



BRIEF ASSESSMENT OF BOSNIA AND HERZEGOVINA JUSTICE SECTOR

Final Report

September 16, 2018

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MONITORING AND EVALUATION SUPPORT ACTIVITY (MEASURE-BIH)

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Final Report

September 16, 2018

Prepared under the USAID's Bosnia and Herzegovina Monitoring and Evaluation Support Activity
(MEASURE-BiH)

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ACKNOWLEDGEMENTS

The United States Agency for International Development (USAID)/Bosnia and Herzegovina (BiH) commissioned IMPAQ International LLC, through the USAID/BiH Monitoring and Evaluation Support Activity (MEASURE-BiH), to design and conduct a performance evaluation of USAID/BiH's Justice Activity (JA) and a brief assessment of the BiH justice sector. Although both the JA evaluation and the BiH justice sector assessment (the Assessment) were conducted simultaneously, and by the same team, this report presents results of only the Assessment. As the JA evaluation preceded the Assessment, it is recommended that readers of this report also become acquainted with the JA evaluation report for additional context prior to reading this report. The Assessment team employed a rigorous research design and methodological approach to address the assessment questions by exploring the current environment in which the BiH justice sector operates, by identifying the issues and gaps it confronts, and by examining its current status and needs.

MEASURE-BiH's Assessment team members who worked on this assessment and prepared this report include Edis Brkić, Assessment team Co-Lead and MEASURE-BiH Deputy Chief of Party; Davorin Pavelić, Assessment team Co-Lead and MEASURE-BiH Chief of Party; Emina Ćosić Puljić, Assessment team member and Senior Research Analyst at MEASURE-BiH; Salminka Vižin, Assessment team member and Research Analyst at MEASURE-BiH; Amila Mujčinović, Assessment team member and MEASURE-BiH Research Fellow; Boris Badža, Assessment team member and MEASURE-BiH GIS (geographic information systems) Specialist; and Sanel Huskić, Assessment team member and MEASURE-BiH Research Analyst.

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ACRONYMS

ACCOUNT	Anti-Corruption Civic Organizations' Unified Network
APIK	Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
ARC	Judicial Response to Corruption through Monitoring of Criminal Cases – ARC Project
AROs	Asset Recovery Offices
BC	Basic Court
BD	Brčko District
BiH	Bosnia and Herzegovina
BoR	Book of Rules
CCIAT	Criminal Codes Implementation Assessment Team
CCPE	Consultative Council of European Prosecutors
CDCS	USAID's Country Development Cooperation Strategy
CEC	Central Election Commission
CEOCC	Corruption, economic and organized crime cases
CMS/TCMS	Case Management System/ Prosecutors Case Management System
COP	Chief of Party
COR	Contracting Officer's Representative
CPC	Criminal Procedure Code
CSOs	Civil Society Organizations
DNS	Democratic National Alliance
DO	Development Objective
EC	European Commission
EU	European Union
EUSR	European Union Special Representative in Bosnia and Herzegovina
FATF	the Financial Action Task Force
FBiH	Federation of Bosnia and Herzegovina
G2G	Government to Government
GIS	Geographic Information Systems
GRECO	Council of Europe – The Group of States against Corruption
HDZ BiH	Croat Democratic Union
HJPC	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
HoP	House of Peoples
HRM	Human Resource Management
HSS	Croat Peasant Party
ICITAP	International Criminal Investigative Training Assistance Program
IMPAQ	IMPAQ International LLC
INL	United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs
IP	Implementing Partner
IPA	European Union Instrument for Pre-Accession Assistance
IR	Intermediate Result
IT / ICT	Information (Communication) Technology
JA	USAID/BiH's Justice Activity in Bosnia and Herzegovina
JEI-BiH	Judicial Effectiveness Index of Bosnia and Herzegovina
JPTC	Judicial and Prosecutorial Training Centers
KI	Key Informant
KIIs	Key Informant Interviews
LEA	Law Enforcement Agency
MC	Municipal Court
MEASURE	USAID/BiH's Monitoring and Evaluation Support Activity

MEL	Monitoring, evaluation and learning
MoJ	Ministry of Justice
NGO	Non-Governmental Organization
NSCP	National Survey of Citizens' Perceptions
ODC	Office of Disciplinary Counsel
OHR	Office of the High Representative
OPDAT	Department of Justice Office of Overseas Prosecutorial Development Assistance and Training
OSCE	Organization for Security and Cooperation in Europe
PO	Prosecutors' Office
RS	Republic of Srpska
RSSPO	RS PO Special Department for suppression of corruption, organized and serious economic crimes
SAA	Stabilization and Association Agreement
SAI	Supreme Audit Institution
SC	Standing Committee
SDC	Swiss Agency for Development and Cooperation
SIMS	Special Investigation Means
SIPA	State Investigation and Protection Agency
SJP	Survey of Judges and Prosecutors
SNSD	Alliance of Independent Social Democrats
SOKOP	System for the electronic processing of utility cases
SOPs	Standard Operating Procedures
SoW	Statement of Work
TA	Technical Assistance
TAIEX	Technical Assistance and Information Exchange instrument of the European Commission
TO	Task Order
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USDS	United States Department of State
USG	United States Government
WTO	World Trade Organization

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EXECUTIVE SUMMARY

PURPOSE, PRIMARY AUDIENCE AND QUESTIONS

IMPAQ International LLC (IMPAQ) has been commissioned by the United States Agency for International Development (USAID)/Bosnia and Herzegovina (BiH) within the USAID/BiH Monitoring and Evaluation Support Activity (MEASURE-BiH) to conduct a performance evaluation of USAID/BiH's Justice Activity in Bosnia and Herzegovina (JA) implemented by the Millennium DPI Partners LLC under Task Order (TO) No. AID-168-TO-14-000001, which began on September 23, 2014, and will continue until September 22, 2019. As a secondary purpose, MEASURE-BiH was tasked with conducting a brief assessment of the BiH justice sector and with identifying which current issues and needs of the BiH justice sector could be met most effectively by USAID assistance. This report presents the results of only the brief assessment of the BiH justice sector (the Assessment).

USAID currently has a broad democracy and governance goal of achieving more functional and accountable institutions that meet BiH citizen needs (Development Objective [DO] 1) as expressed in USAID's Country Development Cooperation Strategy (CDCS). Additionally, USAID/BiH Intermediate Result (IR) and Project 1.1 is: More effective judicial, executive and legislative branches of government. It is further expanded through IR 1.1.1: Making government more responsive to citizens by strengthening the capabilities of justice sector actors. In 2014–2019 USAID/BiH designed JA to support DOI and to contribute to IR 1.1. Within the current CDCS, the framework is designed to host any new potential Activities in the justice sector beyond 2019. The primary audience for this Assessment is USAID/BiH, which will use the findings, conclusions, and recommendations to inform further programming in the BiH justice sector.

The brief assessment of the BiH justice sector, through four assessment questions with seven subquestions, addressed the current context under which the justice sector operates, the most pressing issues in the justice sector, ongoing or planned interventions of other stakeholders, current gaps and needs for further technical assistance, and recommendations to the USAID Mission in terms of further programming in the justice sector. The assessment also estimated the need for or potential benefit of continuing direct assistance to the High Judicial and Prosecutorial Council of BiH (HJPC) in some of the significant areas of HJPC's mandate.

ASSESSMENT METHODS AND LIMITATIONS

The Assessment team used a mixed-method approach based on an extensive desk review of implementation documents, relevant reports from international organizations and local government documentation, analysis of available administrative data on processing corruption and economic crime cases from 2014 to 2017, as well as administrative data on processing all cases tracked by the Judicial Effectiveness Index of Bosnia and Herzegovina (JEI-BiH) from 2012 to 2017, analysis of available JEI-BiH survey data on public perceptions from 2015 to 2017, analysis of available JEI-BiH survey data on perceptions of judges and prosecutors from 2015 to 2017, and semi-structured interviews with 56 key informants (KIs). The main limitations of this Assessment relate to possible response bias from respondents.

BRIEF ASSESSMENT OF BIH JUSTICE SECTOR

In accordance with Statement of Work (SoW), the JA evaluation preceded the BiH justice sector assessment, and the JEI-BiH 2017 report became available during the drafting of this Assessment. It is recommended that the reader become acquainted with the JA performance evaluation report and JEI-BiH 2018 report for context prior to reading this report.

The Assessment team examined a number of environmental factors that affect operation of the BiH justice system. This included a thorough examination of the interaction of the BiH judicial system with the executive and legislative branches of government and with political parties. Furthermore, the team examined the influence of ongoing activities related to BiH's accession to the European Union (EU) and effects of the currently ongoing USAID Justice Activity. The team conducted an extensive literature review of international reports along with an examination of available 2015–2017 data on perceptions by the public, judges, and prosecutors about the effectiveness of the BiH judiciary. In addition, the team analyzed HJPC administrative data on processing all major case types in BiH first and second instance courts and Prosecutors' Offices (POs) from 2012 to 2017; and data on processing corruption and economic crime cases from 2014 to 2017.

Through analysis of the environmental factors, the team concluded that: POs encounter issues in their financing, which affect their work; that there are negative trends in the harmonization of legislation, which cause legal uncertainty; that political parties and their representatives in the executive and legislative branch of government do not provide uncontested support for the work of the courts and POs, particularly in the processing of corruption cases; that the EU requires bold steps forward in the detection, processing, and sanctioning of corruption crimes; that public perceptions of the work of the BiH judiciary is poor; and that judges and prosecutors see considerable room for improvement in the functioning of the BiH justice system. The Assessment team also found that the BiH justice sector operates in a very challenging environment and that no significant environmental changes have occurred since the current USAID JA was designed.

Through analysis of administrative, perception, and key informant interview (KII) data, the team identified numerous issues affecting the work of courts, POs, law enforcement and other government agencies, and the HJPC. Below we list the major issues identified.

Issues facing the courts. Priority is not given in the courts to the adjudication of corruption and organized crime cases, and there is a lack of adequate motivation for judges to work on these cases. Due to non-harmonized legislative solutions, conflicts of jurisdiction between the state and entity courts and POs emerge. Furthermore, unequal judicial practice and sanction policy are present at all levels. An important impediment in processing corruption-related cases in the Federation of BiH (FBiH) is failure to establish the Special Department of the Supreme Court of the FBiH as prescribed by law. Finally, long disposition times at first instance courts and persistence of issues related to cases for unpaid utility bills combined with the identified deterioration of disposition times and backlog in second instance courts are serious issues to consider in courts.

Issues facing Prosecutors' Offices. POs still face long disposition times in POs for corruption and economic crime cases, and there is no significant improvement in work performance on these cases. POs are confronted with numerous poor-quality criminal reports for corruption cases, and prosecutors still lack motivation to work on the most complex corruption cases. The Assessment team found that major reductions in disposition of general crime cases were achieved through rejection of criminal reports and termination of investigations. As in the case of the courts, differently defined subject matter and territorial jurisdictions of POs cause conflicts of jurisdiction, but in addition there is a discrepancy in expectations in judicial validity of evidence standards between POs and courts. Finally, a lack of adequate budgets and financing for the work of POs, including delays in payments for expert witnesses and other goods and services delivered to POs are issues that POs face on a day-to-day basis.

Lack of police competencies and skilled police inspectors. It is common practice to remove police investigators from investigations or investigative teams in complex or sensitive cases that involve public officials. Police professionalism is also called into question through recent convictions of high-profile police

officers. There is no independent oversight of the operational activities of the police force, and it is claimed that there is political influence over their work. Other governmental institutions (i.e., tax administration, financial police, and SAs [Supreme Audit Institutions]), which are supposed to report corruption crimes and provide support in processing those cases, are regarded by POs as being of little help.

Issues facing the High Judicial and Prosecutorial Council of BiH. The Integrity Plans and Guidelines for prevention of conflicts of interest have been developed, but their full implementation still lies ahead for HJPC and the judicial institutions. HJPC will face challenges related to implementation of activities related to alignment of its operations with the provisions in the new law on the HJPC, once adopted. Furthermore, implementation of the upcoming “peer-review” visits and their recommendations will place additional requests before HJPC. In its core competences, HJPC is confronted with poor perceptions of judges and prosecutors related to their appointments; career advancement and valuation of their work; disciplinary proceedings and sanctions rendered. At the same time, the Office of Disciplinary Counsel (ODC) is understaffed and overburdened with the low-quality disciplinary reports being filed.

In accordance with the identified environmental challenges, as well as the current issues facing judicial institutions, the Assessment team identified areas where further assistance may be needed in the BiH justice sector. An extensive list of the needs identified is provided in this report in the section presenting current needs of the BiH judicial sector. We list some of the major ones below.

- *Improving the track record in the processing of corruption and organized crime cases by law enforcement agencies, courts, and POs, particularly for the most complex, high-profile corruption and organized crime cases. This includes modification of regulations permitting selected judges and prosecutors to work only on the most complex corruption and organized crime cases and defining these cases as a priority in the work of courts as well. Those POs and courts that are working on the most complex cases need to have at their disposal all required expertise, training, financial support, and technical means for undisturbed work on those cases.*
- *Establishing forums between Supreme, Cantonal/District, and their corresponding Municipal/Basic courts, including periodically checking on results achieved in all segments, particularly in the adjudication of corruption and organized crime cases. POs need to continue with the practice of having the Collegiums of the Chief Prosecutors and reinforce their agendas in the segment of processing corruption and organized crime cases.*
- *Reversing recent divergent legislative initiatives that are not harmonized among state and entity levels, in particular those related to processing cases of corruption and organized crime cases. This includes addressing flaws in resolving jurisdictional conflicts between state and entity courts/POs.*
- *Addressing issues of unequal judicial practice, particularly in relation to corruption and organized crime cases. This includes establishing forums through which court practice and standards set by courts will be presented to prosecutors as well.*
- *Finding the resources and technical expertise needed to address issues related to HJPC, specifically its multi-year implementation of the Integrity Plans, detecting undeclared assets within implementation of guidelines for preventing conflicts of interest, and data-mining and analysis of processing of cases led by the Office of Disciplinary Counsel through examination of records in the Case Management System (CMS) and the Prosecutors Case Management System (TCMS) databases.*
- *Addressing issues in appointments, performance evaluations, and discipline of judges and prosecutors as demanded by the professional community.*
- *Establishing forums between judicial institutions and relevant ministries of justice that can help foster a mutual understanding of expectations and needs, encourage better allocation of budgets to the judicial institutions, and prevent delays in payments.*
- *Refocusing the huge number of unresolved cases for unpaid utility bills to a very limited number of courts, which retain up to 85% of those cases.*

- *Addressing issues in operations of second instance courts* that are associated with worsening results and undertaking mitigation measures.
- *Undertaking various measures to improve the judiciary's public image* and that of judges and prosecutors.
- *Conducting systematic donor coordination* and helping to avoid overlapping of projects and activities, in particular off-site trainings.

Furthermore, the Assessment team conducted a thorough analysis of current and planned activities of other donors through which some of the identified needs will be addressed. We identified major projects of the United States Government (USG), the EU, Norway, Sweden, the Netherlands, the United Kingdom (UK), Italy and Switzerland and to extend possible, identified areas within the BiH judicial system in which donors will implement their interventions.

Recommendations for USAID/BiH

Bearing in mind that some major EU-financed projects working on issues of corruption and organized crime will not begin until Fall 2018, the areas stated below are recommended for USAID's review and potential engagement through the design of new activities in the BiH justice sector (subject to obtaining additional information from initiated projects and EU peer-review recommendations for the fight against corruption, which remained unavailable to the Assessment team).

USAID assistance directed toward better processing of the most complex high-profile corruption and organized crime cases should:

- R1: *Focus on a select number of POs, mainly specialized POs and major Cantonal POs (absent the establishment of the Special Department of PO FBiH), and provide assistance in processing the most complex corruption and organized crime cases.* In the event of the establishment of the Special Department of PO FBiH, the assistance should be re-focused from the Cantonal POs to the Special Department of PO FBiH. Within selected courts and POs, individual judges and prosecutors should be identified to work on the most complex cases, and technical assistance (TA) should be provided directly to them.
- R2: *Provide expertise (i.e., in forensic accounting and cybercrimes) and advisory support (i.e., prosecutors experienced in conducting investigations) to selected POs in the most complex cases.* This could include special financial assistance to overcome constraints of local budgets to efficiently process the most complex corruption and organized crime cases.
- R3: *Work with the HJPC to formally implement a procedure for determining the most complex corruption and organized crime cases, and identify them as priority cases for both POs and the courts.* Additionally, the HJPC needs to adapt regulations on the work performance of judges and prosecutors to accommodate undisturbed work on these cases by individual judges and prosecutors.
- R4: *Simultaneously work with the courts where the most complex corruption and organized crime cases are being tried* in order to introduce processes such as preparatory hearings, setting trial agendas, and expediting trials.
- R5: *Synchronize activities with the activities of the International Criminal Investigative Training Assistance Program (ICITAP),* which could direct the police in conducting effective investigations into the most complex corruption and organized crime cases. In cooperation with ICITAP, formal training could be offered by prosecutors to the police officers.

- R6: *Continue and reinforce delivery of training for prosecutors working on the most complex corruption and organized crime cases.* Training for judges adjudicating those cases should also be introduced. The training should continue to be a flexible combination of on-site and off-site training. It should include training abroad and exchange visits with specialized courts and POs in the region.
- R7: *Enable dissemination of good practices from the selected POs working with USAID support on the most complex cases to all other lower level POs.* Training organized for the lower level POs should be conducted by the frontline prosecutors from the selected POs working on the most complex corruption and organized crime cases. When justifiable, in-country study visits to POs with best practices could be organized.
- R8: *Facilitate establishment of judicial standards and sanction policy among the second instance courts through creation of a new forum.* Once the new judicial standards and sanction policies are agreed upon at the level of the second instance court, facilitate their dissemination to first instance courts and corresponding POs at the Cantonal/District level.
- R9: *In order to support the work of forums established within the previous recommendation, help establish a functional exchange of information of interest on setting judicial standards and sanction policy by providing TA in preparation of judgments and legal points of interest for discussion.* POs and first instance courts should be invited to bring particular legal issues encountered in their work for which they deem that clarifications are needed to the attention of the established forums of the second instance court.
- R10: *To forums established at the level of second instance courts and at the level of first instance courts, in addition to presently existing Collegiums, present data on processing corruption, economic crime, and organized crime cases and institute a monitoring mechanism for improvements in achieved results.* In addition, forums of the second instance courts should carefully examine deteriorating performance and mitigation measures to reverse current trends in all appeal case types.
- R11: *Continue periodic collection and analysis of administrative data as well as perception data for both the public and judicial professionals.* Use these data as a source of quality information for observing trends in the BiH judiciary and informed decision making. Present such unbiased information to decision makers in the BiH judiciary to bolster improvements in their informed decision making.
- R12: *In conducting activities from R1–R11, coordinate actively with the HJPC and Standing Committees for Efficiency of Courts and POs.*
- R13: *Provide TA to HJPC in mapping and tracking donor-financed projects and their activities.* Moreover, in close cooperation with HJPC, support HJPC in detecting and defining the needs of the BiH justice sector and help HJPC to redirect current donor projects and set requests in advance for new (donor) projects in their early phases of design.

USAID assistance directed toward the prevention of corrupt behavior in the BiH justice sector should:

- R14: *Provide ODC with TA in analytical skills and data mining in the identification of cases.*
- R15: *Provide TA to ODC in re-designing its workflow by decreasing the percentage of disciplinary reports filed that are of low quality.* Options to be examined could include the introduction of a front-desk with junior disciplinary counsels for initial examination of filed disciplinary reports or the creation of a network

of non-governmental organizations (NGOs) that could provide legal aid to those willing to file a disciplinary report.

- R16: *Provide TA to HJPC in examining the current quota system and its connection to the number of disposed cases and inflows. TA should also assist HJPC in automating vital performance indicators from administrative data, such as quotas for judges and prosecutors, the success rate of first instance decisions, and the success rate of indictments and disciplinary proceedings.*
- R17: *Continue supporting HJPC in the implementation of Integrity Plans. TA should include expertise needed for particular issues in the Integrity Plans, assistance in designing a monitoring tool for tracking implementation in all judicial institutions, and drafting of regulations to address identified risks in judicial institutions.*
- R18: *Continue supporting HJPC in asset declarations of judges and prosecutors by helping establish, train, and equip a unit that will be tasked with discovering undeclared assets.*
- R19: *Continue to help HJPC in building consensus forums with state institutions and agencies.*
- R20: *Help initiate visits of HJPC members to individual courts/POs and discussion forums between HJPC members and members of the professional community on issues that concern judges and prosecutors.*
- R21: *Organize the regular exchange of information on internal and external activities of USG agencies and other donors working in the BiH justice sector.*

BRIEF ASSESSMENT OF BiH JUSTICE SECTOR

BRIEF ASSESSMENT PURPOSE, QUESTIONS, DESIGN, AND LIMITATIONS

IMPAQ International LLC (IMPAQ) has been commissioned by USAID/BiH within the USAID/BiH Monitoring and Evaluation Support Activity (MEASURE-BiH) to conduct a performance evaluation of the USAID/BiH's Justice Activity in Bosnia and Herzegovina (JA) and a brief assessment of the BiH justice sector.

The main purpose of the performance evaluation was to provide USAID/BiH with an evidence-based and independent review of USAID/BiH's JA, while the secondary purpose was to conduct a brief assessment of the BiH justice sector and to identify which current issues and needs of the BiH justice sector could be met most effectively by USAID assistance.

To fulfill its mandate, MEASURE-BiH used a rigorous methodological approach in addressing the assessment questions. The work conducted provides insights into the present situation of the BiH justice sector, current and planned interventions of other donors, and remaining issues and gaps not being addressed. Based on this information, MEASURE-BiH provides recommendations for USAID/BiH's possible further programming in this sector.

The primary audience for this brief assessment is USAID/BiH, who will use the findings, conclusions, and recommendations to inform further programming in the BiH justice sector.

The brief assessment of the BiH justice sector addressed the following questions:

1. What is the current context under which the justice sector operates? How is the current context different from the one identified at the commencement of JA?
2. What are the current most pressing issues in the justice sector in BiH? How can they be addressed? To what extent are these issues addressed by current projects/interventions implemented by international and/or local organizations?
3. What are the identified gaps and windows of opportunity in terms of needs for further technical assistance? What are the recommendations to the Mission in terms of further programming in the justice sector?
4. Is there a need or potential benefit of continuing direct assistance to the HJPC in some of the significant areas of HJPC's mandate or were these sufficiently improved over the past decade?

The Assessment team used a mixed-method approach and relied on triangulation methods in the data collection/analysis process, combining different sources of information. Whenever possible, the Assessment team used data from the following sources: Donor, State, HJPC/POs, and JA official documents; HJPC administrative data on cases being processed by courts and POs, including data on processing corruption and economic crime cases from 2014 to 2017, as well as administrative data on processing all cases tracked by the Judicial Effectiveness Index of Bosnia and Herzegovina from 2012 to 2017; selected historical JEI-BiH survey data of public perceptions from 2015 to 2017; selected historical JEI-BiH data from the survey of judges and prosecutors in BiH on effectiveness of BiH judiciary from 2015 to 2017; and semi-structured key informant interviews.

The desk research of international and local documents relevant for assessment of the BiH justice sector and issues relevant for JA activities included: relevant sections of EU progress reports for BiH 2014–2018 (henceforth “EU progress reports”); Transparency International *National Integrity Systems in the Western Balkans and Turkey: Priorities for Reform* (October 2016); European Parliament *Anti-Corruption Efforts in the Western Balkans Briefing* (April 2017), US Department of State *2017 Investment Climate Statement* (August 2017); Organization for Security and Cooperation in Europe (OSCE) *Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases Project Report* (February 2018, henceforth “OSCE report”), and Council of Europe Anticorruption Body – The Group of States against Corruption (GRECO) reports issued February 2016–May 2018 relevant for BiH. Desk research included review of the JA studies, assessments, and reports.

Key informant interviews were conducted with: USAID/BiH, the US Department of State’s (USDS) Bureau of International Narcotics and Law Enforcement Affairs (INL), the US Department of Justice’s Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), and other donors (i.e., the European Commission (EC)/BiH, the European Union Special Representative (EUSR)/BiH, Switzerland, Norway, Sweden, UK, and Italy), Ministries of Justice (MoJs), HJPC members and HJPC Secretariat representatives, ODC, courts, POs, other government agencies (i.e., SAIs, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption [APIK], Agency for Forfeiture of Assets FBIH), associations of judges, associations of prosecutors, and NGOs. A total of 56 KIIs were conducted with 111 informants participating in those interviews. Interviews were structured according to defined interview protocols in order to ensure objectivity, focus, consistency, and comparability of responses. All KIIs were conducted with a minimum of two Assessment team members present.

The team used already available historical HJPC administrative data collected for the calculation of JA monitoring, evaluation, and learning (MEL) indicators and the USAID Project-level indicators. These data (covering processing of criminal reports, investigations, indictments, judgments, and sanctions) helped identify trends and changes in the processing of corruption-related and economic crime cases by POs and courts in BiH from 2014 to 2017, a period that coincides with JA implementation. To simplify presentation and to visualize these data, MEASURE-BiH used geographic information system (GIS) technology and expertise at our disposal. In addition, the team used available historical HJPC administrative data collected for calculation of the Judicial Effectiveness Index of Bosnia and Herzegovina, which cover processing of major case types (including criminal, civil, commercial, administrative, and enforcement cases) in basic and appellate courts and criminal case types belonging to POs. These data helped identify general trends and bottle-necks in the processing of cases by the BiH judiciary from 2014 to 2017.

The team used two sources of survey data: The National Survey of Citizens’ Perceptions (NSCP), which was conducted from 2015 to 2017 by MEASURE-BiH, and the Survey of Judges and Prosecutors on Effectiveness of BiH Judiciary (SJP), which was conducted from 2015 to 2018. Both surveys cover topics and issues relevant to this evaluation and assessment. The survey data were triangulated with KII and HJPC administrative data in order to provide a holistic picture and thorough answers to the evaluation and assessment questions.

The main potential limitation of this assessment is response bias. The key informants may understate the positive effects of advancements made in the BiH justice sector and overstate the negative effects of current issues. The Assessment team mitigated this bias to the extent possible by drawing on multiple sources of information, guaranteeing the interviewees’ confidentiality, and carefully designing and implementing data collection to request specific examples from the KIIs to describe their responses. We also ensured broad coverage of the BiH justice sector stakeholders in the KIIs, including external stakeholders and non-beneficiaries in the KIIs.

BACKGROUND INFORMATION ON BIH JUDICIARY STRUCTURE

Taking into account the specific constitutional and territorial organization, there are four court systems in Bosnia and Herzegovina: the court system of BiH, the court systems of the Entities (the Federation of BiH and the Republika Srpska [RS]), and the court system of the Brčko District (BD) of BiH. The court system also includes a prosecutors' office system that corresponds to the organization of courts. At the BiH level, the relevant structures are the Court of BiH and the Prosecutor's Office of BiH.

In the Federation of BiH the relevant structures include: the Supreme Court of FBiH, the FBiH Prosecutor's Office, municipal and cantonal courts, and the cantonal POs. The total number of courts in FBiH is 41, and the total number of POs is 11. In RS there are courts of general and of special jurisdiction. The courts of general jurisdiction include: basic courts, district courts, and the Supreme Court of the Republika Srpska. The courts of special jurisdiction include: the district commercial courts and the Higher Commercial Court. The prosecutors' office system consists of the RS Prosecutor's Office and the district prosecutors' offices. The RS PO Special Department for Suppression of Corruption, Organized and Serious Economic Crimes (RSSPO) initiates cases that are adjudicated by the Special Department of the Banja Luka District Court in the first instance and the RS Supreme Court in the second instance. The total number of courts in RS is 33, and the total number of POs is 7. The relevant structures in Brčko District include the Appellate and the Basic Court and the Prosecutor's Office of BD.

In BiH there are three constitutional courts: the Constitutional Court of BiH, the Constitutional Court of FBiH, and the Constitutional Court of RS. All three exercise their jurisdiction under the corresponding Constitution and the European Convention on Human Rights and Fundamental Freedoms.

According to the 2004 Law on the HJPC of BiH, the HJPC is an independent and autonomous body in charge of ensuring an independent, impartial, and professional judiciary composed of BiH courts and POs. Among other competences, the HJPC appoints judges and prosecutors, conducts disciplinary proceedings against judges and prosecutors, supervises their training and education, creates methodologies for evaluating the performance of judges and prosecutors, determines the number of judges and prosecutors, directs and coordinates the introduction and use of information technology (IT) in courts and POs, and enacts bylaws on court and PO administration and codes of ethics.

A detailed paper on the structure, jurisdiction, and organizational charts of courts and POs at all levels in BiH is provided in the European Commission for Democracy through Law (Venice Commission) *The Judicial Power in Bosnia and Herzegovina: Background Paper*.¹

¹ The European Commission for Democracy through Law (Venice Commission) "The Judicial Power in Bosnia and Herzegovina: Background Paper" available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)096-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)096-e) (accessed on August 5, 2018).

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Assessment Question I

(AQ1) What is the current context under which the justice sector operates? How is the current context different from the one identified at the commencement of JA?

To establish the current context in which the BiH justice sector operates and how it differs from the context identified at the commencement of JA, the Assessment team examined a number of environmental factors in which the BiH justice system operates. The principal contextual factors can be categorized as either domestic or international factors.

In examining the *domestic* factors, the Assessment team explored the interaction of the BiH judicial system with the executive and legislative branches of government, and with political parties. Furthermore, the Assessment team examined public perceptions and the perceptions of judges and prosecutors regarding the work of the BiH justice system. Finally, available HJPC administrative data were examined to assess the processing of cases and backlogs in courts and POs.

In order to establish the current position of *international* organizations and their influence on the BiH judicial sector, the Assessment team first explored major contextual factors in the BiH judiciary, as noted by international organizations in their reports. Subsequently, current activities related to BiH's accession to the EU, recommendations and requests provided by EU peer-review missions, and the influence of the ongoing USAID interventions were examined to identify additional important environmental factors.

The outcome of this process is presented in the sections below.

Environment in Which the BiH Justice Sector Operates – Domestic Factors (DF)

DF.I Interaction with the Executive Branches of Government

The BiH judicial system experienced significant reforms in the past when HJPC was established and when most of the competences that belonged to the executive branch of government relating to the justice sector were transferred to HJPC. Interactions of the BiH justice sector and the governments at different levels occur through budgeting, execution of payments, and creation of other preconditions by which the local governments engage with courts and POs.

In general, judges and prosecutors are dissatisfied with the budgets allocated to judicial institutions. The JEI-BiH Survey of Judges and Prosecutors (SJP) from 2015 to 2017, showed that the weighted average² of judges/prosecutors who felt that allotted budgets were sufficient did not exceed the index value of 40 out of a maximum of 100.

² Detailed scoring methodology used in JEI-BiH, which includes scoring of answers in NSCP and SJP, is provided in the JEI-BiH 2015 report available at: http://measurebih.com/uiimages/EN_USAID_BiH%20JEI_FINAL_with_TABLE_incorporated_ENG.pdf. In short, the scale used for scoring is from 0 to 100 (0% – 100%), where the most desirable answer receives 100 points (or 100%) and the least desirable answer receives 0 points (0%). Respondents are offered answer options based on 2-, 3-, 5-, and 7-point Likert scales. Accordingly, each answer is assigned a corresponding score between 0 and 100 (0% and 100%), i.e., when offered a 5-point Likert scale, answers between the least and the most desirable answer will obtain 25 (25%), 50 (50%), and 75 (75%) values. The sum of individual answers divided by the number of answers, excluding 'do not know' and skipped ones, provides the overall value of an indicator. The average of all answers represents an overall value of all perception indicators from one source.

KIIs confirmed these findings from JEI-BiH SJP 2015–2017. KIIs stated that insufficient budgets were allocated. Courts/POs encountered cuts by the executive branch in already approved budgets during the fiscal year, in many cases without any prior consultation with courts/POs. In some cases, mainly reported by KIIs in RS, newly approved budgets do not cover the expenses of already approved hiring of additional staff. In these situations, it makes no sense for judicial institutions to send requests for additional expertise or skills that are needed for the improvement or enhancement of operations of the courts/POs, as even already approved positions cannot be filled.

“It’s up to the political will, and only political will. I will repeat again, it’s up to the political will if we hunt corruption in BiH or not. When you ask a politician, he would say, professionals are there, the prosecutors’ office is there, let them hunt. Do you get it, he closes all doors to you and then what do you do...”

“Political will, it’s about political will. It is up to how far they wish to help you, foremost through financial status, isn’t it, to strengthen budgets, to increase resources in prosecutors’ offices and courts. How much they help that is how much results you have, there will be no results if they don’t help. Once the projects are done, we will be at that exact point.”

-PO

Execution of payments to expert witnesses is delayed and late in most cases, causing a lack of interest by expert witnesses in taking on any new work. Similarly, payment of ex-officio defense counsels is delayed. Based on the JEI-BiH SJP in 2015–2017, the weighted average of judges/prosecutors who felt that defense counsels’ fees/expenses are always paid on time did not exceed the index value of 50 out of a maximum of 100.

Payments to suppliers for goods or services already delivered to courts/POs are executed only upon repeated calls or are late. This makes suppliers hesitant to do business with and deliver goods and services to the judicial institutions, which affects daily operations (in the form of lack of paper, fuel/spare parts for vehicles, repairs of IT equipment, etc.) and produces justifiable frustration from judges, prosecutors, and staff.

In the worst cases, salaries of judges and prosecutors are delayed. This is confirmed through findings in the SJP. According to the JEI-BiH SJP 2015–2017, the weighted average of judges’/prosecutors’ answers on the timeliness of their salaries does not exceed an index value of 76 out of a maximum of 100.

On the other hand, the executive branch of the government determines court fees/taxes and collects these directly as part of general budget income. Based on the JEI-BiH weighted answers in both NSCP and SJP, the public perception indicator on the adequacy of court fees/taxes received an index value of 19 out of a maximum of 100, and the comparable indicator for judges and prosecutors received an index value of 56 out of a maximum of 100.

Based on JEI-BiH findings, budgets for courts have increased at a slow pace in each year from 2012 to 2017, accumulating to a 10% increase over a five-year period. The number of judges remains about the same, while the number of court support staff increased by about 20% in that period. POs experienced an increase in their budget of 25% between 2012 and 2017. This was followed by a 22% increase in the number of prosecutors and a 5% increase in support staff in POs. It is worth noting that there has been a reported reduction in support staff in POs of 13% in 2017 as compared to 2016. The Assessment team was not able to identify such a large single change in the number of support staff through KIIs, as no KIIs with POs highlighted this issue. Resources available to courts/POs in 2012–2017 are provided in Exhibit 1.

	2012	2013	2014	2015	2016	2017
Adopted budgets of courts (KM)	164,758,906	171,675,077	174,106,409	177,356,025	178,529,382	182,295,177
Adopted budgets of POs (KM)	41,639,785	43,283,933	46,852,298	48,843,040	49,811,044	51,920,095
Total number of judges	1,073	1,098	1,102	1,088	1,108	1,017
Total number of prosecutors	310	328	360	365	380	377
Number of support staff in courts	3,098	3,239	3,352	3,420	3,253	3,474
Number of support staff in POs	665	687	668	744	803	700

Through KIIs, some cantonal POs stated that over the past couple of years, local governments have been responsive to their financing needs. As such, they succeeded in growing their staff, and one PO also obtained a full-time economic advisor. As only HJPC summary figures on court and PO budgets (presented in Exhibit I above) were available to the Assessment team, the team was not able to examine these statements in depth.

DF.1 Conclusion. Financing of judiciary needs by local budgets is seen as inadequate, and the execution of payments to attorneys, expert witnesses, and suppliers for goods and services delivered to courts/POs are delayed. However, official figures on allocation of budgets show increases each year from 2012 to 2017. This discrepancy suggests the need for further work on strategically planned resource allocation, development of judicial institution budgets in accordance with plans, and the setting of quantifiable indicator results.

DF.2 Interaction with the Legislative Branches of Government

The parliaments at different levels in BiH are in charge of passing new laws and amending current laws. Preparation of the legislative proposals is in the competence of MoJs at different levels as well. This structure established by the Constitution(s) creates a basis for differentiation in legislative solutions among state, entity, and cantonal levels. Despite this, the international community has worked extensively on harmonization of BiH laws at all levels and their full compliance with the EU regulations and international standards for the past two decades. While initial achievements were very positive, in recent years the trends were reversed. Recent divergent legislative initiatives are affecting equal application of law throughout the whole of the country (i.e., intermediation in corruption cases³), and delayed adoption of legislation creates uncertainty in application of the law (i.e., special investigative measures, as explained later).

In its *Background Paper* on the BiH Judiciary,⁴ the Venice Commission noted that: “In 2003, the judicial system at the State level was reformed. The most important procedural laws were adopted, introducing the same civil and criminal procedures throughout the country. However, since there is no obligation to harmonize regulations between the two Entities and the Brčko District, all the legislative bodies in BiH may amend their laws at any time and abolish the harmonization established in 2003. Although the obligation to harmonize laws horizontally between Entities and Brčko District does not exist, vertical harmonization between the Entities, Brčko District, and BiH may be implied. However, it is important to note that there is no institution, such as a Supreme Court at the State level, that guarantees the uniform

³ Reaction of the US Embassy and the Office of the High Representative regarding amendments to the FBiH Criminal Code, <https://www.klix.ba/vijesti/bih/ohr-i-ambasada-sad-a-u-bih-nismo-vidjeli-tekst-krivicnog-zakona-fbih/180620110>.

⁴ *Ibidem*, p.7.

application of the law throughout the country or that has general competence to resolve conflicts of laws.”⁵

Similarly, the European Commission BiH 2018 Report⁶ finds: “Activities undertaken in order to increase the consistency of jurisprudence across the country, in the absence of a supreme court ensuring uniform interpretation of the law, slowed down significantly in 2017, with the civil joint panel of the highest-level courts in Bosnia and Herzegovina meeting twice and the administrative and criminal panels holding no meetings.”⁷ The same opinion is expressed in the OSCE report⁸: “Concerning the legal framework, the Mission notes that the material and procedural criminal legislation (including provisions which are key for the processing of corruption cases) at the different levels of authority in BiH are not sufficiently harmonized.”⁹

The decision of the Constitutional Court of BiH on June 1, 2017,¹⁰ as presented in the previously mentioned OSCE report, established that key aspects of the Criminal Procedure Code of BiH (CPC), regulating special investigative measures, are incompatible with constitutional and human rights because of undue vagueness in their formulation or the excessive scope of their application. Specifically, the decision declared unconstitutional a number of provisions of, namely: Article 84(2)-(5), “Right of the Witness to Refuse to Respond,” Article 117(1d); “Criminal Offenses as to Which Undercover Investigative Measures May Be Ordered,” Article 118(3); “Jurisdiction to Order the Measures and the Duration of the Measures.” Other provisions that were declared unconstitutional concerned the timeframe for completion of the investigation and the timeframe for filing the indictment with the preliminary hearing judge. The Court ordered the authorities to harmonize the provisions in question with the Constitution within six months of the date of communication of the Decision.¹¹ Currently, the amendments to the law have not been officially passed by the BiH Parliament.¹² The past several months were marked by political disputes among leading political parties regarding formulation of the amendments. The level of discrepancy of offered amendments and opposing political views attracted the attention of international organizations in BiH.

While there is a decision of the Constitutional Court of BiH regarding harmonization and the amendment procedure was initiated at the BiH level, no action has been taken at the level of entities and Brčko District. In such circumstances, once adopted, amendments at the BiH level will have no effect on the application of “unconstitutional provisions at the BiH level” by courts in FBiH, RS, and BD, which will deem them formally constitutional within their jurisdiction. The current uncertainty was noted in KIIs with POs, particularly as special investigative measures (such as the interception of communications and computers, the use of undercover agents, covert surveillance, and simulated bribery) are essential for conducting effective investigations in corruption and organized crime cases. The acting or, more correctly stated, the absence of coordinated acting by legislative bodies and the failure to pass adequate and harmonized amendments simultaneously will further hamper the ability of POs to investigate complex and high-profile cases.

⁶ European Commission – “Staff Working Document Bosnia and Herzegovina 2018 Report,” available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>; (accessed on August 15, 2018).

⁷ *Ibidem*, p. 11.

⁸ “Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases (ARC): Project Report”; available at <https://www.osce.org/mission-to-bosnia-and-herzegovina/373204>; (accessed on August 15, 2018).

⁹ *Ibidem*, p. 3.

¹⁰ See the Constitutional Court Decision No. U 5/16 on June 1, 2017; available at http://www.ustavnisud.ba/dokumenti/_bs/U-5-16-1076865.pdf *Ibidem*, paras. 77–79, 82–83 (Accessed on August 10, 2018).

¹¹ *Ibidem*, p. 18.

¹² Head of EU delegation in BiH and EUSR Ambassador Lars-Gunnar Wigemark addressing BiH Parliament, <https://www.klix.ba/vijesti/bih/wigemark-poziva-na-uvajanje-izmjena-i-dopuna-zakona-o-krivicnom-postupku-bih/180726104>.

In addition to this current and ongoing sample of divergence and absence of harmonization, the OSCE study notes: “there is a very concrete risk this will further decrease the harmonization among the different legal systems of BiH in the regulation of fundamental aspects of the criminal procedure. The stress here is on the word ‘further’ since the CPCs are already affected by non-harmonized norms in several important aspects. This for example includes the regulation of legal assistance among courts and prosecutors’ offices at different levels of jurisdiction in BiH; the regulation of investigative actions; and the procedures concerning legal remedies.”¹³ The OSCE report also notes that a group of eminent judges and prosecutors, under the auspices of MoJ BiH, developed a study¹⁴ naming areas and items that require harmonization. Unfortunately, implementation steps have not been taken.

The Assessment team learned, through a KII, that a body in charge of the harmonization of legislative amendments existed under MoJ BiH’s auspices between 2003 and 2013. This was confirmed in the OSCE report, which states: “The body of national experts existed previously, known under the name of CCIAT (Criminal Codes Implementation Assessment Team). Established by the BiH Ministry of Justice in 2003, it was tasked with analyzing all aspects of the application of the Criminal Code and Criminal Procedure Code and recommending measures for improvement and effectiveness of this process. During its existence, the CCIAT prepared numerous amendments to the Criminal Code and to the Criminal Procedure Code of BiH, which were subsequently adopted by the legislature. Importantly, several members of the team were also involved in working groups tasked with preparing amendments to the entity and BD codes, and ensured to a large extent that these provisions were harmonized with the state level ones. Notwithstanding the positive role played by the CCIAT, in 2013 the political support for this body ceased and it was officially abolished.”¹⁵

According to KIs, POs and the justice sector are, with differing levels of intensity but constantly, challenged in their independence through various legislative proposals. It is very likely that the same challenges will reappear in the ongoing process of the drafting, proposing, and adopting of the new law on HJPC.

“There was some parliamentary majority in BiH which tried to amend law on prosecutors’ offices, to subjugate prosecutors’ offices in some way to the executive branch. I remember that even representatives of the Venetian Commission, or some other international organization, came here and did certain interviews which would contribute toward changing the law. What would they bring? Would that impede the independence of the judiciary? I remember that even I was called for a talk with them, what do I think about all that. It was a time of immense pressure on prosecutors’ offices and, on the other hand, it was, in essence, a few instances of prosecuted corruption cases. The third thing that was very prominent at that time were disciplinary proceedings for judges and prosecutors, were they good, were they not good, should something be changed...”

-PO

DF.2 Conclusion. There is a notable trend of non-harmonized proposals of legislative solutions that is recognized by both KIs and in the reports of international organizations. The harmonization of legislation relevant for processing criminal cases and, in particular, cases of corruption and organized crime are urgently needed in order to ensure the legal validity of investigative measures taken and evidence collected. Giving priority to these types of cases, and to the processing of corruption and organized crimes as set by the EU for BiH, require a simultaneous and coordinated approach at all levels of the legislative bodies. The previous working group (i.e., CCIAT), which existed under the auspices of the MoJ, proved that this is not a task that is difficult to achieve. As there are no technical or legal obstacles to the harmonization of criminal legislation, this is primarily an issue of lack of political will.

¹³ *Ibidem*, p.20.

¹⁴ Dr Miloš Babić, Dr Ljiljana Filipović, Dr Veljko Ikanović, Slavo Lakić, Branko Mitrović, *Komparativna analiza zakona o krivičnom postupku u Bosni i Hercegovini sa prijedlogom za harmonizaciju, and Spisak procesnih pitanja koja nisu obuhvaćena komparativnom analizom, January 2016.*

¹⁵ *Ibidem*, p.13.

DF.3 Interaction with Political Parties

Political parties do not show any signs of decisive commitment to fighting corruption. The European Commission BiH 2018 Report finds that: “A proper functioning judicial system and an effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and in practice,”¹⁶ and that “corruption is widespread and remains an issue of concern. There remains a gap between the declared political will and the lack of concrete results.”¹⁷ Political parties, when participating in the government, interact with the BiH justice system through their representatives in the executive and legislative branches of government, and both the parties in power and those in opposition attempt to influence the work of judicial institutions through the media under their control.

Lack of support in the fight against corruption is expressed in the lack of resources (i.e., providing adequate budgets) and the absence of incentives for police/POs/court work in this segment. In addition, there have been impediments encountered in the creation of the Special Department of PO and the Supreme Court of FBiH, which are to be established as frontline institutions in the fight against corruption and organized crime. These impediments were explicitly described by the Government of BiH as being “due to lack of finances.”

Divergent political positions made any HJPC legislative changes impossible for more than a decade (at the level of BiH). The new law on HJPC and the process of its adoption will show if there is a change in the position of political parties and their attitudes toward the judiciary.

Diverse positions are present in legislative bodies at the state and entity level where different political parties are in power and opposition. At the entity level, where political parties can ensure a parliamentary majority, legislative changes are made that further widen the issue of non-harmonization of legislation in BiH as presented in the previous section.

The recent joint communication from the US Embassy and the Office of the High Representative (OHR) in regard to the adoption of amendments to the criminal procedure code of BiH provides insight into the absence of political will and the presence of diverse political views. This communication notes that: “some political parties in the Bosnia’s House of Peoples (HoP) decided to undermine the fight against organized crime, corruption, terrorism, and other serious crimes. Rather than passing amendments to the Criminal Procedure Code (CPC) that would have allowed police, prosecutors and judges to better investigate, indict, and convict criminals, the HoP delayed the decision, even though Parliament has long missed the deadline established by Bosnia’s Constitutional Court.” The communication further states: “It is clear that the Croat Democratic Union (HDZ BiH), the Alliance of Independent Social Democrats (SNSD), the Democratic National Alliance (DNS), and the Croat Peasant Party (HSS) are more interested in party politics than protecting the safety and security of Bosnian citizens,” notes the joint statement.¹⁸

“... the media is controlled by politics and they are constantly trying to apply pressure on certain judges and prosecutors through the media in order to influence certain decision making that is beneficial for certain politics. The Office [ODC] is not capable of controlling politics and the media, and there is constant pressure on those people to reach certain decisions.”

-PO

“One of the problems for Office of Disciplinary Counsel is that there is nothing similar in the neighborhood. Thus, there is constant pressure on the Office of Disciplinary Counsel. They say Bosnia cannot be specific in anything, including this. If it does not reflect the situation in Serbia, Montenegro, Croatia, and Slovenia, it can’t be good.”

-PO

In addition, when elaborating on the large number of criminal reports for corruption cases, their low quality and high rate of rejection by POs, KIIIs in POs stated that the number of criminal reports filed

¹⁶ Ibidem, p.8.

¹⁷ Ibidem, p.12.

¹⁸ Statement by the Office of the High Representative and the US Embassy following the decision by the BiH HoP to delay adoption of CPC amendments; <http://ba.n1info.com/a275875/English/NEWS/OHR-and-US-Embassy-criticise-SNSD-HDZ-DNS-and-HSS.html>.

increases substantially in times before elections. KIs explained that those filings are politically motivated. Such filings serve as a basis for sending news through the media that is under the control of a particular political opinion. Through these filings indicating corrupt acts of officials and high-profile individuals connected with some political options, political parties seek to put blame on other parties for lack of progress in all aspects of the BiH society and increase their own chances of winning elections. As indicated by KIs and by observing the media reporting, there is constant pressure on prosecutors and judges by politicians, through controlled media, to make decisions in favor of their political opinion.¹⁹ In addition, political pressure is specifically extended to the HJPC²⁰ and ODC, which as such is officially discussed during HJPC sessions.²¹

DF.3 Conclusion. There is no support for the work of the judiciary among political parties, regardless of whether they represent ruling or opposition parties. Political parties (both those in power and opposition parties) do not provide uncontested support for the work of the judiciary and do not perceive it as an independent (outside their influence) branch of the government. Rather, the judiciary is seen as a tool to be used in the fight for power, against other political parties and for media campaigns, particularly in periods before elections.

DF.4 Public Perception of the BiH Judiciary

The Assessment team analyzed survey data on public perceptions of the BiH judiciary through the JEI-BiH 2015–2017 report.²² These data are collected through the National Survey of Citizens’ Perceptions, conducted annually by MEASURE-BiH from 2015 to 2017. The surveys were conducted in early autumn each year and administered to a nationally representative sample of approximately 3,000 BiH citizens selected by stratified random sampling. Each year, different respondents provided answers. In total, 32 administered questions reflect public perceptions of the BiH judiciary. The data obtained from this source are used to generate indicators of judicial effectiveness for JEI-BiH, as illustrated in Exhibit 2.

Exhibit 2: Corresponding number of full question in NSCP 2017, abbreviated wording of questions, and 2017 values

Survey Question No.	Question (abbreviated wording)	Indicator Index points (0-100) 2017
20	Perception of increase or decrease in number of unresolved cases, excluding utility cases, in BiH courts	31.41
25	Perception of duration of cases in courts (are the time limits reasonable)	12.63
21	Perception of increase or decrease in the number of unresolved cases in POs	26.83
26	Perception of duration of cases in POs (are the time limits reasonable)	14.53
18a	Rating of the work of judges / courts	36.57
18b	Rating of the work of prosecutors / POs	37.26
18c	Rating of the work of attorneys	43.15
18d	Rating of the work of notaries	48.02
2dd	Satisfaction with courts’ or the POs’ administrative services	48.12
14g	Judges’ poor performance sanctioned	36.53
14h	Prosecutors’ good performance rewarded	48.12
27	Possibilities of assigning a case to a particular judge	47.60
19a	Access to own court case files	37.96
19b	Attendance at public court hearings	34.31

¹⁹ <http://balkans.aljazeera.net/vijesti/vstv-pritisak-na-nezavisnost-pravosuda-u-bih>; <https://avaz.ba/vijesti/bih/314793/vstv-o-reakcijama-na-presudu-naseru-oricu-neprimjeren-pritisak-na-pravosudne-institucije-na-nivou-drzave>.

²⁰ <https://vsts.pravosudje.ba/vstvl/faces/vijesti.jsp?id=75078>.

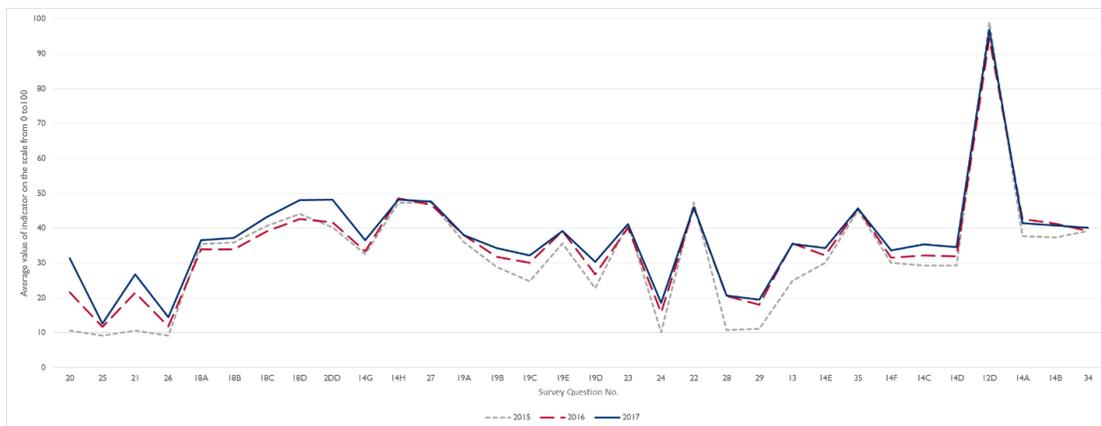
²¹ <https://www.faktor.ba/vijest/vstv-mektievi-istupi-su-pritisak-na-pravosue-224979>.

²² *Judicial Effectiveness Index of Bosnia and Herzegovina*, <http://measurebih.com/judicial-effectiveness-index>.

19c	Access to judgments	32.20
19e	Access to evidence after confirmation of the indictment	39.16
19d	Access to courts / PO reports / statistics	30.38
23	Objectivity of the media in selecting and presenting court cases and investigations	41.17
24	Adequacy of court taxes / fees	18.60
22	Appointment of judges / prosecutors based on their competence	46.07
28	Adequacy of salaries of judges / prosecutors	20.64
29	Adequacy of fees of attorneys and notaries	19.46
13	Extent to which court system is affected by corruption in this country	35.45
14e	Judiciary effectiveness in combating corruption	34.31
35	Absence of improper influence on judges in making decisions	45.61
14f	Prosecution of public officials who violate the law	33.68
14c	Judges not taking bribes	35.36
14d	Prosecutors not taking bribes	34.59
12d	Personal experience in bribing judges / prosecutors?	96.90
14a	Trust in judges to conduct court procedures and adjudicate cases impartially and in accordance with the law	41.46
14b	Trust in prosecutors to perform their duties impartially and in accordance with the law	40.82
34	Equality in the treatment of citizens by the courts	40.12

Values of public perception indicators in 2015–2017 are presented graphically in Exhibit 3.

Exhibit 3: Individual values of public perception indicators in 2015, 2016, and 2017



In accordance with the thorough analysis of all indicators available in JEI-BiH reports,²³ the Assessment team found that:

- Overall public perception of the BiH judiciary is poor and does not exceed the index value of 37.19 out of a maximum of 100, in any year from 2015 to 2017.
- There is a trend indicating an overall improvement in public perception from an index value of 32.21 in 2015, through 34.48 in 2016, to 37.19 in 2017.
- Despite a trend indicating an overall improvement of public perception, there are no significant changes in public perception in relation to corruption-related issues. Several corruption-issues-related indicators saw a negative change in 2017 compared to 2016. Given that the fight against corruption is one of the most pressing issues and a top priority for the governments and citizens of BiH, negative changes in indicators are not encouraging and require the attention of all stakeholders.

²³ JEI-BiH 2015 and 2016 are available at: <http://measurebih.com/judicial-effectiveness-index>, while JEI-BiH 2017 Report is available with MEASURE-BiH.

- Citizens are still most dissatisfied with the time needed to dispose of cases in both courts and POs and with the costs related to processing cases (i.e., adequacy of court taxes/fees, fees of attorneys/notaries, and salaries of judges/prosecutors).
- Less than 10% of the BiH public has experience with the court system in terms of having had his/her own case (in the last three years, except utility cases) processed.
- The primary source of information about court cases and investigations for 67% of respondents is the media. Although there is poor public perception of media objectivity (receiving an index value of 41 out of a maximum of 100), there are no substantial differences in perceptions of respondents who were involved in court cases (except in utility cases) in the last three years and those who were not.

During this period, a number of acquittals or unsuccessful investigations in high-profile cases occurred, as described in the OSCE report. Furthermore, several events related to Special Prosecutor Offices (RS, FBiH, BiH), including the re-positioning of the Special Department of the RS PO²⁴ (being moved from the District Prosecutors' Office in Banja Luka and negative media coverage of the previous results), enacting of the Law on Establishing Special Department of the FBiH PO in 2014²⁵ (and the Supreme Court) along with the absence of its implementation,²⁶ and replacement of some of the key personnel in PO BiH including media coverage of a poor relationship between PO BiH and top officials of the State Investigation and Protection Agency (SIPA) could be among the reasons for the poor perception among the public of the judiciary's ability to process corruption cases.

DF.4 Conclusion. Public perceptions of judiciary effectiveness in general, and of its ability to fight corruption in particular, is poor.

DF.5 Perceptions of Judges and Prosecutors on Effectiveness of BiH Judiciary

Data on the perceptions of judges and prosecutors about the effectiveness of the BiH judiciary are available for 2015 through 2017 through the survey of judges and prosecutors, which was conducted by MEASURE-BiH. All judges and prosecutors are invited once a year, roughly toward the end of the year, to provide answers to 49 questions about the work of the courts/POs and judges/prosecutors. Across survey years, the response rate varied between 31% and 52% of all judges and prosecutors in BiH. Both judges and prosecutors provided their opinions on matters that fall under the jurisdiction of the judicial regulatory body and on HJPC, as well as on areas under the jurisdiction of both the executive and legislative branches of government that relate to providing preconditions for the judiciary's work. Because of this additional detail, the number of questions in the survey of judges/prosecutors is greater than the number of questions in the public perception survey (49 vs. 32). The data obtained from this source are used for an equal number of indicators in JEI-BiH, as provided in Exhibit 4.

Exhibit 4: Corresponding number of full question in SJP 2017, abbreviated wording of questions, and 2017 values

Survey Question No.	Question (abbreviated wording)	Indicator Index points (0-100) 2017
1	Perception of increase or decrease in number of unresolved cases, excluding utility cases, in BiH courts	71.05
2	Perception of increase or decrease in the number of unresolved cases in POs	68.24
3	Perception of duration of cases in courts (are the time limits reasonable)	52.87

²⁴ Law on RSSPO, *The Official Gazette of RS*, May 18, 2016, No. 39.

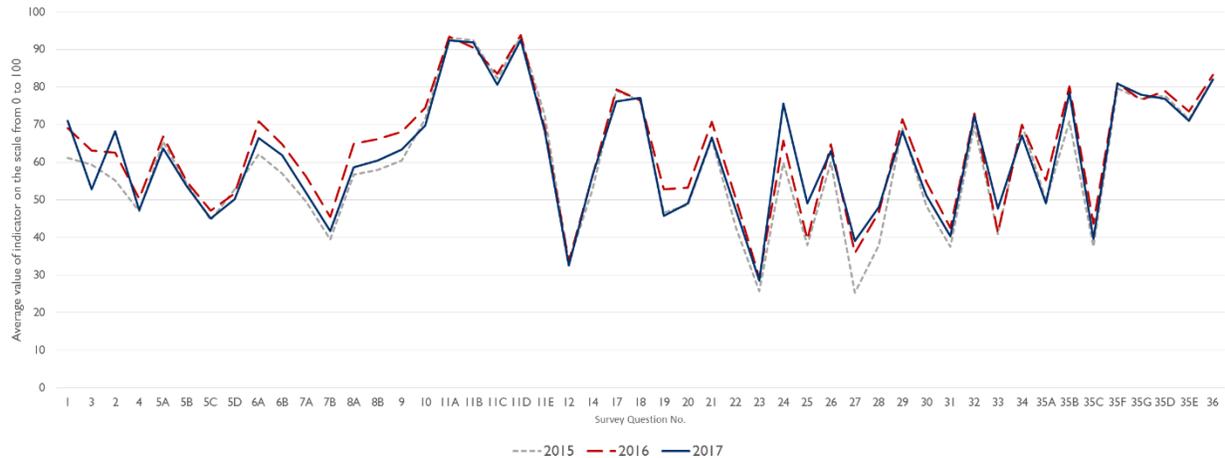
²⁵ Law on suppressing of corruption and organized crime in BiH, *The Official Gazette of FBiH*, July 23, 2014, No. 59/14.

²⁶ <http://nap.ba/new/vijest.php?id=40412>.

4	Perception of duration of cases in POs (are the time limits reasonable)	47.19
5A	Rating of the work of judges / courts	63.70
5B	Rating of the work of prosecutors / POs	53.62
5C	Rating of the work of attorneys	45.02
5D	Rating of the work of notaries	50.22
6A	Existence of a fact-based and transparent system of monitoring judges' work performance	66.50
6B	Existence of a fact-based and transparent system of monitoring prosecutors' work performance	61.81
7A	Judges' poor performance sanctioned	51.87
7B	Rewards for prosecutors' good performance	41.75
8A	Initiating disciplinary procedures against judges / prosecutors in all cases prescribed by the law	58.63
8B	Fairness and objectivity of the initiated disciplinary procedures against judges / prosecutors	60.41
9	Disciplinary sanctions rendered in disciplinary proceedings appropriate	63.38
10	Possibility of allocating a case to a particular judge	69.75
11A	Access to court case files	92.48
11B	Attendance at public court hearings	91.95
11C	Access to judgments	80.58
11D	Access to evidence after confirmation of the indictment	92.53
11E	Access to courts / PO reports / statistics	68.28
12	Objectivity of the media in selecting and presenting court cases and investigations	32.58
14	Adequacy of court taxes / fees	56.30
17	Abuse of the right to absence from work by judges / prosecutors	76.19
18	Judge / prosecutor behavior in accordance with the Ethical Code	77.14
19	Efficiency of judge / prosecutor appointments to newly available positions	45.76
20	Appointment of judges / prosecutors based on their skills / competence	49.05
21	Adequacy of the training / education for judges / prosecutors on an annual basis	66.54
22	Adequacy of salaries of judges / prosecutors	47.44
23	Adequacy of fees of attorneys and notaries	28.45
24	Timeliness of the salary payment to judges / prosecutors	75.68
25	Timeliness of the fees / costs / payment to ex-officio defense attorneys	49.06
26	Competence of the currently employed administrative / support staff in courts / POs	63.03
27	Sufficiency of the court / PO budget	39.00
28	Adequacy of buildings / facilities and work space of courts / POs	48.11
29	Adequacy of the necessary IT equipment and support to courts / POs	68.22
30	Adequacy of court / PO procedures and resources for coping with significant and abrupt changes in case inflow	51.11
31	Objectivity, adequacy, and applicability in practice of career advancement of judges / prosecutors	40.24
32	Adequacy and applicability in practice of immunity and tenure of judges / prosecutors	72.41
33	Personal security of judges / prosecutors and their close family members ensured when needed	47.65
34	Impact of corruption on the BiH judiciary	67.09
35A	Judiciary effectiveness in combating corruption	49.07
35B	Absence of improper influence on judges in making decisions	78.60
35C	Prosecution of public officials who violate the law	39.59
35F	Judges not taking bribes	80.91
35G	Prosecutors not taking bribes	77.98
35D	Trust in judges to conduct court procedures and adjudicate cases impartially and in accordance with the law	76.81
35E	Trust in prosecutors to perform their duties impartially and in accordance with the law	71.01
36	Equality in the treatment of citizens by the courts	81.95

Respondent answers were used for calculation of indicator values, using the same scoring methodology provided earlier for public perception indicators. Values of public perception indicators in 2015–2017 are presented graphically in Exhibit 5.

Exhibit 5: Individual values of judges'/prosecutors' perception indicators in 2015, 2016, and 2017



Based on a thorough analysis of all indicators available in the JEI-BiH reports, we find that:

- Overall, judges'/prosecutors' perceptions of the BiH judiciary are relatively positive compared to public perceptions.
- At the same time, judges' and prosecutors' answers are indicative of a need for significant improvements in most segments of the work of the BiH judiciary, as well as in preconditions needed for effective work by courts and POs.
- Perceptions of judges and prosecutors shows an improvement in 2016 compared to 2015, but also a deterioration in 2017 compared to 2016.
- The overall value of all indicators relating to the perceptions of judges and prosecutors had an index value of 60.28 out of a maximum of 100.
- Judges' and prosecutors' perceptions of the following items declined most substantially between 2016 and 2017: the time needed to dispose cases in courts; efficiency of judges'/prosecutors' appointments; monitoring of judges' work performance; initiation of, fairness of, and sanctions rendered in disciplinary proceedings; assignment of cases to judges; and judiciary effectiveness in combating corruption.

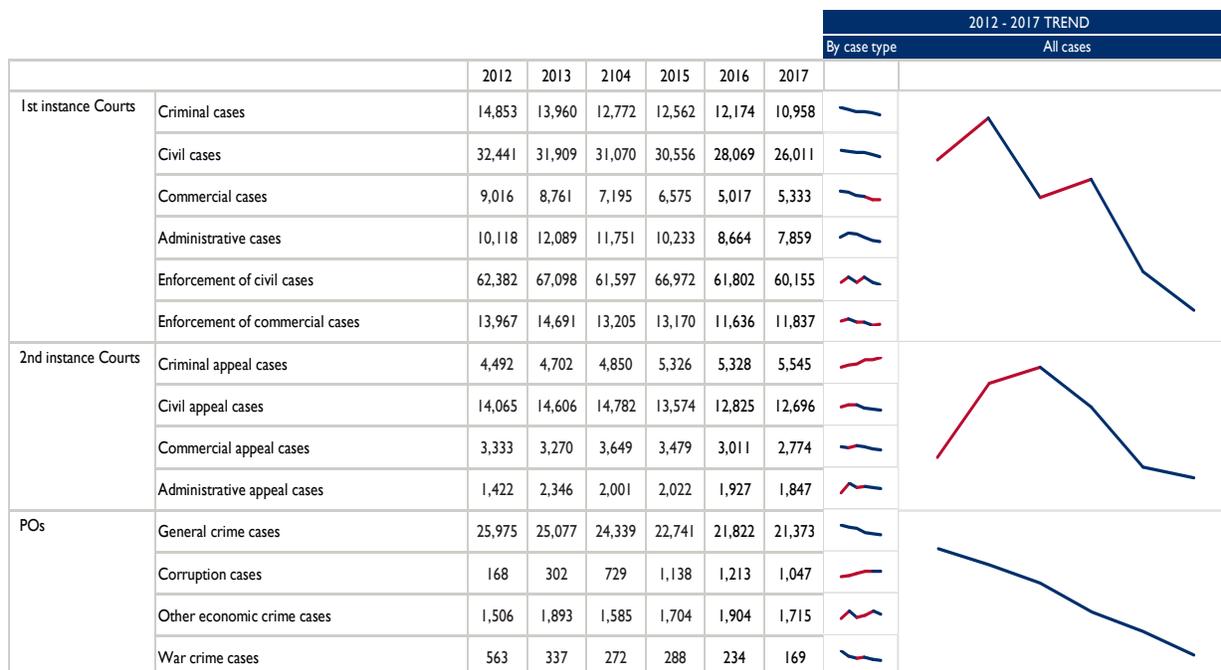
As presented in detail in the JEI-BiH 2015–2017 reports and through a comparison of JEI-BiH data on public and judges'/prosecutors' perceptions, the Assessment team finds that, from 2015 to 2017, these two categories of perceptions diverge on most of the questions related to the BiH judiciary's effectiveness. A comparison of the negative annual changes in indicators that appear in both the public's and judges' and prosecutors' perceptions in 2017 compared to 2016 reveals that 4 out of 7 indicators saw a decline related to areas relevant to the prevention of corruption.

DF.5 Conclusion. It is evident that judges and prosecutors see much room for improvement in both the courts/POs and their own performances. They are also looking for a number of improvements in activities that fall under the competences of HJPC, but also for the creation of adequate preconditions for the work of judicial institutions, which are the responsibility of the executive branches of the government. There was no substantial convergence between the perceptions of the public and those of the judges/prosecutors in 2017. These perceptions differ on many issues, particularly those related to corruption. Moreover, it is worrisome that both groups perceive a worsening in the prevention of corruption at a time when addressing corruption is of the highest importance to society and the state.

DF.6 Administrative Data on Processing Cases in BiH Courts and Prosecutors' Offices

JEI-BiH provides data on 65 indicators tracking major case types (criminal, civil, commercial, and administrative cases, as well as enforcement of court decisions) processed by first and second instance courts and POs in BiH. In 2017, 350,224 cases were processed by courts/POs (for the period January 1–December 31, 2017), while 378,392 cases were processed in 2016 and 421,019 cases in 2015. This indicates that BiH courts and POs processed roughly 8% to 10% fewer cases each year from 2015 to 2017. The Assessment team analyzed the inflow and the number of disposed cases from 2012 to 2017. The data for inflow of cases in courts and POs in BiH are provided in Exhibit 6.

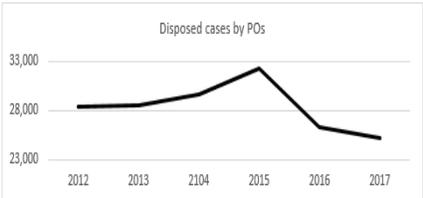
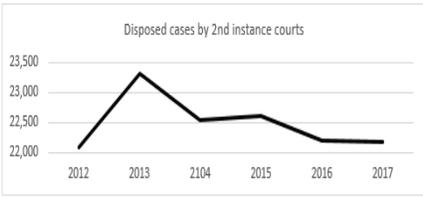
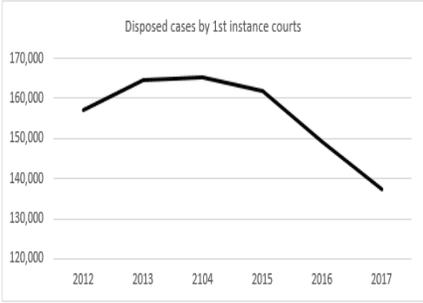
Exhibit 6: Case inflow trends in 2012–2017 by case type and cumulatively by judicial instances



The data on disposed cases by courts and POs in BiH are provided in Exhibit 7.

Exhibit 7: Disposition of cases by case type and trends in 2012–2017 cumulatively by judicial instances

Cases disposed by courts and prosecutor offices in BiH in 2012 - 2017							
		2012	2013	2014	2015	2016	2017
1st instance Courts	Criminal cases	17507	14656	14045	13080	12209	11739
	Civil cases	40052	37645	34989	32541	31008	29242
	Commercial cases	10624	9805	8993	8515	6396	5784
	Administrative cases	9904	10048	10704	11058	10038	9178
	Enforcement of civil cases	64195	75679	80628	81062	75671	67632
	Enforcement of commercial cases	14774	16784	15757	15642	14086	13877
2nd instance Courts	Criminal appeal cases	4417	4674	4469	4848	5124	5522
	Civil appeal cases	12768	14214	13785	13495	12889	12133
	Commercial appeal cases	3274	3168	2966	2987	2740	2978
	Administrative appeal cases	1618	1249	1325	1271	1445	1546
POs	General crime cases	26717	26030	26571	28906	23013	22066
	Corruption cases	7	17	608	1040	1164	1167
	Other economic crime cases	1209	2123	2035	1940	1837	1710
	War crime cases	424	392	419	363	359	235



As there is no official definition of productivity within the BiH judiciary, the Assessment team will refer to number of cases disposed by judges/courts or prosecutors/POs in a calendar year as *productivity*. The Assessment team finds there is a decreasing trend of disposing cases in first and second instance courts from 2013 onward. First instance courts disposed substantially fewer cases in 2016 and 2017. Decreases, although occurring in second instance courts, are minimal. POs disposed a substantial number of cases in 2015, while in 2016 and 2017 they disposed a noticeably smaller number of cases.

JEI-BiH provides clearance rate (ratio of disposed cases and inflow) and backlog data for the same case types in the same period. Prevailing continuous clearance rates in first instance courts and POs between 2012 and 2017 above 100% helped decrease the backlog of cases. However, there is a decrease in productivity of first instance courts since 2015 and in POs from 2017 onward. Although there are no dramatic changes in inflow and disposition at the second instance courts, their historical clearance rate indicates that second instance courts cannot meet their inflow year after year.

First instance courts have a historical record of reducing the average disposition time and age of backlog from 2012 to 2017, except in administrative cases. The clearance rate in first instance courts is historically above 100%, which helps lower the number of unresolved cases (backlog) in those courts for all case types each year. However, the number of unresolved enforcement of utility cases remained high, at about 1.6 million cases, and there is a notable decrease in productivity.

The performance of second instance courts constantly deteriorated from 2012 to 2017, in relation to the average duration of case disposition, the age of the backlog, and the number of unresolved cases (backlog). In criminal and appeal cases, for some variables, the performances of second instance courts are more than two times worse than their average performance from 2012 to 2014.

Comparing data on inflow and disposed cases in POs and criminal cases in first instance courts shows that the success of POs in disposing cases (mainly in the general crime type of cases) in 2015 is a result of the rejection of criminal reports or termination of investigations. In 2016 and 2017, there is a notably lower level of productivity in POs, but by maintaining the number of disposed cases above the inflow (which is also decreasing), POs show a trend toward decreasing their backlog.

On the other side, quotas are used to represent productivity within the BiH justice system. Quotas represent a predetermined number of cases that a judge or prosecutor must dispose in a year. Data for quotas are collected and calculated for both judges/courts manually and produced with a time lag. The reported quota results for judges/courts are presented in Exhibit 8.

Exhibit 8: Collective quota for judges/courts in 2012–2017 as officially reported

	2012	2013	2014	2015	2016	2017
Average collective quota for judges/courts	133%	122%	126%	123%	123%	113%

In order to compare data on productivity and quota reported results, their values between 2012 and 2017 are presented in Exhibits 9 and 10. Exhibit 9 presents the official collective quota reported for first and second instance courts, while Exhibit 10 shows disposition of cases by first and second instance courts.

Exhibit 9: Official collective quota reported for first and second instance courts

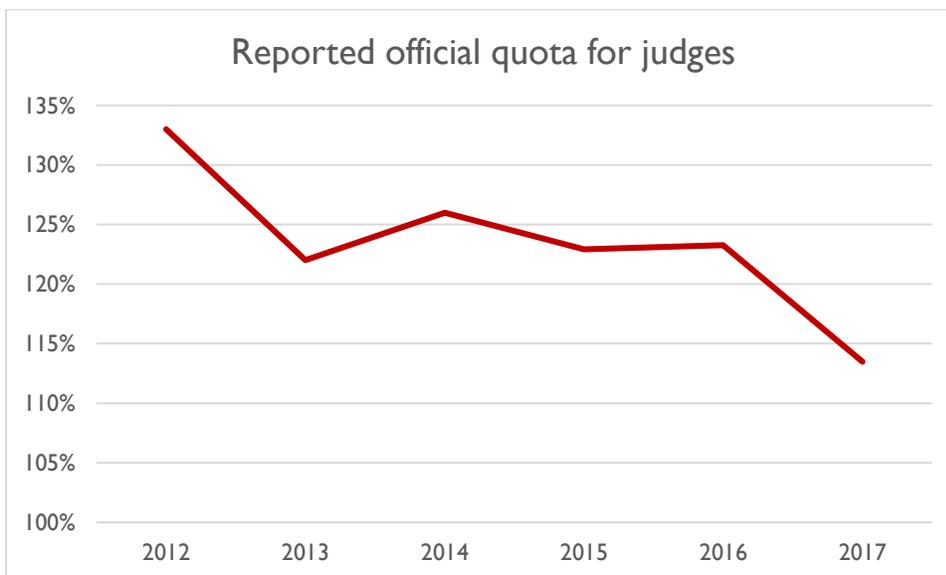
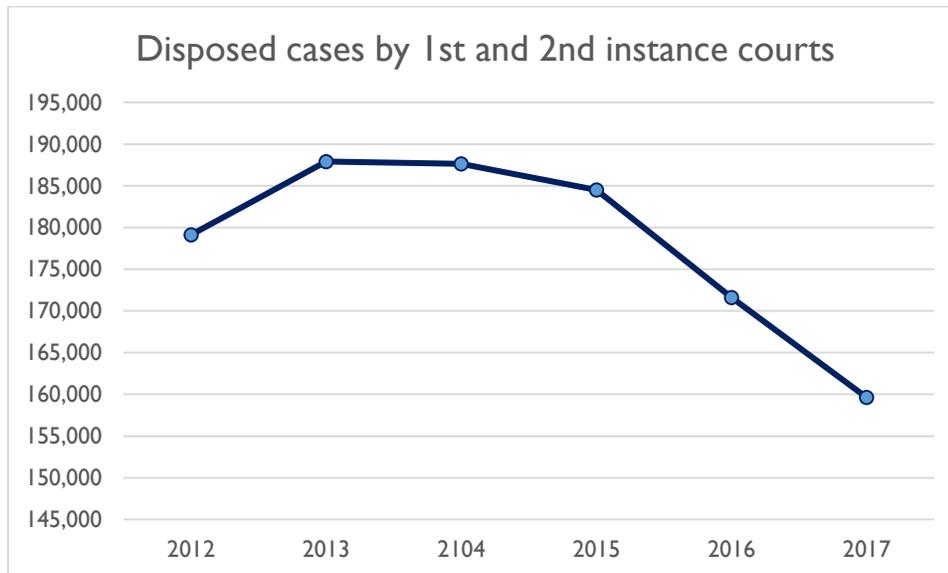


Exhibit 10: Disposition of cases by first and second instance courts

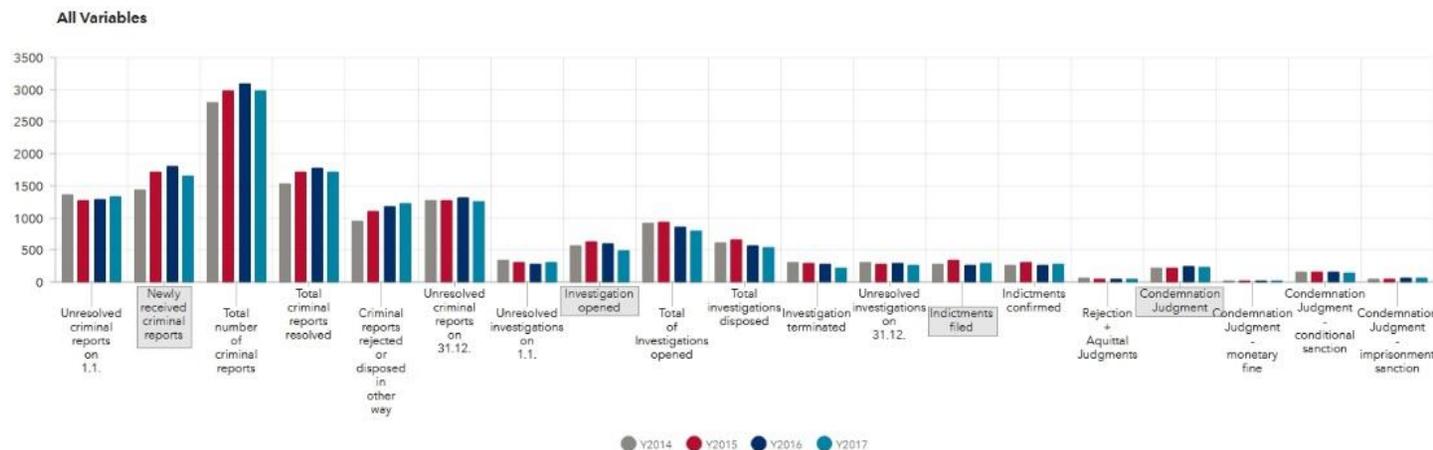
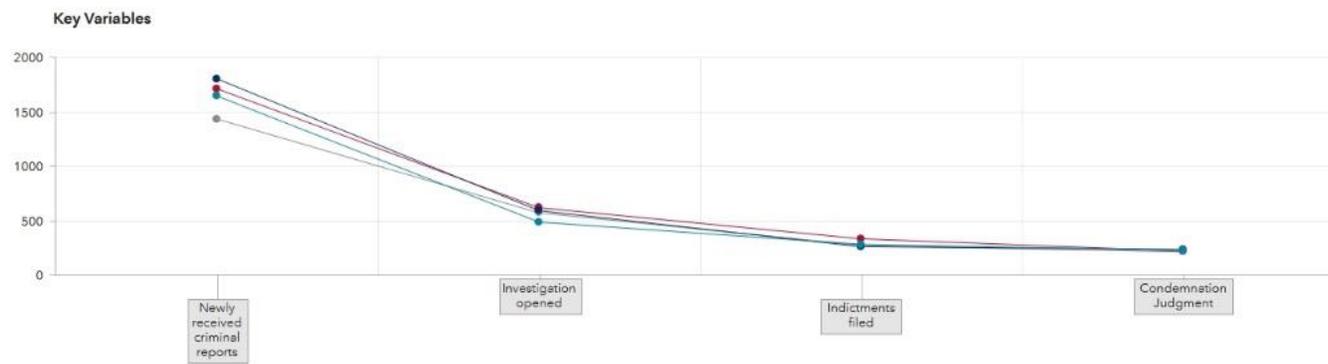


The assessment team observes different trends and patterns in two graphs that should be measuring the same thing. As ‘collective quota’ is one of the key variables used in decision-making processes on new policies and projects, the mismatch in trends and patterns presented in Exhibits 9 and 10 should be examined and explained carefully.

In addition, HJPC still manually collects other important administrative data. Beside the collective quota of judges and prosecutors, the confirmation rate of first instance court decisions and the success rate of indictments are also tracked manually. This is an issue because manual handling of data can lead to various errors—including those in collecting data, transferring and processing data, and manipulating data—that otherwise cannot be easily detected.

Finally, there are no noticeable changes in improving indicators related to processing corruption and economic crime cases. Exhibit 11 provides trends in processing corruption-related cases from 2014 to 2017 by all POs and courts in BiH. While for this Assessment only the total for all POs in BiH was presented, a detailed presentation of data on processing corruption and economic crime cases is available in the Justice Activity performance evaluation and as a GIS online application. Access rights to the GIS online application are available through the MEASURE-BiH COR.

Exhibit 11: Trends in processing corruption related cases in 2014–2017 by all POs and courts in BiH.



Detailed overview of processing corruption cases in 2014-2017 by:



Summary data for all POs in BiH

DF.6 Conclusion. From 2015 to 2017, the BiH judiciary experienced an 8% to 10% decline in the inflow of cases. However, productivity of courts and prosecutors in the same period also deteriorates at very similar rates. Officially reported data, which should show the level of productivity, namely the collective quota of judges/prosecutors (collected manually), are not showing the decline in productivity levels as they occur. Since manual collection and processing of data might be subject to various errors and manipulation, the team concludes that an automation of the collection of important variables (concerning productivity and the quality of the work of judges/prosecutors), which strongly influence decision-making processes, should be performed as soon as possible.

First instance courts from 2012 to 2017 made progress in lowering the average case disposition, age, and number of unresolved cases. However, the approximately 1.6 million enforcement cases and decreased productivity in the last two years are a concern. Second instance courts constantly deteriorated in processing their cases from 2012 to 2017. This requires analysis of the issues surrounding worsening results and immediate mitigation measures.

There are no noticeable changes over time on indicators related to processing corruption and economic crime by POs, which is worrying given the highest importance accorded by the judicial community to these types of cases. The achieved results of POs in average case disposition time and age and number of unresolved cases, particularly in 2015, occurred by rejecting criminal reports and terminating investigations, rather than as a result of increased productivity.

Environment in Which the BiH Justice Sector Operates – International Factors (IF)

IF.1 Contextual Factors Identified by International Reports Related to the BiH Justice Sector

Corruption-related documents and reports produced by international and domestic organizations find a number of environmental challenges affecting operation of the BiH justice sector. We highlight several of the environmental challenges faced by the BiH justice sector, including: the complexity of the government and the overlapping jurisdictions and legislature, which allow the persistence of corrupt practices in governmental institutions; a low level of trust among citizens in the judiciary and limited incentive to become involved in anti-corruption efforts or to report corruption; political parties considered inherently corrupt yet exerting great influence on all branches of government; lack of harmonization of the legislature on corrupt acts of public officials; lack of enforcement of existing laws and regulations; failure to properly manage the system of financial disclosures of public officials; lack of cooperation and coordination of the competent judicial and prosecutorial bodies in preventing, detecting, and prosecuting high-level corruption; high-level corruption cases that last too long and do not lead to satisfactory results; governmental oversight agencies without the necessary authority or scope to perform their duties in an appropriate manner; and rules on ethics and conflict of interest in the judiciary that are not consistent and harmonized. EU annual progress reports for BiH identify corruption as one of the most pressing issues for BiH and state a number of improvements needed in the fight against corruption. Among other recommendations, the European Commission BiH 2018 Report requests that BiH “significantly improve the track records in the areas of repression and prevention of corruption, including by imposing effective and deterrent sanctions.”²⁷ Finally, the European Commission BiH 2018 Report finds: “Politically motivated threats on the judiciary continued. Judicial independence, including from political influence, remains to be strengthened.”²⁸

²⁷ *Ibidem*, p.13.

²⁸ *Ibidem*, p.8.

IF.1 Conclusion. In accordance with international reports, the justice sector in BiH operates in a challenging environment. The Assessment team concludes that contextual factors or issues identified in the international reports are in line with findings of the Assessment team.

IF.2 BiH Efforts toward EU Accession in Relation to the Judiciary

After a prolonged period of slow progress, the EU-sponsored Structured Dialogue on Justice has been revived through peer-review missions, whose recommendations influenced the drafting of a new law on HJPC. Since 2011, the Structured Dialogue on Justice has aimed to advance structured relations on the rule of law with potential candidate countries. It is assisting BiH in consolidating an independent, effective, efficient and professional judicial system.²⁹ Since 2011, in the framework of the Structured Dialogue on Justice, the European Commission has facilitated discussions on the reform of the state-level judiciary, in particular regarding the coordination of criminal jurisdiction between the state and other levels of governance.³⁰ The Assessment team finds limited progress in achievements through the Structured Dialogue based on the number and frequency of meetings as presented on the official site³¹ and the number of structural reforms executed.³²

The peer-review missions conducted over the last year have resulted in seven sets of recommendations thus far. Those recommendations were directed toward the organization and work of ODC, appointment and advancement of judges and prosecutors, declaration of assets and conflicts of interest, education and evaluation of judges and prosecutor performances. As many of the recommendations will require a change in the law on HJPC, HJPC formulated its proposal on the new law and presented it in the last session of the Structured Dialogue in Brussels in June 2018. Still, HJPC does not have the legal capacity to initiate parliamentary procedure for its adoption. The legislative initiative is vested with MoJ BiH, which created a working group to formulate a draft law proposal. It is expected that MoJ will initiate work on drafting a proposal and forwarding it in the parliamentary procedure through the working group. As learned through KIs, there is no expectation of substantial steps forward occurring before the general elections, scheduled for October 2018.

In addition to working on peer-review recommendations and the new law on HJPC, the EU set its own request(s) for processing corruption cases. The EU 2018 BiH Progress Report notes that: “In the coming year, Bosnia and Herzegovina should in particular:

- Adopt consistent and credible action plans (where they are still missing), underpinned by a realistic budget and ensuring the implementation and monitoring of anti-corruption strategies;
- Establish prevention bodies, where not yet set up, and ensure that they cooperate among themselves and with the Agency for prevention of corruption and coordination of the fight against corruption;
- Amend legislation to ensure effective management of conflicts of interest, notably at state, Federation entity and Brčko District levels, improve legislation governing asset declarations, and adopt legislation for the effective protection of whistle-blowers in the Federation entity and Brčko District;
- Significantly improve the track records in the areas of repression and prevention of corruption, including by imposing effective and deterrent sanctions.³³”

²⁹ Fifth Ministerial Meeting held in the framework of the Structured Dialogue on Justice statement, available at <http://europa.ba/?p=40316>.

³⁰ Ministerial Meeting in the framework of the Structured Dialogue on Justice, available at <http://europa.ba/?p=51233>.

³¹ Delegation of EU to BiH and EUSR official page on the Structured Dialogue on Justice http://europa.ba/?page_id=553.

³² *Ibidem*, p.8.

³³ *Ibidem*, p.13.

Furthermore, the EU has produced a peer review on “addressing corruption related issues” during its last of the seven peer-review missions. The recommendations from the last mission are not publicly available and were not accessible to the Assessment team.

The EU peer-review missions are not yet over, and there will be additional peer-review missions. However, through our KIs with the EUSR and EU delegations in BiH, the Assessment team was unable to determine the anticipated number or timetable. Furthermore, the Assessment team BiH is in the process of answering the questionnaire sent by the EU, based on which the EC will issue its opinion on the process of BiH’s accession to the EU. A KI in EUSR noted that the peer-review recommendations are fully aligned with the EC requirements and, as such, will be expressed in the EU Opinion.

The EU supports its recommendations through the initiation of new projects, along with ongoing and recently finished ones. As described in the following sections of this report, EU projects in the BiH justice sector related to processing corruption and organized crime significantly increased in number and scope over the last few years. Unfortunately, as noted later in the report, there has not been a high level of coordination between the EU and other donors operating in the same area.

IF.2 Conclusion. The EU-sponsored Structured Dialogue on Justice has recently been revived through the process of drafting a new law on HJPC. Initiation of work on the new HJPC law was triggered by the EC-led peer-review process. It is expected that additional peer-review missions will be conducted, resulting in new recommendations. The recommendations from the seventh peer-review mission on corruption are available but were not accessible to the Assessment team.

IF.3 USAID Justice Sector-related Activities

A thorough presentation of past and ongoing interventions by USAID in the justice sector 2014–2018 is provided in the Justice Activity performance evaluation. In brief, JA has been helping prosecutors to investigate high-profile corruption and economic crime cases through strengthening their organizational leadership, planning, and performance capacities and by performing their functions more efficiently through balanced allocation of resources. Furthermore, JA assisted prosecutors in upholding public trust and integrity, as well as providing appropriate and accurate information to citizens in order to strengthen transparency and responsiveness. In addition, the TA provided was aimed at improving prosecutor status through performance appraisal, merit-based career advancement, or incentives to prosecute cases. In addition to assistance to frontline prosecutors, JA provided significant assistance to HJPC. This included assistance to ODC to manage complaint procedures, autonomous reviews of the conduct of judges and prosecutors, and requesting recommendation of appropriate sanctions. Furthermore, JA assisted HJPC in assuring that disciplinary proceedings are processed expeditiously and fairly and that decisions are subject to independent and impartial review. JA provided a substantial training program including a combination of on-site and off-site training, which was directed toward identification of elements of corrupt activities and investigation and prosecution of corrupt practices.

The contribution of USAID’s activities in the justice sector suggest that USAID and JA have been pioneers in raising awareness of the need to fight corruption, and activities implemented provide a solid basis for continuation of these activities. As expressed through the KIs, there is a recognition of USAID’s efforts in aiding the fight against corruption and the processing of corruption-related cases by the BiH judiciary. All local stakeholders expressed support for continuation of USAID projects in the justice sector.

IF.3 Conclusion. USAID played a significant role and is recognized for its efforts in raising awareness of the need for processing of corruption-related cases by the BiH judicial community.

Changes in the Context of the BiH Justice Sector Since the Beginning of JA

Environmental challenges and constraints that led to the design of the Justice Activity included: executive and legislative powers at the state and entity levels that were intended to curb the independence of the judiciary by introducing several draft laws that tended to politicize the judiciary; the inability of POs to apply management skills and to conduct prosecutor-guided investigations jointly with police, which seriously hampered POs' ability to obtain convictions in corruption and serious crime cases; justice institutions' lack of capacity to effectively analyze data so as to inform management decisions about strategic allocation of resources; HJPC's need to become more fair and transparent in its operations, particularly in an appointment process that is neutral and merit based; the ODC's need to become more transparent and to develop guidelines for handling complaints and proposing sanctions related to judge and prosecutor performance. In addition to these challenges, the Justice Activity would operate under constraints created by the constitutional and political order of BiH.³⁴

The current judicial context is described extensively in the previous chapters of this section, which show relatively small changes—such as changes in disposition time in the first instance courts and POs in general crime cases; introduction of on-site training of POs; development of strategic plans at the PO level; development of Integrity Plans by all judicial institutions; development and adoption of the guidelines for preventing conflicts of interest; and initiation of a proactive approach by judicial institutions toward the public. Based on a thorough examination of domestic and international factors present in the BiH justice sector environment, the Assessment team concludes that no major changes occurred in the judicial context between the design of the previous USAID Justice Activity intervention and today. The challenges faced by the BiH judiciary, both external and internal, are still present. Efforts have been initiated to address corruption-related issues. However, implementation of these activities has yet to be undertaken and improvements in the processing of corruption cases (both the high profile and the overall quantity of these cases) have yet to be achieved.

Ongoing initiatives provide hope for future progress in the judicial sector. These include the establishment of Special Departments of the FBiH Supreme Court and the PO and enacting of the new law on HJPC, which will address recommendations by the EU peer-review missions and potentially bring many aspects of the BiH judiciary into legislative compliance with EU standards. Additionally, a number of international projects directed toward law enforcement agencies, POs, and courts will be launched to help the BiH justice sector detect and prosecute corruption, economic, and organized crime cases. Although these are very promising initiatives, their success remains to be seen, especially given that the historical discrepancy between declared political will and the underlying dynamics impeding real reform.

Conclusion. Based on an examination of the domestic and international factors present in the BiH justice sector and comparing them with the environmental factors established in the JA contract, there has been no substantial change in the contextual factors in which the BiH justice sector has operated since inception of the Justice Activity. There are promising initiatives that should help the BiH judiciary comply with EU standards, and a number of international projects have worked toward effective processing of corruption cases. At the same time, there is no noticeable change in support for the work of the judiciary by the executive branch of government.

³⁴ USAID Contract No. AID-168-TO-14-000001, p.2.

Assessment Question 2–1

(AQ2-1) What are the current most pressing issues in the justice sector in BiH? How can they be addressed?

In order to identify current issues in the BiH justice sector, the Assessment team conducted semi-structured interviews with relevant stakeholders. To provide a thorough overview of pressing issues in the justice sector, we triangulated our findings from KIs with administrative data and with evidence established by other sources. The key issues identified and presented in the sections that follow are related to: courts, POs, HJPC, and police and other governmental agencies.

Current Issues in BiH Justice Sector

Court issues (Ci)

Ci.1 Issues Related to Cases of Unpaid Utility Bills

By the end of 2017, there were 2.1 million cases in the judicial backlog. The bulk of these cases included 1.7 million unpaid utility cases, with no substantial reduction in this backlog since the last reporting period.³⁵ According to the HJPC administrative data made available to the Assessment team, the Sarajevo Municipal Court (MC) accounts for half of this backlog and Tuzla MC, Zenica MC, and Bijeljina Basic Court (BC) jointly account for 25% of the total. Banja Luka BC, Mostar MC, Lukavac MC, and Zvornik BC jointly account for approximately 10% of the total state-wide backlog. Our analysis shows that unresolved cases related to unpaid utility bills may primarily be found in just eight courts, five of which are located in FBiH and three in RS.

No legislative initiative has yet been undertaken to reduce the backlog of unpaid utility bill cases and small financial claims by improving enforcement procedures.³⁶

Ci.2 Long Disposition Time in First Instance Courts and Deterioration in the Performance of Second Instance Courts in Terms of Disposition Time and Backlog

As shown in the HJPC administrative data, the average duration of disposed cases in first instance courts for major case types was between 308 and 477 days in 2017. Criminal cases had the shortest time-to-decision on average, while administrative cases had the longest time on average. Although there was a noticeable improvement between 2012 and 2017 (except in administrative cases), the current disposition time needs to be further reduced. Exhibit 12 provides the *average duration of disposed cases in first instance courts*.

³⁵ *Ibidem*, p.12.

³⁶ *Ibidem*, p.12.

Exhibit 12: Average duration of disposed cases at first instance courts

Average duration of disposed cases at first instance courts	2012	2013	2014	2015	2016	2017
	(in days)					
Criminal (“K”)	378	375	343	314	300	308
Civil (“P”)	666	622	527	447	396	397
Commercial (“Ps”)	582	560	530	522	461	459
Administrative (“U”)	350	408	412	417	461	477
Enforcement Civil (“I”)	818	821	715	634	518	424
Enforcement Commercial (“Ip”)	869	909	699	585	512	431

The average duration of disposed cases in second instance courts for major appeal case types was between 132 and 755 days in 2017. Criminal appeal cases had the shortest time-to-decision on average, while administrative appeal cases had the longest. There is evidence of a deterioration in the average disposition time in second instance courts between 2012 and 2017. Because the appeal disposition time is accrued beyond the time needed to decide cases in the first instance courts, BiH citizens might expect years to pass before their cases are finally decided. The current disposition time in second instance courts should be shortened. Exhibit 13 provides *average duration of disposed cases at second instance courts*.

Exhibit 13: Average duration of disposed cases at second instance courts

Average duration of disposed cases at second instance courts	2012	2013	2014	2015	2016	2017
	(in days)					
Criminal Appeal (“Kz”)	72	76	80	75	119	132
Civil Appeal (“Gz”)	305	330	311	390	404	388
Commercial Appeal (“Ps”)	327	335	289	346	412	476
Administrative Appeal (“Uz/Uvl”)	325	264	282	393	629	755

As shown in the HJPC administrative data, the number of unresolved cases in first instance courts declined between 2012 and 2017, with the exception of administrative cases, which have shown a more mixed trend. The backlog of civil, commercial, and enforcement (of civil and commercial court decisions) cases was cut approximately in half between 2012 and 2017. The criminal-case backlog experienced a decline of approximately 27% in the same period. The reduced size of the backlog follows a trend in reducing disposition time in first instance courts, as illustrated in Exhibit 11 above, however further reductions in the backlog in first instance courts are needed. Exhibit 13 below provides *backlog figures in first instance courts*.

Exhibit 14: Backlog figures in first instance courts

Number of unresolved cases at first instance courts	2012	2013	2014	2015	2016	2017
	Criminal (“K”)	12,567	11,871	10,598	10,080	9,976
Civil (“P”)	44,007	38,271	34,352	32,367	29,244	26,015
Commercial (“Ps”)	12,007	10,963	9,165	7,225	5,824	5,382
Administrative (“U”)	10,447	12,488	13,535	12,710	11,285	9,958
Enforcement Civil (“I”)	126,339	117,758	98,727	84,637	69,822	62,809
Enforcement Commercial (“Ip”)	23,857	21,764	19,212	16,740	14,241	12,155

Backlogs in second instance courts increased between 2012 and 2017. When compared to 2012, the backlog in criminal appeal cases in 2017 was more than twice as large. The backlog in administrative appeal cases was more than three times larger in 2017 as compared to 2012. Additionally, the backlog in commercial appeal cases was 42% larger in 2017 as compared to 2012. These dramatic figures clearly show that an intervention to reduce the backlog in the second instance courts is needed. Exhibit 14 provides *backlog figures in second instance courts*.

Exhibit 15: Backlog figures in second instance courts

Number of unresolved cases at second instance courts	2012	2013	2014	2015	2016	2017
	Criminal Appeal (“Kz”)	866	894	1275	1753	1951
Civil Appeal (“Gz”)	13293	13685	14682	14761	14628	15191
Commercial Appeal (“Ps”)	3126	3228	3911	4403	4652	4441
Administrative Appeal (“Uz/Uvl”)	1119	2216	2892	3643	4117	4422

As described in section DF.6 of this report, there is a decline in the inflow of cases but also a decline in productivity. The greatest decrease in productivity in the last two years was experienced in first instance courts, while second instance courts have regularly disposed fewer cases than their inflow in the past several years.

Ci.3 Flaws in Solving Jurisdictional Conflicts between the State and Entity Courts/POs

As stated by the Venice Commission, the four judicial systems of BiH “differ considerably in their internal structure and the institutions they cover” and “the relationship between the systems is also not clearly defined, which gives rise to different interpretations of laws and inter-judicial disputes.”³⁷ Court and PO of BiH have a special jurisdiction in the whole territory of BiH (which includes criminal offenses provided in the laws of the FBiH, RS, and BD when the alleged criminal behaviors are particularly serious, namely: “(a) endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina, or (b) may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and Herzegovina or cause serious economic damage or other detrimental consequences beyond

³⁷ Venice Commission, *Opinion on Legal Certainty and Independence of the Judiciary in Bosnia and Herzegovina*, 18 June 2012, p. 11, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)014-e) (accessed on August 14, 2018).

the territory of an entity or the Brčko District of Bosnia and Herzegovina³⁸) commonly referred as *extended jurisdiction*.

However, courts and POs at the entity/BD level have their own prescribed subject matter and territorial jurisdiction. Circumstances of each individual case could be interpreted in various ways, particularly in the early stages of investigations, and a PO can identify (or not identify) itself as having jurisdiction for conducting an investigation. Consequently serious crimes—including corruption and organized crime where crimes are conducted in various parts of the country or by individuals residing in different parts or occupying public functions at different government levels—could be investigated by multiple POs and indictments filed in front of the state, entity, and BD courts.

Within the current organization of the BiH judicial system, there is no body that can adjudicate conflicts among the different POs or courts deciding in criminal cases. Conflicts of jurisdiction could occur in two instances: first, when two POs at different levels claim to have jurisdiction to conduct an investigation and file an indictment, and second, when no PO undertakes an investigation, all claiming *not* to have jurisdiction. While the issue of conflict of jurisdiction among courts and POs at the entity level is resolved through the jurisdiction of entity supreme courts and entity POs, there is no institutionalized procedure for resolution when courts/POs in different entities/BD claim to have jurisdiction for the same crime, or when the same situation is encountered among Court/PO BiH and entity/BD level of courts/POs. Similarly, there is no mechanism in place to identify and prevent simultaneous investigations of the same crime in two or more POs.

Ci.4 Unequal Judicial Practice, Both in Different Geographical Parts of the Country and Even at the Same Instances of Judicial Institutions

KIs stated that when similar cases are decided by different courts, there is a worrisome level of unequal judicial practice stretching from indictment confirmation, through procedural steps and evaluation of evidence, to judgments. Moreover, there are cases where different panels of second instance courts of the same court render different decisions in similar cases. This leads to a challenge in how to adjudicate a new case where diverse decisions and precedents exist. In such an environment there is limited predictability and an impression that each case is decided in isolation, with no regard to decisions in other cases with the same or similar circumstances.

Although the role of the Supreme Court in almost all countries is to adjudicate these types of situations, absence of this institution in BiH and the presence of multiple supreme instance courts, magnifies the issue. Even the synchronization between the two existing Supreme Courts in BiH is inadequate, as the EU 2018 report finds: “Activities undertaken in order to increase the consistency of jurisprudence across the country, in the absence of a supreme court ensuring uniform interpretation of the law, slowed down significantly in 2017, with the civil joint panel of the highest-level courts in Bosnia and Herzegovina meeting twice and the administrative and criminal panels holding no meetings.”³⁹

In addition, most of the cases become final in front of cantonal courts (10 in the country) and district courts (6 in the country) and never reach the level of entity supreme courts. This leads to the application of rules and practices in one canton that vary from those in another canton, while the laws and regulations to be applied are the same. Additionally, different cantonal/district courts do not have a forum where they can learn about these inequalities or differences.

³⁸ Article 7(2) of the Law on the Court of BiH.

In describing this situation, OSCE report findings are in line with the Assessment team's findings: "The jurisprudence on corruption-related offenses is not harmonized, and judicial panels adjudicating these cases fail to refer to precedents in their reasoning. In particular, trial monitoring coverage showed concerning examples of unclear or inconsistent interpretation of substantive and procedural law as well as a systematic failure to refer to jurisprudence by both trial- and appellate-level courts in BiH. This last feature, together with the absence of a supreme court at the state level with the role of ensuring consistency in the case law, represent major obstacles to legal certainty and equality before the law in BiH."⁴⁰

Compounding these challenges, efforts to increase the consistency of jurisprudence across the country, in the absence of a Supreme Court to ensure uniform interpretation of the law, slowed significantly in 2017, with the civil joint panel of the highest-level courts in Bosnia and Herzegovina meeting twice and the administrative and criminal panels holding no meetings.⁴¹ The HJPC's pilot project working on the efficiency of courts, financed by Norway and the Netherlands, is attempting to begin to synchronize decisions of the municipal/cantonal court in Sarajevo and the basic/district court in Banja Luka, but only at the level of civil cases.

Ci.5 Unequal Sanction Policy across Different Geographies and Sometimes within the Same Judicial Institutions, Particularly in Corruption-Related Crimes

Related to the prior issue, there is inconsistency and unequal application of sanction policy. As per KIs in POs, sanctions rendered are unequal and vary in similar cases. Additionally, it was noted that sanctions rendered are mild and do not deter similar crimes. This is of particular concern in relation to corruption, economic, and organized crime. The European Commission BiH 2018 Report, notes the need for significant improvements in preventing corruption by imposing effective and deterrent sanctions, as was noted in statements made by KIs. Furthermore, the OSCE report supports this finding, noting: "There is no adequate sentencing practice for corruption cases. In many of the monitored cases which ended with conviction, the Mission noticed a marked leniency in sentencing, with prescribed punishments frequently falling below the mandatory statutory minimum. Closely connected to this problem is the failure of the system to ensure consistency and proportionality in the sentencing policy applied in corruption cases throughout BiH."⁴²

Ci.6 Initiative to Move Adjudication of Criminal Cases to First Instance Courts Where Seats of Cantonal/District Courts Are Located

The Assessment team learned through KIs that there is an ongoing initiative and discussion about moving adjudication of criminal cases from municipal courts in small towns to the municipal/basic courts located where the seat of the cantonal/district court is. The initiative was triggered by POs' request to reduce daily travel from the seat of the PO (which coincides with the seat of the cantonal/district court) and by an opinion that in small communities, judges are more susceptible to the influence of the local communities, affecting their impartiality in the adjudication of criminal cases.

The Assessment team was not able to determine if the initiative will result in adoption of proposed changes as some individual KIs opposed it. The Assessment team found that this initiative and related discussions take place before the Special Departments of Supreme Court, and PO FBiH are established and have started to work (which will take over the most serious cases of corruption and organized crimes from cantonal POs and prosecute them in front of the FBiH Supreme Court). Furthermore, the Assessment team was not presented with any information to examine expenses that will be imposed on

⁴⁰ *Ibidem*, p.5.

⁴¹ *Ibidem*, p.11.

⁴² *Ibidem*, p.5.

accused, witnesses, and other participants in court cases if this initiative is adopted. In addition to the lack of attention paid to increasing the costs of trials, this change may lead to an increase in postponements due to absence of participants in trials.

Ci.7 Legal Risk of Annulment of Corruption Cases Due to Lack of Establishment of the Special Department of the Supreme Court FBiH

The Law on Fighting Corruption and Organized Crime in FBiH foresees the creation of a Special Department within the Supreme Court of FBiH and a Special Department within the Federal Prosecutor's Office with exclusive jurisdiction over a number of serious crimes under the FBiH Criminal Code.⁴³ However, the special departments have not yet been established. The most frequent explanation provided by the FBiH government for this is the lack of financial resources.

In the absence of this institution, the Supreme Court of FBiH ruled⁴⁴ in 2015 that adjudication of relevant crimes shall remain within the jurisdiction of the cantonal courts until the Special Department is established. As noted in the OSCE report and confirmed by KII: "The failure to establish these authorities could have resulted in institutionalized impunity for the above-mentioned crimes since, with the entry into force of the Law, cantonal prosecutors and courts are no longer competent for their prosecution and adjudication."⁴⁵

Regardless of the position of the FBiH Supreme Court, KIs noted that issues will emerge when an appeal is eventually filed with the EU Court of Human Rights and refers to the EU Convention on Human Rights, which requests that court decisions be made by a competent court of law established by the law in a procedure prescribed by law. Should the EU Court of Human Rights find that—since the Law on Fighting Corruption and Organized Crime in FBiH was passed but competent courts have not been adjudicating decisions—decisions may be annulled.

Ci.8 Deciding Corruption Cases Is Not a Focus of Courts

Requirements set by the EU and other donors/international organizations in the fight against corruption, including processing and adjudication of corruption cases, do not identify any specific judicial institution (or law enforcement agency) to adjudicate these cases. It is expected to be the responsibility of BiH and something that all government and judicial institutions should make a priority.

While a number of activities attempted to build this capacity among POs, including USAID JA, these efforts were not adequately complemented by activities for courts. As a result, POs do treat corruption cases as a priority and, in the case of larger POs, departments that deal only with these cases have been established. However, courts do not prioritize corruption cases in the same way. As identified through KIIs with POs, corruption cases are treated like any other criminal case in terms of case assignment and timeline for processing.

"It is incomprehensible to me that one case of war crime or corruption where the evidence hearing lasts a year, two, and three sometimes. One witness per month. We lack efficiency. I told them then that prosecutors don't know where they started from or where are they going and the Council doesn't know either. The corruption cases last between two and three years. I mean, if it was up to me, two to three hearings would be scheduled per week."

-PO

⁴³ *Ibidem*, Articles 7 and 25(1).

⁴⁴ <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=54616>.

⁴⁵ *Ibidem*, p.22.

Ci.9 “Quota” System Does Not Incentivize Judges to Work on Corruption Cases

By HJPC regulation, prosecutors changed their performance evaluation criteria to incentivize processing corruption cases. However, according to KII, courts did not make similar changes and, for courts, corruption cases are treated similarly to any other criminal case. Consequently, judges are not given any performance credit for dealing with the complexities of corruption cases. Therefore, it is easier for them to work on simpler cases and achieve all performance requirements.

Ci.10 No Policy of Continuous-Trial and No Preparatory Hearings

A further consequence of not prioritizing corruption cases is that these cases are not adjudicated quickly. As per a KII, this might be one of the reasons contributing to failure to obtain convictions in corruption cases, as witnesses over a period of time become exposed to the influence of indicted persons or their accomplices and change their witness testimonies in front of the court.

One KII noted the absence of pre-trial hearings at which a timetable of activities in the trial would be established and parties invited to rigorous preparation for steps in the process. Consequently, in the present course of adjudication of corruption cases, postponements are granted and cases delayed.

Ci.11 Need for Training (On- and Off-site), Specialization, and Forensic Accounting/Economics Expertise in Courts

As was recognized in the case of prosecutors, there is a similar need for judges to understand basic concepts of forensic accounting and economics. The availability of on-site training and expertise in courts to help judges understand basic concepts needed for deciding corruption and economic crime cases would be advantageous.

As stated in KIs with POs, in the absence of this knowledge, prosecutors are concerned that judges look for procedural errors in indictments and criminal procedures and dismiss cases, rather than study the complexities of accounting and economics needed for making a decision in substance (*lat. in meritum*).

“Often judges do not understand what the trial is about, really. They don’t understand the subject matter of some complex cases, corruption with giving and taking, etc. Complex financial cases, they often don’t understand what is going on. In the end they are swayed by expert witness evidence from one or the other side. In essence, they are influenced by closing statements, whoever is more persuasive, which is absurd. In court, the judge should know more than the prosecutor and the defense attorney, am I right, to have a serious verdict, especially a conviction verdict. They often take the path of least resistance. Sadly, it’s like that. That specialization is needed. Especially in one Cantonal Court that is involved with heavy-duty economic crimes.”

-PO

Prosecutors' Offices Issues (POi)

POi.I Long Disposition Times in POs for Corruption and Economic Crime Cases. Major Reductions in Disposing General Crime Cases Achieved Through the Rejection of Criminal Reports and Termination of Investigations

POs had a noticeable reduction in their backlog of cases over the last few years; however, this was mainly achieved by the dismissal of PO cases (at different stages of the proceedings). Still, the average disposition time and backlog notably improved between 2012 and 2017, and the backlog of these cases was cut in half. As of 2017, POs are almost within the disposition time prescribed by law. However, there are no noticeable improvements in processing corruption⁴⁶ and economic crime cases. Due to their nature, the decreases in disposition time and the backlog of war crime cases was expected. Exhibits 16 and 17 show average duration of disposed cases and backlog in POs, respectively.

Exhibit 16: Average duration of disposed cases in POs in 2012–2017

Average duration of disposed cases in POs	2012	2013	2014	2015	2016	2017
	(in days)					
General Crime	366	412	371	396	250	218
Corruption ⁴⁷	1146	374	481	358	344	364
Economic Crime ⁴⁸	510	554	602	590	405	413
War Crimes	2116	1555	1330	1449	1358	1538

Exhibit 17: Backlog in POs in 2012–2017

Number of Unresolved Cases in POs	2012	2013	2014	2015	2016	2017
General Crime	21702	20749	18517	12352	11042	10366
Corruption ⁴⁹	501	786	907	1005	1051	939
Economic Crime ⁵⁰	2511	2281	1831	1595	1707	1740
War Crimes	1277	1222	1075	1000	872	807

⁴⁶ PO BiH expressed a concern that current reporting of corruption cases is not executed correctly by HJPC. Namely, PO BiH believes that corruption crimes processed within organized crime cases are not properly extracted within HJPC reporting on processing corruption cases.

⁴⁷ As HJPC made major changes in the definition of corruption and economic crime cases in 2015 and 2016, which required just partial re-registering of cases from previous years in accordance with the revised definitions, data for 2012–2013, although officially provided by HJPC, should be considered incomplete and unreliable. Data for other case types and for corruption and economic crime in 2014–2017 are accurate.

⁴⁸ Ibidem.

⁴⁹ Ibidem.

⁵⁰ Ibidem.

POi.2 Different Subject Matter and Territorial Jurisdiction of POs Could Cause Conflicts of Jurisdiction for Which a Solution Is Not Defined in Cases That Extend across Entity Borders and between State and Entity Levels

Conflict of jurisdiction was previously described in detail in relation to courts. This exists similarly in relation to POs. For POs, the conflict can emerge in the early phases of criminal procedures and before any indictment is filed with courts.

POi.3 POs Consider Standards Set by Courts for Judicial Evidence and Quality of Indictments To Be Set Too High

According to POs during KIs, courts have set very high standards for judicial evidence which, particularly in complex cases of corruption and economic crime, are very difficult to achieve (the most often mentioned is “intent”). On the other hand, Courts during KIs claimed that indictments are not filed with adequate evidence or evidence obtained in accordance with the law. The OSCE report finds that, in a significant number of corruption cases studied, the prosecution submitted little or no evidence on the criminal intent of the defendant⁵¹ and also noted: “Insufficient oversight by judges during the review of indictments, resulting in the confirmation of indictments which should be dismissed or sent back for corrections. Judicial decisions are often based upon unclear or insufficient reasoning. In some cases, flaws in the reasoning were related to the manner of presentation and evaluation of the evidence, as it was not assessed in light of the elements of the crime. In other cases, the reasoning was not structured in a way that the elements of the crime were identified and addressed separately.”⁵² As a result, there are a number of acquittals for corruption cases, generating further dissatisfaction with the judiciary among citizens (regardless of whether the PO or the court is to blame).

“...that benchmark for evidence and quality of evidence that they are pursuing is for Sweden perhaps. But for post-conflict society that we are?”

“The status of the prosecuted person is dictated by the quality of evidence. They were tracking simultaneously completed investigations in prosecutors’ offices and indictments, completed cases. They noticed certain shortcomings both in indictments, meaning in presentation and quality and quantity of evidence, and in verdicts. I think I was clear here...higher the person is, I mean he is function-holder, the quantity of evidence required from the prosecutors’ office is greater.”

-PO

Through analysis of statements presented in KIs, the Assessment team found that “blame shifting” (i.e., from POs to police and courts, and from courts to POs) takes place in the absence of unified court practice and widely communicated official standards set for the validity of evidence. As previously noted, the fragmentation of courts further contributes to misunderstandings about what courts are expecting and what POs are supposed to provide in court proceedings. The Assessment team was not able to identify the existence of any forums where a proactive exchange of requirements and standards occurs between judges and prosecutors. Equally, such forums were not detected between second instance courts and their corresponding first instance courts. Some KIs noted that in the same court, two different panels sometimes take a different position on the same issue or render different decisions in very similar cases.

POi.4 Majority of Corruption Cases Are Located in a Small Number of Areas

The Special POs (PO BiH and RSSPO) processed most of the high-profile cases in the last several years in BiH. In the absence of the establishment of the FBiH Special PO, the bulk of corruption and high-level cases were processed in FBiH by a small number of POs (Sarajevo, Tuzla, Zenica, and Bihac). As noted in KIs in RS, two-thirds of corruption, economic and organized crime cases (CEOCC) are transferred to RSSPO. District POs in RS primarily deal with less important corruption cases, and the number of these

⁵¹ *Ibidem*, p.5.

⁵² *Ibidem*, p.5.

cases is manageable. Once the Special Department of FBiH PO is established, almost all major corruption cases will be investigated by three special POs, located in Sarajevo and Banja Luka.

In the above-mentioned cantonal POs separate departments for processing CEOCC cases have been established, and prosecutors in those departments can work only on those cases. In addition, these POs increased the number of prosecutors in these departments and intensified work on this type of case. In some cases, the local governments supported POs through increased financing. These are examples of good practice in POs within present legislative and regulatory solutions.

“Regarding the work organization in the previous period, I think this might be relevant or maybe not. In 2014 in the Department for Economic Crime and Corruption we had some 12 prosecutors, am I right? Today we have 27, out of which 2 are Deputy Chief Prosecutors and they do not work on investigations, but they oversee the work of the 25 prosecutors. Therefore, we increased capacity of that department by 80 percent approximately and we shifted focus onto the most serious corruption and economic crime cases, including organized crime that is connected to the previous two types of crime.”

-PO

In JEl-BiH, less than 10% of BiH citizens have experience working with courts in terms of having their own case files processed in a court. This means that the media is the principal source of information on the BiH justice sector for approximately 67% of BiH citizens. At the same time, media coverage is limited to a few major towns in BiH and is focused on the major criminal cases. Public perception of the work of POs (and courts) in general is created through media reporting about these major cases.

The Assessment team used the GIS online application described previously to visualize the processing of corruption cases by each PO in BiH. A detailed presentation of the results is provided in the JA evaluation report. Through the analysis conducted, it was possible to identify an additional group of six POs⁵³ with a medium case load in processing corruption cases.

POi.5 Lack of Adequate Budgets and Finances Affects Work of POs

According to POs, the turning point and the most important precondition for achieving any results in the fight against corruption is the existence of political will. According to KILs with POs, PO budgets are not approved in accordance with POs’ needs and that affects a number of vital areas of their work. POs lack support staff, professional public relations officers, and economic experts. POs that managed to obtain approval and budgets for hiring economic experts on a full-time basis, stated that the work of economics experts is extremely useful, saves a lot of the prosecutor’s time, speeds up the process of documentation review and selection, and improves the prosecutor’s understanding of economic issues. However, even the strongest POs stated that they still need additional expert investigators in order to improve their efficiency. POs further emphasized issues with large transportation costs and old vehicles, payments for lawyers and the costs of criminal proceedings, and a lack of funding for hiring new staff.

⁵³ Prosecutors’ Office of the Herzegovina-Neretva Canton, Prosecutors’ Office of the Central Bosnia Canton, Prosecutors’ Office of the West Herzegovina Canton, District Prosecutors’ Office in Bijeljina, District Prosecutors’ Office in East Sarajevo, and District Prosecutors’ Office in Doboij.

POi.6 Record of Poor Quality Criminal Reports for Corruption

By reviewing the administrative data on processing corruption cases, the Assessment team found that approximately half of all criminal reports are rejected and half of all opened investigations are terminated at a later stage. These high rates of rejection/termination are encountered only in corruption and economic crime cases and differ from those for other types of cases processed by POs.

Through KIs, the evaluation team learned that, for most of the case types POs handle, police are the major source of criminal reports filed, implying that trained police staff draft these reports and are able to corroborate them with adequate evidence and identification of perpetrators. Alternatively, KIs stated that criminal reports for corruption are of very poor quality. It was claimed that approximately 20% of these reports are filed by police, while others are filed by individuals, often anonymously. Concern was expressed that either the criminal reports filed by individuals lack tangible evidence or the individuals filing them refuse to cooperate further with prosecutors. In addition, KIs stated that many individually filed reports are politically motivated and that their number increases in election years. This results in a large number of rejected criminal reports and terminated investigations, whereby the time, work, and effort of prosecutors is nevertheless wasted.

“However, what is alarmingly troublesome is the huge number of negative, so-called negative decisions that order stopping and not conducting investigations. This is due, on the one hand, to shortcomings in the indictments and [on the other hand] sometimes in collecting of the evidence.”

-PO

POi.7 Prosecutors Not Motivated to Work on the Most Complex Corruption Cases

The Assessment team learned through KIs that, although there have been changes in the appraisal of prosecutors’ work to emphasize corruption cases, prosecutors are not motivated to work on the most complex cases, which can take a year for two prosecutors to complete. The length of these trials results in low periodical performance results for prosecutors who take on these cases. Therefore, prosecutors will simultaneously work on several simpler cases, limiting their effectiveness on the complex case.

The OSCE report draws similar conclusions: “On a general note, it is important to underline that the ARC categorization criteria from the Judicial Response to Corruption through Monitoring of Criminal Cases project have been developed by the Mission for the purposes of its trial-monitoring activities and in the absence of domestic procedures for the “weighting” of corruption cases according to their complexity and/or seriousness. In this regard, the Mission notes that the criteria adopted by the HJPC for the evaluation of the performance of judges and prosecutors do not adequately differentiate between high- and low-level corruption cases when it comes to the calculation of the *orientation quota*, namely the number of cases that should be resolved by each individual judge or prosecutor.”⁵⁴

The regulations currently in place simply do not recognize this category of exceptionally complex cases (nor do the regulations provide a definition of cases that should be classified as ‘a case of the highest interest of the State’), which would allow for the full and undisturbed commitment of prosecutors to work on such cases and also provide timely availability of all resources needed for successful conduct of the investigation and prosecution. In addition to lack of definition of such cases, there is no prescribed procedure for granting such a high status to a case.

⁵⁴ *Ibidem*, p.28.

POi.8 Limited Availability of High-Quality Expert Witnesses and Unwillingness of Expert Witnesses to Provide Testimony in the Most Complex Cases

KIs noted that there is only a limited number of expert witnesses of quality for cases of corruption and economic crime. KIs also stated that those expert witnesses who are good have already been used in previous cases and, due to delay of previous payments, either they are unwilling to take on new cases or they deliver their expert opinions with delays. It was also noted that in some high-profile cases, POs have spent years trying to identify an expert witness willing to provide expert opinion in a given case.

The other limitation POs face, as stated by KIs, is a limitation on the allowable fees for expert witnesses, as set by law. Namely, corruption and economic crime are often connected with a large amount of documentation and values in question. Providing expert witness opinion in such cases is a prolonged effort, for which the current compensation fee scale does not account. In such situations, the expert witnesses are more inclined to take simpler cases, for which they are adequately compensated.

One solution to this issue would be to form independent institutes for witness expertise, not currently available for forensic accounting and economics. However, KIs pointed out that if these institutes were to be formed, it would be necessary to obtain assurances about impartiality.

POi.9 Transfer of Ongoing Investigations/Cases Once the Special Departments of the FBiH Supreme Court and PO Are Established

The issues around not yet establishing the special departments of the FBiH Supreme Court and PO were presented earlier. Here, we highlight issues related to initiation of the Special Department of the FBiH PO. Once formed, the Special Department of the FBiH PO will need to address the issue of jurisdiction over cases in FBiH that have already been initiated. Some KIs estimated that if the forecasted 1,300 cases are transferred, 10 prosecutors in this department will immediately have a backlog.

Additionally, there are a number of cases where trials have already begun before the cantonal courts or will have to re-start before the Special Department of the FBiH Supreme Court, or where prosecutors from the Special Department of the FBiH PO will need to travel to courts and participate in already initiated trials. If the Special PO FBiH were to begin to work only on new investigations, this could mean no indictments filed with the special department of the court for a minimum of nine months.

Another issue to consider, as presented by individual KIs, is the appointment of prosecutors and judges in this new department and the possibility that they could be transferred to regular sections of PO FBiH or the Supreme Court of FBiH. Quick transfers of these individuals could be an obstacle to specialization in the Special Department, and appointment in a special department could be seen as a temporary position prior to becoming a judge of the Supreme Court. In addition, KIs pointed out that the Special Departments of the FBiH Supreme Court and PO should not be confronted with issues related to insufficient budgets, as is currently the case with the other POs.

POi.10 POs' Need for Training in Forensic Accounting and Economics

Despite having been provided with specialized training assistance, all POs agree that they still lack economic expertise and the capacity to investigate economic crime cases and, further, that prosecutors are in general ill-equipped to prosecute economic crime cases. For example, KIs with a PO indicated that 11 prosecutors working in the PO's economic department do not understand audit reports. The majority of POs do not have economic advisors and lack in-house expertise. For example, KIs with another PO noted that their PO identified a need to hire an economic expert, met all necessary regulatory

preconditions (i.e., changed the rulebook and systematization of work places), but did not receive financial support from the local government.

Issues Relating to Police and Other Relevant Government Agencies/ Institutions (PGAi)

PGAi.1 Lack of Educated and Skilled Police Inspectors

KIs in POs noted that police lack sufficiently educated and skilled police inspectors for working on complex cases of corruption and economic crimes. This is a consequence of a lack of specialization in the police force, coupled with frequent changes of inspectors in the department working on corruption and economic crime. The police also lack in-house expertise in forensic accounting and economics, which is due in part to a lack of proper education before individuals are recruited to police forces, as well as a lack of in-service training.

Similar to other governmental sectors, hiring is not conducted such that the most promising and capable individuals are hired. A lack of transparent procedures for hiring and a lack of assurance of impartiality on the selection panels increase the risk that candidates will be influenced by politics, nepotism, and favoritism.

PGAi.2 Removal of Police Investigators from Investigations/Investigative Teams

KIs in POs stated that, during investigations, police inspectors are often removed from teams working on corruption or economic crimes, either for routine promotion purposes or, unfortunately, also when they begin to show signs of “deep involvement and commitment.” In other words, an effective way to obstruct investigations is to appoint police investigators who either lack capacity or have a negative attitude toward conducting the work they are supposed to do.

PGAi.3 Police Professionalism Is Questioned through Recent Convictions

Through KIs with the Special Department of the Banja Luka District Court, the Assessment team learned that police professionalism is also questioned as a result of recent convictions of inspectors of the police departments (i.e., narcotics) or members of special elite units (i.e., armed robbery).

PGAi.4 No Independent Oversight of Operational Activities of Police and Political Influence Over the Work of Police

KIs in POs expressed a particular concern about the operative work of the police in uncovering corruption and other serious crimes. This concern is directed particularly toward the police work involved in uncovering crimes committed by high-profile individuals and a suspicion that such high-profile individuals might simply be placed “off police radar”. Namely, POs claim that they can begin investigations and search for evidence only when a criminal report is filed. A precondition is, thus, that the police file a report.

“Also, there is a huge discord inside, I am speaking of Ministry of Internal Affairs, there is no appointment, there is no Commissary. The appointment decision was overruled, political interference, etc. Professional depoliticized police was not created and that is goal that we should pursue.”

-PO

Prosecutors further claim that the police have numerous resources at their disposal and that it is their responsibility by law to search for potential crime and report it to POs in the shortest possible time after learning about it. Yet police lack automated systems and procedures to ensure that police inspectors can

file their reports (including initial discoveries and evidence) without previous review by their superiors who have discretionary decision over moving forward (or not) with findings. In the absence of such automated systems, it is not possible to establish a direct connection and exchange of information with POs. On the other hand, the potential to lose track of a criminal report is minimized in POs with the introduction of the Prosecutors Case Management System and supporting work procedures.

Given the minimal number of criminal reports of corruption filed by police (KIs in POs estimated that approximately 20% of these reports come from the police) and in the absence of high-profile criminal reports filed by the police, POs are suspicious that political interference affects the work of police and the types of crimes police are investigating.

“Who can guarantee us that they are not manipulating those reports; sometimes they submit good stuff, sometimes bad stuff, sometimes they do something hastily. Prosecutors should oversee police work. But due to their obligations at courts they cannot work at the level at which they should.”

“But we are facing new problems where police officers cannot advance, there are no appraisals for good work. This Ministry of Internal Affairs does not have an independent board, it does not have a police board, it does not have an appeal board. Can you imagine what that looks like? I call him today, tomorrow the court made a decision that he is no more, and I must talk to somebody there. Then we compensate with Federal Police Administration. SIPA is offering assistance. Really? They are a state-level agency, they should work with the BiH Prosecutors’ Office. Those that know how to work are retired. They used this good opportunity presented by new law-old law. It was much better to do it during the old law, and many that could retire chose to do that. Now, some call themselves inspectors, but they are high-schoolers.”

-PO

In line with information obtained through KIIs are statements made in the European Commission BiH 2018 Report: “The political authorities should respect the operational independence of law enforcement bodies and ensure that these bodies are fully empowered to act effectively and impartially when investigating corruption allegations. Lack of pro-activeness of the police in investigating corruption cases remains a concern. There is still no track record of effectively checking political party and electoral campaign financing. Proactive investigations that start with intelligence-led policing remain rare as compared to those launched on the basis of signals received. The police should act more on own-initiative. Arrangements for practical cooperation between prosecutors’ offices and the police require structural improvements to guarantee a more effective judicial follow-up. There is a lack of mutual access to databases and the exchange of information between law enforcement agencies and prosecutors’ offices.”⁵⁵

PGAi.5 Court Police, Although Established in BiH, Do Not Provide Assistance to POs in Conducting Investigative Work

The BiH justice system has an independent police force that operates under the direct order of the entity Supreme Courts. This police force assist courts in conducting court procedures and provides physical protection to courts and POs. The same police force should provide personal protection to judges and prosecutors. In accordance with findings of JEI-BiH SJP 2015–2017, judges and prosecutors perceive that their personal security and that of their close family members is assured at level not exceeding an index value of 47 out of a maximum of 100. Experiences in other countries, i.e., Italy’s Judicial Police (equivalent to the Italian term *Policia Giudiciaria*), which ensure that some police force fully and directly serves POs in conducting investigations, offers opportunities to re-think the competences of the court police established in BiH.

⁵⁵ *Ibidem*, p.13.

PGAi.6 Lack of Support from other Governmental Institutions (i.e., Tax Administration, Financial Police, and Supreme Audit Institutions) Charged with Reporting Corruption Crimes and Providing Support to POs' Work

Tax Administration. POs expressed split opinions on their satisfaction with the work of the Tax Administration. While in some POs the work of Tax Administration and its support during investigations was prized, opposite statements were also made.

Financial Police in FBiH. Many POs were not satisfied with the work of the Financial Police. It was claimed that the quality of their criminal reports and evidence corroboration is poor and, furthermore, that there is a lack of responsiveness in answering POs' requests during investigations. The Financial Police in FBiH is in full competence of the executive branch of the government, with limited mechanisms in place to ensure its professionalism, independence, and impartiality. As per a KII with the Italian Embassy, a very different structure of this branch of law enforcement is present in Italy, where the Financial Police (corresponding to the original Italian term *Guardia di Finanza*) is part of the armed police forces and, in conducting certain investigative tasks, fully subordinated to POs.

Supreme Audit Institutions. Despite JA's strong effort to bring SAIs and POs in contact and to facilitate POs' use of SAI reports, no progress has been made in cooperation and collaboration among POs and SAIs. Most of the POs interviewed (7) are dissatisfied with their cooperation with audit institutions. However, most of them (9) view positively JA's work in establishing contacts and communication between POs and these institutions. In RS, as specified by law, audit reports go to the police for review, and they are forensically analyzed first. In FBiH, that is not the case. According to interviewed POs, the Audit Office is not willing to file a report when they have indications of criminal offenses. POs' stand is that, since all BiH citizens are obligated to report such cases, they too are obliged. The majority of POs stated that they have no use for the SAI reports. KIs further stated that when the Audit Offices are announcing to the public that there are audit reports with a negative opinion, it creates a perception in the public that POs do not do their job. Additionally, KIs in POs claim that a negative audit report does not automatically mean that a criminal offense has been committed, just as a positive audit report does not automatically mean there has been no criminal offense. There are significant differences and disagreements between POs and Audit Offices on the role of the Audit Office in investigation processes. While POs are of the opinion that cooperation with the Audit Office should be formalized, the Audit Offices representatives prefer informal communication.

Issues Relating to the High Judicial and Prosecutorial Council (Hi)

Hi.1 Issues Related to the Implementation of Integrity Plans

During KIIs, most POs (9), including those with the HJPC, believe that implementation of Integrity Plans will be a challenge. Specifically, courts/POs in RS are faced with issues related to having two different Integrity Plans, one developed by HJPC with JA assistance and one whose development was imposed by the RS Ministry of Justice. Furthermore, some interviewed POs were not sufficiently familiar with all steps and activities related to implementation of Integrity Plans. A majority of interviewed POs were not optimistic about the success of Integrity Plan implementation and remained cautious about progress over the next three to four years.

As evidenced by a review of some of the Integrity Plans already developed and as per KIIs, a key challenge to HJPC in implementing Integrity Plans (developed with JA assistance) is the fact that this will be a multi-year activity involving over 90 individual institutions. Successful implementation will require: field and compliance visits; informing and educating all judges, prosecutors, and staff about their content and

substance; IT support; additional technical expertise in areas where risks are identified and courts/POs do not have needed expertise; and drafting of regulations that will address identified risks in judicial institutions. Currently, HJPC has very limited resources to commit to effective implementation of the Integrity Plans and monitoring of their implementation in all judicial institutions.

Hi.2 Implementation of the Guidelines for Conflict of Interest

As expressed in some KIs and by reviewing planned assistance from other donors, HJPC will also be challenged with implementation of the guidelines for conflict of interest (including asset-declaration forms), which will require development, initial implementation and procedures, tools and IT solutions for continuous tracking of assets. A particular issue will be the identification of undeclared assets by judges/prosecutors, which is of the greatest interest within this activity.

Hi.3 Implementation of Activities Once the New Law on HJPC Is Adopted

Within the current political context and ahead of upcoming elections, KIs stated that it is difficult to foresee when the new law on HJPC will be adopted. When it is, HJPC will face a number of implementation activities necessary to bring HJPC organization and operations into compliance with provisions of the new law. These include, for example, a new system of appointment, evaluation of judges and prosecutors, and career advancement, all of which will require new procedures, tools, and information/communication technology (ICT) solutions.

Hi.4 EU “Peer-Review” Visits and Implementation of Their Recommendations

HJPC will be the subject of additional EU peer-review visits and will be required to implement the subsequent recommendations. The number, dynamics, and subject-matter areas that the peer-review visits will cover are not yet known. In addition, BiH is expecting an opinion to be issued by the EU as part of the process for assessing BiH candidacy status for EU accession. EU peer-review missions are supposed to address upfront the items that otherwise will be requested within the EU Opinion on accession of BiH to EU.

Hi.5 Room for Improvement in Appointments, Career Advancement, Evaluation of Work Performance, and Disciplinary Proceedings and Sanctions Rendered, As Noted by Judges and Prosecutors

As evidenced in the JEI-BiH SJP 2015–2017, the agreement of judges and prosecutors did not exceed the index value of 42 out of a maximum of 100 when asked about whether criteria for the advancement of judges and prosecutors are objective, adequate, and applied in practice. Additionally, the agreement of this group did not exceed the index value of 47 when asked whether the appointment of judges and prosecutors is competence based. When asked if their good work is rewarded and poor work sanctioned, agreement did not exceed the index value of 49. Finally, when asked about the initiation of disciplinary procedures, their fairness and objectivity, and sanctions rendered, the agreement among this group ranged from the index value of 56 to 68 out of a maximum of 100.

During the KIIs, there was support for these findings from the SJP. Namely, KIIs in POs and courts reported instances where judges and prosecutors were promoted without a reference check to prior employers. Furthermore, judges and prosecutors are sometimes unaware that someone from their court/PO was the subject of disciplinary procedures and that a sanction was issued against that individual. Furthermore, the evaluations of work performance are heavily based on statistical figures and do not take into account the complexities of cases and the quality of work, which is frustrating to judges and prosecutors.

By reviewing available peer-review recommendations publicly available on the HJPC web site and through KIIs with HJPC, the Assessment team found that these issues

reported by KIIs are mainly recognized. The peer-review recommendations led to initiation of work on the new HJPC law, which should seek solutions for these issues. The Assessment team finds that judges and prosecutors are not as well informed about the current activities of HJPC with regard to addressing issues mentioned by KIIs. Unfortunately, until the new law is enacted with the recommended revisions, all issues presented by KIIs will remain pressing challenges to the work of judges and prosecutors.

“Judicial integrity within the judicial system is what it is. Are we happy with it? No, we are not! Starting with a personnel selection method for the justice sector, on this method we have no influence. Do you understand this? It is incomprehensible for me that he [a job candidate] is somewhere selected for Chief Prosecutor and nobody asks does he know anything, he came for some institution, nobody asks do you really need somebody like him...”

“...as far as successful fight against corruption is concerned, I believe that HJPC is a key because HJPC is responsible for appointing judges and prosecutors. HJPC is the instance that appoints Chief Prosecutors, and Chief Prosecutors in essence determine how seriously the prosecutors’ office will fight corruption.”

-PO

Hi.6 Heavy Dependence of HJPC and the Work of the BiH Judiciary on Donor Assistance

Through KIIs, it was learned that the BiH judiciary’s financing is heavily dependent on donor assistance, which covers all technical assistance, reconstruction and purchase of IT and other equipment, payment of salaries to prosecutors and support staff (through EU IPA [EU Instrument for Pre-Accession Assistance] funds and the Swiss Agency for Development and Cooperation (SDC)/Norway projects), and payment to HJPC Secretariat staff. KIIs conducted with donors pointed out that most of the operational work of the HJPC (Secretariat) is performed by donor-financed project staff.

The BiH judiciary faces significant challenges related to a lack of interest among local governments at all levels in financing, coordinating, and supporting the work of judicial institutions. Most of our KIIs noted a lack of will among the executive and legislative authorities to take any steps forward in addressing the needs of the judiciary and motivating the work of judges and prosecutors. Therefore, donor assistance is needed even for the simplest activities, such as coordinating the work of local stakeholders. To ensure sufficient funding and support, the majority of KIIs pointed out that donor assistance is and will be needed in the future. KIIs voiced concern that if donors stop supporting the judiciary, significant gaps could develop in the system.

Hi.7 Office of Disciplinary Counsel Overburdened by the Filing of Low-Quality Disciplinary Reports

Only 3% to 5% of reports filed with ODC result in the initiation of disciplinary proceedings. Through a KII with ODC, it was learned that ODC has been understaffed for the past several years, and the limited staff resources were occupied by work on poor-quality reports. The organizational structure of ODC does not foresee junior disciplinary counsel positions, which would be in charge of improving reports and ensuring that high-quality reports with adequate evidence are forwarded to senior disciplinary counsels. Also, there are no mechanisms in place to offer free legal advice (through a network of NGOs or media campaigns) to individuals willing to file a disciplinary report as a means to help improve the quality of reports filed with ODC. Possibilities to obtain better quality information to support initiation of targeted

disciplinary investigations have become available since ODC obtained full and unlimited access to information about all cases in BiH courts and POs through the Case Management System in June 2017.

Current Needs of the BiH Judiciary

To identify the current needs of the BiH judiciary, the Assessment team carefully collected and organized the issues in the work of each institution analyzed previously in this report. We then paired them with results of our analysis of environmental factors. The resultant matrix allowed us to compare and triangulate information and identify common themes in the needs of the BiH justice sector. The findings are presented below.

Needs related to corruption:

- *Improve the track record in processing corruption-related cases by both law enforcement agencies and judicial institutions.* To this end, improved and coordinated activities of all actors are needed. In order to prosecute major corruption cases, assistance should be focused on special POs (BiH and RS level) and three to four cantonal POs in the absence of the establishment of the Special Department of FBiH PO. These POs should receive support in terms of budgets, availability of expert witnesses, advisors, assistants, and equipment. (Cross-references: DF4, DF6, IF1-3, Ci7, POi4, POi6)
- *Modify regulation of standards for the work performance of prosecutors and judges to accommodate focused work on the most complex high-profile cases.* (Cross-references: Ci8, POi7)
- *Prioritize work on corruption cases in courts.* Relevant efforts should include incentives for judges to work on the most complex high-profile cases and expedite trials. (Cross-references: IF1-3, Ci7, Ci8, Ci9)
- *Increase involvement of local governments, parliaments, and political parties in strategy development.* International organizations are currently the only ones providing support to ensure the independence of the BiH judiciary. HJPC, in combination with international organizations, should seek possibilities for establishing forums with local governments, parliaments, and political parties for discussing issues related to processing corruption cases. (Cross-references: DF1-3)
- *Develop training (on- and off-site), specialization, and forensic accounting/economics expertise in both courts and law enforcement agencies.* (Cross-references: Ci10, POi10, PGAi1)

Establishing the Special Departments of FBiH Supreme Court and PO:

- *Establishment of the Special Department of the Supreme Court and PO FBiH.* It is of the utmost importance that the Special Departments of the FBiH Supreme Court and PO be established and operational. This should include an adequate transfer of currently open cases and should ensure that these special departments are equipped with adequate expertise and budgets for their operations. (Cross-references: Ci6, POi9)

Addressing shortcomings in the work of police and other government agencies:

- *Support for the focused work of police in identifying and reporting corruption-related cases.* The executive branch of the BiH government needs to provide uncontested support for the focused work of police in identifying and reporting corruption-related cases. Automated systems need to be developed for tracking cases in police agencies and connecting them with POs' case management systems. International organizations that are working with police agencies should provide expertise and technical equipment for work on corruption-related and other serious crime cases. In the absence of political support, the assignment of additional competences to court police in

financial investigations conducted by POs could be considered. (Cross-references:DF3, PGAI1-5, POi6)

- *Improve track record in filing criminal reports and related activities.* Similarly, other governmental institutions (i.e., tax administration, financial police, and SAIs), which are supposed to report corruption crimes and provide support to POs' work, need to improve their track record in filing criminal reports, collection and sharing of evidence, and support of prosecutors in investigations with expertise at their disposal. (Cross-references: DF3, PGAI6)

Efficiency of courts and POs:

- *Introduce good judicial management practices.* Courts need to introduce good management practices, including setting strategic plans and quantifiable performance indicators. To do this, courts need to establish collegiums of cantonal/district courts and their corresponding municipal/basic courts and periodically track achievements and establish measures for improvements in results. Similarly, the supreme courts should establish similar collegiums with district/cantonal courts and track results. Prosecutors should continue the established practice of having collegiums of the Chief Prosecutors and monitoring results achieved. (Cross-references: DF6, Ci2, Ci7, POi1)
- *Review administrative data and reverse declines in productivity.* There is an urgent need to review administrative data and reverse declines in productivity (number of disposed cases) in courts and POs. The collection of vital administrative data on performance results ("quotas"), quality of judgments and success of indictments needs to be automated so that data are available in real time. Prescribed quotas need to be reviewed, and an explanation needs to be provided concerning the discrepancy between decreased productivity and achieved quotas of over 100% by most judicial institutions. (Cross-references: DF6, Ci2, Ci7, POi1)
- *Refocus resources for cases of unpaid utility bills.* Resources dedicated to the large number of unresolved cases of unpaid utility bills need to be refocused to a limited number of courts, which already retain up to 85% of these cases. (Cross-references: DF6, Ci1)
- *Analyze operations of second instance courts to investigate decline in results.* The operations of second instance courts require an immediate analysis to identify causes for the continuous decline in results. This analysis needs to inform targeted mitigation measures. (Cross-references: DF6, Ci2)

Financing of justice institutions:

- *Budget proposals should align with annual plans and targeted results.* All courts should initiate and POs should continue to develop their budget proposals in line with their annual plans and targeted results. Further training in the preparation of budgets is needed by judicial institutions at all levels. (Cross-references: DF1, POi5)
- *Establish coordinated forums between judicial institutions and relevant ministries of finance.* This would help develop mutual understanding of expectations and needs and inform better allocation of financial resources for the judicial institutions. These forums could address the adequacy of court fees/taxes and compensation policies for attorneys and expert witnesses. (Cross-references: DF1)

Harmonizing legislative solutions:

- *Harmonize legislative solutions relating to the processing of criminal cases.* The harmonization of legislation relevant to processing criminal cases, in particular cases of corruption and organized crime, is urgently needed. In addition, there is a need for an institutional mechanism to reconcile conflicts of jurisdictions between the state and entity courts/POs. A possible solution is establishment of a coordination body for the harmonization of criminal laws. (Cross-references: DF2, Ci3, Poi2)

Addressing inconsistent judicial standards, court practices, and sanction policies:

- *Address issues of inconsistent judicial practices.* Courts must take bold steps in addressing issues of inconsistent judicial practices. This must take place between entity Supreme Courts but also at the cantonal/district court level, municipal/basic court level, and within all individual institutions. As part of this process, the sanction policy should be unified and strengthened, particularly in cases of corruption and other serious crimes. (Cross-references: IF1, Ci4, POi3)
- *Establish prosecutor forums to promote standardized court practices.* Forums need to be established, through which standardized court practices and standards can be presented to prosecutors. POs should be offered an opportunity to bring legal issues for which they deem clarifications are needed to the attention of the established forums of the second instance court. (Cross-references: IF1, Ci4, POi3)

Addressing requirements of the BiH judicial system for EU accession:

- *Institutionalize engagement of all stakeholders in implementing EU recommendations.* There is a need for institutionalized engagement of all actors in the BiH justice system to implement recommendations from the EU peer-review process. Given current resources, this may require the assistance of international donors. (Cross-references: IF1-3, DFI-3)
- *Identify HJPC implementation resources.* HJPC should identify resources to implement Integrity Plans in judicial institutions and to implement the guidelines for preventing conflicts of interest. This should also include activities related to identification of undeclared assets of judges and prosecutors. (Cross-references: IF1-3, Hi1, Hi2)
- *Align HJPC with provisions of new law.* HJPC will need to develop new procedures and adapt its organization to align with the provisions of the new law on HJPC, once it is adopted. Furthermore, HJPC will need to make additional regulatory and organizational adjustments in accordance with recommendations of future peer-review missions. These modifications will require additional resources and expertise, currently unavailable to HJPC. (Cross-references: IF1-3, Hi3)

Addressing public perceptions of the BiH judiciary:

- *Enhance provision of information to the public on activities and achievements of the BiH judiciary.* There are a number of areas where the BiH judiciary can better inform the BiH public of its activities and achievements. However, public perceptions of the BiH judiciary will remain poor as long as the judiciary does not ensure that no person or public official is outside the reach of the justice system, regardless of rank. (Cross-reference: DF4)

Addressing expectations of judges and prosecutors regarding HJPC work:

- *Identify and address judge and prosecutor needs.* Judges and prosecutors are not satisfied with the environment in which they work and seek a number of improvements in activities that fall under the competences of HJPC. There is a need for HJPC members to come to individual courts/POs (or forums of courts/POs) and learn about the needs of judges/prosecutors in order to adequately represent their interests. (Cross-references: DF5, Hi4)

Issues relating to the HJPC Office of the Disciplinary Counsel:

- *Conduct targeted ex-officio disciplinary investigations.* Having recently been granted access to cases in the CMS/TCMS databases should allow ODC to conduct targeted ex-officio disciplinary investigations. However, ODC lacks the analytical skills and data-mining capacity needed for identification of cases.
- *Develop strategies to improve quality of disciplinary complaints filed.* ODC needs to take steps to address the issue of the large number of poor-quality disciplinary complaints being filed. This could include the creation of junior disciplinary counsels who will do preparatory work for senior disciplinary prosecutors or the creation of a network of NGOs that will provide legal advice to those who would like to file a disciplinary report. ODC requires additional expertise in analytical skills and data-mining that will enable identification of cases in the CMS/TCMS databases as the basis for initiation of disciplinary investigations. (Cross-references: Hi7)

Assessment Question 2–2

(AQ2-2) *To what extent are these issues addressed by current projects/interventions implemented by international and/or local organizations?*

Donor Assistance – Recently Finished, Current, and Soon-to-Start Projects

There is a two-decade history of international donors providing assistance to judicial institutions in BiH. In the last 10 years, the BiH judiciary's financing was heavily dependent on donor assistance, which supported technical assistance, purchase of equipment, reconstruction of buildings and, more recently, salary payments for prosecutors and support staff. Almost all donors present in BiH currently have implemented or previously implemented projects in the BiH justice sector. This includes USAID, USG Agencies, EU, OSCE, and the embassies (or their development agencies) of Norway, Sweden, the Netherlands, Switzerland, the UK, and Italy. The Assessment team conducted KIIs with all major donors. Annex II provides USAID/BiH with all information on donor projects collected by the Assessment team.

The Assessment team was not presented with documentation mapping current interventions in the BiH justice sector and found that individual donors have limited knowledge about what other donors are doing. Almost all donors interviewed expressed the view that the HJPC is not coordinating donor efforts well. HJPC was asked to initiate donor coordination meetings. However, donors did not feel that the last meeting, held in June 2018, was productive. The lack of coordination causes significant overlap and forces donors to engage in burdensome alignments and restructuring of their already approved projects. To that end, HJPC issued an instruction obliging all donors to obtain HJPC's consent before initiating new BiH judiciary projects. However, even after that decision, there have been instances where project approvals were granted to donors without the knowledge of other donors operating in the same area. While coordination has been limited, all donors expressed strong support for these efforts. In a KII with the Italian Embassy, there was a particularly strong willingness to discuss, cooperate, and unite resources with other donors.

Through a review of data from KIIs and available online project documentation, the Assessment team found there are a significant number of donor projects present or planned in the BiH justice sector. Many of these new projects recently began activities related to processing corruption and economic crime (often using different terminology for planned activities).

To provide USAID/BiH with an overview of the current status of donor assistance in the BiH justice sector, the Assessment team created a matrix presenting all identified projects, their duration, and principal activities mapped against their beneficiary institutions. The matrix is provided in Exhibit 18, and details on each donor project are provided in Annex II. Through this mapping exercise, the team was able to identify 23 projects operating in and around the BiH justice sector. The activities are not all directed toward courts, POs, and HJPC. Among them are projects related to law enforcement agencies, Civil Society Organizations (CSOs)/NGOs, and other government institutions (i.e., SAI, the Agency for Forfeiture of Assets). However, almost all are related to prosecution of corruption, economic crime, organized crime, and other serious crime, requiring engagement with courts, POs, and HJPC. This matrix shows that the BiH justice sector receives a substantial amount of technical assistance, but it also shows a number of overlapping activities and projects.

Our analysis identifies that the activities under the current USAID JA intervention are also proposed and approved as part of EU assistance. Specifically, currently planned activities in Year 5 of JA overlap with the activities of the HJPC EU-financed project (9th phase) and the EU4Justice project. Additionally, as EU and other donor projects do not make a clear distinction in their activities between work with courts and

POs and work with law enforcement agencies, other USG agencies may experience overlapping of their planned activities with some of the new projects.

Through analysis of KII data, the Assessment team found that POs agree that donor projects sometimes operate in silos and that current coordination activities are of limited productivity. KIs in POs stated that they sometimes experience situations in which they are overburdened with trainings provided by different donors that are not inter-connected. During a KII, an HJPC representative concurred that there are overlaps between different donor projects. A few POs mentioned that they would benefit from better coordination between projects (USAID, SDC, the United Nations Development Programme [UNDP], the Center for Education of Judges and Prosecutors) as there are many parallel activities in projects implemented by international organizations and the Judicial and Prosecutorial Training Centers (JPTC).

Based on our review, we conclude that a significant number of international projects were designed or operate without adequate coordination mechanisms, leading to overlapping activities, particularly in trainings delivered. There is a need to systematically coordinate activities. As there is no record of a local institution taking an active role in this coordination, there is a need to assist HJPC in efficiently leading donor coordination. HJPC has taken some initial steps, but these activities need to be reinforced through systematic collection of information, mapping of donor activities, and directing the design of new projects.

Assessment Question 3

(AQ3) What are the identified gaps and windows of opportunity in terms of needs for further technical assistance? What are the recommendations to the Mission in terms of further programming in the justice sector?

To develop recommendations for the USAID Mission, the Assessment team first carefully identified the environmental factors in which the BiH justice sector operates and issues that surround the work of the courts, POs, HJPC, and law enforcement and other governmental agencies in BiH. These findings were paired and re-organized to map the current needs of the BiH justice sector. Next, the Assessment team matched identified needs of the BiH justice sector to available information on present and soon-to-start donor-assistance projects to establish areas in which overlap with other donor projects can be avoided. Finally, as learned from KIIs with USG agencies, addressing issues of corruption is a top priority for USG agencies. Therefore, we isolated the corresponding needs of the BiH justice sector that further USAID assistance could support.

Throughout this process the key challenge was identifying activities in which other donors are or will be engaged. Bearing in mind that some of the major EU-financed projects working on issues of corruption and organized crime will begin only in Fall 2018, it will be necessary to obtain additional information from those projects once they begin to prevent overlap of activities. Additionally, it is highly advisable that USAID/BiH obtain and review the EU peer-review recommendations for the fight against corruption, which were not available to the Assessment team.

Recommendations for USAID/BiH

Taking all these issues into consideration, the Assessment team provides the recommendations below relating to AQ3.

USAID assistance directed toward better processing of the most complex high-profile corruption and organized crime cases should:

R1: *Focus on a select number of POs, mainly specialized POs and major Cantonal POs (absent the establishment of the Special Department of PO FBiH), and provide assistance in processing the most complex corruption and organized crime cases. In the event of the establishment of the Special Department of PO FBiH, the assistance should be re-focused from the Cantonal POs to the Special Department of PO FBiH. Within selected courts and POs, individual judges and prosecutors should be identified to work on the most complex cases, and technical assistance (TA) should be provided directly to them.*

R2: *Provide expertise (i.e., in forensic accounting and cybercrimes) and advisory support (i.e., prosecutors experienced in conducting investigations) to selected POs in the most complex cases. This could include special financial assistance to overcome constraints of local budgets to efficiently process the most complex corruption and organized crime cases.*

- R3: *Work with the HJPC to formally implement a procedure for determining the most complex corruption and organized crime cases, and identify them as priority cases for both POs and the courts. Additionally, the HJPC needs to adapt regulations on the work performance of judges and prosecutors to accommodate undisturbed work on these cases by individual judges and prosecutors.*
- R4: *Simultaneously work with the courts where the most complex corruption and organized crime cases are being tried in order to introduce processes such as preparatory hearings, setting trial agendas, and expediting trials.*
- R5: *Synchronize activities with the activities of the International Criminal Investigative Training Assistance Program (ICITAP), which could direct the police in conducting effective investigations into the most complex corruption and organized crime cases. In cooperation with ICITAP, formal training could be offered by prosecutors to the police officers.*
- R6: *Continue and reinforce delivery of training for prosecutors working on the most complex corruption and organized crime cases. Training for judges adjudicating those cases should also be introduced. The training should continue to be a flexible combination of on-site and off-site training. It should include training abroad and exchange visits with specialized courts and POs in the region.*
- R7: *Enable dissemination of good practices from the selected POs working with USAID support on the most complex cases to all other lower level POs. Training organized for the lower level POs should be conducted by the frontline prosecutors from the selected POs working on the most complex corruption and organized crime cases. When justifiable, in-country study visits to POs with best practices could be organized.*
- R8: *Facilitate establishment of judicial standards and sanction policy among the second instance courts through creation of a new forum. Once the new judicial standards and sanction policies are agreed upon at the level of the second instance court, facilitate their dissemination to first instance courts and corresponding POs at the Cantonal/District level.*
- R9: *In order to support the work of forums established within the previous recommendation, help establish a functional exchange of information of interest on setting judicial standards and sanction policy by providing TA in preparation of judgments and legal points of interest for discussion. POs and first instance courts should be invited to bring particular legal issues encountered in their work for which they deem that clarifications are needed to the attention of the established forums of the second instance court.*
- R10: *To forums established at the level of second instance courts and at the level of first instance courts, in addition to presently existing Collegiums, present data on processing corruption, economic crime, and organized crime cases and institute a monitoring mechanism for improvements in achieved results. In addition, forums of the second instance courts should carefully examine deteriorating performance and mitigation measures to reverse current trends in all appeal case types.*
- R11: *Continue periodic collection and analysis of administrative data as well as perception data for both the public and judicial professionals. Use these data as a source of quality information for observing trends in the BiH judiciary and informed decision making. Present such unbiased information to decision makers in the BiH judiciary to bolster improvements in their informed decision making.*
- R12: *In conducting activities from R1–R11, coordinate actively with the HJPC and Standing Committees for Efficiency of Courts and POs.*

R13: *Provide TA to HJPC in mapping and tracking donor-financed projects and their activities.* Moreover, in close cooperation with HJPC, support HJPC in detecting and defining the needs of the BiH justice sector and help HJPC to redirect current donor projects and set requests in advance for new (donor) projects in their early phases of design.

USAID assistance directed toward the prevention of corrupt behavior in the BiH justice sector should:

R14: *Provide ODC with TA in analytical skills and data mining in the identification of cases.*

R15: *Provide TA to ODC in re-designing its workflow by decreasing the percentage of disciplinary reports filed that are of low quality.* Options to be examined could include the introduction of a front-desk with junior disciplinary counsels for initial examination of filed disciplinary reports or the creation of a network of non-governmental organizations (NGOs) that could provide legal aid to those willing to file a disciplinary report.

R16: *Provide TA to HJPC in examining the current quota system and its connection to the number of disposed cases and inflows.* TA should also assist HJPC in automating vital performance indicators from administrative data, such as quotas for judges and prosecutors, the success rate of first instance decisions, and the success rate of indictments and disciplinary proceedings.

R17: *Continue supporting HJPC in the implementation of Integrity Plans.* TA should include expertise needed for particular issues in the Integrity Plans, assistance in designing a monitoring tool for tracking implementation in all judicial institutions, and drafting of regulations to address identified risks in judicial institutions.

R18: *Continue supporting HJPC in asset declarations of judges and prosecutors by helping establish, train, and equip a unit that will be tasked with discovering undeclared assets.*

R19: *Continue to help HJPC in building consensus forums with state institutions and agencies.*

R20: *Help initiate visits of HJPC members to individual courts/POs and discussion forums between HJPC members and members of the professional community on issues that concern judges and prosecutors.*

R21: *Organize the regular exchange of information on internal and external activities of USG agencies and other donors working in the BiH justice sector.*

Assessment Question 4

(AQ4) Is there a need or potential benefit of continuing direct assistance to the HJPC in some of the significant areas of HJPC's mandate or were these sufficiently improved over the past decade?

In order to assess needs for continuation of direct assistance to the HJPC and to establish if HJPC has sufficiently improved over the past decade supported by donor assistance, the Assessment team collected data through KIIs, examined activities of other donor projects targeting HJPC, and reviewed available international reports.

Many KIs stated that HJPC is a much-needed institution and a guarantor of judicial independence in BiH. While KIs noted the need for improvement in HJPC's work, no major transformation or shifts in HJPC's competences were mentioned by members of the judicial community. Most KIs favor the continued allocation of donor assistance and technical aid to individual institutions in coordination with the HJPC.

As presented in the previous sections, donor projects will continue to work directly with HJPC and provide various types of technical assistance. This aligns with a number of EU requests regarding the role of the HJPC in the process of BiH's accession to the EU. HJPC is seen as the major partner of the EU peer-review missions and is expected to be a lead institution in transferring peer-review recommendations into fully implemented and workable solutions in the BiH judiciary. At the same time, there are no requests to change the competence or mandate of HJPC. This indicates that HJPC is still seen by international organizations as a lead institution operating in the BiH justice sector, while needing to improve in its core competences.

Numerous concerns were expressed by frontline prosecutors and judges through KIIs in terms of appointments, performance monitoring and evaluation, career advancement, and disciplinary proceedings, all of which are among the core competences of the HJPC. HJPC is competent to introduce (and impose) by-laws, regulations, and tools that can help prevent possibilities of corrupt behavior in judicial institutions in the medium to long run. However, the HJPC lacks technical expertise and experience in these areas. Either such expertise is not available in the country or local budget limitations do not allow for the engagement of local experts. Due to such constraints, donor technical assistance is the only option for further improvements in the work of HJPC.

Conclusion. The BiH judiciary is still in the process of meeting EU standards and requirements. HJPC is seen as a lead institution for the introduction of required changes in the courts and the POs in BiH. Previously offered technical assistance to HJPC forms the basis for achieving a higher level of compliance with EU standards and requirements as HJPC's role and authority is recognized and supported by judges and prosecutors.

Recommendation. We highly recommend that USAID continue providing technical assistance to the HJPC to help prosecutors and judges better perform their responsibilities. Furthermore, as to introducing new tools and practices, a top-down approach from the HJPC to the courts/POs is most viable. Therefore, it would be particularly difficult to achieve the same level of implementation in all courts/POs if technical assistance were not provided to the HJPC and work continued with individual courts/POs only.

ANNEXES

ANNEX I: EXECUTIVE SUMMARY OF THE JEI-BIH 2017 REPORT

This report presents the calculation and results for the 2017 Judicial Effectiveness Index of Bosnia and Herzegovina (JEI-BiH). Data for the 2017 Index were collected using the same methodologies as in 2015 and 2016. The research team used three sources of data to derive a holistic estimate of the BiH judiciary's effectiveness: (1) a survey of BiH public perceptions, (2) a survey of BiH judges and prosecutors, and (3) the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) administrative data on the major case types processed by the first instance and second instance courts, and prosecutors' offices (POs). A survey of public perceptions in BiH was conducted in the last quarter of 2017, while the survey of judges and prosecutors was conducted in the second quarter of 2018. The HJPC administrative data cover cases processed from January 1 through December 31, 2017.

Based on all processed data, across a total of 146 indicators, the 2017 Index value is 57.09 points; this represents a 0.54% improvement in the effectiveness of the BiH judiciary relative to 2016 (representing a 0.31 index point improvement in the overall Index value). The values of two of the five dimensions of the Index (Efficiency and Quality) improved compared to 2016; one (Accountability and Transparency) decreased, while the other two (Capacity and Resources, and Independence and Impartiality) were mainly unchanged. Data from three sources contributed to the 2017 overall result. While indicators sourced from HJPC administrative data had very similar overall values and minimal increases compared to 2016, indicators sourced from the survey of public perception and the survey of judges and prosecutors moved in the opposite directions from one another. Public perception continued to improve, judges' and prosecutors' perception worsened compared to 2016. Overall, these changes balanced out and produced a minor positive change in the Index value.

As in 2015 and 2016, the media remained the prime source of information available to the public about the BiH judiciary in 2017. Although neither the structure of the information sources available to the public nor the level of public perception of the media selection and presentation of court cases and investigation changed, the public perception of judiciary effectiveness in 2017 relative to 2016 improved by 7.85%. Despite this clear improvement, however, the public perception of judiciary effectiveness continues to be poor—37.19% of a total of 100%, which would represent the maximum level of satisfaction of all citizens on all questions asked. Citizens are still the most dissatisfied with time needed to dispose cases in both courts and POs, adequacy of court taxes/fees, fees of attorneys/notaries and salaries of judges/prosecutors. Although there is an overall positive change in public perception, there are several indicators that saw a negative change in 2017 compared to 2016. Given that the fight against corruption is one of the the most pressing issues and a top priority for the governments and citizens of BiH, negative changes in indicators related to trust in judges to conduct court procedures and adjudicate cases impartially and in accordance with the law, trust in prosecutors to perform their duties impartially and in accordance with the law and the extent to which the court system is affected by corruption in this country are not encouraging and require the attention of all stakeholders.

Based on 559 respondents to a survey of BiH judges and prosecutors (38% of all judges and prosecutors in BiH), the perceived effectiveness of the BiH judiciary in 2017 relative to 2016 declined by 1.91%. Judges and prosecutors perceived that the following declined the most substantially between 2016 and 2017: the time needed to dispose cases in courts; efficiency of judges'/prosecutors' appointments; monitoring of judges' work performance; initiation of, fairness of, and sanctions rendered in disciplinary proceedings; assignment of cases to judges; and judiciary effectiveness in combating corruption. Despite the overall negative change in judges'/prosecutors' perception of the BiH judiciary's effectiveness in 2017 compared to 2016, the perception of judges/prosecutors is much higher than the public perception, at 60.28% of a total of 100%, which would represent the maximum level of satisfaction of all judges/prosecutors on all questions asked.

There was no substantial convergence between the perceptions of the public and those of the judges/prosecutors in 2017. Significant differences remain and were mostly unchanged compared to the results in 2015 and 2016. A comparison of the negative annual changes in indicators that appear in both the public's and judges' and prosecutors' perceptions reveals that 4 out of 7 indicators that saw a decline relate to areas relevant to the prevention of corruption. It is worrisome that both groups perceive a worsening in the prevention of corruption at a time when addressing corruption is of the highest importance to society and the state.

The HJPC administrative data on processing the main types of cases in courts and POs revealed a slight improvement, 1.07%, in 2017 compared to 2016. On average, the work of courts and POs did not change much compared to the findings in 2016. First instance courts made some improvements in the duration of case dispositions in enforcement cases (of both civil and commercial court decisions) and in commercial cases, with further reductions of their backlog in all case types except utility cases. Although some improvements in clearance rates occurred, negative trends in second instance courts have continued. The clearance rate of all PO case types was close to or above 100% in 2017, and further improvements are noticed in general crime cases. Although the clearance rate of 96% for corruption and economic crime cases, noted as an issue in 2016, improved, the average disposition time for these two type of cases increased in 2017. In addition, the age of unresolved corruption cases (backlog) increased.

Judicial instances at all levels in BiH should continue with efforts to shorten the average case disposition time and the age of cases, and thus decrease case backlog. Negative trends detected at second instance courts highlight the need to undertake remediation measures. The priority given by the local judicial institutions to processing corruption and economic crime cases creates an expectation of further improvements in all indicators related to these type of cases. Courts and POs should take advantage of the general trend of reduced case inflow to improve indicator values in all aspects of judiciary efficiency. HJPC should make efforts to automate collection of administrative data in real time. Reliable and up to date data are vital for making informed decisions, however, data that is currently collected manually (i.e. collective quota of judges and prosecutors, confirmation rate of first instance court decisions and success rate of indictments) has a substantial time lag.

For each perception indicator coming either from the survey of the public or the survey of judges and prosecutors, the reasons for low values need to be identified and targeted corrective measures taken.

ANNEX II: CURRENT AND PLANNED DONOR PROJECTS IN BIH JUDICIAL SECTOR

U.S. Agency for International Development (USAID)

Justice Activity (JA)

Value: 9,500,000 USD

Duration: September 2014 – September 2019

Implementer: A consortium led by MDI Development Partners Inc. and including a local company LucidLinx

Principal activities. Preserving the independence of justice sector institutions through greater self-accountability (and external accountability mechanisms such as CSOs); Moving key justice sector institutions from the planning and standards-development stage to actual improved performance based upon results analysis; Strengthening the management and decision-making practices of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and Prosecutor Offices (POs) so that resources are available to fight corruption and other serious crime; Supporting on-site knowledge and skills application by frontline prosecutors and police handling corruption cases so that they work as a team and network across jurisdictions; Building consensus for key reforms within the justice sector and standardizing cross-jurisdictional cooperation between state, entity, and local actors; Using diagnostic studies to inform major policy solutions that improve system-wide performance and lead to strategies that will effectively fight corruption; Increasing public confidence in the justice sector through professional regulation, accountability, and transparency.

The Anti-Corruption Civic Organizations' Unified Network (ACCOUNT)

Value: \$3.35 million USD

Duration: July 2015–July 2019

Implementer: Center for Media Development and Analysis, and INFOHOUSE

Principal activities. ACCOUNT builds on the previous project's success in putting public pressure on the BiH Government to implement anti-corruption reforms required for Euro-Atlantic integration. The project works on strengthening collaboration and cooperation to increase civil society participation in anti-corruption initiatives and reforms. Specifically, ACCOUNT follow-on activities focus on:

- Public advocacy on anti-corruption legislation that will protect whistleblowers and prevent or sanction corrupt behavior in selected sectors, including public procurement, public sector employment, health and education.
- Civic monitoring and evidence-based research on corruption in these sectors.
- Increased public awareness through targeted media campaigns and investigative reporting to stimulate civic participation.
- Legal assistance to whistleblowers and victims of corruption.

Other U.S. Donors

United States Department of State (USDS), Bureau of International Narcotics and Law Enforcement Affairs (INL), International Criminal Investigative Training Assistance Program (ICITAP), and the Office of Overseas Prosecutorial Development Assistance and Training Program (OPDAT)

Principal activities. INL coordinates work of ICITAP and OPDAT. ICITAP is oriented toward work with law enforcement agencies, while OPDAT is oriented toward work with judges and prosecutors. Each of these has its own activities and projects. Among INL's prime objectives in BiH is fighting corruption. To that end, INL works with OPDAT and ICITAP to improve cooperation of police and prosecutors in conducting proactive investigations.

OPDAT provides a week-long seminar for judges and prosecutors in September 2018 in forensic accounting. That same training was already held in the past. OPDAT will continue delivering training to judges and prosecutors. INL is financing OSCE's monitoring of processing corruption-related cases.

“Building Forensic Accounting Capacity in Bosnia and Herzegovina”

Duration: anticipated to begin in early autumn 2018, and should last for three years

Value: \$600,000

Implementer: TBD – (NGO)

Principal activities. This project will be directed toward providing a forensic accounting certification program in BiH. The current lack of trained forensic accountants hampers government and private-sector efforts to detect and combat fraud, thereby undercutting efforts to support the rule of law. The program will use internationally accepted standards and curricula and emphasize practical, hands-on training to provide the training and certification of government accountants, including within taxation agencies and law enforcement to enable them to become certified forensic accountants. Developing forensic accountants in BiH will help combat fraud and corrupt business practices; combat domestic and transnational organized crime; support prosecutors, judges, and defense attorneys in their work; help counter endemic corruption; and increase citizens' trust in their justice system.

European Union (EU)

EU4Justice – Support to the Fight against Organized Crime and Corruption in Bosnia and Herzegovina

Duration: Initiation forecast for autumn 2018 with two-year duration

Value: EUR 2,200,000

Implementer: TBD

Principal activities. Strengthening supervision and control in prosecutors' offices (POs), which will include conducting an analysis of mechanisms for complaints against prosecutorial decisions and procedures to address them; supervision mechanisms monitoring the prosecutors' decisions in POs in order to identify systemic shortcomings and control deficiencies and to increase transparency. In addition, the project will strengthen the use of existing provisions and mechanisms, if any, for internal monitoring to enhance the efficiency of POs where a focus will be on measures that do not require substantial law changes. The project will analyze the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organized crime in BiH versus the Consultative Council of European Prosecutors (CCPE) Opinion No. 11 (2016) and provide support for implementation of selected recommendations, such as the general complaint mechanism concerning prosecutors' work. Additionally, the project will assess the situation on possible unjustified reallocations of cases in courts and POs

(CMS/TCMS), in particular as regards organized crime and corruption cases and suggest countermeasures, if evidentially needed. The project will also develop a plan to address excessively long criminal investigations and court proceedings that hamper efficiency and are in breach of the right to a fair trial within a reasonable time. Finally, within this component the project will provide an analysis of standards in EU Member States for immunity-granting and plea-bargaining and provide targeted proposals for law amendments.

Strengthening capacities, resources, and the independence of the Office of the Disciplinary Counsel (ODC), which will include: presentation of best EU practices regarding capacities, craft skills, knowledge, and qualifications of staff conducting disciplinary proceedings of judges and prosecutors in EU Member States; definition of fundamental job characteristics and requirements and set them as a baseline for a Training Needs Analysis (TNA); development of a profile of qualification for ODC staff and panel members; conduct of a gap analysis between the profile of qualification with existing skills and knowledge of ODC staff and panel members and design on this basis initial and specialized training modules in cooperation with the Centers for Education of Judges and Prosecutors in the entities; development and implementation in coordination with other donor projects of a concept to address the recommendations of the TAIEX Peer Review on Disciplinary Procedures in the Judiciary (JHA IND/EXP 62879), taking into account the measures already elaborated by the HJPC and other relevant institutions.

Joint trainings in an interdisciplinary fashion to better respond to organized crime, corruption, and the most common forms of commercial crimes (privatization of companies, tax evasion, tax fraud), which will encompass the following: presenting best practices from EU Member States in investigating and countering the above-mentioned forms of crimes, including the role of audit offices, delivering joint case-based trainings to LEAs, prosecution service and judiciary and compare investigation approaches in BiH with standard operating procedures (SOPs) in EU Member States; training selected law enforcement staff, prosecutors, judges specialized in commercial crimes in economics, particularly in reading financial statements and auditor reports; drafting a manual on investigating most common forms of commercial crimes, including the use of auditors' reports as a source for investigations, taking into account any existing material; provide explanation of a proper use of the existing legislative framework in investigations, including special investigation means (SIMs), to achieve better results in fighting organized crime and corruption; and organize separate trainings for court experts on craft skills and their role in court proceedings.

Improve current practice and results in forfeiting criminal assets with the following key activities: conducting an analysis as regards the efficient implementation of the applicable laws on confiscation of criminal assets with a focus on the initiation phase and obstacles to execution; assessing infrastructure and means available to Asset Recovery Offices (AROs) at the entity level; identifying needs with a particular focus on information technology requirements; presenting the identified shortcomings to relevant authorities on all level of governance and propose situation-specific solutions for discussion (administrative assistance, inter-agency cooperation, increased resources, revised and streamlined procedures, etc.).

Tracking mechanism improving mutual access to criminal case files by law enforcement agencies, prosecutors' offices, and courts, which include presentation of best practices from different EU Member States on tracking crime cases from police to court, in particular cases of organized crime and corruption; outlining a concept to improve the electronic workflow and exchange of information among police—prosecutor offices—courts based on the existing IT infrastructure and conduction of a pilot project to test the concept's viability in practice.

It is already predicted that this project will have a follow-up. The working name of the follow-up project is “EU Justice II Phase,” which should run from September 2020 to September 2022. The implementer will be an EU Member State with a value TBD. Activities planned within the follow-up project will include:

- Follow-up activities related to next ‘peer-review’ mission recommendations.
- Activities related to recommendations coming from the Stabilization and Association (SAA) framework.
- Activities related to recommendations coming from EU Annual Country Reports.
- Support to the implementation of measures of the future Justice Sector Reform Strategy.

Support to Implementing Anti-Corruption Strategies in Bosnia and Herzegovina

Duration: 2 years starting in June 2018

Value: EUR 750,000.00

Implementer: TBD

Principal activities. These will be related to effective coordination and monitoring of the implementation of anti-corruption strategies and related action plans with a harmonized approach, as well as to better address corruption in the private sector and to improve communication toward media and citizens. Key activities will encompass:

- Strengthening implementation, coordination, monitoring, and evaluation of anti-corruption policies (anti-corruption strategies, action plans, etc.) and legislation.
- Capacity building, including training, on prevention of corruption in both public and private sectors.
- Capacity building, including training, on communication and awareness-raising in the context of countering, meaning preventing and fighting corruption.

Note: it was a preceding EU project “Capacity Development for Prevention of Corruption,” which provided support to implementation of the Strategy for the Fight against Corruption 2015–2019 and its Action Plan through completion of the strategic framework for the fight against corruption. Its value was EUR 197,920.00 and it was implemented by ALTAIR ASESORES SL.

“9th Phase of Financing of HJPC Projects”

Duration: September 2018–September 2021

Value: ca. 6,000,000 EUR grant

Implementer: HJPC Secretariat with local employees and one international senior legal expert deployed to the Council.

Principal activities. Activities planned include:

- Capacity building in POs (at least 10 POs)
- Providing technical expertise in economics to POs (11 economics experts to be seconded to POs)
- Support to POs and Courts in economic crime and commercial law cases
- Alternative Dispute Resolution activities
- Harmonization of Case Law activities
- Providing an IT solution for work of ODC
- Asset-declaration-related activities
- Improving management skills of Court Presidents and Chief Prosecutors
- Introduction of strategic planning in courts
- Activities related to improving PR relations of judiciary with public (training for PR officers in judicial institutions, review and improvements in web presence)

- Confiscation of assets
- Purchases of various equipment (ICT, etc.)
- Activities related to follow-up on 'peer-review' activities

Note: The Assessment team did not obtain this information from HJPC. All details presented here were learned through an interview with EU representatives and, as such, were confirmed in e-mail follow-up correspondence.

EU Twinning Light Projects

“Twinning Light Projects” is an EU platform for transferring specific expertise from selected institutions in an EU country to a counterpart in the recipient country, which is in process of EU accession. These projects are usually two years long. As the Assessment team learned from the representatives of the EU in BiH, there have been recently finished, ongoing, and soon to start “Twinning Light” projects, including those listed below.

Twinning project “Anti-money laundering”

Duration: 2017–2019

Value: 2,000,000 EUR

Implementer: EU MS consortium (Austria in lead with Slovenia)

Principal activities. In the twinning project in support of the fight against money laundering, emphasis will be placed on implementation of the Financial Action Task Force (FATF) recommendations and the functioning of the Financial Intelligence Department, in cooperation with other relevant institutions. Special components will also continue to support the structures for forfeiture and seizures of criminally gained assets and financial investigations, including the prosecutors and judges for proceedings related to financing of terrorist activities, money laundering or other financial offenses. Complementary supplies of IT equipment and software will also be provided (IPA 2013 - EUR 500 000).

Twinning project “Strengthening law enforcement”

Duration: 2016 initiation and ending in 2018, but possibility of follow-up

Value: 4,500,000 EUR

Implementer: EU MS consortium (Austria in lead with Croatia and Slovenia)

Principal activities. This twinning project was a comprehensive program for the law enforcement agencies, which included work on organized crime, cooperation between police and POs, and IT solutions. More specifically, it included:

- Professional standards in the police services
- Modern human resource management (HRM)
- Police training for cadets and students and ongoing professional training
- Investigation and prosecution capacities and relevant cooperation mechanisms (in particular exchange of intelligence)
- International police cooperation (implementation of the Europol operational agreement)
- Acquis harmonization process in the area of law enforcement (Chapter 24)
- Strategic planning capacities within law enforcement agencies (in view of future budget support)
- Special investigation techniques

“Integrity through Justice: Independent Civil Society Monitoring and Assessment of Judicial Response to Corruption”

Duration: 12/15/2015–12/14/2018

Value: EUR 210,321.33

Implementer: Analitika Center for Social Research, Balkan Investigative Reporting Network (Birn)

Principal activities. These include strengthening CSOs’ capacity to assess the effectiveness of judicial response to corruption and advocate for targeted and measures and reforms aimed at enhancing that response.

A project referred to in KIIs as the “EU War crime project”⁵⁶

Duration: ending in 2019

Value: n/a

Implementer: HJPC and training through OSCE

Principal activities. These include direct payment of salaries for prosecutors and staff working on war crime cases in POs.

A project referred to in KIIs as the EU Regional Project “Serious Crime”

Duration: 2017–2019

Value: IPA regional project

Implementer: GiZ / Italy

Principal activities. KIIs briefly referred to this project. Our KI counterparts were not able to provide details on this project except mentioning that within this regional project an Italian police officer is in SIPA/ DPC and a Slovenian prosecutor is seconded in PO BiH. Both have advisory roles.

A project referred to in KIIs as a Project with APIK and other anti-corruption agencies

Duration: September 2018 – 2020

Value: 750,000 EUR

Implementer: TBD

Principal activities. Activities planned are related to the prevention of corruption in all branches of government, toward the private sector and awareness raising on the negative effects of corruption.

In addition, the EU is forecasting the “Enhance the quality and safety of information exchange among LEAs in BiH”⁵⁷ project, which will ensure that its law enforcement agencies are independent, efficient, and accountable and have the capacity to fight corruption and organized crime in line with EU standards and practices. The intended timing of publication of the contract notice was April 2018; it has not yet been issued. This project will work on building a police IT Information Management System and supply needed hardware and support software.

⁵⁶ The assessment team was not able to identify this project on the official web site of the EU <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&nbPubliList=15&orderby=upd&orderbyad=Desc&searchtype=AS&pgrm=&finpub=&ZGEO=35368&debpub=>

⁵⁷ The assessment team succeeded in identifying a projected EU project “Enhance the quality and safety of information exchange among LEAs in BiH” available at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?ADSSChck=1536050111680&do=publi.detPUB&searchtype=AS&zgeo=35368&aoret=36539&debpub=06%2F05%2F2016&orderby=upd&orderbyad=Desc&nbPubliList=15&page=1&aoref=139465>

Italy

A project referred to in KII as the “Bilateral project providing assistance to HJPC”

Duration: 3 years starting in 2019

Implementer: Italian High Judicial Council (Anti-Mafia Department)

Principal activities. Activities include:

- Establishing cooperation between the HJPC and the Higher Judicial Council (Anti-Mafia Department) in relation to organized crime.
- Exchange/training for prosecutors with the Italian Judicial School, which should bolster the skills of POs and law enforcement agencies.
- Project focus not determined, but most likely will be on: 1) quality of investigation and data collection and storage of data, as well as sharing of information when needed; 2) improving investigation of financial crimes.
- Italy is now sharing SIWA-SIDNA software with HJPC, which collects all police databases and puts information in the hands of prosecutors. The same software has been implemented in Serbia and translated into Serbian. The software is valued at approximately 400,000 Euros and 50,000 has already been spent for initial adaptation for HJPC.
- The project will have one liaison office in the Italian embassy, which will coordinate all activities, while all other activities will occur through Italian experts or visits of BiH counterparts to Italy.
- The final approval for financing of the project is not yet approved in Italy.

United Kingdom (UK)

A project referred to in KII as the “Project with BiH Court and BiH Constitutional Court”

Duration: 4 years, ending in March 2019

Principal activities. Activities tackled issues related to application of the European Convention on Human Rights and quality of verdicts in terms of preventing their overruling by the EU court in Salzburg.

A project referred to in KII as the “First phase of the project with the HJPC and BiH PO”

Duration: 2016–2018

Value: approximately 1,500,000 GBP

Principal activities. The project ended in June 2018 and a follow-up project is being developed (the second phase, presented below). The project worked on restructuring issues within the HJPC Secretariat, HJPC appointment procedures, and BiH PO (the last component had noticeable “ups and downs” due to number of issues in BiH PO).

A project referred to in KII as the “Second phase of the project with the HJPC and BiH PO”

Expected to start in autumn 2018

Duration: 3 years

Value: 1,500,000 GBP

Principal activities. The project will broadly follow peer-review recommendations related to fighting corruption. More specifically, the new project will:

- Continue to work with the HJPC Secretariat in restructuring (at approximately 30% of the project resources).
- Assist management of HJPC sessions, assist in implementation of the action plan for implementation of the peer-review recommendations, and gender issues within the peer-review recommendations.
- Work jointly with HJPC and PO BiH to implement peer-review recommendations for fighting corruption.
- Continue to assist HJPC in developing tools for monitoring and evaluation of peer-review recommendations.
- Provide assistance in relation to better cooperation between BiH PO and SIPA (police–PO cooperation) building onto the Swiss assistance establishing BiH PO and SIPA.
- Continue to provide assistance to the Court BiH with the aim of offering consolidated support to SIPA–PO BiH–Court BiH in processing cases. The Court BiH will not receive assistance in the first year of implementation.

Donor Projects Operating under HJPC

HJPC has a more than a decade-long history of hosting G2G (Government to Government) projects that work under the supervision of HJPC and the HJPC Secretariat. HJPC prefers core granting (e.g., G2G) where donors cover employee expenses as opposed to the British and USG approach to providing TA. Current donors financing projects that work under the HJPC umbrella include: Switzerland, Norway, Sweden, the Netherlands and, as mentioned previously, the EU through the 8th/9th phase of financing HJPC projects.

Switzerland/Norway

“Support to the Judiciary in BiH – Strengthening Prosecutors in the Criminal Justice System”

Duration: 12/01/2014–11/30/2018

Value: CHF 3,000.000

Principal activities. The project provides support to BiH’s authorities in shaping the prosecutorial system; in improving criminal investigations; in establishing tools for executing prosecutorial functions more efficiently, effectively, and transparently; and in fostering the public’s trust in the work of the prosecutors’ offices. This project is in its second phase. The third phase should start immediately after the end of the second phase. No information was provided on what the major activities in the third phase will be, but a major theme will be consolidation of results achieved through Phases 1 and 2.

Sweden

“Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH – Phase 2”

(partner in implementation Swedish court administration – IKEA)

Duration: 2016–2019, a 3-year project

Value: 20,000,000 SEK (approximately 5 mil. KM)

Principal activities. The general objective of the project is to improve the efficiency of the judiciary, from the perspective of the courts, by strengthening the rule of law, democracy, human rights, improving the position of vulnerable groups that access the courts, fighting corruption, providing support for managing court cases, and reforming enforcement procedures in the judicial system of BiH.

The IKEA project is focused on judicial/court efficiency based on the Swedish judicial administration model. It focuses strictly on civil cases. Pilot courts are first instance courts in Tuzla and Bijeljina, and initial results are positive. There are plans to extend assistance to six new courts. IKEA also helps further development of the System for the electronic processing of utility cases (SOKOP) system for tracking unresolved cases for unpaid utility bills. Within the project, the construction of a new data center was financed (300,000 EUR from Sweden). Within IKEA, a software for tracking asset declarations will be developed, which will be operational in 2019. In addition (as a separate project), Sweden is in group of donors (Council of Europe, European Development Bank and EU), which participate in financing of construction of the State prison.

Norway / The Netherlands

”Improving Judicial Efficiency II”

Principal activities. Partners in implementation are the Judicial Council of the Netherlands and the Norwegian Court Administration. The overall objective of the project is to increase the efficiency of the courts in Bosnia and Herzegovina through targeted interventions. The main focus of the project is to significantly reduce the number of old cases and shorten court procedures (case-processing time) for new cases by reforming and optimizing court management and governance of the judiciary.

Activities that have been implemented to achieve the project results are management of the judiciary (by HJPC BiH, courts and management of court cases by individual judges); promotion of court settlement (alternative resolution of cases); design of a more active and forward-leaning public relations strategy with the objective to enhance the trust in the judiciary; more efficient processing of utility cases; and modernization of court buildings. In addition, HJPC approved work on appointments of judges and prosecutors to the Norway / The Netherlands project.

In addition, HJPC has its own project, currently ongoing (the 8th phase) in financing of HJPC projects by the EU: **“Consolidation and Further Development of the Judicial Communication and Information System – IPA 2013”**

Principal activities. The project is working on development and implementation of the new generation of Case Management System CMS/TCMS, development of functionalities and services based on e-signature in the BiH judiciary, further improvements and adjustments to the business intelligence (BI) system, implementation of plans for solving war crime cases, improving data security within the judicial information system, and other activities to achieve the general objective of the Project.

Projects working under HJPC umbrella are organized through two major projects:

- Project directed toward strengthening POs’ capacities (SDC/Norway).
- Project directed toward court efficiency, including IKEA, Norway/ The Netherlands and EU/HJPC projects.

**MONITORING AND EVALUATION
SUPPORT ACTIVITY (MEASURE-BiH)**

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