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ECONOMIC CONSULTANTS

External evaluation of the Support to the Judiciary project, Phase 2

Final Report

Basel, 17 April 2019

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Final Report

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Abbreviations

| | |
|------|---|
| BiH | Bosnia and Herzegovina |
| CHF | Swiss francs |
| DAC | Development Assistance Committee |
| EU | European Union |
| HJPC | High Judicial and Prosecutorial Council |
| M&E | Monitoring and Evaluation |
| OECD | Organisation for Economic Cooperation and Development |
| PMT | Project Management Team |
| PO | Prosecutor Office |
| SDC | Swiss Agency for Cooperation and Development |
| ToR | Terms of Reference |

Summary

The Swiss Agency for Development Cooperation (SDC) commissioned an external review of the project *Support to the Judiciary in BiH – Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina, Phase 2* with the aim of

- assessing the project's effectiveness, impact and sustainability
- providing recommendations in terms of project performance and direction

The findings, conclusions and recommendations in this review report are based on interviews, a stakeholder workshop as well as the review of documents.

Performance: The project implementation is summarised in the following table:

| Dimension | Comments | Rating |
|----------------|--|---|
| Effectiveness | <ul style="list-style-type: none"> • Activities implemented and outputs achieved largely as planned, good project management • M&E instruments show positive results on outcome level • Interviewees identify / associate many positive results with the project • Anchorage in the HJPC, stakeholder ownership and engagement high • Gender dimension of the project can be strengthened |  Very satisfactory |
| Impact | <ul style="list-style-type: none"> • M&E instruments are inconclusive on impact level |  Satisfactory |
| Sustainability | <ul style="list-style-type: none"> • Probability of sustainability of project results is high • however: likely not in same intensity and quality |  Satisfactory |

Rating levels: Very satisfactory, satisfactory, unsatisfactory, very unsatisfactory

Recommendations: The evaluation team formulates the following recommendations, which were discussed with project stakeholders:

- Maintain the current set-up for the implementation of the final phase, yet optimise its link with the ongoing HJPC change process (“reform process”).
- Increase the project's activities towards enhancing quality of prosecutorial work and outreach to the public, whilst maintaining actions on improving efficiency.
- Consider entrusting the HJPC (or members of the project management team) with the design of the final project phase.
- Further improve the M&E framework of the project.
- Improve the project's contribution to gender mainstreaming.

1. Introduction

1.1. Background

The Swiss Agency for Development and Cooperation (SDC) in Bosnia and Herzegovina (BiH) commissioned B,S,S. Economic Consultants to carry out an external review of the *Support to the Judiciary in BiH – Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina, Phase 2* (henceforth: the project).

This report contains the findings, conclusions and recommendations of the evaluation team. Chapter 1 provides background information, explains the purpose and scope of the evaluation and the methods that were applied. Chapter 2 summarises the findings and conclusions and Chapter 3 contains the recommendations. Annexes offer supplementary information.

1.2. Scope and purpose

The evaluation covers the period of 2013-2018 and all project components.¹ In light of the project's completion by mid-2019, the purpose of the evaluation is twofold:

- assessing the project's effectiveness, impact and sustainability²
- providing recommendations in terms of project performance and direction

The evaluation findings, conclusions and recommendations shall "*serve as relevant elements for decision making and setting up*" a possible third and final project phase.

1.3. Methodology

The evaluation questions, which were set forth in the terms of reference (ToR), were further operationalised in an evaluation matrix, which defines the indicators, data sources and methods to respond to the questions (see Annex 2).

Definition of terms and concepts: As mentioned above the evaluation questions will be assessed according to the indicators in the evaluation matrix. The ToR and specifically the evaluation questions contain complex terms and concepts such as "participation", "ownership" and "anchorage". They can be defined very differently; consequently, the evaluation thereof can differ as well. Rather than defining the terms and concepts in advance, the approach chosen for this evaluation was to identify

¹ We refrain from describing the project in detail but refer to the ToR in Annex 1.

² According to the client's request, the evaluation covers only three of the five OECD DAC evaluation criteria; relevance and efficiency were expressly excluded.

notions, examples, cases etc.³ that interviewees associate with these concepts and that they deem manifested in the project.

The following methods were applied:

Document / data review: Project related documents (Project Document, annual reports draft end-of-phase report, M&E data) and other documents (see Annex 7) were reviewed to answer directly to evaluation questions but also to contextualise our findings, conclusions and recommendations.

Interviews: We carried out 16 qualitative, semi-structured interviews (most of them during the visit in Sarajevo from 3-8 February 2019). Annex 6 contains the list of interviewees.

Workshop: A half-day workshop with members of the Standing Committee for Prosecutorial Efficiency (henceforth: Standing Committee), the Project Management Team (PMT), selected Chief Prosecutors and Police Chiefs focused on i) validating preliminary evaluation findings and ii) identifying strategic priorities of potential future interventions.⁴ For details, we refer to Annex 5.

Validation / reporting: A debriefing – with SDC and the PMT attending – as well as the review of the draft evaluation report provided opportunities for scrutiny of the evaluation.

1.4. Limitations

Both quality and quantity of the information and data that were gathered allow for a solid assessment of the project and formulation of relevant recommendations. Notwithstanding, there are limitations that should be taken into consideration when reading and utilising the report:

M&E framework: Whilst the project maintains a well-developed M&E framework, it has some deficiencies (e.g. formulation of indicators; inadequate indicators; gender specific metrics) which will be discussed further below. This limits the ability for a conclusive assessment.

Bias: Most of the persons who were interviewed were involved in the implementation of the project. Biases and strategic answers can therefore not be

³ Footnotes explain the notions, examples, cases etc. in more detail.

⁴ Dženana Radončić and Adnan Kadribašić of LucidLinx, who acts as backstopper of the project, moderated the half-day workshop.

excluded.⁵ Furthermore, prosecutors who are not in senior positions were not interviewed. To address this risk we interviewed former prosecutors and other experts familiar with the judicial / prosecutorial system in BiH.

Workshop: The results of the workshop are to be understood as a first orientation and guidance for the project design of the next phase. The workshop cannot substitute a thorough project design process.

2. Findings

This chapter summarises the findings and responses to the evaluation questions 1 to 6, which address results achievement, project implementation and anchorage of the project within the High Judicial and Prosecutorial Council (HJPC).

2.1. Results

Evaluation topic 1: Overall achievement of project outcomes and objectives.

Under this evaluation topic we assess both *effectiveness* (outcomes) and *impact* (objectives) of the project by referring to the projects M&E data and interviews; furthermore we refer to earlier internal and external evaluations of the project.

M&E framework: As of September 2018, the project reports that 60% of project activities are finalised, 38% are continuous activities and 2% were dropped or suspended.⁶ Virtually all of the planned outputs are reported to have been realised. Against this background, it does not come as a surprise that all of the seven outcome indicators are on track as shown in Table 1. Conversely, the three impact indicators do not lend themselves well to assess the extent to which the project achieved its objectives (impact):

- the first indicator (number of verdicts and decisions) appears inadequate to assess prosecutorial efficiency; it is also unclear as regards to which decisions it measures
- the second indicator (citizens' trust) lacks the requisite data which is yet to be measured in a forthcoming survey

⁵ To mitigate this risk we repeatedly invited the interviewees for open feedback, we advised them to see the interview as a learning opportunity and we offered anonymity to the interviewees.

⁶ This comprises, for instance, an activity to train and "certify" journalists or to engage prosecutors more on social media platforms.

- the third indicator (implementation of measures in the Judicial Sector Reform Strategy JSRS Action Plan (JSRS)) focuses on the JSRS which, however, was reported to have gradually become less important and consequently lags implementation

Considering the above, the M&E framework does not lend itself well to measure to what extent the project will reach its objectives. Indeed, citizens' trust in the prosecutorial system, for instance, may even have deteriorated, as a result of intense public discontent with two recent cases in Sarajevo and Banja Luka respectively. Whilst these situations are beyond the ambit of the project per se, they influence its results. Conversely, whilst the project can only report implementation of half of the measures foreseen in the JSRS, it has invested its resources instead into implementing peer review recommendations as part of the European Union (EU) (pre)accession process, including the Structured Dialogue.⁷

Table 1: Level of indicator achievements

| Indicator | Score | Comment |
|--|---|---|
| Objective: Improved performance, efficiency and credibility of the prosecutorial system; accountable to citizens and fully harmonised with the EU standards and practice, and the practices ensuring the rule of law. | | |
| Increased number of verdicts / decisions in criminal cases |  | Recent data shows <i>decrease</i> of verdicts / decisions → possibly / likely the result of less criminal case reports and increase of decision not to conduct investigation |
| Growing citizens' trust in the prosecutorial system |  | Impact yet to be measured by means of an USAID funded public survey → current expectation that trust has <i>not increased</i> because of recent events that led to great public discontent |
| Prosecution service implemented successfully requirements of JSRS ⁸ and EU Structured Dialogue |  | Recent data shows that only 12 of 25 priority programs mentioned in the JSRS are addressed → however, government commitment to implementation of JSRS lags; at the same time, EU Structured Dialogue makes reference to JSRS; project focus on implementing peer-review recommendations |
| Outcome 1: Prosecutorial work continuously improves efficiency and quality, by evidence-based substantial reduction of backlog cases and increased resolving of priority cases of organised crime and corruption. | | |
| Reduced number of backlog cases in prosecutors' offices |  | Quantitative targets achieved. |

⁷ The peer review recommendations can be considered as "adjustments" to the JSRS. Consequently, the indicator should have been re-phrased / changed in the M&E system.

⁸ Justice Sector Reform Strategy 2014-2018

| | | |
|--|---|--|
| | | however, no information on <i>quality</i> or <i>type</i> of decisions |
| Reduced rate of rejected and acquittal verdicts | ■ | Quantitative targets partly achieved. mixed results regarding general vs. economic crimes; yet several positive accounts re training, police-prosecutor collaboration, strategic plans |
| Increased priority to organised crime, corruption, privatisation cases | ■ | Downward trend of pre-investigations and investigations however, possibly one-time effect due to change of practice as regards the definition of corruption cases, which led to an increase of such cases |
| Outcome 2: Coordination of the prosecutorial system is enhanced through increased performance of the Prosecutors' Strategic Body and Prosecutors' Offices are managed more effectively, in accordance with identified strategic priorities, plans and policies. | | |
| More policies re efficiency of prosecutorial work implemented by HJPC | ■ | Standing Committee proposed 40+ measures and policies towards efficiency; all adopted by HJPC; measures and policies reported to be implemented however, no quantitative targets in logical framework (logframe) |
| Improved relevant/adequate capacities of prosecutors' offices | ■ | Working conditions in most prosecutors' offices reported to have improved; temporary deployment of "legal assistances" increased number of staff / decreased workload of prosecutors on average However, partly one-time effect b/c temporary deployment of "legal assistances" |
| Outcome 3: Citizens benefit from enhanced quality of services, improved accountability and overall care for the users of prosecutorial service as enshrined in adopted relevant strategy | | |
| Strategic and operational framework | ■ | Strategy adopted, activities implemented |
| Standardised framework for quality / intensity | ■ | Implementation in all POs; innovative assessment framework for public information, communication, transparency |

Score: Dark green: indicator on track, no reservations / deviations; Light green: indicator on track, minor reservations / deviations; Red striped: indicator not on track, major reservations / deviations but indicators partly inadequate; Grey: no data available at present; scores express opinion of evaluators

Source: Logical framework, September 2018

Interviews: The interviewees commonly stated that the project excelled and that their expectations were fully met, specifically as regards the first and second com-

ponents of the project. The interviewees perceive positive effects on several dimensions, including the reduction of the case backlog;⁹ increase of technical and managerial capacity of prosecutors as a result of project sponsored training in the Judicial Training Centre, mentoring, collaboration with the team of the Office of the Public Prosecutor of the Canton of Zurich and other capacity building measures; improved collaboration between prosecutors and law enforcement bodies thanks to strengthened cooperation mechanisms at strategic and operational level. The feedback regarding the interventions aiming at enhancing citizen's trust is mixed. Relevant strategies were adopted and activities are being implemented it has yet to be seen how and to what extent these measures register effects.

For more details on the performance in each of the three components, we refer to Annex 3.

Previous evaluations: Positive results were reported at mid-term of the project both in an internal evaluation¹⁰ as well as in an evaluation commissioned by the Norwegian government.¹¹ In the latter report, the authors state, *inter alia*, that

- prosecutorial efficiency has increased as a result of the project
- the number of backlog cases and old cases decreased significantly
- quality of prosecutors' work, as measured by the project, slightly increased
- police and prosecutors cooperation improved
- the project can take credit for the creation of the Standing Committee

The internal report alludes, overall, to a comparatively higher performance of the project compared with two other Norway funded projects. At the same time, the report identified areas that would merit additional reforms and efforts, specifically as regards the quality of prosecutorial work, reorganisation of the prosecution service, modernising prosecutorial administration and processes, as well as police-prosecutor cooperation.

Evaluation topic 2: Performance of the project in terms of project organisation and project management.

⁹ The temporary deployment of supplementary "legal advisors", who assisted the prosecutors in their casework, was in this context considered by several of our interlocutors as the most immediate and consequential support.

¹⁰ Conclusions of mid-term evaluation of the project "Strengthening the role of prosecutors in the criminal justice system", Lucid Linx, 8 May 2017

¹¹ Review of Norwegian Support to the Judicial Sector in Bosnia and Herzegovina, Final Report, LucidLinx, 30 October 2017

Under this evaluation topic, we assess *implementation issues*, mainly based on the information obtained in interviews.

Project organisation: The project is one of currently nine externally funded projects to support the HJPC in delivering on its mandate. It is implemented by the HJPC and managed by a team of six professional staff, one assistant and one financial officer. Mandating the HJPC and embedding the management team into the HJPC structures has proven to be viable already in the first phase in terms of planning, execution, monitoring, reporting and motivation, which can be concluded for the current phase too.¹² All interviewees share the view that the set-up has several advantages in terms of effectiveness and efficiency, such as the proximity to the project stakeholders or the possibility to access all official data systems of the HJPC. This is also expressed by the fact that the project team is contracted by the HJPC and that salaries align with those of permanent staff members; that the project reports to both the Secretariat and the Standing Committee; or that project manager attends the Secretariat's senior staff meetings. The management team specifically values that it is "at the source of the action" and that the positioning adds legitimacy to the project. The project manager, the director of the Secretariat and the deputy chairperson of the Standing Committee share the view that the project has the same "standing" as the official departments.¹³

Project management: The project implemented activities according to the project document (ProDoc) and the delivery of the activities unfolded largely as planned, without experiencing significant delays. This was also confirmed by the interviewees both within and outside of the HJPC. Interviewees describe the management team as being committed, diligent and compliant. Senior managers of the HJPC reiterated that the project (and its team) has a very good reputation and is committed to the HJPC. Fund absorption is on track; it should also be noted that the results framework was continuously updated and that the PMT demonstrated its ambition and effort to report for results. Backstopping services regarding activity

¹² See, for instance, BSS 2013

General observation: Positioning a project (management unit) into a hosting institution is oftentimes a design feature to enhance probability of transfer of competences and sustainability and to increase the use of country systems – apart from benefits in terms of building trust, as well as relevance and quality of service delivery. Whether perceived benefits can be realised is contingent upon many factors, incl. importantly the standing / clout of the host institution; the willingness and incentives to engage with the project; the technical and other capacities to absorb technical and other support rendered by the project.

¹³ The project is not part of the Secretariat's organigram. Nonetheless, the project is referenced in the HJPC strategic plan as the responsible body ("*za mjerenje zadužen*") for the achievement of several strategic priorities and also mentioned on the HJPC's website.

planning, monitoring and evaluation, strategic advice and reporting contributed to the good performance.

Evaluation topic 3: Stakeholders' participation and ownership.¹⁴

Under this evaluation topic, we assess both *implementation issues*, mainly by referring to the interviews.

Participation: According to the project reports as well as interviews, the participation of the project stakeholders¹⁵ has been high during implementation. By fostering different means of communication, collaboration and cooperation (an example is the Strategic Forum, gathering the Chief prosecutors and heads of law enforcement agencies) participation intensified in the course of the implementation. This is all the more relevant because the project design was largely done by the backstoppers and the project team themselves; more could have been done to ensure larger participation in the design phase.

Ownership: The project, particularly the management team, is the main provider of operational and technical support to the Standing Committee, which plays a central role within the HJPC on prosecutorial effectiveness and efficiency. Given that the current work of the Standing Committee largely depends on the project, it can be seen as the "engine for reform proposals for the prosecutorial system", according to one interviewee. The vast majority of the interviewees opined that ownership is high, specifically of the Standing Committee and the Secretariat, and invoked the following explanations:

- virtually all policies and measures that the project tabled were subsequently approved by the HJPC
- the project has been entrusted with a role in the context of the European Union (EU) peer review process, including the role to translate the peer review recommendations into action (plans)
- the project manager is part of the Secretariat's senior management group
- members of the Standing Committee repeatedly refer to "our project" and state to highly identify with the project

¹⁴ The term *participation* is assessed with e.g. the frequency, comprehensiveness, quality, inclusiveness of meetings with stakeholders and events etc. during design and implementation. The term *ownership* is defined as the extent to which stakeholders identify with the project, the extent to which project deliverables were adopted, and the general commitment to the project.

¹⁵ Project stakeholders are: HJPC, Standing Committee, Steering Board, Chief / Prosecutors

Finally, ownership has also been confirmed in the workshop, during which the participants reiterated repeatedly that project is the single most important intervention for prosecutors.¹⁶

Evaluation topic 4: Involvement of project partners.¹⁷

Under this evaluation topic, we assess both *implementation issues*, mainly by referring to the interviews.

The range of partners¹⁸ broadened beyond what was initially planned during implementation of the project. Examples include:

- The collaboration with the Ministries of Education and Interior of the Canton Sarajevo, the BiH intelligence service (OSA) as well as with non-governmental organisations (NGO), including organisations with which the HJPC and the project have been working in the past.
- NGO acted primarily as service providers, i.e. to implement a specific, time bound task (as opposed to genuine collaboration for a common cause or resolve a common concern).
- Several interviewees confirmed that the project is well known "in the prosecutorial system and beyond", for instance among law enforcement institutions.¹⁹

Some frustration and disillusionment among interviewees could be observed when it comes to the cooperation with Ministries of Justice, which has *de facto* been inexistent despite repeat legislative proposals put forth via the HJPC.²⁰ Such cooperation would be instrumental, however, with a view to push the legislative agenda forward to resolve structural obstacles to prosecutorial effectiveness and efficiency.

¹⁶ That close to twenty senior managers of prosecution and police services attended the workshop in the context of the evaluation can be seen as prove not only for the "convening power" of but also for the stakeholders' interest in the project.

¹⁷ The term *involvement* is assessed with e.g. the frequency, comprehensiveness, quality, inclusiveness of meetings, events etc. during design and implementation.

¹⁸ Project partners include: ministries, civil society organisations, training institutions.

¹⁹ During the workshop, a participant stated: "there is not a single prosecutor in BiH who does not know about the project and some of its results".

²⁰ Some thirty amendments to the Criminal Code aiming at promoting greater efficiency in the investigations, trial proceedings and appellate proceedings were delivered to the ministries of justice but they were never taken up. Amendments were only successful at level of bylaws/procedures.

In this context it can also be referred to the European Commission's (EC) most recent country report that notes that the HJPC "... adopted a detailed action plan to implement the European Commission's recommendations on issues within the HJPC remit ... However, most measures are to be addressed by the legislator." EC 2018

Evaluation topics 5 and 6: Interventions and processes that warrant continuation, scaling, roll-out (and vice-versa).

Under this evaluation topic, we assess both *implementation issues* and *recommendations*. The sources of information are the workshop and earlier internal and external evaluations of the project.

Workshop: On the occasion of the workshop, the participants identified and prioritised a range of potential activities and interventions for a forthcoming project phase that we summarise as follows (see Annex 5 for more information):

- *Technical support:* providing support to the Standing Committee to address strategic and operational challenges and priorities (i.e. those stemming from EU peer-reviews; implementation of recently adopted strategies; process alignment with law enforcement)
- *Capacity building:* more specialisation in new and emerging forms of crime (e.g. economic crime, cybercrime); increase quality of prosecutorial work
- *Prosecutorial efficiency:* advisory services to improve resource allocation among prosecutors' offices (e.g. staff and other resource allocation according to quantity/complexity of cases); to analyse and address incentive structures and performance appraisals of prosecutors

Overall, there have been only few ideas that go beyond the scope and ambit of the current phase. This can be seen positively, specifically considering the third phase focus on consolidation and exit. In light of the experience and the prerogatives of the HJPC, the interviewees commonly opined that only very few (if any) resources should be dedicated regarding legislative changes / legal reform.

In this context it should also be noted that the technical support rendered by the Canton Zurich Prosecution Office remains a very valuable resource for the workshop participants (and most of the other interviewees) and its services are perceived as relevant and effective. At the same time both the PMT and the Zurich Prosecution Office seem to have run out of ideas how to deepen the collaboration, how to bring it "to the next level" and how to render it more effective and efficient. Some interviewees wished that more Swiss authorities be included in the knowledge transfer, such as the Federal Prosecution Office or cantonal and federal police services. In terms of the delivery modality, experience suggests that shorter term but repeat activities appear to work better than the anticipated longer-term peer-learning activities.

Previous evaluations: These results mirror the ideas and suggestions that were put forth in earlier evaluations as well as in the 2017 strategic review of the Swiss justice sector interventions.

Excursus on gender mainstreaming

As a complementary part of the evaluation, the project's contribution to gender mainstreaming was assessed. (The full report, drafted by Dženana Radonicic, is in Annex 4). The main findings are:

Gender-responsive project management: An external gender backstopper prepared a gender mainstreaming strategy, and the project management team (at least partly) seemed indeed aware and knowledgeable about gender issues. The project's reports and data focus on implemented activities but do not inform about result achievement. Indeed, the strategic framework merely contains an introductory remark how the gender-sensitive approach is being planned and implemented.

Gender-sensitive capacity building: According to reports and interviews, care was taken to ensure that men and women were equally included as authors of training materials, trainers and participants on study visits. A manual on processing gender-based violence and sexual crimes against women and children for judges, prosecutors and police was developed. Additionally, one online gender equality course was developed for prosecutors and other prosecutorial staff. It is difficult to evaluate the effect of the course for the lack of data (e.g. feedback of course participants). The online course seems suboptimal because its content was neither tailored specifically for prosecutors nor was it intensive and specialised enough.

Gender sensitive outreach and communication: The project aimed to support prosecutors' offices in becoming more proactive and transparent towards the public, with a particular focus on hard-to-reach groups, such as victims of violence and rural women. A respective strategy was elaborated and adopted. Whilst there is a system to monitor the implementation of the strategy (each PO needs to report bi-annually on more than 60 indicators), the data is not adequate to assess what effects the interventions yielded.

Conclusion / recommendation: It is recommended to include more specific gender targets in the logframe of the final phase, coupled with an adequate monitoring and reporting system, along with activities that are potent enough to introduce a gender-sensitive approach in the prosecutors' offices. This also requires budgeting the requisite resources (e.g. to insource various services of gender specialists).

2.2. Sustainability

Evaluation topic 7: Sustainability of project results and anchorage²¹ of the project.

Formal sustainability (of deliverables): Several of the project's deliverables such as strategies (communication, gender mainstreaming etc.) or rulebooks were formally adopted by the HJPC can be considered sustainable – which does not preclude that the deliverable are likely to be revised and newly adopted in the future. Memoranda of understanding (e.g. between prosecutor and police institutions) or training curricula for the Judicial Training Centre can also be mentioned in this context.

²¹ The term *anchorage* is defined as the extent to which there is a quasi-/legal basis for the project; for consistency of strategic vision between the project and the hosting institution; internal and external acceptance of the project by the hosting institution.

Institutional sustainability (of project function): As stated elsewhere in the report, the project is considered as the key resource for strategic and operational advice to the Standing Committee for Prosecutorial Efficiency and there are several reasons to conclude that the project is well anchored in the HJPC.²² Furthermore, possible changes to the law on the HJPC, which foresee the setting up of a separate council for the prosecution, could possibly even strengthen the project's anchorage relevance and standing in this regards. In principle, these factors would bode well for institutional sustainability.

However, according to HJPC senior leadership, the Secretariat's organisational structure has become "obsolete" and a severe obstacle to deliver on its mandate.²³ According to them, neither the Secretariat nor the Council would presently have the requisite resources and capacity to integrate the project's functions into the existing structures. Against this background the HJPC is currently in the process of preparing a major change management effort; the effort is supported and facilitated by an external advisory team sponsored by DFID.

This change process – planned to last for at least 2-3 years – offers interesting perspectives regarding the projects institutional sustainability and the next project phase:

- *Strengths / opportunities:* The project provides exclusive support to the Standing Committee and no other intervention is in reach that could provide similar functions and services. According to information received, the role, the functions etc. of the project were mapped and reflected in the draft of the new organisation chart. Compared to other externally funded interventions, the project team is comparatively small meaning that it is likelier to be integrated as positions become available as a result of restructuring. The current project backstopper, LucidLinx, is in the delivery team of the organisational change and is aware of the project's performance and its relevance for the organisations. All these elements should bode well for the integration of the project into the future organisation.
- *Weaknesses / threats:* During the change process the HJPC could be absorbed by organisational issues rather than project delivery and the change process could get stuck because of internal or external resistance to change. The new organisation may no longer allow for "externally funded

²² See, specifically, the response to evaluation question 2.

²³ Problems that were stated include the fact that there are departments that are no longer relevant whilst others are missing; staff allocation among the departments no longer reflect actual needs of the organisations; work processes require massive overhaul.

projects", which could mean that in future SDC would have to make direct budgetary support to the HJPC rather than project financing. This *could* increase SDC's fiduciary risk. The project "integration into permanent structures" could diminish the "visibility" of SDC's support to the HJPC; SDC is formally not in the loop as regards the change process.

Financial sustainability (of project function/services): According to HJPC's senior leadership, the HJPC is presently neither in a position to provide nor finance similar services (in terms of scale, quantity, quality) to the Standing Committee if the Swiss funding ended. This is explained by understaffing²⁴ and the inability of the HJPC to tap into national or external resources in the short- to medium-term. These structural constraints pose a significant risk to sustainability.

In the context of institutional sustainability, we also note another important project result, namely the reduction of the case backlog. It faces some sustainability risks because the temporary deployment of "legal assistants", whose deployment was considered instrumental to reduce the backlog, ends.

At the same time the evaluators assume that it would be likely that some workaround could be found, e.g. by tapping into the resources of other development partners that are committed to justice reform in BiH, including Norway, Sweden and the European Union.

Social sustainability: As stated elsewhere in the report already, the evaluators got the impression that there is a high degree of identification and satisfaction with what has been achieved as a result of the project. The senior leadership and senior managers we talked to appreciate SDC's continued support to the prosecutors and would greatly welcome future collaboration with SDC. Some risks may emerge as the current members of the Standing Committee and the HJPC change due to statutory reasons. Incoming members who may have had little to no knowledge of the project and its team may identify less, which could mean that internal support fades. The sustainability of collaboration with NGO is questionable, since it hinges on the availability of funds for joint projects.

²⁴ For purposes of illustration: The Secretariat currently employs 66 permanent staff members and can rely on an additional 64 project staff, all of which are financed by the HJPC's development partners. The Secretariat has been falling short of roughly 20 full-time equivalents for many years due to a staff freeze in public administrations. Even if the staff freeze were lifted (which is unlikely to occur) and the Secretariat could recruit the staff that it is supposed to have, the Secretariat would only be partly able to integrate the project staff into the regular structure.

3. Reflection

3.1. Conclusions

The M&E instrument indicates that the project will meet the outcome targets that it set out to achieve. It also became evident in our consultations that the project stakeholders are generally of the opinion that the project is performing well and that they associate many results and progress with the project. Whereas the indicators set forth in the M&E instrument suggest differently, it is nonetheless conceivable and partly also demonstrated that the project contributed to improving performance and efficiency of the prosecutorial system. With the adoption of relevant strategies and implementation of outreach activities, good foundations were made towards increasing accountability vis-à-vis citizens but much still remains to be done.

Senior leaders and managers of the HJPC value the commitment and quality of the project team and they highlighted the important role that the project plays for the Standing Committee as well as the wider prosecutorial services. The project set-up, namely to embed a qualified project management team into the HJPC Secretariat, has proven to be viable, yet full and sustainable integration of its functions cannot be assured at this stage. This situation may be remedied if a forthcoming change process of the HJPC Secretariat is well implemented.

We summarise our assessment in Table 2, by giving each of the three evaluation dimensions that are covered in this evaluation a rating.

Table 2: Evaluation dimension assessment

| Dimension | Comments | Rating |
|----------------|--|---|
| Effectiveness | <ul style="list-style-type: none"> • Activities implemented and outputs achieved largely as planned, good project management • M&E instruments show positive results on outcome level • Interviewees identify / associate many positive results with the project • Anchorage in the HJPC, stakeholder ownership and engagement high • Gender dimension of the project can be strengthened |  Very satisfactory |
| Impact | <ul style="list-style-type: none"> • M&E instruments are inconclusive on impact level |  Satisfactory |
| Sustainability | <ul style="list-style-type: none"> • Probability of sustainability of project results is high • however; likely not in same intensity and quality |  Satisfactory |

Note: Following rating levels are used: Very satisfactory, satisfactory, unsatisfactory, very unsatisfactory

3.2. Learnings

Evaluation topic 8: Lessons learnt for the planning of the next phase.

Various lessons learned can be drawn from the project, the following of which we deem particularly important:

1. Supporting prosecutorial effectiveness and efficiency remains a relevant and important reform area. The European Commission highlights several topics that range from management, impartiality and accountability, to ethics, professionalism and competence, to quality and efficiency of justice²⁵ to which Switzerland can contribute. With its prosecution-focused intervention, SDC has placed in a niche, which benefits commitment of the immediate stakeholders but also visibility.
2. Legislative changes are beyond the ambit of the HJPC, let alone the project, and are thus very difficult to achieve. As a viable alternative to influence positively prosecutorial effectiveness and efficiency, the project focused on elaborating, *inter alia*, bylaws, rulebooks, procedures, and capacity building that are within the competence of the HJPC. Experience suggests that, in the current context, investing additional resources to achieve legislative reforms requires careful assessment. More resources do not necessarily translate into better results.
3. Placing the project (management team) into the HJPC is viable. Important prerequisites are the project's ability to provide immediate value addition to the organisation coupled with the willingness and capacity of the latter to absorb the support; the proximity between the project and the HJPC stakeholders that allows for effective communication, collaboration and trust building; the deployment of competent and committed project personnel. Nonetheless, even these prerequisites cannot easily overcome structural obstacles (e.g. recruitment processes in the civil service; budget allocations to the HJPC) that render "full and sustainable" integration of the project difficult.
4. Improving transparency vis-à-vis and outreach to citizens, improving client orientation and service delivery, upholding highest professional and ethical standards whilst improving citizens' understanding of the prosecutorial system are essential elements to gain public trust that can benefit the prosecutorial work – apart from ensuring quality, impartiality, fairness and swiftness of prosecutorial proceedings.²⁶

²⁵ EC 2018

²⁶ In this context, one interviewee argued that measures to increase professionalism in communication and collaboration with citizens have become of “existential nature” for prosecutorial system.

With these learnings and conclusions in mind, we formulate recommendations in the following chapter.

4. Recommendations

The following recommendations for a last phase result from the findings and conclusions of this evaluation. They are formulated in light of SDC's decision to finance a final phase with a planned duration of 3-4 years and a tentative budget of 3 million Swiss francs.

Recommendation: Maintain the current set-up for the implementation of the final phase, yet optimise its link with the change process (“reform process”) supported and facilitated by DFID.

Justification: That the project is managed by a local team that is positioned in the HJPC Secretariat is assessed positively by all of the interviewees, as has been the case in the first phase. There are currently no indications that the set-up would have to be changed or that the change process would constitute a significant implementation risk. Quite to the contrary, being present with a project team in the HJPC can create opportunities where the project provides value addition (e.g. by advising the Standing Committee and/or the Secretariat during the change or by alleviating their workloads). Nonetheless, we recommended that SDC negotiates implementation safeguards or even conditionality. These could consist of specific reporting requirements regarding the implementation of the change process or that SDC is granted an observer or participant role in the HJPC internal team that supervises the change processes. As part of the exit strategy, we also recommend negotiating the gradual integration / takeover of certain project team functions during implementation by the HJPC, for instance, as regards administration, finances or possibly even M&E and statistics.²⁷

Recommendation: Increase the project's activities towards enhancing quality of prosecutorial work and outreach to the public, whilst maintaining actions on improving efficiency.

Justification: Increasing the quality of prosecutorial work has repeatedly been mentioned during this and previous evaluations as an important reform area. Further ca-

²⁷ Such integration / takeover needs to be planned with care and communicated transparently, first and foremost to minimise the risk that motivation, commitment, and spirit of the project team is not undermined but also for reasons of quality.

capacity building, as suggested by the EU peer-review recommendations, but also addressing structural issues such as the current "quota system" based on which prosecutors' performance is measured, would likely need to be addressed in this context. In the same vein, increasing efficiency of the prosecutorial system (e.g. issues of resource allocation among prosecutors' offices or territorial organisation) would have to be buttressed. In the current phase the HJPC adopted strategies on gender mainstreaming and communication with the public. Whilst implementation has already started, it will take time to achieve the kind of behaviour change needed for gender equality or improved trust by citizens. It is therefore recommended to deepen, expand and build up on the results achieved by additional capacity building. Considering that the next phase is a final one, new topics and new areas of reform should only be pursued to the extent that they can be completed within the 3-4 year implementation period. This would require careful design and planning.²⁸ In addition, ways should be explored to establish viable cooperation mechanisms between the HJPC / prosecutors that outlive the project. This could include, for instance, including NGO representatives in training programmes of the Judicial Training Centre for prosecutors or establishing cooperation forums with NGO (similar to the strategic / operational forums).

Recommendation: Consider entrusting the HJPC (or members of the project management team) with the design of the final project phase.

Justification: The design of the final project phase could be led by the members of the project management team with support of an experienced backstopper / facilitator and involve, as was the case for the 2nd phase, the members of Standing Committee and the President of the HJPC Secretariat. Ideally, the process unfolds in a participatory manner (e.g. in a consultative process, in a project design workshop or a combination thereof). Involving a larger group of stakeholders to identify and agree on priorities and interventions could generate further ownership. Representatives of the Prosecution Office of the Canton of Zurich should be invited to attend. Specific attention should be placed on formulating a sound theory of change, on the monitoring and evaluation framework, as well as on a thorough exit strategy.²⁹ Part of the

²⁸ A case in point is community policing, which has been mentioned during the workshop as a potential intervention area in the future. An intervention at the nexus of local development and judicial reform could fit well into Switzerland's strategic framework for Bosnia and Herzegovina. The feasibility of an intervention in would need to be assessed carefully. SDC can refer to own community policing experience, including e.g. in Romania.

²⁹ The theory of change could also contain reflections on how to best approach and consult ministries and/or of relevant parliamentary committees *during* implementation in relation to needed legislative changes, the implementation of JSRS measures or peer-review recommendations. Whether their involvement is feasible and beneficial would have to be duly assessed, in light of experience.

exit strategy could include elements such as a gradual taking over of selected project staff functions by the "permanent structures" of the HJPC; an increase of the HJPC's co-financing to the project; specific measures for knowledge management and experience capitalisation.

Recommendation: Further improve the M&E framework of the project.

Justification: As stated above, the project maintains a solid M&E framework. However, it can be further improved with a thorough Theory of Change, an improved set of indicators (e.g. indicators that show trends/tendencies), as well as more specific gender targets. An experienced backstopper could provide quality assurance in this regard.

Recommendation: Improve the project's contribution to gender mainstreaming.

Stemming from the *complementary* review of project's contribution to *gender mainstreaming* we formulate the following **recommendation**: include more specific gender targets in the logframe of the final phase, coupled with an adequate monitoring and reporting system, along with activities that are potent enough to introduce a gender-sensitive approach in the prosecutors' offices. This also requires budgeting the requisite resources (e.g. to insource various services of gender specialists).

Annex 1: Terms of Reference



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Embassy in Bosnia and Herzegovina

Terms of reference

External evaluation of the project “Support to the Judiciary in BiH – Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina” (7F-06866.02)

1. Background and evaluation context

1.1. State of play in the judiciary sector

As pivotal part of Euro-Atlantic integration process, strengthening the rule of law and the consequent reform of the judicial system in Bosnia and Herzegovina remain one of the main domestic and international priorities for the country.

Affected by both the post-socialist transition process and the devastating consequences of the 1992-95 conflict, the justice sector in BiH has undergone substantial reform phases over the past two decades. Significant changes were introduced as of 2003, including notably the restructuring of both courts and prosecutorial services, re-appointment process of judges and prosecutors and the establishment of the State-level institutions (BiH Ministry of Justice, High Judicial and Prosecutorial Council (HJPC - acting as the “management body” of the BiH judiciary), State Court and Prosecutor’s Office). In 2008, BiH adopted the first Justice Sector Reform Strategy for the period 2009-2013, aiming at creating “efficient, effective and coordinated justice system in BiH that is accountable to all BiH citizens and fully aligned with EU standards and best practices, guaranteeing the rule of law”. The Strategy objectives being only partly completed, a revised Strategy for the period 2014-2018 has been adopted in 2015. The action plan of the Strategy, with new adjusted timelines for implementation, was adopted in March 2017 and the monitoring and reporting structures were established. However, its pace of implementation remains slow, mainly due to political reasons.

The complex internal structure of the country - direct consequence of the Dayton Peace Agreement - is also mirrored in the fragmentation of its judicial system. Indeed, there are currently four judicial (sub) systems in the structure of the State, *de facto* four legal orders varying in many areas of substantive and procedural law, leading to fragmentation of the legislation and fragmentation of judicial bodies that apply the legislation. According to the

Venice Commission³⁰, the judicial system of BiH is the most complex system among European countries today.

In spite of noteworthy achievements over the past years, significant gaps still remain and additional reforms need to be undertaken or finalized in order to ensure fully efficient, effective, transparent and accountable judiciary, in line with European standards. According to the European Commission Report from 2018³¹, the BiH justice system has “*some level of preparation*”. Also, “*some progress was made regarding the judiciary but overall, reforms proceeded at a slow pace*”. Politically motivated threats on the judiciary in the country increased, even on the highest level and the independence of the judiciary remains to be strengthened. Corruption remains prevalent in many areas and continues to be a serious problem. The declared political commitment on this subject did not translate into concrete results.

As a specific instrument of support, the EU also introduced the so-called “Peer Reviews”, which consists of exchange of best practices between the BiH judiciary representatives and peers (experts) from different EU countries on specific topics. This tool helps to better assess the situation in BiH on particular issues on one side, and BiH authorities to better understand the reasons for alignment with the relevant EU practices on the other. So far, peer reviews on the HJPC Rules of Procedure, disciplinary procedures, procedures and criteria for appointment of judges and prosecutors, appraisal of judges and prosecutors, asset declarations of judges and prosecutors and criminal procedure (fight against organised crime and corruption) took place, resulting each time in a set of recommendations. The peer review recommendations present a sort of roadmap and a framework for necessary amendments to the legislation and legal practice and further alignment with the EU acquis.

As reflected in the revised Justice Sector Reform Strategy (2014-2018), there seems to be a common understanding from both the national institutions and the international donors/agencies to maintain the focus on the following areas:

- continuation of legal reform and harmonizing legislation within the country and with the EU acquis;
- strengthening institutional capacities of the judicial institutions (including human resources development, improvement of capacities and skills of managerial staff and case management skills, but also improvement of infrastructure and equipment conditions);
- reduction of the backlog of cases (including war crime cases and revision of the National War Crimes Strategy);
- access to justice (including free legal aid).

³⁰ CoE, Venice Commission, Opinion on legal Certainty and the Independence of the Judiciary in BiH, 18 June 2012

³¹ EC, 2018 Communication on EU Enlargement Policy, 04 April 2018

Overall, the reform process remains very demanding and still requires significant and sustained efforts in order to further strengthen the efficiency, effectiveness, professionalism and independence of the justice sector in BiH, thus bringing the country closer to meeting the EU accession criteria.

1.2. Prosecutorial system

The prosecutorial system mirrors the complex State organization: the 20 prosecutorial units in the country operate separately, under 15 Laws and with no firm functional links between them. Moreover, there is no hierarchy-based relationship between the State and Entity systems. Prosecutors work in a complex institutional context where competences and responsibilities are often not clearly defined and/or overlap or compete. Although the prosecutorial services have not been in focus in terms of the reform process at the beginning, this situation has gradually changed over the past years. Indeed, given prosecutors' important (and increased) role in criminal proceedings, especially in the area of organized crime, corruption and, more recently, terrorism, both donors and the national stakeholders started focusing more on the prosecutorial system. However, despite important results achieved in the areas such as better strategic planning, skills development in conducting complex investigations, improving cooperation between police and prosecutors reducing the number of backlog cases, the work of the prosecution office still fails to satisfy the needs of the citizens and cannot be considered as fully functional. Indeed, many of the reforms initiated are still at initial stage and the prosecutors' offices will need substantial assistance to fully implement them. Certain reforms which impact on the overall functioning of the prosecutorial system have also yet to be tackled.

The public perception of the prosecutorial services also remains weak, due notably to perceived lack of effective prosecution of high-level corruption and organized crime cases.

2. Project overview

Switzerland remains, together with the USAID-funded Justice Project and the EU IPA-funded War Crimes Project, a major donor, which provides assistance to the prosecutorial system in BiH.

The first phase of the project "Strengthening Prosecutors in the Criminal Justice System" has been launched in October 2010, with the aim to achieve improvements in four areas: the methods and capacities of prosecutors to conduct criminal investigations; the coordination with the police; the public perception of the prosecution service and the capacities of the HJPC to monitor and supervise prosecutorial performance. The external review³² of the 1st phase conducted at the end of 2013 confirmed the positive results

³² External evaluation report by B, S, S . ECONOMIC CONSULTANTS LTD, November 2013

achieved, specifically the project's contribution to building foundations for substantive judicial reforms in BiH. The review also indicated a clear need for the continuation of the project in order to further consolidate these reforms.

Based on these recommendations, the 2nd project phase started in December 2014 and will last until July 2019. The implementation remains under the HJCP Secretariat, which makes the project very visible and widely recognized as the knowledge resource center amongst the prosecutors. All partners acknowledge indeed the project as the key initiator and voice of reform processes in the criminal justice system as regards to the prosecution service.

The overall goal of this project phase is to improve performance, efficiency, and credibility of the prosecutorial system in BiH, which is accountable to citizens and fully harmonized with EU standards and practices. This 2nd phase is co-funded by Norway, with Switzerland remaining the lead donor. The project works closely with all 20 prosecutors' offices, selected law enforcement agencies, training centres for judges and prosecutors and selected NGOs.

Canton Zurich Prosecutors' Office is an important and integral part of the project, while backstopping is provided by selected local consultants.

There are three expected outcomes of the 2nd project phase:

1. Prosecutorial work in BiH continuously improves efficiency and quality, by evidence-based substantial reduction of backlog of cases and increased resolving of priority cases of organized crime and corruption.
2. Coordination of the prosecutorial system in BiH is enhanced through increased performance of the Prosecutors' Strategic Body and Prosecutors' Offices are managed more effectively, in accordance with identified strategic priorities, plans and policies.
3. Citizens benefit from enhanced quality of services, improved accountability and overall care for the users of prosecutorial service as enshrined in adopted Strategy for care of Prosecutorial Office Users.

3. External evaluation of the project

3.1. Purpose and main objective of the evaluation

The main objective of the external evaluation is to review and assess the overall effectiveness, impact and sustainability of the project (priority being given to the latter), and make strategic recommendations for a possible third (and final) phase of the project, based also on wider country context relevant to the justice sector reform. The evaluation shall be based on the OECD-DAC methodological framework and use methods of qualitative research (in-

depth document review, semi-structured interviews and focus groups). The evaluation shall be performed by the external project evaluation team consisting of one international evaluation consultant (team leader) and one national expert/consultant.

3.2. Scope and key evaluation questions

The external evaluation will identify and assess a number of elements to determine the project's achievements and constraints, results (main outcomes), impact (as far as clear tendencies can be observed) and sustainability. Conclusions and recommendations will serve as relevant elements for decision making and setting up the third (and final) project phase. Thus, the external evaluation is mainly future oriented. The principal objectives of the external review are to:

- Assess the effectiveness of the project and evaluate the overall achievement (mainly outcomes-oriented) of the project in relation to its objectives;
- Assess the performance of the project (project management, organization and approach);
- Assess the stakeholders' participation/ownership, as well as the quality and involvement of project partners and beneficiaries;
- Identify what was successful and, therefore, may be sustained (or rolled out) in the upcoming phase, what didn't work at the level of the main beneficiaries and processes and therefore should be redesigned, complemented (precise in which sense) or dropped;
- Assess the **ownership and sustainability** of the project and its deliverables (in particular with regard to institutional sustainability), having in mind that the next phase will be the final one (assessment of the possibility of outcomes/outputs leading to benefits beyond the lifespan of the project, assessment of the levels of the project's institutional anchoring and vertical integration);
- Recommend strategic and organizational changes that may be required to improve the project's performance in the upcoming phase;
- Recommend strategic directions, based also on the context analysis and the EU accession recommendations in the field of rule of law (possible scenarios with core elements for the forward-looking Strategic Outline), with particular emphasis on sustainability.

Additionally, the external evaluation will also address in a horizontal manner the importance and effectiveness of the Swiss support provided by the Canton Zurich Prosecutor's Office, as well as of the support provided by the local backstoppers.

The main focus of the evaluation is on the assessment of the project (institutional) sustainability (including recommendations for the design and streamlining of activities for the next phase). The project relevance and efficiency were mainly addressed during the evaluation of the 1st project phase

and this project phase was already assessed as both relevant and efficient notably in the Review of Norwegian Support to the Judicial Sector in BIH from October 2017.

3.3. Methodology of the evaluation

The external evaluation will be based on SDC evaluation standards and general OECD-DAC evaluation principles. A fair knowledge and understanding of the projects context as well as of the justice sector will be prerequisites to make a realistic appraisal of achievements and to elaborate future-oriented recommendations. The external consultants are expected to develop the methodology for this review, which shall include:

- Studies of relevant reference documentation (list to be proposed by the Embassy and the HJPC project team);
- Field mission: conduct semi-structured interviews with representatives of SDC (briefing), of the project team, with the project local backstoppers and with members of the project's steering board + interview/telephone conference with the Canton Zurich Prosecutor's Office representatives.
- Conduct a focus group workshop with the key beneficiaries (participants to be selected by the consultants in consultation with SDC and HJPC project team).
- Prepare for and share information during a de-briefing meeting with HJPC, SDC and the Norwegian Embassy (*tbc*) at the end of the field mission, where preliminary recommendations for future-oriented strategic directions will be discussed and verified.

3.4. Deliverables of the evaluation

The evaluation team will deliver the following:

- **A draft external review report of a maximum 20 pages** (executive summary and annexes not included), font 11 (plus annexes) on the findings and recommendations, featuring a specific chapter on projections and scenarios for the third, final project phase to be potentially supported by SDC. The report shall be written in English and submitted to SDC in electronic form. The report will be structured and formatted in accordance to the document "SDC External Evaluations – Formatting Instructions"
- **A final external evaluation report** (under the same conditions as for the draft report). The final report shall include, but will not be limited to:
 - Executive summary;
 - Introduction and background of the external evaluation of the project (max. 2 pages);
 - Scope and objectives of the evaluation;
 - The evaluation design and description of methodology;

- Findings and conclusions (including on the project relevance);
- Recommendations/scenarios for the formulation of potential forward-looking interventions;
- Annexes, including the Assessment grid for evaluations of SDC projects/programmes.

3.5. Evaluation team

The evaluation will be conducted by a team of two evaluators, one international consultant (team leader) and one national expert/consultant.

The international consultant (team leader) is required to possess following competencies: advanced university degree in law, political or social sciences (certificates in evaluation studies is an asset); extensive experience in designing and conducting evaluations and surveys, quantitative and qualitative analysis (minimum of 5 years); excellent knowledge of monitoring and evaluation methodologies; sound judgment and ability to objectively evaluate programmes in terms of processes, as well as results achieved (evidenced through previously conducted evaluations and references); experience in conducting evaluations related to justice sector reforms, including knowledge of the country context related to justice system (incl. donor community involvement); demonstrated ability to prepare interview/focus groups protocols and other evaluation instruments very good written and spoken English; familiarity with SDC's mission and mandate is an asset.

The national expert/consultant, is required to possess the following competencies: university degree in law; minimum 3 years of expertise in the area of evaluation and experience in programmes related to justice; proven in-depth knowledge of the justice system in BiH (incl. donor community involvement); excellent communication and presentation skills in English and excellent communication and presentation skills in Bosnian/Croatian/Serbian; familiarity with SDC's mission and mandate is an asset.

The team can be complemented by **local interpreter**, when required.

3.6. Proposed evaluation plan

| Activities | Dates | Working Days Team Leader | Working days Local Consult. |
|---|-----------------------|--------------------------------|-----------------------------------|
| Preparation of the mission (including desk review) | | | |
| Preparation of methodology, consultations with the Embassy, desk review of reference documents, phone interview with the Canton Zurich Prosecutor's Office | Mid-January 2019 | 5 days | 5 days |
| First feedback following the desk review (phone conference) | Mid-January 2018 | ½ day | -- |
| Mission to Sarajevo (including travel) | | | |
| Travel to and from BiH | February 2019; | 1 day | -- |
| Briefing Embassy, interviews with project team and local backstoppers and with members of the project's steering board, local backstoppers, focus group workshop with the key beneficiaries | February 2019 | 4 days | 4 days |
| Systematization of findings / verification of preliminary findings and debriefing | February 2019 | ½ day | ½ day |
| Finalisation phase | | | |
| Writing and submission of the draft report to the Embassy | February 2019 | 3 days | 1 ½ days |
| Systematization of feedbacks and submission of the final report | March 2019 | 2 days | 1 day |
| Reserve | throughout assignment | 1 day | 1 day |
| Total | - | 16-17 days | 12-13 days |

3.7. Roles and Responsibilities

The evaluation team is full responsible for:

- Preparation and realization of the evaluation in accordance with the present ToR;
- Systematization of all information collected, regular communication on intermediate results, findings and conclusions with the Programme Officer in charge;
- Organization and moderation of the focus group workshop during the field mission (with the logistical support by the project team);
- Preparation and timely delivery of the draft and the final evaluation report.

The team leader is responsible for:

- The coordination of the whole evaluation program and coordination within the evaluation team (including for sub-contracting the other members of the team);

- The quality of the evaluation (including the designing of the detailed evaluation concept, the definition of relevant key questions as well as the delivery of processed findings and recommendations);
- Smooth and efficient communication with all parties involved or addressed in the course of the evaluation.

The role of SDC (throughout the in Embassy in Sarajevo) shall be as follows:

- Overall follow up of the evaluation and regular communication with the team leader;
- Providing reference documents and information related to SDC's strategic focus;
- Elaboration of a management response to the evaluation report.

Results, conclusions and recommendations of the evaluation team may be accepted or not by SDC. In no case SDC will influence the systematization of facts and findings as well as the opinion making of the evaluation team.

3.8. Reference documentation

SDC will support compilation of a list of the most important background material, documents, and reports.

Documents to be consulted for the evaluation purposes include but are not limited to:

- project documents, including draft end-of-phase report, last yearly and 6-month report, external evaluation report of the 1st phase and mid-term internal evaluation report (May 2017);
- Review of Norwegian Support to the Judicial Sector in BiH (review related to the project under evaluation), October 2017;
- Document "Swiss Assistance to Justice Sector in BiH: Strategy Review", July 2017;
- Swiss Cooperation Strategy for BiH 2017-2020;
- BiH Justice Sector Reform Strategy 2014-2018;
- 2018 Communication on EU Enlargement Policy for BiH (so-called "EC Progress Report"), April 2018;
- Recommendations of Peer Reviews by the EU Delegation experts;
- EC document IPA II 2014-2020 – Enhanced Justice Sector and cooperation in Rule of Law;
- USAID Justice Project – project overview document.

3.9. Budget

All financial costs need to be proposed by the applicant. Travel costs in BiH and per diems for the international consultant have to be itemised within the proposed budget. The flight ticket is to be ordered by the *Bundesreisezentrale*.

Annex 2: Evaluation Matrix

Note:

- Evaluation themes are based on section 3.2 of the ToR but slightly reformulated hereafter
- Sources of information: Doc = Documents; Int = Interview (semi-structured interviews and two focus groups); Exp = own expertise
- Primary sources: , Secondary sources:

| # | Theme | Source | | | Assessment |
|----|---|-------------------------------------|-------------------------------------|-------------------------------------|--|
| | | DD | Int | Exp | |
| Q1 | Evaluate the overall achievement of project <i>outcomes</i> and <i>objectives</i> . <i>Note: Impact and outcomes are hereafter jointly referred to as "results".</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | <ul style="list-style-type: none"> • Summary table of achieved/not achieved target values (<i>as per M&E</i>) • Summary of internal/mid-term evaluation and Norwegian support evaluation (<i>both 2017</i>) • Summary of perceptions / opinions stated by interviewees regarding results achievement, their frequency • Summary of perceptions / opinions stated by interviewees regarding Zurich Prosecutors Office, their frequency |
| Q2 | Evaluate the performance of the project in terms of <i>approach</i> , <i>project organisation</i> and <i>project management</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <ul style="list-style-type: none"> • Assessment of the extent to which approach, organisation, project management (<i>as defined in the ProDoc</i>) were contributing to achieving results • Number / issues of delays in project implementation as per reports / steering board meetings • Summary of own project lessons learned (<i>as per semi-/annual reports, draft end-of-phase report</i>) • Summary of perceptions / opinions stated by interviewees regarding these elements |
| Q3 | Evaluate the stakeholders' <i>participation</i> and <i>ownership</i> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | <ul style="list-style-type: none"> • Assessment of range / roles / number of stakeholders in project implementation • Assessment of the extent there have been manifestations of <i>participation</i> (e.g. frequency, comprehensiveness, quality of meetings; inclusiveness); differentiation of design and implementation phase |

| | | | | | |
|----|--|---|---|--|---|
| | <i>Note: Stakeholders defined as HJPC Secretariat, Standing Committee, Project Management Team and SDC</i> | | | | <ul style="list-style-type: none"> • Assessment of the extent to which have been manifestations of <i>ownership</i> (e.g. flexibility, identification, adaption, commitment); differentiation of design and implementation phase • Summary of perceptions / opinions stated by the interviewees regarding participation and ownership |
| Q4 | Evaluate <i>involvement</i> of project partners <i>Note: Suggestion to drop reference to beneficiaries to avoid confounding with stakeholders (see above)</i> | | ■ | | <ul style="list-style-type: none"> • Assessment of range / roles / number of stakeholders in project implementation • Assessment of the extent there have been manifestations of <i>involvement</i> (e.g. frequency, comprehensiveness, quality of meetings; inclusiveness); differentiation of design and implementation phase |
| Q5 | Identify interventions and processes that warrant continuation, scaling, roll-out | | ■ | | <ul style="list-style-type: none"> • Summary of perceptions / opinions stated by the interviewees, their frequency • Strategic workshop |
| Q6 | Identify interventions and processes that warrant to be discontinued, re-scaled, amended | | ■ | | <ul style="list-style-type: none"> • Summary of perceptions / opinions stated by the interviewees, their frequency • Strategic workshop |
| Q7 | Evaluate the sustainability of project results <i>Note: Suggestion to extend from "deliverables" (see ToR) to "results"; suggestion to differentiate financial, institutional and social sustainability</i> | □ | ■ | | <ul style="list-style-type: none"> • Assessment of the extent to which have been manifestations of <i>anchorage</i> (e.g. internal and external acceptance, quasi-/legal basis, resource endowment) • % SDC contribution to HJPC budget expenditure per annum (<i>if budget data is available</i>) • Number / summary of project results that are quasi-/legally binding or otherwise committing • Summary of perceptions / opinions stated by the interviewees • Strategic workshop |
| Q8 | What are the main lessons learnt which are to be integrated into the planning of the next phase? | □ | ■ | | <ul style="list-style-type: none"> • Summary of learnings stated by interviewees, their frequency • Success / hindering factors mentioned by interviewees, their frequency • Good practices / innovative approaches mentioned in documentation / case study |

Annex 3: Effectiveness

This annex supplements the findings in chapter 2.1. with detailed information to each of the three project components.

Outcome / component 1: Prosecutorial work continuously improves efficiency and quality, by evidence-based substantial reduction of backlog cases and increased resolving of priority cases of organised crime and corruption

Finding: General reduction of backlog cases and overall number of rejections as well as shortened average investigation duration suggest increased effectiveness and efficiency of prosecutorial work.

By the end of 2018, the project reports increased *effectiveness* of the prosecutorial services since the number of backlog cases – a key outcome indicator in the project's logframe – was overall reduced.³³ This is explained by improved capacity and efficiency of the prosecutors that resulted in an increase of identification of such cases. *Efficiency* of investigations is also reported to have improved with the average length of investigations dropping by 96 days, from 259 days in 2013 to 163 days in 2018. The interviewees associate the positive effects with several project activities (e.g. strategic planning, managerial and policy framework) and particularly the supplementary "legal advisors" to the prosecutors' offices. Senior prosecutors are concerned that the end of this project activity has ramifications on the prosecutors' abilities to maintain (let alone further reduce) the current case backlog. The results regarding the *quality* of prosecutorial work as measured by the project (i.e. rate of rejections and acquittal verdicts) are mixed: whilst the former slightly decreased that latter slightly increased.³⁴ Nonetheless, the interviewees perceive significant capacity improvement, specifically of specialised prosecutors, as a result of training and mentorship activities that were financed by the project. Ongoing measures to align and organise joint capacity building/trainings of police and prosecutors based on memorandum of cooperation are expected to yield positive effects.

³³ Concretely, the backlog of "old" pre-investigations, open investigations and corruption cases decreased, whereas organized crime cases that show an increasing trend. The increase is explained by improved capacity and efficiency of the prosecutors that resulted in an increase of *identification* of such cases – an overall positive development. Against this background, both the PMT and the workshop participants argued that the project's outcome indicators are inadequate.

³⁴ The percentage of the acquittal verdicts has increased but is presented under a joint category of "economic crimes". The data does not separate organised crime and corruption.

Outcome / component 2: Prosecutorial work continuously improves efficiency and quality, by evidence-based substantial reduction of backlog cases and increased resolving of priority cases of organised crime and corruption

Findings: Standing Committee received support to fulfil its mandate and contributed to better managerial practices within prosecutors' offices.

Both reports and interviewees confirm that upon the initiative of the Standing Committee, the HJPC adopted more than 40 measures and policies which are considered to have contributed to greater efficiency and effectiveness within the prosecutorial service (e.g. Book of rules on framework performance measures for prosecutors' offices; Book of rules on criteria for performance evaluation; Instruction for the preparation of plans for solving old cases; Guidelines on preparation of annual report and strategic plans). As a result of better strategic planning, the overall efficiency of prosecutors' offices increased, as indicated by statistical data provided in reports. The project provided technical and substantive support for close to 70 meetings of the Standing Committee in the four-year period 2014-2018.

The project initiated the so-called Strategic Forum, a senior level coordination body composed of heads of prosecutors' offices and police bodies.³⁵ It decides upon strategic issues towards achieving effective and efficient investigations and its conclusions and work plans are continuously shared with all prosecutors' offices and police bodies that are obliged to implement them. Seventeen Operational Forums between police and prosecutors' offices were established in all jurisdictions to provide space for ongoing cooperation and alignment, to stimulate joint capacity building activities, to allow for coordination on annual working plans and to promote early exchange of information. Available data make it difficult to objectively assess the results of these forums, but interviewees underline the value addition.

Four joint investigation teams were developed in larger cities. As pointed out by the PMT, there are no preconditions for establishment of investigative teams in certain Cantons. Different organisational structures of police and prosecutors' offices and frequent changes of staff in police offices are serious impediments to more effective collaboration and establishment of joint investigative teams.

Finding: Prosecutors' offices are managed more efficiently and effectively in line with needs-based strategic and operational priorities; incorporation of gender sensitive approach in managerial processes formally achieved.

³⁵ The Strategic Forum is composed of heads of prosecutors' offices and police bodies; it decides upon strategic issues towards achieving effective and efficient investigations.

The project developed a methodology for strategic planning and prosecution services were assisted in devising and rolling out bi-annual framework strategic plans. The project reports changes in the administrative culture in prosecutors' offices – albeit to different extent – as a result of the process of strategic planning, which is also confirmed by the interviewees as well as past evaluation reports.

Finding: Staff and material capacity in prosecutors' offices was improved.

The material conditions and human resources in prosecutors' offices were improved and contributed to increasing efficiency of prosecutorial work. The temporary deployment of "legal advisors" was considered by senior managers as the most direct and immediate support to resolve the backlog of cases.

Outcome / component 3: Citizens benefit from enhanced quality of services, improved accountability and overall care for the users of prosecutorial service as enshrined in adopted relevant strategy

Finding: A strategic and operational framework has been adopted and is being implemented.

A framework for increasing public trust in the prosecutorial system was set forth with the adoption of the Strategy and Action Plan for Treatment of Persons in Contact with prosecutors' Offices. According to HJPC Report 2019, the Strategy is being implemented by all prosecutors' offices.

As part of the Strategy's implementation, the project also worked with a number of NGO in areas such as witness support, citizen participation and the use of media for supporting greater public awareness (building capacities of prosecutorial and police spokespersons, as well as journalists to report on criminal justice issues). Furthermore, it worked jointly on the development of crime prevention programmes (implemented and monitored in selected local communities with the involvement of citizens and associations of prosecutors). The project evaluation of November 2017 states that implementation of the Strategy and Action plan will require "substantial assistance".

Regarding the use of new and mass technology and social platforms as a new outreach strategy, some caution and resistance of prosecutors to make use of social media for communication with the public is evident, as confirmed by the PMT and interviewees. This attitude is unlikely to change in the near future.

The project has been expanding the scope of stakeholders during implementation, indicating recognition of the projects' value and achievements both internally and externally.

Planned outputs are mostly achieved. The monitoring system for the implementation of the Strategy has been introduced and each prosecutor's offices is required to submit bi-annual reports on the status of implementation. However, the reporting includes only closed questions (yes/no). It is difficult to evaluate the achieved effects thus far in terms of user satisfaction and overall increase of citizens' trust in prosecutorial system.

Public trust remains a core area for the future, although public perception and citizens' trust have not been measured recently. The baseline on perception was defined by a USAID judiciary project and a new perception study is forthcoming in spring 2019. The recent and ongoing crisis communication in Banja Luka and Sarajevo respectively were not optimal and is expected to affect the results of the opinion survey, according to interviewee feedback. Public perception also influenced by fact that certain legislation is not conducive for prosecutorial operations. In the process of enhancing public trust, the project relies largely on civil society organisations as well as the professional associations.

Annex 4: Gender dimension assessment

Note: The following short report was authored by Dženana Radončić, local consultant, as a supplementary input for SDC. The views expressed are those of the author.

Report on gender mainstreaming within HJPC II Project

The purpose of this brief evaluation report is to offer concise and focused analyses of *gender mainstreaming* through the project's goals, implemented activities and achieved results in terms of effectiveness, impact and sustainability. The report includes an assessment of gender equality results and impact, which contributes to gender mainstreaming throughout the project cycle. Gender mainstreaming has been embraced internationally as a strategy towards realising gender equality. It involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programs, with a view to promoting equality between women and men, and combating discrimination.³⁶

The project will be evaluated according to the desired outcomes regarding gender mainstreaming, as follows:

- Gender-responsive management including human resources and case management (rules, procedure, systems and facilities)
- Gender-sensitive prosecutors and police officers, other personnel (education and capacity building, crime prevention programs targeting gender-based violence)
- Developed gender-related database (sex-disaggregated and gender-related information)
- Integrated gender sensitive approach into outreach and public communication activities

Throughout implementation, monitoring and evaluation a gender balance was ensured in the team. At least one member of the project management team (hereinafter: PMT) and evaluation team was knowledgeable about gender issues and gender mainstreaming. In addition, gender-specific evaluation questions were addressed during evaluation interviews.

³⁶ European Institute for Gender Equality, <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>. Additional sources: www.un.org/womenwatch, Council of Europe, 'Gender mainstreaming: conceptual framework, methodology and presentation of good practices'. Strasbourg, EG-S-MS (98) 2, May 1998.)

Firstly, it should be noted that project's logical framework (hereinafter: logframe) does not include any gender specific objective or outcome, unlike outputs. Indeed, the development of the study "Gender issues in Judiciary" and its publication were planned as cross-cutting activity, but that activity had not been realised within this project because a similar study was prepared within a different, albeit, judiciary-related project.³⁷ This study refers to judiciary in total including judges, prosecutors, lawyers and associates and the findings relate to several categories of judicial office holders, thus leading to findings and conclusions being more general and less focused on prosecutors.

In the preliminary phase, before designing Phase II of the project, an external gender expert³⁸ was engaged, in coordination with the PMT, with aim to prepare a report on gender mainstreaming and to give concrete recommendations for integration gender considerations in the project (Phase II). This included concrete recommendations for gender-specific references/indicators in the logframe. Only few of the 40+ recommendations had been explicitly accepted in the final logframe.

First, for output A3 ("Practical and thematic training programs devised and implemented in line with the prosecutors' needs in BiH and capacities of entity JTC' strengthened accordingly"), the indicator was set as *increased awareness of prosecutors staff about gender equality with target of more than 80% of prosecutorial staff trained on gender equality*. This issue will be addressed in relation to capacity building and training programs. Second, output B2 explicitly contained reference to gender sensitivity ("20 POs in BiH are managed more efficiently and effectively in line with needs-based strategic and operational priorities, *incorporating a gender sensitive approach*"). For this output, an indicator was set as *developed program for improvements of chief prosecutors' management and gender mainstreaming (...)*. It is difficult to evaluate in which aspect and how successfully the Chief prosecutors implemented *a gender sensitive approach* within their managerial practices, since no other measures/indicators were defined. Third, for output C1 set as "Strategic and operational framework for the care of users of POs adopted and implemented", an indicator was developed that reads "Strategy for the care of users *with incorporated*

³⁷ Prepared by Majda Halilović and Heather Huhtanen in 2014 titled „Gender and the Judiciary: Selected findings and recommendations on the implications of gender within the judiciary of Bosnia and Herzegovina“, within the project „The Gender and Justice Reform Project in Bosnia and Herzegovina“, partnered by Geneva Centre for the Democratic Control of Armed Forces (DCAF) and Atlantic Initiative (AI).

³⁸ Sanja Tošić, Report and recommendations: Support in Gender Mainstreaming in project „Strengthening the Capacities of Prosecutors in the Criminal Justice System“.

gender sensitivity is implemented in most POs in BiH.” This strategy has been developed and according to interviewees, implemented in POs.

No data available on gender responsive budgeting.³⁹

- a) Gender-responsive management, including human resources and case management (rules, procedures, systems)

In BiH, out of 353 prosecutors, 168 prosecutors or just under half are women. Out of 20 Chief prosecutors, 7 are women. According to reports and interviews, care was taken to ensure men and women were equally included as authors of training materials, trainers and participants on study trips.

The *Gender Mainstreaming Strategy* of the project was prepared by external gender backstopper, Megan Smith Hrle. According to this Strategy, the project envisions a gender-responsive prosecutorial system where all women and girls in BiH are able to seek support, safety and justice free from bias and discrimination, within the criminal justice system. Similarly, women working within the prosecutorial system are free from discrimination and harassment, and advance equally as their male counterparts. The project, according to Strategy, aims to enhance gender equality within the prosecutorial system by mainstreaming gender into all relevant activities.

As first strategic orientation, the project should work with Chief Prosecutors to mainstream gender in all management practices, including long-term work plans and operational approaches within each office. The Strategic Framework for prosecutors in Federation BiH 2018-2020 contains only one explicit reference to gender equality, namely in the introductory remarks. It states: “gender equality remains very important question and all prosecutors should take into consideration gender equality.” According to PMT legal adviser for gender issues, other strategic plans contain such formulations, without any other concrete examples of gender-sensitive approach being planned and implemented.

PMT Report 2018 states: “With (these) activities⁴⁰, all elements of the project’s *Gender Mainstreaming Strategy* are being actively implemented and a gender sensi-

³⁹ A „gender-sensitive budget“ disaggregates expenditures in terms of women and men – it is a budget that shows how much money and resources has been spent on women and how much is spent on men and why. The purpose is to determine the impact of existing expenditures on women and men and to review gender-related allocations of opportunities and resources. It, however, relies on gender-disaggregated data (who gets jobs, what kind of jobs and what salary, who is targeted for training, who has decision-making power over allocation of resources etc.).

⁴⁰ Inclusion of cited formulation within strategic plans; development of Manual on Prosecuting Criminal Offences involving Sexual Violence; distribution of leaflets; capacity building.

tive approach to strategic planning and conducting criminal investigations is increasingly understood and embraced.” However, an indicator to measure improvement is missing. Capacity building will be elaborated below. As for the other relevant activities, such as inclusion of cited formulation within strategic plans and distribution of leaflets (except for the preparation of the Manual), these activities are neither substantial enough nor far-reaching, and are unlikely to effectively contribute to gender mainstreaming. Despite that, the PMT legal adviser states that feedback and reaction from prosecutors and other prosecutorial staff indicate raising awareness, their acceptance and change within POs. Implementation of gender equality principles can be monitored through the appointment of heads of departments - to ensure equal gender representation, the same applies to the employment of civil servants. In addition, it is stated that Chief prosecutors indirectly discriminate as far as the assessment of prosecutors is concerned, who were previously on maternity leave, in manner not affecting their promotion and work evaluation. Secretaries and Chief prosecutors also have a duty to monitor and implement guidelines for the prevention of sexual and gender-based harassment in judicial institutions in BiH that the HJPC has adopted and each prosecutor's office has its advisor in charge of coordinating the implementation of the Guidelines.

According to the available information presented above, several activities had been implemented and basic prerequisites for gender-sensible approach were set, however, the quality and scope of gender-sensitive approach being implemented remains inconclusive due to lack of concrete indicators.

- b) Gender-sensitive prosecutors and police officers, other personnel (education and capacity building, crime prevention programs targeting gender-based violence)

The development of sustainable capacity building programs through entity Judicial Training Centres (hereinafter: JTC) is another core component of the project. The JTC delivers more than 150 trainings per entity during one year. The main characteristic of prosecutor's training are specialisation through a modular approach and multi-annual (two-year) training. The only gender-related topic incorporated within the project was included in education on cyber-crime (sexual exploitation in cyber space), with 21 attendants to this course. Besides that, several trainings regarding gender issues (ethics, gender equality, violence against women, trafficking, human

rights and anti-discrimination legislation) were contained and conducted in accordance with entity JTCs' annual plans.⁴¹ **It is difficult to evaluate the effect of these trainings on attitudes, approach and professional conduct of prosecutors, since no feedback or evaluation report is available. At present, there is no obligatory training on gender equality for judicial officials.**⁴² In addition, a *Manual on Processing Gender-based Violence and Sexual Crimes against Women and Children* for judges, prosecutors and police was developed. This includes guidelines on how to process these criminal offences with two following educations (Sarajevo and Banja Luka) held by authors of the Manual.

No training for trainers were organised integrating topics of gender equality and human rights.

Additionally, one online gender equality course was developed for prosecutors and other prosecutorial staff. Participation in this and other gender-related courses is voluntary. The course covered basic concepts of sex, gender and discrimination. A number of prosecutors were included in the online course, however, no exact data were available, since education was offered on the JTC platform and because other prosecutorial staff was involved as well. As explained by the PMT, an evaluation of the course was not conducted “because this is a new methodology for which the evaluation system has not been developed.” No feedback from participants was gathered, except confirmation by participants that this is an interesting timesaving concept of education, while at the same time providing enough information. The plan is to organise online course again, however, no education is planned for 2019 within project – neither for prosecutors nor for police officers. Other online courses on various topics will likely be developed by June 2019 as a module for newly appointed prosecutors. According to the interviewees from JTC, the JTC provided inputs to the online course on gender sensitivity. **Taking into account the concept, modality and content of (only one) online course, it appears that the choice was not optimal for achieving substantive changes in the approach to gender equality within the prosecutor's offices. Even more so since the course was not tailored specifically for prosecutors, but included other prosecutorial staff, which inevitably led the course to lose in intensity and specialisation.**

⁴¹ Information available only in local languages. See: <http://www.rs.cest.gov.ba/index.php/seminari-2018>

and

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi5i_PU4YbhAhUEx4sKHS81BAUQFjAAegQICRAB&url=http%3A%2F%2Fwww.rs.cest.gov.ba%2F&usg=AOvVaw1n7iNYsbbCNLHUo1tw3Go5

⁴² Gener Mainstreaming Strategy, p.8.

c) Developed gender-related database

Data being collected and processed within project's reporting is not being classified according to sex and/or gender. There is no special records for girls and women (both victims and perpetrators) in TCMS. Although TCMS does allow the input of gender-related data, for example, indication of sex/gender for each party, this is not a required field (no obligatory input) and the quality of the data is questionable.

d) Integrated gender sensitive approach into outreach and public communication activities

According to the *Gender Mainstreaming Strategy*, the project will support POs in creating more proactive and transparent policies toward interacting with the public, with a particular focus on hard-to-reach groups, such as women and girls victim of violence and rural women. In addition, the project should strengthen collaboration with the civil society and make stronger linkages and improved understanding between the community and the prosecutorial system

With this purpose, the *Strategy on Treatment of Persons in Contact with the Prosecutors' Offices* was developed. It sets “the standards for the treatment of persons coming in contact with the POs” and creates “new modalities of cooperation between NGOs and POs, particularly in the area of witness support, citizen engagement, and the use of media toward fostering greater public trust in the work of POs”. According to interviewees, this is a modality of using resources (expertise) of NGOs in certain areas in the field of work of the POs. E.g., the use of NGO Vive Women expertise to support victims and witnesses, or in the case of NGO Transparency International BiH, to assist prosecutors to establish reactivate forums for cooperation with the community.

According to the *Gender Mainstreaming Strategy*, *Strategy on Treatment (...)* should integrate a gender sensitive approach and include specific activities toward promoting gender equality in the work of POs. Although with great potential, the Strategy is rather gender-blind and without explicit mentioning of gender-sensitive approach, except for a few sporadic mentioning of gender in general. According to the PMT legal adviser, a strategic goal to “ensure professional treatment of participants in actions within the jurisdiction of the prosecution” entails also gender-sensitive approach. **This approach, however, was neither mentioned explicitly, nor explicitly elaborated through strategic programs within same strategic goal, leaving this interpretation inconclusive.**

In order to "create preconditions for professional treatment of victims and witnesses (...)" (strategic program 1.1.) and with a view to encourage the prosecution to establish functional cooperation at the local level, cooperation with organisations and institutions that provide support to victims was set as an indicator of success. This included groups related to war crimes, trafficking in human beings, gender-based violence, hate crimes, violence against children, among other crimes. However, no concrete data was available on the number, parties or duration of protocols of understanding and cooperation at the local level. No data list of involved NGOs, list of cantons where such collaboration was established with indicated purpose of such collaboration etc. was collected. Interviewees state that cooperation with NGO within three NGO grants was a one-time cooperation with perspective to, if possible, transform in longer lasting process. Since this kind of cooperation requires certain financial resources that do not exist – neither within the project's budget nor in the NGOs – **sustainability of such collaboration is thus at risk.**

The monitoring system of the Strategy includes periodic reporting on the status of implementation of the activities from the Strategy. Each POs must report bi-annually on 60+ items contained in the Strategy and reporting is designed as a list of close-end questions (answers yes-no). **In addition to not revealing much, it is assumed that the answers are true and valid inputs from POs, with no other monitoring mechanisms in place.**

e) Conclusion

The project's logframe does not include any gender specific objective or outcome. Data being collected and processed within the project's reporting is not being disaggregated according to sex and/or gender and there is no special records for girls and women (both victims and perpetrators) in TCMS. Although TCMS does allow the input of gender-related data, this is not a required field and the quality of the data is questionable.

The *Gender Mainstreaming Strategy* was prepared by the external gender backstopper Megan Smith Hrle. According to the Strategy, the project aims to enhance gender equality within the prosecutorial system by mainstreaming gender into all relevant activities. In that manner, *Strategic Framework for prosecutors in Federation BiH 2018-2020*, similarly to other strategic plans, contains only one explicit reference to gender equality within introductory remarks. There it says: "gender equality remains a very important question and all prosecutors should take into consideration gender equality", without any other concrete examples of gender-sensitive approach being planned and implemented.

Although the PMT acknowledges that the activities for gender mainstreaming were wide ranging⁴³, the achieved results are not as far-reaching as expected. In general, management practices within the prosecutors' offices are improved, but as new goals are set out, e.g. on gender-mainstreaming or transparency vis-à-vis public, additional and substantial improvement is needed. The lack of clear qualitative and quantitative indicators for gender-mainstreaming and implementing gender-sensitive approach prevents a complete and thorough evaluation of the results achieved.

The measures that have been taken to date point to a formal commitment to gender mainstreaming. However, the fluctuation in intervention levels, the choice of modalities and training concepts⁴⁴, the lack of adequate monitoring mechanisms and the temporary and geographically limited nature of cooperation with NGOs, indicate a genuine lack of gender mainstreaming in the prosecutorial system.

In regards to capacity building, the only gender-related topic incorporated within the project was included in cyber-crime training (sexual exploitation in cyber space), with 21 attendant to this course. Besides that, several trainings regarding gender issues (ethics, gender equality, violence against women, trafficking, human rights and anti-discrimination legislation) were planned and organised in accordance with entity JTCs' annual plans, although at present, there is no mandatory training on gender equality for judicial officials. It is difficult to evaluate the effect of these trainings on attitudes, approach and professional conduct of prosecutors, since no feedback or evaluation report is available. The sustainability of gender results in this project is an important issue and current or formally attained benefits are not relevant if sustainable effects cannot be guaranteed.

f) Recommendation

More specific gender targets needed in logframe with adequate monitoring system in the final phase as well as more substantial measures and focused, concrete and intensive activities aiming to introduce genuine gender-sensitive approach in POs and police structures (both internally and externally).

⁴³ Including cooperation with one feminist NGO; organising online training for prosecutors; developing and adopting policies, including gender in strategic planning; distributing informational brochures/leaflets; developing crime prevention programmes (safety in cyber space); organising specialised training for POs spokespersons on gender sensitive reporting

⁴⁴ For example, distribution of informational brochures, one e-learning module for gender awareness without evaluation methodology, inclusion of gender-related topic as one segment of broader topic of sexual exploitation in cyber space etc.)

Annex 5: Workshop Report

Support to the Judiciary in BiH – Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina, Phase II

Wednesday, 6 February 2019, 11-15 hours

This short report summarises the workshop held for the external evaluation of the above-referred project. Apart from *validating the preliminary findings* of the evaluators, the main purpose of the workshop was to *identifying possible intervention areas* of the planned third phase of the project. The programme of the workshop, the list of participants and the presentation of the evaluators are annexed.

Part 1: Validation / comment of preliminary evaluation findings and learnings

Method: Presentation of the main facilitator, Dženana Radončić, and invitation of the participants to provide feedback to the following queries:

- to what extent do participants agree with findings and learning
- where / why do they disagree
- which findings do participants want to highlight, substantiate etc.
- statements of key deliverables, feedback on the cooperation and value of the Zurich PO

Feedback (summarised):

- Participants of the workshop concur with the preliminary findings presented by the evaluators; there are no major objections.
- Participants underline that the project is much known and well positioned not only within the HJPC but across prosecutorial system (“each prosecutors knows the project”).
- Some participants agree with the finding that “institutional sustainability” of the project is not secured yet; planned internal re-organisation of HJCP Secretariat can create opportunity for integration and thus sustainability.

Part 2: Priorities for prosecutorial service in the next 3-5 years

Method: Group-work (30 min.) with the purpose of identifying up to 10 strategic goals / items for prosecutorial system and prioritisation of these strategic goals / items (high, medium, low). Facilitators subsequently consolidated higher ranked strategic goals / items, which were then once again ranked by all participants.⁴⁵

⁴⁵ Each participant was invited of assignment up to three points to the consolidated priorities.

Consolidated priorities

| Priority | Score |
|---|-------|
| Increase technical resources for conducting investigations (high-tech/cybercrime) | 13 |
| Harmonise (processes of) reorganisation of prosecutors' offices and the police | 11 |
| Further capacity building; focus on joint trainings of police and prosecutors | 11 |
| Continue support to the Standing Committee | 10 |
| Continue prioritisation of cases of corruption or crime and economic crimes (peer review) | 8 |
| Improve organisation of prosecutorial systems | 7 |
| Continue work with / facilitation of Strategic and Operational Forums | 2 |
| Strengthen citizens' trust and the role of NGO | 2 |
| Further improve quality of work in the POs | 1 |

Part 3: Interventions that are needed to meet identified priorities, differentiation of interventions that have already been implemented and need to be scaled/continued and new interventions that are feasible to be meaningfully implemented in a period of 3-4 years

Method: Group work (30 min.) and subsequent plenary discussion with the purpose of identifying interventions and activities, at are needed to work towards realising the above referred strategic goals / items.

List of interventions / activities:

Increase technical resources for conducting investigations (high-tech/cyber-crime)

- Analysis of different high-tech crime types and trends; analysis of technical and personal resources in the prosecution and the police; identification of equipment and human resources needs

Harmonise (processes of) reorganisation of prosecutors' offices and the police

- Improve promotion system in accordance with specialisations to ensure the continuity of police officers in certain areas of crime (retain quality staff); introduce differentiation in wages and work evaluation for prosecutors and investigators; analyse current capacities and direct reorganisation accordingly; ensure/provide material and technical equipment for the police for modern research methods; improve/align records between police and prosecutors

Further capacity building; focus on joint trainings of police and prosecutors

- Maximise use of forums for improving capacity of prosecutors and police; synchronise trainings of prosecutors and police, incl. joint definition of topics; evaluation of training; continue specialist training for prosecutors jointly with police; continue cooperation with POs from Switzerland and involve of police from BiH; improve international legal assistance (data and person exchange)

Continue prioritisation of cases of corruption or crime and economic crimes (peer review)

- Increase number of prosecutors and police officers (reorganisation of existing staff); determine the optimum number of prosecutors and police; establish joint investigation teams focus on the role of the prosecutor running these teams (peer review); (intensify) joint education for prosecutors and police, ensuring specialisation; organisational changes: ensure police officers working on these cases are directly subordinated to the prosecutor; open financial investigations simultaneously with the opening of a criminal investigation

Improve organisation of prosecutorial systems

- Continue to advocate centralisation of criminal proceedings in POs - continue and further efforts to make changes in existing analyses; pilot redistribution of capacities between POs in accordance with the scope of work and workload; adapt internal organisation in accordance with the priorities of the POs; establish mechanisms of cooperation and coordination between POs at all levels through forum development

Continue support to the Standing Committee

- Administrative support (meetings, minutes, monitoring of conclusions); communication between Standing Committee and Chief prosecutors; regular meetings of Chief prosecutors

Continuing work with / facilitation of Strategic and Operational Forums

- Take necessary steps towards sustainability; Strategic Forum: ensure that representatives of the forum represent the interests of lower levels of government (FBIH); exchange best practices re operational forums; Additional suggestion from the group: monitor and, if necessary, improve the process of assessing the quality of prosecutorial work

Strengthen citizens' trust and the role of NGO

- Continuation with the implementation of Strategy on Treatment of Persons in Contact with the Prosecutors' Offices
- Strengthening of PR officers capacity

- Communication and plan standards
- Strengthening cooperation with relevant NGOs in terms of mutual resource use

Further improvement of the quality of work in the POs

- Revise incentive system (quota) for prosecutors' work; seek greater evaluation of the corruption, organised crime and economic crimes cases (KTK, KTPO and KTO); monitor and, if necessary, improve process of performance evaluation; improve practice of merging and separation of cases; improve prosecutorial teams; improve mentoring system in the prosecutor's offices; continue prosecutors' specialisation; introduce innovative and multidisciplinary approaches in the education of prosecutors and police; harmonise entity criminal procedural legislation (plea, etc.)

Additional comments and interventions:

- PO Una-Sana Canton (Bihac): solved its backlog as a result of additional legal staff engaged on corruption and economic crime cases; engaging external associates remains crucial (also applies to other PO)
- Minister of Interior (Sarajevo Canton): work of police in the community is deemed important, useful experiences from Switzerland which has experience with community policing projects; vital for strengthening citizen's trust in the judiciary; necessary to include prosecutors and relevant ministries in this regard
- Improve existing reporting system of the HJPC, POs and police: synchronise statistical reports, increase transparency and strengthen the position of the judiciary in regard to the public; harmonise records between police departments and prosecutor's offices.
- Address issues regarding salary grades (regardless of the complexity of the cases that prosecutors deal with, all belong to the same salary class)

Report by: Harald Meier, Dženana Radončić, 7 February 2019

Evaluator presentation

External evaluation

Strengthening prosecutors in the criminal justice system, Phase 2

Workshop
Sarajevo, 6 February 2019

B,S,S. Economic Consultants

1

Program

- ◆ 11:00 – 11:15 Workshop purpose, goals and participants
- ◆ 11:15 – 11:45 Overview of project implementation
- ◆ 11:45 – 15:00 Discussion rounds / breaks
- ◆ 15:00 – 15:15 Presentation of workshop conclusions
- ◆ 15:15 – Lunch / Departure

B,S,S. Economic Consultants

Purpose

- ◆ Assess the effectiveness, impact and sustainability of the project
- ◆ Assess the extent to which project is recognised and owned by HJPC
- ◆ Provide recommendation regarding future orientation and institutionalisation
- ◆ → evaluation findings, conclusions and (strategic) recommendations shall *"serve as relevant elements for decision making and setting up"* a possible third and final project phase.

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Preliminary evaluation findings

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Selected findings (1/2)

Overall

- ◆ Standing Committee's plays **central role** within HJPC on prosecutorial reform.
Example: 40+ measures/policies adopted by HJPC; legitimacy internally and externally (EU peer review recommendations).
- ◆ Project is the **main provider of operational and technical support** to the Standing Committee; delivery of project plan and usage of project funds suggest that project is relevant.
- ◆ Feedback of interviewees suggest that project enjoys **good reputation and standing** within HJPC.
- ◆ Project monitoring system indicates high level of achievement; but some indicators are inadequate.

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Selected findings (2/2)

Overall

- ◆ Project has **broadened range of partners** in project implementation beyond what was initially planned. Cooperation with Ministries of Justice has virtually been inexistent.
Example: Non-governmental partners, Ministry of Education, Ministry of Interior, Intelligence Service; partnerships with NGOs as a result of tender procedures and based on services agreements.
- ◆ HJCP would presently **neither have the requisite resources nor capacity to integrate** the project's functions into its existing structures.
Comment: Changes to the Law on the HJPC and plans for organisational reform of the HJPC Secretariat may create opportunities for integration / institutionalisation; yet budgetary constraints remain a challenge.
- ◆ Increased citizens' trust in the prosecutorial system may have deteriorated; partly beyond the ambit of the project.
Comment: Measures to increase transparency and communication vis-a-vis citizens and of citizens' understanding of prosecutorial system are of "existential nature".

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Increased efficiency and quality

Component 1

- ◆ Number of **backlog cases and “old cases” reduced**, and **average resolve time shortened**; both quantitative results can reasonably also be attributed to project.
Comment: End of temporary deployment of legal staff may limit prosecutors’ offices abilities to maintain or further reduce current backlog.
- ◆ Results regarding **quality of the decisions** (= rate of rejected and acquittal verdicts) are **mixed**; those regarding prioritisation of corruption or organised crime cases are inconclusive.
- ◆ Interviewees see evident capacity improvement of **specialised prosecutors** and benefits of mentorship programme; ongoing measures to align training of police-prosecutors (education forums) are expected to yield positive effects.
Comment: Canton Zurich Prosecutor’s Office involvement was reportedly relevant and effective; open question whether its involvement is still of use in the future and with which modality support should be provided.

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Enhanced coordination

Component 2

- ◆ More than **40 measures/policies** proposed by the Standing Committee have reportedly been adopted by the HJPC.
- ◆ Project initiated Strategic Forum and Operational Forums; these forums provide **space for cooperation, alignment as well as workarounds** to improve police-prosecutor collaboration. “Investigation teams” in 4 cities.
Comment: Difficult to assess the results of these forums but interviewee statements underline the value addition.
- ◆ **Management practices** of prosecutors offices improved according to interviewees; but as new strategic goals are set out – e.g. on gender sensitivity or transparency vis-a-vis public – additional improvement is needed.

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Enhanced quality, accountability, care

Component 3

- ◆ **Adoption of Strategy** and Action Plan for treatment of persons in contact with prosecutors' offices; inclusion of baselines/indicators for all POs in a communication framework.

Comment: Project evaluation of November 2017 states that implementation of the Strategy and Action plan will require "substantial assistance"; recent crisis communication in Banja Luka and Sarajevo respectively were not optimal, according to interviewee feedback.

- ◆ Some caution and resistance of prosecutors to make use of social media for communication with the public.
- ◆ Adoption of Gender Sensitive Approach.

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Lessons learned

- ◆ Participation and inclusiveness can enhance ownership and sustainability; early involvement is beneficial.
Examples: Strategic Forum, Chief Prosecutors' Collegium.
- ◆ Legislative changes are very difficult to achieve; therefore keep focus on exploiting the opportunities to adopt bylaws, procedures, rulebooks; consultation and early involvement of relevant actors can be beneficial.
- ◆ Orienting strategic reforms along EU requirements offers more momentum than JSRS.

Source: Annual Report sections on lessons learnt; above referred items are consolidated by the evaluators.

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Workshop conclusions

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Part 1: Validation

Preliminary findings

- ◆ Participants of the workshop concur with the preliminary findings presented by the evaluators; there are no major objections.
- ◆ Participants underline that the project is anchored not only within the HJPC but across prosecutorial system (*“each prosecutors knows the project”*).
- ◆ Some participants agree with the finding that «institutional sustainability» of the project is not secured yet; planned internal re-organisation of HJCP Secretariat *can* create opportunity for integration and thus sustainability.

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Part 2: Strategic priorities

Main priorities

- ◆ Increase in technical resources for conducting investigations (cyber-crime) *(13 points)*.
- ◆ Harmonised processes of reorganisation of prosecutors' offices and the police *(11 points)*.
- ◆ Further capacity building with a focus on joint trainings of police and prosecutors *(11 points)*.
- ◆ Continued support to the Standing Committee *(10 points)*.
- ◆ Continued work on priority cases of corruption or crime and economic crimes (peer review) *(8 points)*.

List of participants

| Prosecutor offices | | |
|--------------------------------------|--|--------------------------|
| Mirzeta Begić | Deputy Chief prosecutor | PO Tuzla |
| Zdenko Kovač | Chief prosecutor | PO Mostar |
| Dalida Burzić | Chief prosecutor | PO Sarajevo |
| Jadranka Lokmić Misirača | Prosecutor of PO BiH | HJPC Member |
| Mahmut Švraka | Chief prosecutor – Republic PO RS | HJPC Member |
| Slavo Lakić | Prosecutor-Federal PO of FBiH | HJPC Member |
| Željka Radović | Chief prosecutor – PO Doboј | HJPC Member |
| Fadila Amidžić | Chief prosecutor | PO Bihac |
| Tihomir Jurko | Acting Chief prosecutor | Federal PO FBiH |
| Vesna Kaknjo | Chief prosecutor | PO Zenica |
| Zekerija Mujkanović | Chief prosecutor | PO Brčko distrikt BiH |
| Police agency representatives | | |
| Miroslav Đurić | Police inspector for prevention – of- fice of police director | MoI RS |
| Radenko Novković | The police support department – Forensic investigation unit | MoI RS |
| Miroslav Kalabić | Chief of economic crime depart- ment– Police unit Banja Luka | MoI RS |
| Admir Katica | Minister | MoI Canton Sarajevo |
| Mevludin Halilović | Chief of police | MoI Canton Sarajevo |
| Nermin Alispahić | Chief of crime police unit | MoI Canton Tuzla |
| Goran Pisić | Chief of police | Police in Brčko District |
| | | |
| Amila Rahić | Project manager | |
| Enes Šehić | Deputy Project manager | |
| Adisa Muratbegović | Legal Advisor | |
| Haris Grizović | Statistic Advisor | |
| Adis Hećimović | Legal Advisor | |
| Aleksandra Todorović | Legal Advisor | |
| Biljana Miladinović | Administrative Assistant | |
| | | |
| Dženana Radončić | Evaluator | |
| Adnan Kadribašić | Lucid Linx | |
| Harald Meier | Evaluator | |

Workshop Programme

- 10:45 – 11:00** Arrival and registration of participants
- 11:00 – 11:15** Presentation on workshop purpose, goals and participants
- 11:15 – 11:45** Brief overview of project implementation and feedback by the participants
- 11:45 - 15:00 Discussion**
- 11:45 – 12:45 Discussion Part II (identification of priority reform areas)
 - 12:45 – 12:55 Short break
 - 13:00 – 13:45 Discussion Part III (classification of identified priorities)
 - 13:45 – 13:55 Short break
 - 14:00 – 15:00 Discussion Part IV (identification of interventions)
- 15:00 – 15:15** Presentation of workshop conclusions
- 15:15 -** Lunch / Departure

The workshop context

The Swiss Agency for Development and Cooperation commissioned an external evaluation of the project "*Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina, Phase II*". A workshop with representatives of the prosecutorial and the police services shall contribute to the evaluation.

The workshop objectives

The workshop aims at validating selected, preliminary evaluation findings and learnings; identifying strategic priorities and potential future interventions as well as measures to enhance sustainability of these future interventions.

The workshop structure

The workshop is a four-hour collaborative event, structured in content-related plenary discussions/group-works and followed by a presentation of consolidated workshop conclusions.

- The *first part* consists of a short presentation of preliminary project-evaluation findings and a collective feedback thereto.
- In the *second part* the participants shall, through brainstorming and facilitated group work, identify reform priorities for the prosecutorial service in the next 3-5 years. We aim towards elaborating a list of strategic items that are characterised e.g. in regards to their source (internal/external) and according to their priority.

- The *third part* will be devoted to assessing the current and past project interventions in terms of their adequacy, design, concept, quality or effectiveness as well as identifying project interventions deemed necessary in a potential future phase of the project.
- The *fourth part* will link to the strategic items referred to above. It will focus on classifying the strategic items in terms of the extent to which their realisation would benefit from external support.

The workshop will be finished with a presentation of the consolidate workshop conclusions.

The workshop logistics

The workshop takes place at the High Judicial and Prosecutorial Council in Sarajevo on Wednesday, 6 February 2019 from 11-15 hours. It will be facilitated by two consultants and held in local language.

Annex 6: Interviewees

The following table shows persons who were interviewed for this evaluation.

| Name | Institution |
|------------------------------|---|
| Haris Lokvancić | SDC |
| Dimka Stantchev | SDC |
| Jadranka Lokmić Misirača | HJPC |
| Milan Tegeltija | HJPC |
| Admir Suljagić | HJPC |
| Hajro Pošković | HJPC |
| Amila Rahić | Project team |
| Enes Šehić | Project team |
| Adis Hećimović | Project team |
| Haris Grizović | Project team |
| Umberto Pajarolo | Canton Zurich Prosecution Office |
| Sead Traljić | LucidLinx |
| Megan Smith Hrle | Consultant |
| Ana Bilić Andrijanić | HJPC Project Court Efficiency |
| Jasmin Muratagić | HJPC Project War Crimes |
| Hilma Unkić | Mediacentar |
| Snježana Ivandić Ninković | Asocijacija za Demokratske Inicijative |
| Almir Tabaković | Judicial Training Centre |
| Sanela Paripović | USAID Justice Sector Project |
| Biljana Potparić-Lipa | USAID Justice Sector Project |
| Christopher Will | GIZ Project Countering Serious Crime in the Western Balkans |
| Hajrija Hadžiomerović-Muftić | Consultant |

Annex 7: Literature

Bertelsmann Transformation Index 2018 Country Report – Bosnia and Herzegovina, Bertelsmann Stiftung, 2018

Evaluating Development Co-operation: Summary of key norms and standards, Organisation for Economic Development, Paris, June 2010

Bosnia and Herzegovina. Enhanced Justice Sector and cooperation in Rule of Law, IPA II 2014-2020 Country Action Programme.

Bosnia and Herzegovina: Overview of corruption and anti-corruption, Transparency International, November 2018

Conclusions of mid-term evaluation of the project "Strengthening the role of prosecutors in the criminal justice system", Lucid Linx, 8 May 2017

Review of Norwegian Support to the Judicial Sector in Bosnia and Herzegovina, Final Report, LucidLinx, 30 October 2017

Support to the Judiciary in Bosnia and Herzegovina – Strengthening prosecutors in the criminal justice system, External Evaluation, Final report, B, S,S. Economic Consultants, October 2013