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Sida Decentralised Evaluation

NIRAS Sweden AB

Evaluation of the Improving Court Efficiency and Accountability of Judges and Prosecutors in BIH Phase 2

Evaluation Report

Evaluation of the Improving Court Efficiency and Accountability of Judges and Prosecutors in BIH Phase 2

**Evaluation Report
November 2019**

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Abbreviations and Acronyms

BiH	Bosnia and Herzegovina
CEPEJ	Council of Europe European Commission for the Efficiency of Justice
CEST	Centre for Training Judges and Prosecutors
CMS	Central Management System
PDPA	Persona Data Protection Agency
EC	European Commission
EU	European Union
EUD	European Union Delegation
EUSR	EU Special Representative
GAP	Gender Action Plan
HJPC	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
IPA	Instrument for Pre-Accession Assistance
MoU	Memorandum of Understanding
MSME	Micro-, Small- and Medium-sized Enterprises
PDPA	Persona Data Protection Agency
RS	Republika Srpska
SEK	Swedish Kroner
Sida	Swedish International Development Cooperation Agency
SNCA	Swedish National Courts Administration
SOKOP	Part of CMS for Utility Cases
USD	US Dollar
WJP	World Justice Project

Preface

This report presents the findings of the evaluation of the Evaluation of the Improving Court Efficiency and Accountability of Judges and Prosecutors in BIH Phase 2, implemented by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The evaluation has been commissioned by the Swedish Embassy in Sarajevo and has been carried out by NIRAS Sweden. The purpose of this assignment is to provide the Embassy of Sweden with information and knowledge regarding the outcome and effects of the ICEA project achieved during the period November 2016 – December 2019. The focus of this evaluation was on effectiveness and sustainability.

The team consisted of evaluators Marina Matic Boskovic and Jups Kluyskens (Team Leader); Christine Paabøl Thomsen was project manager for the assignment, and Niels Dabelstein conducted quality assurance. The evaluation was conducted between August and November 2019.

Executive Summary

The Improving Court Efficiency and Accountability of Judges and Prosecutors (ICEA) project represents the continuation of cooperation between the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH) and the Government of Sweden towards improving the efficiency of the Bosnia and Herzegovina (BiH) judiciary.

The purpose of this assignment was to provide the Embassy of Sweden with information and knowledge regarding the outcome and effects of the ICEA project achieved during the period November 2016 – December 2019. The focus of this evaluation was on effectiveness and sustainability.

ICEA has two complementary objectives:

1. It aims to improve the efficiency of the judiciary by, inter alia, streamlining operations within the courts, reforming enforcement procedures and other practices in order to reduce a substantial backlog of cases; it also aims to improve the position of vulnerable groups that access the courts, and strengthen gender equality among judicial office holders.
2. It seeks to advance judicial accountability through the development of a system for the management and verification of judges' and prosecutors' financial reports.

Sweden is the only donor to the ICEA Phase 2 project and the budget for ICEA Phase 2, is 22 414 640 SEK. ICEA is part of a larger effort by donors to support reforms in the justice sector. ICEA is complementary to the partners' support and in particular to assistance from Norway and the Netherlands. Donor coordination in BiH, however, is limited at the strategic level and more efforts are needed to reduce fragmentation among donors and support judicial reforms which are slow. The ICEA project is complementary to the European Union (EU) interventions and contributing towards EU accession.

ICEA is relevant in terms of its contribution to reforms in the justice sector, BiH's national strategy, the EU accession process and several international agreements of which BiH is a signatory.

Conclusions

ICEA is most effective in promoting efficiency objectives, in testing innovations and from the innovations demonstrate results and contribute to systemic reforms. The results of the different components are mixed, however, and dependent on decisions that need to be taken by state institutions in the short term. HJCP is operating as an independent organisation that cannot influence state institutions and state-owned companies to move forward on reforms. It has, however, contributed to drafting relevant legislative amendments and procedures, for example in enforcement procedures.

HJCP's collaboration with SNCA has been excellent, introducing the delegation of tasks to non-judicial staff which has a positive effect on the number of cases handled and the time needed to come to the closure of cases. Improvements in efficiency have been realised in a relatively short period.

Contribution to drafting the legislative amendments for the enforcement procedure has been realised and it is expected that short term measures will be adopted once the government is constituted. While the project mainly focusses on efficiency in the judiciary, new activities such as gender equality, protection of vulnerable groups, and integrity of judicial office holders have made a good start. This has also contributed to HJCP's strategic orientation and fulfilling obligations concerning gender equality, violence against women and various forms of discrimination.

Progress in the integrity of judicial office holders is limited, including whether an independent body should be responsible for asset declarations. Integrity of judicial office holders may be the most important element of all when it comes to improving the quality and the status of the judiciary in BIH.

Project Design

The project design consisted of two parts: activities related to the efficiency of the courts and activities related to accountability. The project objectives should articulate more explicitly how project components contribute to the judicial reform agenda. Two log frames were developed for this support: one for the overall project and one for the collaboration with SNCA. The log frames have shortcomings in defining outputs and indicators most of which are activity or process based. Results-based analysis is sometimes lacking as well as the clarity of the baseline and the methods applied for measuring progress.

The HJCP project team has effectively managed the project and the Council and Secretariat are well placed and equipped to implement projects, oversee reforms and provide incentives to courts to introduce innovations, including in close collaboration with the SNCA.

The sustainability of results is highly dependent on the outcomes of discussions on structural changes and reforms, the role of an active Council and the establishment of a new government. At the same time, the HJCP project team has managed to make progress and, in some instances, activities have been handed over to national institutions. This could be strengthened in the next stages of the project so that Sida can ultimately scale back its support. A considerable proportion of measures that would assure sustainability are, however, political in character, in the sense that they concern legislative changes that require political support (e.g. enforcement and integrity). This remains a challenge and donors should continue to press for reforms at the highest level.

Recommendations

While an explicit exit strategy is not advised, Sida should include phase out activities in the components. How the different activities advance will also depend on the establishment of a new government and how the reforms will be pushed forward. This requires close monitoring and flexibility as the situation evolves.

The new log frame needs to be developed in line with good practices to include appropriate objectives and SMART indicators. The SNCA contribution should be part of the overall ICEA project framework and logic so that joint monitoring and reporting can take place, including creating one oversight committee.

The two components should be further supported and aligned to HJCP's new Strategic Plan. At this moment in time it is critical to continue work in both components to institutionalize what has been started. Many of the operational reforms initiated under this project are uncontroversial and therefore less likely to confront resistance on political grounds. HJCP should lead in the design of the next activities and select partners to secure ownership and facilitate the sharing of results to the Council and donors. The delegation system should be rolled out to more courts in close collaboration with SNCA until a critical mass/tipping point is achieved so that the changed work processes can be applied throughout the legal system. SNCA's support can phase out once the tipping point has been achieved and responsibilities have been handed over to HJCP and the courts.

Support to gender equality and promoting the rights of vulnerable groups in the judicial system should continue to be supported. Promoting gender equality and protecting vulnerable groups remains relevant but strategic documents need to be developed to ensure

that Sweden's contribution translates into concrete institutional changes. The integrity of the judiciary and the HJPC Council are awaiting some structural reforms and further support should be aligned to the outcomes of those processes.

Sweden could also initiate discussions with other donors about supporting longer term programming options, including other funding modalities and joint programming.

1 The Assignment

1.1 THE EVALUATION

NIRAS Sweden was tasked by the Embassy in Sarajevo to review its project entitled “Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH - Phase 2 (ICEA), covering the period November 2016 - December 2019”.

The ICEA project represents the continuation of cooperation between the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH) and the Government of Sweden towards improving the efficiency of the Bosnia and Herzegovina (BiH) judiciary, with an accent on the courts. It is a logical next step that builds on activities covered by two previous initiatives: Improving Judicial Efficiency Project, funded by the Kingdom of Norway (September 2011 – May 2014), and the first phase of the current project funded by the Kingdom of Sweden (November 2012 – June 2016).

The purpose of this assignment is to provide the Embassy of Sweden with information and knowledge regarding the outcome and effects of the ICEA project achieved during the ongoing implementation of the second project phase November 2016 – December 2019. ICEA is coming to an end in December 2019, and although no specific evaluation is planned by the end of this phase, the project partners have indicated that elements of the program would not be sustainable if there was no extension into an exit phase. An exit phase would primarily focus on existing components, or only some of them, conditional to a determination on the acceptable level of sustainability and effectiveness and available funding from Sida.¹

1.2 REPORT STRUCTURE

Given that this project is a follow up from the previous intervention and most activities have not yet been completed (the project ends 31 December 2019), the team decided that it would be most beneficial to assess the components and subcomponents in terms of the progress towards results. This would give stakeholders a detailed understanding of where subcomponents stand and what the next steps could be. The HJCP has a Strategic Plan for the period 2014 - 2018 which Sida’s ICEA Phase 2 project contributes towards. There is, however, limited progress in implementing the Justice Reform Strategy and the fact is that several donors are supporting some of the institutions that Sida

¹ Terms of Reference, page 2

also targeted, many processes are ongoing and activities in flux, including Sida's own thinking about the next stage.

As a result, the findings will be a summary of the results per subcomponent to which the OECD-DAC evaluation criteria have been applied (relevance, effectiveness, efficiency and sustainability). Additional sections have been introduced to respond to the ToR questions and report on additional findings that are relevant for Sida and stakeholders to consider when reflecting on the next steps.

2 The ICEA Project

The project rationale stems from the recognition that improving the state of the judiciary in Bosnia and Herzegovina is a key precondition towards European integration. The country applied for EU membership in 2016 and thereby committed to fulfilling several obligations necessary to acquire country candidate status and begin the negotiation process. Further judicial reform is among these obligations and at the heart of the European integration process.

ICEA has two complementary objectives:

1. It aims to improve the efficiency of the judiciary by, inter alia, streamlining operations within the courts, reforming enforcement procedures and other practices in order to reduce a substantial backlog of cases; it also aims to improve the position of vulnerable groups that access the courts, and strengthen gender equality among judicial office holders.
2. It seeks to advance judicial accountability through the development of a system for the management and verification of judges' and prosecutors' financial reports.

The project consists of two main components with separate subcomponents under which various activities have been identified.² Project activities were preceded by the conclusion of a Specific Agreement on 15 November 2016, which was amended three times: on 23 June 2017, 14 March 2018 and finally on 11 December 2018. In addition to extending the project duration, the amendments resulted in the introduction of a new subcomponent in 2018. The final project outline subject to the present evaluation stands as follows:

² According to the Project Proposal 2016 and its log frame

Table 1: ICEA's components**Component 1: Enhance Court Efficiency**

- 1.1 Court cases management
- 1.2 Internal reorganisation of courts and human resources at courts (with the support of Swedish National Courts Administration (SNCA))
- 1.3 Reforming enforcement proceedings
- 1.4 Gender equality, vulnerable groups and cooperation with NGOs
- 1.5 Prepare project/technical documentation for reconstruction/construction of judicial buildings through the Instrument for Pre-Accession Assistance (IPA) 2017

Component 2: Reinforce Independence and accountability of the judiciary

- 2.1 Establishment of electronic system for submission, recording, processing and monitoring of financial statements of judges and prosecutors.

2.1.1 Alignment of ICEA

The ICEA project is harmonised with the vision and mission of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) and is fully founded on the legal competences of the institution, its strategic documents, as well as the strategic documents in the field of the judiciary and other relevant fields. The project, focusing on judicial efficiency, is in line with the “Bosnia and Herzegovina Justice Sector Reform Strategy 2014-2018”, the “EU-BiH Structured Dialogue on Justice” and coherent with the Swedish government’s foreign policy strategies towards Bosnia and Herzegovina as stated in the “Results Strategy for Eastern Europe, Western Balkans and Turkey 2014-2020”. The project is also aligned with the United Nations Global Agenda 2030 and the EU Stabilization and Association Process for Bosnia and Herzegovina (BiH). The country is especially mentioned as a prioritized country in Sweden’s National Action Plan for the implementation of the UN Security Council Resolutions on Women, Peace and Security 2016–2020.

In addition, strengthening judicial independence and accountability is a priority of the Reform Agenda for BiH for 2015-2018 and its Action Plan. It focuses on advancing a more efficient judicial systems that can to a greater extent guarantee the right to a fair trial in accordance with European standards. It also underlines “strengthened democracy, greater respect for human rights and a more fully developed state under the rule

of law”, which highlights the need for the judiciary system to tackle gender-based violence and hate crimes, among other issues.³

Strategic relevance also arises from international obligations (such as the Council of Europe Convention on preventing and combating violence against women and domestic violence), and domestic strategic documents, in particular the Gender Action Plan for BiH.⁴ See section 4.4.4. In relation to component 2, asset declarations regimes are corruption prevention mechanisms and an obligation of BiH under the UNCAC and the Council of Europe conventions makes this component relevant. See section 4.5.1.

2.1.2 ICEA's Budget

Sweden is the only donor to the ICEA Phase 2 project in contrast to the previous phase. The approved budget, as amended, for ICEA Phase 2, is 22 414 640 SEK of which the twinning component with SNCA is 7 961 362 SEK.⁵ Sida has a contract with both HJCP for its direct assistance to the Council and with SNCA for its assistance to the Council in support of implementing subcomponent 1.2. According to the Specific Agreement between SIDA and HJPC, the total project budget amounts to 22 414 640 SEK.

Within the project, technical support was provided to the HJPC through a distinct twinning component with the Swedish National Courts Administration (SNCA) that concerns subcomponent 1.2 on the internal reorganization of courts and human resources of courts, with a budget of 7 961 362 SEK.

The total financial envelope further reflects a 2018 amendment that included a component that enabled the reconstruction of judicial buildings through the Instrument for Pre-Accession Assistance (IPA) support from the EU. In order to prepare for the IPA support, the HJCP introduced a new component to the objective to enhance court efficiency: Prepare project/technical documentation for reconstruction/construction of judicial buildings through the IPA 2017 (sub component 1.5). This was in response to a request from both the HJPC and the EU Delegation in Sarajevo which also supports HJPC and the judiciary. The EU, through IPA, provides funding for the reconstruction

³ “Results strategy for Sweden’s reform cooperation with Eastern Europe, the Western Balkans and Turkey 2014-2020” available at <https://www.regeringen.se/49b72b/contentassets/12a89180bafb43e3823b6c6f18b6d86a/results-strategy-for-swedens-reform-cooperation-with-eastern-europe-the-western-balkans-and-turkey-2014-2020>

⁴ The Gender Action Plan initially covered 2013-2017; an update for 2018-2022 was adopted during project implementation. Available at <https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina/>

⁵ There is a small difference in SEK according the amendment for the SNCA contribution and total project costs.

of judicial buildings which are seen to be in very poor shape and cannot meet basic standards.

When taking the preparation for the IPA grant (which is in EUR) into account, the total budget approved for the implementation period is EUR 2 985 000 considering exchange rate differences as well as amendments during ICEA Phase 2. The preparation of the document to request IPA funding was undertaken with Sida resources by HJCP and this is part of component 1. Therefore, during 2018, the project was amended to include a component dealing with reconstruction of judicial buildings through IPA support. IPA's contribution to the reconstruction of buildings is EUR 867 000. In addition, the gender and vulnerable groups component received separate budgets and the gender component received additional funds for project staff and visibility activities.

Budgets include staff and activity related costs. Staff are hired for specific activities based on their expertise and full time. They work on Sida related activities only. Costs can vary considerably based on which activities are implemented when and staff perform tasks based on a workplan. Budgets are detailed for activities per component and the estimated staff time assigned to a component per calendar year. The audits for 2017 and 2018 found no omissions.

2.2 THE PROJECT COMPONENTS

The project comprises two thematically distinct segments ("components"). The first component concerns court efficiency and contains five subcomponents; the second component concerns judicial accountability and stands as a single segment, with no additional subcomponents. To simplify matters, the project documentation treats the five subcomponents under Component 1 and Component 2 as equivalent units: it refers to a total of six (6) project segments, referred to in the documentation as "activities" and reflected in the comprehensive ICEA log frame as "specific objectives". The preparation for the IPA grant and the resources provided to Courts' capacity building in proactive communication with the media and the public, and improvement of the courts' transparency are not part of the results framework.

The project documentation includes two log frames: one log frame capturing the entirety of the ICEA project and all its subcomponents; and a specific one for the SNCA twinning subcomponent (subcomponent 1.2). The SNCA log frame was developed when the overall log frame was completed. Moreover, the log frame for SNCA has been changed several times due to changes in the work and an extension of SNCA's contribution by one year. An additional log frame was prepared for activities in 2019. For an example of discussing the log frames indicators, activities and outputs, see Annex 4.

3 Evaluation Approach and Methodology

3.1 THE EVALUATION APPROACH

The evaluation approach responds to both the scope of the evaluation and the questions raised in the Terms of Reference (ToR). See Annex 1 for the ToR. The ToR state that the focus of the evaluation should be on sustainability and effectiveness. The scope of the evaluation includes amongst others requests to assess the relevance of the project within the Rule of Law sector reform, coordination with other donors, the effectiveness of the twinning arrangement, the validity of the results framework, the projects focus and achievement in gender equality and awareness raising.

While the approach reflected this request, the team has included questions that respond to the five OECD – DAC evaluation criteria: relevance, effectiveness, efficiency, sustainability and impact. The main reason for this is to ensure that in assessing the results of the intervention, including the scope of the evaluation as well as looking forward to the next phase of support, the data collection and evidence would be robust. The ToR noted that the reforms in the justice sector have been limited and that the HJCP is prone to political interference and thus would a broader approach, including using all evaluation criteria shed light on how the context and political situation has effected the intervention in the past and may affect the design of the next phase.⁶

In support of the approach and methodology the team conducted a stakeholder analysis during the inception phase to fully capture the key beneficiaries of the ICEA project such as the HJPC, the courts in BIH and court users (citizens) as well as stakeholders who ultimately should experience improved services, for example, improved access to justice for vulnerable groups, the Ministry of Justice, the EU and others. The identification of the different stakeholders ensures that all stakeholders who are targeted through ICEA's two components are consulted and assess what Sida's contribution has been to the justice sector and to the HJCP and its different partners, including the courts. Moreover, these stakeholders are equally relevant in discussing the next phase of support (phase 3). See Annex 2 for the stakeholder analysis and Annex 3 for the list of people met.

⁶ Terms of Reference, pages 2 and 4

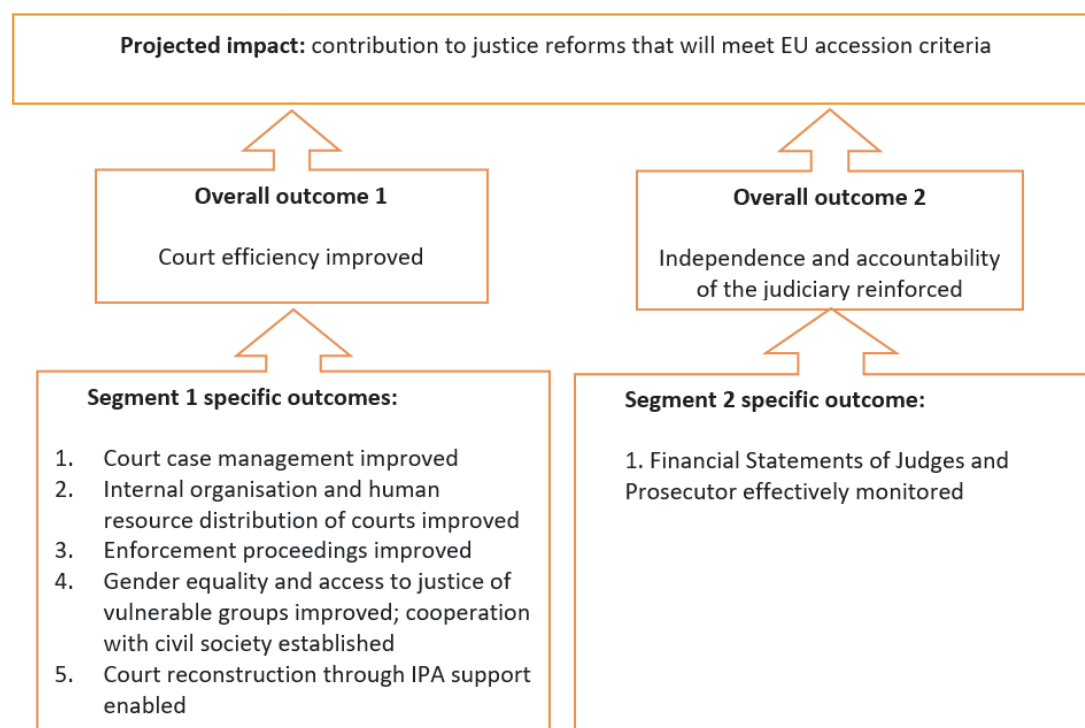
3.2 THE METHODOLOGY

The evaluation consisted of a mixed methodology for data collection and other activities at various stages of the evaluation. 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 final evaluation report. The team prepared an intervention logic and a questionnaire which was restructured to include the different evaluation questions under the OECD DAC evaluation criteria. In addition, the team formulated forward looking questions in the sustainability section of the questionnaire to respond to the ToR's emphasis on sustainability.

Table 2: Data collection activities at various stages of the evaluation

Data collection activity/instrument	Stage of the evaluation
Document Review	In preparation of the Inception Report and continuously during the evaluation phase and in the field
Stakeholder analysis	In preparation of the Inception Report
Semi-structured interviews with SNCA staff and management through Skype	During the evaluation phase and before arriving in the field
Assessment of the ICEA activities and outputs based on available documents	During the evaluation phase and before arriving in the field-based on available documents; During field visits based on testimonials and observation
Assessment of the HJPC reports, annual judicial statistics, surveys on judiciary	During the evaluation phase and before arrival in the field
Semi-structured interviews with stakeholders in the field, including the project management team at the HJCP	During the field visit
Contribution Analysis	During the evaluation phase and after the field visit

The team reconstructed the overall project logic to better assess whether objectives have been achieved.

Figure 1: Project Logic, ICEA Phase 2

3.2.1 Limitations

The team selected three cities to visit four courts: the Municipal Court in Tuzla; the Municipal Court in Bijeljina; the District Commercial Court in Bijeljina and the Municipal Court in Zenica. It was expected that these courts would be able to provide relevant data and with the limited time in the field, these could be visited within a short time frame.

The log frames both for ICEA and SNCA have shortcomings which affected the teams' ability to assess progress towards results and the overall effectiveness of the project. For example, the team has experienced challenges in the results-based analysis since the indicators are broad (e.g., the number of recommendations implemented), some indicators are absent that would have been relevant such as the number of incoming cases or the time needed to solve them. See Annex 4 for detailed examples.

The justice system and its legal underpinning are complex, including that the state building structure differs between the Federation BiH (FBiH) and *Republika Srpska* (RS). E.g., SNCA's support to courts in both entities had to be adapted.

4 Findings

The findings chapter is structured in the following way: the first three sections discuss: i) the log frame for ICEA Phase 2; ii) the role of the HJCP as implementor of the project, and iii) ICEA in the context of other donors supporting BiH. These sections are relevant for understanding the subsequent findings which are presented per component and subcomponent. For each subcomponent we discuss relevance, effectiveness, efficiency and sustainability.

4.1 LOGFRAME

There are challenges with the log frames in terms of assessing progress towards results. Certain components have indicators which are process oriented, activity based, or output based, (e.g. numbers of meetings or number of trainings for gender/vulnerable groups component and SNCA). While there are some outcome-based indicators on efficiency, they do not capture all dimensions of efficiency. In court case management, for example, data on duration of case processing could also be used as an indicator of project performance and this information is collected at HJPC.

Results-based analysis is sometimes lacking, as is the clarity of the baseline and the methods applied for measuring progress of ICEA. In some instances, the measuring of an indicator was neglected, or data collection was depending on external institutions (i.e. utility companies). The team, however, has to the extent possible, collected evidence in support of measuring progress to date but it must be noted that many activities are still ongoing and that results of ICEA may only become available once the annual reports for 2019 are prepared.

Given the need for detailed analysis subcomponents, like court case management and performance, benefit from expanding the number of performance indicators and there is insufficient data about related factors that affect results (for example, number of incoming cases, number of resolved cases and clearance rate) and that permit the interpretation of the reported data. See Annex 4.

The SNCA log frame was developed after the ICEA project log frame was completed so it had to fit with what was already approved. While the two instruments appear complementary to each other, the team has noted slight differences in the conceptualization of results, objectives and outcomes. The SNCA log frame is a contribution to the overall ICEA framework and consist mostly of activity-based outputs without specific contributions to the outcomes.

For the component on vulnerable groups, the only outcome is “Improved condition of vulnerable groups” which is a medium-term outcome at best and is highly unlikely to be realized within the duration of the project. The others are short-term activities and outputs, reflecting a rather limited (at least initially so) vision of what can be accomplished in these domains.

Outcomes⁷ for gender and vulnerable groups are defined as: Improved condition for vulnerable groups; Cooperation established between the HJPC and courts with NGOs and relevant anti-discrimination authorities; Training/education events for judges; Collection of data on discrimination; Problems identified; Solutions proposed, and Reports drafted and circulated. It lacks defining proper outcomes outside of efficiency objectives.

4.2 ROLE OF HJPC AS AN IMPLEMENTOR

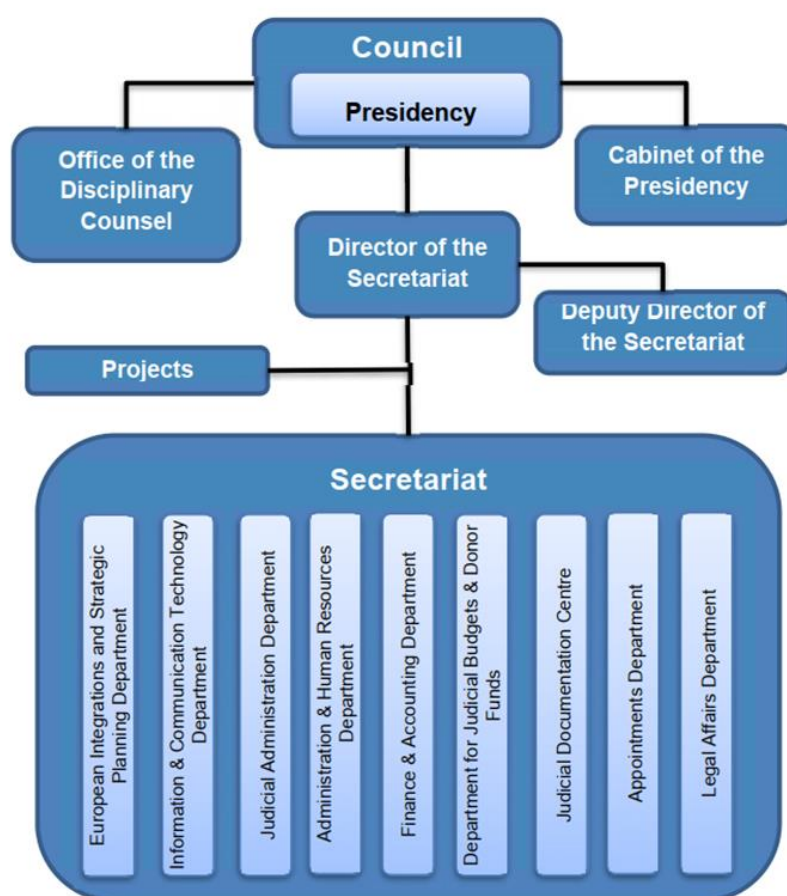
On 31 December 2018, the HJPC had 145 employees, with 83 financed from the HJPC budget and 62 hired for the implementation of project activities by the HJPC and financed by donors.⁸ In 2018, for example, donor funds were used to finance eight projects dealing with judicial reform and aimed at strengthening the capacities of the judiciary, including a contribution from Sweden.

The HJCP’s Council has fifteen members and the Secretariat includes staff to implement project activities. Several Working Groups were established in support of implementing the HJCP’s mandate and respond to EU accession issues.

⁷ The indicators include: Number of NGOs with which the cooperation has been established; Number of training / education events held; Collected data on discrimination cases, Reports circulated.

⁸ HJCP Annual Report 2018, page 14. Please note that the quote refers to 2017 which we assume is an error. In addition, The Book of Rules on Internal Organisation and the Systematisation of Posts of the HJPC provides for 104 posts with indefinite durations. Based on budget-related savings measures for BiH institution as elaborated in the Letter of Intent for a Stand-By Arrangement sent to the International Monetary Fund (IMF) and which limits employment in BiH institutions to 2009 levels, the maximum number of employees for the HJPC BiH stands at 84.

Figure 2: HJPC Organisational Chart, source: HJPC Annual Report 2018



The Secretariat is currently being reorganised and it is expected that some posts will be created to absorb project staff. This is, however, also dependent on the budget for the next year. The HJCP had provisional budgets for 2018 and 2019 and there is doubt that such budget will be forthcoming and thus both sustainability of donor interventions and the upward movement to the policy and decision-making levels remains absent.

The project implementation unit at the HJCP employs different staff for different donor projects. The staff working on the ICEA implementation is distributed per component and works on the ICEA project only. There are two project managers who do not work full time on the ICEA projects and together with the ICEA project staff they implemented the activities as planned. While the implementation works well, the arrangement is not sustainable since this modality does resemble a Project Implementation Unit. Another issue that hinders effectiveness is that ICEA's contribution to reform processes also depends on how Working Groups absorb results of individual projects and ultimately how project results get to the Council's agenda and thus lead to effective decision making. While the HJPC staff time and costs that is needed to shepherd the process along is relevant for efficiency and effectiveness of the implementation of the projects, the political situation prevents further steps to be taken, including the fact that Bosnia and Herzegovina does not yet have a new government since the elections.

4.3 ICEA AS PART OF DONOR'S SUPPORT TO BIH

ICEA is part of a larger effort by donors to support reforms in the justice sector. Key partners are the Netherlands and Norway. In general, ICEA is complementary to what the other partners support and at the technical level of exchanges this is adequate. In addition, the focus of some of the components such as the support from the SNCA is unique since it focusses on all judicial staff and working methods. The Swedish and Norwegian Court Authorities have regular meetings, which ensures that they work in tandem.

Within the Strategic Pillar 1 Judicial System Strategic Area 1.2: Efficiency and Effectiveness of Judicial Institutions in BiH, the two other donors continue their programme until 2022. In this sub area there is exchange of information and a good level of complementarity. The Improving Judicial Quality is the Norwegian funded project where the Dutch Council for the Judiciary act as a partner to the project. The support by the Netherlands has two components. The first subcomponent is the largest and focusses on working with the courts and the second subcomponent supports the HJCP in a twinning with the Dutch equivalent of the HJCP.

Table 3: Partner Donors⁹

Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH - Phase 2 (ICEA)	2016-2019	Improvements in the enforcement procedure	1.600.000 EUR	Government Sweden
Improving Judicial Efficiency Project II	2015-2018		2.000.000 EUR	Governments of Norway and Netherlands
Improving Judicial Quality Project	2019-2022	Develop systems for automatic case processing, which will speed up their prosecution	1.900.000 EUR	Governments of Norway and Netherlands

⁹ The World Bank/UK project on commercial justice as well as the EU contribution to justice reform have recommendations for future support that could be complementary to the next stage of Sida support. The numbers in this table are indicative to get an idea of the donors' contributions in which area. Some more specific numbers are provided for the Phase 2 ICEA project in Euros after the table was shared. The total is 2.331.156 EUR (the HJCP 1.519.653 and SNCA 811.503 EUR). There also is an omission in the third row of this table provided. The Improving Judicial Quality "2019-2022" should be "2019-2021".

HJCP's annual report 2018 asserts that Sweden is among the four top donors to the BiH judiciary and accounts for 14 % of donor support (Norway 27%, Swiss Confederacy 19% and the EU 40 %).¹⁰

Regular exchanges haven taken place among the SNCA, HJCP and Sida and includes other donors (Norway, the Netherlands) relevant to the project. This has been effective in moving forward and avoiding duplication.

Beyond the partner consultations relevant to the Sida's intervention, donor coordination has been taking place and meetings are organised in an ad hoc manner by the HJCP. The Ministry of Justice also organise donor meetings. Donors perceive these meetings as information sharing and they do not necessarily discuss issues of substance, design, planning and prolongation of support to the justice sector. It appears that there is fragmentation among the donors in how best to contribute to the judicial reforms, including a level of frustration that the results of their interventions are not taken up at the appropriate level to contribute to reforms. This has been going on for some time and has, amongst others, resulted in donors change of approach, for example, to support the courts directly. This begs the question how results of projects are taken up at higher levels of government and how donors could jointly address this challenge. A related issue is that donors finance the project teams and would like to see in due course how their interventions can be sustained in the long term, including Sida.¹¹

Donor coordination is also relevant in terms of the EU accession process and currently not optimal.¹² Most bilateral donors are EU members and bilateral initiatives such as the twinning arrangements are complementary to EU's interventions. This kind of coordination is therefore relevant from a different and higher goal perspective. For example, the focus on the EU's recommendations is relevant in the sense that HJCP needs to undertake essential reforms itself while also implementing BiH's judicial reform strategy.

10 HJCP Annual Report 2018, page 17

11 Switzerland is about to launch its third and last round of support. It intends to support BiH for four more years and slowly reduce payment for the project team after the first year.

12 The EU Delegation to Bosnia and Herzegovina is responsible for implementing EU financial assistance via direct management as well as for ensuring the coordination of assistance with EU Member States. Implementation of the IPA I and IPA II programmes is ongoing. The indicative strategy paper for Bosnia and Herzegovina 2014-2017 was revised in 2018 to include several additional sectors and extend it until 2020

Box 1: The EU Communication from the Commission to The European Parliament and the Council¹³

“Important reforms have taken place over time in the area of the judiciary, notably with the establishment of the Court of Bosnia and Herzegovina and of a single self-regulatory body of the judiciary, the High Judicial and Prosecutorial Council (HJPC). The judiciary is organised into four systems, each of them having its own jurisdiction and internal institutional structures. The constitutional and legislative framework is incomplete and does not sufficiently guarantee the independence, autonomy, accountability and efficiency of the judiciary. In order to strengthen the guarantees of judicial independence and prosecutorial autonomy, including from all forms of politicisation and pressures, the HJPC and the state level court system should be provided with an explicit constitutional status. The Law on the HJPC should be revised to better regulate the appointment, appraisal and disciplinary procedures of members of the judiciary, and provide appropriate legal remedies against final decisions of the HJPC. A Law on the Courts of Bosnia and Herzegovina should be adopted to prevent conflicts of jurisdiction and ensure the required legal certainty in criminal matters.”

Donor coordination at a strategic level should therefore address HJCP’s own need for reforms and respond to issues of accession to which all donors contribute.

4.4 COMPONENT 1: ENHANCE COURT EFFICIENCY

This component includes:

1. Court case management: this subcomponent aims to reduce the backlog by developing strategies to tackle specific types of cases before the courts.
2. Internal reorganisation of courts and human resources at courts: this subcomponent was included to address problems of administrative burden of judges, who are tasked with several activities which are not, strictly speaking, judicial tasks. The workload challenges are further exacerbated by outdated systems of organizing business processes in the judiciary, which have not changed to reflect the way modern courts operate.
3. Reforming enforcement proceedings: this subcomponent addresses the enforcement procedure which is one of the main obstacles to the judicial efficiency in Bosnia and Herzegovina, since 1.8 million enforcement cases were pending in courts in 2015. Cases involving the non-payment of public utilities represent most of this backlog.
4. Gender equality, vulnerable groups and cooperation with NGOs: this subcomponent was introduced to address issues of uneven representation of men and

¹³ Commission Opinion On Bosnia And Herzegovina’s Application For Membership Of The European Union May 2019. Page 5

women in the BiH judiciary and exercise the rights of vulnerable groups. The challenge with the gender disparity is illustrated by a significant discrepancy between women (40 percent) and men (60 percent) holding management level positions within the judiciary. While certain issues in this domain had been addressed previously on an ad hoc basis, the component aimed to provide a comprehensive situation assessment in order to advance HJPC's work on the remaining challenges.

5. Prepare project/technical documentation for reconstruction and construction of judicial buildings through the IPA 2017 Project: this subcomponent was included in 2018 in order to benefit from the opportunity to apply for European Union IPA funding available for (re-)construction of judicial buildings. The component supported a position to prepare the necessary tendering documentation and coordinate the related activities.

4.4.1 Court Cases Management

As mentioned previously, the sub-component 1.1 represents a continuation of phase 1 of the ICEA project with some change in activities. It aims to reduce the backlog by developing strategies to tackle specific types of cases that are treated by the courts.

The following areas are targeted:

1. More efficient processing of administrative disputes
2. Strengthening professional capacity of judges for processing the most complex commercial cases
3. Rationalising civil litigation cases against budget beneficiaries
4. Further support to improving archive management of courts

Relevance

The subcomponent is tackling efficiency problems in the BiH judiciary, with the emphasis on specific type of court cases: administrative, commercial and against budget users. The challenge of efficiency is recognized in the Bosnia and Herzegovina Justice Sector Reform Strategy 2014-2018 and in response to this, a set of activities were planned to reduce the case backlog and improve efficiency of the Judiciary. For a detailed assessment of the efficiency challenges, see Annex 4.

The specific case types were selected based on their relevance for the business environment (commercial cases and administrative cases), and as a result of the analysis that the value of the case is blocked in specific type of court case (litigious cases against budget users).

The subcomponent is also aligned with the EU-BiH Structured Dialogue that was established as a new European Commission mechanism with the aim of enhancing the structured relations of the rule of law with potential EU membership candidate countries. It has a strong focus on efficiency of the judiciary. The subcomponent 1.1 supports the HJPC to implement the European Commission's recommendations provided

within the Structured Dialogue which focuses on increased efficiency through proposals for legislative changes, monitoring backlog reduction through the available IT management tools, management training, and changes of internal working procedures at courts.

In addition, the sub-component is aligned with Reform Agenda for Bosnia and Herzegovina, namely with strengthening judicial efficiency through decision making within a reasonable time which is a priority of the Reform Agenda for Bosnia and Herzegovina for 2015-2018 and its Action Plan.

The sub-component further aligns to the Swedish Strategy “Results Strategy for Sweden’s Reform Cooperation with Eastern Europe, the Western Balkans and Turkey 2014-2020”, which is focused on advancing a more efficient judicial systems that can to a greater extent guarantee the right to a fair trial in accordance with European standards. The Strategy highlights that support will be complementary to the EU assistance provided through IPA funds. Having that in mind, the selection of the HJPC as implementing partner is of great significance, since the HJPC is managing the judicial system at the state level and has developed capacities for coordinating and implementing project activities. The Law on the HJPC specifically listed the right to initiate, oversee and coordinate projects related to the improvement of all aspects of administration of courts and prosecutor offices as one of the HJPC competences (art. 17(21)). A specific bylaw, the Book of Rules on Preparation of Project Proposals and Implementation of Donor Funded Projects from 2013, regulates the comprehensive organization of the HJPC in planning and implementing projects.

Effectiveness

The sub-component tackles different challenges affecting judicial efficiency in specific types of cases (i.e. administrative, commercial, litigious against budget users) in BiH. The log frame for sub-component 1.1 presents a good basis, while there also is a need to include more indicators to ensure measuring the effectiveness of project activities. Detail analysis of the indicators, including suggestions for improvement are presented in Annex 4.

Within the first sub-objective (***Increased processed and reduced length of proceedings and influx of administrative cases***) the project activities were designed to ensure preparation of analytic reports as an input to informed decision making (activity plans). The HJPC prepared an annual analysis on processing of administrative cases. In addition, the project team prepared an analysis on the predictable and optimal duration of administrative cases and monitored the time needed to process administrative cases in 18 courts in the country. The analyses on predictable timeframes showed that an uneven allocation of cases among judges causes problems related to administrative disputes.

The challenge for processing administrative cases is evident by the fact that a significant number of administrative cases are pending at the Supreme Court of FBiH due to legislative amendments and most of these cases are based on Law on the Control of Lawful Exercise of Veterans' Rights.¹⁴

The strategic decision was taken by the HJPC to develop a specialized education program for administrative judges and to introduce an annual curriculum at the Centre for Education of Judges and Prosecutors (CEST).¹⁵ In addition, the HJPC adopted the conclusion that courts, and court presidents should be reminded to follow predictable timeframes.

Although the results showed that the number of pending administrative cases decreased during project implementation, the courts cannot reach the target number of solved cases. The issue is that there is less pressure on resolving administrative cases since the number of incoming cases is decreasing.¹⁶ By 2018 the number of pending cases decreased by 22 percent due to the reduced number of incoming cases. However, since the HJPC and court presidents expected a continuous decrease of incoming cases, the increase of influx in 2018 resulted in a slight increase of pending stock. The HJPC should consider how to deal with such risk in future.

Within the second sub-objective (**Strengthening capacities of the judges to deal with the most complex commercial cases**) the project activities were similarly designed to ensure an analytical basis for decision making, but were expanded to include monitoring of the implementation of the action plans and establishment of the cooperation with Association of Mediators. The project team prepared annual statistical and analytical reports on bankruptcy and liquidation cases to monitor efficiency in case processing. These analyses enabled the formulation of specific recommendations on how to tackle issues of the efficiency of bankruptcy and liquidation cases. Based on the analysis the HJPC adopted a conclusion on the establishment of a Working Group for improvement of treating bankruptcy and liquidation cases, and this Working Group prepared a guide for dealing with bankruptcy cases.

14 These mass claims should be handled without discrimination in the same way and should significantly reduce workload on the Supreme Court (i.e. Vuckovic and Others v. Serbia, Application no. 17153/11, Judgment (preliminary objection), Strasbourg, 25 March 2014).

15 CEST is responsible for the training of judges and prosecutors.

16 Court presidents each year adopt an annual schedule for their own court, which includes allocation of judges within court departments. Since bigger courts are struggling to resolve incoming civil, commercial and administrative cases, courts presidents will allocate judges from departments for which they notice a decreasing number of incoming cases. This approach of court presidents is rational behaviour and in line with limited resources.

However, bankruptcy and liquidation cases are highly sensitive cases since they are related to state owned companies, which are usually closely linked with labour and social policies of the country.

The most important outcome of the third sub-objective (***Process civil cases conducted against budget beneficiaries more efficiently***) is the organization of an awareness raising campaign and the presentation of data on litigation against budget users (including information that budget beneficiaries are using all procedural tools and legal remedies to prolong cases and increase costs for reluctance to use court settlement or mediation). The same approach in organizing the activities was used for the third objective, as for previous two objectives. The HJPC, on an annual basis, prepared statistical and analytical reports on civil cases against budget users to monitor efficiency in case processing.

Effectiveness of this approach was confirmed within the third objective. Although the plan was that this project should target different ministries, state institutions and state-owned companies that are identified as most often litigants in this type of cases (based on the results of the analyses), the HJPC decided to change its approach and work more on awareness raising of the general public. The HJPC asserted that it is more efficient to use external pressure, through media and raise awareness that budget users are abusing procedural rules and prolonging case duration. The HJPC CRM could not track all data, but courts reported that there was more court settlement after the media campaign. The numbers on the pending civil cases against budget users significantly decreased in 2018 compared to 2017 and are in line with the HJPC perception of the campaign's effectiveness.

The fourth sub-objective (***Continued support for improving archiving operations in courts***) deviated in approach from the three sub-objectives. The activity was designed to enable digitalisation of court archives, since the organization of archives influences the efficiency of case processing.

Inclusion of this activity is in line with a recommendation of the ICEA Phase 1 evaluation to continue with work that started in the archives. To ensure the most effective use of available resources, the HJPC was involved in the selection of pilot courts for the digitalisation process. The selection process was based on the findings from the HJPC analysis on the situation at archives and whether courts are capable (depending their internal resources) to prepare files. Eight pilot courts (from SNCA component) and courts in Banja Luka, Trebinje, Tuzla and Bihac were included in the digitalisation process. Additional staff were engaged in each selected court to support courts in cleaning and ordering files. This specific activity aimed at ensuring efficient digitalisation once the scanners could be used in the courts. However, there is no data on the effect of these activities and whether this affects the efficiency of the courts.

It is also important to note that there were delays during the last year of project implementation (2019). The EU supported the development of a module within the CMS that enables digitalization of the archive and scanners for scanning the files were purchased with EU support. HJPC staff took over maintaining the digital archive module. After finalization of the ICEA Phase 1, the HJPC supported scanning of the files in the courts that had already cleaned their archives (within own resources or with the support of the ICEA Phase 1). The HJPC is expecting that archives from all courts will be digitalized during 2020.

Efficiency

Some of the project activities are built on previous outputs and lessons learned from Phase 1. For example, digitalisation of archive activities is built on previous efforts undertaken during ICEA Phase 1. The process was supported by the EU support in developing software for digitalisation of archives. It has been an efficient approach to use lessons learned from ICEA Phase 1, including reducing time needed for scanning of documents. In addition, the software developed within the EU support and the equipment bought are operational. It was also efficient to include the pilot courts from sub-component 1.2. in some of the activities (digitalisation of archive). This contributed to achieving better results in the efficiency of the judiciary. The expansion of activities beyond the pilot courts will ensure improved efficiency in project implementation since the court management is already aware of how pilot activities are implemented.

The implementation of the outcomes within this sub-component is labour intensive since it requires a lot of “shuttle diplomacy” of the HJPC Secretariat, including preparatory work for the approval of each analytic report by Standing Committees of the HJPC and formal adoption at the HJPC sessions. The HJPC is a 15-member body with a complex structure and considerable preparatory work is needed to ensure a smooth adoption of reports, analysis, conclusions, and recommendations. The involvement of other stakeholders, including bankruptcy administrators, mediators, arbiters, ministries responsible for potential parties in the litigation cases against budget users require several meetings before consensus and agreement are reached on how to proceed.

Sustainability

Annual analyses on commercial cases, administrative cases and litigious against budget users that have been prepared within this sub-component are adopted by the HJPC, including the recommendations for future activities. Once recommendations are adopted the standard mechanism to monitor their implementation is in place. The HJPC takes measures to continue with implementation, including the establishment of the Working Group for bankruptcy and liquidation case; adoption of the Guide and its promotion among judges, development of training programme for administrative case; inclusion of the training in the CEST annual curricula, etc. Each of these decisions were

taken by the HJPC and all results will be endorsed by the HJPC or by other relevant institution, i.e. CEST.

Some of the outputs are easy to replicate or use in future, for example, the Guide for Bankruptcy proceedings or training curricula for administrative judges. Since there is a high fluctuation of judges in dealing with bankruptcy cases, the Guide will be used by newly appointed judges as a road map for dealing with bankruptcy cases. The administrative cases are usually neglected and the introduction of administrative law training in annual training curricula of the CESTs provide options for replicating the training in future. The HJPC has a Standing Committee for education and approves annual training programmes which is implemented by CESTs. This is a good way of ensuring the sustainability of capacity building activities. However, the CESTs budgets are limited and MOJ (FBiH and Republic SS) should ensure prioritization of these trainings and secure financing.

4.4.2 Internal Reorganisation Of Courts And Human Resources At Courts Introduction

The SNCA support to subcomponent 1.2 through technical assistance aimed to improve the internal reorganization of the courts that would result in improved organization, work processes and performance in the courts. The SNCA's contribution is financed by SIDA and confirmed in a cooperation agreement between SNCA and the HJPC, accompanied by a project concept note, and a separate log frame. The subcomponent was initially planned for two years starting autumn 2016 for a budget of 3 300 000 SEK. The budget increased during implementation to 4 201 000 SEK. In April 2018 the project was extended to 31 December 2019 and the budget further increased to 7 961 640 SEK.⁵

The log frame that was developed for this intervention has three result areas and for the extension in 2019 the results were not changed:

- Result 1. Working methods in court and delegation of tasks
- Result 2. Pilot courts exchange – Sister Courts in BiH and Sweden
- Result 3. Recommendations on organisational measures

These will be discussed in the effectiveness areas. In the ICEA log frame there is only one indicator identified:

Table 4: Indicators for SNCA's log frame and contribution to ICEA

2017	The Number/percentage of implemented recommendations on organisational measures in pilot court(s)
2018	3 recommendations on organisational measures in Bijeljina (note: the word "implemented" is not used)
2019	?

For the first two years the activities have mainly been carried out through two sister courts experience exchanges (Tuzla Municipal Court – Varberg District Court and Bijeljina Basic Court – Malmö District Court/Ystad District Court). Separate workshops have been held within the component on strengthening the managerial role of court presidents in 2017. This component has been integrated into the activities within the sister courts experience exchange during 2018.

During the extension six additional sister courts in four cities (Prijeedor, Mostar, Trebinje and Bihac) were identified introducing the same approach and method. The work is still ongoing and there are no results yet that can be reported on. There are, however, activities that includes the previous two courts Tuzla and Bijeljina in terms of exchange of experience and learning. A major event is to take place in December 2019 when all courts meet for a two-day seminar. Ministries and other donors are invited to discuss the results and some of the recommendations that were jointly produced by the SNCA and the project team.

Relevance

The SNCA support to the courts in close collaboration with the HJCP project staff is relevant in terms of improving business processes in the courts in terms of reducing the time to process cases, removing administrative burden from judges and thereby reducing the backlog and improving quality since judges have more time to deal with reasoning of court decisions. Tasks that can be handled by auxiliary staff tasks that were not part of their job description before is freeing up time for judges.

The SNCA approach is relevant since the entire human resource chain is analysed and taken as the point of departure to analyse and diagnose the inefficiency in the courts handing of cases and minor cases that do not need the time of the judges. The peer to peer approach includes that all staff categories from Bosnian and Swedish Courts compare their working practices and routines and through comparison discuss options to improve the involved through a participatory method called peer exchange. The intervention logic is relevant to the HJCP and the Courts and provides court management and staff with the opportunity to review and discuss their practices and identify ways to render the process more efficient. The intervention logic follows the sequence of:

1. Preparing cases (examination of new applications/cases and orders to remedy deficiencies in the application):
2. Court sessions (notifications/summons to the session and the taking of minutes/records)
3. Writing and deciding judgements/orders/decisions (drafting of judgements and deciding cases)
4. Strengthening of the managerial role of court presidents (division of labour between the president, the court administrator and other staff)

The focus of the project in relation to cooperation with SNCA is relevant to the courts in bringing in all staff in the human resource chain, thereby redefining and introducing roles for auxiliary staff and trainees who were not actively involved in the court cases before. The SNCA's goal is to change the participants 'mindset' meaning that court staff understand that their contribution to the cases can be organised more efficiently and effectively thereby improving their skills, increasing their work motivation and job satisfaction. This change has to a large extent been achieved in the first two sister courts during 2017 and 2018. The activities are well on their way to be completed in the other courts despite so challenges in two of these courts. The project time ends and the support to the 6 new courts is still ongoing. Results will be shared in November when a Symposium will be organised. The final report on the results will be expected shortly after which will include recommendations.

The focus of the SNCA is relevant to the courts, the HJCP and other donors. It is only the work undertaken by SNCA which has a focus on auxiliary staff and complements activities from other donors who can build on the results.

While the SNCA's work is relevant in changing the work practices it is not the only way to improve efficiency in the courts. The legal systems are complex, and the enforcement of court decisions and the appeal mechanism appear also to cause inefficiency and loss of time.

Relevant is also that the SNCA with the HJCP project staff pursues a **practical approach** to identify opportunities and limitations for changing business practices. It did deliberately not focus on policy analysis as such but instead through its practical and peer to peer learning model demonstrated that changes are possible that reduce the lead time of cases, redistribute the workload and provide judges to come to closure on more relevant cases to their expertise in a given time period.

The selection of the courts takes place based on various principles and criteria, including: i) whether courts are open to the type of intervention and activities: ii) the size of the courts so that different staff categories are present and thus non-judicial staff can be included; iii) complementarity of other project's activities (such as Improving Judicial Quality – Norway and Netherland ; iv) representing both the Federation and the

Republika Srpska; and logistics and proximity to Sarajevo so that travel can be efficient and visits to the courts combined. The selection of the six sister courts included a commercial court in the Republika Srpska. The specialized commercial courts do not exist in the Federation rather they are a department in 10 municipal courts.

Effectiveness

At the end of the 2 year programme the SNCA's conclusions were that:¹⁷

Box 2: SNCA's conclusions

- *The implemented activities in pilot courts have resulted in increased productivity, efficiency and quality of judges, as well as the better utilization of non-judicial staff through innovated delegation of tasks*
- *It is necessary to introduce systemic and continuous training for administrative staff and trainees, map the processes and prepare a training module*
- *It is necessary to redefine the role and tasks of the existing non-judicial staff and consider the need to introduce a new category of staff*
- *Establish cooperation with the relevant justice ministries with regard to application of positive results of the Project as a systematic solution for organizing business processes at courts¹⁸*
- *Ensure funding for implementing the innovated business processes at courts*

These conclusions still hold, and more challenges have been identified and expressed in a detailed list of recommendations. Moreover, non-judicial staff are under the responsibility of the Ministry of Justice which has not provided any training. The Centre for Training Judges and Prosecutors (CEST) is dealing with judges and prosecutors, and the public administration neglects non-judicial staff as specific target group.

Result 1. Working methods in court and delegation of tasks

Results in the two courts Tuzla and Bijelina (2017-2018) have been reported by SNCA and summarized in **Annex 5**.

Bijeljina and Tuzla court presidents took steps to ensure sustainability and full application of delegation. Delegation of tasks was initially introduced in civil departments

¹⁷ This section taken from the conclusions of a workshop held towards the end of the 2018 (November 28) and before the extension for year 2019 began

¹⁸ This is relevant in light of the fact that the Ministries of Justice are responsible for non-judicial staff and need to provide financing for alternative work processes

and both courts included all departments (after end of the SNCA support); Court Presidents initiated development of check lists for trainees to ensure better monitoring of their work by judges. In addition, the Plan for acting of judicial trainees was developed and shared with 6 new pilot courts in 2019 to ensure a more efficient process of delegation of tasks.

It must be noted that not all business processes are documented in the courts so the exchange with the sister courts allowed for a closer examination of the lack of documentation compared to the Swedish Courts and the list of delegation tasks provides a first opportunity to systematize the delegation of tasks across the courts.

The SNCA worked closely with the HJCP project staff in order to be transparent and create a shared understanding of the efficiency challenges in the courts, this has been appreciated and ensured complementarity with other projects that the project team handles and notably the support from Norway and the Netherlands.

The introduction of the peer to peer method to delegate tasks implies that more staff is working on one case and the 'control' over a case by the judge is changed. This requires a behavioural change. Two effects have been brought forward that the team cannot verify since it is impossible to measure changes during 18 months of project implementation. Moreover, citizens may not be aware of internal changes at the courts.

The observations are the following: public perception appears to be that judges are corrupt and through the delegation method it may be more difficult to divert from the due processes if more staff works on the case. A second point is that the judges are 'measured' against their outputs of cases, including appeal cases. Apparently, quotas are set which are used as an incentive to meet the required number of cases. The question is whether this system is relevant. In those courts where judges can handle more cases it would be expected that they can easily meet the quota at the same time judges that have challenges in meeting the quota may also be reluctant to delegate since judges would like to 'remain in control'.

The Presidents of both courts were motivated and supported the project throughout. This was also a reason to select the courts in the first instance. Uncertainty remains between the delimitation of the responsibilities of the chief judge and the administrative manager according to the SNCA. It appears that they have overlapping tasks and that the management system is affecting the delegation system. The number of persons involved in the exchanges have changed over time and mostly increased, leading to budget changes. The inclusion of Presidents has been effective in terms of participating in the peer to peer method for both the courts. The overall observation is that the support to the change process and the ownership of the Presidents are critical to the implementation of the method, sustaining and broadening the results and sharing the benefits

with other courts, including the courts that were targeted in 2019. In this context motivation and leadership of the court is a precondition to initiate changes.

Result 2. Pilot courts exchange – Sister Courts in BiH and Sweden

Result 2 in terms of the exchanges has been completed and feeds directly into result 1 and 3.

The judges from SNCA have been selected based on their expertise. It is also noteworthy that some of the Swedish judicial staff have origins in Bosnia and can speak the language. This has helped to better understand the efficiency issues, the existing legal framework and has created a bond. The cooperation between SNCA and the HJCP project staff has been excellent and sister courts consider the peer to peer method valuable, motivating and effective. It allows staff to speak freely about their tasks, supervisors are not present, and thus Swedish experts can assist in understanding and recording their tasks. This participatory approach has assisted in exposing in detail the tasks or lack of tasks, including the time spent on these. Both in Tuzla and Bijeljina the results are good, but the 2019 batch of courts shows some challenges where in particular the role of the President determines the ownership of the project and the results of the delegation method. Involvement and leadership by the President of the court is a clear driver for results. This makes the selection of courts even more important if the system will be rolled out in future. Alternatively, the courts who have been effective in introducing the delegation system could play a role in demonstrating the benefits to the management and judicial staff of the courts. An overview of the SNCA exchanges is presented in **Annex 6**.

Result 3. Recommendations on organisational measures

The 2018 report provides a detailed list of recommendations under several headings and is comprehensive. While these recommendations appear systemic to the issue of making the courts more efficient and effective there are several recommendations which require **systemic changes** both in the court and in the legal system. While the outcome has been achieved in the sense that the courts demonstrate that their internal organization has improved in an efficient manner, including the distribution of the workload, there are practical and structural issues that need to be responded to.

The SNCA's support in close collaboration with the HJCP project staff has therefore contributed to identifying structural bottlenecks which cannot be solved within the courts alone. Moreover, the HJCP has been an important partner in selecting the courts and accompanying the SNCA. The SNCA has managed to introduce efficiency gains; better use of available human resources and greater job satisfaction within the **existing**

legal and procedural framework and based on a comparison with the Swedish system.¹⁹ Recommendations are made in relation to: i) preparation of cases before and after court sessions; ii) trials/hearings/court sessions; iii) writing and deciding judgments/orders /decisions; iv) administrative tasks not connected to case handling and v) the recommendation related to budgets training, the CSM system and human resources issues

The only log frame indicator about the number of recommendations implemented was relevant but not strictly met. They are based on the stock taking at the end of 2018 and on the results of the learning exercise that had been going on for two years. The courts have continued their work in 2019 and the results will be made available after a final workshop in December 2019. The recommendations should therefore be understood as package of different themes that need to be addressed in the next stage of the project. Most of these recommendations still need to be implemented and to the extent possible within the legal framework and their contribution to the justice reform strategy of the sector and EU requirements.

Key challenges include the lack of payment for the trainees and the recruitment of trainees.²⁰ If these issues do not change then a roll out of this delegation system across the courts will provide a structural impediment to results.

The workplans have been realistic and all activities have been completed. Reporting on gender is in terms of percentages of participants taking part in an event. There is no reporting on what positions men or women hold in the court and who contributes to the project or whether specific gender equality policies are applied.

Judicial efficiency has been improved in the cases of Tuzla and Bijeljina. There is evidence that changes were introduced and effective: tasks have been delegated to auxiliary staff in an incremental way.

The governance and project structure

The governance and project structure with SNCA - HJCP - Sida has not slowed down the effectiveness of the project but SNCA's contribution to the project has been a separate set of activities. This is because SNCA developed a separate log frame in addition

¹⁹ The conclusion in the 2018 SNCA report on conclusions and recommendations provide a relevant illustration: "Regardless of whether the work tasks have been delegated to trainees or typists, the delegation system at the courts in Bijeljina and Tuzla is still based on the trainees and typists performing all of the delegated work tasks in a dependent capacity in the sense that they are carried out under the supervision and control of the judge responsible. This is because there seems to be no legal possibility which allows for the transfer of information from one judge to another to perform a work task under his/her own responsibility".

²⁰ The payment they receive is for insurance and compensation for meals and transportation.

to the ICEA Phase 2 log frame. This also resulted in separate reporting and a separate governance structure. While the twinning in terms of contribution to the implementation of the project is effective it would be preferable to integrate SNCA's contribution in the next project and be part of the HJCP's reporting and governance structure of the next project similar to how other twinning arrangements are organised (Norway).

Efficiency

The twinning arrangement is a commonly used mechanism that is used for technical assistance whereby Swedish public institutions provide support to countries where Sida is working. This is not common to most types of technical assistance projects which are procured on an international market. The team cannot judge whether the costs for the twinning arrangement is reasonable when compared to a marketplace where bids are both technically and financially assessed. The SNCA is part of the legal system and has no resources of its own.

The project team's collaboration with the SNCA's has been beneficial and activities have been implemented as planned with some changes in the number of SNCA staff involved in field visits. As mentioned above the integration of its work into the next phase will also increase efficiency in terms of having one log frame; joined reporting and SNCA being part of the project management arrangements.

SNCA costs

The personnel costs are charged as fees for the inputs of the experts while the SNCA is obliged to compensate the courts for the working hours that staff and management are deployed abroad. In order to deploy staff, the SNCA needs permission from the court's presidents. These rules apply since the SNCA is part of the legal system. This incurs additional costs which are rule based and increases costs. For an example of SNCA's cost see **Annex 7**.

The costs extensions were justified because the peer system requires the right peers to the BiH courts, and the 2019 work required new resources. In some cases, the annual disbursements were lower than the budget and SNCA was able to transfer the remaining budget to the next year.

Sustainability

While there has been good progress in the first two courts and to some extent in the other six courts, some of the latter are making progress towards sustainability. The new ways of working need to become standardised at which point the intervention results will be sustainable. The Tuzla and Bijeljina courts are producing more templates that

could help in transferring competencies to typists and trainees. In addition, they discussed developing a manual or guide for trainees, preparation of a curriculum as preparatory theoretical part for trainees and typists. Various other ideas are discussed, including producing a procedural book, the adaptation of job descriptions, ensuring better working conditions for the auxiliary staff and pay.

It is not unlikely that some legal or procedural changes may be required, and some amendments have been made in support of sustainability.²¹ A final workshop is planned later this year which should lead to a clear identification of what other changes are needed.

The work with the six new courts also included the two previous courts and mentoring and learning from each other are options, but the support from SNCA in facilitating and offering support to the change processes is critical in ensuring that the mindset change translates into changes in the delegation system that become routine practice. The role of the President is critical in making the changes and creating relationships of trust.

The support by SNCA is likely to become sustainable once a majority of courts have implemented the delegation method and delegation tasks, roles and responsibilities have been clearly identified and documented. The HJCP is able to continue leading this process.

4.4.3 Reforming Enforcement Proceedings

The sub-component on reforming enforcement proceedings has continued the work of previous activities implemented within ICEA phase 1. For details on the evidence, see **Annex 8**. Addressing challenges with utility cases is impossible if there is no effective enforcement of court decisions. Although the reform of the enforcement procedure is beyond the HJPC scope, the HJPC has used its influence to push for a legislative initiative.

This subcomponent has addressed the following areas:

²¹ Amendments to the Rulebook on Internal Court Operations, in terms of defining job descriptions of trainee-volunteers, based on delegated tasks defined through the project *Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH*; formalizing the function of mentoring; Amendments to the Law on Courts, regarding the increase in the number of trainees / volunteers, the right of the trainee to receive remuneration, Amendments to the Rulebook on Internal Organization and Systematization of Posts, with a view to introducing a new category of employees.

- Difficulties encountered in the enforcement against movable property and announcing gearings for sale of movables;
- Promoting court settlement, mediation and introducing the practice of pre-suit notice, concluding contracts with users;
- Improving enforcement procedures by promoting and applying the Personal data protection agency opinion in order to obtain data on the property of a debtor;
- Reorganising work processes in enforcement departments and strengthening the role of court bailiffs and their training;
- Establish a public debate to identify the optimal system solution model for enforcement procedures.

Relevance

Enforcement of the court's decision is part of the aim to have a trial within reasonable time. BiH, however, is facing a significant backlog of enforcement cases. The enforcement procedure is one of the main obstacles to judicial efficiency in BiH, as 1.8 million enforcement cases have been pending in the courts since 2015. Cases regarding the non-payment of public utilities represent most of this backlog, and more than half of the pending cases were in the Municipal Court in Sarajevo.

According to the World Justice Project (WJP) Rule of Law Index 2019, BiH ranks 71 out of 126 countries when it comes to civil justice, including accessibility and affordability of the justice system.²² In this Index, BiH lagged behind regional peers (Eastern Europe and Central Asia), especially for effective enforcement and unreasonable delays, which are recognized as one of the reasons for the business sector to deter in order to protect their rights through the justice system.

According to World Bank Doing Business Report, it takes 595 days to enforce a contract in BiH, while for Europe and Central Asia the average is 496 days.²³ Furthermore, the use and implementation of mediation, as a measure for enhancing efficiency of dispute resolutions and reduce the number of pending cases, is still limited in BiH. According to the EU Commission's Opinion on BiH application for membership of the European Union from May 2019, alternative dispute resolution methods, in particular court settlement and mediation, need to be improved, promoted and used more widely. The small claims procedure is not streamlined, although it is the form of justice most likely to be experienced by the general public.

²² See World Justice Project Rule of Law Index 2019, available at: <http://data.worldjusticeproject.org/pdf/rule-of-law-index-BIH.pdf>

²³ Doing Business, World Bank, 2019.

The activities in the sub-component provide support to the HJPC in implementing the European Commission's recommendations defined within the Structured Dialogue: to put in place measures 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; introduce functional system for in-court and out-of-court mediation throughout BiH based on the preliminary assessment conducted by the HJPC.

The sub-component is also in line with the Reform Agenda for BiH (2015 – 2018), which sets as one of the priorities the consideration that utility cases could be resolved out of court; improvement of procedures for sale of seized property and enhancing the role of bailiffs in order to reduce the burden on the courts in the enforcement procedure.

Effectiveness

The sub-component is addressing challenges of enforcement proceedings as an integral part of the court proceedings. The sub-component is organized to include improvement of the legislative framework as well as technical issues such as the re-organization of work processes in enforcement departments, the use of IT solutions for sale of movable property, and the promotion of alternative dispute resolutions.

The log frame for the sub-component does not present a useful framework for measuring effectiveness of the subcomponent. The indicators are activity based (outcome) and not relevant for a medium-term assessment (i.e. number of courts that adopted new techniques, number of meetings, design and distribution of promotion materials). Also, some indicators are beyond the HJPC's control and data collection was impossible (number of requests for data on the property of a debtor by judgement creditors). To assess effectiveness, the team used alternative indicators (i.e. usefulness of trainings for court bailiffs, development of proposal(s) for legislative amendments).

The most important outcome for the first sub-objective (***Increased Announcing hearings for sale of movables as a means of enforcement***) is the development and implementation of the technical support for advertising the sale of movable property on the web portal. The project team developed an application for sale of movable property. The technical solution was tested in Zenica Municipal Court and is now implemented in 5 courts in the country (3 courts installed the application in 2018 and 2 more in 2019). The project team prepared technical documentation for developing the application for sale of movable property considering all suggestion from courts, enforcement judges and court bailiffs. To ensure proper application of the solution, the HJPC organized on-the-job training during 2019. It is difficult to assess the effectiveness of this activity since it has just started. The HJPC, however, should start measuring the effectiveness of the application through collecting data on the number of published movables and the number of sales.

Within the second sub-objective (*Promoting court settlement, mediation and introducing the practice of pre-suit notice, signing agreements with beneficiaries*) the most relevant outcome is testing the pre-suit notice in selected courts. The sub-component was used for testing identified good practice from the basic court in Banja Luka. Before the full roll out, the HJPC tested pre-suit notice in pilot courts in Tuzla and Bijeljina (pilot courts from 1.2 sub-component) and in the Zenica court which already had major improvements in enforcement. Results of the testing are mixed: in Bijeljina court pre-suit notice was followed with successful enforcement of 20 percent while in Zenica it was around 5 percent only.²⁴ Zenica, however, is already a champion in enforcement of court decisions so it was not expected to achieve much more. Although the results are mixed, the HJPC considers that pre-suit notice should be applied throughout courts in BiH.

As with the mediation promotion activities, all previous projects had limited results. To increase effects of the activities, the HJPC decided to add promotion of arbitration as a more effective tool for large judgement creditors. The association Arbitri was identified as a promoter of arbitration that could be used for raising awareness, and HJPC signed a MoU with Arbitri. The HJPC also included CEST to organize trainings for judges on arbitration as an alternative dispute resolution.

The third sub-objective (*Improving the enforcement procedure through the promotion and greater application of the Opinion of Personal Data Protection Agency to obtain data on property of a judgement debtor and improve enforcement procedures*) relates to the promotion of the PDPA Opinion to ensure access to data on the property of a debtor by creditors. In order to overcome the challenge of limited access to data on the property of a debtor, the HJPC took the initiative and requested the opinion of the Personal Data Protection Agency (PDPA). The refusal to provide data was delaying the enforcement procedure. The PDPA Agency issued an Opinion that authorised bodies should share data with creditors and that this is in line with the Personal Data Protection Act. To ensure application of this Opinion by the authorised bodies, the HJPC planned to promote the Opinion and meet with relevant bodies. The HJPC organized a Round Table and meetings to promote the Opinion and sent the Opinion to all courts and Bar Chambers. At the local level, the courts sent an Opinion to local authorised bodies.

²⁴ The Municipal court in Tuzla was not collecting data, so it is not possible to evaluate results of their testing.

During the project implementation the HJPC realized that it was not possible to collect data on the number of requests for data on the property of a debtor by judgement creditor, since only two of the ten creditors that were included in the monitoring shared data with the HJPC. The pilot courts mentioned that the Opinion was useful for the enforcement procedure and that courts informed all local institutions of the Opinion and the need to submit data to the judgement creditor.

The fourth sub-objective (***Improved work processes in enforcement departments and strengthened role of court bailiffs and their training; and Proposed measures implemented***) is interlinked with the previous sub-components. The HJPC prepared analyses on the work of enforcement departments, based on operations of enforcement departments in five pilot courts (MC Zenica, MC Tuzla, MC Mostar, BC Bijeljina and BC Banja Luka), CMS data and SOKOP-Mal system. The analysis was presented to the Standing Committee for the Efficiency and Quality of Work that approved the recommendations and its implementation. The HJCP also prepared an analysis on secondary legislation that regulates the work of court bailiffs and proposed changes to improve their status, rights and obligations.

As part of the capacity building activities of court bailiffs, the HJPC organized two workshops, one for court bailiffs in FBiH and Brcko District and one for court bailiffs in RS to exchange experience and improve knowledge and skills. Based on this initiative, CEST organized joint trainings for court bailiffs and enforcement judges. The main challenge is that CEST is not competent to organize such trainings and to overcome this problem, CEST organized joint trainings on enforcement for judges and judicial staff. The HJPC also prepared a guide for court bailiffs which can be used as a guideline for their work. The guide includes templates of acts for the work of bailiffs and it has been distributed to all courts.

The activities within this objective are complementary with sub-component 1.2. and activities of the pilot courts since it includes reorganization of work processes in the courts and a stronger involvement of court bailiffs. Courts could use some of the tools developed by the pilot courts and included check lists for bailiffs.

The fifth sub-component (***Starting a public dialogue to identify the optimal model for a systemic solution involving enforcement procedure***) aimed to reach consensus and prepare proposals for reform of the enforcement procedure. The HJPC also initiated the establishment of the Working Group for Improving Enforcement Procedure and Revision of Laws on Enforcement Procedures in BiH as well as providing extensive support to the work. Members of the Working Group are representatives of competent ministries of justice, HJPC members and representatives of courts. Representatives of the EU Delegation and the Embassy of Sweden participated in this Working Group.

The Working Group prepared a proposal as a short-term measure that requires amendments of the existing law on enforcement (i.e. to shorten timeline and include deadlines for some actions) that are not controversial and could be adopted as soon as the government is established. The draft amendments to the law are delivered to the BiH Ministry of Justice.

A long-term measure that requires adoption of the new law on enforcement that will propose options for consultations on the comprehensive reform of enforcement (i.e. transferring of enforcement from courts to external bodies – state agency or private enforcement agents) will be drafted after preparation of the Peer Review Report on the enforcement.

To collect additional inputs for enforcement reform, the HJPC conducted a survey and the majority of respondents were in favour of keeping the model of court bailiffs but significant changes to the procedure should be introduced. Moreover, the respondents suggested that the number of bailiffs be increased. Having in mind that enforcement cases present a huge burden to the justice system, the HJPC will support a consultation process and drafting of the working text of the new law on the enforcement procedure. The complexity of the state organization put even higher pressure on the HJPC to include as many stakeholders as possible to reach an agreement. It is difficult to measure the efforts put into this activity.

Efficiency

Several activities are developed based on previously identified good practices or lessons learned. Pre-suite notice was selected as a tool to be tested in other courts based on the analysis of the enforcement practice in all courts in BiH. The analysis identified pre-suit notice as a successful practice in Banja Luka court that lead to 30 percent success in enforcement of delivered pre-suit notices. The HJPC is working on the identification and replication of good practices throughout the country. In terms of cost-effectiveness, the work on the sub-component on judicial enforcement is labour intensive, as it requires engagement of additional staff for development of the application for the sale of movable property, delivery of pre-suite notice, support to the Working Group on drafting the law on enforcement procedure and preparation of the guide for court bailiffs. The project staff provided support in implementation to all these activities.

Sustainability

Some actions are sustainable since the HJPC adopted recommendations and conclusions: it will monitor its implementation (i.e. proposals of the Working Group for improving the enforcement procedure and revision of laws on the enforcement procedure in BiH; training of court bailiffs; Guidelines for court bailiffs). Without donor support

it is not clear whether results would be sustained. The process is labour intensive and if there is no support it is questionable whether the process of amendments of enforcement procedure could be finalized without efforts of the HJPC Secretariat that is dependent on donor support, financial and political.

4.4.4 Gender Equality, Vulnerable Groups And Cooperation With Ngos

Component 1.4 addressing gender equality, vulnerable groups in the judicial system, and civil society cooperation represents a thematic departure from the previous phases of the project, which focused on efficiency and reduction of the backlog. The project document²⁵ specified the respective objectives as:

- Improving gender equality in the BiH judiciary with focus on equal promotions to management level positions;
- Greater promotion and realisation of rights for vulnerable groups in the BiH judiciary; and,
- Inclusion of the NGO sector in project activities and the promotion of project activities through action and cooperation with the NGO sector.

Relevance

The project document references several specific reasons/grounds for extending the project in these directions. One set is derived from recommendations from the evaluation of the previous project phase²⁶, which include the following:

- For the HJPC to “start working on conceptualizing meaningful outputs that establish a link to achieving some of the key Swedish cooperation priorities, in particular with regard to gender and non-discrimination” and
- For Sida, that a “future project should be more consistently aligned with Swedish cooperation priorities [concerning gender and non-discrimination]”.

Strategic relevance, however, primarily arises from international obligations (such as the Council of Europe Convention on preventing and combating violence against women and domestic violence), and domestic strategic documents, in particular the

²⁵ Project Proposal “Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH - Phase 2”, July 6, 2016.

²⁶ Sida. Evaluation of the Project “Improving Judicial Efficiency” (Bosnia and Herzegovina). Sida Decentralised Evaluation 2015:40.

Gender Action Plan (GAP) for BiH.²⁷ In terms of obligations for the judiciary, the Gender Action Plan relates not only to improving gender equality within the judiciary but also to the remaining sub-objectives of this project component: promoting the rights of women as a vulnerable group in the judiciary and cooperation with civil society.

From Sida's perspective, the activities reflect the Swedish partnership strategy in the region²⁸, in particular the expected result 2 in connection with the Western Balkans, namely "strengthened democracy, greater respect for human rights and a more fully developed state under the rule of law", which highlights the need for the judiciary system to tackle gender-based violence and hate crimes, among other issues.

In sum, the project component is relevant in meeting high-level strategic objectives of both the beneficiary (the state of Bosnia-Herzegovina and its judiciary in particular) and Sida, as well as in assisting BiH to meet its international obligations. The extent to which it does so is limited, however, as project activities constitute the initial, preparatory steps needed to advance the stated objectives, rather than a comprehensive roadmap for achieving them.

At the time of the project launch, the component objectives were only partially incorporated in HJPC's current Strategic Plan²⁹, which addressed victims of domestic violence and juveniles. This absence illustrates the starting point for the planned activities: the HJPC recognized its obligations (to promote gender equality and to protect women and other vulnerable groups in the judicial process) and opportunities (usefulness in cooperating with NGOs and other international partners in pursuit of these objectives). Missing was an in-depth analysis of the current situation and challenges, on which to base more concrete actions and specific objectives (apart from the single specific objective "improving gender equality in the BiH judiciary with focus on equal promotions to management level positions").³⁰

The project component was therefore designed as the necessary first step. It sought to assess the situation, identify specific gaps and needs, map out potential partners and

²⁷ The Gender Action Plan initially covered 2013-2017; an update for 2018-2022 was adopted during project implementation. Available at <https://arsbih.gov.ba/project/gender-action-plan-of-bosnia-and-herzegovina/>

²⁸ "Results strategy for Sweden's reform cooperation with Eastern Europe, the Western Balkans and Turkey 2014-2020" available at <https://www.regeringen.se/49b72b/contentassets/12a89180bafb43e3823b6c6f18b6d86a/results-strategy-for-swedens-reform-cooperation-with-eastern-europe-the-western-balkans-and-turkey-2014-2020>

²⁹ High Judicial and Prosecutorial Council of BiH : 2014 – 2018 Strategic Plan. Available at https://www.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=29929.

³⁰ The project proposal specified that "[b]ased on available figures, there are 40% women and 60% men holding management level positions in the BiH judiciary. The dominating trend of men holding management level positions in the BiH judiciary has been present for some time now."

potential solutions. It did not set as an explicit objective a plan to institutionalize necessary measures, for instance by integrating them in the HJCP strategic documents. Recognizing that the project activities were intended to begin a process of developing a plan to address gender equality and the needs of vulnerable groups, it would have been more appropriate to set that intermediate outcome as the more realistic project objective (rather than the more distant outcome of actually achieving improvement).

Effectiveness

The project log frame does not provide a useful framework for measuring effectiveness. The only properly articulated outcome ("Improved condition for vulnerable groups") is a medium-term outcome at best and clearly not to be realized within the duration of the project. The other stated outcomes are rather short-term activities and outputs.³¹ Effectiveness, therefore, needs to be considered beyond the targets provided by the results framework.

In terms of **sub-objective 1 (improving gender equality in the BiH judiciary with focus on equal promotion to management level within the BiH judiciary)**, the project activities have sought to raise awareness about gender-based stereotypes and discrimination, sexual harassment, and other challenges women employed in the judiciary might encounter in the work place.

The project activities consisted of analyses of the current situation and challenges, as well as trainings and educational materials, such as the awareness-raising publication about prejudice and discrimination.³² Many of these activities represent a "revival" of and follow-up to earlier efforts, such the 2015 Guidelines for the Prevention of Sexual and Gender-based Harassment, and the appointment of advisors for the prevention of sexual and gender-based harassment. While the project reviewed the implementation of these obligations (and prompted compliance where it was lacking), ongoing supervision is not institutionalized. Apart from a very limited sample of discussions within courts, there is no other data to suggest that either of these instruments are recognized resources for employees.

The trainings were very well received and highly rated by participants, according to select participants interviewed and post-event surveys administered by the Centre for Judicial and Prosecutorial Training (CEST) which organized them. The reach of the

³¹ The other outcomes include: Cooperation established between the HJPC and courts with NGOs and relevant anti-discrimination authorities; Training / education events for judges; Collection of data on discrimination; Problems identified; Solutions proposed; Reports drafted and circulated.

³² English-language version is available at https://vstv.pra-vojudje.ba/vstv/faces/docservlet?p_id_doc=54291.

training was quite limited, however. The interactive workshop-type approach applied restricted the number of participants to approximately 15. With two to three trainings per year (including HJPC Secretariat staff), the resulting coverage is minute in proportion of the target group. Even with the continuation of trainings over the next three years secured by the NGOs that are providing the content, the reach will remain limited. Furthermore, their voluntary character allows the least aware individuals to simply skip the training. While it is not clear that mandatory training is the best way to promote awareness, certainly more regular opportunities to engage with these issues do appear to be needed. The HJPC project team reports having proposed to the CESTs to include trainings on specific aspects of access to justice (i.e. on vulnerable groups) in their 2020 programs in order to ensure that all newly appointed judges and prosecutors gain some knowledge on these topics. Such training would be a positive advance.

The most strategically significant activity undertaken within the sub-component is the development of a gender mainstreaming strategy, the first draft of which is anticipated by the end of 2019. While its quality remains to be seen, such an instrument could provide an institutional roadmap needed to achieve the looked for (if implicit) outcomes: increased awareness, a reduction of gender-based discrimination, harassment and other objectionable practices, as well as the explicitly-stated outcome of gender equality in promotions to management level positions. Without the institutionalization of gender-quality practices, requirements, and standards, the activities undertaken will remain of limited value.

The most important outcome that can be anticipated in connection with **sub-objective 2 (greater promotion and realisation of rights for vulnerable groups in the BiH judiciary)** is the development of technical capacity within the CMS to identify, record and analyse trends of cases that may involve violence against women, hate crimes, and other forms of discrimination. While other information received from civil society organisations will help the HJPC assess the breadth of challenges affecting vulnerable groups, such statistical data is indispensable in order to assess the true extent of these practices and to elaborate the policies to addresses them and to assist the victims.

The projected advance in data collection will be achieved through coding changes in the CMS interface (data entry form) so that it can record data that would identify cases as relating to victimization of vulnerable groups.

The technical work had not been finalized at the time of the present evaluation, but its completion is anticipated by project end. Additional activities will be necessary to ensure that the data entry form is used correctly—for instance, the training of prosecutors to identify the elements of these crimes, and of various categories of personnel who perform the data entry. These necessary follow-up activities are finite in scope and some may already have the financial support of HJPC partners pursuing this agenda.

Overall, they appear to have a good prospect of entering into routine practice, particularly if they are accompanied by support and instructions by the HJPC.

As with the gender equality sub-objective, all other activities aiming to raise awareness about discrimination and the plight of vulnerable groups can yield only limited results in absence of a strategic and systemic approach. While there are several initiatives relating to e.g. domestic violence and other forms of violence against women, as well as the special needs of children (juveniles) in the justice system, what remains missing is a comprehensive strategic response on the range of challenges involving vulnerable groups analogous to the gender mainstreaming strategy currently in development. The present project has initiated work toward this important outcome, but more data from NGOs on the challenges vulnerable groups are facing in contact with the judiciary and analysis are still needed before advancing to that next stage.

The **sub-objective 3 (inclusion of the NGO sector in project activities and the promotion of project activities through action and cooperation with the NGO sector)** is interlinked with the previous two sub-objectives, to the extent that NGOs were the key partners in advancing them. In that respect, cooperation with NGOs need not be viewed as a separate objective.

It is to be hoped that the good cooperation achieved through the above-noted activities may serve as a precedent towards further advancing civil society participation in the work of the judiciary to other thematic areas in the future.

The project staff stated that the final project report would include a summary of the needs and recommendations for further work on issues addressed by this project component, which will serve as a kind of roadmap for continued programmatic development. This would be a welcome step toward a further strategic advancement and institutionalization.

Efficiency

A considerable proportion of activities undertaken under component 1.4 built on previously elaborated instruments (such as the 2015 Guidelines for the Prevention of Sexual and Gender-based Harassment within the Judicial Institutions of Bosnia and Herzegovina) and former partners (particularly NGOs that delivered training). The project built on previous outputs and relationships, reiterated previous messages, revitalized existing materials, and refreshed old partnerships. This is an efficient approach that maximizes resources, which should not be taken for granted: it is not unheard in the field of international development that similar measures are repeated under different projects and different donors due to a lack of coordination and institutional memory. The HJPC Secretariat is rather competent on both of these.

The project also succeeded in conceptually unifying disparate activities that, in one way or another, sought to advance the position of various vulnerable groups in the judiciary (from the work of the Multi-Sectoral Group on Gender-Based Violence, to the distinct initiatives to amend the CMS in order to facilitate reporting on discrimination, hate crimes and domestic violence, and other forms of violence against women).

The conceptual link invites programmatic follow-up. To promote both further efficiencies (deliberate elaboration of activities that build on and support one another) and sustainability (to be addressed next), moving forward, it would be advisable to consider developing a strategic road map for further protecting the rights of vulnerable groups in the judicial system. This issue has been already noted in several instances above.

From a financial perspective, the approach with working with NGOs proved efficient by allowing the project to leverage additional funding. NGOs providing training on gender stereotypes and discrimination reported using their own funds to support the activities in question—as well as securing additional financing to continue trainings for another three years.³³

Sustainability

One of the notable results attributed to this project component—the CMS modifications that would permit systematic recording of hate crimes or violence against women—is driven by processes external to the HJPC. It is primarily the result of NGO and international organizations' efforts to combat discrimination and hate crimes, or the Agency for Gender Equality's obligation to report on domestic violence and other forms of violence against women. In that respect, the follow-up necessary for its implementation - and sustainability of these results - can be expected external to the present project.

The main question regarding the sustainability of other project achievements concerns the development of a strategic roadmap to institutionalize the necessary measures. Such a road map (strategic plan, strategy and implementation plan, etc.) should define both specific interim objectives and the measures required to reach those objectives, so that the way forward would be clear.

³³ The interactions between the HJPC and NGOs on gender equality issues also reflect **synergies in Sida's investments** on this topic. The most important NGOs working on gender equality and engaging with the HJPC are financed by Sida either directly (Atlantic Initiative) or indirectly (Zenica Center for Women's Rights via Kvinna Till Kvinna). The two rather distinct areas of Sida's support have discovered a common objective and a point of intersection, paving the way for further cooperation and mutual reinforcement.

Institutionalization can take place in several ways. One, in terms of the HJPC adopting/making mandatory certain standards or practices (e.g. mandatory training on gender-based or other types of discrimination). Two, in the interim, by integrating specific gender-equality, vulnerable groups-related, and NGO cooperation objectives into the HJPC Strategic Plan. And three, there may be opportunities to create supporting operational mechanisms at the HJPC Secretariat (for instance, by instituting periodic or ongoing “calls for cooperation with civil society organizations” or similar measures that would encourage cooperation with NGOs in a sustained manner). Nearly all results anticipated from this project component hinge on such institutionalization.

4.4.5 Prepare Technical Documentation For Reconstruction Of Judicial Buildings Through IPA 2017

Component 1.5 was an add-on introduced in December 2018 that concerned the preparation of project and technical documentation necessary to activate IPA 2017 funding for the reconstruction (or construction) of judicial buildings.

Relevance

The poor physical condition of certain judicial buildings in BiH undermines the efficiency of operations and, correspondingly, the quality of services to citizens. In this respect, reconstruction of judicial buildings is consistent with efficiency objectives of the present project, and the reported reason for European Union investments in this particular domain.

The established positive record in project implementation, among other factors, speak in favour of the HJPC decision to support relevant ministries in applying for European Union IPA funding available for (re-)construction of judicial buildings. Such support was provided through the present project by engaging a staff position to elaborate the necessary tender documentation and coordinate construction activities.

Effectiveness

The project was amended in December 2018 to support the development of project documentation through a new coordinator position. The coordinator position succeeded in securing approximately EUR 3,48 million for the (re-)construction of judicial buildings.

Efficiency

The investment of approximately EUR 100,000 in staff time and external consultancies for technical details resulted in leveraging approximately EUR 3,48 million for (re-)construction of judicial buildings. It was reported to the evaluators that procurements carried out by the HJPC—rather than the EUD internally—are quicker and less costly,

since the HJPC is not obliged to open its tenders for international competition. In this respect, it was reported, HJPC implemented tenders provide the added efficiency of procuring “more reconstruction” for the available funding than would be the case otherwise. It is however beyond the scope of this evaluation to independently verify this claim.

Sustainability

The staff position secured through this component is not intended to be sustainable. It is a clear one-time outsourcing of specific, highly skilled, tasks. There is no need to internalize/institutionalize this kind of capacity.

The outcome of the effort, on the other hand - the refurbishment of buildings through IPA funds - is highly sustainable.

4.5 COMPONENT 2: REINFORCE INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIARY

This component has only one subcomponent: Establishment of electronic system for submission, recoding, processing and monitoring of financial statements of judges and prosecutors (SuRePro Monitor): This subcomponent promoted judicial accountability by addressing a gap in the corruption prevention regime. The existing Judicial Information System managed by the HJPC lacks the capacity to process judicial office holders’ financial statements, which should be monitored to detect conflict of interest situations and other liabilities that affect their independence and impartiality.

4.5.1 Establishment of Electronic System for Submission, Recording, Processing and Monitoring of Financial Statements of Judges and Prosecutor

Relevance

Financial statements of judges and prosecutors are part of a broader asset declarations regime that applies to a wide range of public officials. Asset declarations regimes are corruption prevention mechanisms and an obligation of BiH under the UNCAC and the Council of Europe conventions. When designed and implemented properly, asset declarations (AD) regimes can help detect conflicts of interest and illicit enrichment. In this respect, AD regimes are relevant for many categories of public officials - in particular high-level elected and appointment officials, and officials with considerable decision-making authority or authority to manage public funds. Members of the judiciary are among them.

AD systems are typically supervised by an independent body, such as an anti-corruption agency. In BiH, however, the mandate is split among several agencies, including

the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption, the Commission for Deciding on Conflicts of Interest, the Central Electoral Commission, and others, for non-judicial categories of state officials. Overall, the disparate efforts are insufficiently harmonized, and capacities are lacking to verify, in depth, the truthfulness of the declarations. In the context of an incomplete institutional architecture, it makes sense that the HJPC would be mandated to institute its own system of asset declarations for members of the judiciary. In that context, a database that permits the processing and verification of the data appears sensible.³⁴

What is missing from the project segment justification is a broader analysis of all the measures and resources necessary in order to effectively carry out verification of the financial statements. The database is only one element. Analysis and verification of data requires trained staff, including staff capable of carrying out, essentially, forensic audits. Such an elaboration would not diminish the relevance of the database, but rather qualify its contribution toward the objective of building the capacity for prevention and detection of the corruption and conflict of interest in the BiH judiciary.

Despite being one part of a broader system, the database is nevertheless an essential part of the system, and in that respect, its relevance stands. Even with functionality reduced in line with objections of the Data Protection Agency³⁵, the database should still enable staff to assess compliance with submission requirements, which is a first step toward further integrity objectives.

Effectiveness

Due to the objections of the Data Protection Agency, the development of the database during the project duration will likely be limited to approximately 70% of originally intended functionalities. It is anticipated to be able to collect data and perform basic checks for completeness and timeliness of submission. This is the extent of processing performed by most asset declarations regimes in the region.

Additional functionalities have been designed that would perform additional “truthfulness” checks, but these will not be enabled while the Data Protection Agency Opinion

³⁴ While it is beyond the scope of this evaluation to assess the policy decisions that have created the present asset declarations framework for members of the judiciary in Bosnia and Herzegovina, it might be noted that supervision of AD regimes is most typically mandated to an external, independent body. This is because of a concern about the capacity of any relatively close-knit professional group to effectively self-supervise.

³⁵ It is beyond the scope of this evaluation to assess the merits of the Data Protection Agency opinion, which does at first glance appear deserving in-depth analysis.

stands. If the Opinion is overturned, the additional functions would be activated with only minor effort by the HJPC that does not require further donor support.

It must be remembered, however, that the database—even when operating with all the foreseen functionalities—is only one part of a supervisory system. Its effectiveness depends first on highly qualified human beings performing forensic audits to assess the veracity of the submitted data, and second, on the system’s ability to exact proportional and dissuasive sanctions for violations.

The development of the database is outsourced, with the Beta version for testing anticipated for the end of 2019. A period of testing is planned for early 2020, and its full launch for some time thereafter, during that calendar year.

In that respect, the basic effectiveness of the system will not be apparent until the second half of 2020 at the earliest, and its full potential—operating in tandem with auditors—until at least half a year after the dispute with the Agency for Data Protection is resolved.

Efficiency

The HJPC has applied a standard approach to the database development, where the specifications are produced in-house, the actual development is outsourced, and all further refinements are performed in-house. The efficiency of such an arrangement can be made only in a comparative perspective, which is beyond the scope of this evaluation.

No matter what the outcome of the dispute with the Data Protection Agency, a basic functionality of the database (collecting information and performing a timeliness and completeness check) is expected. Its functionalities can only increase following resolution of the dispute, and the value-for-money of the investment can only improve.

Sustainability

Databases of this sort typically have a satisfactory sustainability record. The project staff interviewed stated that a similar design approach has been applied equally for all the systems developed for the HJPC - it allows for future expansion and other modification in line with evolving needs. There has been no reported dissatisfaction with the sustainability record of HJPC’s other databases (CMS, Judicial Information System), hence there is sufficient basis to expect similar performance from the SuRePro Monitor.

5 Conclusions

5.1 IN RELATION TO THE PROJECT AND ITS COMPONENTS

1. ICEA is most effective in promoting efficiency objectives, in testing innovations and from the innovations demonstrate results and contribute to systemic reforms
2. The results are mixed and the prospects for longer term outcomes are dependent on primarily, whether they are situated within a strategic framework, legislative and policy changes that need to be taken by state institutions in the short term and once a government is established. Activities that are not controversial and do not require policy decision are implemented smoothly with good results, for example, improving archiving operations in courts. When it comes to interventions in the area of civil cases against budget users, the HJPC realized that it cannot influence state institutions and state-owned companies in their approach towards court proceedings. This implies that the project is flexible and changes approach when needed to get better results.
3. Contribution to drafting the legislative amendments for the enforcement procedure has been realised and it is expected that short term measures will be adopted once the government is constituted. Small changes were achieved, e.g. application for sales of movable property, reorganization of enforcement departments, and strengthening capacities of court bailiffs.
4. The process of delegation of tasks proved to be effective in two pilot courts and further improvements are ongoing. The role and leadership of the court presidents is critical in achieving results, including the change in mindset (relationship of trust).
5. The peer to peer method introduced in collaboration with SNCA is effective and constitutes a relevant and effective method that can be rolled out to all courts in BiH.
6. There is limited discussion of the rationale for the sub-component on gender/vulnerable groups beyond reference to one strategic document, the Gender Action Plan (GAP). There are, however, numerous other sources of obligations, in particular regarding vulnerable groups. While it is clear that the project pre-

sented an entry point for HJPC work on these issues, more extensive preparation would have been appropriate, including for instance more extensive contextualization of the activities as a follow up to past HJPC work on gender issues.

7. Due to unanticipated external factors, the database designed for managing asset declaration has limited functionality (estimated 70% of originally conceived functions) and is projected to be in a testing phase at the end of the project (not operational). There is, however, a broader concern about the potential effectiveness of the general approach of supervision of asset declarations - by the HJPC rather than a non-judicial independent body, which is a more customary arrangement.

5.2 IN RELATION TO PROJECT DESIGN

1. The project design consists of two parts: activities related to the efficiency of the courts and activities related to accountability. However, the linkages between these two components are not well articulated to include judicial accountability for the timely delivery of justice (trial within reasonable time) or other issues that could be addressed within these two components.
2. Addressing the needs of vulnerable groups does not promote efficiency as such, but it does affect the quality and access to justice. It relates to efficiency objectives in that respect.
3. Integrity of judicial office holders may be the most important element of all when it comes to improving the quality and the status of the judiciary in BiH. There is a need, however, to consider the broader integrity framework beyond asset declarations.
4. The linkages between these two components, as well as the various sub-components (for instance, efficiency vs. gender/vulnerable groups sub-components) are not well articulated. All the project components contribute in one way or another to the timely delivery of justice, but the logic of addressing them together within a single project is not clearly stated.

5.3 IN RELATION TO PROJECT MANAGEMENT

1. The Council and Secretariat are well placed and equipped to implement projects, keep oversight of reforms and provide incentives to courts introducing innovations. The forthcoming reorganization of the Secretariat could render the next support more effective and efficient.

2. The HJPC project team is currently the best set up available to effectively implement Sida's next programme because of their contribution to institutional memory and relevant skills which are embedded in the national institution.

5.4 IN RELATION TO THE PROJECT'S SUSTAINABILITY

1. The extent and sustainability of results is highly dependent on the outcomes of discussions on structural changes and reforms, the role of an active Council, the establishment of a government and pace of the EU accession process.
2. The reform of the enforcement procedure is a burning issue for the BiH justice system and as such under the scrutiny of the EU (peer review reports, BiH analytic report). Support to the reform of the enforcement procedure should be aligned with EU recommendations.
3. Within the existing legal framework, the contribution of the SNCA has shown results and while the process can be further improved, more courts need to adopt the delegation method to reach a tipping point where such practice becomes a routine business process with adequate budget.
4. Support to the judicial reforms through this type of intervention is labour intensive and thus costly, including the twinning arrangement. However, Sida's work, including the twinning arrangements are relevant and useful if they are complementary to what other donors are doing and in support of the EU accession process.
5. Promoting gender equality and protecting vulnerable groups remains relevant but strategic documents need to be developed to ensure that Sida's contributions translate into concrete institutional changes.
6. The integrity of the judiciary and the HJPC Council has been an issue of concern for some time, for the EU in particular. It is anticipated that some structural reforms are pending. Further support to integrity measures should be aligned to the outcomes of those processes.
7. A considerable proportion of measures that would assure sustainability are political in character, in the sense that they concern legislative changes that require political support (e.g. enforcement, integrity). This remains a challenge and donors should at the highest level continue to press for reforms.

6 Lessons Learned

1. Judicial reforms are slow and long-term initiatives that usually requires amendments to legislation, capacity building and awareness raising. Some of these activities are not under the HJPC or judiciary control and they are dependent on the political circumstances, including political stability to move forward on the needed reforms. Capacity building requires resources, time, and raising awareness of the needed reforms.
2. Sida coordinates well in a complex environment with many interventions but more needs to be done to reduce the fragmentation among donors.

7 Recommendations

7.1 DESIGN AND COMPONENTS RELATED

1. The new log frame needs to be developed in line with good practices to include appropriate objectives and SMART indicators. The SNCA contribution should be part of the overall ICEA project framework so that monitoring of implementation of activities and reporting takes place for the overall project. This ensures that SNCA's contribution becomes an integral part of the next stage. For the efficiency indicators all relevant elements should be included in the log frame to ensure measurement of progress, for example, the number of incoming cases, number of resolved cases, number of pending cases, clearance rate, aging list, etc. It may be an option to provide specific assistance to develop the log frame.
2. HJCP should lead in the design of the next phase and activities (and ensure alignment to its new Strategic Plan) and select partners to secure ownership and facilitate the sharing of results to the Council and donors. The SNCA contribution should become an integral part of the next phase. The team recommends that the two components be further supported, albeit with necessary (re-) alignment with potential reformed integrity mechanisms. In that respect, it may be prudent to delay continuation of support for integrity measures until the new policies are clear. Particular care should be taken in identifying most urgent and most promising integrity-related components for future support. In line with comments elsewhere, the strategic link to the overall integrity/accountability system should be clearly articulated.
3. At this moment in time it is critical to continue work in both components to institutionalize what has been started. New pilots should be launched in a limited way if clear opportunities present themselves, in line with the broader evolving reform agenda, and potential organizational changes within the HJPC. Once a new government is in place options may arise that can push for broader systemic reforms.
4. In all cases, it would be good for the project document to show broader linkage to other projects (project objectives) as well. Ideally, it should be more clearly articulated how these project components fit into the reform agenda implementation plan.
5. It would be beneficial to begin articulating the broader strategic/programmatic framework - or at least ambitions in this domain - for new themes of gender

equality and rights of vulnerable groups. Such contextualization is particularly important with interventions in connection with integrity of judicial office holders.

6. Continued support to reforms in efficiency and enforcement are necessary since without project support it is not likely that reforms will continue. While ICEA Phase 2 has contributed to, for example, the preparation of legal amendments to enforcement, monitoring the implementation of the amendments is critical, including testing other innovations that do not require political actions.
7. The delegation system should be rolled out to more courts until a critical mass/tipping point is achieved so that the changed work processes can be applied throughout the legal system. SNCA's support is critical to the HJCPs project team to ensure an effective and timely roll-out while also defining when the SNCA can phase out and the further implementation can be part of the HJCP's role and responsibilities. Parallel efforts should be launched to secure the necessary preconditions (e.g. legislative and financial framework to support the work of trainees). A focus on the management system of the courts should facilitate an effective roll out.
8. Work to support gender equality and promote the rights of vulnerable groups in the judicial system should continue (and continue to be supported by Sida). Next phases should ideally be designed with more ambitious short-term objectives/outcomes, in particular to advance toward the institutionalization of appropriate measures and approaches.
9. If substantial organizational changes are indeed pending with the HJPC, the next project should aim to consolidate the areas addressed under the current project rather than introduce new topics and approaches.

7.2 SUSTAINABILITY

1. While an explicit exit strategy is not advised, Sida should include phase out activities in the components. Some activities are already handed over to local institutions (for example training) and this could be further stimulated. For example, the delegation system should be handed over gradually to BiH institutions.
2. Sida could engage in discussions about supporting longer term programming options and could do so with like-minded donors. Sida in close collaboration with HJCP and donors should consider what other options exist and whether at some point in time other funding modalities, including joint programming and

funding may be appropriate. Since this project ends shortly and to prevent interruptions, the project team should continue its work. It has performed well in sometimes challenging circumstances.

3. Effective donor coordination needs to be further improved at the strategic level. Implementation of activities are coordinated at a technical level by the HJPC Secretariat and respond to a wider framework for strategic planning by the HJPC. At a strategic level close cooperation among donors is needed to ensure the direction of such processes: it is essential that the key messages be aligned with the remainder of the donor community and in particular with the EU recommendations. HJCP should lead such coordination at the strategic level and regularly to strengthen the integrity of the institution.
4. Sida can support the required policy changes in concert with other donors, including through bilateral dialogue with the national partners and executive authorities.

Annex 1 - Terms of Reference



Terms of Reference for the Evaluation of the Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 2

Date: August 5 2019

1. Evaluation object and scope

The evaluation object is the “Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 2” – ICEA project November 2016- December 2019.

ICEA is a long term project aimed at general improvement of the state of judiciary aimed at creating the basic preconditions towards European integration in BiH with the overall objective to improve the efficiency of the judiciary, from the court perspective by strengthening the rule of law, democracy, human rights, improving the position of vulnerable groups that access the courts, strengthening gender equality among judicial office holders, providing organizational and material support to judicial institutions, fighting corruption, providing support for managing court cases, training of judicial officer holders as well as other judicial and non-judicial staff, reforming enforcement procedures in the judicial system of BiH, etc. The ICEA project has a developed result monitoring matrix which is based largely on the relatively good data collection capabilities of the BiH judiciary’s Case Management System.

The first project’s phase was implemented November 2012- June 2016. The first phase was evaluated in September 2015 (ref. Indevalop evaluation) Following the evaluation the project agreement partner, the High Judicial and Prosecutorial Council of Bosnia Herzegovina (HJPC), made a needs analysis focused on identifying future project activities as they relate to the priorities set by the HJPC. During the summer of 2016, the Swedish National Court Administration (SNCA) was invited for a Feasibility study which paved the way to include a twinning component (Internal reorganizations of courts and human resources in courts) in the second phase.

The ICEA project thus included new components compared to the first phase of support; a twinning component with SNCA, an enforcement reform component, a gender equality com-

ponent, a vulnerable groups component and a component dealing with reform of asset declaration process within the whole judiciary. The SNCA component, although integrated in the overall ICEA, is contractually separate as there is no funding flow from HJPC to SNCA. The contribution from Sida has two agreements; one with HJPC and one with SNCA for the twinning component. In the ICEA a steering committee which consists of HJPC Secretariat management, and the SNCA project management is responsible for management level coordination of all Sida activities.

The ICEA project promotes gender equality in judiciary, including addressing gender stereotypes in HJPC's own organization and through various initiatives. The project is raising awareness about the importance of gender equality in judiciary, and the project also includes a component on promotion and support for vulnerable groups in exercising their rights in the judiciary.

During 2018, the project was amended to include a component dealing with reconstruction of judicial buildings through IPA support. This was made on request of both HJPC and the EU Delegation in Sarajevo which also supports HJPC and the judiciary. The EU, through IPA, provides funding for reconstruction of judicial buildings which are seen to be in very poor shape and cannot meet basic standards. The HJPC has taken on a role of coordinating this support, in line with its mandate, and provides the Ministries of Justice with needed support, inter alia, with developing necessary technical project construction documents and specifications as well as monitoring. The support Sweden provides is seen to complement EU and is crucial for its part in enabling the IPA project. Future support however needs to be somehow integrated into HJPC budget financing as reliance on donor support is not seen to be sustainable.

The ICEA project is aligned to the Swedish strategy “Results strategy for Sweden’s reform cooperation with Eastern Europe, the Western Balkans and Turkey 2014-2020”. The strategy was accepted by the Swedish government in 2014 and focus on more efficient judicial systems that to a greater extent guarantee the right to a fair trial in accordance with European standards. The ICEA objectives are in line with and relevant for achieving the objectives of the strategy.

The present situation in BiH regarding the third pillar of authority, the judiciary, suffers from the same complexities that relate to the executive and legislative pillars. Political crises from one often spill over to the other and the political system has trouble coping with needed reforms. In this high political risk environment, the High Judicial and Prosecutorial Council is one of the important institutions on which the whole judiciary depends. Recent negative media reporting is indicative of the problems that are present in judiciary, and by extension HJPC itself, and are seen to be “unacceptable for a country seeking membership in the EU” according to European Commission. The level of risk for the ICEA project has therefore increased in the last year of the project. Mitigation of the risk should include more frequent dialogue between the Council and the Secretariat and the donors especially in the design of new projects in judiciary. Improved coordination between supporting donors and EU Delegation is also to be desired as a primary way to mitigate political risks.

Strengthening of the judiciary system in Bosnia and Herzegovina is the foundation of the BiH reform agendas. The EU Stabilization and Association agreement and the European Partnership

both emphasize the need for reinforcing the independence and accountability of the judicial system.

Budget

Sweden is the only donor to the ICEA project. The approved budget, as amended, for ICEA Phase 2 is 22 414 362 SEK, of which the twinning component with SNCA is 7 961 362 SEK.

2. Evaluation rationale

The purpose of this assignment is to provide Embassy of Sweden with information and knowledge regarding the outcome and effects of the ICEA project achieved during the ongoing implementation of the second project phase November 2016 – December 2019. ICEA is coming to an end in December 2019, and although no specific evaluation is planned end of phase, the project partners have indicated that elements of the program would not be sustainable if there was no extension into an exit phase. An exit phase would primarily focus on existing components, or only some of them, conditional to a determination on the acceptable level of sustainability and effectiveness and available funding from Sida. The possibility to continue to finance all existing components or to introduce new components is limited from Sida's perspective. The HJPC and in particularly the council's President has been recently under strong critics on the way it carries on its competences and upholds its independence. The current "crisis" situation, independently from any future developments, cannot simply be disregarded while negotiating development cooperation projects.

The major part of the evaluation should be carried out in September-October 2019, during which a field visit of at least 10 working days to BiH should be conducted. In addition to the field visit, adequate time should be allotted for interviews with SNCA. The stated rationale is to enable the Embassy of Sweden to assess the performance of the project in relation to stated objectives and give recommendations regarding a possible exit phase of ICEA. Both HJPC and SNCA have submitted concept note/factfinding report on possible continuation of the ICEA project.

The SNCA has submitted to the Embassy a "Factfinding report on future cooperation between the Courts of Sweden and the High Judicial and Prosecutorial Council and the Courts in BiH" and Working paper on continued cooperation 2020-2022 on the re-organization of courts and human resources at the courts in BiH. Both submitted March 2019

The HJPC has submitted to the Embassy a "Concept note: Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 3" June 2019

The evaluation rationale is furthermore to analyse the project concept/working/factfinding paper referenced above.

3. Evaluation purpose: Intended use and intended users

The purpose or intended use of the evaluation is to provide input to Sida's decision on future funding and help the HJPC and SNCA to improve implementation in an exit phase.

The primary intended users of the evaluation are:

- the Embassy of Sweden and Sida Eurolatin department
- the project management team and project partners

Other partners such as Ministries of Justice, EU Delegation/ EUSR and other international donors in the judiciary sector are also considered interested users of the evaluation.

The evaluation is to be designed, conducted and reported to meet the needs of the intended users and tenderers shall elaborate in the tender how this will be ensured during the evaluation process.

4. Evaluation criteria and questions

The objective of this exercise is to evaluate the activities carried out by ICEA with a focus on the sustainability and effectiveness criteria. The evaluation shall formulate recommendations as an input to developing a possible exit phase of the programme. The evaluation questions are:

Scope of work

The scope of work is to:

- Comment on the level of achieved ownership and sustainability of the capacity building interventions funded by Sweden. Comment on the phasing out: a forward-looking analysis on key changes in the surrounding landscape which could affect the HJPC and SNCA and identify adjustments which would be relevant for ICEA to undertake in order to ensure sustainability
- Verify and assess the performance of the project in relation to stated objectives. What is the outcome and what are the effects of the project? Is it possible to relate any visible improvements and achievements directly to the Swedish support?
- Assess the relevance of the project design particularly about the additionality of Swedish support within a larger Rule of Law sector reform programme. What are the lessons learnt from the project in this respect? What collaboration and co-ordination arrangements with partner and other financiers (e.g. primarily EU but also with Norway, Netherlands, Switzerland, USAID, UK etc.) were applied and how well did they function? Were there partnerships available which were not ventured into? Assess the role of the HJPC in coordinating the different projects implemented in the courts during ICEA Phase 2.
- Establish the extent to which the result monitoring frameworks for the ICEA project contain sufficient detail in terms of baselines, targets and sources of verification?

- Assess the relevance and appropriateness of having a Swedish institutional partner engaged in capacity building/twinning programme? What were the advantages and disadvantages of the solution chosen, lessons learned? Have the experts engaged by SNCA conveyed experiences and lessons learnt from other countries in transition?
- Establish the extent to which cross-cutting issues, primarily gender equality, have been considered during project implementation?
- Comment on the ICEA project structure with HJPC and SNCA and if there are other alternatives in developing the partner business model and sustaining future operations?
- What are the results of the various elements and activities of the ICEA awareness building/communications program in increasing visibility?

The focus of the evaluation should be on sustainability and effectiveness:

- What are the programmatic results relative to plans and targets during the current project period? The evaluation shall identify any shortcomings and explain the causes of such shortcomings, where applicable.
- The evaluation shall assess ICEA's theory of change and make recommendations regarding on how the theory of change could be developed in an exit phase. An aspect of this assignment is to review ICEA monitoring and evaluation system, and provide recommendations on how ICEA's monitoring and evaluation system may be improved

Sustainability

The evaluation shall primarily be a forward-looking analysis on key changes in the surrounding landscape which could affect ICEA and to identify adjustments relevant for ICEA to undertake in order to ensure long term sustainability. The forward-looking analysis shall also consider the increasing instability of the political environment surrounding the ICEA project and comment on the Embassy's risk evaluation of the ongoing project. Recommendations shall be made to the Embassy as to whether the current crisis of the HJPC requires additional steps to be taken. Is a change in approach necessary?

Questions are expected to be developed by the tenderer in its submission and further developed during the preparatory phase of the evaluation.

5. Evaluation approach and methods for data collection and analysis

It is expected that the evaluator describes and justifies in the tender an appropriate evaluation approach/methodology and methods for data collection. The evaluation design, methodology and methods for data collection and analysis are expected to be fully developed and presented in the methodology and workplan report. A clear distinction is to be made between evaluation approach/methodology and methods. Limitations to the methodology and methods shall be made explicit and the consequences of these limitations discussed. A gender responsive methodology, methods and tools and data analysis techniques should be used.

Sida's approach to evaluation is utilization-focused, which means the evaluator should facilitate the entire evaluation process with careful consideration of how everything that is done will affect the use of the evaluation. It is therefore expected that the evaluators, in their tender, present i) how intended users are to participate in and contribute to the evaluation process and ii) methodology and methods for data collection that create space for reflection, discussion and learning between the intended users of the evaluation.

Evaluators should take into consideration appropriate measures for collecting data in cases where sensitive or confidential issues are addressed, and avoid presenting information that may be harmful to some stakeholder groups.

6. Organisation of evaluation management

This evaluation is commissioned by Embassy of Sweden. The evaluation partners have contributed to the ToR and will be provided with an opportunity to comment on the methodology/workplan report as well as the final report, but will not be involved in the management of the evaluation. Hence the commissioner will evaluate tenders, approve the methodology/workplan report and the final report of the evaluation. The start-up meeting and the debriefing will be held with the commissioner only.

7. Evaluation quality

All Sida's evaluations shall conform to OECD/DAC's Quality Standards for Development Evaluation³⁶. The evaluators shall use the Sida OECD/DAC Glossary of Key Terms in Evaluation³⁷. The evaluators shall specify how quality assurance will be handled by them during the evaluation process. The supplier shall ensure that any of its employees, agents and subcontractors, as well as any informant to an evaluation, whose personal data are transferred to Sida, promptly receive and take note of the information provided in Sida's Privacy Policy: <https://www.sida.se/English/About-us/about-the-website/privacy-notice/>. The supplier shall promptly inform any of its informants if their names and organisational affiliation will be included and published in the final report of an evaluation, which will be made available in Sida's publication database and in Open Aid, a web-based information service about Swedish international development cooperation.

8. Time schedule and deliverables

It is expected that a time and work plan is presented in the tender and further detailed in the methodology/workplan, i.e. inception report. The evaluation should contractually be defined to

³⁶ DAC Quality Standards for development Evaluation, OECD, 2010.

³⁷ Glossary of Key Terms in Evaluation and Results Based Management, Sida in cooperation with OECD/DAC, 2014.

the period September 2019-December 2019. The timing of any field visits, surveys and interviews need to be settled by the evaluator in dialogue with the main stakeholders during the preparation (developing workplan and methodology) phase.

The table below lists key deliverables for the evaluation process. Deadlines for final workplan/methodology report and final report must be kept in the tender, but alternative deadlines for other deliverables may be suggested by the consultant and negotiated during the preparation phase.

Deliverables	Participants	Deadlines
1. Start-up meeting Video Meeting	Embassy Sarajevo	Upon signing call off contract, estimated end August
2. Draft methodology and workplan for evaluation report (inception report)		By mid-September
3. Comments on methodology/workplan from intended users to evaluators		Tentatively end September
4. Field mission, validation workshop (meeting)	Embassy, Sida HQ, ICEA project partners	Throughout October
5. Debriefing	Embassy, Sida HQ	
6. Draft evaluation report		Tentatively end October
7. Comments from intended users to evaluators		Tentatively early November
8. Final draft evaluation report		End November

Timeframe, reporting

Timeframe to be covered with the evaluation is November 2016 – September 2019 (evaluation date).

The evaluation of the project as well as the field mission is expected to take place during September 2019.

Activity	Timeframe
Inception/preparatory activities (e.g. methodology, review design and workplan) based upon desk study of project documentation	End August/early September

Field visits and interviews with partners including interviews (over video?) with the Swedish experts and/or the SNCA	End September/early October (field mission to include both Republika Srpska and Federation BiH entities)
Preparation of the evaluation report	October/November 2019

The key product expected from the evaluation is a comprehensive analytical report in English that should, at least, include the following contents:

1. Executive summary
2. Information about the Evaluation/Project
3. Description of the methodology
4. Findings from the Evaluation
5. Lessons Learned
6. Conclusions and recommendations.
7. Annexes: field visits, people interviewed, documents reviewed, etc.

The draft report should be submitted to the Embassy by end October. Following comments, the report should be finalized by mid-December, at the latest.

Previous evaluations

Evaluation of the Project “Improving Judicial Efficiency” (Bosnia and Herzegovina) Final Report 24 September 2015. Marijana Trivunovic, Vera Devine Indevalop Sweden AB.

The evaluation workplan report will form the basis for the continued evaluation process and shall be approved by Sida before the evaluation proceeds to implementation. The evaluation workplan report should be written in English and cover evaluability issues and interpretations of evaluation questions, present the evaluation approach/methodology, methods for data collection and analysis as well as the full evaluation design. A clear distinction between the evaluation approach/methodology and methods for data collection shall be made. A specific time and work plan, including number of hours/working days for each team member, for the remainder of the evaluation should be presented. The time plan shall allow space for reflection and learning between the intended users of the evaluation.

The final report shall be written in English and be professionally proof read. The final report should have clear structure and follow the report format in the Sida Decentralised Evaluation Report Template for decentralised evaluations (see Annex C). The executive summary should be maximum 3 pages. The evaluation approach/methodology and methods for data collection used shall be clearly described and explained in detail and a clear distinction between the two shall be made. All limitations to the methodology and methods shall be made explicit and the consequences of these limitations discussed. Findings shall flow logically from the data, showing a clear line of evidence to support the conclusions. Conclusions should be substantiated by findings and analysis. Recommendations and lessons learned should flow logically from conclusions. Recommendations should be specific, directed to relevant stakeholders and categorised as a short-term, medium-term and long-term. The report should be no more than 35 pages

excluding annexes (including Terms of Reference and Evaluation Workplan Report). The evaluator shall adhere to the Sida OECD/DAC Glossary of Key Terms in Evaluation³⁸.

The evaluator shall, upon approval of the final report, insert the report into the Sida Decentralised Evaluation Report for decentralised evaluations and submit it to Nordic Morning (in pdf-format) for publication and release in the Sida publication data base. The order is placed by sending the approved report to sida@nordicmorning.com, always with a copy to the Sida Programme Officer as well as Sida's Evaluation Unit (evaluation@sida.se). Write "Sida decentralised evaluations" in the email subject field and include the name of the consulting company as well as the full evaluation title in the email. For invoicing purposes, the evaluator needs to include the invoice reference "ZZ980601," type of allocation "sakanslag" and type of order "digital publicering/publikationsdatabas".

9. Consultant Qualification

The proposed consultants, apart from conditions set out in the framework agreement, should have degree in law and/or work experience in a court, or at least one court lawyer on team, experience of working and/or reviewing of donor (preferably Sida, and preferably Western Balkans region) projects supporting Judicial Reform including gender mainstreaming, and experience of having conducted similar assignments. It is necessary that the consultants have work experience both within the area of human rights and rule of law. The evaluation may comprise of international and local consultants' team.

The evaluators must have no links with the evaluated activities and have no stake in the outcome of the evaluation.

The consultant's qualifications are already stated in the framework agreement for evaluation services. The consultants' CV shall be included in the call-off response. It should contain a full description of relevant qualifications and professional work experience.

10. Resources

The maximum budget amount available for the evaluation is 700 000 SEK

The contact person at Sida/Swedish Embassy is Nedim Bukvic, National Programme Officer, Embassy of Sweden in Sarajevo. The contact person should be consulted if any problems arise during the evaluation process.

³⁸ Glossary of Key Terms in Evaluation and Results Based Management, Sida in cooperation with OECD/DAC, 2014

Relevant Sida documentation will be provided by Nedim Bukvic, National Programme Officer, Embassy of Sweden in Sarajevo.

Contact details to intended users (cooperation partners, Swedish Embassies, other donors etc.) will be provided by Nedim Bukvic, National Programme Officer, Embassy of Sweden in Sarajevo.

The evaluator will be required to arrange the logistics including bookings, interviews, preparing visits, etc. including any necessary security arrangements.

11. Annexes

Annex A: List of key documentation

-Results strategy for Sweden's reform cooperation with Eastern Europe, the Western Balkans and Turkey 2014 – 2020

- Project Proposal "Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 2 dated July 2016 and Concept Note- Technical Assistance Project to ICEA dated October 2016

-HJPC Narrative and financial progress report 16 November 2016-31 December 2017

-SNCA Annual and financial report for the year 2017

-HJPC Narrative and financial progress report II (January -December 2018)

-SNCA Narrative and financial annual progress report (January -December 2018)

- Evaluation of the Project "Improving Judicial Efficiency" (Bosnia and Herzegovina) Final Report 24 September 2015

"Factfinding report on future cooperation between the Courts of Sweden and the High Judicial and Prosecutorial Council and the Courts in BiH" and Working paper on continued cooperation 2020-2022 on the re-organization of courts and human resources at the courts in BiH March 2019

"Concept note: Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 3" July 2019

Review of Norwegian Support to the Judicial Sector in BiH Lucid Linx October 2017

Annex B: Data sheet on the evaluation object

Information on the evaluation object (i.e. project or programme)	
Title of the evaluation object	Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 2
ID no. in PLANIt	55060023
Dox no./Archive case no.	UM2016/14962
Activity period (if applicable)	2016-11-01 - 2019-12-31
Agreed budget (if applicable)	22 414 640 SEK
Main sector ³⁹	Legal and judicial development
Name and type of implementing organisation ⁴⁰	High Judicial and Prosecutorial Council of BiH, Swedish National Court Administration
Aid type ⁴¹	Grant, project type contribution
Swedish strategy	Results strategy for Sweden's reform cooperation with Eastern Europe, the Western Balkans and Turkey 2014 – 2020

Information on the evaluation assignment	
Commissioning unit/Swedish Embassy	Sarajevo
Contact person at unit/Swedish Embassy	Nedim Bukvic
Timing of evaluation (mid-term, end-of-programme, ex-post or other)	End of programme
ID no. in PLANIt (if other than above).	

Annex C: Decentralised evaluation report template

[This format is a requirement for publication under the “Sida Decentralised Evaluations” report series and can be found on Sida Inside, under Guidelines & Support/Cooperation Methods/Evaluation at Sida/Manual for planning and commissioning/Implementing process.]

Annex D: Project/Programme documents

The relevant project documents will be delivered to the consultant in the electronic form.

³⁹ Choose from Sida's twelve main sectors: education; research; democracy, human rights and gender equality; health; conflict, peace and security; humanitarian aid; sustainable infrastructure and services; market development; environment; agriculture and forestry; budget support; or other (e.g. multi-sector).

⁴⁰ Choose from the five OECD/DAC-categories: public sector institutions; NGO or civil society; public-private partnerships and networks; multilateral organisations; and other (e.g. universities, consultancy firms).

⁴¹ Choose from the eight OECD/DAC-categories: budget/sector support; core contributions/pooled funds; project type; experts/technical assistance; scholarships/student costs in donor countries; debt relief; admin costs not included elsewhere; and other in-donor expenditures.]

Annex 2 - Stakeholder Analyses

Who <i>(stakeholders, disaggregated as appropriate)</i>	What <i>(their role in the intervention)</i>	Why <i>(purpose of involvement in the evaluation)</i>	Priority <i>(how important to be part of the evaluation process)</i>	When <i>(stage of the evaluation to engage them)</i>	How <i>(ways and capacities in which stakeholders will participate)</i>
Individuals/organization with the authority to make decisions related to the intervention					
Sida in BiH	Project management	Empower/Manage	High	Throughout the evaluation, data collection, approval of all reports	Client/Managing evaluation Informant Support throughout the evaluation, including in the field
HJCP in collaboration with Sida and SNCA for the twinning arrangement	Beneficiary	Empower/Manage	High	Throughout the evaluation Data collection and reports	Informant Audience throughout the evaluation
SNCA in collaboration with Sida and HJCP in the twinning arrangement	Project Support to HJCP	Empower/Manage	High	Throughout the evaluation Data collection and reports	Informant Audience throughout the evaluation
Organizations/ individuals who contribute and enable the project to be implemented, including in the field					
Sida BiH - Project Manager - Head of Cooperation - Former Counsellor	Supervise	Collaborate/Implementer	High	Data collection All reports	Informant also in the field
HJCP and its structure HJCP Councillors	Coordination and	Empower/Advise	High	Data collection	Informant in the field

HJCP Secretariat HJCP other staff relevant to the project, including support staff	Technical Support				
HJPC's standing committee for efficiency members.	Beneficiary and Technical Support	Collaborate/Implementor	High	Data collection	Informant in the field
The working group that is related to reform of the enforcement code	Beneficiary and technical support	Empower/Advise	High	Data collection	Informant in the field
Courts in country that are part of the project their management and staff, courts in Tuzla, Bijeljina, Mostar, Bihac, Prijedor.	Technical Support	Collaborate/Implementor	High	Data collection	Informant in the field
SNCA staff and management relevant to the project in Sweden	Technical Support Project advisor and in country management of analytical work and processes	Collaborate/Implementor Advisor	High	Data collection	Informant through Skype
Organizations who one way or another benefit from the intervention					
HJCP • Management • Secretariat • Units which are targeted in components of the project, inclusive HR management introducing gender • Project Management Team	Partner and Primary beneficiary	Consult	High	Data collection	Informant
For SNCA: all staff categories in the courts – judges, judicial associates and auxiliary staff and the secretariat of the HJPC.	Partner and Primary beneficiary	Consult	High	Data collection	Informant

Courts and their Presidents, management and staff participating in the project. Courts in Tuzla, Bijeljina, Mostar, Bihac, Prijedor.	Beneficiary	Consult	High	Data collection	Informant
NGOs and in particular those that represent gender and vulnerable groups	Partner and Primary beneficiary	Consult	High	Data collection	Informant
Association of Mediators, Association of Bankruptcy administrators, Court of Arbitration.	Secondary Beneficiary	Consult	Medium	Data collection	Informant
Personal Data Protection Agency	Secondary Beneficiary	Consult	Medium	Data collection	Informant
Citizens and in particular vulnerable groups who can exercise their rights at the courts	Secondary Beneficiary	Consult	Medium	Data collection	Informant
Partners in country to which this contribution is beneficial: EU in the context of EU accession and other donors to HJCP who benefit from this project	Beneficiary	Consult	High	Data collection	Informant
Other interest groups who are not directly participating in the intervention					
Donors, including EU, Norway, Swiss, USAID, the Netherlands some of which have supported the HJCP (Norway and the Netherlands in areas of the SNCA work) before or are currently supporting the HJCP. Other donors who have projects in the justice sector or activities that relates to	Observer	Informant	High	Data collection field	Informant

the efficiency of courts, e.g. the World Bank, Norway.					
Training Institutes or trainers. For example, CEST (Justice Training Centre since training component is within project)	Implementor, partners	Informant	High	Data collection field	Informant
EU which finances the reconstruction of the Court through an IPA grant	Partner	Informant	High	Data collection field	Informant
Council of Europe	Observer/Partner	Informant	Medium	Data collection field	Informant
Ministry of Justice	Partner	Informant	High	Data collection field	Informant
State Parliament	Observer	Informant	High	Data collection field	Informant

Annex 3 - List of People Met/Skype

Sida

Marie Bergström Senior Policy Specialist, EU Coordination Department
for International Organisations and Policy Support

Nedim Bukvic
Torgny Svenungsson

HJCP

Selim Karamelic Member of the HJPC and Standing Committee for eff-
ciency and quality of judiciary

Admir Suljagic Director of the HJPC

Hajro Poskovic Deputy Director of the HJPC Secretariat

Ana Bilic Project Manager

Kenan Ališah Deputy Project Manager

Kenan Softic Head of ICT department

Elma Turic IT expert

Amila Rahic Project team Suisse Assistance

Municipal Court in Tuzla

Muhamed Tulumovic President

Municipal Court in Bijeljina

Aid Hanusic President

Court Secretary

Judge

Judicial Trainee

IT expert

District Commercial Court in Bijeljina

Bozana Guzvic President

Municipal Court in Zenica

Dijana Ajanovic Court president, President of enforcement department En-
forcement judges, Head of court bailiffs

Centre for Education of Judges and Prosecutors (CEST)

Arben Murtezic, director

Association Arbitri

Nevena Jevremovic

Gender Equality Agency of B&H

Joško Mandić

Swedish National Courts Administration

Jonas Högström	Head of unit for international relations, SNCA
Charlotta Necking	Legal Adviser and Programme Manager, Department for Training and International relations
Sebastian Nilhammer	Legal Adviser and Programme Manager, Department for Training and International relations

Experts SNCA:

Fredrik Bohlin	Judge, Ystad, District Court
Mats Sjösten	Judge, Teamleader for the sister courts, Varberg District Court
Višnja Raguž	Junior judge, Helsingborgs Court

Donors**EU**

Drino Galicic	National Legal Adviser
Johannes Hintzen	Attaché - Programme Manager for Justice Reform and Security. Delegation of the European Union to BiH & European Union Special Representative in BiH

Bilateral donors

Lara Obrenovic	Embassy of the Netherlands, Sarajevo
Haris Lokvancic	Advisor on Political Affairs. Senior Programme Office Justice.
	Embassy of Switzerland in Bosnia and Herzegovina

Norwegian Court Administration

Sven Markus Urke	Director General (in writing)
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Court representatives from donor countries

Esther de Rooij	Rechterlijk bestuurslid, Amsterdam Court
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OSCE

Miloš Bogičević	Legal Adviser, Anti-discrimination
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NGOs

Atlantic Initiative, Sarajevo	
Majda Halilović	
Maida Čehajić	

Centar Zenskih Prava, Zenica
Duška Andrić

Sarajevo Otvoreni Centar
Jozo Blažević

Annex 4 - Court Case Management

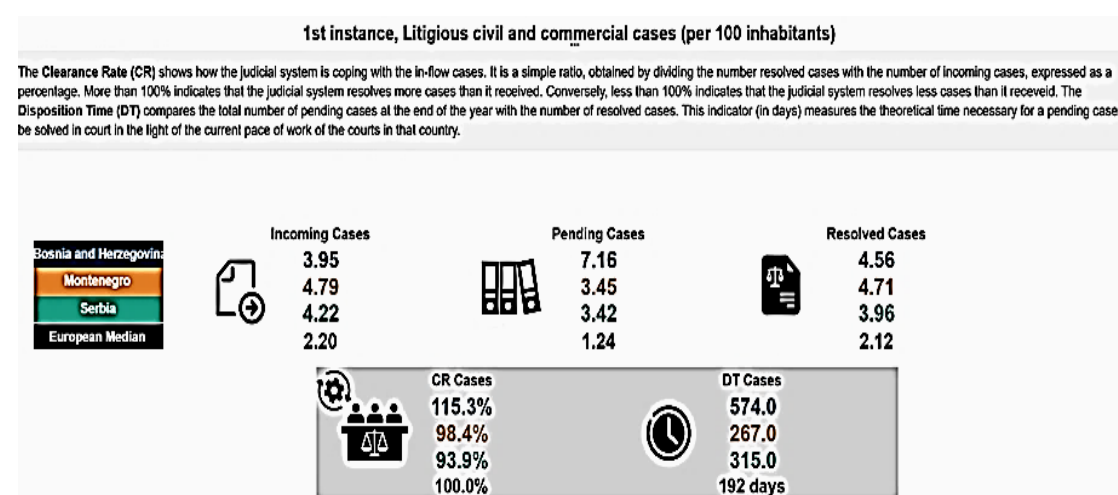
Relevance

Bosnia and Herzegovina see a relatively high demand for judicial services. BiH judiciary receives 3.95 incoming civil and commercial litigious cases at the first instance level per 100 inhabitants, compared to an average of 2.2 incoming cases in member states of the Council of Europe (CoE).⁴²

The high demand has led to difficulties for judges to keep up with their workloads and maintain stable positive clearance rates. According to CEPEJ the clearance rate of first instance civil and commercial litigious cases increased from 94 percent in 2012 to 115 percent in 2016. However, the number of pending cases per 100 inhabitants is still high with 7.2 cases per 100 inhabitants in 2016, compared to CoE average of 1.24 cases per 100 inhabitants. A clearance rate significantly above 100 percent is needed to remain not only keep up with the existing demand and avoid further backlog but also address the already existing backlog of cases in courts.

BiH courts do not stand up well against CoE disposition time average. When comparing BiH disposition time to the CEPEJ average, it scores poorly for first instance civil and commercial litigious cases with 574 days compared to 192 days. See also Chart 1 below.

Chart A1: BiH courts efficiency compared to its regional peers



Although the number of bankruptcy proceedings remains quite low in proportion to total commercial cases, the number of incoming bankruptcy cases has increased by 65

⁴² CEPEJ Efficiency and Quality of Justice, 2018 Edition (2016 data), more information available at: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

percent during the last four years. Over 85 percent of bankruptcy cases are heard in the Municipal Courts in Sarajevo, Mostar, Zenica, Tuzla and Bihac.

The number of pending bankruptcy cases has increased by 23 percent over the period prior to project implementation (2012-2015). The Ageing List of unresolved cases reveals that many unresolved bankruptcy cases remain caught in the justice system. Of 480 unresolved bankruptcy cases at the end of 2015, 66 cases are older than five years and 30 cases are older than 10 years. Any case older than 5 years is likely to violate Article 6 of the European Convention on Human Rights (ECHR) as well as other international and European standards. According to Doing Business 2017, most delays in proceedings are due to delays in the sale of the immovable property. Statistical data show that number of pending administrative cases increased for more than 20 percent in the period prior to this project (2012-2014) and reached a number of 19,781 pending administrative cases before BiH courts and the average duration of cases increased from 318 days in 2012 to 327 days in 2014.⁴³

Civil cases against the budget users were identified as another category of excessively long-lasting cases. These types of cases are specific since one of the parties is a budget user that usually is using all available legal remedies to prolong the duration of cases. Budget users usually act as defendant and the value of these cases represents half of the total value of all civil and commercial cases.

In addition, inadequate archive management not only extended the duration of proceedings, but also led to collapse of the archive in some instances.⁴⁴ Records in these courts were not properly placed, arranged or handled, which caused problems in finding specific files or documents. The HJPC in March 2016 decided to implement the "Procedure for Establishment of Electronic Records"⁴⁵. Precondition for digitalisation process (electronic archive) is improvement of archive management.⁴⁶

Challenges with indicators for this subcomponent

The sub-component contains several activities which tackle different challenges affecting judicial efficiency in specific type of cases (i.e. administrative, commercial, litigious against budget users) in BiH.

⁴³ European Judicial Systems – Efficiency and Quality of Justice, Edition 2016 (Data 2014), p. 204, available at <https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680789851>

⁴⁴ Improving archive management is also connected to the digitalization of archives in courts in BiH, which is supported by the DEU.

⁴⁵ Digitalisation of court archives.

⁴⁶ Within ICEA 1 project provided support to targeted courts (MC Sarajevo, MC Mostar, BC Prijedor and BC Zvornik) to improve archives management.

The project has defined indicators relating to a number of specific challenges that the project addresses, as well as overall objective indicator of judicial efficiency on the whole, to which each of the project outcomes within component 1 contributes in part. Most activities within this subcomponent are analytic inputs to the decision-making process within the HJPC.

First outcome objective for sub-component 1.1. was defined as an Increased processed and reduced length of proceedings and influx of administrative cases.

Outputs defined to reach targeted objective were:

- Comprehensive analysis prepared
- Activity plans prepared

The outcome indicators were defined as follows:

- Number of solved administrative cases
- Number of pending administrative cases
- Influx of administrative cases

The HJPC prepared the annual basic analysis on processing of administrative cases: at the beginning of each year the HJPC prepares an annual analysis in which statistical data from the CMS were assessed, including data on allocated human resources. In addition, the HJPC prepares analysis on predictable and optimal duration of administrative cases and followed the time needed to process administrative cases in 18 courts. Analysis on predictable timeframes showed that uneven allocation of cases among judges cause problems for administrative disputes. The challenge for processing administrative cases presents the fact that a significant number of administrative cases are pending in front of the Supreme Court due to legislative amendments and most of these cases are based on the Law on Rights of War Veterans.⁴⁷

Based on the results of this analysis the HJPC adopted the conclusion that a specialized education program for administrative judges should be developed and introduced at CEST⁴⁸. In addition, the HJPC adopted the conclusion that courts, and court presidents should be reminded to follow predictable timeframes.

The logic of the indicators is sound, as the reduction of pending stock, the increased number of solved cases and decreased number of incoming cases would improve efficiency of administrative justice. Performance according to the defined indicators stands as follows:

⁴⁷ These mass claims should be handled without discrimination in the same way and should significantly reduce workload on the Supreme Court (i.e. *Vuckovic and Others v. Serbia*, Application no. 17153/11, Judgment (preliminary objection), Strasbourg, 25 March 2014.

⁴⁸ CEST is responsible for the training of judges and prosecutors.

Table A1: Performance on project defined indicators for more efficient processing of administrative disputes

Indicator	Baseline	Target	2016	2017	2018
Number of solved cases	11,058	11,390	10,090	9,226	8,487
Number of pending cases	12,718	8,650	11,327	10,001	10,148
Influx of administrative cases	13,103	6,835	8,705	7,903	8,636

However, there is no indicator that measures the duration of administrative cases. It would be useful to include an indicator that reflects the duration of administrative cases (number of days for first instance decision), and an indicator of the clearance and congestion rates in line with CEPEJ standards. If the current CMS cannot aggregate this type of data, the HJPC should consider improvement of the CMS in this direction to ensure effective monitoring of the system performance and effectiveness of measures taken.

It is not clear how targets were calculated and set, especially in relation to the number of incoming cases. It appears that courts cannot reach the targeted number of solved cases since they decrease pressure on resolving administrative cases with the decreased number of incoming cases. By 2018 the number of pending cases decreased by 22 percent due to the decreased number of incoming cases. However, since the HJPC and court presidents expected continuous decrease of incoming cases, the increased influx resulted in a slight increase of pending cases.

Court presidents each year adopt an annual schedule for their own court, which includes allocation of judges within court departments. Since bigger courts are struggling to resolve incoming civil, commercial and administrative cases, courts presidents will allocate judges from departments for which they notice a decreasing number of incoming cases. This approach of court presidents is rational and in line with limited resources. The HJPC should consider how to deal with this risk in the next project.

Strengthening capacities of judges to deal with the most complex commercial cases

Outputs defined to reach targeted objective were:

- Comprehensive analysis of pending commercial cases at courts prepared;
- Monitoring of the implementation of action plans;
- Established cooperation with courts, the Association of Mediators in BiH.

The outcome indicators were defined as follows:

- a) Number of processed bankruptcy cases;

- b) Number of processed liquidation cases;
- c) The length of bankruptcy cases (days);
- d) The length of liquidation cases (days).

The HJPC, on an annual basis, prepared statistical and analytical reports on bankruptcy and liquidation cases to monitor efficiency in case processing. The analysis contains more detailed information on pending stock, aging list of bankruptcy and liquidation cases, number of judges working on this specific type of cases, etc. These analyses enable formulation of specific recommendations how to tackle issues of the efficiency of bankruptcy and liquidation cases. The HJPC adopted a conclusion on the establishment of a Working Group for improvement of the work on bankruptcy and liquidation cases. The Working Group includes judges and bankruptcy administrators. The Working Group prepared a Guide for dealing with bankruptcy cases. Since there is fluctuation of judges across departments there is a need to ensure that judges who are allocated to deal with bankruptcy cases have a “road map” how to process this specific type of cases and how to monitor work of bankruptcy administrators.

The logic of the indicators is sound. Performance according to the defined indicators standing as follows:

Table A2: Performance on project defined indicators for strengthening capacities of judges to deal with the most complex commercial cases

Indicator	Baseline	Target	2016	2017	2018
Number of processed bankruptcy cases	663	683	642	615	725
Number of processed liquidation cases	1,634	1,683	1,334	1,222	1,183
The length of bankruptcy cases (days)	936	797	939	865	917
The length of liquidation cases (days)	237	193	225	209	210

However, there is no indicator that measures the number of incoming cases, clearance rate, and ageing list of bankruptcy cases, which would provide more detailed information on improving efficiency in processing these specific types of cases.

It would be useful to include more indicators in this component to better understand results. However, the results of processed bankruptcy cases increased over the project duration and passed the target. The liquidation cases target was not met.

Within this specific outcome, the team had similar problems with identifying how targets were set and calculated, especially in relation to the length of cases. It appears that courts cannot reach the targeted length of bankruptcy cases as well as number of processed cases (both bankruptcy and liquidation).

Activities within this outcome were coordinated with the support provided by the World Bank through its Commercial Justice Technical Assistance Project. The World Bank is working specifically on small claims, improvement of procedural rules, training curricula for commercial matters and improvement of access to justice for MSMEs. Analysis on the equalization of workload of commercial judges could be useful for further work on commercial cases.

However, bankruptcy and liquidation cases are highly sensitive cases since they are related to state owned companies. Resolution of these cases is beyond decisions of the judicial system, so a country wide approach is necessary to solve these cases.

Process civil cases conducted against budget beneficiaries more efficiently

Outputs defined to reach targeted objective were:

- The analysis of and recommendations on judicial proceedings against budget beneficiaries prepared
- The analysis presented and the conclusions adopted to improve efficiency of proceedings against budget beneficiaries

The outcome indicators were defined as follows:

- a) Number of civil cases against budget users
- b) The length of civil cases against budget users (days)

The HJPC prepares annually statistical and analytical reports on civil cases against budget users to monitor efficiency in case processing. The analysis contains more details on the number of incoming and resolved cases, value of the cases, etc.

Based on the analyses the HJPC decided to change its approach and work more on awareness raising of the general public. Initially the project targeted awareness raising of different ministries and state institutions and state-owned companies that are identified as most often litigants in this type of cases. However, the HJPC decided that is more efficient to use external pressure, through media and raise awareness that budget users are abusing procedural rules and prolonging case duration. The HJPC adopted following the conclusions: organized press conferences for journalists and present results of the analysis and publish the analysis on the HJPC website; promote system of court settlement and mediation; and, work on promotion SOKOP system⁴⁹.

⁴⁹ SOKOP system is part of the case management system that tracks utility bill cases.

The HJPC could not track all data, but courts reported that there is more court settlement after the media campaign. Numbers on the pending civil cases against budget users significantly decreased in 2018 compared to 2017 and are in line with the HJPC perception on the effectiveness of the campaign.

The logic of indicators is sound but incomplete, as number of civil cases against budget users and length of civil cases against budget users. Performance according to the defined indicators standing as follows:

Table A3: Performance on project defined indicators for more efficient processing of civil cases against budget beneficiaries⁵⁰

Indicator	Baseline	Target	2016	2017	2018
Number of civil cases against budget users	N/A		N/A	34,981	31,626
The length of civil cases against budget users (days)	N/A		N/A	575	628

However, there is no indicator that measures the number of incoming cases, number of resolved cases and clearance rate, which would provide more detail information on improvement of efficiency in processing these specific types of cases. It is not clear how progress would be measure, specially having in mind that baseline was not defined.

Continued support for improving archiving operations in courts

Output defined to reach targeted objective was CMS records digitalisation implemented in courts.

The outcome indicators were defined as follows:

- a) Percentage of courts where CMS records digitalisation process is implemented.

The HJPC was involved in the selection of pilot courts for digitalisation process. The selection process was based on the findings from the HJPC analysis on the situation in archives and whether courts are capable (the available internal resources) to prepare files. Eight pilot courts (from SNCA component 1.2) and courts in Banja Luka, Trebinje, Tuzla and Bihac were included in the digitalisation process. Additional staff were engaged in each selected court to support cleaning files and putting these in the

⁵⁰ Data are relevant for the analysis of the performance although there was no baseline or the data started to be collected at a later point in time.

correct order. This specific activity would ensure more efficient digitalisation once the CMS is ready to support it. However, there is no data on the effect of these activities and how this will improve efficiency of the courts.

The logic of the indicators is sound. Performance according to the defined indicators is below.

Table A4: Performance on project defined indicators for improving archiving operation in courts

Indicator	Baseline	Target	2016	2017	2018
Percentage of courts where CMS records digitalisation process is implemented	1	N/A		3	5

However, the sub-component does not include any qualitative indicator, including how digitalisation processes influence court efficiency.

This outcome was delayed for the last year of project implementation (2019). The EU supported development of a module within the CMS that will enable digitalization of the archive.

Scanners were purchased with EU support for scanning of the files and the HJPC staff took over the maintenance of the digital archive module. After finalization of the ICEA phase 1 the HJPC supported scanning of the files in the courts that had

already cleaned their archives (within own resources or with the support of the ICEA phase1). The HJPC is expecting that archives from all courts will be digitalized in 2020.

Annex 5 - Detailed Results of SNCA's Support to the Courts

Box A1: Tuzla Basic Court⁵¹

- The skills of the various professions have been better exploited compared to before
- The introduction of teamwork has also led to increased work satisfaction.
- The ongoing changes has been that the number of case balances has been reduced.
- No tasks were delegated before 2017. In November 2017 approximately 30% of the work tasks were delegated, and in February 2018, the figure had risen to approximately 60%. The figures have been calculated by looking at the list of delegated tasks and comparing that with the duties the trainees carried out before.
- Meetings in the courts are held once a month, which has been good in order to see what needs to be improved at the court.
- Active monitoring takes place which looks at how much time the trainees/interns and typists/judge assistants put into their respective work efforts.
- A contact person has been introduced for all trainees.
- The trainees have kept the record of the proceedings to a greater extent (than before) thereby relieving the typists of their workload.
- Typists conduct judicial enquiries and prepare proposals for the next measure to be taken regarding the cases, and they have received training in how to use the CMS system.
- The judges do not have to double check what the trainees/typists have done, which means that the judges have been given more time for preparation and they feel less stressed when preparing for meetings and hearings. The judges no longer have to work as many overtime hours as they did before.
- They are working more and more like a team with one judge, one typist, and one trainee.
- The trainees have appointed a coordinator for their group and monthly meetings where they exchange experiences.
- The trainees have increasingly begun to draft proposals for decisions and judgments, and this has made the work easier for the judges.

⁵¹ Summary from the Annual Report 2018

Box A2: Bijeljina Basic Court

- A success factor from the very beginning may have been that the judges involved in the project did so on a voluntary basis.
- The proposed work method with the delegation of work tasks to trainees and closer collaboration between judges and trainees is not foreign to all of the judges at the Basic Court in Bijeljina; it is namely reminiscent how work was organised at the courts in the former Yugoslavia.
- trainees had been assigned to a judge and had been delegated work tasks; work that the judge had been doing in the past. As a result, the number of completed cases per judge who participated in the project almost doubled during the period January-April 2018 compared with the same period in 2017.
- Higher job satisfaction for trainees and judges.
- The judges that participated in the project had all in all ruled on approximately 10 per cent more cases during the period January-August 2018 compared with the corresponding period the previous year.
- The number of delegated work tasks had increased, and that the delegation other work was now more far-reaching, for instance, the typists had been assigned more work tasks.
- Trainees are better prepared and equipped to take their bar exam after the end of the trainee period.

Annex 6 - Overview of Activities SNCA

2017 ACTIVITIES ACCORDING TO THE LOG FRAME WITH COURTS IN BIH AND SWEDEN IN CHRONOLOGICAL ORDER		
Corresponding number from log frame	Activity	Status
1.1	Fact finding Tuzla, 17-20 January	Completed
1.2	Fact finding report	Completed
1.3	Workshop in BiH on strengthening the managerial role of the president of the court, 28 September	Completed
1.4	Visit to Sweden Gothenburg and Borås district courts on strengthening the managerial role of the president of the court, 12 October	Completed
2.1 A	Visit to BiH, Bijelijna, September 10–13	Completed
2.1	Visit to BiH, Tuzla court 18 – 20 April	Completed
2.2 A	Visit to Sweden, Varberg district court, 18 – 22 of June	Completed
Steering Committee Meetings	Two SC meetings were held and a visit by the General Director of SNCA to HJPC was conducted	Completed
For 2017: Total of 7 activities and one report		
2018 ACTIVITIES ACCORDING TO THE LOG FRAME WITH COURTS IN BIH AND SWEDEN IN CHRONOLOGICAL ORDER		
2.3 A	Second visit to BiH, Bijelijna, 9–12 April	
2.4	Third visit to Tuzla, 27 – 30 of May	Completed
2.4 A	Third visit to Bijelijna, 24 - 27 September	Completed
3.1	Report with recommendations	Completed
1.5	Workshop on organizational development of the judiciary “Experience exchange and sharing of best practices between the pilot courts”	Completed
Steering Committee Meetings	2 SC meetings and 2 coordination meetings were held.	

For 2018: Total of 4 activities and one report		
2019 ACTIVITIES ACCORDING TO THE LOG FRAME WITH COURTS IN BIH AND SWEDEN IN CHRONOLOGICAL ORDER		
3.0	Preparation of materials for the activities and desk study baseline	Completed baseline only available in Swedish
3.1	Kick-off seminar “Introducing a new way of distributing tasks among staff in the Courts of Bosnia and Herzegovina”, in BiH, 6-7 February	Completed
3.2	Visit to Sweden, Varberg district court, 19-20 March	Completed
3.2 A	Visit to Sweden, Malmö/Ystad district courts, 13-14 March	Completed
3.3	Visit to BiH, Prejedor and Bihac courts, 14-16 May	Completed
3.3 A	Visit to BiH, Mostar and Trebinje courts, 7-9 May	Completed
3.5	Visit to BiH, Prejedor and Bihac courts, 17-19 September (	Completed
3.5 A	Visit to BiH, Trebinje and Mostar courts, 24-26 September	Completed
3.6	Report	Expected
3.7	Seminar in BiH on findings and recommendations	Expected
4.0	Factfinding for new project in BiH, Sarajevo, 12-14 March	Completed
Steering Committee Meetings	1 SC meeting has taken place, coordination has taken place through HJPC and also via e-mails from SNCA to the Norwegian project manager	The second SC will take place on 5 December
For 2019: Total of 9 activities and one report		

Annex 7 - SNCA Costs Example

Resources	Total budget for year 2018	Outcome per date December 31	Funds remaining	Outcome in per cent (%) of budget in 2018
Total budget for year 2018	2.527.26 4,00	1.695.58 6	831.678	67%
Fees				
Salaries (internal work at the SNCA)	501.259, 00	358.551, 34	142.708	72%
Compensation for loss of workforce to the Courts of Sweden and fees directly payed out as a part of their salary to the experts	1.254.05 2,00	828.840, 00	425.212	66%
Allowance	117.558, 00	39.512,8 0	78.045	34%
Total fees	1.872.86 9,00	1.226.90 4,14	645.964, 86	66%
Reimbursables				
Travel costs	294.895, 00	229.914, 00	64.981,0 0	78%
Accommodation costs	139.500, 00	108.458, 00	31.042,0 0	78%
Interpretation/translation of documents etcetera	190.000, 00	98.953,8 0	91.046,2 0	52%
Audit	30.000,0 0	30.000,0 0	0,00	100%
Cost for phone call costs		1.356,00	-1.356,00	
Total reimbursables	654.395, 00	468.681, 80	185.713, 20	72%

Annex 8 - Reforming Enforcement Proceedings

Discussion of the targets and indicators per activity.

Increased Announcing hearings for sale of movables as a means of enforcement

Outputs defined to reached targeted objective were:

- Technical support in advertising the sale of movable property on web portal
- Joint work with judges and bailiffs to improve the existing practices of listing, evaluating and sale of movables

The outcome indicators were defined as follows:

- a) Number of courts that adopted new technics of sale of movable property

The HJPC identified problems with selling movables when implementing the enforcement procedure. The courts do not have big enough storage place for movable property that are seized from citizens, and if property is left with debtors' potential buyers are reluctant to go to the debtor house to check movables.

To solve this problem the project team prepared technical documentation for developing the application for the sale of movable property considering all suggestions from courts, enforcement judges and court bailiffs. The technical solution was tested in Zenica Municipal Court and is now implemented in 5 courts in the country (3 courts installed application in 2018 and 2 more in 2019). To ensure proper application of the solution the HJPC organized on the job training during 2019.

The logic of the indicators is sound, defined as number of courts that adopted new technics of sale of movable property. Performance according to the defined indicator standing as follows:

Table A5: Performance on project defined indicator for sale of movables as a means of enforcement

Indicator	Baseline	Target	2016	2017	2018
Number of courts that adopted new technics of sale of movable property	0	5	N/A	0	3

However, to provide more insight in the usefulness of the activity it would be better to include an indicator on the number of sales or percentage of sales that were announced through the web portal. Also, an indicator on the number of enforcement cases that were disposed by using this new application would be relevant.

It is difficult to assess effectiveness of this activity since it has just started to be implemented. The HJPC should start with measuring effectiveness of the application through collecting data on number of published movables and number of sales.

Promoting court settlement, mediation and introducing the practice of pre-suit notice, signing agreements with beneficiaries

Outputs defined to reach targeted objective were:

- Animate judgment creditors with large numbers of cases in order to identify the best solutions for the collection of claims:
 - o promoting the use of mandatory pre-suit notices;
 - o promoting the establishment of services contracts between the companies and service users;
 - o promoting agreements on the payment of debts in instalments;
 - o promoting court settlements and mediation in BiH.

The outcome indicators were defined as follows:

- a) Number of meetings with large judgement creditors;
- b) Follow up on influx of enforcement cases in targeted courts;
- c) Design and distribution of promotional materials and forms for alternative claims collection

Based on good practices identified at the Basic court in Banja Luka, the HJPC included pre-suit notice as a solution that could be rolled out in other courts. Before the full roll out the HJPC tested the pre-suit notice in pilot courts in Tuzla, Bijeljina and Zenica courts which were already success courts in improving enforcement cases. Results of the testing, however, are mixed. In Bijeljina court pre-suit notice was followed with successful enforcement in 20 percent, while in Zenica it was around 5 percent. However, Zenica is already a champion in enforcement of court decisions so it was not expected to achieve much more. The Tuzla court was not collecting data, so it is not possible to evaluate results of their testing. Although the results are mixed the HJPC considers to apply the pre-notice suit throughout courts in BiH.

The mediation was introduced over a decade ago in BiH. The results of mediation, however, are still modest. To ensure better results of the project, the HJPC decided to add promotion of arbitration as a more effective tool for large judgement creditors. The association Arbitri was identified as a promoter of arbitration that could be used for raising awareness and the HJPC signed an MoU with Arbitri. The HJPC also included CEST to organize trainings for judges on arbitration as alternative dispute resolution. Cooperation with NGOs (association Arbitri) should be further supported. NGOs initiated the cooperation with the HJPC, but for the promotion of NGOs participation in judiciary work, especially in area of alternative dispute resolutions, the HJPC should take a leading role.

With regard to the indicators, the HJPC could consider introducing indicators that could provide information on the success of using the alternative dispute resolution in enforcement cases.

It is not clear why the HJPC did not identify a baseline for monitoring the influx of enforcement cases in targeted courts and why the target was not identified.

Improving the enforcement procedure through the promotion and greater application of the Opinion of Personal Data Protection Agency to obtain a data on a property of a judgement debtor and improve enforcement procedures

Outputs defined to reach targeted objective were:

- Meetings with authorised bodies for providing data on the property of a debtor;
- Monitoring the number of requests for data on the property of a debtor;
- Monitoring any increase in the number of cases in which efficient means of enforcement of monetary claims are proposed.

The outcome indicators were defined as follows:

- a) Number of requests for data on the property of a debtor by judgement creditor;
- b) Number of cases where alternative means of case enforcement were used, or where Personal Data Protection Agency's opinion was utilized for data collection

The authorised bodies providing data on the property of a debtor refused to share data on property based on the Personal Data Act although the creditors had active legitimation to request these data based on a court's decision. This refusal was delaying the enforcement procedure and the HJPC requested the opinion of the Personal Data Protection Agency in order to overcome this problem. The Agency issued an opinion that authorised bodies should share data with creditors and that is in line with Personal Data Protection Act. To ensure implementation of this opinion by the authorised bodies, the HJPC held Round table to promote and present the Opinion to relevant stakeholders. In addition, the HJPC also sent the Opinion to all courts and Bar chambers in BIH. At the local level the courts sent an opinion to local authorised bodies.

The logic of the indicators is sound, as the number of requests for data on property of a debtor by judgement creditor and the number of cases where alternative means of case enforcement was used.

Table A6: Performance on project defined indicators for improving the enforcement procedure through the promotion of the Opinion of Personal Data Protection Agency

Indicator	Baseline	Target	2016	2017	2018
Number of requests for data on the property of a debtor by judgment creditor	N/A	N/A	N/A	N/A	N/A
Number of cases where alternative means of case enforcement were used, or where Personal Data Protection Agency's opinion was utilized for data collection	9,183	13,000	N/A	10,811	18,179

During project implementation the HJPC realized that it was not possible to collect data on the number of requests for data on the property of a debtor by the judgement creditor, since from the ten creditors that were included in the monitoring, only two shared data with the HJPC. For the period February – June 2018, Heating Company Sarajevo sent 331 requests and Utility company Rad Sarajevo sent 6,562 requests.

The HJPC surpassed the target since the Municipal Court in Sarajevo started with implementing the SOKOP-Mal system which resulted in processing a high number of cases.

To provide insight into the results of the promotion of the Opinion of Personal Data Protection Agency among potential providers of property data, an indicator on the number of positive answers by requested institutions should be included. In addition, it is not clear why the second indicator is not disaggregated further to have two separate indicators: one on the number of cases where alternative means of case enforcement were used and a second on where the Personal Data Protection Agency's opinion was utilized for data collection.

In future programming the HJPC should include indicators that are within its competence to mitigate the risk of not receiving data from other institutions.

The visited pilot courts mentioned that the Opinion was useful for the enforcement procedure (it was issued on the initiative of the HJPC) and that courts informed all local institutions on the Opinion and need to submit data to judgement creditor.

Improved work processes in enforcement departments and strengthened role of court bailiffs and their training; and Proposed measures implemented.

Outputs defined to reach targeted objective were:

- Analysis of organization of enforcement departments and the work processes;
- Propose measures for reorganisation and implement them within the pilot departments;
- Roundtables and workshops to improve the performance of court bailiffs;

The outcome indicators were defined as follows:

- a) Improved skills of court bailiffs and efficient work of enforcement departments
- b) Increased number of successful enforcement actions

The HJPC prepared analysis on enforcement departments, based on operations of enforcement departments in five pilot courts (MC Zenica, MC Tuzla, MC Mostar, BC Bijeljina and BC Banja Luka), the CMS data and SOKOP-Mal system. The Analysis and recommendations were approved by the Standing Committee for the efficiency and quality of work.

The HJCP also prepared analysis of secondary legislation that regulates the work of court bailiffs and proposed changes to improve the status, rights and obligations of court bailiffs.

As a part of capacity building activities of court bailiffs, the HJPC organized two workshops, one in RS and one in FBiH to ensure exchange of practice and increase knowledge and skills of court bailiffs. The workshops were organized together with enforcement judges. Based on this initiative of the HJPC and CEST organized joint trainings for court bailiffs and enforcement judges.

The HJPC also prepared a Guide for court bailiffs that could be used as a guideline for their work. The Guide includes templates of acts for the work of bailiffs. The Guide has been distributed to all courts.

The proposed indicators, several increased cases of successful enforcement actions provide a ground for measuring effectiveness. The data could not be provided by the HJCP so the team cannot report on these.

However, the indicator on improved skills of court bailiffs is not a well-defined indicator, it should be replaced by increased the percentage of successful enforcement or decreased number of actions taken by the court bailiffs in order enforce decisions. The number of organized trainings for court bailiffs could also be included as an indicator and also the number of disposed enforcement cases would be a useful indicator.

Activities in this objective are complementary to sub-component 1.2 (SNCA support to the courts) since it includes reorganization of work processes in the courts and a stronger involvement of court bailiffs. Courts could use some of the tools developed in the SNCA pilot courts and develop check lists for bailiffs.

Starting a public dialogue to identify the optimal model for a systemic solution involving enforcement procedure

Outputs defined to reached targeted objective were:

- Conference/roundtables for the reform of enforcement procedures in BiH
- Survey

The outcome indicator was defined as follows: The optimum systemic solution selected taken into account in drafting legislative changes by relevant ministries.

The HJPC initiated establishment of the Working Group for improving enforcement procedure and revision of laws on enforcement procedure in BiH. Members of Working group are representatives of competent ministries of justice, HJPC members and representatives of the courts. Representatives of the EU Delegation and the Embassy of Sweden take active participation at the meetings.

The Working Group prepared the proposal as a short-term measure that requires amendments of the existing Law on enforcement (i.e. to shorten timeline and include deadlines for some actions) that are not controversial and could be adopted as soon as Government is established.

After the preparation of the Peer Review Report on Enforcement the Working Group will prepare as a long-term measure proposal of the new Law on enforcement that will propose options for consultations on the comprehensive reform of enforcement (i.e. transferring of enforcement from courts to external bodies – state agency or private enforcement agents).

Prior to the establishment of the Working Group, the HJPC organized two roundtables. The first roundtable was dedicated to a discussion on improving the enforcement procedure and introducing efficient enforcement tools. The second roundtable focused on a discussion of an optimum system solution for enforcement in BiH. Both round tables were attended by 40 participants. One of the Round table conclusions was to establish a Working Group that will define a solution for reforming the enforcement procedure in BiH.

To collect additional inputs for enforcement reform the HJPC conducted a survey. The survey provided insight in the opinion of the judicial stakeholders (judges and judicial assistants in enforcement departments of first instance courts in BiH) on optimum system solutions. There were 79 respondents invited to participate in the survey. The majority of respondents were in

favour of keeping the model of court bailiffs, but significant changes to the procedure should be introduced. Moreover, the number of bailiffs should be increased.

The outcome objective is vaguely defined to enable a discussion on a new model of enforcement and a new Law on the enforcement procedure. Changes of enforcement legislation and reform of the enforcement procedure require a profound change of the system, including a decision on whether the enforcement should be implemented within the courts or be transferred to a private or public agency. Such decision requires broad consultation processes to reach consensus.

Having in mind that enforcement cases present a huge burden to the justice system, the HJPC supported a consultation process. The complexity of the state organization put even higher pressure on the HJPC to include as many stakeholders as possible to reach agreement. It is difficult to measure the efforts put in this activity, but it is labour intensive.



Evaluation of the Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH Phase 2

The evaluation of the 'Improving Court Efficiency and Accountability of Judges and Prosecutors in Bosnia and Herzegovina, Phase 2' covers Sida's support between 2016–2019. Its support has been relevant in view of national and international agreements, complementarity to other donors and the EU accession process. The effectiveness of the support is somewhat mixed: good progress has been made in making the courts more efficient while addressing gender, vulnerable groups and the accountability of office holders lacks a strong framework. The activities implemented under the various components are not yet sustainable but the first signs of handing over responsibilities to national and local authorities has started. Examples of achievements and the full list of recommendations are found in the executive summary.

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