregated format for the Norwegian and the Swedish contributions, respectively. As far as the evaluators were able to ascertain, the financial reporting follows the expenditure lines listed above—staff costs; procurement of goods and services; infrastructure and operational costs. It does not break down these costs per project outcome or at output/activity level.

The JEP is aligned with the priorities of the two consecutive Swedish development cooperation strategies, i.e. the 2011-2014 Strategy for Swedish Development Cooperation with Bosnia and Herzegovina, and the subsequent 2015-2020 Results Strategy for Reform Cooperation with the Western Balkans. The 2011 – 2014 Strategy stipulated one of the three areas of Swedish support to be on “democracy, human rights and gender equality, with a focus on the development of central and local administrations aimed at better safeguarding citizen rights,

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<sup>31</sup> Data derived from the August 2014 Financial Report from HJPC to Sida

meeting the requirements of EU integration and providing continued support to democratic actors.”<sup>32</sup> In the ongoing Results Strategy, the project falls under focus area 2, “Strengthened democracy, greater respect for human rights and a more fully developed state under the rule of law”, and where the focus is on strengthened public administration and judicial systems. Specifically, the JEP would seem to fall under the defined results of “[d]elivery of higher quality public services, based on principles of non-discrimination and equal rights and with less corruption” and “[m]ore efficient judicial systems that to a greater extent guarantee the right to a fair trial in accordance with European standards.”<sup>33</sup> The project is also aligned with the executing agency’s priority areas for reform, which, in turn, is part of the judicial reform agenda of BiH in the framework of the country’s EU accession process.

## THE PROJECT’S OBJECTIVES, INTERVENTION LOGIC AND THEORY OF CHANGE

During the inception phase, the evaluators found that while the project logic is implicitly sound and well-justified, the structure of the project documents makes it difficult to follow. The evaluators have therefore found it necessary to map out all project components and re-structure them into an alternative logical framework, while preserving the original aims and objectives. This alternative logical framework is presented in Annex 2 of this inception report and is the key output of the inception phase. The evaluators will need agreement from the HJPC and the Swedish Embassy to use this alternative logical framework as the basis against which the JEP will be evaluated.

- ***Project objectives***

The project’s stated objective is to improve the efficiency of courts in Bosnia and Herzegovina (BiH) to ensure that users of the judicial system get their cases resolved in a shorter time.

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<sup>32</sup> See [http://www.openaid.se/wp-content/files\\_mf/1396858348Bosnia\\_and\\_Herzegovina\\_development\\_cooperation\\_strategy\\_20112014.pdf](http://www.openaid.se/wp-content/files_mf/1396858348Bosnia_and_Herzegovina_development_cooperation_strategy_20112014.pdf).

<sup>33</sup> See [http://www.swedenabroad.com/ImageVaultFiles/id\\_28553/cf\\_347/Results\\_Strategy\\_2014-2020.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_28553/cf_347/Results_Strategy_2014-2020.PDF), p. 4

The issue of inefficiency is seen as a fundamental deficiency in the functioning of the judicial system overall, which impairs court system users in having legal conflicts settled so that they can carry on with their regular life and business (i.e. in realising their human rights), and which negatively impacts society as a whole by undermining the development of a functional economy to create jobs and prosperity (i.e. in state-building objectives). An efficient judiciary is also a fundamental requirement for accession to the European Union (the EU integration objectives). The evaluators interpret these stated factors as the impact-level project objectives.

- **Intervention Logic**

The existence and continued accumulation of a considerable backlog of cases is identified by the JEP as the main challenge in improving judicial efficiency, and the project's main interventions focus on that issue. The Improving Judicial Efficiency 2012–2016 Project Outline (which is the key project document) highlights in particular the immense volume of cases relating to utility payments and RTV subscriptions, which, in the baseline study conducted in 2011, constituted 75% of the overall backlog of over 2 million unresolved cases.<sup>34</sup> Addressing the backlog of utilities-related cases was therefore identified as a main specific objective (outcome). In addition to systemic solutions that address the utility/RTV licence cases overall, the project also defines a special target with the Municipal Court of Sarajevo, where approximately half of the volume of the utility/RTV backlog for the entire country is concentrated, and where these cases constitute 94% of the court's entire backlog.

**Figure 2. Statistics concerning unresolved utility cases**

| Unsolved utility cases in BiH - 31/12/2011              |      |                          |
|---------------------------------------------------------|------|--------------------------|
| 778.761                                                 | 49%  | Sarajevo Municipal Court |
| 804.592                                                 | 51%  | Other courts             |
| 1.583.353                                               | 100% | Total                    |
| Unsolved cases in Sarajevo Municipal Court - 31/12/2011 |      |                          |
| 51.515                                                  | 6%   | Other cases              |
| 778.761                                                 | 94%  | Utility cases            |
| 830.276                                                 | 100% | Total                    |

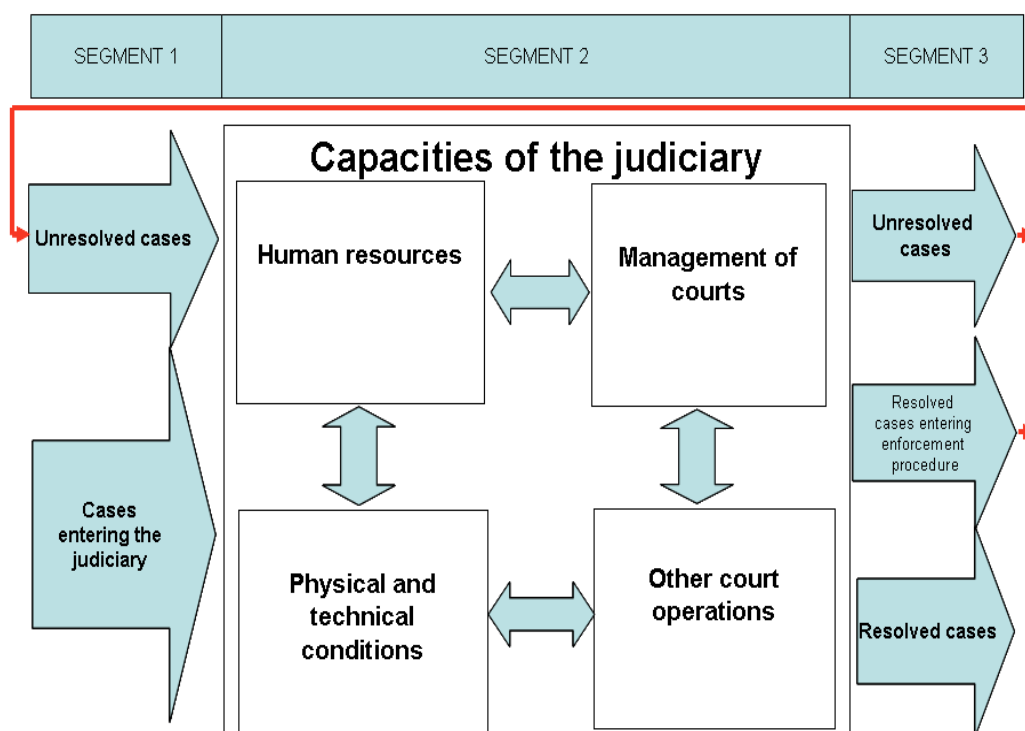
Source: Improving Judicial Efficiency 2012-2016 Project Outline p. 47.

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<sup>34</sup> Improving Judicial Efficiency 2012-2016 Project Outline p. 12. The figures date from December 31, 2010, which was the last date that accurate statistical data was available for the preparation of the Project Proposal.

The project further identified factors that affect court efficiency and effectiveness overall, beyond the utilities cases. The logic is represented in the following diagram defined in the Justice Sector Reform Strategy of BiH, reflecting the different stages in the logical flow of cases through the courts.<sup>35</sup>

**Diagram 1: Key factors affecting court efficiency and effectiveness**



Source: Improving Judicial Efficiency 2012–2016 Project Outline p. 29.

The first segment is the caseload, which comprises both the existing backlog of unresolved cases requiring further consideration by the court and the incoming new cases entering the court for the first time.

The second segment involves the capacities of the courts to handle these incoming cases<sup>36</sup>, which consist of four main components: human resources, management of courts, physical and technical conditions, and other court operations.

<sup>35</sup> Project Outline, p. 29.

<sup>36</sup> The project document states “[t]he second segment relates to how the courts handle these incoming cases”, however, the evaluators interpret the intended meaning to be judicial capacities, as stated in the diagram.

The third segment relates outputs of the judicial process, consisting of either fully resolved cases or cases re-entering the system. The latter include unresolved cases (which effectively stay within the system and contribute to the backlog), and cases that have been resolved but require further action in connection with enforcement of judicial decisions that have not been complied with. Both are represented as re-entering the system at segment 1.

The project aims to affect change in all three segments in order to achieve a reduction in the backlog of non-utilities cases, which is also defined as a main project objective (outcome).

It focuses on the ordinary first instance courts because they account for the vast majority of the problem. In addition to systemic changes that are to be applied across the judicial system, the project also defines two special targets for more sustained support in applying the envisioned systemic reforms. These are Municipal Courts in Mostar and Tuzla, which have some of the highest backlogs in the country, and the focused operational support is seen to complement the planned facilities refurbishment.

Courts in Modriča, Zvornik and Prijedor are described as experiencing similar acute challenges and have been earmarked for similar support. The project aims to apply the lessons learned from these interventions to other courts, pending available time and resources.

The overall project logic is defined (explicitly and/or implicitly) in the following manner:

#### **Overall project goal (impact)**

- Development of a functional economy to create jobs and prosperity
- Accession to the European Union
- Citizens' improved ability to realise their human rights (the right to a fair trial within a reasonable time)

#### **Overall objective (outcome):**

Improved efficiency of courts in Bosnia and Herzegovina (BiH).

#### **Outcomes and outputs:**

*Outcome 1. Improved efficiency of non-utility cases in all first instance courts in BiH*

Outputs:

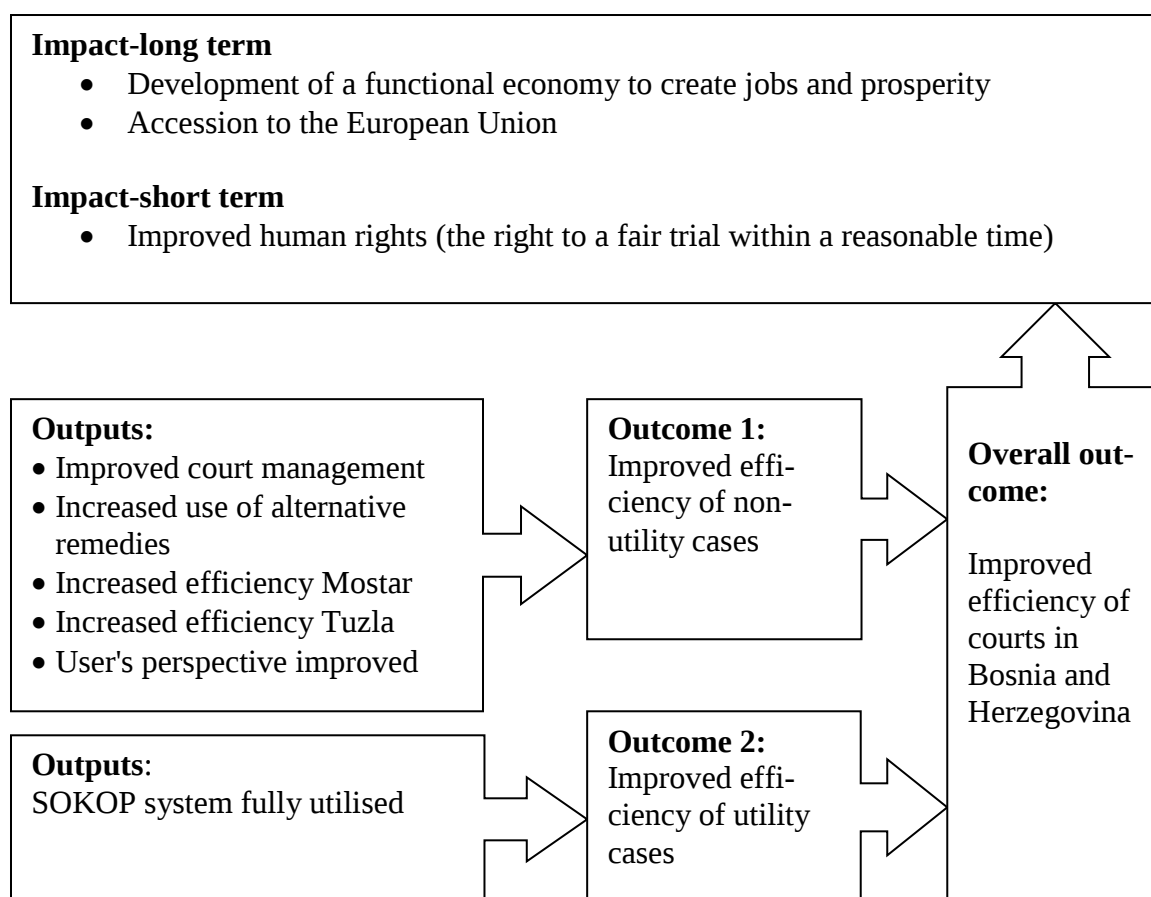
- Improved management of courts
- Increased use of court settlement and out-of-court mediation (alternative remedies)
- Efficiency of Municipal Court Mostar increased
- Efficiency of Municipal Court Tuzla increased
- User's perspective [improved]

*Outcome 2. Improved efficiency of utility and RTV cases in courts in BiH*

Outputs:

- SOKOP system [a tailor-made system for the electronic processing of large batches of utility and RTV cases] fully utilised

**Diagram 2: Project results framework**



This framework is logical and internally consistent. The evaluators find that the emphasis on backlog figures as performance indicators is commendable, as it is the ultimate functioning of the courts due to the project investments that are of primary interest. After mapping all the components described in the Project Outline however, the evaluators identify certain shortcomings of the framework, as follows:

- The framework does not fully reflect all the project activities elaborated in the project document, particularly the reform work in target courts beyond the physical refurbishments in Mostar and Tuzla, which may be significant, potentially constituting *de facto* stand-alone projects.

- The emphasis on the backlog, while understandable and very important in the BiH context, downplays the importance of other issues (and corresponding project interventions) that concern overall court management (defined in Diagram 1 under of “Capacities of the Judiciary”). Court management is arguably the umbrella issue that encompasses backlog management as well.
- More generally, the framework offered under Diagram 1 is under-utilised in demonstrating the project logic. For instance, physical refurbishment (in Mostar and Tuzla) contributes to the reduction of utility-related backlog as well, as part of improving judicial capacities overall.

For the purposes of this evaluation, therefore, the evaluators propose the framework offered in Diagram 1 as the main organising framework for the project, simplified in the following manner:

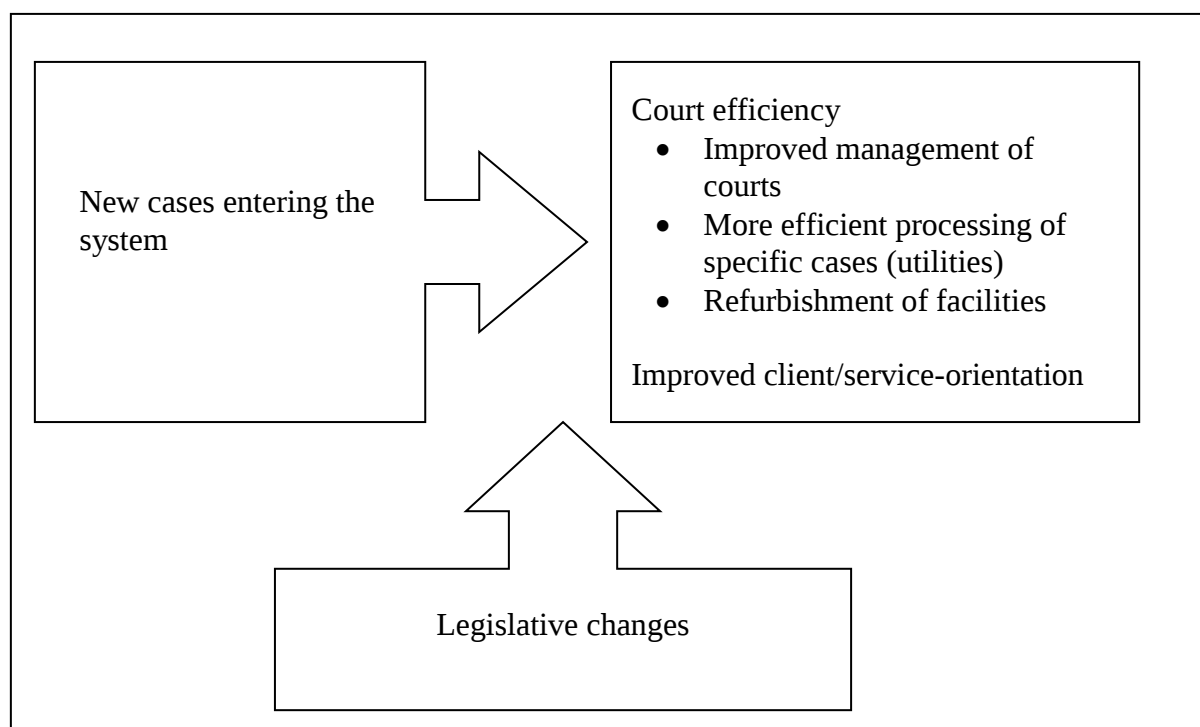
- New cases entering the system are treated as a distinct category. This includes new processes relating to enforcement of judicial decisions.
- Unresolved cases are interpreted as remaining within the judicial system (rather than re-entering it), since the bulk of the project measures targeting their resolution concerns efficiency interventions within the system itself.
- Human resources issues are considered as an aspect of court management practices.

Further, the evaluators have identified additional two project components that are not specifically reflected in Diagram 1. They are the following:

- Improved client/service-orientation (addressed in the “users’ perspective project segment”).
- The enabling environment, in particular legislative changes that would improve court efficiency but require the support of Ministries of Justice and parliaments in order to be implemented.

During the inception phase, the evaluators have found no indication of addressing gender issues, and have highlighted this issue for further consideration.

The evaluators therefore propose an alternative representation of the project intervention logic in Diagram 3, below, based on Diagram 1 and project components identified in the Project Outline. Such a framework also reflects more accurately the structure of the JEP annual Work Plans (although not entirely, as the Work Plans do not elaborate on all activities and outputs described in the Project Outline).

**Diagram 3. Project intervention logic**

On the basis of the project logic, the evaluators have identified six (6) main project outcome objectives, while duly noting that they do not all receive equal emphasis. We propose structuring the results framework according to the observed project logic, as follows.

#### **Overall project goal (impact)**

- Development of a functional economy to create jobs and prosperity
- Accession to the European Union
- Citizens' improved ability to realize their human rights (the right to a fair trial within a reasonable time)

**Overall objectives:** To improve the efficiency of courts in Bosnia and Herzegovina (BiH) to ensure that users of the judicial system get their cases resolved in a shorter time.

#### **Specific objectives (outcomes):**

##### 1. Reduction of cases entering the judicial system

###### Outputs:

- Increased use of court settlement
- Increased use of out-of-court mediation

##### 2. Improved management of courts

## Outputs:

- Improved case management (“Case flow and backlog monitoring through CMS”)
- [Improved] Measurement of productivity (quota system)
- [Introduced] Foreseeable timeframes for case completion
- [Improved] Assessment of judicial quality
- Business process re-engineering and work-flow optimization
- [Assess efficiency of] Human resources within the judiciary
- Special target Mostar: to reduce the total backlog by 20% over the project implementation period and special attention will be paid to reducing the backlog in civil cases.
- Special target Tuzla: to reduce the backlog in all departments in line with Project targets and to improve organisation of the court.
- Additional special targets: Modriča, Zvornik and Prijedor

## 3. More efficient processing of specific cases (utilities cases)

## Outputs:

- Extending the use of SOKOP
- Develop new functionalities of SOKOP
- Improving the organization and practices of the enforcement departments
- Supporting the transfer of enforcement/utility cases to other agencies
- Special target: Reduction of the utility cases backlog in Municipal Court Sarajevo

## 4. Improved client-orientation

## Outputs:

- Improved public information
- Improved service to vulnerable groups (women, ethnic minorities, etc.)

## 5. Refurbishment of facilities

## Outputs:

- Refurbishment Mostar
- Refurbishment Tuzla
- Refurbishment of additional locations
- Addressing needs of users with special needs
- Building new HJPC primary data centre premises

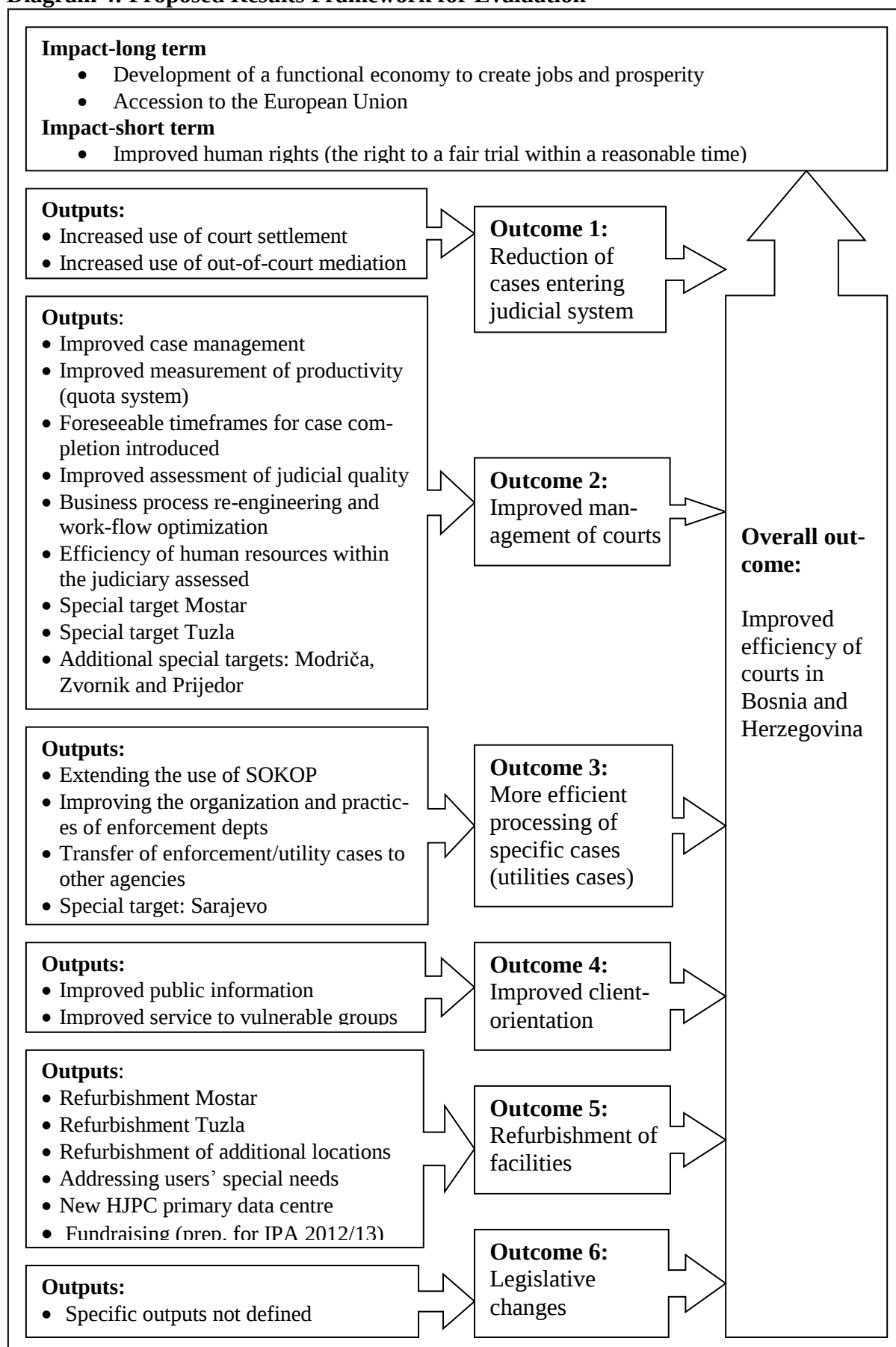
- (preparation for IPA 2012/13)

6. Legislative changes [to make further gains in efficiency]

Outputs:

- Specific outputs not defined

This structure is represented in Diagram 4.

**Diagram 4: Proposed Results Framework for Evaluation**

The challenge with this alternative framework is that there have been no specific indicators defined for a number of related outputs and outcomes. In these cases, the evaluators will, in the beginning of the in-country data collection phase, attempt to define potential indicators and identify relevant data sources. In many cases, it is to be expected that the data will be qualitative rather than quantitative.

As mentioned above, the evaluators have developed a table (Annex 2) outlining all activities described in the Project Outline, corresponding to the above 6 specific objectives. Indicators or expected results have also been included, where they have been defined in the project document. It would be helpful if some of the missing data on specific project components and any relevant indicators could be provided by HJPC in response to this inception report, as well as confirmation which of the described activities have actually taken place, which may have been revised during project implementation.

## EVALUATION PURPOSE AND SCOPE

- ***Geographic reach and period***

The evaluation will assess the project from the onset of the Swedish contribution to the JEP, to date, i.e. from November 2012 to June 2015. It will attempt to assess all project activities in accordance with the above proposed framework. While the main emphasis of the in-country data collection will be in Sarajevo, the evaluators will assess activities in a select number of locations within BiH. At the end of the inception phase, the evaluators suggest to consider as possible locations for data collection in the field Sarajevo, Banja Luka, Mostar, Tuzla, Modriča, and Prijedor. A decision on these locations will be taken after the submission of the inception report and in preparation of the in-country work. Criteria informing the decision on the locations include whether there have been locations targeted by the project where one could assess what is achievable with a major injection of resources, i.e. where a significant change can be observed and what lessons can be drawn from this.

- ***Target groups***

The evaluation will assess the extent to which results (outputs and outcomes) have been achieved among what the JEP's reports define as its "secondary" target group,<sup>37</sup> which include judges; judicial associates; non-judicial staff of BiH courts; and members of the wider judicial community in BiH.

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<sup>37</sup> The project documents define the "primary targets" of the JEP to be the citizens of BiH overall, as well as the business community.

The evaluation will rely on statistics/data from HJPC to get an overview of the actual activities undertaken and which courts, institutions and interest groups have been targeted or collaborated/partnered with for those specific activities. HJPC has made available a first batch of documents, including activity reports. The evaluators will be in contact with HJPC in preparation of the in-country data collection phase to ensure that they consult a representative sample of all relevant stakeholders that the project has worked with.

- ***Attribution***

Justice sector reform in BiH is receiving considerable international support, and in this context, projects of substantial financial size are implemented by the HJPC. At the time of the evaluation, the European Union was funding a technical assistance project under IPA 2012/2013, “Consolidation and Further Development of the Judicial Communication and Information System”, with an overall financial envelope of 2.315 MEURO<sup>38</sup>, and which is implemented by the HJPC under the IPA 2012 and 2013 programmes. Both the IPA project and the JEP share the same project management structure. The evaluators anticipate that it will not always be possible to attribute results to the JEP. Further, as the JEP is co-funded by Norway and Sweden, and given that reporting is aggregate for both donors, it is neither intended nor feasible that the evaluation attributes results between Norway and Sweden with the possible exception for those activities where funding for specific outputs or activities was specifically earmarked to come from the Swedish or the Norwegian contribution, respectively.

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<sup>38</sup> According to information extracted from the HJPC’s website <http://vstv.pravosudje.ba/>. The ToR for the assignment mentions two further IPA projects, although during the inception phase, it could not be ascertained what these were.

## Users and intended use of the evaluation

There are two main users of the evaluation, namely the Swedish Embassy in Sarajevo/BiH, and the HJPC. The evaluators understand that the ToR have been shared with the HJPC, but no additional information is available as to whether HJPC has been directly involved in the drafting of the ToR and thus, whether the questions outlined in the ToR reflect priorities of both the Swedish Embassy and the HJPC.

The Swedish Embassy, and the Embassy of Norway, will use the evaluation:

- For accountability and learning purposes, including in order to learn what results have been achieved by the ongoing project to date;
- To inform their dialogue with the HJPC on the possibilities and directions of funding beyond the current project, which ends in June 2016.

The HJPC might use the evaluation:

- For accountability and learning purposes, and to consolidate its position as a reliable implementing partner for international reform cooperation funds;
- To improve its project planning skills, in particular with view to a possible second phase of Swedish funding for a judicial efficiency project.

The Delegation of the European Union in BiH is a further user of the evaluation, given the substantial involvement of the EU through IPA I and II in the judicial reform process in the context of BiH ambitions for EU membership.

## Relevance and evaluability of evaluation questions

### EVALUATION CRITERIA AND QUESTIONS

The evaluation will focus on four key evaluation criteria, primarily effectiveness, relevance and sustainability, but will also try to address efficiency and impact to the extent possible. An Evaluation Matrix containing detailed questions across these criteria can be found in Annex 1.

The evaluation defines the five included criteria as follows:

- **Effectiveness**

*“The extent to which the development intervention has achieved its objectives, taking their relative importance into account”<sup>39</sup>*

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<sup>39</sup> Definition from OECD/DAC and Sida Evaluation Manual

The evaluation will assess the results achieved (intended and unintended) in relation to the project's theory of change, the specific six outcome objectives and the corresponding outputs as reconstructed by the evaluators in section 2 above. As the outputs of the project are not captured consistently, the evaluators note that it might not be possible to report and assess all of them qualitatively.

In order to assess the extent to which the expected *outcomes* and the *outputs* as confirmed by the HJPC have been achieved, the evaluation team will review and assess the HJPC's monitoring data (this process has started during the inception phase) and undertake interviews with key informants (stakeholder and non-stakeholder) during the in-country data collection phase in BiH. In accordance with the ToR, the evaluation will also assess how conducive the funding modality (core support as a complement to a multi-donor funded reform programme implemented by HJPC) has been to achieving the JEP's results, and whether the processes accompanying implementation (planning, verification, and monitoring) were adequate and what lessons learned can be drawn from the JEP.

- **Relevance**

*“The extent to which a development intervention conforms to the needs and priorities of target groups and the policies of recipient countries and donors”*

The project is aligned with the BiH Justice Sector Reform Strategy 2008-2012 and persuasively argues the need to focus on the reduction of the backlog, reflecting the recommendations from the Structured Dialogue between BiH and the European Union. The Swedish Embassy in BiH has assessed that the JEP's is relevant to Sweden's previous and ongoing cooperation and reform strategies. The evaluators will also specifically assess whether and how the JEP has responded to the Swedish overall cooperation emphasis on gender equality and the environment. Another emphasis will be on examining to what extent the JEP has been relevant on the cross-cutting priorities of non-discrimination and equal rights, and a judiciary with less corruption, as outlined in the 2015-2020 Swedish Reform Cooperation Strategy with the Western Balkans. The evaluators will also examine the value-added of the project against the background of other ongoing international projects that are implemented by the HJPC in parallel to the JEP.

- **Sustainability**

*“The continuation or longevity of benefits from a development intervention after the cessation of development assistance”*

The evaluation will assess sustainability by examining the extent to which the results achieved by the JEP are likely to remain beyond June 2016, and will assess the sustainability criterion in relation to the following:

- Prospects for sustainability of results achieved
- Financial dependence on Sweden vs. availability of funding through the state budget or the prospects thereof

- Organisational sustainability (human resources, systems and structures, etc.)

- **Efficiency**

*“The extent to which the costs of a development intervention can be justified by its results, taking alternatives into account”*

The evaluation will attempt to assess if resources are being efficiently used, provided that budgets and costs are available disaggregated by individual activities/outputs/outcomes. As mentioned above, the financial data of the JEP is available in disaggregated form between the Norwegian and the Swedish contributions. However, the evaluators have not (yet) seen financial reports disaggregated by outputs/activities, i.e. they have no clarity on whether internally, the HJPC tracks expenditure by associating costs with specific activities. There is some information on salaries corresponding to some of the outputs/outcomes, and thus they give some indication of the minimum spent on those. Overall, with the information available at the end of the inception phase, the assessment of this criterion appears to pose the greatest difficulties for the evaluation.

From the data available to the evaluators during the inception phase, it is evident that the JEP is set up in a way as to ensure certain efficiencies and to avoid overlap. As mentioned above, the project is using, in part, existing management structures provided by other donor projects. The evaluation will be able to assess if JEP has systems and procedures in place to manage the Project efficiently, including a useful monitoring system.

## LIMITATIONS

Given the anticipated considerable amount of stakeholders and non-stakeholders to be interviewed across BiH, the key limitation to this evaluation is the limited time available to conduct in-country data collection and the variety of evaluation methods that can be used to conduct it.<sup>40</sup> The evaluators will conduct interviews, as much as possible, in parallel in order to make maximum use of the time available. Both evaluators are fluent in the local language, which will allow for more meetings to be organised given that no interpretation is necessary. Although it cannot reasonably be expected, it would be helpful if a number of meetings could be arranged for 20 and 21 June 2015 (a weekend), given that the team leader is still going to be in BiH during both days.

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<sup>40</sup> For example, there will not be any time to organise and conduct focus groups discussions or workshops with stakeholders, nor will there be a possibility to devise surveys etc.

A further limitation, as highlighted above in section 2, is the fact that the project documentation is not organised in a way that corresponds to the reconstructed project framework as proposed above. The evaluators anticipate having to spend considerable time to ascertain which files “fit” which of the now six outcomes and the respective outputs under these outcomes. In terms of data gaps, the evaluators note the lack of financial data corresponding to activities/outputs as the main limitation to assess the efficiency of the JEP.

The evaluators will not be able to assess the quality of the physical refurbishment beyond confirming that it has taken place in the select locations that will be visited.

## Proposed approach and methodology

### GENERAL APPROACH

The evaluators will use desk study of available project documents and face-to-face semi-structured interviews as their main methods for data collection, triangulation, and analysis.

In terms of approach, the evaluation intends to be as participatory and consultative as possible. The team will strive to triangulate findings to the extent possible by interviewing a wide range of informants, reviewing JEP documentation and by accessing information from external observers and sources (i.e. internet).

### DATA COLLECTION, SOURCES OF INFORMATION, ANALYSIS

- **Document Review**

The evaluators have started to analyse relevant documents provided by HJPC and the Swedish Embassy. These include the Improving Judicial Efficiency 2012–2016 Project Outline (the main project document); and a number of narrative reports of the JEP including on specific activities/outputs; assessment memos and decisions etc. While the HJPC has made a considerable number of documents relating to specific project activities available to the evaluators, these documents have not, yet, been studied in detail, given that the evaluators have focused, during the inception phase, on reconstructing the project logic and on establishing a clear understanding of the JEP. Document review will continue in preparation of the in-country data collection. The evaluators will also seek to identify relevant non-stakeholder documents/sources of information that can be used for the triangulation process.

- **Interviews**

Given that the evaluators have not had the possibility to consider all documents submitted to them, there is, at present, only a preliminary understanding of the potential stakeholders that will be interviewed during the in-country data collection. From what is known at this point, interviews will be held with direct stakeholders of the JEP, including HJPC JEP project staff at the HJPC main office in Sarajevo and project staff employed in the target courts, as well as of the courts that JEP has worked with. Further, the project has targeted a number of stakeholder groups outside the immediate court system, specifically, the JEP was to make a difference for utility companies; representatives of these would be a natural point of call for the evaluators. Further, a number of professional groups were targeted to benefit from the JEP, such as the BiH Association of Mediators—the evaluators will seek to solicit of this and other professional groups that the project worked with. Finally, the evaluators will solicit the views of non-stakeholder experts, i.e. experts that have not directly participated in JEP activities, but who are taking a professional interest in its work, such as the EU Delegation and NGOs (e.g., Transparency International BiH) and independent think tanks. .

The amount of interviews to be held is considerable, and the evaluators will mainly work in parallel (i.e. following two separate schedules) to ensure that the maximum amount of interviews can be held in the limited time available. In preparation of the in-country work, the evaluators will prepare semi-structured interview guides, differentiated among the different stakeholder groups (see above), so as to allow for comparability of the data collected. The evaluators have received, from the Swedish Embassy, an introduction letter that will allow them to set up interviews with stakeholders. As mentioned above, it would be important that HJPC makes available the contact details of individuals they propose to meet. Given that the planning of the schedule will take considerable time, the evaluators would also appreciate if HJPC could nominate a staff member that could liaise with them between 1 and 12 June 2015 in preparation of the trip.

- **Analysis**

The evaluators will analyse the data collected during the in-country data collection and in preparation of the draft final report. Given the time constraints for the in-country work, it would appear that no formal validation workshop can be conducted with the HJPC and the Swedish Embassy. The evaluators are, however, planning to brief HJPC and the Swedish Embassy on the preliminary findings that emerge at the end of the in-country work. A debriefing is foreseen to be held with the Swedish Embassy on Monday, 22 June 2015.

## SELECTION OF KEY INFORMANTS

The evaluators will seek to access information from a wide range of informants (see also discussion above).

In sum, criteria for the selection of key informants will include the following:

- JEP staff at HJPC's main office and in courts specifically targeted by the project
- Representation from all categories of "secondary targets" (i.e. judges, court workers etc.) and according to levels of courts that have been targeted by the JEP
- Geographic representation and representation across both BiH entities
- Representation from across external stakeholders the JEP worked with (professional associations etc.)
- The Swedish Embassy
- Other donors and organisations involved in judicial reform in BiH and through projects with HJPC (Norway, EU, USAID, Switzerland, UNDP)
- A balanced representation of external informants (non-stakeholders) from NGOs, think-tanks and others

## Workplan

The evaluation team will collect data in the following manner and in the following stages during May and June 2015:

1. Logistics of field work, collecting monitoring data from HJPC, and booking interviews: 1 June to 12 June 2015
2. Desk review of JEP documents: 25 May to 15 June 2015
3. In-country data collection: 15 June to 22 June 2015
4. De-briefing with Swedish Embassy: 22 June 2015 (to be agreed)
5. Additional data collection and report writing: 23 June – 30 June 2015
6. Quality assurance of report: 1 – 3 July 2015 (TBC)

### Milestones and deliverables

- **Submission of the Draft Report:** 3 July 2015
- Written feedback/comments on the Draft Report: 11 September 2015
- **Submission of the Final Report:** 25 September 2015

## Annex 1 – Evaluation Matrix

| Questions raised in ToRs and proposed by the evaluators                                                                                                                                                | Indicators to be used in Evaluation                                                                                                                                                                                                                         | Methods                                                                                                  | Sources                                                                                                         | Availability and Reliability of Data/Comments                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Relevance</b>                                                                                                                                                                                       |                                                                                                                                                                                                                                                             |                                                                                                          |                                                                                                                 |                                                                                                                                                                                                                                                                               |
| Is the JEP relevant in relation to BiH and Swedish reform priorities?                                                                                                                                  | Alignment with BiH and Swedish strategies, including Sida cross-cutting issues (gender equality, environment)<br><br>Recognition and acknowledgment of the JEP's efforts by relevant domestic stakeholders and non-stakeholders and international observers | Desk review<br><br>Stakeholder and non-stakeholder interviews<br><br>Triangulation                       | Sector analyses<br><br>EU Progress Reports<br><br>Reports by think tanks and other donors                       | This evaluation question has, to some extent, already been answered in the inception phase.                                                                                                                                                                                   |
| To what extent do the activities carried out address the causes of problems identified?                                                                                                                | Alignment with expert recommendations                                                                                                                                                                                                                       | Assessment/policy document review<br><br>Stakeholder and non-stakeholder interviews<br><br>Triangulation | Sector analyses<br><br>EU Progress Reports<br><br>Reports by think tanks and other donors<br><br>Sector experts | There are numerous analyses of the judicial sector as well as reform strategies and EU recommendations.<br><br>Considering the importance of the sector, it is to be expected that a number of experts on the sector are working in international agencies and domestic CSOs. |
| What is the value-added of the JEP against the background of the multi-donor reform programme implemented by HJPC? Could JEP reinforce and/or multiply effects of other programmes and projects in the | Stakeholders can substantiate the JEP's distinct contribution to advancing the reform agenda                                                                                                                                                                | Desk review<br><br>Stakeholder interviews (HJPC senior management and other donors)                      | Programme/project outlines by other donors                                                                      |                                                                                                                                                                                                                                                                               |

|                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                      |                                                      |                                                                                       |                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| judiciary sector and in other sectors, during the period and how? What lessons can be drawn from the potential evidence of synergies or lack of synergies? |                                                                                                                                                                                                                                                                                                                      |                                                      |                                                                                       |                                                                                                                 |
| How has the JEP been relevant in relation to gender, environment, human rights, and corruption?                                                            | <p>Evidence that gender, environment, human rights and corruption considerations have been incorporated into the JEP design and reflected in the project's defined outcomes, outputs, and activities</p> <p>Data on these cross-cutting issues has been systematically collected and used for internal learning.</p> | <p>Document review</p> <p>Stakeholder interviews</p> | <p>JEP progress reports</p> <p>Sector analyses</p>                                    |                                                                                                                 |
| <b>Impact</b>                                                                                                                                              |                                                                                                                                                                                                                                                                                                                      |                                                      |                                                                                       |                                                                                                                 |
| Has the project positively impacted BiH European Accession process?                                                                                        | EU comments on judicial efficiency in BiH                                                                                                                                                                                                                                                                            | <p>Stakeholder interviews</p> <p>Document review</p> | <p>EU representatives in BiH</p> <p>EU Progress Reports and other EU statements</p>   | Remarks reflecting potential gains made may not be reflected until the next EU Progress Report in November 2015 |
| Are BiH citizens better able to realise their human rights in terms of resolving court cases in a reasonable time frame?                                   | <p>Citizen perceptions</p> <p>Human rights assessments</p>                                                                                                                                                                                                                                                           | Document review                                      | <p>Existing surveys</p> <p>Human Rights groups reports</p> <p>EU Progress Reports</p> | At this stage, the evaluators have been unable to determine the availability of this data                       |
| <b>Effectiveness</b>                                                                                                                                       |                                                                                                                                                                                                                                                                                                                      |                                                      |                                                                                       |                                                                                                                 |

|                                                                                                                                        |                                                                                                                                                                                 |                                                                                           |                                                                   |                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| What are the results of the JEP in relation to the project's stated objectives?                                                        | Quantitative indicators established by the JEP in the beginning of the project<br><br>Relevant key reports (EU accession analyses etc.) confirm progress on judicial efficiency | Desk review<br><br>Stakeholder and non-stakeholder interviews                             | JEP progress reports<br><br>Sector analyses                       | The evaluators will not be able to independently corroborate/check IT statistics produced in the framework of the project             |
| What contextual factors have affected project implementation and overall results?                                                      | Political support for reforms<br><br>Ability to adapt programming to address unforeseen developments (e.g. floods 2014)                                                         | Interviews                                                                                | Project stakeholders                                              | The evaluators have become aware at the inception phase that some project funds have been redirected to sanitise flood-related damage |
| <b>Efficiency</b>                                                                                                                      |                                                                                                                                                                                 |                                                                                           |                                                                   |                                                                                                                                       |
| What were the strengths and weaknesses in relation to the JEP funding modality (core support and co-funded between Norway and Sweden)? | HJPC can provide specific and detailed evidence with regards to the relative merits of the JEP funding modality over other donor's approaches                                   | Stakeholder interviews (HJPC senior management and project staff; Swedish Embassy staff)  |                                                                   |                                                                                                                                       |
| What were the strengths and weaknesses in terms of planning, implementation, and internal monitoring?                                  |                                                                                                                                                                                 | Desk review<br><br>Stakeholder interviews (HJPC and Swedish Embassy)<br><br>Triangulation | Project documents (outline, narrative reports, financial reports) |                                                                                                                                       |
| How have the organisational structure, managerial support and coordination mechanisms supported the delivery of the programme?         |                                                                                                                                                                                 |                                                                                           |                                                                   |                                                                                                                                       |
| What coordination arrangements with other donors and programmes were applied and                                                       | Existence of coordination mechanisms                                                                                                                                            | Stakeholder interviews                                                                    | Project stakeholders (HJPC; other donors)                         |                                                                                                                                       |

|                                                                                                                                                                                                        |                                                                                                       |                                           |                                                                                  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------------------------------------------------------------|--|
| how well did they function?                                                                                                                                                                            |                                                                                                       |                                           |                                                                                  |  |
| Has an effective M&E system been put in place and did it generate information on performance that has been useful for measuring performance and outcomes and taking critical decisions when necessary? | Project-defined indicators<br>Other activity indicators<br>M&E and reporting system overall           | Document review<br>Stakeholder interviews | Project documents<br>Project managers (Swedish Embassy, Norway, HJPC)            |  |
| <b>Sustainability</b>                                                                                                                                                                                  |                                                                                                       |                                           |                                                                                  |  |
| What are the prospects of sustainability of the project results beyond the duration of the JEP?                                                                                                        | HJPC is able to present an assessment for the safeguarding of the results in the medium and long-term | Stakeholder interviews<br>Document review | Budget forecasts/plans                                                           |  |
| Are resources secured for continued IT support of systems provided by the project?                                                                                                                     | Projected institutional budgets                                                                       | Stakeholder interviews                    | Institutional representatives (HJPC and Ministry of Justice)<br>Budget forecasts |  |
| Are resources secured for continued staff training on systems and procedures established by the project?                                                                                               | Projected institutional budgets                                                                       | Stakeholder interviews                    | Institutional representatives                                                    |  |
| What changes in legislation, operational procedures, etc. have been instituted as a result of this project?                                                                                            | Relevant legislation drafted, in procedure, or passed<br>Changes in procedures implemented            | document review<br>interviews             | project reports<br>institutional representatives                                 |  |

|                                                                                                                               |                                 |                                           |                                                  |  |
|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------------|--------------------------------------------------|--|
| What is the projected durability of the physical refurbishments made? Are funds available for routine maintenance and repair? | Projected institutional budgets | Document review<br>Stakeholder interviews | Project reports<br>Institutional representatives |  |
|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------------|--------------------------------------------------|--|

## Annex 2 – Table 1: Reconstructed Project Framework

| Outcomes                                                  | Outputs                                                                                 | Activities                                                                                                                                                                                                                                                                                                                                          | Indicators defined?                                                                                                                                                                                                                                                                                           | Corresponding Work Plan item/ Budget item | Activity undertaken? / other comments |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|---------------------------------------|
| <b>1. Reduction of cases entering the judicial system</b> | Transferring non-contested inheritance cases to notaries (legislative changes required) | <ul style="list-style-type: none"> <li>Assist the HJPC with relevant data and analysis related to the issue of transferring non-contested inheritance cases to notaries.</li> <li>Lobby for the implementation of this reform with the ministries of justice and the relevant parliaments</li> </ul>                                                | <b>Indicators not defined;</b> possible indicators: <ul style="list-style-type: none"> <li>analyses undertaken</li> <li>reforms implemented</li> </ul>                                                                                                                                                        |                                           |                                       |
|                                                           | Court Settlements applied                                                               | <ul style="list-style-type: none"> <li>Project will initiate a pilot project in target courts regarding dispute resolutions through court settlement</li> </ul>                                                                                                                                                                                     | <b>Defined indicator:</b> <ul style="list-style-type: none"> <li>Number of court settlements before the target courts</li> </ul>                                                                                                                                                                              | 2014-15 WP: item 1                        |                                       |
|                                                           | Out-of-Court Mediation applied                                                          | Possible activities: <ul style="list-style-type: none"> <li>‘Preliminary assessment’ of the functioning of the existing system for out-of-court mediation</li> <li>Promotion of out-of-court mediation</li> </ul>                                                                                                                                   | <b>Defined indicator:</b> <ul style="list-style-type: none"> <li>Number of disputes referred to out-of-court mediation in the target courts</li> </ul> Possible additional indicators: <ul style="list-style-type: none"> <li>assessment conducted</li> <li>extent and quality of promotional work</li> </ul> | 2014-15 WP: item 1                        |                                       |
| <b>2. Improved management of courts</b>                   | Improved case management (“Case flow and backlog monitoring through CMS”)               | <ul style="list-style-type: none"> <li>Constantly monitor the implementation of the Backlog Reduction Plans approved by the HJPC, analyse the received data, regularly report to the permanent Commission for Judicial Efficiency on their implementation and prepare proposals for how the plans and the implementation of Plans can be</li> </ul> | Indicators not defined for this segment explicitly, however, the following <b>defined indicators</b> can be used as the focus is on clearing                                                                                                                                                                  | 2014-15 WP: item 9                        |                                       |

|  |                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                   |                     |  |
|--|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--|
|  |                                                       | <p>improved</p> <ul style="list-style-type: none"> <li>• Constantly monitor the resolution of the oldest cases in the backlog and ensure that the courts are adhering to the decisions made by the HJPC regarding case prioritization</li> <li>• Improve the quality of the data in the CMS through cooperation with the ICT and Courts Administration Departments, initiate training with respect to data entry for courts, further develop the written instruction for entering case data and assist the HJPC with the carrying out of inspections of the data in the field</li> <li>• Further improve the automated CMS backlog monitoring and reporting functions for the managerial levels in courts</li> <li>• Further improve the automated CMS backlog monitoring and reporting functions at the level of the HJPC</li> <li>• Improve the capacity of court managers and relevant HJPC staff to use the automated CMS backlog monitoring mechanisms efficiently through appropriate training</li> <li>• Continue to update and further develop the presentation on the HJPC web-page of the implementation of the Backlog Reduction Plans for each court in BiH.</li> </ul> | <p>oldest cases:</p> <ul style="list-style-type: none"> <li>• Percentage of non-utility civil cases older than 5 years</li> <li>• Percentage of non-utility civil cases older than 3 years</li> </ul> <p>possible additional indicator:</p> <ul style="list-style-type: none"> <li>• Courts' implementation of Backlog Reduction Plans</li> </ul> |                     |  |
|  | [Improved] Measurement of productivity (quota system) | <ul style="list-style-type: none"> <li>• Monitor the implementation of the new quota system for judges and report regularly to the Commission for Judicial Efficiency</li> <li>• Propose the necessary changes to the new quota system based on the results of the monitoring</li> <li>• Cooperate with the HJPC ICT Department and the Human Recourses Management Project with respect to integrating the new quota system in the CMS and the Human Resources Database so that the calculation of the monthly and yearly quota of judges can be fully automated</li> <li>• Cooperate with the JudicialAdministration Department with respect to amending the evaluation system for judges in line</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p><b>Indicators not defined;</b> however, it may be possible to review</p> <ul style="list-style-type: none"> <li>• implementation rates of the new quota system for judges</li> </ul>                                                                                                                                                           | 2014-15 WP: item 10 |  |

|  |                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                         |                              |  |
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|  |                                                            | <p>with the new quota system</p> <ul style="list-style-type: none"> <li>Propose new criteria for the performance evaluation of judges that may increase quality and efficiency</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                         |                              |  |
|  | [Introduced] Foreseeable timeframes for case completion    | <ul style="list-style-type: none"> <li>Provide necessary CMS data to the project working on the implementation of foreseeable timeframes for case completion and coordinate its activities with that project</li> <li>If tasked by the Council, take a more active role in the development and implementation of foreseeable timeframes in courts.</li> </ul>                                                                                                                                                                                                                                                                                                     | It is unclear whether the project has addressed this issue; <b>indicators to be considered upon verification</b>                                                                                                                                                        | 2014-15 WP: item 11          |  |
|  | [Improved] Assessment of judicial quality                  | <ul style="list-style-type: none"> <li>Carry out a desk study of regional and European systems for the evaluation of quality in the judiciary</li> <li>Identify new indicators for judicial quality both for individual judges and managers in the judiciary</li> <li>Propose necessary changes to the current evaluation system for judges and court presidents and ensure that relevant indicators reflecting judicial quality are included in the annual evaluation process for judges and thereby taken into account when judges are promoted and when mandates for court presidents are being considered for renewal</li> </ul>                              | <b>Indicators not defined;</b> possible indicators: <ul style="list-style-type: none"> <li>desk study undertaken</li> <li>new indicators for judicial quality identified</li> <li>changes to the current evaluation system proposed</li> <li>changes adopted</li> </ul> | 2014-15 WP: item 12          |  |
|  | Business process re-engineering and work-flow optimization | <ul style="list-style-type: none"> <li>Increase case processing efficiency through changes of the way cases are processed in courts (Business Process Re-engineering) and implement these changes in the CMS and/or the Book of Rules of Internal Court Operations or through recommendations by the Council to court presidents and judges</li> <li>Based on the analysis of current business processes in courts, draft changes of legislation that could have a direct effect on the efficiency and quality of the work of the judiciary, present such changes to the Council and assist the Council with the lobbying for the changes as requested</li> </ul> | <b>Indicators not defined;</b> possible indicators: <ul style="list-style-type: none"> <li>Business process studies undertaken</li> <li>Business process changes implemented</li> <li>Productivity indicators</li> </ul>                                                | 2014-15 WP: item 2 (in part) |  |

|  |                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                              |                              |                          |
|--|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------|
|  | [Assess efficiency of] Human resources within the judiciary | <ul style="list-style-type: none"> <li>Analyse the effectiveness and impact of temporary judges and judicial associates on the reduction of backlogs and make recommendations to the Council regarding how to best utilize temporary judges and judicial associates for further backlog reduction</li> <li>Analyze the existing system for setting the number of administrative staff in the judiciary – in particular in light of the introduction of CMS – and, if necessary, propose changes of the system currently in place.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Indicators not defined;</b> possible indicators: <ul style="list-style-type: none"> <li>Relevant analyses undertaken</li> <li>Recommendations made</li> <li>Recommendations implemented</li> </ul>                                                                                                                                                                        |                              | this is a needs analysis |
|  | Special target Mostar                                       | <ul style="list-style-type: none"> <li>Carry out a detailed analysis of the work process of the departments dealing with civil cases at the court</li> <li>In cooperation with the court president reorganize the court based on the analysis of work processes</li> <li>Change working procedures based on the detailed analysis of the work processes (Business Process Reengineering) and taking into account experiences of other courts</li> <li>Engage additional short term support staff to work on the backlog of land registration cases and for carrying out other backlogged administrative work at the court</li> <li>Provide CMS education of court staff as well as gathering their suggestions for CMS improvement</li> <li>Provide management training for the managers at the court</li> <li>Facilitate the allocation of so-called “typical-cases” at the court (cases originating from the same legal basis) to a limited number of judges</li> <li>Procure equipment necessary for making the court more</li> </ul> | <b>Defined indicators:</b> <ul style="list-style-type: none"> <li>% of non-utility civil cases (with the exception of labor disputes and enforcement cases) older than 3 years</li> <li>% of labor disputes and enforcement non-utility cases older than 5 years</li> <li>Number of unsolved land registry cases</li> <li>% of Backlog Reduction Plan realization</li> </ul> | 2014-15 WP: item 2 (in part) |                          |

|                                                       |                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                 |                                                              |  |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--|
|                                                       |                                                                                                                                       | <p>efficient</p> <ul style="list-style-type: none"> <li>Carry out other activities as recommended by the Change Management Team at the court.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                 |                                                              |  |
|                                                       | Special target Tuzla: to reduce the backlog in all departments in line with Project targets and to improve organisation of the court. | Some activities defined in narrative, details to be determined in consultation with HJPC                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p><b>Defined indicators:</b></p> <ul style="list-style-type: none"> <li>% of non-utility civil cases that are older than 3 years</li> <li>% of non-utility civil cases that are older than 5 years</li> <li>% of Backlog Reduction Plan realisation</li> </ul> | 2014-15 WP: item 2 (in part)<br>2014-15 WP: item 2 (in part) |  |
|                                                       | Additional special targets: Modriča, Zvornik and Prijedor                                                                             | <p>Activities for Basic Courts in Modriča, Zvornik and Prijedor not defined</p> <p>Once the Project extension to these three Courts is approved, the Project will perform an initial assessment of needs as described above for Mostar and Tuzla. This assessment will in turn point to the activities that will be required. The experience gained by the Project in the interventions in other courts will be most useful in helping the Project to efficiently identify the problems and to determine the appropriate solutions</p> | <p><b>Results/indicators not defined,</b> to be developed at a later stage in consultation with HJPC</p>                                                                                                                                                        | 2014-15 WP: item 2 (in part), to be verified                 |  |
| <b>3. More efficient processing of specific cases</b> | Extending the use of SOKOP                                                                                                            | <ul style="list-style-type: none"> <li>Procure equipment and licences necessary for the use of SOKOP in selected courts as decided by the Council</li> <li>Carry out training necessary for the use of SOKOP in those courts</li> <li>Organise workshops with system users in order to increase their sense of ownership and determine necessary improvements</li> <li>Provide limited assistance to selected courts related to enter-</li> </ul>                                                                                      | <p><b>Defined indicators:</b></p> <p>% of total number of cases resolved in SOKOP</p> <p>% of total number of resolved cases in relation to cases received within reporting period through SOKOP</p>                                                            | 2014-15 WP: items 13, 14, 15,                                |  |

|  |                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                   |             |  |
|--|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--|
|  |                                                                         | <p>ing of utility enforcement cases in SOKOP and extraordinary backlog reduction staff</p> <ul style="list-style-type: none"> <li>• Manage the further development of the SOKOP software and ensure its sustainability <ul style="list-style-type: none"> <li>○ Migrate data to the new servers provided through IPA2009</li> <li>○ Ensure the maintenance of the software and the satisfaction of users'</li> <li>○ Ensure full integration of SOKOP with CMS</li> <li>○ Gradually transfer the administration of SOKOP to the ICT department at the HJPC</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                  | <p>% of backlog of utility enforcement cases in first instance courts registered in SOKOP</p> <p>% of total utility enforcement cases sent through SOKOP to first instance courts</p> <p>% of total utility cases sent through SOKOP to first instance courts</p> |             |  |
|  | Improving the organization and practices of the enforcement departments | <ul style="list-style-type: none"> <li>• Contribute to the internal reorganization of the work of the bailiffs</li> <li>• Provide and implement recommendations from international experts</li> <li>• Further develop SOKOP and CMS functionalities in order to reflect the new role of bailiffs in the enforcement procedure</li> <li>• Facilitate the possibility of more effective means of enforcement</li> <li>• Identify and draft necessary legislative changes to provide access to existing electronic information on the financial situation of the debtor for courts and plaintiffs</li> <li>• Develop procedures for automatic and semi-automatic searches of the debtors' assets</li> <li>• Increase the number of scheduled court sales</li> <li>• Streamline the internal procedures for dealing with sales of seized property</li> <li>• Improve the capacity to advertise the sale of seized items from enforcement proceedings on the judicial portal</li> </ul> | <p><b>Indicators not defined;</b> possible indicator:</p> <ul style="list-style-type: none"> <li>• Expert recommendations implemented</li> </ul>                                                                                                                  |             |  |
|  | Supporting the trans-                                                   | <ul style="list-style-type: none"> <li>• Assist the HJPC and the ministries of justice with relevant</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Indicators not de-</b>                                                                                                                                                                                                                                         | 2014-15 WP: |  |

|                                       |                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                            |                              |                                                                                  |
|---------------------------------------|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------------------------------------|
|                                       | fer of enforcement/utility cases to other agencies                                 | <p>data and analysis needed for transferring enforcement to institutions outside the courts</p> <ul style="list-style-type: none"> <li>• Upon invitation, participate in working groups established by the ministries to address this issue</li> </ul>                                                                                                                                                                                                                                                                                                                                      | <p><b>fined</b>; possible indicators:</p> <ul style="list-style-type: none"> <li>• Analysis undertaken;</li> <li>• Reforms instituted</li> </ul>                                                                                                                           | item 6                       |                                                                                  |
|                                       | Special target: Reduction of the utility cases backlog in Municipal Court Sarajevo | <ul style="list-style-type: none"> <li>• Set up and coordinate a Utility Cases Issues Steering Board (UCISB) at the level of Canton Sarajevo</li> <li>• Assist the UCISB with developing a multifaceted Utility Cases Backlog Reduction Plan, and follow up on its implementation</li> <li>• Ensure a smooth importation of utility cases from KODIFEL to SOKOP</li> <li>• Provide support staff needed for the reduction of the utility backlog</li> <li>• Provide support to the utility companies in respect of establishing an updated database of utility users in Sarajevo</li> </ul> | <p><b>Defined indicator:</b></p> <ul style="list-style-type: none"> <li>• Percentage of unresolved utility cases at Sarajevo Municipal Court</li> </ul>                                                                                                                    | 2014-15 WP: item 16          | Not sure how to deal w/interventions in specific courts: just a separate output? |
| <b>4. Improved client-orientation</b> | Improved public information                                                        | Information/ outreach activities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b>Defined indicator:</b></p> <ul style="list-style-type: none"> <li>• Public perception of judicial efficiency</li> </ul> <p>Possible additional indicators:</p> <ul style="list-style-type: none"> <li>• Extent/quality of information/outreach activities</li> </ul> | 2014-15 WP: item 4 (in part) |                                                                                  |
|                                       | Improved service to vulnerable groups                                              | Situation/needs analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>Indicators not defined</b>; possible indicators:</p> <ul style="list-style-type: none"> <li>• Analysis undertaken</li> <li>• Measures proposed</li> <li>• Measures implemented</li> </ul>                                                                            |                              |                                                                                  |
| <b>5. Facilities</b>                  | Mostar                                                                             | Scope of interventions not defined, to be elaborated in consulta-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Indicators not de-</b>                                                                                                                                                                                                                                                  | 2014-15 WP:                  |                                                                                  |

|                                                                     |                                                |                                            |                                                                                                                                               |                                                  |   |
|---------------------------------------------------------------------|------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|---|
| <b>refurbishment</b>                                                |                                                | tion with HJPC and project team            | <b>fined</b> ; to be developed on the basis of activities                                                                                     | item 8                                           |   |
|                                                                     | TuzlPrijedor                                   |                                            |                                                                                                                                               |                                                  |   |
|                                                                     | Other locations:                               |                                            |                                                                                                                                               |                                                  |   |
|                                                                     | Fundraising (preparation for IPA 2012/13)      |                                            |                                                                                                                                               |                                                  |   |
|                                                                     | Addressing needs of users with special needs   |                                            |                                                                                                                                               |                                                  |   |
|                                                                     | Building new HJPC primary data centre premises |                                            |                                                                                                                                               |                                                  |   |
| <b>6. Legislative changes [to make further gains in efficiency]</b> |                                                | Based on OECD study, specifics not defined | <b>To be developed</b> based on activities implemented; in general, number and status of legislative changes (drafted, in procedure, adopted) | 2014-15 WP: item 5<br><br>2014-15 WP: item 7 (?) | ` |

## Annex 3 – Documents Reviewed

### *Project-Related Documents (in alphabetical order)*

Annual Workplan September 2014 to August 2015. (Supplied by Swedish Embassy)

Appraisal of Intervention; J. Francis/Swedish Embassy Sarajevo. 7 March 2012.  
(Supplied by Swedish Embassy)

Appraisal Plan of Judicial Efficiency Project/Local Appraisal Committee Swedish Embassy Sarajevo. 19 April 2012. (Supplied by Swedish Embassy)

Attachment 2 JEP Sida and HJPC Internal Results Summary. 11 February 2012.  
(Supplied by Swedish Embassy)

Audit Report HJPC Judicial Efficiency Project funded by Sida; Period 2012-2013;  
Revizija-Auditing doo Mostar. 28 October 2013. (Supplied by Swedish Embassy)

Audit Report HJPC Judicial Efficiency Project funded by Sida; Period 2010-2014;  
Intercons doo Zenica. October 2014. (Supplied by Swedish Embassy)

Contribution 55000002 Narrative Report; 1 November 2012 – 31 August 2013, Im-  
proving Judicial Efficiency Project; HJPC Report to Sida. No date. (Supplied by  
Swedish Embassy)

Contribution 55000002 Narrative Report; 1 September 2013 – 31 August 2014, Im-  
proving Judicial Efficiency Project; HJPC Report to Sida. No date. (Supplied by  
Swedish Embassy)

Copy of IJEP Budget – All Donors. No author. No date. (Supplied by Swedish Em-  
bassy)

Decision on Appraisal JEP. Swedish Embassy Sarajevo. No author. 25 April 2012.  
(Supplied by Swedish Embassy)

Decision on Appraisal JEP. Signed J. Francis, P. Persson, S. Perković. 16 May 2012.  
(Supplied by Swedish Embassy)

Decision on Contribution. Not signed. Not dated. (Supplied by Swedish Embassy)

Detailed Financial Report as of 31 August 2013. Not signed. Not dated. (Supplied by  
Swedish Embassy)

Detailed Financial Report as of 31 August 2014. Not signed. Not dated. (Supplied by  
Swedish Embassy)

Improving Judicial Efficiency – Project Outline. September 2012. (Supplied by Swe-  
dish Embassy)

Informacija o ulaganju u ciljne sudove Projekta unapređenja efikasnosti pravosuđa i aktivnostima vidljivosti Projekta. 28 March 2014. In Bosnian. (Supplied by HJPC)

JEP Indicators June 2014. Swedish Embassy. Not dated. (Supplied by Swedish Embassy)

JEP Indicators December 2014. Swedish Embassy. Not dated. (Supplied by Swedish Embassy)

Letter from HJPC to Swedish Embassy Sarajevo (J. Francis) requesting reallocation of project funds. 14 July 2014. (Supplied by Swedish Embassy)

Letter from Swedish Embassy Sarajevo (P. Persson) approving reallocation of project funds. 2 July 2013. Attached letter from HJPC (A. Suljagić) to Swedish Embassy. 25 June 2013. (Supplied by Swedish Embassy)

Minutes of the Meeting of the Improving Judicial Efficiency Project. 16 January 2012 [N.B. this is probably a typo and should read 2013, as it reports on developments in late 2012]. (Supplied by Swedish Embassy)

Minutes of the semi-annual Meeting between Sida and the Improving Judicial Efficiency Project. 10 July 2013. (Supplied by Swedish Embassy)

Minutes of the semi-annual Meeting between Sida and the Improving Judicial Efficiency Project. 5 December 2013. (Supplied by Swedish Embassy)

Minutes from the Meeting on the Improving Judicial Efficiency Project. 11 July 2014. (Supplied by Swedish Embassy)

1. Minutes of the meeting with representatives of the Embassy of the Kingdom of Sweden. 2 December 2014. (Supplied by Swedish Embassy)

2.

3. New Financial Plan 2014-2015. (Supplied by Swedish Embassy)

4.

5. Results Summary of JEP. 22 June 2012. (Supplied by Swedish Embassy)

6.

7. Risk Analysis Register JEP. No date. (Supplied by Swedish Embassy)

8.

Statement of Cooperation Regarding the Promotion of Judicial Efficiency in Bosnia and Herzegovina between the HJPC of BiH; the EUD to BiH; the Embassy of Norway to BiH; and the Embassy of Sweden to BiH. Sarajevo, 2 November 2012. (Supplied by Swedish Embassy)

Signed Specific Agreement between the HJPC and Sida on the Improving Judicial Efficiency Project. 31 October 2012. (Supplied by Swedish Embassy)

#### *Other documents*

Draft Concept Paper on the Establishment of Enforcement Agency.

EC Instrument for Pre-Accession Assistance II, 2014 – 2020 (draft).

Follow-up memo on the Rule of Law and Fundamental Rights Workshop in the Framework of the IPA II planning. 8 May 2015. (Supplied by Swedish Embassy)

Swedish Strategy for Development Co-operation with Bosnia and Herzegovina 2011 – 2014, at [http://www.openaid.se/wp-content/files\\_mf/1396858348Bosnia\\_and\\_Herzegovina\\_development\\_cooperation\\_strategy\\_20112014.pdf](http://www.openaid.se/wp-content/files_mf/1396858348Bosnia_and_Herzegovina_development_cooperation_strategy_20112014.pdf)

Results Strategy for Sweden's Reform Cooperation with the Western Balkans 2015-2020, at [http://www.swedenabroad.com/ImageVaultFiles/id\\_28553/cf\\_347/Results\\_Strategy\\_2014-2020.PDF](http://www.swedenabroad.com/ImageVaultFiles/id_28553/cf_347/Results_Strategy_2014-2020.PDF)

#### *Websites*

EU Overview over Structured Dialogue in the Justice Sector in BiH, at <http://europa.ba/Default.aspx?id=87&lang=EN>

Website of the HJPC <http://vstv.pravosudje.ba/>

# Annex 3 Persons consulted

## **Sida/Sweden:**

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Jonathan Francis, former Programme Officer, Embassy of Sweden, BiH

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Irma Boracic-Surman, Registry Office, Municipal Court Sarajevo  
Nenad Banduka, Registry Office, Municipal Court Sarajevo  
Archivist, Municipal Court Sarajevo  
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Gorana Zagovec Kustura, Officer, USAID Justice Project





## Evaluation of the Project “Improving Judicial Efficiency” (Bosnia and Herzegovina)

The Swedish Embassy in Sarajevo/ Bosnia and Herzegovina (BiH) commissioned Indevelop to conduct, between May and October 2015, an evaluation of the Improving Judicial Efficiency Project (JEP). This JEP is co-financed by Sweden (with approx. 3.8 MEUR) and Norway (approx. 4.5 MEURO), and is implemented by the High Judicial and Prosecutorial Council (HJPC), the state institution overseeing the judiciary and in the lead of judicial reforms in BiH. The project's stated objective is to improve the efficiency of courts in BiH to ensure that users of the judicial system get their cases resolved in a shorter time. The evaluation finds that the JEP has made a contribution to increasing judicial efficiency in BiH. During the consecutive years covered by the project (2011 to date), there has been a reduction in the backlog of non-utility civil cases in the courts of first instance, and in accordance with the indicators set by the project. HJPC has, with JEP-funding, instituted backlog reduction plans against which individual judges and court performance is being monitored. These plans and monitoring mechanisms have also made the courts more accountable. At the time of the evaluation, the ratio of clearing of old cases (pre-2011) to incoming cases suggested that courts were able to resolve a greater number of cases than there were incoming cases, albeit it is too early to establish this as a trend that will continue in the future. The project has also made progress on increasing the number of court settlements, and has successfully lobbied for legislation to ease the Federation court system of inheritance cases by transferring those to notaries.