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# FINAL REPORT

OCTOBER 2014 – SEPTEMBER 2019

## USAID'S JUSTICE ACTIVITY IN BOSNIA AND HERZEGOVINA



September 20, 2019

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### USAID'S JUSTICE ACTIVITY IN BOSNIA AND HERZEGOVINA

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## LIST OF ACRONYMS

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ACCOUNT	Anti-Corruption Civic Organizations' Unified Network
AEA	Association of Expert Associates and Advisors in Courts and Prosecutor Offices of BiH
APIK	Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
APIK BoR	APIK Book of Rules on How to Process Reports Indicating Corrupt Conduct
BI	Business Intelligence System
BiH	Bosnia and Herzegovina
CEELI	Central and Eastern European Law Initiative
CMS	Case Management System
DA	Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary
DAD	Diagnostic Assessment Document on the Enforcement Regime of Civil Claims in BiH
DCMS	Disciplinary Case Management System
EC	European Commission
EU	European Union
FAQ	Frequently Asked Question
FBiH	Federation of Bosnia and Herzegovina
FOIA	Freedom of Information Act
HJPC	High Judicial and Prosecutorial Council
IT	Information Technology
JA	Justice Activity
JPTC	Judicial and Prosecutorial Training Center
M&E	Monitoring and Evaluation
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NCSC	National Center for State Courts
NGO	Non-Governmental Organization
ODC	Office of Disciplinary Counsel
OPDAT	United States Department of Justice's Overseas Prosecutorial Development, Assistance, and Training
OSCE	Organization for Security and Cooperation in Europe
PGI	Prosecutor Guided Investigation
PO	Prosecutor Office
POAP	Prosecutor Office Assistance Plan
POCM	Prosecutors' Office Capacity Matrix
PPP	Prosecutor Partnership Program
PR	Public Relations
RAI	Regional Anti-Corruption Initiative
RS	Republika Srpska
RSSPO	Republika Srpska Special Prosecutors Office for Organized Crime and Corruption
SAI	Supreme Audit Institution
SIPA	State Investigation and Protection Agency

SPO	FBiH Special Prosecutor Office for Combating Corruption, Organized, and Inter-Cantonal Crime
SC	HJPC Standing Committee on the Efficiency of POs in BiH
SCL	HJPC Standing Committee for Legislation
SDC Project	Project on Strengthening POs' Capacities in the Criminal Justice System, funded by the Swiss Agency for Development and Cooperation and the Norwegian Government
SOW	Statement of Work
TAIEX	Technical Assistance and Information Exchange
TCMS	Prosecutor Case Management System
USAID	United States Agency for International Development
USKOK	Croatia's Office for the Suppression of Organized Crime and Corruption

## ABOUT THE PROJECT

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The US Agency for International Development's (USAID's) Justice Activity in Bosnia and Herzegovina (BiH), hereafter the JA, was a five-year rule of law initiative, worth in total \$9.4 million, implemented by the US-based company Millennium DPI Partners, LLC, in collaboration with its partners, the US National Center for State Courts (NCSC) and one local company, Lucid Linx. The Project ran from October 2014 until October 2019. Its purpose was to help justice sector institutions in BiH effectively combat government corruption and prosecute economic, organized, and other serious crime. At the same time, the JA aimed to increase public confidence in the judiciary by strengthening its integrity and ensuring greater self-accountability and transparency within the justice sector.

To achieve these objectives, the JA operated through two components:

- Component 1: Strengthening the Professional Status and Performance of Prosecutors
- Component 2: Strengthening Justice Sector Institutions to Uphold Public Integrity and Combat Corruption

A third component, Improving Efficiencies in the Enforcement of Judgments, was eliminated by USAID in the second half of Year 2. The key achievement of this component was the publication of the Diagnostic Assessment on the Enforcement of Judgments. This document, containing over 100 recommendations aimed at improvements both in practice and in the legal framework and by-laws, will remain a foundation for local justice sector institutions, the government and legislators, and donors, as well as legal practitioners who will plan and implement improvements and reforms in this area in the future.

In implementing its activities, the JA worked in partnership with key actors and stakeholders in the justice system in BiH. These partners included the High Judicial and Prosecutorial Council (HJPC) of BiH, partner courts and prosecutor offices (POs), ministries of justice (MOJs), professional associations in the judiciary, civil society, and other donor-funded initiatives in the rule of law. The JA ensured its activities were designed and implemented to support the reform objectives outlined by USAID's Country Development and Cooperation Strategy, the European Union (EU) Progress Reports on BiH, and strategic documents of key justice actors including the HJPC and POs, thus supporting BiH on its path towards the EU accession.

Specific activities that the JA has implemented with national partners include: developing in-depth diagnostic assessments of key issues related to the JA's scope of work (a total of 10 assessments were produced); conducting individual assistance and partnership programs with each of the 19 POs; and working with the Office of Disciplinary Counsel (ODC) and relevant HJPC Standing Committees and Working Groups to improve disciplinary proceedings, ethical standards, and integrity within the judiciary.

The JA team was composed of national legal experts with in-depth knowledge of the BiH judiciary in those areas the JA aimed to address. In addition, the JA had a wide range of international and national experts in various fields on which it could draw, depending on the specific needs of its local partners and the goals of the JA.

## EXECUTIVE SUMMARY

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Although there were many previous efforts to reform the justice sector BiH, prior to the launch of the USAID's JA in 2014, there was an overwhelming consensus that insufficient attention was given to strengthening the capacity of prosecutors to investigate and prosecute corruption. Furthermore, in accordance with the conclusions of the EU Foreign Affairs Council of April 2014, it was decided that the agenda for the Structured Dialogue between the EU and BiH should be broadened to include, among other things, a greater focus on corruption. Efforts to successfully prosecute corruption were seen as clearly insufficient according to relevant non-governmental organizations (NGOs) and the BiH 2013 Progress Report by the European Commission (EC). In addition, as the statistics in the HJPC's Annual Report showed at the time, POs in BiH were grappling with a huge backlog. For example, on December 31, 2013, the backlog in cantonal POs included 46% pending cases at the criminal report stage and 57% pending cases at the investigation stage, while the proportion of these cases in district POs was 69% and 55%, respectively.

Furthermore, relevant strategic documents<sup>1</sup> indicated that an impartial and accountable judiciary capable of addressing integrity gaps and corruption risks within the judiciary was crucial to the implementation of efficient and sustainable anti-corruption reforms in society. It was in this context that the JA carried out its activities from 2014 to 2019. The JA was able to build on two previous five-year projects funded by USAID, the Justice Sector Development Projects I and II, which also aimed at assisting the government to build the capacity of the justice sector to fight corruption.

The JA's objectives were designed to enhance:

1. Prosecutors' status and performance
2. The enforcement of court decisions
3. The integrity of the justice sector as being worthy of public trust
4. The capability of courts and POs to prosecute and enforce laws against corrupt officials

The overall purpose of the activity was to help justice sector institutions in BiH effectively combat government corruption and prosecute economic, organized, and other serious crime cases. At the same time, the JA aimed at increasing public confidence in the judiciary by strengthening the integrity, accountability, and transparency of the justice system.

The JA's goal from the outset was to partner with key national stakeholders to secure local buy-in for its activities and long-term sustainability for implemented solutions. From the beginning, the JA coordinated its activities with the HJPC, its relevant Strategic Bodies, and the Secretariat, built partnerships with all BiH POs, and cooperated closely with judicial and prosecutorial training centers

<sup>1</sup> See Bosnia and Herzegovina Justice Sector Reform Strategy 2014 – 2018:

[http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/13%204%20RSP%20u%20BiH%20-%20EJ.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/13%204%20RSP%20u%20BiH%20-%20EJ.pdf)

See also: EC Bosnia Progress Report, October 2014

[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-bosnia-and-herzegovina-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf)

(JPTCs), NGOs, MOJs, and other international donors, particularly the EU, with the aim of achieving the four objectives listed above.

The achievements of the JA should be viewed in the context of the environment in which the JA operated during its mandate. The JA faced significant difficulties in implementation which included: the lack of an adequate legal and institutional framework<sup>2</sup>, inadequate action plans and operational instruments for implementing the rules and regulations developed and adopted with the JA's assistance, and a profound lack of political will on the part of justice sector actors to implement reforms in the field of rule of law.

As noted in the Performance Evaluation Report issued by MEASURE-BiH: "the JA operated in a highly challenging environment that was not conducive to fighting corruption. Given this context, the JA's implementation required flexibility and adaptation."<sup>3</sup>

The next few paragraphs describe some of the challenges the JA faced in its efforts to achieve effective reforms within the BiH judiciary.

Although combatting corruption was officially touted as a priority by the HJPC at its annual conference on anti-corruption, corruption cases were not formally prioritized in the HJPC's strategic documents and annual plans. Even its latest Annual Work Plan for 2019 and the Draft Three Year Work Plan (2020–2022) failed to give priority to anti-corruption efforts and, significantly, did not include successful prosecution of corruption as a criteria in the evaluation of prosecutor performance. This has clearly undermined efforts to motivate prosecutors to take on complex corruption cases or high-profile cases.

The JA worked with the HJPC to develop a new system for measuring and rewarding prosecutors who work on complex cases of corruption. The HJPC, with the JA's technical assistance, adopted a completely new set of rules in 2018 to appraise the work of prosecutors more fairly by taking into account the type of case, not just the number of cases prosecuted by a prosecutor in a single year. These rules are a first step towards developing a more balanced system for measuring the work of prosecutors and rewarding and motivating those who take on complex and time-consuming corruption cases.

One of the most significant challenges to the JA's efforts to support prosecutors to combat corruption was the Judgement of the Constitutional Court of BiH (U-5/16, of June 1, 2017), which held that provisions of the BiH Criminal Procedure Code on special investigative measures and immunity of witnesses were unconstitutional, therefore putting into question constitutionality of prosecutorial actions taken in that regard. The Constitutional Court's ruling, requiring changes to the Criminal Procedure Code in order to bring respective provisions in line with the Constitution, had the effect of calling into question several hundred ongoing investigations and trials as it threatened to make key evidence against defendants inadmissible (such as evidence collected by using wiretapping or other secret surveillance). awaiting legal adoption of relevant legal amendments. This situation lasted until September 17, 2018, when the BiH Parliament finally adopted the necessary changes to the BiH

<sup>2</sup> See Commission Opinion on Bosnia and Herzegovina's application for membership of the EU: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion_en.pdf), and accompanying Analytical Report of the EU Commission: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf>

<sup>3</sup> Performance Evaluation of USAID's Justice Activity in Bosnia and Herzegovina, p 12, <http://www.measurebih.com/performance-evaluation-justice-activity-in-bih>



Criminal Procedure Code with regard to the Constitutional Court's decision, defining clear criteria for undertaking special investigative measures which are important tools for successful prosecutions in complex cases such as corruption cases.

The JA also had to adjust to the unexpected delay in the establishment of the Special Departments for Corruption of the Federation of BiH (FBiH) PO and the FBiH Supreme Court in 2015. This effectively halted investigations on a large number of cases in cantonal POs. Following this setback, the Republika Srpska Special PO for Organized Crime and Corruption (RSSPO) underwent a restructuring during 2016 and part of 2017 as a result of legal amendments that transferred the department from the District PO in Banja Luka to the Republic PO of the Republika Srpska (RS). This restructuring resulted in a significant delay in the processing of cases since the entire staff of the newly established department had to be reappointed.

Other challenges faced by the Project included the absence of effective mechanisms for overseeing the implementation of important directives that had been developed and adopted by the HJPC with the JA's assistance. These included the HJPC's Guidelines for the Prevention of Conflict of Interest in the Judiciary (Conflict of Interest Guidelines) and HJPC's Guidelines for Determining Disciplinary Measures (Disciplinary Sanctioning Guidelines). Despite the JA's investment of considerable time and effort to help national counterparts develop these guidelines, internal resistance to their implementation has been hard to overcome. For example, the new asset declaration system for judges and prosecutors, which would have been an important tool in detecting conflict of interest breaches, was suspended.

Despite these challenges and the lack of political will to support necessary legislative changes and provide sufficient means, in terms of human and technical capacities, to judicial institutions to successfully fight corruption, the JA was able to achieve significant progress in strengthening the capacity of prosecutors to combat corruption while building effective integrity measures into the judiciary.

During the past five years, the JA worked with 19 POs to improve their prosecutorial capacity through tailored Prosecutor Partnership Programs (PPPs). As part of this effort, the JA organized a total of 109 professional events, attended by 1,247 prosecutors and other PO staff, and helped build the capacities of POs to efficiently prosecute corruption and economic and organized crime, strengthen managerial skills, and improve integrity and transparency.

The JA successfully implemented, for the first time in BiH, a specialized two-year training program for prosecutors working in: 1) corruption, 2) economic and organized crime, and 3) cyber-crime. In total, 70 prosecutors were certified in these areas through this program.

The JA produced 10 diagnostic assessments and expert analyses covering key issues relevant to the reform of the judiciary, with a focus on corruption and strengthening accountability and integrity. Key findings and conclusions from these analyses often served as the basis for other strategic documents produced by relevant national and international bodies and organizations.

The JA worked closely with numerous counterparts to make the Project as effective as possible. A Memorandum of Understanding (MOU) was signed with the HJPC in the first year of implementation to ensure all Project efforts would be coordinated at a strategic level with the HJPC and its relevant standing committees. The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) was also party to this MOU. The JA also signed cooperation agreements with Croatia's State Prosecutor Office for the Suppression of Organized Crime and Corruption

(USKOK)<sup>4</sup> and Romania's Directorate for the Fight against Corruption whose experts provided professional support and guidance to BiH prosecutors on subjects relevant to ongoing processes and investigations.

The JA also tackled one of the most challenging issues in prosecuting high profile cases — that of incentivizing prosecutors to work on the most complex cases. This subject was targeted through numerous recommendations in several of the JA's diagnostic assessments and at different expert forums. As a result, the HJPC introduced additional criteria for evaluating the work of prosecutors tasked with financial investigations in complex cases.

Furthermore, the JA managed to link the fragmented prosecution service in BiH that is organized at the level of two entities and one district. This was achieved through a methodological approach to strategic planning and instituting semi-annual meetings for collegiums of chief prosecutors where best practices, knowledge, and other experience could be shared.

As a result of JA interventions and efforts, the issues of conflict of interest, integrity, disciplinary procedures, and sanctioning were addressed for the first time by the HJPC in a systematic and comprehensive manner that resulted in the adoption of several crucial guidelines and handbooks governing these topics. Integrity plans became part of each judicial institution in BiH. All of the activities were carried out in coordination with the EU and in line with the EU Peer Review Recommendations<sup>5</sup> (EU PRR).

## OVERVIEW OF YEAR 5 ACTIVITIES

In Year 5, the JA continued to provide intensive practice-based training and mentorship on criminal and financial investigations for prosecutors working in the Cantonal POs in Sarajevo, Orašje, and Livno and in the District POs in East Sarajevo, Trebinje, and Bijeljina. It also supported the participation of prosecutors from BiH at the anti-corruption training conducted by the Central and Eastern European Law Institute (CEELI) in Prague, Czech Republic. The Project also supported the Fourth Annual Anti-corruption and Integrity Conference, in collaboration with the HJPC and the EU. Regional workshops were organized to share best practices in prosecuting crimes linked to violations of public procurement procedures. The JA continued to provide legal consultancy support to the Cantonal POs in Goražde and Bihac and the District PO in Prijedor, while also extending this type of support to the District PO in Doboj. Specific expert support was provided to the District POs in Doboj and Prijedor in developing a budget framework document.

<sup>4</sup> USKOK is a body of the Croatian criminal justice system. It is attached to the State's Attorney Office and specializes in investigations related to corruption and organized crime. USKOK was formed in December 2001, and its headquarters are located in Zagreb.

<sup>5</sup> The EC recommendations stemming from the peer reviews aim at providing guidance for the reform of the BiH judiciary. Since 2016, with a view to the preparation of the EC Opinion on BiH's application for EU membership, seven peer reviews have been conducted in the justice sector: 1) HJPC Rules of Procedures, July 2016; 2) Procedure and Criteria for Appointment of Judges and Prosecutors, September 2016; 3) Disciplinary Procedures in BiH Judiciary, September 2016; 4) Financial Declaration and their Verifications in the Judiciary, April 2017; 5) Performance Appraisal of Judges and Prosecutors, April 2017; 6) Initial and Continuing Legal Education for Judges and Prosecutors, May 2017; and 7) Criminal procedure and Organised Crime, October 2017. For the purpose of the implementation of the EC peer review recommendations (1-6 from the above list), the HJPC has adopted a comprehensive Action Plan for the implementation of the recommendations and the JA assisted the HJPC in implementation of some recommendations falling into JA's mandate.

The JA published a Glossary of the Financial Terms for the legal professional community and an Analysis on the Use of Audit Findings in POs. The JA developed a Proposal of Targeted Results and Pertaining Indicators for Measuring the Work of POs on Asset Forfeiture until 2021, which were presented, discussed and, in principle, endorsed by the Collegiums of Chief Prosecutors for POs in the FBiH and RS, who lead POs' strategic planning processes in these Entities.

In terms of its cooperation with the HJPC's Standing Committee for the Efficiency of POs in BiH (SC), the JA, in coordination with the Collegiums of Chief Prosecutors in the FBiH and RS, provided support to the SC in developing the Best Practices Guide for Working with Expert Witnesses in POs.<sup>6</sup>

The JA also successfully implemented several workshops for chief prosecutors and public relations (PR) officers dedicated to increasing the transparency of POs and developing their capacity to communicate with the media and with public in general. To support a unified practice in the area of transparency, the JA finalized additional guidelines and templates for publishing information via the POs' official websites and the Draft Model Instructions on Internal and External Communication in POs.

The JA also continued to provide support to the HJPC Working Group on Integrity and Accountability by: 1) finalizing the Judicial Discipline Benchbook, to be considered for adoption by the HJPC at the September 2019 session; 2) developing the draft Rules on the Publication of Disciplinary Decisions on the HJPC Website, to be considered for adoption by the HJPC at the September session; 3) finalizing the Report on the Monitoring of the Application of the Disciplinary Sanctioning Guidelines covering the period between July 2016 and June 2018; and 4) developing a draft report with recommendations on the types of records relevant to monitoring the implementation of the Conflict of Interest Guidelines, per the monitoring instrument adopted by the HJPC in 2018.

In collaboration with entity JPTCs, the JA continued to provide: 1) trainings on ethics for judges and prosecutors using the Judicial Ethics Handbook as a guide, and 2) workshops for prosecutors on the effective use of the Universal Benchbook on how to prosecute and adjudicate corruption and organized and economic crime. Additionally, in May 2019 the JA delivered a train-the-trainer training to the HJPC Secretariat and the ODC staff on judicial discipline based on the draft Judicial Discipline Benchbook.

The JA also supported the HJPC's efforts to supervise the implementation of integrity plans in courts and POs by assisting in the development of a template for a reporting form on the implementation of integrity plans, which was submitted to all courts and POs to use for the purpose of 2018 reporting. In conjunction with this, the JA also helped develop the first HJPC monitoring report on the implementation of integrity plans in courts and POs in 2018.

Overall, in Year 5, the JA provided support tailored to the specific needs of its partner POs, with an emphasis on cementing and multiplying the effects of the support already provided in previous years to ensure institutionalization and sustainability over the long term.

## **FINAL REMARKS**

In conclusion, as noted in the EC Opinion on BiH's application for membership in the EU, the judiciary in BiH still needs deep reforms to become more independent, fair, and accountable to its citizens.

<sup>6</sup> The final title of this document reflects the proposal of the Collegiums of Chief Prosecutors.

The JA's work and the results the Project has achieved are critical for future sustainable reforms in this area by Bosnian nationals. Thanks to the work of the JA, in close collaboration with its partners, certain mechanisms relevant to the successful fight against corruption and economic crime have been identified and introduced into the justice system, either through practical application or through regulatory changes. With regard to the fight against corruption and organized and economic crime, the last five years have seen a significant increase in BiH entities' level of effort in cooperating with international partners, such as USAID. The JA was able to play a noteworthy role, spearheading some of the key initiatives in the field, such as specialized trainings for prosecutors in financial investigations and cyber-crime, and developing a functional asset forfeiture system to fight corruption. The judiciary's capacity to deal with systemic corruption has been improved by introducing conflict of interest rules and ethics training. These mechanisms have laid the foundation for the implementation of future crucial reforms to eliminate political and other inappropriate influences that undermine the independence and integrity of the judiciary.

From the outset the JA sought to provide technical support to secure the adoption of a new Law on the HJPC that would enable the HJPC to address a host of important issues, such as career advancement, merit-based appraisal, accountability, integrity, and discipline. Due to political obstacles and a lack of political will, the draft law had not been finalized or adopted at the time of this report. However, the JA's considerable contribution to the drafting process of the proposed Law on the HJPC will continue to shape the drafting process and its final passage into law. In addition to this direct contribution to the drafting process, the JA's other analyses and publications will provide a valuable resource to those authorities involved in delivering this critical and long delayed legislation.

## SECTION I — OVERVIEW OF THE PROJECT

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### SPECIAL ACTIVITIES

Under the JA's task order contract, a Special Activity Fund was established by USAID BiH to enable the JA to provide rapid and flexible support to its BiH partners in their endeavors to combat corruption, economic, and organized crime. Originally the fund was conceived as a way to support the establishment of the FBiH Special Prosecutor Office for Combatting Corruption, Organized, and Inter-Cantonal Crime (SPO). This assistance was intended to include material support for setting up the office, staffing, prosecuting cases, and coordinating with cantonal PO plans, as well as to provide expert assistance to train newly appointed prosecutors and staff. However, during the implementation of the JA's activities, it became obvious that it was highly unlikely that the SPO would become operational before the end of the JA in September 2019. Therefore, with the approval of the Contracting Officer's Representative, the JA drew from the fund to support other, equally important needs and activities that arose during the course of the JA's implementation.

The assets from the fund were used to finance the participation of 45 prosecutors over the course of four years in the annual Central and Eastern European Law Initiative (CEELI) Prosecutor Training Program in Prague, Czech Republic. Prosecutors from BiH were offered a series of intensive and comprehensive lectures and practical exercises focused on identifying, investigating, and successfully proving official corruption, delivered by some of the world's most renowned experts in prosecuting corruption. These week-long intensive courses provided Bosnia prosecutors with best practices and skills-based training on complex corruption cases. Special Activity Funds were also used in 2016 to support a study tour to Serbia for members of the HJPC, HJPC Secretariat management, and the chief disciplinary prosecutor on anti-corruption measures. This study tour provided an opportunity for the BiH judicial leadership to learn about Serbia's experience in managing conflicts of interest in the judiciary, Serbia's asset declaration system for judges and prosecutors, and the effectiveness of Serbia's judicial and prosecutorial disciplinary system.

In 2017, the JA used Special Activity Funds to support the establishment of the Investigation Centre in the Cantonal PO in Sarajevo by renovating and fully equipping these premises. Further, the JA strengthened the capacities of all partner POs and other partnering institutions and agencies, including the HJPC (ODC), the FBiH Agency for Seized Property Management, and the FBiH Supreme Court, by providing critical information technology (IT) and other technical equipment, as well as office furniture.

From 2015 to 2019, the JA supported a number of roundtables, workshops, and conferences on topics such as the gender dimensions of corruption ("The Impact of Corruption and Unethical Behavior on Women as a Marginalized Group") and PO public relations and transparency ("Improving Public Relations Practices and Increasing the Transparency of POs"). The JA also convened two annual conferences, one on double jeopardy to coincide with the JA's publication of the "Double Jeopardy Manual" and the other on the most recent developments in the field of judicial discipline, performance, and career advancement, which was organized in cooperation with the HJPC and the Public Law Center Foundation.

From 2016 to 2018, Special Activity Funds were used to provide specialized experts in financial and criminal investigations to prosecutors in the Cantonal POs in Sarajevo, Mostar, and Bihac and the

District POs in Banja Luka and Dobož. The Project engaged nine long-term legal consultants to build the capacity of POs to deal with complex corruption cases.

The publication and translation of a number of JA analyses and publications, which have been instrumental in influencing some of the very important reforms that JA achieved, were also supported with Special Activity Funds. These funds were also used to support activities in Years 4 and 5 related to training in the area of public procurement corruption. A full list of activities supported with Special Activity Funds is attached in Annex I.

## **OVERVIEW OF THE (FORMER) JUSTICE ACTIVITY COMPONENT ON IMPROVING EFFICIENCY IN THE ENFORCEMENT OF JUDGEMENTS**

During 2014 and 2015, the JA included a component (the former Component 2) dedicated to improving efficiency in the process of the enforcement of final court judgments in civil proceedings. This component was discontinued by USAID during Year 2.

Under this component, the JA achieved two main goals: 1) completing the Diagnostic Assessment Document on the Enforcement Regime of Civil Claims in BiH (DAD), by reviewing the existing legislative framework and proposing system improvements, and 2) convening forums for discussions on reforming the enforcement regime.

The JA engaged an expert team to produce the DAD, a comprehensive assessment containing findings and recommendations for reform of the enforcement system in BiH. In order to prepare for the expert team's work, the JA invested significant effort in creating forums for discussions that concentrated on the various areas of reform in enforcement. The forums were designed to gather large groups of institutions and individuals and to elicit information on the areas of potential reform of the enforcement system and related areas, such as bankruptcy, access to relevant personal data, exchange of information between interested parties, aspects of banking operations and payments, and the status of state-owned companies. The JA organized two regional roundtables (in Sarajevo in February 2015, co-hosted with the Municipal Court in Sarajevo, and in Banja Luka in May 2015, both with total of more than 80 participants) and a series of meetings in different areas in BiH, in which a large number of institutions and legal professionals actively participated. The participants included representatives of the HJPC, Entity and Cantonal MOJs, chambers of commerce, bar associations and notary chambers, banks, private businesses, judges, court bailiffs, and other professionals involved in the different aspects of civil enforcement. Based on calls for reforms in this area, the DAD identified systemic inefficiencies that slowed or completely blocked enforcement proceedings. The DAD's recommendations also included amendments to other laws, such as the Civil Procedure Law, the Law on the Courts, the Law on the Protection of Personal Data, the Bankruptcy Law, and the Law on Deposits. Recommendations to amend these laws focused on simplifying procedures and providing for speedier processing in enforcement procedures, while protecting the rights of the debtor at the same time. The DAD also recommended a number of new solutions, such as creating independent court bailiffs/enforcement officers, re-organizing enforcement units in courts, reducing the role of judges in the enforcement proceedings, and improving information systems to decrease backlog. Finally, the DAD presented three options for the future enforcement system in BiH: 1) maintaining the enforcement system within the courts; 2) introducing a system in which the enforcement of judgments would be entrusted to independent entities or private companies, and 3) creating public

enforcement agencies. The DAD identified pros and cons for all three options, giving preference to maintaining the enforcement system within the courts, but with a strengthened role for court bailiffs.

Within this component, the JA also prepared the Analysis of the Legal Framework for Securing and Controlling Debtors' Assets, that deals primarily with the enforcement of court decisions ordering confiscation of proceeds of crime. This document served as a basis for broadening a scope of activities in relation to asset forfeiture under the Component I (see Activity 1.1. e) Asset Forfeiture).

Along with the DAD, the expert team also completed two other important documents related to the JA: 1) the Pilot Court Program and Standards, setting criteria for selecting courts that would participate in a pilot program designed to test new or improved practices to address operational shortcomings affecting efficiency in the enforcement procedure; and 2) a set of Training Resource Materials for analyzing the current status of enforcement procedures and identifying needs and methods for training judges and court bailiffs who work in these courts.

In March 2016, the JA organized an event to present the DAD and make it available to the professional public, after which activities under this JA component were terminated.

The DAD, Pilot Court Program and Standards, and Training Resource Materials laid the foundation for successful multidisciplinary improvement efforts in the system of enforcement. These documents were at disposal of the HJPC while planning actual reform through its Project for Improving the Quality of the Judiciary, which touches upon several topics elaborated in the DAD, such as strengthening the role of court bailiffs, addressing backlog, and improving institutional coordination.

## KEY ACHIEVEMENTS

1. Upon signing the trilateral MOU with the HJPC and APIK for cooperation in combating corruption, the JA developed a comprehensive analysis of corruption and integrity risks in the BiH judiciary, the Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary. This analysis became the basis for further JA activities, including the development and implementation of PPPs and POAPs, and a number of specialized analyses and handbooks. It also served and continues to serve as a helpful guide for other judicial reform related initiatives by national and international partners.
2. A total of 2,979 participants (judges, prosecutors, judicial personnel, HJPC members, ODC staff, HJPC Secretariat personnel, lawyers, journalists, governmental employees, and members of NGOs) took an active part in 119 events (trainings, workshops, seminars, and conferences) supported by the JA. Women's participation was measured at 49.2%.
3. The JA provided support to all partners, including POs, the HJPC (ODC), and the FBiH Agency for Seizure of Assets, to further strengthen their capacities to fight corruption, financial, and organized crime. This support included critical IT and other technical equipment, furniture, and small renovations to create a prosecutor investigation room.
4. Through the development of several thoroughly researched and highly regarded comprehensive analyses and diagnostic assessments in areas relevant to the prosecution of corruption and improving the integrity of the judiciary, the JA was successful in influencing reform initiatives both by the HJPC and the EU in areas such as the performance evaluation of prosecutors, monitoring of asset forfeiture cases, EU Expert Assessments and

Recommendations, defining conflicts of interest, and improving the asset declaration system in judiciary, among others.

5. With the JA's support and the specially designed trainings for prosecutors involving experts from neighboring countries, a foundation was established for cooperation between BiH prosecutors and prosecutors from other countries in the region (Croatia and Serbia) and resulted in the direct exchange of best practices, lessons learned, and other experiences and knowledge.
6. The JA strengthened management practices in all 19 partner POs through implementation of tailored PPPs. The JA developed and helped POs apply a unified strategic and operational planning methodology and measurable indicators for assessing their individual achievements.
7. The JA has also improved coordination among POs by supporting the semi-annual collegiums of chief prosecutors in FBiH and the RS. Forums such as these have promoted discussions on matters relevant to PO mandates and long-term strategic planning.
8. The JA increased the capacities of prosecutors to conduct criminal and financial investigations and prosecute cases of corruption, economic, and organized crime through the use of on-the-job training and mentorship and by launching an online best practices network, which will enable a long-term knowledge-based approach to improving and unifying prosecutorial practices.
9. The JA developed local prosecutorial expertise in BiH for prosecuting corruption and other complex cases. The JA, in cooperation with the HJPC and JPTCs, developed a Training Needs Assessment that resulted in the creation of a Specialized Long-Term Training Program for Prosecutors and Judges. The JA supported the delivery of this two-year Specialized Training Program for Prosecutors in coordination with Project on Strengthening POs' Capacities in the Criminal Justice System, funded by the Swiss Agency for Development and Cooperation and the Norwegian Government (SDC Project) and JPTCs. In this program, 24 prosecutors were trained to conduct specialized work on economic and organized crime cases, and 23 prosecutors were trained to conduct specialized work on corruption cases. In parallel, the JA published the Universal Benchbook on How to Prosecute and Adjudicate Corruption and Organized and Economic Crime.
10. The JA strengthened financial management in POs by building the capacities of chief prosecutors and PO staff to better identify, justify, and advocate budget needs to executive and legislative branches. The JA trained the POs' chief prosecutors and staff and provided expert support in the process of developing budgets for several POs. With the JA's support, the PO in Mostar succeeded in obtaining approval for an increased budget by the legislative authority and, subsequently, added a finance expert and a spokesperson to its staff.
11. The JA improved transparency in all 19 partner POs by strengthening their capacities to improve the quantity and quality of information provided to the public. The assessment score in 2018, in comparison to 2017, demonstrated an increase in the quantity and quality of information presented to the public by 28 percent in the RS and 26 percent in the FBiH. The assessment was based on criteria defined in the HJPC Plan for Monitoring and Evaluation of Public Relations in POs (PR M&E Plan), developed with the JA support. The HJPC and POs also increased their M&E capacities to track improvements in the field of PR. This was achieved by providing guidance to POs on M&E methodology. These results were achieved



through PR trainings, delivered in cooperation with JPTCs, and through the development of significant documents related to this field, such as the Guide on External and Internal Communications in POs, Information Best Practice Templates, and the Draft of the PR M&E Plan.

12. The JA supported the establishment of a professional association of spokespersons for all partner POs, which then became a source of initiatives and PR expert resources and a valuable partner in implementing a number of actions to increase transparency in POs, such as trainings, the development of practical tools and guidelines, and the promotion of good PR practices.
13. The JA, in cooperation with the HJPC and ODC, improved the fairness, efficiency, and transparency of judicial discipline proceedings by making several instruments and analyses available. These included the HJPC Disciplinary Sanctioning Guidelines and monitoring its application; the Judicial Discipline Benchbook, including digests of all disciplinary decisions; regulatory and practical proposals on how to improve the availability and online publication of disciplinary decisions; and strengthening the HJPC's capacity to provide training to new members of the ODC and HJPC panels on judicial discipline.
14. The JA strengthened the judicial ethics framework applicable to judges and prosecutors through the development and adoption of the first BiH Judicial Ethics Handbook and the Conflict of Interest Guidelines. This activity was conducted in cooperation with the HJPC.
15. The JA supported the Association of Expert Associates and Advisors in Courts and Prosecutor Offices of BiH (AEA) to enhance awareness and application of professional ethical standards for expert associates and advisors in the courts and POs. This was achieved through the development of a Model Code of Ethics for expert associates and advisors in courts and POs with a Commentary, which was endorsed by the HJPC and incorporated into the FBiH JPTC's training program for expert associates. Moreover, the JA assisted the AEA to shape the career and position of associates within the judicial system. This was achieved through the various reform proposals in the field of ethics and integrity that the JA worked on with the Association.
16. The JA strengthened mechanisms that would improve individual and institutional integrity in the judiciary by developing and adopting the HJPC Book of Rules on Asset Declarations of Judges and Prosecutors and developing and adopting the HJPC Guidelines on the Development and Implementation of Judicial Integrity Plans (which were accompanied by a Model Integrity Plan, Methodological Instructions, a list of over 50 pre-identified integrity risks and over 300 measures to counter them, and a Reporting and Monitoring instrument) that resulted in the adoption of integrity plans in over 95 percent of BiH courts and POs.
17. The JA helped APIK increase its capacity to handle reports of corruption and cooperate more effectively with POs by developing the Book of Rules on How to Process Reports Indicating Corrupt Conduct, which was adopted by APIK on July 8, 2016.

## LESSONS LEARNED

- 1. Strengthening the accountability and transparency of the judiciary is a necessary ingredient of any successful rule of law reform** — Capacity building efforts, legislative reform, the restructuring and professionalization of justice institutions, and the provision of new equipment and infrastructure, while relevant, will not by themselves deliver long-lasting and sustainable changes if they are not coupled with a clear, uncompromising, and continuous public demand for accountability from the judiciary and government as a whole. The JA made relevant and long-lasting reforms that contributed to strengthening the integrity of the judiciary and generating public demand for reform by setting standards, raising awareness, and educating the public.
- 2. The process and the people who are part of the rule of law reform are critical to successful reforms** — The rule of law movement today recognizes that institutional reforms by themselves are not sufficient to foster a culture of law. Reform is dependent on key individuals who use their power and authority to build constituencies to advance reforms.<sup>7</sup> A successful rule of law program also requires an engaged and aware civil society who can maintain pressure on the government to carry out the promised reforms. Chances of acceptance and enforcement are better if the process includes national consultation on what reforms are needed, prioritization of the reforms, and the development of a feasible approach to implementation. Recognizing this, the JA involved BiH stakeholders throughout the reform process, from the early stage of assessment, to the design of the reform strategy, to its prioritization and implementation. The JA collaborated closely with stakeholders, establishing ministerial working groups such as the HJPC's Working Group on Integrity and Accountability, which resulted in the development and adoption of a set of guidelines, a rulebook, ethics codes amendments, and handbooks to strengthen the integrity of the judiciary. Work with stakeholders was also a key approach in developing the JA's assessments, diagnostic studies, and recommendations in a number of critical areas, such as asset forfeiture, expert witnesses, a prosecution of corruption, transparency, and trainings.
- 3. Without accurate and verifiable data, institutional reforms will have poor results because they are likely to be based on inaccurate assumptions** — One of the key findings of the EU Peer Review Assessment of the BiH judiciary was that the lack of relevant statistics has prevented BiH from monitoring efforts to combat corruption and consequently planning and implementing improvements. With this in mind, the JA supported improvements to judicial statistics on cases of corruption, organized, and economic crime managed by the HJPC through court and PO case management systems. Additionally, the JA supported the development of M&E instruments to help the HJPC track compliance with the integrity plan guidelines, conflict of interest guidelines, disciplinary sanctioning guidelines, and asset declaration rulebook. The data collection and development of quantified indicators is an integral component of strategic frameworks for measuring the work of POs. The JA supported the development of strategic frameworks for prosecutorial systems in the RS and FBiH and assisted chief prosecutors to examine collected data and assess achievements on a continual basis in line with strategic objectives and annual targets. Thus, the JA has made a

<sup>7</sup> "Promoting the Rule of Law Abroad: A Conversation on Its Evolution, Setbacks and Future Challenges," Lelia Mooney, Martin Schönsteich, Jennifer Windsor, and Colette Rausch, see: [https://www.jstor.org/stable/41757388?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/41757388?seq=1#page_scan_tab_contents)

significant contribution to changing the management culture in POs, from a fragmented and unsystematic approach to one that is evidence-based and monitors results.

4. **Rule of law strategies must take the political context in which they are created into account** — In BiH, the idea of a rule of law system based on equal application of the laws and an independent and accountable judiciary is relatively new and has been shaped by a history of conflict and the unresolved aspirations of a war-torn population.<sup>8</sup> Power structures are entrenched, and rule of law reform efforts that threaten them are quashed or stymied, despite donor incentives and the threat that such resistance poses to EU integration. This is not to say that incentives and consequences have no impact, but they should be carefully calibrated to fit the situation and should not be seen as the solution in all cases. A key reform critical to anticorruption efforts that the JA supported in partnership with the EU and other donor countries (e.g., the Netherlands, Sweden) was the asset declaration reform; however, it was rejected by a Personal Data Protection Agency decision issued on the pretext of protecting the right to privacy of judges and prosecutors. This is an example of how a donor “best practice” reform sometimes runs counter to host country beliefs (privacy versus transparency) and their vested interests (use of office for gain). In the past decade, the approach of international and donor organizations supporting the EU integration process of BiH has been to “share good practices” rather than “impose solutions.” The consequence of such an approach has been that the outcome cannot be controlled and reforms may not progress as quickly as the international community and BiH reformists would hope. Overall, a formalistic approach to reform efforts without proper oversight mechanisms for implementation will not achieve substantial and measurable progress in the Euro-Atlantic integration processes.
5. **Effective anticorruption efforts require effective and skilled judges and prosecutors, as well as effective and skilled law enforcement agencies** — The JA applied a holistic approach in building the capacities of POs in BiH to efficiently prosecute corruption and other serious crimes by addressing operational as well as technical development needs. These JA efforts resulted in improvements in strategic and operational management, budget planning, and capacity building of line prosecutors in specific fields such as financial/forensic and criminal investigation techniques, special investigative measures, etc. In cooperation with the SDC Project and JPTCs, the JA developed a core group of prosecutors specializing in corruption, organized, and economic crime, including financial investigations. However, these improvements alone, while significant, will not result in the system-wide changes that are needed to effectively combat corruption and serious crimes. Having skilled and qualified judges and prosecutors who have the integrity and will to meet the challenges of a corrupt system is the key to a successful anti-corruption strategy. The same applies to law enforcement agencies and officials. Stronger coordination mechanisms, improved monitoring and reporting, ethics awareness and training, and stronger donor coordination are needed to achieve more effective anti-corruption strategies and reforms.
6. **Continual, flexible, and needs-oriented donor assistance is a key to achieving sustainable results** — Support from multiple donors in the justice sector can result in

<sup>8</sup> As noted by Freedom House: “Another issue delaying anticorruption efforts was the slow adoption of new legislation, including laws allowing the investigation of the origins of politicians’ property, while the unsatisfactory implementation of existing laws presented a further problem.” Nations in Transit 2018, Freedom House Survey, <https://freedomhouse.org/report/nations-transit/2018/bosnia-and-herzegovina>

overlapping activities and place unintended burdens on beneficiaries or stakeholders. The JA was keenly aware of the overlapping projects that were in place at the outset of the activity. The JA developed a multi-year partnership with international donors, such as the EU and the Organization for Security and Cooperation in Europe (OSCE), and together they established clear objectives while maintaining the flexibility needed to support the emerging needs of beneficiaries or stakeholders. This approach, which was applied throughout project implementation, was a key factor in garnering stakeholder commitment and ensuring their ownership over Project results.

## SECTION II — ACTIVITIES AND RESULTS

### COMPONENT I: IMPROVE THE PROFESSIONAL STATUS AND PERFORMANCE OF PROSECUTORS

#### ACTIVITY I.1: STRENGTHENED ORGANIZATIONAL LEADERSHIP, PLANNING, AND PERFORMANCE OF PROSECUTORS

##### a) *Establishing and Implementing PPPs*

The purpose of Component I was to help POs effectively combat government corruption and prosecute economic, organized, and other serious crime cases. The POs in BiH shared many of the same challenges in combatting corruption and in their efforts to investigate and prosecute serious crimes. These challenges included: 1) a lack of efficient strategic management in POs; 2) low conviction rates due to the failure to make use of prosecutor-guided investigations (PGIs) and cross-jurisdictional cooperation; 3) a lack of work processes that would enhance the processing of complex criminal cases; 4) poor statistical performance indicators and a lack of evaluative and weighted criteria with regard to difficult and complex cases; and 5) poor public outreach practices.



Figure 1 - Signing PPPs with different partner POs

To address these capacity issues, the JA established the highly innovative PPPs with 19 partner POs, including the RSSPO. These frameworks for cooperation served as the backbone for the JA's intensive management and direct skill-building assistance to POs. Given the number and geographic distribution of the POs, the technical assistance program implemented under the PPPs was established

incrementally, starting with four POs in Year 1 and increasing to 19 by Year 4.<sup>9</sup> Implementation of the PPPs was a continuous and deepening effort throughout the life of the Project.

The PPPs had a dual technical assistance approach:

1. Collaborate with individual POs to improve their performance in line with strategic plans and the performance standards established for POs, with an emphasis on management, effective prosecution of corruption and organized and financial crime cases, and public outreach.
2. Collaborate with the HJPC and its SC to identify and implement policy-level solutions to help POs better manage and perform their mandates, focusing on combating corruption, economic, and organized crime. Thus, the PPPs linked direct Project assistance in POs with policy-level reform determined by the HJPC.

Within the framework of the PPPs, the JA focused its assistance in three main areas leading to: 1) enhanced prosecution and investigation of corruption, economic, and organized crime cases and other complex cases, 2) enhanced organizational management and performance in POs, and 3) enhanced PO transparency and public information outreach.

The Project provided PPP assistance through analyses and identifying systemic solutions for common problems in POs, trainings, sharing experience and knowledge, identifying and promoting good practices, developing and implementing unified managerial, operational, and prosecutorial practices, and improving prosecutors' capacity to combat corruption and serious crime. Finally, the PPPs supported joint efforts of the HJPC and POs to improve policies that guide the work of POs and launch initiatives before legislative and executive bodies.

Over the Project's life, the JA implemented a significant number of activities, all reported under the relevant Component I sections of this Final Report. The implementation of the PPPs was put into action by developing Prosecutor Office Assistance Plans (POAPs) for individual POs (more details are provided in the following section). During implementation of PPPs, one of the most significant challenges facing prosecutors was the Judgment of the Constitutional Court of BiH (U-5/16, of June 1, 2017), which held that provisions of the BiH Criminal Procedure Code on special

investigative measures and immunity of witnesses were unconstitutional, therefore putting into question the constitutionality of prosecutorial actions taken in that regard. The Constitutional Court's ruling, requiring changes to the Criminal Procedure Code in order to bring respective provisions in line with the Constitution, effectively called into question several hundred ongoing investigations and trials by threatening to make key evidence against defendants inadmissible (collected by using wiretapping or other secret surveillance.) This situation lasted until September 17, 2018, when the

*"We are focusing on the processing of cases of corruption, economic and organized crime, and we are certainly ready to face different challenges. Our indictments have yielded first instance or final verdicts for the corruption in relation to numerous public officials at different levels. The capacities of the PO are continuously being strengthened to which the USAID's Justice Project has contributed significantly."*

— the Chief Prosecutor of the  
Cantonal PO of the Tuzla  
Canton, Tomislav Ljubić

<sup>9</sup> In Year 1, the JA established PPPs with the Cantonal POs in Zenica and Tuzla and District POs in East Sarajevo and Doboj. In Year 2, the JA entered into PPPs with the Republic PO of the RS, the PO of FBiH, the Cantonal POs in Sarajevo, Mostar, and Široki Brijeg, and the District PO in Trebinje. In Year 3, the JA partnered with the Cantonal PO in Orašje, the District Public POs in Bijeljina and Brčko, and the RSSPO, which was established within the PO of RS. In Year 4, the JA entered into PPPs with the Cantonal POs in Goražde, Bihać, Livno, and Travnik and the District Public PO in Prijedor.

BiH Parliament finally adopted the necessary amendments to the BiH Criminal Procedure Code with regard to the Constitutional Court's decision, defining clear criteria for undertaking special investigative measures which are important tools for successful prosecutions in complex cases such as corruption cases.

In Year 5, the JA finalized implementation of the PPPs with all 19 POs, including the RSSPO.

### **b) Development and Implementation of POAPs**

A POAP was created for each partner PO as an operational document that guided the delivery of JA assistance within the framework of their PPP. Each POAP was based on a preliminary needs assessment that was conducted by the JA and guided the content and sequencing of JA assistance. In line with three main areas identified under the PPPs, POAPs included a number of activities implemented throughout the Project's life, such as:

1. Supporting the work of line prosecutors on cases of corruption and organized and economic crime. The JA provided assistance in identifying prosecutorial needs for efficient and effective prosecution and the development of special analysis in selected areas. Under the Special Activity Fund, the JA also provided much needed IT equipment, furniture, and renovations (Activity 1.1); provided on-the-job trainings, specialized trainings, study visits, and exchanges of best practices events for prosecutors on specific subjects (including the organization of work in pre-investigation and investigation phases, prioritization of cases dealing with complex corruption and organized and economic crime in all criminal procedure phases, and the use of asset forfeiture and other tools; Activity 1.3); and improved prosecutors' professional status and the performance evaluation system (Activity 1.5).



*Figure 2 - During the delivery of IT equipment to the ODC, April 2017*

2. Strengthening the management practices within the POs through the development and application of a strategic planning methodology, the development of annual reports and plans (Activity 1.2), trainings and expertise for developing well justified budgets and three-year budgetary framework documents (Activities 1.2 and 1.3), and monitoring of PR activities (Activity 1.4).
3. Enhancing the transparency and PR of the POs through the development of an M&E mechanism for monitoring the quality and output of PR officers in POs, establishing a national association of spokespersons, developing communication guidelines and information

templates for the public, and providing specific trainings to spokespersons and prosecutors (Activity 1.4).

Through their participation in POAP activities, POs took a proactive role in developing tools, instruments, and guidelines for improving the management, organizational, and casework capacity of the POs. The JA, in partnership with POs, continually monitored achievements and adjusted its support where appropriate. To that end, in addition to the organization of individual meetings with partner POs, the JA used the mid-year Collegiums of Chief Prosecutors as a platform for tracking development and monitoring achievements in POAP activities. According to the feedback of participants, the flexibility of JA assistance within the framework of the PPPs and POAPs was particularly valuable to beneficiaries.

In each year of Project implementation, the JA completed a number of POAPs, while specific POs, such as those requiring financial investigation expertise, received further assistance. In Year 5, the JA completed the implementation of all POAPs. More information on the implementation of POAP activities is provided under the relevant Activity sections.

### ***c) Coordination with the HJPC, Partner POs, and Other Stakeholders***

From the very beginning of the Activity, the JA managed to establish policy-level coordination with the HJPC. This was critical since the HJPC is the main governance body for the judiciary, prosecutors, and the courts. The HJPC and its working bodies were regularly briefed about the types of assistance provided to partner POs through the PPPs and POAPs. In particular, the JA provided information and advised the SC, the HJPC Presidency, and the Secretariat on best practices developed in the partner POs, with the aim of establishing system-wide standards and procedures that could be applied in all POs through the HJPC SC's policies. Members of the SC continually expressed their support of the JA's activities and regularly partnered in JA events. In Year 1, the President of the HJPC formally recognized the JA's areas of intervention as part of the strategic commitment of BiH institutions and as a priority for EU integration. The President invited all court presidents and chief prosecutors to cooperate with and support the JA and provide access to information and documents to the extent necessary to achieve Project objectives.

The JA stood ready to provide technical assistance to the HJPC Standing Committee for Legislation (SCL) at all times. In order to support proposals for amending or harmonizing legislation, the JA regularly shared all research, findings, and recommendations related to disciplinary proceedings, appointment procedures, career advancement, and performance appraisals in the judiciary, which are closely tied to currently proposed changes to the HJPC Law. Supporting the Annual Conferences on Anti-corruption also provided additional opportunities to exchange information with members of the HJPC SC and SCL on these important topics.

The JA team maintained regular contact with all partner POs to discuss and coordinate PPP and POAP implementation. The JA's outreach efforts focused not only on the HJPC and POs but also on a wider audience, engaging other legal professionals and institutions, courts, academia, and professional associations. All of these organizations, institutions, and individuals were involved, at different levels, in the JA's efforts to promote the Project's goals and, in particular, the efforts to improve the capacity of POs to fight economic and organized crime and official corruption.

The JA was actively engaged in advancing its activities at several important events, such as the annual conferences of court presidents and chief prosecutors and the Collegium sessions of the RS PO and FBiH PO. Most notably, the JA supported the FBiH Association of Prosecutors in organizing four



Annual Conferences of Prosecutors in BiH. In particular, each year the JA provided technical assistance and sponsored the work of panels dedicated to the investigation and prosecution of corruption and organized and economic crime, issues of asset forfeiture, the use of audit reports, the use of expert witnesses, and building public trust in POs through regular reporting on cases of particular public interest. This annual forum was instrumental in presenting the JA's work and activities to prosecutors from all over BiH, thus promoting and verifying the findings and recommendations of the JA's research and analyses. During the four years in which JA supported these panels, 191 prosecutors participated in constructive and open dialogue related to the most important issues and problems in their day-to-day work. The panels regularly adopted important positions, many of which the Association of Prosecutors of FBiH adopted and implemented. It should be noted that many of the worthy positions reached during these conferences remain unimplemented. Despite a concerted effort by the JA to institutionalize a coordination mechanism between the RS Association of Prosecutors and relevant POs, the Association of Prosecutors declined to act on the idea.

The JA also maintained regular bilateral contacts and held occasional meetings with representatives of the EU, OSCE, SDC Project, and relevant embassies, which enabled the JA team to ensure donor resources aimed at strengthening POs in BiH were coordinated effectively.

In Year 5, as with previous years, the JA continued its strong coordination with the HJPC, which included sending a letter to all members of the HJPC Presidency, the SC, the ODC, and the HJPC Secretariat, as well as the Working Groups cooperating with JA, to inform them of the JA support provided throughout Year 4 and announcing upcoming activities in Year 5. The JA also supported the organization of the HJPC Justice Sector Anti-Corruption and Integrity Conference that took place on December 2018.

In May 2019, the JA presented the Draft Guidelines for Prosecutors on the Use of Expert Witnesses to the HJPC SC and received feedback. A modified version of the Guidelines based on this feedback was prepared, presented to the chief prosecutors, and finalized.

#### **d) Expert Witnesses**

The Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary (DA) identified the BiH system of using court experts as raising a serious risk for corruption in the judiciary. This was due to the fact that the expert witness system was not sufficiently regulated and some expert witnesses lacked proper qualifications and integrity, among other issues. The DA recommended that an analysis of the system be conducted. In 2017 the JA produced an Analysis of the System for Engaging Expert Witnesses in Cases of Corruption and Organized and Economic Crime. The findings and recommendations of the Expert Witness Analysis covered three major areas: 1) the engagement and use of expert witnesses in criminal proceedings involving serious crimes and corruption; 2) the quality and efficiency of the current expert witness system in BiH; and 3) the integrity and accountability of expert witnesses. The Analysis identified gaps in both the legal and the practical framework for using expert witnesses. The Analysis contains more than 30 recommendations, some of which suggest revisions to the BiH legal framework, particularly with respect to the role and importance of professional associations in appointing, training, and disciplining expert witnesses, establishing the criteria for selecting a court expert, and improving the curriculum for training expert witnesses. The recommendations also focus on the need to improve the supervision of the work of expert witnesses, improve communication between experts and POs, and strengthen the capacities of POs and the courts to engage highly qualified expert witnesses. The Analysis also recommends raising the level of professional integrity of expert witnesses through

clearer ethical standards and by increasing the level of reporting and sanctioning of possible unprofessional conduct.

The preliminary findings of the Expert Witness Analysis were presented to the professional community at several occasions (such as at the ninth Annual Conference of Prosecutors on September 28–30, 2016, and on April 4, 2017 in Sarajevo), and at the JA's events such as trainings and roundtables. The Expert Witness Analysis garnered significant attention from the professional community. It has also been cited several times in the World Bank's document "A Comparative Analysis of the Role of Expert Witnesses in Court Systems of the Western Balkans"<sup>10</sup> as a reliable source, covering the topic of the procedural position of an expert witness during the hearing, issues in the process of appointing an expert witness, and the M&E of an expert witness's work.

One of the recommendations of the Analysis was to create a Glossary of Financial Terms relevant to financial investigations to help prosecutors, judges, and law enforcement agencies dealing with corruption and economic and organized crime cases to better understand complex terms. During 2018, the JA created the Glossary, which contains definitions and practical examples of 200 important terms commonly used in the course of complex financial investigations. The Glossary was printed in 2019 and distributed to POs, the courts, and law enforcement agencies.

To assist the HJPC to implement its Strategy for Acting towards Persons Coming into Contact with POs in BiH (which includes expert witnesses), in Year 5 the JA prepared the Draft Guide on the Use of Expert Witnesses. This document was developed based on a previous comparative analysis conducted by the JA of practices in 15 countries in the region, the EU, and two countries with common law legal systems. The Draft Guide provides directions on how expert witnesses should be managed by the POs and how expert witnesses can assist in prosecution. The Draft Guide was presented to the SC and SDC Project, and subsequently to the Collegiums of Prosecutors of the RS and FBiH held in June 2019. Both Collegiums approved the document for distribution to POs and cited it as an example of a good PO practice in working with expert witnesses. The final draft, which was informed by the conclusions of both Collegiums and entitled Best Practices Guide for Working with Expert Witnesses in POs, was submitted to the SC for approval.



Figure 3 – Published JA Analyses of Court Verdicts, Asset Forfeiture, and Expert Witnesses

#### e) **Asset Forfeiture**

Based on the results of multidisciplinary legal and practical research during Year 1, in Year 2 the JA decided to focus activities on asset forfeiture since it is a highly efficient tool for combating corruption. The JA performed a review of the legal and practical framework governing asset forfeiture in BiH, conducting structured interviews with over 50 experienced professionals and analyzing selected court decisions. In Year 3, the JA completed and published its in-depth Analysis of Asset Forfeiture, which revealed that many conflicting practices are carried out regularly by various actors in the asset forfeiture procedure chain. The Analysis of Asset Forfeiture identified several mechanisms that could

<sup>10</sup> Available at: <http://documents.worldbank.org/curated/en/463201556099404129/Examining-the-Experts-A-Comparative-Analysis-of-the-Role-of-Expert-Witnesses-in-Court-Systems-of-the-Western-Balkans>

improve asset forfeiture practices and provided specific recommendations. The primary recommendation involved improving mechanisms used to evaluate the performance of prosecutors who handle asset forfeiture cases.

In Year 4, the JA developed a Proposal of Targeted Results and Pertaining Indicators for Measuring the Work of POs on Asset Forfeiture, including four potential indicators for measuring and evaluating POs' progress in forfeiture of illegally gained assets. The Proposal was presented at both entity Collegiums of Chief Prosecutors in June 2018 (POs in FBiH) and July (POs in RS), where it was agreed that data on asset forfeiture cases would be manually collected in line with the JA Proposal. The JA developed a form to be used for collecting data on asset forfeiture cases. The form was approved by the SC in July 2018 and subsequently adopted by the HJPC in September 2018. Accordingly, for the first time, beginning in 2018 POs at all levels of the judiciary are required to record data on asset forfeiture.

In Year 5, the JA continued to support partner POs in defining indicators for monitoring asset forfeiture cases. At the HJPC session in April 2019, the HJPC Secretariat presented a report on the collected data, providing evidence of poor prosecutor practices in asset forfeiture. The JA subsequently developed a proposal for monitoring specific annual results both for the entity prosecutorial systems (FBiH and the RS) and for individual POs. In July 2019, for the first time, the Collegiums decided that targeted results in the area of asset forfeiture would be included in strategic frameworks for the work of prosecutor systems (for the years 2020–2022), which was a major success for the JA in this area.

The HJPC undertook additional activities on its own initiative to implement recommendations from the JA Analysis on Asset Forfeiture. These included: improving the system for the evaluation of prosecutors by introducing the same type of rating for financial investigations and regular criminal investigations; adopting the Guidelines for Chief Prosecutors on Issuing Mandatory Instructions for the initiation of financial investigations in certain types of complex cases; continuing the development of the Prosecutor Case Management System (TCMS) Module for asset forfeiture; and providing assistance to police agencies to improve their work and coordination with prosecutors on financial investigations.

As part of its efforts to build the capacity of POs, the JA, in cooperation with the SDC Project and the JPTC, delivered three specialized trainings for prosecutors in asset forfeiture procedures and related financial and forensic investigations. The trainings were aimed at improving their skills in identifying property obtained through criminal activity and confiscating it from perpetrators and third parties through both direct and extended confiscation. The majority of participants had a high opinion of the trainings (more details are provided under Activity 1.3, Specialized Trainings for Prosecutors).

In 2018, the JA was invited by the EU Delegation to participate in a Technical Assistance and Information Exchange (TAIEX) roundtable on the implementation of the recommendations stemming from the EU Peer Review Report on Criminal Procedure in processing corruption, organized crime, and money laundering cases. The JA delivered a presentation of its findings and recommendations from the Analysis on Asset Forfeiture. The JA and the OSCE had a key role in formulating the recommendations, which served as a basis for defining concrete short-term, mid-term, and long-term priorities in the BiH path to EU accession.

## **f) Audit Reports**

Part of the reason that the public has such a negative perception of the BiH POs is directly related to the frequent and non-transparent dismissal of corruption and economic crime cases that originated from audit reports, particularly from those submitted to POs by the four supreme audit institutions in BiH (SAIs). To respond to this issue, the JA conducted the Analysis on the Use of Audit Findings in Prosecutor Offices (Analysis of Audit Reports). The Analysis of Audit Reports examined the function and substance of audit reports issued by the SAIs in BiH and the issues faced by prosecutors in using audit findings as a tool for opening criminal investigations.

In the process of developing the Analysis, during Years 2 and 3, the JA collected information from POs on their use of audit reports, analyzed 92 audit reports where the auditor issued a negative opinion, and organized two consultative meetings for POs and SAIs in BiH, in cooperation with the HJPC BiH.

The findings of the Analysis of Audit Reports suggested that there is a gap in understanding and expectations between prosecutors and auditors when it comes to cases of potential wrongdoing identified during the auditing process. In addition to the lack of financial and forensic expert capacities in all 19 POs (except in the PO BiH) and their insufficient ability to analyze audit findings, prosecutors also lack an understanding of the SAI's role and audit standards. Prosecutors are not very proactive when it comes to reviewing audit reports. The Analysis found that they hardly ever seek clarifications on audits and that it is rare for them to seek additional information. On the other hand, the SAI has not developed a practice for reporting criminal behavior identified in audit reports in a way that is in accordance with criminal procedure laws applicable to public officials and public employees in BiH. State-level SAIs do not use their authority to inform law enforcement agencies when they have identified significant breaches or (as in the case of the RS SAI) have not developed an agreement regulating SAI communication with law enforcement agencies, as provided by relevant laws regulating the work of SAIs. Finally, *ex officio* submissions of "negative audit reports" to POs have not proved effective for initiating prosecutions by the POs, since audit reports are in general perceived by prosecutors seen as not having sufficient information about potential criminal act required by law for further actions by POs.

The Analysis of Audit Reports provided a number of specific recommendations for improving the situation within the existing legal framework, the key to which was to develop a functional communication mechanism between POs and SAIs, strengthen cooperation between individual prosecutors and auditors, and develop POs' prosecutorial skills in financial areas. In Year 4 the JA organized three workshops, one of which was organized with the Swedish State Audit Office, to build bridges between these institutions by increasing their understanding of each other's roles in exposing criminal behavior and discussing potential mechanisms for cooperation.



Figure 4 - Workshop with representatives of the Swedish SAI, Sarajevo, October 2017

As a result of these JA efforts to build trust between POs and SAIs and to develop a functional communication mechanism between these institutions, most POs in BiH appointed prosecutors as point persons for coordination with SAIs and organized individual meetings with SAIs and auditors. Also, the SAI of FBiH introduced a new practice in its communication with POs that involved delivering an additional document along with the audit report highlighting findings that, according to the FBiH SAI, require the specific attention of the PO.

As a catalyst for bringing the efficient use of audit findings into focus for prosecutors, in Year 5 the final text of the Analysis of Audit Reports was published on the USAID JA website.

During the implementation of this Activity, a huge gap in expectations and the negative perception each of these institutions had of each other presented a significant challenge for the JA. This challenge was overcome by continually building partnering relationships among all players. POs, however, must continue to build on this foundation to cement their partnership with SAIs and to strengthen the ability of POs to uncover corruption and other serious crimes.

*“It would be important to implement the recommendation of the USAID’s JA in BiH whereby the HJPC of BiH would adopt some kind of guidelines for action for prosecutors and expert associates regarding the use of audit reports and ways of communicating with auditors.”*

— Ms. Alma Tirić, the Deputy Chief Prosecutor of the FBiH PO

During Years 2 and 3, the JA produced a comprehensive Analysis of Court Verdicts in Corruption Cases covering approximately 700 court verdicts rendered by courts in BiH from 2013 to 2015. The purpose of the Analysis of Court Verdicts, published in December 2017, was to identify trends in the types and complexity of corruption cases that were indicted, as well as to analyze the quality of evidence presented by the prosecution, the standards of evidence required by courts, and the sanctioning policy. The ultimate aim of this activity was to identify prosecution gaps in gathering and presenting evidence and those areas where prosecutors needed additional training to efficiently investigate and prosecute these cases.

The Analysis of Court Verdicts revealed many shortcomings in prosecuting corruption in BiH. Quantitative trends showed that high profile defendants were rarely brought to trial and the majority of defendants convicted of corruption offenses received light sentences or probation. The qualitative part of the Analysis revealed a lack of clear standards of proof set by courts in BiH, especially in complex cases, and a lack of uniformity of practice. A noticeable reluctance of judges (and consequently prosecutors) to accept indirect evidence as sufficient to prove intent to commit a crime

was observed. The practice of seizing assets illegally obtained in the course of a corrupt act had not taken hold. The low quality of indictments often manifested by a failure to state a claim upon which a crime could be charged, as well as technical deficiencies in the indictments, proved to be one of the main reasons for unsuccessful trials.

In Year 4, the JA focused on providing advanced specialized trainings to prosecutors, in cooperation with JPTCs and the HJPC SDC Project, to cover case investigation gaps identified in the Analysis of Court Verdicts. These areas of weakness included the need to expand the use of circumstantial evidence in proving corruption, to improve drafting skills in preparing indictments for trials, to understand standards of proof in complex cases, to ensure the legality of evidence collected through special investigative measures, and to improve asset forfeiture proceedings. Trainings were provided to two groups of prosecutors: one specializing in corruption, and the other in economic and organized crime cases.

In producing this Analysis of Court Verdicts, the JA coordinated its efforts with the OSCE project focused on monitoring cases of corruption. The OSCE released its monitoring report on corruption cases in February 2018. Both projects' recommendations led to the adoption in November of 2018 by the HJPC of a new definition of a "high profile case" for both corruption and economic and organized crime. This is an important step to improve the monitoring and weighting of such cases in the performance appraisal process in the courts and POs. In order to make this truly effective in practice, the HJPC and POs will need to clearly link work on high profile cases to the appraisal system of prosecutors, which remains an important tasks for a future reform.

*"All issues covered by the expert analyses pose challenges and obstacles to the successful and efficient processing of complex forms of crime, foremost corruption. I believe that these analyses and their recommendations will be very useful in the long run for the entire justice community in BiH, but also for policy makers when it comes to adopting a proper strategic approach to fighting corruption."*

— Ms. Berina Alihodzic, a member of the HJPC and the Deputy Chief Prosecutor in the Sarajevo Cantonal PO

In Year 5, the JA used the recommendations of the Analysis of Court Verdicts for identifying specific topics and the development related expert documents that were shared through the Best Practices Network launched by the JA (more information is provided under the section Activity 1.3.d, Sharing Best Practices).

## **ACTIVITY 1.2: PROSECUTORS PERFORM THEIR FUNCTIONS MORE EFFICIENTLY THROUGH A BALANCED ALLOCATION OF RESOURCES THAT EFFECTIVELY MEET ORGANIZATIONAL NEEDS**

### **a) Assessment of Workflow and Business Processes in POs and Implementing Recommendations**

At the very beginning of the Project, in Years 1 and 2, the JA conducted two assessments of the business workflow in POs to identify procedural improvements that would lead to greater efficiency in the handling of cases.

- I. The first assessment was related to the excessive time that cantonal and district prosecutors lose traveling to courts outside their jurisdictions, which undermines their efficiency and that of their POs. This problem developed on the heels of the 2003 judicial reform, which merged all basic and municipal POs with the district and cantonal ones, while the offices of the

municipal and basic courts remained in the same seats. This created pressure on prosecutors who are required to travel outside their PO headquarters frequently to attend court hearings. The travel requirement creates inefficiencies because it limits the time available to prosecutors to carry out investigations and achieve results, and it is reported to have a negative impact on the overall motivation of prosecutors. The magnitude of this problem was recognized in the HJPC's Strategic Plan for 2014–2018, which noted the need to develop an analysis of the existing time allocation for prosecutors and make recommendations to enhance efficiency. The assessment conducted by the JA was intended to supplement the efforts of the SDC Project, which was preparing a broader analysis of the current prosecutorial structure and was going to provide guidance on whether the geographic divisions remained viable.

The JA assessment indicated that the time spent travelling to court hearings significantly affects the degree to which prosecutors can achieve the performance standards set by the HJPC. Each PO loses 36 work days per annum to travel in this way. The assessment was delivered to the SDC Project, and its results were incorporated into the SDC Project's broader analysis, which revealed that prosecutors spent between 3.6 percent and 14.6 percent of their work time traveling. The consequent HJPC analysis was presented at the Annual Conference of Chief Prosecutors in June 2016, and measures were discussed to minimize lost time and enhance the effectiveness and efficiency of casework in the short- and long-term. The short-term proposal was to improve coordination between POs and the courts when scheduling hearings, while the long-term measure was to move all criminal trials from municipal and basic courts to the cantonal and district level. Since the latter option would require legislative changes, the HJPC was not able to implement this recommendation during the JA's lifetime.

2. The second assessment was a review of the functionality of the TCMS in partner POs as a tool to improve efficiency in the handling of cases. The JA engaged a workflow business process engineering expert who analyzed the TCMS functionalities that are applied in the pre-investigative and investigative phases of criminal proceedings. The assessment described the types of reports available in the TCMS and how these reports are applied in the work of individual prosecutors and in the supervision/monitoring of prosecutors by chief prosecutors. The results of the expert assessment clearly indicated that the TCMS could be further upgraded and that its optional functionalities could be used for better planning, supervision, and monitoring of prosecutors' work on complex cases of economic crime and corruption in the pre-investigative and investigative phases. The assessment showed that prosecutors lack the requisite management skills to provide standardized automatic reporting, to properly analyze problems, or to implement the necessary measures to achieve results. To address these issues, the assessment recommended that the HJPC support permanent training for PO staff on legal, administrative, and technical matters related to the TCMS. The JA distributed the conclusions and recommendations of the assessment to the HJPC Secretariat to support the ongoing process of upgrading the TCMS.

### ***b) Strategic and Annual Planning and Reporting***

In Year I, the JA identified the absence of a harmonized approach in strategic planning and measuring of results in all POs in BiH as one of key obstacles to building strong leadership and a results-based management culture throughout the prosecutorial system in BiH. Despite the fact that all POs were regularly submitting their annual plans and reports to the HJPC, their efforts were fragmented, lacking long-term objectives, measurement tools, and system-oriented outcomes.

This situation particularly influences the work of 18 POs in FBiH and the RS, organized under the Entity prosecutorial systems in FBiH (10 Cantonal POs and the PO of FBiH) and in the RS (six District POs and the PO of the RS, including the RSSPO). Therefore, in Year 2, the JA provided substantial support to the POs in FBiH and the RS to develop their Entity Three-year Strategic Planning Frameworks. As a first step, an outline of the strategic documents and a methodology were developed, including a draft mission and vision statement, proposed strategic priorities and objectives, and draft indicators for measuring their implementation. During the life of the Project, the JA provided technical assistance to all individual POs in monitoring the implementation of strategic objectives and developing their annual plans and reports, in line with the Entity Strategic Frameworks, and developing an M&E system to track progress against targets. From Year 2 to Year 5, the JA provided technical assistance to all POs in the preparation of 72 annual reports, 72 annual work plans, and four consolidated reports for all POs in FBiH.

In October 2016, the HJPC adopted the Instructions for the Book of Rules on Orientation Criteria, which require all POs to use standard formats for annual plans and reports, aligned with a strategic planning methodology, to harmonize medium-term plans with annual plans and reports, and introduces strict timelines for submission, etc. This sustainability mechanism clearly recognized the efforts made by the JA and the existing need within the prosecutorial system to establish a unified procedure for monitoring the annual performance targets of POs as aligned with entity strategic targets.

In order to perform this monitoring more efficiently, the JA's M&E Director provided training to partner POs aimed at improving their M&E capacities. The training covered how M&E could be utilized as a tool in POs' strategic planning and monitoring of those plans, program budgeting, public responses to freedom of information requests, and PO public outreach activities and disclosures.

In Year 3 through Year 5, the JA continued to assist all POs to develop and revise their annual reports and their annual plans using the HJPC's adopted procedure. The JA's ultimate goal — to make this process sustainable in all POs by standardizing the processes and formats for strategic and operational planning and reporting — has been achieved. The JA has also taken an active role in ensuring that the FBiH PO is capable of collecting statistics and drafting a consolidated report for all POs in FBiH without the JA's support. Year 4 (2018) was the first year where the consolidated report containing data from all cantonal POs was prepared almost solely by the FBiH PO, with only minimal assistance from the JA. The JA implemented these activities in close cooperation with the SDC Project.

In the first quarter of Year 5, the JA completed its assistance in developing updated PO Entity Strategic Frameworks for the period of 2019 to 2021, annual plans for 2019, and annual reports for 2018.

### **c) Collegiums of Chief Prosecutors**

The JA identified the Collegiums of Chief Prosecutors, which regulate the work of Entity POs in FBiH and the RS, as the main bodies for coordinating and implementing strategic processes. In order to support these processes, the JA established a practice of supporting the organizing and convening of bi-annual meetings of the Collegiums of Chief Prosecutors throughout the Activity's implementation, both in FBiH and in the RS. This support included technical assistance in analyzing strategic achievements and in the implementation of specific conclusions, including developing updated Entity Strategic Frameworks on an annual basis. The JA also provided logistical assistance in the organization of meetings. All Collegiums of Chief Prosecutors meetings have included sessions dedicated to the assessment of strategic achievements and annual results and to defining annual targets for a new strategic period.



The first two Entity Strategic Framework Plans for 2016–2018 were discussed and endorsed by these forums in June 2016. Three key strategic objectives were defined: improving the efficiency, quality of work, and transparency of POs. Each objective contained specific targets and indicators for measuring achievements and planned annual results for the Entity prosecutorial system and for individual POs. As of Year 2, the JA had supported the organization of 19 mid-year Collegiums of Chief Prosecutors meetings (10 in FBiH and 9 in the RS), including four meetings held in Year 5. The most recent Strategic Framework Plans for POs in FBiH and the RS were developed in Year 5, covering the period of 2019–2021.



Figure 5 – Collegium of RS chief prosecutors, July 2018

The meetings of the Collegiums of Chief Prosecutors served as forums where a number of JA proposals and documents were examined and endorsed. These included the assessment of working trends in cases of corruption and economic crime, targets and detailed tracking methods for asset forfeiture cases, the development of the PR M&E Plan, and the development of the Guidelines on Internal and External Communication and the Guidelines on Use of Witness Experts in POs. Some of these documents were finalized and adopted in Year 5. More details about these specific JA initiatives are provided under the relevant sections of this Final Report. As a result of these consistent efforts, in addition to ensuring the sustainability of the strategic planning methodology with the HJPC's decision, Collegiums served to further strengthen leadership and managerial skills in partner POs.

*“The Collegiums of Chief Prosecutors proved as extremely useful not only for strategic planning purposes, but also to discuss the development of individual PO plans and to monitor the progress of their implementation, identify and share best practices, define common goals, and face common challenges at the Entity level.”*

— Slobodanka Gaćinović,  
Chief Prosecutor of the  
District PO in Trebinje

#### **d) Budgetary Planning**

The JA invested significant efforts in building the capacities of POs to perform functions more efficiently through a balanced allocation of resources that effectively met organizational needs. In addition to the complex governmental structure and variable political environment, a number of POs continue to face a lack of budget resources, which continues to be ignored by government officials who are responsible for allocating the funds. The POs' mid-term and annual budget requests also were not properly supported and lacked planning and realistic elements. The JA started to address this issue, under the individual POAPs in Year 1, by providing technical assistance to POs to develop their preliminary budget proposals based on strategically planned needs. The JA also piloted advocacy efforts in the Cantonal PO in Zenica by organizing a meeting of the Chief Prosecutor in Zenica, the

Cantonal MOJ and Ministry of Finance, and representatives of the HJPC to discuss mechanisms for improving regular communication in the process of adopting budget proposals.

Based on positive initial results and the growing interest of individual POs, the JA provided expert assistance to an additional five partner POs to develop their budget framework documents and/or annual budget requests from Year 2 to Year 5.<sup>11</sup> The JA focused its assistance on developing well-reasoned justifications for individual PO funding needs and linking the strategic and operational frameworks with three-year budgets and the annual budget plans. From Years 2 to 4, support was provided to Cantonal PO in Mostar to increase their ability to advocate for their budgetary needs. As in Zenica, meetings were organized between the Chief Prosecutor and the Cantonal MOJ and Ministry of Finance to discuss the PO's needs for resources and new expert staff, particularly finance experts and a public spokesperson. In Year 3, the JA continued providing support for developing budget requests for with detailed justifications and organizing meetings between the chief prosecutors and cantonal ministries to discuss the resource needs of POs. These meetings also included the Cantonal Prime Minister and representatives of the USAID Mission in BiH. The Mostar budget request and its justifications were highly praised by the Cantonal Ministry of Finance and the Cantonal Government, and resulted in Parliament adopting an increased budget for the Mostar PO for 2018.



*Figure 6 - Meeting with the Cantonal Prime Minister in Mostar on the subject of budget support for the Cantonal PO in Mostar, October 2017*

<sup>11</sup> These POs were: The Cantonal PO in Mostar and the District POs in Trebinje, East Sarajevo, Prijedor, and Doboj.

In order to increase the capacity for budgetary planning for all POs, in Years 4 and 5, the JA designed and delivered, through support to the JPTCs in FBiH and the RS, eight one-day trainings on mid-term and annual budget planning. The trainings were attended by POs and court representatives. The participants expressed appreciation for the training, particularly since the trainers included staff from the Ministries of Finance in FBiH and in the RS, and experienced local budget planning specialists who were able to provide practical advice. The participants concluded that setting priorities in the budgetary process to ensure that limited funds are properly allocated is of the highest importance for POs. Effective planning and advocacy for these budgets with the executive and legislative branches of government remains a significant challenge for most POs, and continued support in this area was desired by the stakeholders in the future.

*“Without adequate budget and staff, it is not possible to effectively prosecute complex crimes such as economic crime and corruption. That is why the approval of the budget request and hiring of highly needed staff is a momentous step forward for PO Mostar. None of this would be possible without the generous support of the USAID and JA and their project team, who are devoted in transferring know-how to us and thus, to help us strengthen our prosecutorial capacities, and the understanding of needs of the our PO by the Cantonal Government and Parliament, as a final result.”*

— Zdenko Kovač, Chief Prosecutor  
of the Mostar PO

### **ACTIVITY 1.3: PROSECUTORS UPHOLD PUBLIC TRUST AND INTEGRITY BY GIVING DUE ATTENTION TO PROSECUTION OF CRIMES COMMITTED BY PUBLIC OFFICIALS**

#### ***a) Intensive Practice-based Training and Mentorship to Front-line Prosecutors***

Since Year 1, the JA has provided continual on-site expertise to support partner POs, implemented through PPPs and in accordance with the identified needs of the POs. The JA engaged local and experienced experts on criminal and financial forensic investigation to provide intensive practice-based training and mentorship to front-line prosecutors. The focus was on examining the issues, dilemmas, and challenges that prosecutors face when dealing with complex cases of corruption, organized, and economic crime. Individual and group on-the-job trainings were provided on how to resolve these issues. The training covered the following elements under three different investigative phases:

1. **The pre-investigation phase:** examining and assessing reports on criminal offences submitted to enforcement agencies and tax offices; assessing information and planning further actions; strengthening cooperation with enforcement agencies (e.g., the police and the State Investigation and Protection Agency [SIPA]), tax offices, and other relevant institutions; analyzing economic documents; preparing a methodology and planned approach to complex investigations; and selecting and prioritizing further actions and assessing their results.
2. **The investigation phase:** planning, implementing, and monitoring the results of investigations in complex cases, focusing on cases involving public officials; strengthening cooperation with police, SIPA, and tax offices; drafting focused and clear orders for enforcement agencies and witness experts; planning and accessing the results of special investigative measures; examining economic documents, including audit reports; and efficiently collecting evidence aimed at asset forfeiture in a financial investigation.
3. **Preparation for drafting the indictment:** building an argument using criminal and economic evidence in complex cases; assessing the evidence collected in complex cases; prioritizing evidence in proving specific crimes; using criminal and economic forensic evidence

in drafting the indictment for specific types of cases; and building the case before the court and others.

Efforts were also made to unify the POs' investigative techniques where factual and legal issues are similar. The JA experts did not work on actual PO cases. However, according to prosecutors' feedback, the knowledge and skills gained through the on-the-job trainings were continually applied in their daily work. For example, during 2017, the Cantonal PO in Sarajevo benefited from this expertise by processing 29 complex cases initiated against 108 persons; five of these cases involved special investigative measures, and three cases ended with indictments for 24 persons.

*“One unique aspect of this project was the opportunity for us prosecutors to work “one on one” with financial experts. As a prosecutor, I found this type of cooperation invaluable and this has certainly contributed to better informed prosecutorial decisions in complex cases of this kind.”*

— Ms. Halida Vrabac,  
 a prosecutor of the  
 District PO in East Sarajevo

In total, the JA experts devoted 1,333 expert days to the Cantonal POs in Sarajevo, Orašje, and Livno and the District POs in East Sarajevo, Trebinje, and Bijeljina. They worked with 95 prosecutors working on corruption, economic, and organized crime cases in 14 POs in BiH. This number represents 16% of the total prosecutors working in all POs in BiH (370).

*Assistance to POs from Project Experts on Criminal and Financial Investigations,  
 as Part of the JA's Capacity Building for Prosecutors in BiH*

Prosecutor Office	Number of prosecutors who attended on-the-job training	Number of expert days provided
Federal PO of FBiH	2	20
Republic Public PO of the RS	-	-
Brčko District PO of BiH	11	74
Cantonal PO in Bihac	7	30
Cantonal PO in Goražde	-	-
Cantonal PO in Livno	4	22
Cantonal PO in Mostar	10	196
Cantonal PO in Orašje	4	33
Cantonal PO in Sarajevo	11	536
Cantonal PO in Široki Brijeg	3	16
Cantonal PO in Travnik	-	-
Cantonal PO in Tuzla	6	62
Cantonal PO in Zenica	8	48
District Public PO in Banjaluka	-	-
District Public PO in Bijeljina	9	24
District Public PO in Doboј	3	44
District Public PO in Istočno Sarajevo	7	117
District Public PO in Prijedor	-	-

Prosecutor Office	Number of prosecutors who attended on-the-job training	Number of expert days provided
District Public PO in Trebinje	10	124

**b) Specialized Training for Prosecutors**

Over the Activity's life, the JA designed and supported the delivery of a significant number of specialized trainings, forums, and roundtables, which can be grouped into the following four categories:

**1. Specialized training programs for prosecutors**

— Based on a training program developed by the JA in Year 1 and adopted by the HJPC in Year 2, three groups of prosecutors were selected for the two-year specialized training programs for prosecutors to effectively prosecute 1) corruption, 2) organized and economic crime, and 3) cybercrime, each group specializing in one of the three areas. From Year 2 to Year 4, the JA delivered these two-year specialized training programs in cooperation with the SDC Project and the JPTCs in FBiH and the RS. In total, 24



*Figure 7 - Prosecutors attending specialized training*

prosecutors were certified in the area of corruption, and 23 prosecutors were certified in the area of economic and organized crime. Based on highly positive feedback from the participants, in Year 4 the JA, in cooperation with the SDC Project, also developed and delivered six two-day advanced specialized trainings for prosecutors. The advanced trainings aimed at unifying practices, developing strategies to overcome ongoing challenges, and further developing skills and knowledge in the areas of corruption and other serious crimes. This activity was implemented based on a training needs assessment and a specialized training program developed under Component 2 Activity 2.6.a.

**2. CEELI prosecutor training** (November 2015, April 2016, April 2017, April 2018, and April 2019) — Over the five years of implementation, the JA supported a total of 45 prosecutors from partner POs to participate in the annual week-long anticorruption trainings organized by CEELI in Prague, Czech Republic. Together with prosecutors, judges, journalists, and investigators of corruption from the region and around the world, prosecutors from BiH were offered a series of intensive and comprehensive lectures and practical exercises focused on identifying, investigating, and successfully prosecuting official corruption.

**3. Annual Conference of Prosecutors** — In Year 1, the JA began providing support to the Association of Prosecutors in organizing the Annual Conference of Prosecutors. A specific panel dedicated to the challenges of working on cases of corruption, organized, and economic crime was supported by the JA over the five years of Project implementation. The JA not only provided organizational and logistical support, but also developed the panel's thematic structure and selected the expert panelists. According to the information available to the JA,

the panel was of great importance to prosecutors from all over BiH who attended the Annual Conference for the information sharing and the expert knowledge they received.

4. **Trainings and roundtables on specific issues** — The JA organized several trainings and roundtables on specific issues relevant for the work of prosecutors based on the expressed interests of partner POs. In Year 2, the JA delivered an initial training for 15 new prosecutors of the partner PO in Sarajevo. In Year 4, the JA delivered a training on the use of electronic evidence to prosecutors working on corruption and economic and organized crime in the District POs in Banja Luka, Prijedor, and Doboje and the RSSPO. A two-day training on the abuse of public procurement processes was organized in cooperation with the ACCOUNT project in Year 4. In the last five years, the JA also organized and supported events promoting the exchange of best practices among POs to increase prosecutors' knowledge. Through these events, prosecutors have gained a better understanding of financial investigations, asset forfeiture, and complex corruption cases from their regional counterparts.

*"This is an excellent opportunity to continue cooperation with colleagues and to exchange experiences and opinions. The knowledge gained from these specialist trainings is very valuable and useful, as through these trainings we continue to strengthen our capacities in the field of processing corruption cases."*

— Biljana Markovic,  
a prosecutor of the District  
Public PO Banja Luka and a  
participant at the specialized  
training for prosecutors on  
"Legality of Evidence and  
Preparation of the Indictment"

In order to ensure a high standard of quality in all trainings, the JA established critical regional partnerships, including with USKOK and, in Year 1, with the National Anti-Corruption Directorate of the Republic of Romania. The JA also engaged highly experienced PGI experts from the USA, the EU, the region and BiH as trainers.

#### **c) Formation of Joint Investigative Teams for the Prosecution of Corruption and Economic Crime Cases**

In Year 1, the JA engaged a national PGI expert to develop a strategy paper for engaging law enforcement in forming joint prosecutor-police investigation teams for serious economic crime and corruption cases. The Joint Investigation Strategy Paper produced guidelines for: 1) the selection of cases eligible for joint prosecutor-police investigative teams, 2) criminal and financial investigation plans for specific types of offenses (e.g., abuse of office, embezzlement, and taking bribes), and 3) recommendations on how to improve coordination and cooperation with law enforcement agencies when conducting investigations and prosecutions of corruption and economic crime. The Strategy Paper was presented to partner POs during a two-day workshop on PGIs in September 2015. There was a unanimous consensus among the prosecutors that a multidisciplinary approach to investigations in these complex cases is a key precondition to successful prosecution. It was also noted that the lack of skilled police investigators and structural deficiencies in the police system are impediments to developing and institutionalizing joint teams.

In Year 2, the Project worked closely with chief and line prosecutors in partner POs to implement recommendations from the Strategy Paper, primarily by having PGI experts provide advice to prosecutors handling complex investigations. To carry out the recommendation for the much needed joint trainings of prosecutors and police, and to facilitate stronger bonds with police, the JA organized a study tour for prosecutors to the CEELI Institute in Prague in April 2016. The JA also reached out to the US Department of Justice's Office of Overseas Prosecutorial Development, Assistance and

Training (OPDAT) to ensure that four police officers from Tuzla, Zenica, Sarajevo, and Istočno Sarajevo attended the same training as the prosecutors from their jurisdictions. The training successfully engaged police and prosecutors to work together on resolving hypothetical cases and enhanced their skills to develop and implement shared investigation plans for conducting criminal and financial investigations in high-profile cases of corruption and economic crime.

#### **d) *Sharing Best Practices***

In Year 5 the JA initiated the Best Practices Network (“Mreža dobre prakse”), an online network for prosecutors aimed at sharing knowledge, experiences, and practices and unifying their approach to investigating and prosecuting complex forms of corruption and financial crime. Based on experiences working directly with prosecutors over the years, lessons learned from on-the-job trainings, and continual analysis conducted by the Project, the JA’s financial investigation experts prepared materials that were distributed via the Best Practices Network and stimulated online discussions. Chief prosecutors showed strong support for the initiative, and roughly 150 prosecutors who regularly work on corruption, economic, and organized crime cases became members of the network. Online discussion topics included the use of financial documentation in investigations of corruption and economic crime, public procurement abuse, and abuses in the process of privatizing publicly owned companies. At the request of network members, the JA collected all the court decisions related to public procurement abuse in BiH in the past three years and made them available through the network.

In Year 5, the JA also organized three workshops — in Sarajevo, Mostar, and Jahorina — to present lessons learned, encourage the use of the Best Practices Network, improve investigations of corruption in public procurement proceedings, and promote the Glossary of Financial Terms used in financial investigations published in 2019.

#### **e) *Double Jeopardy Manual***

In BiH, due to a classification loophole, the double jeopardy rule has been too often used to thwart prosecutors from prosecuting criminal acts. This happens in situations where a criminal act has been classified as a misdemeanor instead of a criminal offense, which for example allows criminal acts of corruption to be processed as misdemeanors by tax or customs authorities. These cases then cannot be prosecuted as criminal offenses.

In Year 4, the JA engaged a team of experts to develop a Double Jeopardy Manual to help authorities in BiH properly differentiate between a misdemeanor and a criminal offense. In March 2018, the JA organized a broad consultative meeting in Sarajevo with 17 selected participants representing authorities who can initiate misdemeanor procedures, POs, and courts at different levels of government. The meeting was used to present the draft version of the manual, verify its findings and recommendations prior to finalizing it. The Manual was then finalized based on the feedback received at the meeting and also subsequently in writing.



*Figure 8 - Presentation of the Double Jeopardy Manual to professional community, May 2019, Bijeljina*

The Double Jeopardy Manual targets both prosecutors and other officials who are in a position to determine the classification of a particular crime as a felony or a misdemeanor. The goal was to provide guidance to the police, prosecutors, and tax and custom officials so they could quickly and correctly distinguish between a criminal offense and a misdemeanor, which would avoid the activation of the double jeopardy rule and ensure that serious criminal acts are properly prosecuted. In addition, the JA supported the organization of two Annual Conferences on Misdemeanors (2018 and 2019) in Bijeljina (RS), which were used to promote awareness of the Manual and double jeopardy issues as central to the fight against corruption in BiH. The Manual was also presented at the 2018 Annual Criminal Law Conference in Neum (FBiH).

In Year 5, in addition to its support for the Annual Conference on Misdemeanors, the JA financed the translation of the Double Jeopardy Manual into English and ensured its distribution to all courts, POs, and other relevant institutions competent to initiate the misdemeanor procedure.

#### **ACTIVITY I.4: PROSECUTORS PROVIDE APPROPRIATE AND ACCURATE INFORMATION TO CITIZENS IN ORDER TO STRENGTHEN TRANSPARENCY AND RESPONSIVENESS**

##### ***a) Professional Association of Spokespersons in POs***

In Year 2, in order to increase POs' transparency and provide timely and accurate information to the public to increase their trust in the judicial system, and to meet the goals established by the HJPC strategic plans, the JA helped to establish the Professional Association of Spokespersons in POs in BiH. The JA supported the Association in the process of registration, in developing a long-term training plan for PO spokespersons, and in completing the Association's Strategic Plan. Today the Association represents an important platform for spokespersons and PR officers in POs to exchange experiences and know-how, share best practices, and discuss challenges in their everyday work. Members of the Association have created a Viber group that has been used continuously for over three years as a channel of communication to exchange practice ideas and association activities.

Since its establishment, the Association has developed into a valuable resource for PR experts who work in the justice sector. During Years 3–5, members of the Association proactively engaged in most JA activities geared towards increasing the transparency of POs. Association activities supported by the Project included trainings and the development of PR tools and guidelines for PR officers and prosecutors. In the Year 5, the President of the Association and experts engaged by the JA



contributed to the development of PO model instructions on public communications, as well as press release guidelines and templates.

### **b) Strengthening PO Capacity in Public Information**

The JA worked intensively with spokespersons and PR officers in POs, as well as with chief prosecutors, to improve their capacities and build better relations with the media and the public. Each year the JA organized several workshops for spokespersons and chief prosecutors focused on public speaking, the consistent application of the Freedom of Information Act (FOIA), and how to inform the public about the work on complex cases. In Years 3–5, JA provided intensive support for developing PO websites as a first line of communication with the public and the media. Furthermore, the JA periodically analyzed partner POs' websites and submitted the results of that analysis and recommendations for improvements to chief prosecutors and spokespersons or PR officers. Most recently, both chief prosecutors and spokespersons became able to measure how often their official websites have been visited. In addition, the PO in Goražde launched its first official website in May 2018 with the JA's assistance.

*"Thanks to the support of the JA, PO Goražde now has its own website. I believe the public has the right to know about how its institutions function. This is such a great accomplishment, since websites should present a mirror-reflection of the work of an institution."*

—Aida Obuća, legal assistant,  
PO Goražde

In Year 4, the JA engaged a group of PR experts, members of the Association of Spokespersons in BiH, and developed several press release templates and guidelines for POs to use in instances such as arrests, detention motions, and confirmed indictments. According to the research recently conducted by a JA PR expert, 14 out of 15 PR officers who provided survey feedback utilized the templates and guidelines developed by the JA for communication in their daily work and considered them very useful. The JA expert also conducted an assessment regarding the need for additional templates and guidelines for communication, and developed additional press release templates and guidelines in collaboration with other PR experts, including: an order to pursue an investigation, first or second instance verdicts, publishing statistical data, and reports and events of special interest. All aforementioned guidelines and templates for communication were endorsed by chief prosecutors at the Collegium meetings both in FBiH and the RS.

*"Each time after these trainings I felt empowered and, at some point, I decided to put words into action. After one training that I attended, I went back to my work place and talked to my boss, the chief prosecutor, about the importance of transparency, and she now supports me and my ideas. Now we have excellent cooperation with the local media. Last year our PO was even praised by several local media as one of the most transparent and proactive POs in BiH. It is possible to build bridges with journalists and become allies, not enemies."*

— Josip Aničić, a former PR officer and newly appointed prosecutor in the Cantonal PO of Široki Brijeg

In Year 5, in collaboration with the JPTCs in the FBiH and RS, the JA was able to organize a website maintenance course for PR officers, with the goal of equipping the POs' PR staff with the knowledge and skills they would need to effectively and independently maintain the websites. In addition, the JA organized a panel discussion and networking session with journalists to discuss the best approaches to improving the communication and cooperation between the media and POs in BiH. The JA also organized a public speaking training for chief prosecutors and PR officers in June 2019. At the workshop, participants discussed how to

*"Public speaking is never an easy task. However, prosecutors, as government employees, are accountable to their citizens, and therefore public speaking is part of our public duty. That is why I appreciate this training so much and consider it as vital for my future work."*

— Sabina Sarajlija, the newly appointed Chief Prosecutor of the Cantonal PO of Sarajevo

improve their public speaking skills so as to improve their relations with the media. At the end of the workshop, the participants had the opportunity to exercise, under the experts' guidance, their own public appearance skills in front of the camera. Finally, in its final year of implementation, the JA developed the instructions/guidelines on communication in the field of public relations, providing practical advice for improving internal, external, and crisis communication in POs, endorsed by both Collegiums of Chief Prosecutors held in July 2019. Subsequently, the JA submitted this document to the HJPC SC for adoption by the HJPC, as proposed by the both Collegiums of Chief prosecutors, thus completing this activity.

### **c) Monitoring and Evaluation of Public Relations in POs**

In Year 2, in collaboration with SDC Project and PR officers from partner POs, the JA developed the PR M&E Plan for POs in BiH. The Plan was developed in accordance with the Barcelona Declaration of Measurement Principles adopted in 2010, which introduced seven principles for PR evaluation. The PR M&E Plan, which was adopted by the HJPC in 2017, presents a comprehensive tool for supervising PR activities in POs using a set of qualitative and quantitative indicators. The main purpose of this Plan, which is entirely new in the BiH justice system, is to strengthen transparency in the work of BiH POs and help POs build better relations with the public, as envisioned in the HJPC's long-term strategic goals.



*Figure 9 - Specialized training for PR officers*

This Plan has been successfully and continuously implemented for two years now. According to the most recent PR M&E analysis, the quantity and quality of information distributed by POs in BiH has improved significantly. According to the comments provided by the members of the Evaluation Team (which included representatives of the HJPC, associations of prosecutors of FBiH or RS, and representatives of NGOs and media), information shared by POs with the public in 2018 was far more meaningful and understandable in comparison with the results from 2017.

The results of the most recent analysis have been presented at the Collegiums of Chief Prosecutors of FBiH and the RS held in July 2019. Improving transparency in the work of POs is one of the strategic goals of both prosecutorial systems in BiH, which is why this M&E tool is so valuable for all chief prosecutors in BiH.

## **ACTIVITY I.5: PROSECUTOR STATUS IMPROVED THROUGH A PERFORMANCE APPRAISAL PROCESS, MERIT-BASED CAREER ADVANCEMENT SYSTEM, AND/OR INCENTIVE OPPORTUNITIES TO PROSECUTE PRIORITY CRIMINAL CASES**

Prior to the initiation of the JA in 2014, a major weakness in the BiH justice system was the lack of an adequate appraisal process or a system for merit-based career advancement. Appraisals of prosecutors did not, for example, take into account the greater difficulty faced by those prosecutors handling complex cases of corruption. To prepare for a comprehensive approach to this issue, during Year I the JA did an assessment of performance evaluation procedures and practices in partner POs and completed comparative research into the legal systems in four European countries and their standards and procedures for merit-based appointment and career advancement. The JA also conducted an assessment of the legal framework for the appointment and advancement of prosecutors within the HJPC-governed system. The JA recommended improvements to the HJPC that included: introducing and developing new criteria for performance evaluations of individual prosecutors' work and also for the evaluation of an entire PO's productivity; developing specific guidelines for chief prosecutors; and creating additional criteria and qualitative standards for evaluating prosecutorial performance in complex cases.

The comparative research also resulted in several key recommendations, which included: 1) improving the introductory training for new judges and prosecutors; 2) enhancing the criteria for performance evaluations to include more qualitative indicators as relevant factors for career advancement; 3) introducing psychological evaluations of candidates for judicial positions; and 4) revising the criteria for appointment to managerial positions.

In December 2015, the JA, in cooperation with the HJPC and the Public Law Centre Foundation, organized a roundtable on the appointment and career advancement of prosecutors, with more than 30 participants from justice sector stakeholders, law faculty, professional associations, and civil society. The roundtable was used to present the assessment prepared by the JA expert, and the discussion addressed criticisms of the existing performance evaluation and disciplinary processes in the BiH judicial community.

At the session held in July 2016, the HJPC adopted the rules on Orientation Measures for the Work of Prosecutors, introducing some of the changes proposed by the JA, including a more adequate evaluation of prosecutors' work on complex cases as the key mechanism for incentivizing prosecutors to tackle high profile, complex cases. Still, the adopted changes did not bring significant improvements to the appraisal system.

However, during the implementation of the EC's recommendations based on the expert assessment of the appraisal of judges and prosecutors (i.e., the EU Peer Review recommendations) and under pressure to better evaluate the work of the prosecutors on complex cases, the HJPC adopted a completely new set of rules in November 2018. This set of rules introduced significant improvements by recognizing the quality instead of only the quantity of prosecutors' work as a relevant factor in appraisal, which is in line with the JA expert's recommendations. The new system will be applied to the annual evaluations in 2019. The EC recognized the importance of the introduced changes and

emphasized “a need to undertake a thorough and balanced appraisal of performance of judges and prosecutors along the criteria adopted by the HJPC and based on EU standards.”<sup>12</sup>

During Year 3, the SCL started working on the draft of the new Law on the HJPC. Their work covered the appointment, career advancement and performance evaluations of judges and prosecutors. Based on the SCL's request, the JA conducted a second, more comprehensive comparative study covering these areas in eight European countries. The analysis elaborated on topics such as initial selection, trainings, advancement system, lateral and parallel transfers within different judicial offices, and the selection of candidates for managerial positions. The study was delivered to the SCL in May 2017 with the aim of informing the process of drafting the HJPC Law, which had not been adopted by the end of the Project.

Despite significant JA efforts in this area, the regulatory reforms undertaken by the HJPC were only partially achieved due to shortcomings of the Law on HJPC which does not enable the HJPC to undertake more substantial reforms in this area. Given that and the fact that no proposals for additional support were addressed from the HJPC to the JA, Activity 1.5 was discontinued at the end of the Year 3.

## **COMPONENT 2: STRENGTHENING JUSTICE SECTOR INSTITUTIONS TO UPHOLD PUBLIC INTEGRITY AND COMBAT CORRUPTION**

### **ACTIVITY 2.1: PROSECUTORS INVESTIGATE AND PROSECUTE HIGH PROFILE CORRUPTION AND ECONOMIC CRIME CASES FREE FROM POLITICAL OR IMPROPER INFLUENCE**

Following the development of the Universal Benchbook on How to Prosecute and Adjudicate Corruption and Organized and Economic Crime (see Activity 2.6.b below), the JA, in collaboration with entity JPTCs, delivered three workshops to POs in Sarajevo, Mostar, and Jahorina on the effective use of the Universal Benchbook (this is crosscutting with Activities 1.1 and 1.3 above). The workshops were delivered by two prosecutors, a judge, and a defense attorney. The events were attended by a total of 40 prosecutors and judges. The presenters provided an overview of the Benchbook's goals and its form and content. They also conducted a discussion on current prosecutor practices for using special investigative measures in cases of corruption and organized and economic crime. Using three hypothetical cases, the trainers demonstrated to prosecutors how to use the Universal Benchbook in their daily work on cases involving corruption, economic, and organized crime and money laundering, and how to prove intent in these types of serious crimes.

<sup>12</sup> European Commission Analytical Report no. SWD (2019) 222, issued in Brussels on May 29, 2019, can be found at: <https://data.consilium.europa.eu/doc/document/ST-9818-2019-INIT/en/pdf>



Figure 10 - Presentation of the Universal Benchbook, January 2019

## **ACTIVITY 2.2: INCREASED COOPERATION AND COORDINATION AMONG STATE, ENTITY, AND CANTONAL LAW ENFORCEMENT AND JUSTICE SECTOR INSTITUTIONS LEADS TO THE SUCCESSFUL INVESTIGATION AND PROSECUTION OF CORRUPT CASES**

### **a) *Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary***

Democratic reforms implemented in BiH over the two last decades included measures to give the judiciary more control over administration, finance, and recruitment (i.e., the appointment of judicial office holders), either directly or through the HJPC. The objective of these reforms was to ensure the independence of the judiciary as a separate branch of government. Judicial independence that does not entail a high level of accountability, however, can cause a number of problems, such as corruption and a lack of professional ethics. With this in mind, in Year 1, the JA conducted the Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary (DA) in January 2016. To facilitate collaboration on the DA, as well as other follow-up activities to increase the performance, management capacities, integrity, accountability, and transparency of judicial institutions, USAID signed the MOU with the HJPC and APIK through the JA in June 2015. This partnership was key to securing access to judicial institutions, people, and information. By engaging key BiH partners in the process at the earliest stage of identifying issues and formulating recommendations, the JA secured their buy-in for future reforms.



*Figure 11 - Presentation of the DA to the public, January 2016*

The objective of the DA was to identify potential governance gaps and integrity risks in: 1) vertical processes of the justice sector (appointment, promotion, performance evaluation, and mechanisms of accountability of judges and prosecutors), and 2) horizontal processes in criminal proceedings (including the investigation phase that precedes it: case detection, case selection, case assignment and management, and prosecutorial decision-making). Because the outcome of judicial proceedings can be influenced by other actors as well, the DA addressed the role of POs, attorneys, and police, in addition to the courts, in criminal proceedings. The DA looked at these justice sector actors individually and also studied their interrelationships.

The DA methodology was based on: 1) a public perception survey of the general public and legal professionals, and 2) research and analysis of primary sources, such as policies and regulations and verification of their actual implementation through individual and group discussions with judicial professionals. Feedback and discussion with the judiciary and other stakeholders was secured through approximately 50 individual interviews and two roundtable discussions (80 participants). The general public perception survey provided invaluable insight into how judges and prosecutors are actually performing. At the same time, the legal professionals' survey was also useful in helping to identify the source and location of problems.

Below are some of the key findings and conclusions of the DA:

1. Insufficient attention is paid to the prevention of corrupt and unethical behavior using education and raising awareness.
2. The low quality of judicial personnel makes them more vulnerable to corruption and unethical behavior. One of the manifestations of corruption is the self-censorship of individual judges and prosecutors who fear speaking out because they might lose privileges or potential favors.
3. The existing mechanisms of supervision and accountability are insufficient or ineffective.
4. Justice chain actors can engage in corrupt or unethical behavior through the abuse of their substantive and procedural discretion (e.g., undue delays in judicial proceedings, a prosecutor's decision to open an investigation, a decision to terminate a prosecution).

5. The police and the private bar (attorneys-at-law) suffer from the same corruption and integrity risks as the courts and POs.
6. Justice chain actors who engage in corrupt behavior are not only motivated by financial interests but also by anticipated future favors or other gain (e.g., the removal of threats).
7. A distorted value system, political and other influences, and systemic government corruption were noted as the main reasons for corrupt and unethical behavior in the judiciary.
8. Each category of justice chain actors (judges, prosecutors, police, and attorneys) believes that it contributes to the fight against corruption the most, and that other justice chain actors are at greater risk for corrupt behavior than they are.

The DA provided a set of 124 recommendations to assist both the judiciary and other relevant institutions involved in the fight against corruption (including USAID and its international and local partners in the governmental and nongovernmental sectors) in designing and implementing reforms that will be based on corroborated facts rather than on unverified perceptions and anecdotal information. The recommendations contain practical and feasible suggestions and are mainly targeted at the HJPC, JPTCs, judges, and prosecutors. The recommendations consisted of suggestions on how to improve the implementation of existing laws and suggested amended or new laws only when necessary.

The aim of the recommendations has been to change the incentive structures, eliminate points of vulnerability, and provide new models of behavior in the judiciary. Examples of JA activities based on implementing DA recommendations in the following years included: assistance to the HJPC in improving judicial ethics codes (see Activity 2.5.b); assistance to the HJPC in developing judicial conflict of interest guidelines and reforming the asset declaration system (see Activity 2.5.a and d); assistance to the ODC in strategic management (planning, budgeting, staffing, communication) as a means for institutional empowerment (see Activity 2.3.a); assistance to the HJPC and ODC in developing the Judicial Discipline Benchbook and the Disciplinary Sanctioning Guidelines to help ODC staff and disciplinary committees conduct proceedings more expeditiously and with greater consistency and fairness (see Activity 2.4); assistance to the JPTCs in better equipping prosecutors and judges to prosecute and adjudicate cases of corruption through specialized long-term training programs and use of the Universal Benchbook on How to Prosecute and Adjudicate Cases of Corruption, Organized Crime, and Economic Crime (see Activities 2.1 and 2.6).

Finally, the JA assisted the HJPC in developing an Instrument to Monitor the Implementation and Impact of the DA's recommendations in September 2018. The monitoring instrument enables the HJPC to monitor the implementation of those DA recommendations that fall under its competence and whose implementation can be directly influenced by the HJPC. This has allowed the JA to measure the impact the DA has had on the overall reform agenda by reviewing the extent to which the objectives and goals of the HJPC (including courts and POs) and their donor partners are addressing the needs and problems identified in the DA. The results of this monitoring effort revealed that the DA's findings and recommendations (2015–2016) correlate with the findings and recommendations of the subsequent EU peer review assessments<sup>13</sup> (2016–2018) of the asset declaration system for judges and prosecutors (100% match), prosecution and adjudication of cases of corruption, organized crime and economic crime (71% match), judicial discipline system (60% match), appointment of judges

<sup>13</sup> EU peer review assessments are a key instrument in measuring the BiH judicial reform progress relevant to the EU integration process.

and prosecutors (48% match), and judicial performance appraisal (37% match). Finally, the monitoring effort revealed that the HJPC, with the support of USAID and also other international organizations and donors (the EU, OSCE, RAI, Switzerland, UK, Norway, Sweden, and Netherlands), implemented approximately a third of the DA recommendations.

### ***b) Improve Judicial Statistics on Corruption Cases and Their Exchange with Law Enforcement Agencies***

The Police-Prosecution Data Exchange System, established in 2013 with EU assistance, enabled the exchange of information between prosecutors and police on the status of an individual case, such as whether an investigation was initiated or cancelled, or whether an indictment was confirmed. However, this system did not enable the inter-agency exchange of statistical information or analysis of that data. As reported by NGOs, a significant number of police reports on corruption that were submitted for prosecution yielded no action. On the other hand, prosecutors complained of the poor quality of the police investigations, the high incidence of illegally obtained evidence, and the poor quality of evidence in general. Therefore, improved judicial statistics and their exchange between law enforcement agencies was seen as a useful mechanism to prevent blame-shifting among justice sector actors and encourage information sharing as a cornerstone of any inter-agency cooperation in anti-corruption efforts.<sup>14</sup> Additionally, the 2017 EU Peer Review assessment of the ability of BiH to successfully address high level corruption, organized crime, and money laundering, covering the entire criminal procedure from the investigation to the final court rulings, pointed out that the lack of relevant statistics would prevent BiH from keeping a record of its past performance and therefore assessing the strengths and weaknesses of the BiH system to combat corruption, and consequently planning and implementing improvements.

With the above in mind, the JA made recommendations to the HJPC on how to improve the method for collecting judicial statistics on corruption cases, and how to facilitate the exchange of this information with law enforcement agencies, in a report titled “Review and Recommendations for Improvement of Judicial Statistics on Corruption Cases and Their Exchange with Law Enforcement Agencies” (July 2015). The recommended improvements related to: 1) the type of information collected (especially related to victim and offender information, and also the value of forfeited proceeds of crime); 2) counting rules relevant to the evaluation of the efficiency of the courts’ and POs’ work; 3) objective validation of statistical information; 4) analysis of statistics for purposes of policy decision-making; and 5) sharing analytical reports for enhanced inter-agency cooperation. With funding from the EU Instrument for Pre-Accession Assistance in 2012–2013, the HJPC has been implementing these improvements through changes to the court case management system (CMS) and prosecutor’s TCMS to introduce a Business Intelligence system (BI), which enables the collection of this additional statistical data, easier analysis, and access by involved stakeholders (i.e., the HJPC, courts, POs, and MOJs), all of which should assist in decision-making.

The JA also supported the HJPC in promoting the BI by providing training to 250 participants (i.e., court presidents, chief prosecutors, and other court and PO staff) on the new, improved statistical framework, including the new statistical parameters for corruption and organized and economic crime cases. Furthermore, the JA developed a Manual on the Use of the New Statistical Framework for Purposes of Management, Policy-Making, and Inter-agency Cooperation (September 2017), which the

<sup>14</sup> ‘In terms of case management, countries with the best legal implementation strategies have developed inter-institutional, computerized, joint case-management processes for police, prosecutors and judges. Intra-institutional checks and balances are introduced when police, prosecutors and judges handle shared case files.’ Buscaglia, Edgardo ‘Judicial Corruption and the Broader Justice System’



HJPC committed to updating and publishing on its website as the practice evolves. Finally, the JA organized a workshop between the HJPC and APIK to facilitate discussion and agreement on the sharing of judicial statistical information through the newly developed HJPC BI.

The full implementation of the recommended improvements faced challenges. While CMS and TCMS are advanced case management systems, they are mainly administrative systems that serve as a source of statistical information, but they are not statistical systems themselves. A long-term solution would require a strict distinction between CMS and TCMS as administrative systems and a retrieval or statistical system (possibly called Jstat), as recommended by the JA expert. Additionally, there is no regular audit system that would help validate the statistics, which leads to variations in statistical reports and incompatibilities being detected either by the HJPC or monitoring NGOs. Finally, the judiciary lacks the resources to enter statistical information into the system retroactively to enable comparison and analysis.

Additionally, in Year 5 of the JA, due to concerns over potential breaches of data security, the HJPC decided not to enable APIK — or consequently any other stakeholder such as SIPA or the MOJ — to directly access judicial statistical information. While this HJPC decision undermines the BI concept, which is to make the judicial statistical data needed for efficient policy decision-making directly available to policy makers, the HJPC has decided to continue to provide information to policymakers upon request, on an *ad hoc* basis.

### **c) Support Justice Sector Annual Conference on Anti-corruption and Integrity**

With an aim of increasing cooperation and coordination among justice sector institutions in their fight against corruption, in 2015, the JA supported the introduction of the annual justice sector conference on anti-corruption and integrity to be sponsored by the HJPC. Besides representatives of the judiciary, law enforcement agencies, the bar, and academia, these conferences included representatives of APIK, the MOJs, NGOs, and other relevant stakeholders. These parties' participation was especially important where policy or legislative measures were needed to implement the identified reforms.



Figure 12 - Annual anti-corruption conference, Mostar, December 2016

The conferences served to facilitate consensus and encourage decision-making on reforms that would be needed to minimize integrity and corruption risks in the judiciary and strengthen its capacity to combat corruption. The conferences' discussions were guided by the findings and recommendations from the DA (2015) and, later on, of EU Peer Review Recommendations (2017). As a way to secure the sustainability of the annual conference and to provide accountability for commitments made at the conference, the JA supported the HJPC to: 1) assume a lead role in the organization of these

conferences by establishing a conference planning committee, and 2) develop a conference booklet with information on the agenda, keynote speeches, presentations, conclusions, and participants of the conference.

The first conferences held in 2015 and 2016 were supported solely by the JA in cooperation with the HJPC. They were organized as interactive roundtables and panel discussions that included: 1) brief presentations on the preliminary findings of the DA, and 2) discussions on its recommendations to address the identified integrity and corruption risks in the justice chain. Panelists included representatives of the judiciary and also the director of USKOK<sup>15</sup>, who shared Croatia's experience and lessons learned in combating corruption. Among other things, these conferences aimed to strengthen a culture of open dialogue within the BiH judiciary and to enable judges and prosecutors to communicate constructive critiques without fear of retribution by fellow colleagues and superiors, raise awareness of the need to respect and apply ethical and professional standards and build the public's respect for the judiciary, improve the appointment, career advancement, and appraisal procedures for judges and prosecutors, and improve the transparency of disciplinary proceedings and efforts in processing and adjudicating corruption cases.

*"The competence, professionalism, and integrity of judges and prosecutors are critical to the success of overall anticorruption efforts...[T]here needs to be more action in POs and courts, as well. Successful prosecutions of corruption and organized crime are needed. By saying this I do not mean the success which is measured through statistics only, but real results such as the processing of high profile (as opposed to petty) corruption cases, more rigorous sanctions, including effective forfeiture of proceeds of crime, which will have a preventive affect and send a strong message that the society does not and will not tolerate corruption and that nobody is above the law."*

— US Embassy Deputy Chief of Mission, Paul Horowitz's address during the fourth conference opening, Banja Luka, February 2018

As of 2017, two annual conferences were organized by the JA, the EU Delegation in BiH/EU Special Representative's Office, and the HJPC to include the broader professional community in a discussion on the EU Peer Review Recommendations regarding judicial reforms. These conferences dealt with topics such as: the efficiency and quality of courts and POs, the fight against organized crime and corruption, and the independence, integrity, and accountability of the judiciary. Some of the commitments made at the last conference held in Mostar in 2018 included: the development of an electronic system of asset declarations for judges and prosecutors, the adoption of the risk criteria for the prioritization of audits of asset declarations, the adoption of the Judicial Ethics Handbook and the Judicial Discipline Benchbook as educational tools of the HJPC, and the establishment of an electronic system of random allocation of cases to disciplinary panels. Most of these commitments were presented jointly with the HJPC, and the JA continued its endeavors as described under Activities 2.4 and 2.5.

#### **d) Facilitate Cooperation between APIK and POs**

Meaningful collaboration between stakeholders is key to an effective fight against corruption. With anticorruption agencies being perceived as actors that could play a pivotal role in the prevention and investigation of corruption, the facilitation of cooperation between APIK and POs seemed only natural. Under the Law on APIK, APIK was tasked mainly with preventing corruption and coordinating the fight against corruption in public institutions through strategies, policies, monitoring efforts, and

<sup>15</sup> USKOK is a body of the Croatian criminal justice system. It is attached to the State's Attorney Office and specializes in investigations related to corruption and organized crime. USKOK was formed in December 2001, and its headquarters are located in Zagreb.

regulatory impact assessments. Additionally, APIK was also tasked with taking action on citizen reports of corrupt conduct. In the absence of an enforcement authority, APIK's actions were limited to reviewing citizens' reports of corrupt conduct and referring them to a competent body, such as a PO, Inspector General, government auditing agency, or tax administration office. With this in mind, and following consultations with APIK, the HJPC, and POs, the JA identified the exchange of information between APIK and POs and their mutual assistance in the investigation of allegations of criminal offences of corruption as one of the key areas in need of its support. For that purpose, the JA helped draft the APIK Book of Rules on How to Process Reports Indicating Corrupt Conduct (APIK BoR), which was adopted by APIK in 2016. The APIK BoR focuses on improving the quality of reports of corrupt conduct processed by APIK, thus increasing the chances of successful prosecution. An accompanying training on how to use the APIK BoR was provided to the employees and leadership of APIK in 2016. Additionally, the JA assisted APIK in the development of an M&E Plan to Monitor the Impact of the APIK BoR in June 2017. Finally, the JA facilitated the agreement to have each PO appoint a prosecutor who would act as a contact point for working with APIK and handle individual corruption reports submitted through APIK.

However, APIK's ability to contribute to the fight against corruption has been adversely affected by limited resources, an insufficient mandate to fight corruption, and political interference. At the time of the writing of this report APIK was unable to share the results of the monitoring of the implementation of its BoR with the JA due to human resource constraints. To facilitate cooperation between APIK and POs, courts, and the HJPC, the JA also supported the development of integrity plans for individual courts and POs. More information on this support is provided below under Activity 2.5.f.

### **ACTIVITY 2.3: THE ODC IS PROPERLY RESOURCED TO MANAGE COMPLAINT PROCEDURES AND AUTONOMOUSLY REVIEW THE CONDUCT OF JUDGES AND PROSECUTORS AND RECOMMENDS APPROPRIATE SANCTIONS FOR UNETHICAL CONDUCT AND CORRUPTION**

One of the goals of the JA was to strengthen the capacity of the ODC, a body mandated to investigate and present cases of disciplinary violations to the disciplinary panels of the HJPC. To that end, the JA first carried out an internal operations assessment of the ODC and recommended improvements for increasing its institutional efficacy and empowerment in a report titled "Functional Analysis of the ODC" (June 2015). The ODC Office Operations Assessment (November 2015) focused on: 1) the ODC's lack of independence, including its competencies, efficiency, impact, and relations with the HJPC and disciplinary panels; and 2) the ODC's management capacity, including strategic planning, M&E, human resources, and budgeting. The findings of the assessment were shared with the EU peer reviewer who issued a number of recommendations, mainly that "the ODC must be an independent body, not a body of the HJPC, to ensure both fairness of investigations and the confidentiality of information (its own budget, separate headquarters, separate phone line, and drivers)."<sup>16</sup>

The ODC's lack of independence is a consequence of the organizational structure of the HJPC and the ODC's position within that structure. Its functional autonomy within the HJPC is limited by the appointment of the chief disciplinary prosecutor by a HJPC dominated panel, a limited mandate, its relations with the HJPC, and the restricted role that the ODC has played in the judicial legal community. The JA sought to address these constraints by working with the SCL on draft

<sup>16</sup> EU Peer Assessment on Disciplinary Procedures in BiH Judiciary, September 2016.

amendments to the Law on the HJPC, among other things, as described in more detail under Activity 2.4.c below.

The ODC also faced ongoing management challenges — for example, the absence of strategic planning to manage the day-to-day operations of the office, the lack of appropriate resources to carry out its mandate, and the lack of proactive outreach to the general public and the professional community. The JA provided specific support to the ODC in strategic planning, which included developing an ODC communications strategy, an M&E plan, program budgeting, a staffing and workload analysis, and a training needs assessment, all of which were included in a comprehensive “Plan for ODC Development” (December 2016). Additionally, the JA supported improvements to the ODC’s annual reporting to the HJPC by helping the ODC develop an improved annual report format. In 2018, the new website of the ODC (<https://udt.pravosudje.ba/>), developed with the support of the JA, was published. The improvements included upgrading the ODC website to a subpage with its own domain (as opposed to being a module of the HJPC website with no domain of its own) and improvements to the content and accessibility of information for complainants on disciplinary procedures. The improvements to the ODC website that would contribute to improved public and media relations were not adopted, but the technical preconditions for these further improvements were created.

In May 2017, the JA provided office equipment to the ODC, such as laptops to facilitate field visits and lockable document storage cabinets for protecting confidential information. Additionally, from 2016 until September 2019, the JA supported the membership of the ODC in the National Organization of Bar Counsel<sup>17</sup> and NCSC’s Center for Judicial Ethics<sup>18</sup>, which gave the ODC access to interactive discussions with professionals from other jurisdictions, educational and training opportunities, specialist literature and materials, databases providing a plethora of disciplinary case law and ethics opinions, and comparative disciplinary regulations and commentaries. The ODC has reportedly used these comparative materials to enhance the legal arguments provided in indictments, presentations before disciplinary panels, and appeal proceedings.

The JA reviewed and provided recommendations for improvements to the Disciplinary Case Management System (DCMS) in a report submitted to the ODC and HJPC Secretariat’s IT Department in July 2017 (The Assessment of the Case Management System of the ODC). The JA proposed better usage, management, sharing, and protection of information. Specifically, the JA noted that the DCMS currently being used by the ODC, which is modeled after court and prosecutor office case management systems, is not adapted to the ODC’s specific needs and therefore is not fully functional. The ODC has tried to overcome this by developing and maintaining additional Microsoft Excel® databases, but this has made the collection and analysis of statistical data very time consuming since data collection must be inputted manually. The full implementation of the JA recommendations for software and organizational changes can only happen if amendments to the Law on the HJPC are

<sup>17</sup> The National Organization of Bar Counsel is a non-profit organization whose members (bar prosecutors, ethics counsel and disciplinary adjudicators and regulators from US, Canada, the UK and Australia) work on lawyer discipline and regulation through enforcement of legal ethics rules as well as educational, preventive and rehabilitative efforts impacting lawyer ethics and professionalism in the United States and abroad. For more information please see the National Organization of Bar Counsel website at <http://nobic.org/>.

<sup>18</sup> The Center for Judicial Ethics became part of the NCSC in 2014, following the dissolution of the American Judicature Society. It provides research support for the US conduct commissions that investigate complaints of judicial misconduct and tracks opinions issued by ethics advisory committees. For more information, view the Center for Judicial Ethics website at <http://www.ncsc.org/Topics/Judicial-Officers/Ethics/Center-for-Judicial-Ethics.aspx>

adopted, which would limit the HJPC's access to ODC records.<sup>19</sup> This did not happen by the end of the JA, and funding for software changes was allocated to the HJPC by the EU in the meantime.



Figure 13 – Strategic Planning Training for ODC staff, December 2016

Further, in accordance with the training needs assessment, the JA provided training to ODC staff on strategic planning, internal and external communications (Trebević in 2016 and Sarajevo in 2017), and the application of the Disciplinary Sanctioning Guidelines (Jahorina in 2017 and Sarajevo in 2018). In 2019, the JA provided two train-the-trainer programs on professional ethics and discipline, based on the Judicial Ethics Handbook (see Activity 2.5 below) and the Judicial Discipline Benchbook (see Activity 2.4 below), thus enabling the ODC to continue to deliver training on ethics and discipline to judges and prosecutors through entity JPTCs independent of donor assistance.

## **ACTIVITY 2.4: DISCIPLINARY PROCEEDINGS ARE PROCESSED EXPEDITIOUSLY AND FAIRLY AND DISCIPLINARY DECISIONS ARE SUBJECT TO INDEPENDENT AND IMPARTIAL REVIEW**

### **a) Judicial Discipline Benchbook and Training**

HJPC members, who also participate in the work of disciplinary panels, serve four-year terms, thus leading to frequent turnover in the membership of the HJPC and its disciplinary panels. The Judicial Discipline Benchbook (June 2019), which intended primarily for members of HJPC disciplinary panels but also for the ODC, provides a single reference text and orientation tool on the correct disciplinary procedure and prior disciplinary decisions. The Benchbook offers a detailed, step-by-step explanation that guides users of the system through the disciplinary process from the moment of filing a case to the conclusion of case proceedings. In addition to the explanation of and commentary on the disciplinary procedure, the Benchbook also provides a template for a disciplinary decision, a template for a joint consent agreement, a timeline for disciplinary proceedings and suspensions, a disciplinary

<sup>19</sup>Under the current Law on the HJPC, the HJPC has unlimited access to ODC records, which may jeopardize the confidentiality of disciplinary investigations, as suggested by the JA expert. Article 65 of the Law on the HJPC (Record keeping and Reporting to the Council), reads:

- (1) The Office of the Disciplinary Counsel shall maintain records of complaints filed and the action taken in the processing of complaints, investigations, and disciplinary matters.
- (2) The records shall be available to the Council. The Office of the Disciplinary Counsel shall be obliged to provide the Council with copies of complaints, investigation reports, or other relevant documentation as requested.
- (3) The Office of the Disciplinary Counsel shall report periodically, in written form, to the Council regarding its activities.

sanctioning checklist, and case summaries. The Benchbook was developed in partnership with the HJPC Working Group on Integrity and Accountability and the ODC, with participation of the HJPC Secretariat Legal Department and Appointments Department (which supports the work of disciplinary panels). Judicial Discipline Benchbook was adopted at the HJPC session on September 5, 2019. The development and adoption of the Judicial Discipline Benchbook was also recommended in the Peer Assessment on Disciplinary Procedures in BiH Judiciary (September 2016).

To inform the development of the Benchbook, the JA conducted the following analyses: 1) the Analysis of Disciplinary Decisions in Cases of the Disciplinary Offense Defined as Issuing Decisions Contrary to the Law or the Persistent and Unjustified Violation of Procedural Rules (November 2016), 2) the Analysis of Disciplinary Decisions That Impose the Disciplinary Measures of Public Reprimand and Salary Reduction (December 2016), and 3) the Analysis of Suspensions of Judges and of Prosecutors Pending Criminal, Disciplinary, or Dismissal Proceedings (April 2018).

In 2018, the JA, in collaboration with entity JPTCs, delivered a training on disciplinary decisions and the application of the HJPC Disciplinary Sanctioning Guidelines to 40 judges, prosecutors, disciplinary panel members, disciplinary prosecutors, and the HJPC Secretariat Legal Department and Appointments Department representatives. At its session held in February 2018, the HJPC made the attendance for this training mandatory for all members of its disciplinary panels. The training topics included: due process requirements and international standards, the relevance of the explanation of disciplinary decisions and a template to facilitate its development, and the purpose and elements of the Disciplinary Sanctioning Guidelines. The discussion and main observations from the training were built into the draft Judicial Discipline Benchbook.

Finally, in 2019, the JA delivered a train-the-trainer training to ODC staff on judicial discipline based on the draft Judicial Discipline Benchbook (see Activity 2.3 above). The training was also attended by staff from the HJPC Secretariat Legal Department and the Appointments Department. The training had two primary objectives: 1) to build the knowledge and practical skills of legal professionals who work with disciplinary cases involving judicial office holders, and 2) to support institution-guided training and orientation for new staff members involved in the regulation of judicial office holders. The training featured materials to be used in future orientation programs across disciplinary system institutions — including new HJPC disciplinary panel members, HJPC Secretariat staff, or ODC staff.

### ***b) Support the Development and Implementation of Guidelines for Disciplinary Sanctions***

A clear and consistent sanctioning policy is key to securing public confidence in the judiciary's ability to maintain the highest professional and ethical standards. In 2015, the JA reviewed the ODC's annual reports, studied a selected number of disciplinary cases, and carried out consultations on the disciplinary sanctioning practices. The findings of the review and consultations were reflected in a JA report that was provided to USAID in May 2015. The report revealed that many judges and prosecutors, including HJPC members, believed that the sanctioning policy was unclear, inconsistent, and overly lenient. Furthermore, the 2015 survey of the general public conducted within the scope of the DA (see Activity 2.2.a above) revealed that two of three respondents (67%) did not believe that the judicial institutions sufficiently sanctioned unethical and unprofessional behavior in their own ranks.

With these findings in mind, the JA supported the development of the HJPC Disciplinary Sanctioning Guidelines, which were adopted by the HJPC in July 2016. The HJPC adopted all the provisions of the proposed Guidelines. The aim of the Guidelines was to establish a clear and consistent HJPC disciplinary sanctioning policy. Their adoption was pointed out as an accomplishment in the EU report

on the BiH's progress towards EU accession, with a note that further progress will be measured based on the level of implementation of the Guidelines.<sup>20</sup> Following the adoption of the Guidelines, the JA supported their implementation through monitoring and training. Two trainings on their use were provided to the HJPC disciplinary committees, the ODC, and the HJPC Secretariat (Jahorina in 2017 and Sarajevo in 2018). The implementation of the Guidelines was monitored through an analysis of disciplinary decisions issued in the past three years since the Guidelines were adopted (July 2016 – June 2019). The Report on the Monitoring of the Application of the HJPC Disciplinary Sanctioning Guidelines showed that the percentage of disciplinary decisions that referenced the Guidelines had increased over time from 27% to 75%. However, the report also noted limited improvements in the quality of reasoning provided in the decisions, since they still did not sufficiently demonstrate that factors were weighed properly in determining the appropriate disciplinary sanctions. In September 2019, the report will be shared with the HJPC, as well as with international organizations that monitor and advocate for fair and efficient disciplinary proceedings such as the OSCE and the EU.



Figure 14 - Training for ODC and HJPC Secretariat staff on disciplinary decisions and disciplinary measures

### **c) Enhance the Disciplinary System through Amendments to the Law on the HJPC**

In the course of its work with the ODC (see Activity 2.3), the JA concluded that legislative changes are necessary to strengthen the ODC's independence and authority and ensure that it has the resources it needs to perform effectively. Additionally, during the process of developing the Judicial Discipline Benchbook (see Activity 2.4.a), the JA identified a number of deficiencies in disciplinary proceedings that would require changes to the Law on the HJPC. The JA's findings were confirmed in the EU Peer Review Assessment on Disciplinary Procedures in the BiH Judiciary (September 2016).

Consequently, the JA supported the SCL in drafting amendments to the Law on the HJPC that would enhance the disciplinary system by strengthening the ODC and improving disciplinary proceedings. The support included developing a comparative analysis of similar ODC offices in other countries in the region, EU member states, and the US, with specific recommendations for improving the BiH ODC's status and performance. The findings and recommendations of this comparative analysis,

<sup>20</sup> "Bosnia and Herzegovina's justice system has some level of preparation. Some progress was made in addressing some of last year's recommendations on accountability and integrity in the judiciary, namely through the adoption by the High Judicial and Prosecutorial Council of a set of guidelines on conflict of interest, drafting of integrity plans and disciplinary measures... In the coming year Bosnia and Herzegovina should in particular: implement the guidelines adopted by the High Judicial and Prosecutorial Council on conflict of interest, disciplinary sanctions and integrity in the judiciary." Bosnia and Herzegovina 2016 EC Progress Report, pg. 13, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_bosnia\\_and\\_herzegovina.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf)

which were provided in the report titled “Analysis of Options for Improved Institutional Positioning and Functionality of the ODC” (August 2016), were shared with the ODC and the HJPC. In supporting the drafting of amendments to the Law on the HJPC, the JA was guided by the EU Peer Review Recommendations, though the JA differed by recommending ways to strengthen the independence and authority of the ODC as an office within the HJPC, as is currently regulated, rather than as an entirely separate office as recommended by the EU.<sup>21</sup>

The latest draft Law on the HJPC (June 2018) ensures greater ODC independence in the process of selecting disciplinary prosecutors, greater independence of the chief disciplinary prosecutor through a six-year-long mandate, improved regulation of the confidentiality of disciplinary investigation proceedings, and clearer delineation of the ODC's authority to dismiss a complaint, suspend an investigation, and other similar actions.

The HJPC also agreed to the JA's proposed amendments to the Law on the HJPC for more simplified disciplinary proceedings that would include a first instance hearing and appeal, better defined disciplinary offenses, better regulated legal consequences for a disciplinary breach, and more clarity for suspension proceedings in cases of a discretionary suspension. While these amendments offer an improvement, more remains to be done in the areas of the transparency of disciplinary proceedings, the composition of disciplinary panels to limit the HJPC's influence, and judicial redress in disciplinary cases.

The HJPC submitted the draft Law on the HJPC to the inter-agency working group sponsored by the BiH MOJ for consideration and adoption first by the BiH Council of Ministers and then by the BiH Parliament. The new law had been adopted as of September 2019 when the JA contract concluded.

#### ***d) Transparency of Judicial Discipline Proceedings***

Judicial transparency is key to promoting accountability, combating corruption, and eliminating arbitrariness. Transparency also promotes public trust and confidence in the judiciary, without which it would not be able to fulfill its mission and perform its functions. One of the special focuses of the JA has been on improving the transparency of judicial discipline proceedings. To that end, the JA provided communications training to the ODC and also directly assisted in developing the ODC's communications strategy and improving its website (see Activity 2.3 above). Case summaries of all disciplinary decisions were produced and form part of the Judicial Discipline Benchbook (see Activity 2.4.a above). Additionally, the Proposal on Ways to Improve the Publication of Disciplinary Decisions on HJPC Website (July 2018) was developed and submitted for consideration to the HJPC Working Group on Integrity and Accountability. The Proposal addresses the nature and scope of information to be published on the HJPC website (e.g., the type of disciplinary decision, whether the decision should be redacted or not, and if so to what extent) and the duration of its publication (e.g., whether decisions should be removed from the website to allow for the rehabilitation of a judge or prosecutor). Additionally, it suggests how to present this information on the website in an accessible, user-friendly manner and the criteria per which it could be searched (both for basic and advanced searches). The Proposal was developed after analyzing comparative approaches in 14 countries in Europe and the US. As part of its support for the reform of the Law on the HJPC (see Activity 2.4.c above), the JA also proposed an amendment that would allow for the publication of all disciplinary

<sup>21</sup> The EU Peer Review recommended that the ODC become a body fully independent from the HJPC, which would require the adoption of a separate Law on the ODC to establish and regulate the work of ODC as an independent agency. This more serious reform of the ODC would require further discussions and consultations among stakeholders, which were beyond the scope of the JA activities.



decisions on the HJPC website, as opposed to publishing final decisions only.<sup>22</sup> The HJPC instead introduced an amendment noting that “disciplinary decisions can be published after removal of personal data, in line with the by-law to be passed by the HJPC.” Consequently, the JA helped draft the Rules on Publicizing Disciplinary Decisions and Other Related Information on the HJPC Website, the issuance of which was also recommended in the aforementioned Proposal. The draft Rules were submitted to the HJPC Secretariat for comments in July 2019 and presented to the HJPC Working Group on Integrity and Accountability on September 18, 2019. The Working Group will finalize the Rules and propose it the HJPC for adoption.

## **ACTIVITY 2.5: PUBLIC TRUST AND RESPECT FOR JUSTICE SECTOR INSTITUTIONS/ACTORS ARE INCREASED WITH RESPECT TO DEMONSTRATED ABILITY TO ACT INDEPENDENTLY AND IMPARTIALLY AND TO BE HELD ACCOUNTABLE**

### ***a) Prevention of Conflicts of Interest of Judges and Prosecutors***

Corruption can take many forms, but its genesis often starts with the same issue — a conflict of interest. Pending amendments to the Law on the HJPC, which would strengthen its provisions on conflicts of interest, among other things, the EU invited the HJPC to develop Guidelines for the Prevention of Conflict of Interest in the Judiciary (Conflict of Interest Guidelines).<sup>23</sup> The JA helped the HJPC develop these Guidelines, which were adopted by the HJPC in July 2016. The Guidelines focus on: 1) incompatible and external activities of judicial office holders; 2) reporting on assets, income, liabilities, and interests; 3) gifts and other benefits; 4) contact with third parties and misuse of confidential information; and 5) nepotism. The Guidelines also seek to underline the importance of appropriately managing conflicts through the full and timely identification and disclosure of interests and conflicts, and the implementation of appropriate responses. Along with the HJPC Disciplinary Sanctioning Guidelines (see Activity 2.3.b), the adoption of these Conflict of Interest Guidelines was pointed out as an accomplishment in the EU report on BiH's progress in the EU integration process, with a note that further progress will be measured based on the level of their implementation. With that in mind, the JA supported the HJPC Working Group on Integrity and Accountability to develop the Monitoring Instrument to Track the Implementation of the HJPC Conflict of Interest Guidelines, which was adopted by the HJPC in November 2018. Furthermore, in 2019, the JA provided the HJPC Working Group on Integrity and Accountability with a Report with Recommendations on the Content of Records Relevant to Monitoring the Implementation of the Guidelines for the Prevention of Conflict of Interest in the Judiciary. The records discussed in the Report include the records of disciplinary cases involving judges and prosecutors, the records of disqualifications of judges and prosecutors, records of additional activities of judges and prosecutors, records of *ex parte* communications, and records of public and media appearances of judges and prosecutors. Additionally, the Report provides an analysis of the effectiveness of the previous asset declaration form reinstated by the HJPC, following the suspension of the application of the new HJPC Book of Rules on the Submission, Verification, and Management of Asset Declarations (see Activity 2.5.d

<sup>22</sup> The final decision, i.e., the decision on appeal, provides limited information about the case, since its explanation addresses grounds of the appeal only. The June 2019 HJPC Survey of Judges and Prosecutors about their Perception of Ethics and the Fairness and Impartiality of Disciplinary Action, supported by the JA, revealed that 80% of respondents thought that all disciplinary decisions, including the first instance decision and the dissenting opinion, should be publicized on the HJPC website.

<sup>23</sup> EU-BiH Structured Dialogue on Justice and Additional Rule of Law Matters, TAIEX seminar on ‘Conflict of Interest in the Judiciary’, February 2015

below). This analysis concluded that using the old asset declaration form would only allow partial monitoring of the HJPC Conflict of Interest Guidelines and that therefore the monitoring instrument will have to be amended to reflect this change.



Figure 15 – Training on conflict of interest for judges of the Municipal Court in Sarajevo, September 2018

In 2018, the JA, in cooperation with entity JPTCs, delivered a two-day training on conflicts of interest to a total of 30 judges, prosecutors, disciplinary prosecutors, and representatives of the HJPC Secretariat Legal Department. The training topics included: the purpose of the regulation of conflicts of interest, European and US approaches, types of conflicts of interest, prevention strategies, and the application of the Conflict of Interest Guidelines. During the same year, the JA supported the Municipal Court in Sarajevo to implement a measure contained in its integrity plan to provide conflict of interest training to judges of the court. The training, which was based on the Conflict of Interest Guidelines, was attended by 40 judges of the court.

#### **b) Improvements to the Codes of Ethics for Judges and Prosecutors**

Ethics codes guide judges and prosecutors in the independent exercise of their authority, thus contributing to a credible and trustworthy legal system. The BiH ethics codes for judges and prosecutors were adopted by the HJPC in 2006, and they provide both: 1) a standard against which to assess judicial behavior, and 2) a guide to judges and prosecutors about what behavior is and is not acceptable. Ethics codes are not intended to be rigid instruments and should be reviewed and revised regularly to reflect changing realities and new concerns. In 2015, the JA reviewed the ethics codes for judges and prosecutors and examined how they were understood and implemented by the relevant parties. The findings of this review were reflected in the report *Expert Recommendations on How to Enhance Ethics Codes for Judges and Prosecutors* (May 2015), which introduced and improved rules governing: *ex parte* communications, mandatory reporting on judges or prosecutors who have committed a violation of ethics, the verification of annual financial statements and asset declarations of judges and prosecutors, conflicts of interest, and restrictions on the use of social media. Following the adoption of Conflict of Interest Guidelines (see Activity 2.5.a), the HJPC Working Group on Integrity and Accountability requested assistance from the JA to harmonize of the ethics codes for judges and prosecutors using these guidelines. The amended ethics codes for judges and prosecutors were then adopted by the HJPC at the end of 2018. The amended ethics codes provided stricter regulation of judges' and prosecutors' additional activities with an aim to prevent, among other things, double billing (i.e., a judge or prosecutor being paid twice for a single day's work through, for example, participation in working groups sponsored by the executive or legislature). The codes also placed an obligation on a judge or prosecutor to recuse himself from a case in which he or a family member

has a financial or political interest. Finally, the ethics codes required that judges or prosecutors avoid *ex parte* communications and conduct themselves in public in such a way as to minimize the risk of impropriety and potential conflict with the obligations of judicial office.

### c) *Judicial Ethics Handbook and Training*

The HJPC Survey of Judges and Prosecutors about Their Perception of Ethics and the Fairness and Impartiality of Disciplinary Action, conducted in 2017 and repeated in 2019 with the support of the JA, revealed that more than a half of the respondents did not participate in any ethics training in the last five years, while 75% of respondents were of the opinion that ethics trainings should be regular and mandatory. The JA supported the efforts of the HJPC Working Group on Integrity and Accountability to develop and adopt the first BiH Judicial Ethics Handbook (February 2019). The Handbook is intended for educational purposes and promotes the societal benefits of a professional and ethical judiciary. As an efficient, user-friendly reference guide, the Handbook includes chapters on the independence, impartiality, conflicts of interest, integrity, diligence, and competence of the judiciary. Each chapter provides a checklist that will assist judges and prosecutors to recognize and prevent ethical violations. The Handbook provides explanations of relevant provisions of the Law on the HJPC, ethics codes for judges and prosecutors, and HJPC Conflict of Interest Guidelines. It does so by looking at BiH and international disciplinary practices, opinions of BiH and US ethics committees, and the jurisprudence of the European Court of Human Rights. The HJPC adopted a decision requiring the use of the Handbook at JPTC trainings on ethics, and also committed to updating the Handbook periodically. The adoption of the Judicial Ethics Handbook contributed to the implementation of a number of the EU Peer Review Recommendations.<sup>24</sup>



Figure 17 - Annual Presentation of the JDB and Ethics checklist, Mostar 2019



Figure 16 - Judicial ethics handbook and ethics checklist for judges and prosecutors, Mostar 2019

Following the adoption of the Handbook, the JA published a brochure with an ethics checklist for judges and prosecutors from the Judicial Ethics Handbook, as a way to both promote the Handbook and raise awareness about professional ethics and compliance. Additionally, in collaboration with

<sup>24</sup>“Judges and prosecutors should be familiar with the concrete ethical challenges and concrete instruments available to ensure integrity, including disciplinary jurisprudence... All guidelines (guiding the behavior of judges and prosecutors, such as ethical codes, book of rules on conflict of interests, guidelines on preventing conflict of interests etc.) should be in the same document, preferably Rules of Procedure, or in a joint compilation.” Peer Assessment on Disciplinary Procedures in BiH Judiciary, September 2016

entity JPTCs, the JA delivered three ethics trainings built around the Judicial Ethics Handbook (in Sarajevo, Mostar, and Jahorina in 2019). The trainings, which were delivered by an international ethics expert, BiH authors of the Handbook, and two disciplinary prosecutors (who attended the train-the-trainers session on ethics), were attended by a total of 89 judges and prosecutors. The main purpose of the training was to familiarize participants with the Handbook, its content, and practical applications using factual case studies and international best practices. Some of the topics covered by the training included: the erosion of ethical standards and how to prevent unethical behavior, the appearance of impropriety, external influences on judicial conduct, disqualifications, conflicts of interest, and the duty to report professional misconduct.

In 2019, to ensure sustainability, the JA also provided a train-the-trainer training on ethics for representatives of the ODC, the HJPC Secretariat, and interested judges and prosecutors. Due to the high level of interest, 31 participants attended, although the JA had initially planned for only 15 participants. The trainees received a certification, co-signed by entity JPTCs and the JA. Through presentations, discussions, and case studies, the trainees were able to learn about effective design for courses on ethics, methodologies for interactive learning, and how to engage training participants.

#### **d) Improvements to Asset Declarations of Judges and Prosecutors**

Asset declaration systems can contribute to combating corruption by either reducing the incidence of conflicts of interest or by helping identify and prosecute cases of illicit enrichment by public officials<sup>25</sup>, including judicial office holders. An asset declaration requirement can also provide an effective reminder to public officials of the accountability that comes with public office. The Law on the HJPC has required the submission of asset declarations by judges and prosecutors since as far back as 2004. However, the asset declarations of judges and prosecutors have never been verified and thus could not be used as a tool in combatting corruption. Following the EU recommendation to the HJPC to develop a “mechanism which ensures an accurate and transparent declaration of assets for all judicial office holders, in line with best international standards and practices and compatible with individual privacy rights, including a verification procedure and prevention of false declaration”<sup>26</sup>, the HJPC requested assistance from the JA to reform the asset declaration system, first by improving the asset declaration form, and second by drafting the HJPC Book of Rules on Asset Declarations, which would regulate the submission, verification, and management of asset declarations. The Book of Rules on Asset Declarations, which was adopted by the HJPC on September 26, 2018, introduced an electronic submission and verification process for asset declarations, as well as online publication of asset declarations of judges and prosecutors, following the removal of personal data, for the first time in BiH. The Book of Rules included best practices from EU member states and addressed the recommendations of the EU Peer Review report on asset declaration for the BiH judiciary. In order to secure the HJPC's support for the development and adoption of the Book of Rules on Asset Declarations, the JA engaged in discussions with the EU both during the development of the EU Peer Review Recommendations on asset declarations and during their implementation. The Book of Rules on Asset Declarations was drafted in close collaboration with the HJPC Working Group on Integrity and Accountability.

Additionally, the JA supported the HJPC in drafting amendments to the Law on the HJPC related to asset declarations. The final draft Law on the HJPC that was submitted to the BiH MOJ by the HJPC incorporates most of the JA's recommendations. The proposed legislative amendments clearly specify

<sup>25</sup> Technical Guide to the UN Convention against Corruption, UNODC and UNICR, Vienna, Austria, 2009

<sup>26</sup> EU-BiH Structured Dialogue on Justice and Additional Rule of Law Matters, TAIEX seminar on ‘Conflict of Interest in the Judiciary’, February 2015

the purpose of the asset declaration tool as an instrument to detect, prevent, and combat conflicts of interest and illicit enrichment, regulate in more detail the HJPC's authority to receive and verify asset declarations, expand the scope of asset declarations to all members of the household of a judge or prosecutor, and secure the transparency of asset declarations through their online publication.

To support the enforcement of the Book of Rules on Asset Declarations, at the end of 2018, the JA provided training on the verification of asset declarations to HJPC members and HJPC Secretariat staff. After presenting a detailed review of the verification procedure, as stipulated in the adopted Book of Rules, as well as a review of the new asset declaration form, the JA trainer facilitated discussion on the challenges in rolling out the new asset declaration system, including issues related to the development of the software for the electronic system and the human resources required for verifying asset declarations. Using case studies, the JA trainer addressed the following topics: how to identify implausible asset declarations, how to calculate incoming and outgoing financial flows and their purposes, and the conditions and means of verifying an asset declaration, especially a full audit of an asset declaration (e.g., red flags of hidden income, red flags of conflicts of interest, and data sources for verification). Additionally, in collaboration with the HJPC Working Group on Integrity and Accountability, the JA developed detailed instructions for judges and prosecutors on the submission of asset declarations. Presented in the form of frequently asked questions (FAQs), the draft instructions address the dilemmas expressed by HJPC members and HJPC Secretariat staff regarding the information required by the new asset declaration form. Finally, the JA supported the HJPC Secretariat in developing risk criteria<sup>27</sup> per Article 9 of the Book of Rules on Asset Declarations, based on which asset declarations would be prioritized for regular and non-periodic verification and a verification schedule would be developed.

In March of 2019, the Personal Data Protection Agency issued a decision<sup>28</sup> that prohibited processing the personal data of judges and prosecutors pursuant to the Book of Rules on Asset Declarations, claiming that it violates the Data Protection Law on individual privacy and goes beyond the scope of the Law on the HJPC. As a consequence, at its March 7, 2019 session, the HJPC adopted a resolution to postpone the application of the Book of Rules for an indefinite time until the problem could be resolved, or to file a legal remedy against the Agency's decision if no favorable solution could be found in negotiations with the Agency. Without a mutually agreed solution with the Agency, the HJPC decided to file a lawsuit against the Agency's decision before the Court of BiH. At the HJPC's request, the JA provided an expert opinion on the issues raised by the Agency's decision, which was used to inform and educate the HJPC as it prepared the lawsuit. The JA also supported drafting amendments to the Book of Rules to address the Agency's concern. The HJPC submitted the amended Book of Rules to the Agency for an opinion; however, the Agency refused to issue a decision due to the pending lawsuit. The HJPC decided to reinstate the old asset declaration form so that asset declaration forms could still be filed in 2019.

<sup>27</sup>Article 9 (Risk criteria and verification schedule) of the Book of Rules on Asset Declarations:

- (1) For the purpose of verification of financial statement of judge and prosecutor, the Council shall adopt and periodically revise the risk criteria which are confidential.
- (2) A risk criterion is a circumstance or a set of circumstances based on which financial statements are prioritized for regular checks, and a verification schedule is comprised.
- (3) A non-periodic check shall be conducted based on the risk criteria as well.

<sup>28</sup>Per the complaint of the Association of Judges of the Court of BiH, supported by the Association of Judges of the RS and the BiH Association of Judges.

### **e) Model Code of Ethics and Conduct for Court and PO Expert Associates and Advisors**

The JA entered into an agreement with the AEA to develop a Model Code of Ethics for Expert Associates and Advisors (Model Ethics Code) in courts and POs in BiH that integrates the best practices of the existing ethical standards with applicable provisions from the new ethics codes for judges and prosecutors. The Association conducted an analysis of the BiH legal framework and consulted stakeholders, and the results of their analysis were provided in the report titled “The Analysis of Ethics Regulations Applicable to Expert associates and Advisers in Courts and POs.” The resulting Model Ethics Code was adopted by the AEA at its Ninth Annual Conference in September 2017. In 2018, the HJPC issued a formal statement that the Model Ethics Code represented a valuable contribution by the Association to future judicial reform processes in the area of professional ethics through potential amendments to the Law on Civil Service or internal regulation of courts and POs. In the absence of a regulation that would uniformly regulate expert associates and advisors in courts and POs<sup>29</sup>, the Model Ethics Code allows the HJPC to secure a standardized approach to ethical and professional conduct of judicial staff. The Model Ethics Code can thus serve as an important tool for changing the ethical culture in courts and POs and, moreover, for improving the public’s perception of the integrity of these two institutions, since staff behavior greatly affects how the judicial system is perceived

To support the implementation of the Model Ethics Code, in 2018, the JA: 1) helped the AEA develop the Commentary to the Model Ethics Code, and 2) provided training to AEA members on the application of the Model Ethics Code. That training included a train-the-trainer session to strengthen the Association’s capacity to provide future training through JPTCs, independent of donor assistance.

### **f) Support the Development and Implementation of Integrity Plans**

An integrity plan is a corruption and integrity risk management instrument introduced in public institutions through the BiH Anticorruption Strategy, the implementation of which is overseen by APIK. The development and implementation of an integrity plan involves an institutional self-assessment of integrity and corruption risks and then defining measures to prevent the occurrence of corruption and unethical behavior. To facilitate collaboration on anti-corruption between APIK and the judiciary, the JA supported the creation of the Guidelines on the Development and Implementation of Judicial Integrity Plans, which were adopted by the HJPC in July 2016. The Integrity Plan Guidelines regulate the procedures and provide a detailed methodology for developing and implementing integrity plans in courts and POs. Along with the HJPC Disciplinary Sanctioning Guidelines (see Activity 2.3.b above) and the HJPC Conflict of Interest Guidelines (see Activity 2.5.a above), the adoption of the Integrity Plan Guidelines was noted as an accomplishment in the EU’s report on BiH’s progress towards EU integration.

The JA actively participated in the work of the HJPC Working Group for the Identification of Corruption and Integrity Risks in Judicial Institutions, which was tasked with identifying and developing a list of judicial integrity and corruption risks and measures to address them. This list of corruption risks and countermeasures will assist courts and POs in developing their integrity plans, and it was formally adopted by the HJPC in March 2017. The support to the aforementioned Working Group included a study tour to Serbian justice sector institutions (i.e., the High Judicial Council, High

<sup>29</sup> While there is uniformity in the regulation and application of ethics for judges and prosecutors, in BiH, the ethics standards for court and prosecutor staff are regulated differently depending on their status as civil servants and non-civil servants. These ethics standards can be found in the Law on Civil Service, the internal regulation of courts and POs, and other by-laws.

Prosecutorial Council, the Anti-Corruption Agency, and selected courts and POs) in November 2016 to study Serbia's five-year practice in the development and implementation of judicial integrity plans.

To secure the enforcement of the integrity plan framework, the JA successfully advocated for the expansion of the mandate of the HJPC Standing Committee on Ethics to make it responsible for opinions on judicial and prosecutorial integrity plans and for supervising their implementation. Additionally, in 2017, the JA, in collaboration with the HJPC, provided training on the development of integrity risks to over 170 representatives of all courts and POs in BiH. The JA also provided direct technical assistance to the Municipal Court and PO in Sarajevo to develop their integrity plans. Once the draft integrity plans were developed by all courts and POs and submitted to the HJPC, in 2018, the JA assisted the HJPC Standing Committee on Ethics in reviewing them and providing feedback relevant to their finalization.

The JA and the HJPC, at the invitation of the Regional Anti-Corruption Initiative, presented integrity plans from BiH courts and POs at the Regional Forum on Effective Prevention of Corruption through Efficient Identification of Risks held in Ljubljana on October 25–26, 2017. Notably, these integrity plans — developed by the JA for the HJPC — were recognized at the forum as a regional best practice model for establishing an effective tool for performing corruption risk assessments in judicial institutions in the Balkans. The Forum was attended by all regional anti-corruption agencies, MOJs, the EU, OSCE, UNDP, UNODC, and NGOs.

In 2018, the JA supported the Municipal Court in Sarajevo to implement a measure contained in its integrity plan by providing conflict of interest training for its judges (see also Activity 2.5.a above). In 2018 and 2019, the JA focused its support to the HJPC on supervising the implementation of integrity plans by assisting the HJPC in the development of: 1) an M&E tool to measure the success of implementing integrity plans in the courts and POs, and 2) a template for courts and POs to use to report to the HJPC on integrity plan implementation. At the time of the writing of this report, 96 percent of courts and POs had submitted their monitoring reports on integrity plan implementation. Finally, the JA assisted the HJPC in developing the first Annual Report on the Implementation of Integrity Plans in Courts and POs for 2018, which will be considered by the HJPC in its session on September 25–26, 2019. To secure the sustainability of this activity, the JA and the EU Special Representative's Office urged the HJPC to assign the role of coordinating the monitoring of the implementation of integrity plans to one of its staff, which resulted in the establishment of the position of the Integrity Plan Coordinator at the HJPC.

## **ACTIVITY 2.6: PROSECUTORS AND JUDGES ARE TRAINED IN IDENTIFYING ELEMENTS OF CORRUPT ACTIVITIES AND ARE ABLE TO INVESTIGATE AND PROSECUTE CORRUPT PRACTICES AND ENFORCE THE LAW AGAINST OFFENDERS**

### ***a) Training Needs Assessment and the Development and Delivery of Specialized Training Program for Judges and Prosecutors***

In 2015, the JA, in collaboration with the JPTCs, conducted a training needs assessment and developed a long-term training program for prosecutors and judges to effectively prosecute and adjudicate cases of corruption, organized, and economic crime. The aim of the long-term training was to provide specialized, comprehensive, and systematic training for pools of prosecutors and judges in the subsequent years of the project, thus creating national expertise in the prosecution and adjudication of these serious crimes (this is a crosscutting activity with Activity 1.3 above). Training conducted through the JPTCs resulted in official certification of expertise gained by a total of 47 prosecutors.

The planning of training took full account of the need for local ownership, which was promoted by: 1) designing coherent and a continuous two-year training program, and 2) engaging with local training providers, i.e., the entity JPTCs. The JA collaborated with the SDC Project to deliver the specialized training for prosecutors.

The training needs assessment sought the opinion of judges and prosecutors as to which training subject areas would be most useful in their efforts to adjudicate cases of corruption, organized, and economic crime. The following training subject areas were identified: using financial records; using financial experts; working with other institutions such as tax authorities, APIK, and audit institutions; using special investigative measures; conducting trials of high-profile cases; and obtaining and using digital evidence. With these results in mind, in 2016, the JA delivered a specialized training program for judges and prosecutors in Sarajevo on "Financial Crimes: Investigation and Proof." Approximately 60 judges and prosecutors completed the program. In 2017, the JA provided another specialized training program in Sarajevo and Banja Luka for 51 judges and prosecutors, which focused on planning investigations, drafting indictments and judgments, using international legal assistance, dealing with challenges in prosecution, and adjudicating high-profile cases. In 2018, the JA delivered a two-day training on special investigative measures and human rights to over 50 judges.<sup>30</sup> Finally, in 2019, the JA provided two trainings for a total of 34 judges on the effective use of the Universal Benchbook on How to Prosecute and Adjudicate Cases of Corruption, Organized, and Economic Crime (February 2019, see also Activity 2.1 above) developed by the JA (see also Activity 2.6.b below). Trainers for these training programs included judges and prosecutors from the US, Germany, Croatia, and BiH.

**b) *Develop a Universal Benchbook on How to Prosecute and Adjudicate Cases of Corruption, Organized Crime, and Economic Crime***

The training needs assessment (see Activity 2.6.a) helped the JA identify many areas that need to be improved in prosecuting and adjudicating corruption and organized and financial crimes. With these findings in mind, the JA developed the Universal Benchbook on How to Prosecute and Adjudicate Cases of Corruption, Organized Crime, and Economic Crime. The Universal Benchbook covers topics that help prosecutors and judges reach efficient and fair results in these serious cases. It has a general section, which includes chapters on all investigation and trial stages, as well as a specialized section, which includes chapters on special issues in the following types of cases: corruption, organized crime, financial crime, money laundering, and high-profile cases. The Universal Benchbook contains a discussion of the best practices to be employed at each stage of a case, which are illustrated by actual case studies as well as by hypothetical examples. The case studies include case decisions or excerpts from decisions that illustrate the issues discussed where they were available.

The Universal Benchbook was drafted by a team comprised of three judges, three prosecutors, and an attorney. The draft of the Universal Benchbook in the Bosnian language was edited by an editorial board made up of the attorney and one of the judges and prosecutors who were contributing authors of the Benchbook. The English language version was edited by the US contributing author. It was published in the Bosnian language in February 2019 and in English in June 2019.

<sup>30</sup> Special investigative measures are paramount in the fight against corruption, financial crime, and organized crime due to their secretive nature. However, because of their invasive nature, special investigative measures must adhere to a strict authorization regime in order to safeguard individual rights and freedoms. The training provided practical knowledge to judges on how to effectively perform judicial oversight of special investigative measures and consequently make sure their decision in the case is upheld.



## SECTION III — M&E RESULTS AND FINDINGS

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USAID's JA utilized a comprehensive M&E Plan throughout the implementation period, tracking outputs, outcomes, and impact indicators for each objective.

A purpose of the JA's M&E Plan was to enable the Activity and local counterparts to integrate continuous learning into annual Activity planning and implementation to achieve desired results and outcomes/outputs. The M&E Plan was based on best practices for effective program outcome/output measurement developed over years of experience implementing US Government funded rule of law programs.

In this regard, the JA M&E Plan was a living document and had four modifications (in February 2016, August 2016, August 2017, and January 2018) driven by changes in the Activity's Statement of Work (SOW) or by the need to more closely and comprehensively monitor developments as a result of technical assistance to POs. These changes included both the introduction of new performance indicators and the deletion of performance indicators that were outdated or inadequate.

The JA M&E Plan consisted of 25 performance indicators tied to the results/impacts specified in the SOW. Developments for 19 performance indicators were monitored through annual internal surveys.

An integral part of the M&E Plan was the specially designed Prosecutors' Offices Capacity Matrix (POCM). The POCM was used semi-annually to monitor development in partner POs' capacities in five subject areas related to the Component I Objective (Indicator 1.1).

The data for two performance indicators related to Result/Impact 1.4 (POs' PR activities) were used from the PR M&E Plan, which was designed by the JA and implemented with the assistance of the SDC Project.

The JA conducted three biannual online surveys of judges and prosecutors on disciplinary proceedings and conflicts of interest related to Performance Indicator 2.4.2 in cooperation with the HJPC.

Results for two performance indicators (1.4.3 and 2.5.1) were collected from annual national surveys conducted by USAID's MEASURE BiH project.

It is also important to emphasize in this report that judicial statistical data for Performance Indicators 1.1.1–1.3.4 were collected annually for calendar years, so the data for the 2018 calendar year represent the final data for the Activity.

An overview of findings on performance indicators is provided per the Illustrative Programmatic Impact, specified in the Activity's SOW.

### COMPONENT I: IMPROVE THE PROFESSIONAL STATUS AND PERFORMANCE OF PROSECUTORS

For tracking the overall achievements of Component I efforts towards this objective, a special M&E tool was developed and designed from the beginning of the Activity — the POCM. The POCM is a tool that was developed to measure the performance and improvements of POs as a result of the

technical assistance provided by the JA. The POCM has been designed to provide a realistic and objective evaluation of the improvements in performance of POs in BiH throughout the life of the Activity. The results of this tool were tracked through Performance Indicator 1.1, Score on the POCM in POs that implement PPPs, which is an integral part of the JA M&E Plan.

The POCM establishes and measures five areas related to the improvement of the capacity of the partner POs. These areas are tied to specific results/impacts (identified in the SOW and five work plans) that will be addressed individually below. Each area is graded on a five-point scale. The areas and outputs are:

- Organizational leadership, planning, and performance in POs strengthened
- POs perform functions more efficiently through a balanced allocation of resources
- Prosecutors in POs uphold public trust and integrity through the prosecution of corruption or other serious crime
- Prosecutors in POs provide appropriate and accurate information to citizens to strengthen transparency and responsiveness
- POs improve the status of prosecutors through performance appraisals, merit-based career advancement, or incentives to prosecute cases.

The POCM is a tailor-made JA M&E tool that converts evaluated qualitative aspects of a PO's performance into numerical values, from a minimum of zero to a maximum of 25 points. In Year 1, the JA performed a baseline POCM survey in April 2015 and the first periodic, semi-annual surveys for the First Group of partner POs (Year 1: the Cantonal PO of Tuzla Canton, Cantonal PO of Zenica-Doboj, District PO of Doboj, and District PO of East Sarajevo). In Year 2, the JA conducted a baseline survey in April 2016 and four periodic semi-annual surveys for the Second Group of partner POs (Year 2: the Cantonal PO of Sarajevo Canton, Cantonal PO of Herzegovina-Neretva Canton, Cantonal PO of West Herzegovina Canton, District PO of Trebinje, Federal PO of FBiH, and the Republic PO of the RS). In April 2017, the JA conducted a POCM baseline survey for the Third Group of partner POs (Year 3: the Cantonal PO of Posavina Canton, District PO of Bijeljina, District PO of Banja Luka, Brčko District PO, and the RSSPO) and two regular surveys. In April 2018, the JA conducted a POCM baseline survey for the Fourth Group of partner POs (Year 4: the Cantonal PO of Canton 10 in Livno, Cantonal PO of Mid-Bosnia Canton in Travnik, Cantonal PO of Bosnia-Podrinje Canton in Goražde, Cantonal PO of Una-Sana Canton in Bihać, and District PO of Prijedor). In April 2019, the JA conducted a POCM regular survey for all partner POs.

The POCM surveys showed a significant capacity improvement among the First Group of PPP POs during the four and half years since their baseline survey was conducted in April 2015, achieving 19.50 points (the target for FY 2019 was 16 points) in capacity out of a maximum of 25 points. The progress in capacity for this group is clearly visible.

A very impressive improvement in capacity was also made among the POs from the Second Group, who joined the PPP in Year 2. These POs achieved capacity levels similar to POs from the first group after three and half years of PPP implementation (an increase to 18.17 points in comparison to the baseline value in 2016, which was only 3.5 points). The result is significantly above the target for FY 2019, which was 15 points.

The Third Group of POs joined the PPP in Year 3, and their baseline POCM survey was done in April 2017. The baseline value was 4.6 points. The last survey in April 2019 showed their level of capacity at 17.40 points, which was a significant improvement.

The Fourth Group of POs joined the PPP in Year 4, and their baseline POCM survey was done in April 2018. The results show a significant improvement in just one year, increasing from 10 points at the baseline survey to 17.60 in April 2019, which was slightly above the ranking of the third group of POs.

The highest ranking, 22 points (out of maximum 25), was achieved by the Cantonal PO of Tuzla Canton, followed by the Cantonal PO of Zenica at 21 points, and then the Brčko District PO, the Cantonal PO of West Herzegovina (in Široki Brijeg), and the Cantonal PO of Una-Sana Canton (in Bihać), which had 20 points. The RSSPO in Banja Luka had the most modest ranking of 15 points.

The two figures below display the status in capacity for all groups of POs, numerically in Figure 18 and by subject area in Figure 19.

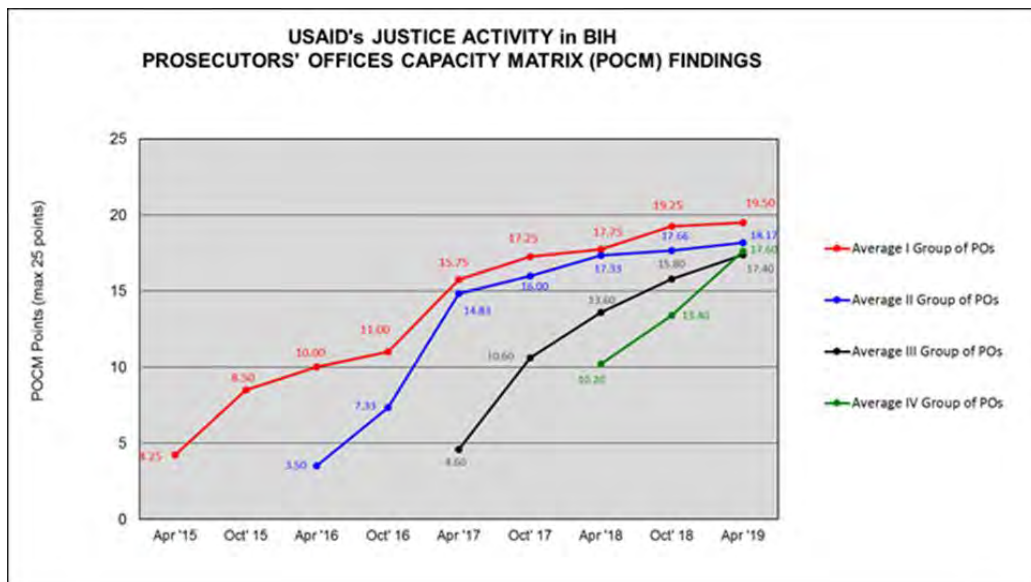


Figure 18 - POCM Findings (April 2019)

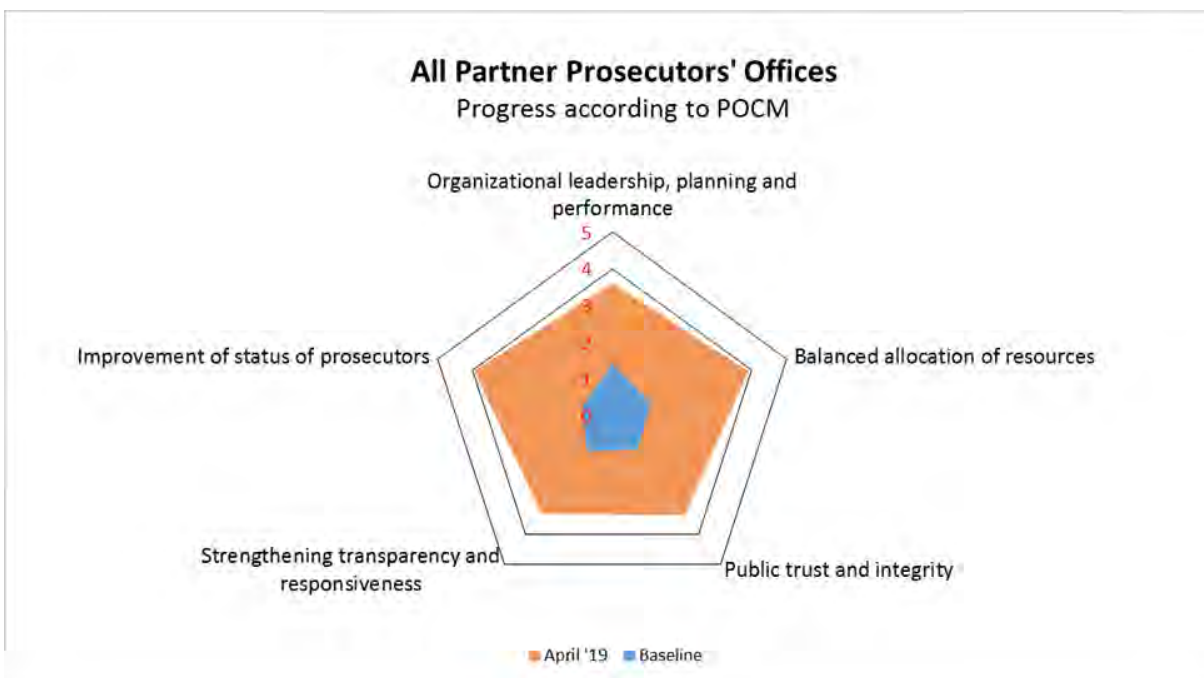


Figure 19 - Progress according to the POCM in five subject areas

## RESULT/IMPACT I.1: STRENGTHENED ORGANIZATIONAL LEADERSHIP, PLANNING, AND PERFORMANCE IN PROSECUTOR OFFICES

The achievements for results above were tracked through Subject Area I of the POCM and three performance indicators from the M&E Plan. These performance indicators are:

- I.1.1 Number of convictions for corruption-related crime in POs that implement PPPs
- I.1.2 Number of indictments for corruption related crime in POs that implement PPPs
- I.1.3 Conviction rate for corruption related crime in POs that implement PPPs

Subject Area I of the POCM shows that capacity of partner POs in organizational leadership, planning, and performance increased from 1.3 points on average at the baseline to 3.6 points (of 5 points maximum) on average in April 2019, which is a significant improvement.

For the judicial statistics for Indicators I.1.1 to I.1.3 and indicators related to judicial statistics, it is necessary to highlight that the JA used two sources of data. The first one is related to data based on the HJPC List of Corruption Crimes. Data for this list were provided annually to the JA for calendar years by USAID's MEASURE BiH project and represent official data for the JA M&E Plan. The second source of judicial statistical data is the official quantitative HJPC data where corruption crime cases have been labeled KTK, while economic crime cases by KTPO label. These data were submitted quarterly and annually to the JA by the SDC Project.

Regarding indictments for corruption crime, the HJPC List of Corruption Crime shows the total number of indictments for corruption crime in all POs increased from 259 in 2014 to 286 in 2018, an increase of 10.4 percent and almost equal to the target of 288 for 2018.

With regard to the number of convictions, the HJPC List of Corruption Crime shows the total number of convictions for corruption crime in all POs increased from 204 in 2014 to 230 in 2018, an increase of 12.7 percent but below the target of 244 for 2018. However, the other data source — the official quantitative HJPC data where corruption crime cases are labeled as KTK — shows that the number of convictions in all partner POs increased from 77 in 2015 to 158 in 2018, which is an increase of 105 percent and represents a significant achievement. Clearly the data from the two sources vary significantly despite the fact that the data for the HJPC List of Corruption Crime and the KTK both come from the TCMS, but parameters for extracting the data are different and beyond the control of the JA. One of the future challenges for the judiciary in BiH will be to establish and maintain a reliable source of data for corruption crimes. Significantly, the JA's technical assistance to help POs improve their strategic planning was based on an approach of distinguishing between different kind of cases (including the KTK label for corruption cases).

The conviction rate for corruption crime in partner POs is generally high, at around 80 percent. The HJPC List of Corruption Crime shows that this rate was 77.0 percent in 2014 and increased slightly in 2018 (by 1.5 percentage points) to 78.50 percent. However, the target for 2018 of 88.0 percent was not reached. It also should be noted that a significant increase in an already high conviction rate for corruption crime is very difficult to achieve.

## **RESULT/IMPACT 1.2: PROSECUTORS PERFORM FUNCTIONS MORE EFFICIENTLY THROUGH BALANCED ALLOCATION OF RESOURCES**

The findings for this result were tracked through Subject Area 2 of the POCM and three performance indicators from the M&E Plan. These performance indicators are:

- 1.2.1 Number of unresolved criminal reports for corruption and economic crime in POs that implement PPPs
- 1.2.2 Percentage of resolved criminal reports for corruption and economic crime versus total number of criminal reports in POs that implement PPPs
- 1.2.3 Number of resolved criminal reports for corruption and economic crime in POs that implement PPPs

Subject Area 2 of the POCM shows that the capacity of partner POs in balancing their allocation of resources increased from 1.5 points on average at the baseline to 3.9 points (of 5 points maximum) on average in April 2019, which is again a significant improvement.

According to the HJPC List of Corruption Crime, all partner POs had 1,835 unresolved reports on corruption and economic crime in 2018 as opposed to 2,149 in 2014, which was a decrease of 14.6 percent, so the target of 5 percent was met.

The percentage of resolved reports for corruption and economic crime in all partner POs in 2018 was 61 percent compared to 53.5 percent in 2014, which is an increase of 7.4 percentage points, so again this target of 5 percent was also met.

However, the ambitious target for the number of resolved reports on corruption and economic crime in all partner POs was not met, since there were 2,871 resolved reports in 2018 compared to 2,482 in 2014, which was an increase of 15.6 percent, below the target of 34.89 percent. In spite of that fact, there was significant improvement in this area, especially when taking into consideration the

reduced number of reports on corruption and economic crime submitted in the observed period of time.

### **RESULT/IMPACT I.3: PROSECUTORS UPHOLD PUBLIC TRUST AND INTEGRITY THROUGH PROSECUTION OF CORRUPTION OR OTHER SERIOUS CRIME**

The outcomes for this result were tracked through Subject Area 3 on the POCM and four performance indicators from the M&E Plan: These performance indicators are:

- I.3.1 Percentage of investigations for corruption and economic crime completed within the one calendar year in POs that implement PPPs
- I.3.2 Number of investigations for corruption and economic crime completed in POs that implement PPPs
- I.3.3 Number of ordered investigations for corruption and economic crime in POs that implement PPPs
- I.3.4 Number of unresolved investigations for corruption and economic crime in POs that implement PPPs

Subject Area 3 of the POCM shows that the capacity of partner POs to uphold public trust and integrity through the prosecution of corruption or other serious crime was increased from 1.1 points on average at the baseline to 3.4 points (of 5 points maximum) on average in April 2019, which is also a significant improvement.

The number of unresolved investigations for corruption and economic crime in partner POs was reduced to 517 in 2018 in comparison with 557 in 2014. This result was reduced by 7.2 percent, and therefore the target of 8.6 percent was almost reached.

The number of resolved investigations for corruption and economic crime in partner POs decreased to 1,075 in 2018 from 1,168. Hence the targeted increase was not met. Similarly, the number of investigations ordered for corruption and economic crime in partner POs decreased, to 1,071 in 2018 in comparison to 1,093 in 2014.

The percentage of resolved investigations for corruption and economic crime in partner POs remained almost the same in 2014 and 2018 at 67.5 percent, while the target was +2 percent, so this target was not met either.

### **RESULT/IMPACT I.4: PROSECUTORS PROVIDE APPROPRIATE AND ACCURATE INFORMATION TO CITIZENS IN ORDER TO STRENGTHEN TRANSPARENCY AND RESPONSIVENESS**

The achievements for this result were tracked through Subject Area 4 of the POCM and three performance indicators from the M&E Plan. These performance indicators are:

- I.4.1 Number of POs that regularly disseminate information to the public through their websites including appropriate information on corruption and economic cases in POs that implement PPPs

- 1.4.2 Number of press releases (or other types of communication channels) issued to the public including information on investigation and prosecution for corruption, economic crime cases in POs that implement PPPs
- 1.4.3 Percentage of public that agree that BiH POs adequately inform the public about their work (net high – strongly agree, agree, and somewhat agree)

Subject Area 4 of the POCM shows that the capacity of partner POs to provide appropriate and accurate information to citizens in order to strengthen transparency and responsiveness increased from 1.4 points on average at the baseline to 3.3 points (of 5 points maximum) on average in April 2019, which is a visible improvement.

According to data collected through the PR M&E Plan, 16 partner POs regularly disseminated information to the public through their websites, including appropriate information on corruption and economic cases. The target for FY 2018 was nine and therefore was significantly exceeded.

The PR M&E Plan shows that in 2018 partner POs issued 5,016 press releases, media statements, answers to FOIA requests, and other information published on POs' webpages. This is 25 percent more than in 2017, and more than 30 percent above the target for 2018.

The data on the percentage of the public who agree that BiH POs adequately informed the public about their work were obtained through the 2016 National Surveys conducted by USAID's MEASURE BiH project. The value was 28.96 percent at the baseline in 2016 (net high – strongly agree, agree, and somewhat agree), 28.76 percent in 2017, and 26.49 percent in 2018. The target of 31.96 percent was not reached. This may be due to the negative press at the time regarding the judiciary and several high profile corruption cases. Also, it is unrealistic to expect a significant change in public perception immediately after increasing POs' efforts to provide public information.

## **RESULT/IMPACT 1.5: PROSECUTORS' STATUS IMPROVED THROUGH PERFORMANCE APPRAISAL, MERIT-BASED CAREER ADVANCEMENT, OR INCENTIVES TO PROSECUTE CASES**

The outcomes for this result were tracked through Subject Area 5 on the POCM and one performance indicator from the M&E Plan. The performance indicator is:

- 1.5.1 Number of PPP POs with score of 4 or 5 on JA's POCM for appraisal processes

Subject Area 5 of the POCM shows that the capacity of partner POs to improve prosecutors' status through performance appraisals, merit-based career advancement, or incentives to prosecute increased from 0.85 points on average at the baseline to 3.95 points (of 5 points maximum) on average in April 2019, which is the greatest improvement of all subject areas of the POCM. All partner POs except one reached a score of 4. This means that the number of POs with a score of 4 on the JA's POCM for appraisal processes was 19 as compared to the target for FY 2019 of 12, so the target was significantly exceeded.

## **COMPONENT 2: STRENGTHENING JUSTICE SECTOR INSTITUTIONS TO UPHOLD PUBLIC INTEGRITY AND COMBAT CORRUPTION**

The monitoring of developments in technical interventions by Component 2 was implemented through eight performance indicators tied to results/impacts specified by the SOW, which were developed to track changes as outputs/outcomes of technical interventions.

### **RESULT/IMPACT 2.1: PROSECUTORS INVESTIGATE & PROSECUTE HIGH PROFILE CORRUPTION & ECONOMIC CRIME CASES FREE FROM POLITICAL OR IMPROPER INFLUENCE**

Please see Component 1 and Results/Impacts 1.1–1.3.

### **RESULT/IMPACT 2.2: INCREASED COOPERATION AMONG STATE, ENTITY, AND LOCAL JUSTICE AND OTHER SECTOR ACTORS**

The developments for this result were tracked through the performance indicator from the M&E Plan:

- 2.2.1 Number of collaborative mechanisms established and/or improved among justice sector institutions and other parties involved in anti-corruption efforts

Under this result/impact, the JA published the DA. The JA also facilitated an MOU between the HJPC, APIK, and USAID and ensured its implementation. In addition, recommendations for the improvement of judicial statistics as a new anti-corruption mechanism were developed by the JA. APIK agreed to collaborate with 17 POs to appoint prosecutors responsible for processing individual corruption reports that come through APIK. In addition, the JA supported five annual conferences on anti-corruption and integrity.

Through JA efforts, 25 collaborative mechanisms were established, significantly exceeding the target of 4 for 2019.

### **RESULT/IMPACT 2.3: ODC IS PROPERLY RESOURCED TO MANAGE COMPLAINTS PROCEDURES, AUTONOMOUSLY REVIEWS CONDUCT OF JUDGES & PROSECUTORS, AND RECOMMENDS APPROPRIATE SANCTIONS**

This result/impact was monitored through the following performance indicator from the M&E Plan:

- 2.3.1 Number of improvements implemented in ODC performance in disciplinary matters

With the JA's support, the Disciplinary Sanctioning Guidelines, the ODC PR and Communication Strategy (2015–2018), the ODC annual reporting system, and the ODC system of recording incoming cases were introduced into ODC operations. In addition, in 2019, a new ODC website was developed. The JA also facilitated an orientation program for new disciplinary prosecutors with



training and the Judicial Discipline Benchbook that the JA developed. In this way, the actual number of improvements implemented was 6 total for 2019, so the target of 4 for 2019 was exceeded.

Additionally, the JA conducted and submitted a DCMS Assessment and Recommendations for Improvements. This document was submitted to the ODC, but it has not been implemented yet. Implementation is pending EU funding.

#### **RESULT/IMPACT 2.4: DISCIPLINARY PROCEEDINGS ARE PROCESSED EXPEDITIOUSLY AND FAIRLY AND DECISIONS ARE SUBJECT TO INDEPENDENT AND IMPARTIAL REVIEW**

This result/impact was measured through two performance indicators in the JA M&E Plan. These performance indicators are:

- 2.4.1 Judicial Discipline Benchbook and Handbook that will enable ODC staff and disciplinary committees to conduct proceedings more expeditiously and with greater consistency (fairness) developed
- 2.4.2 Percentage of judges and prosecutors who strongly agree with the statement that the disciplinary process is fair and impartial

The Judicial Discipline Benchbook was completed and submitted to the HJPC and will be considered for adoption at the HJPC session in September 2019, so this target was reached.

The JA, through the HJPC, conducted three biannual online surveys of all judges and prosecutors in BiH on disciplinary proceedings, in 2015, 2017, and 2019. In 2015, 38.5 judges and prosecutors who responded to the survey strongly agreed that disciplinary proceedings were fair and impartial. In 2017, 34 percent of judges and prosecutors who responded to the poll held this opinion. In 2019, this dropped to 23 percent. The drop is probably due to several corruption scandals that shook up the judiciary in BiH, while the latest corruption scandal involving the HJPC President coincided with the last opinion survey, which also affected results. Consequently, the target of 44.5 percent was not reached.

#### **RESULT/IMPACT 2.5: PUBLIC TRUST IN AND RESPECT FOR JUSTICE SECTOR INSTITUTIONS ARE INCREASED DUE TO GREATER ABILITY TO ACT INDEPENDENTLY AND IMPARTIALLY AND BE HELD ACCOUNTABLE**

Three performance indicators from the M&E Plan were used to monitor the ability of justice sector institutions to act independently and impartially and be held accountable:

- 2.5.1 Percentage of public who agree with the statement that judiciary is not vulnerable to corruption
- 2.5.2 Number of codes of conduct revised for improved standards in judicial conduct
- 2.5.3 Number of courts and POs that adopted Integrity Plans

The data for Indicator 2.5.1 were obtained through several National Surveys conducted by USAID's MEASURE BiH project since 2015. The baseline value in 2015 was 9.9 percent, while the survey

conducted in 2018 showed an increase in public agreement with the statement that the judiciary is not vulnerable to corruption of almost 10 percentage points to 19.68 percent, so the target of increasing by 8 percentage points was reached.

To meet Indicator 2.5.2, the JA developed the Guidelines for the Prevention of Conflict of Interest in the Judiciary, which was adopted by the HJPC in July 2016, and also designed the Model Code of Ethics, which was adopted by the AEA in September 2018. The JA also supported the drafting of amendments to the codes of ethics for judges and prosecutors, which were adopted by the HJPC in November 2018.

The asset declaration system was revised through the development of the HJPC Book of Rules on Asset Declarations under JA guidance. Its application is pending due to a decision issued by the Personal Data Protection Agency that in effect rejects the new system as a violation of privacy rights. The decision is being challenged by the HJPC.

The JA supported the development of a Judicial Ethics Handbook, which was adopted by the HJPC in January 2019. The Handbook is a user-friendly, single reference education tool for judges and prosecutors on the practical application of ethic codes.

In sum, the JA exceeded the target of 2 for Indicator 2.5.2, reaching 6 revised codes by 2019.

The number of courts and POs that adopted integrity plans in 2019 was 98, while the target for 2019 was 20, so this target was also significantly exceeded.

## **RESULT/IMPACT 2.6: PROSECUTORS AND JUDGES ARE TRAINED IN IDENTIFYING ELEMENTS OF CORRUPT ACTIVITIES AND INVESTIGATE AND PROSECUTE CORRUPT PRACTICES**

This result/impact was tracked through one performance indicator:

- 2.6.1 Number of judges and prosecutors who earned the certificate of specialized training in the investigation prosecution and adjudication of corruption and financial crime cases.

A total of 47 prosecutors earned the certificate of specialized training in the investigation, prosecution, and adjudication of corruption and financial crime cases. The target for 2019 was 50, so the goal was substantially achieved, but the target was not numerically reached.

The JA developed the Universal Benchbook in both English and the Bosnian language. The Universal Benchbook, which was drafted by international and national judges and prosecutors, incorporates the discussions, recommendations, and lessons learned from the aforementioned specialized trainings, and as such it presents a valuable instrument to secure the sustainability of this educational effort. Its development was preceded by a comprehensive training needs assessment carried out by the JA in Year 1. Following its publication in 2019, in collaboration with JPTCs, the JA delivered three workshops for prosecutors and two for judges on the effective use of the Universal Benchbook in the prosecution of serious crimes. The workshops were attended by a total of 32 prosecutors and 41 judges.

## ANNEX I — LIST OF SPECIAL ACTIVITIES

Date	Special Activity
November 2015	2015 CEELI Prosecutor Training Program in Prague
January 2016	Diagnostic Study on Potential Sources of Corruption and Unethical Behavior in the Justice Chain Launch Event
January 2016 – September 2019	HJPC ODC's Membership in the National Organization for Bar Council and NCSC's Center for Judicial Ethics
March 2016	Specialized Prosecutor-Led Investigation Training
April – September 2016	Support for the Cantonal PO in Sarajevo
April 2016	2016 CEELI Prosecutor Training Program in Prague
June 2016	Organized a Consultative Meeting Aimed at Finalizing the Guidelines for Judicial Integrity Plans and Related Documents
June 2016	Supported the Diagnostic Study on Potential Sources of Corruption and Unethical Behavior in the Justice Chain Launch Event and Printed More Copies of the Study
November 2016	Support for the Cantonal PO in Sarajevo, USAID's JA in BiH
November 2016	Purchased Furniture for POs in BiH
November 2016	Provided IT Equipment for POs
November 2016	Study Tour to Serbia for the HJPC, ODC, and APIK
February 2017	Supported the Renovation of an Investigation Room in the Sarajevo PO
March 2017	2017 CEELI Prosecutor Training Program in Prague
May 2017	Procured Furniture for the Investigation Room at the Sarajevo PO
September 2017	"Crime of Corruption" Training for BiH Law Students
October 2017	Engaged Short-Term Experts in Financial Investigations
December 2017	Developed the Manual on Double Jeopardy and Engaged Four Short-Term Experts
January 2018	Anti-Corruption and Integrity Conference
March 2018	Trainings on Public Procurement and Related Printed Analyses
March 2018	2018 CEELI Prosecutor Training Program
April 2018	Engaged Legal Consultants on Criminal and Financial Investigations for Partner (June 2018 – July 2019)
May 2018	Purchased Furniture for PO in Tuzla
July 2018	Provided IT Equipment for the POs in Tuzla and Bihac

Date	Special Activity
August 2018	Provided a Senior Legal Expert for the HJPC
March 2019	2019 CEELI Training Program in Prague
March 2019	Supported Two Prosecutor Workshops on the Universal Benchbook
March 2019	Proofreading and Printing of the JA Publications Finalized in Year 5: the Universal Benchbook on Prosecuting Corruption Cases (English translation); the Judicial Discipline Benchbook; an Ethics Brochure; and the Glossary of Financial Terms
March 2019	Two Sessions on Standards of Professional Ethics for Judges and Prosecutors
March 2019	Annual Workshop on Double Jeopardy Issues and Ethics Standards
March 2019	Train-the-Trainers Programs on Judicial Ethics and Discipline
March 2019	Two Workshops to Improve PR Practices and Increase Transparency of POs
March 2019	Provided Three Short-Term Legal Advisers to the Dobož PO for Six Months
March 2019	Assisted the PO of Sarajevo Canton Working Group with the Development of the Draft Bylaw on Public Procurements
May 2019	Purchased Additional IT Equipment for POs in BiH
June 2019	Translation of Seven Publications
August 2019	Public Procurement Procedures Training

## **ANNEX 2 — M&E FINAL REPORT**

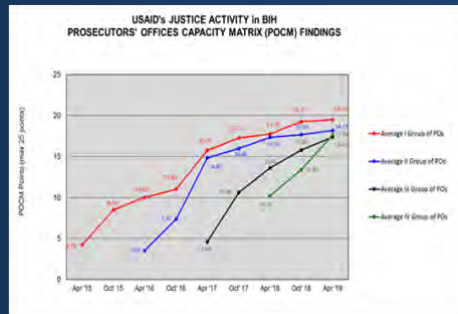
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**USAID**  
FROM THE AMERICAN PEOPLE

# M&E FINAL REPORT

## USAID'S JUSTICE ACTIVITY IN BOSNIA AND HERZEGOVINA



August 31, 2019

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# M&E FINAL REPORT

## USAID'S JUSTICE ACTIVITY IN BOSNIA AND HERZEGOVINA

**Contract:** AID-168-TO-14-00001F

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## LIST OF ACRONYMS

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APIK	Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
BiH	Bosnia and Herzegovina
BoR	Book of Rules on the Submission, Verification, and Management of Asset Declarations
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
HJPC	High Judicial and Prosecutorial Council
JA	Justice Activity in Bosnia and Herzegovina
M&E	Monitoring and Evaluation
MOJ	Ministry of Justice
ODC	Office of Disciplinary Counsel
PO	Prosecutor Office
PPP	Prosecutor Partnership Program
PR	Public Relations
RS	Republika Srpska
SDC	HJPC Strengthening POs' Capacities in the Criminal Justice System Project, funded by the Swiss Agency for Development and Cooperation and the Norwegian Government
USAID	United States Agency for International Development

## ABOUT THE PROJECT

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**The United States Agency for International Development's (USAID's) Justice Activity in Bosnia and Herzegovina (JA)** is a five-year rule of law initiative that was implemented by Millennium DPI Partners, from October 2014 until October 2019. Its purpose was to help justice sector institutions in Bosnia and Herzegovina (BiH) effectively combat government corruption and prosecute economic, organized, and other serious crime cases. At the same time, the JA worked to increase public confidence in the judiciary by strengthening its integrity and ensuring greater self-accountability and transparency within the justice sector.

To achieve these objectives, the JA operated through two components:

- Component 1: Strengthening the Professional Status and Performance of Prosecutors
- Component 2: Strengthening Justice Sector Institutions to Uphold Public Integrity and Combat Corruption

In implementing its activities, the JA worked in partnership with key actors and stakeholders in the justice system in BiH. These partners included the High Judicial and Prosecutorial Council (HJPC) of BiH, partner courts and prosecutor offices (POs), ministries of justice (MOJs), professional associations in the judiciary, civil society, and other donors.

Specific activities that the JA conducted with national partners included: developing in-depth diagnostic assessments of key issues related to the JA's scope of work; conducting individual assistance and partnership programs with each of the POs; and working with the Office of Disciplinary Counsel (ODC) and relevant HJPC Standing Committees and Working Groups on the improvement of disciplinary proceedings, ethical standards, and integrity.

The JA team was composed of national legal experts with in-depth knowledge of the BiH judiciary and other areas covered by JA activities. In addition, the JA drew from a wide range of international and national experts in various fields to meet the specific needs of its local partners and to advance the objectives of the JA.

## EXECUTIVE SUMMARY

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The JA's goal was to contribute to the USAID BiH Mission Purpose of developing more effective judicial, executive, and legislative branches of government. The JA was designed to support the USAID BiH Mission Sub-Purpose 1.1.1: creating more effective, independent, and accountable justice sector actors.

The Contract Statement of Work supported the following key outcomes/outputs:

- Preserving the independence of justice sector institutions through greater self-accountability (and external accountability mechanisms such as civil society organizations [CSOs])
- Moving key justice sector institutions from the planning and standards-development stage to actual improved performance based upon results analysis
- Strengthening the management and decision-making practices of the HJPC and prosecutor offices (POs) so that resources are allocated strategically to fight corruption and other serious crime
- Supporting on-site knowledge and skills application by front-line prosecutors and police handling corruption cases so that they work as a team and network across jurisdictions
- Building consensus for key reforms within the justice sector and standardizing cross-jurisdiction cooperation between state, entity, and local actors
- Using diagnostic studies to inform major policy solutions that improve system-wide performance and lead to strategies that will effectively fight corruption
- Increasing public confidence in the justice sector through professional regulation, accountability, and transparency

The European Union (EU) recommendations to BiH, stemming from the Structured Dialogue on Justice and Additional Rule of Law Matters, as jointly agreed on with representatives from relevant BiH domestic authorities and civil society, identified the following policy areas of importance for justice sector institutions: anti-corruption, anti-discrimination, prevention of conflict of interest, and measures to strengthen the integrity, accountability, and efficiency of justice sector institutions. Based upon those recommendations, the USAID BiH vision has been to contribute to the increased efficiency and effectiveness of BiH justice sector institutions, mechanisms, and services by helping prosecutors to better conduct investigations, and justice institutions to uphold the public integrity and combat corruption (which will lead to increased public trust in the rule of law).

The Contract Statement of Work specified five results/impacts for Component 1 and five results/impacts for Component 2. Based on specified results/impacts, the JA designed and conducted a monitoring and evaluation (M&E) plan consisting of twenty-five performance indicators tied to the results/impacts specified in the Contract Statement of Work. Fifteen performance indicators were developed to track outcomes/outputs of Component 1 activities, while nine performance indicators were developed for Component 2. Two USAID Standard Indicators focused on judicial and anti-corruption training were also adopted.

Continuous M&E annual surveys through the five years of the Activity showed that Component 1 achieved four out of five specified results/impacts. Improvements in results were achieved with nine

of the fifteen performance indicators for Component 1. Based upon these findings, Component 1 achieved specified results/impacts 1.1; 1.2; 1.4 and 1.5, while it did not achieve improvements with specified result/impact 1.3, where all four performance indicators showed negative trends.

Component 2 made improvements in four out of five specified results/impacts (2.1; 2.2; 2.5 and 2.6), while one of the results/impact was partially fulfilled (2.3). Findings for seven performance indicators reached or exceeded targets under Component 2; the target for one performance indicator was substantially reached, while target for another performance indicator was not reached.

Regarding USAID Standard Performance indicators, the JA measured the number of persons trained in the judiciary and in other government entities. The JA significantly exceeded the targets specified for these two performance indicators for each of the activity years. To illustrate, the JA organized or took part in the organization of 120 training events in five years with a total 2,979 participants (judicial and other government officials) covering 4,494 training days. Among the participants, 50.75 percent were men and 49.25 percent were women.

In the original USAID contract with Millennium DPI Partners in October 2014, there were three Activity components. The original Component 2, Improving Efficiency in the Enforcement of Judgments was removed from the Activity Scope of Work by a decision of USAID BiH in the second year of the project. The original M&E Plan had introduced seven performance indicators to track developments during the implementation of the former Component 2. After it was eliminated from the JA scope of work, only a baseline survey for these indicators was carried out with the majority of targets equal to baseline findings for Activity Year 2. These seven performance indicators were deleted from the M&E Plan by Modification 1 of the M&E Plan in August 2016.

In conclusion, USAID's JA achieved and, in several cases, exceeded a majority of the results/impacts specified by the Contract in its five years of activity.

## MONITORING AND EVALUATION PLAN (M&E PLAN)

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USAID's JA BiH utilized a comprehensive M&E Plan throughout the implementation period, tracking outputs, outcomes, and impact indicators for each objective.

An M&E Plan is a critical tool for planning, managing, and documenting data collection. It contributes to the effectiveness of the performance monitoring system by assuring that comparable data are collected on a regular and timely basis. These data are essential to the operation of a credible and useful performance-based management approach. An M&E Plan promotes the collection of comparable data by sufficiently documenting indicator definitions, sources, and methods of data collection. This enables the Activity to collect comparable data over time. An M&E Plan supports the timely collection of data by documenting the frequency and schedule of data collection as well as by assigning responsibilities. In this approach, data collection, analysis, reporting, and review comprise an integrated process. This process helped to keep the performance monitoring system on track and ensured that the Activity could make informed decisions based on performance data.

The additional purpose of the Activity M&E Plan was to enable the Activity and local counterparts to integrate continuous learning into annual Activity planning and implementation to achieve desired results and outcomes/outputs. The M&E Plan was based on the best practices for effective program outcome/output measurement developed over years of experience implementing US Government (USG) funded rule of law programs.

In this regard, the JA M&E Plan, as a living document, had four modifications (February 2016, August 2016, August 2017 and January 2018) which were driven by changes in Contract Statement of Work or by the need to more closely and comprehensively monitor developments as the technical assistance to POs took shape and trends emerged. These changes resulted in the introduction of new performance indicators and the deletion of performance indicators that were no longer relevant or useful.

The JA M&E Plan consisted of twenty-five performance indicators tied for the results/impacts specified in the Contract Statement of Work. Monitoring of developments for nineteen performance indicators was done through internal annual surveys.

An integral part of the M&E plan was the specially designed Prosecutors' Offices Capacity Matrix (POCM). It was used to semiannually monitor the development in capacities of partner POs in five subject areas related to the Component I Objective (Indicator I.1.)

The data for two performance indicators related to results/impact I.4 (POs' PR Relations — discussed in more detail below) were used from the M&E Plan for PR Relations of POs with the Public, which was designed by the JA and implemented with the assistance of the Swiss-Norwegian Project (SDC).<sup>1</sup>

<sup>1</sup> HJPC Strengthening POs' Capacities in the Criminal Justice System Project (SDC), funded by the Swiss Agency for Development and Cooperation and the Norwegian Government

The JA in cooperation with the HJPC conducted three biannual online surveys of judges and prosecutors on disciplinary proceedings and conflict of interest related to performance indicator 2.4.2.

Results for two performance indicators (1.4.3 and 2.5.1) were collected from annual national surveys conducted by USAID's MEASURE BiH.

It is also important to emphasize in this report that judicial statistical data for the performance indicators 1.1.1 to 1.3.4 were collected annually for calendar years, so the data for calendar year 2018 represent the final data for the Activity.

## M&E RESULTS AND FINDINGS

### COMPONENT I: IMPROVE THE PROFESSIONAL STATUS AND PERFORMANCE OF PROSECUTORS

The Illustrative Programmatic Impact for Component I per the Contract is as follows:

*Table 1 – Component I Objective and Results/Impact*

<b>Component I Objective – Strengthening Prosecutor Status/Performance</b>
<b>Illustrative Programmatic Impact</b>
<b>Result/Impact</b>
I.1 Strengthened organizational leadership, planning and performance in prosecutor offices
I.2 Prosecutors perform functions more efficiently through balanced allocation of resources
I.3 Prosecutors uphold public trust and integrity through prosecution of corruption or other serious crime
I.4 Prosecutors provide appropriate and accurate information to citizens in order to strengthen transparency and responsiveness
I.5 Prosecutor status improved through performance appraisal, merit-based career advancement or incentives to prosecute cases

For each Result/Impact, one to four performance indicators were selected in the M&E Plan. The following text provides an overview of developments through time and comparison of actual versus baseline and targets for each performance indicator. As can be seen, some of the initially set targets have not been met, especially in relation to the Component I objectives. Primarily this was due to a weak legal and institutional framework and a general lack of political will.<sup>2</sup> The following describes in part other obstacles faced by the JA that contributed to its inability to meet some of its targets.

Although improvements are noticed in the majority of areas covered by the M&E (such as the number of resolved cases, number of indictments and convictions, conviction rates and others), several factors outside of the JA's control impeded the POs' efforts to prosecute corruption and organized and economic crime. Among the most significant was the government's delay in establishing the FBiH Special Prosecutor Office for Combating Corruption, Organized and Inter-Cantonal Crime (SPO)

<sup>2</sup> As noted in the Performance Evaluation report issued by MEASURE-BiH: "the JA operated in a highly challenging environment that was not conducive to fighting corruption. Given this context, the JA's implementation required flexibility and adaptation."

and the FBiH Supreme Court in 2015, which halted work on a large number of cases found at that time in the 10 cantonal POs.

Similarly, the Republika Srpska Special Prosecutors Office for Organized Crime and Corruption (RSSPO) underwent a restructuring during 2016 and part of 2017, which resulted in significant delays in the processing of cases since the entire staff of the newly established Department had to be reappointed.

Furthermore, the Constitutional Court of BiH ruling that special measures applied in cases of organized crime and corruption were unconstitutional in turn led to a halt during most of 2017 and spanning into 2018, in the work on organized crime and corruption cases pending a final decision of the Court, and the adoption of the changes to the Criminal Code. As a result, there was a significant drop statistically in the processing of cases during this period of time.

Finally, it became obvious early on that the JA's interventions depended on a certain level of capacity and available resources in the targeted institutions, i.e. POs. Most POs lacked these resources during the time of the JA mandate.

## **COMPONENT I OBJECTIVE – STRENGTHENING PROSECUTOR STATUS/PERFORMANCE**

For tracking overall achievements of Component I towards the above objective, a special M&E Tool was developed and designed from the beginning of the Activity. This is the Prosecutors' Office Capacity Matrix (POCM). It is a tool that was developed to measure the performance and improvements of POs as a result of the technical assistance provided by the JA. The POCM has been designed to provide a realistic, objective evaluation of the improvements in performance of POs in BiH throughout the life of the Activity. The results of this tool were tracked through Performance Indicator 1.1 – Score on Prosecutors' Office Capacity Matrix (POCM) in POs that implement PPPs, which is an integral part of the Activity M&E Plan.

The POCM establishes and measures five areas related to the improvement of the capacity of the partner POs. These areas are tied to specific results/impacts identified in the JA Scope of Work and the Work Plan that will be discussed later in the report. Each area is graded on a five-point scale. The areas and outputs are:

- Organizational leadership, planning, and performance in POs strengthened
- POs perform functions more efficiently through a balanced allocation of resources
- Prosecutors in POs uphold public trust and integrity through the prosecution of corruption or other serious crime
- Prosecutors in POs provide appropriate and accurate information to citizens to strengthen transparency and responsiveness
- POs improve the status of prosecutors through performance appraisals, merit-based career advancement, or incentives to prosecute cases.

The POCM is a tailor-made JA M&E tool that converts evaluated qualitative aspects of PO performance into numerical values from a minimum of 0 to a maximum of 25 points. In Year 1, the JA performed a baseline POCM survey in April 2015 and the first periodic, semi-annual surveys for



the First Group of PPP POs (Year 1: Cantonal PO of Tuzla Canton, Cantonal PO of Zenica-Doboj, District PO of Doboj, and District PO of East Sarajevo). In Year 2, the JA conducted a baseline survey in April 2016 and four periodic semi-annual surveys for the Second Group of PPP POs (Year 2: Cantonal PO of Sarajevo Canton, Cantonal PO of Herzegovina-Neretva Canton, Cantonal PO of West Herzegovina Canton, District PO of Trebinje, and two entities' POs). In April 2017, the JA conducted the POCM baseline survey for the Third Group of PPP POs (Year 3: Cantonal PO of Posavina Canton, District PO of Bijeljina, District PO of Banja Luka, District Brčko PO, and the RSSPO), and two regular surveys. In April 2018, the JA conducted the POCM baseline survey for the Fourth Group of PPP POs (Year 4: Cantonal PO of Canton 10 in Livno, Cantonal PO of Mid-Bosnia Canton in Travnik, Cantonal PO of Bosnia-Podrinje Canton in Goražde, Cantonal PO of Una-Sana Canton in Bihać, and District PO of Prijedor).

In April 2019, the JA conducted the POCM regular survey for all partner POs. The final results are displayed in Table 1.

Table 2- POCM Results

Group of PPP POs	April 2015	October 2015	April 2016	October 2016	April 2017	October 2017	April 2018	October 2018	April 2019	Target 2019
I Group of PPP POs	4.25	8.50	10.00	11.00	15.75	17.25	17.75	19.25	19.50	16.00
II Group of PPP POs			3.50	7.33	14.83	16.00	17.33	17.66	18.17	15.00
III Group of PPP POs					4.60	10.60	13.60	15.80	17.40	14.00
IV Group of PPP POs							10.20	13.40	17.60	14.00

The POCM surveys showed a significant capacity improvement among the First Group of PPP POs during the four and half years since their baseline survey was conducted in April 2015, achieving 19.50 points (Target FY 2019 – 16 points) in capacity out of a maximum 25 points. The progress in capacity is clearly visible.

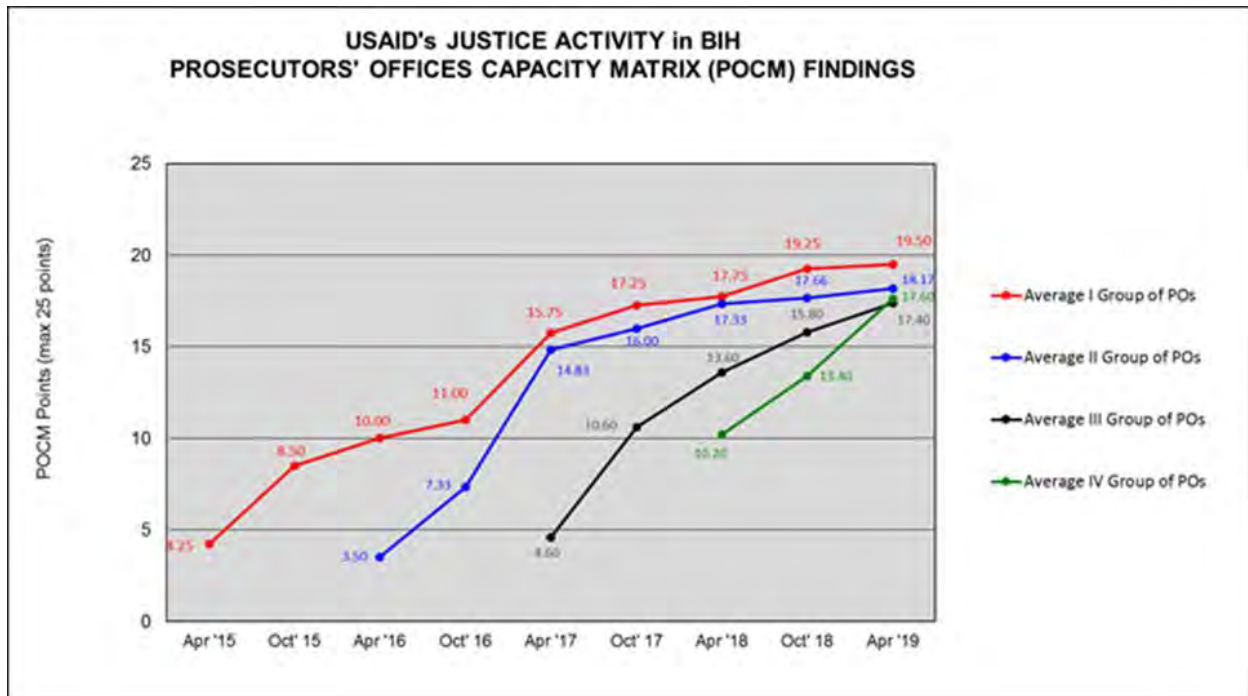


Figure 1 - POCM Findings (April 2019)

A very impressive improvement in capacity was also made among the POs from the second group, which joined the PPP in Year 2. These POs achieved capacity levels similar to POs from the first group at three and half years of PPP implementation (an increase to 18.17 points in comparison to the baseline value in 2016, which was only 3.5 points). The result is significantly above the target for FY 2019 which was 15 points.

The third group of POs joined the PPP in Year 3 of the JA, and their baseline POCM survey was done in April 2017. The baseline value was 4.6 points. The last survey in April 2019 showed their level of capacity at 17.40 points, which was a significant improvement.

The fourth group of POs joined the PPP in Year 4 of the JA, and their baseline POCM survey was done in April 2018. The results show a significant improvement in just one year from 10 points at baseline survey to 17.60 in April 2019, which was slightly above the third group of POs' level of ranking.

The highest ranking of 22 points (out of maximum 25) was achieved by the Cantonal PO of Tuzla Canton, followed by the Cantonal PO of Zenica (21 points) and Brčko District PO, the Cantonal PO of West Herzegovina (in Široki Brijeg) and Cantonal PO of Una-Sana Canton (in Bihać), all three with 20 points. The RSSPO in Banja Luka has the most modest ranking of 15 points.

The figures 1 and 2 display the status in capacity for all groups of POs, numerically in Figure 1 and by subject areas in Figure 2.

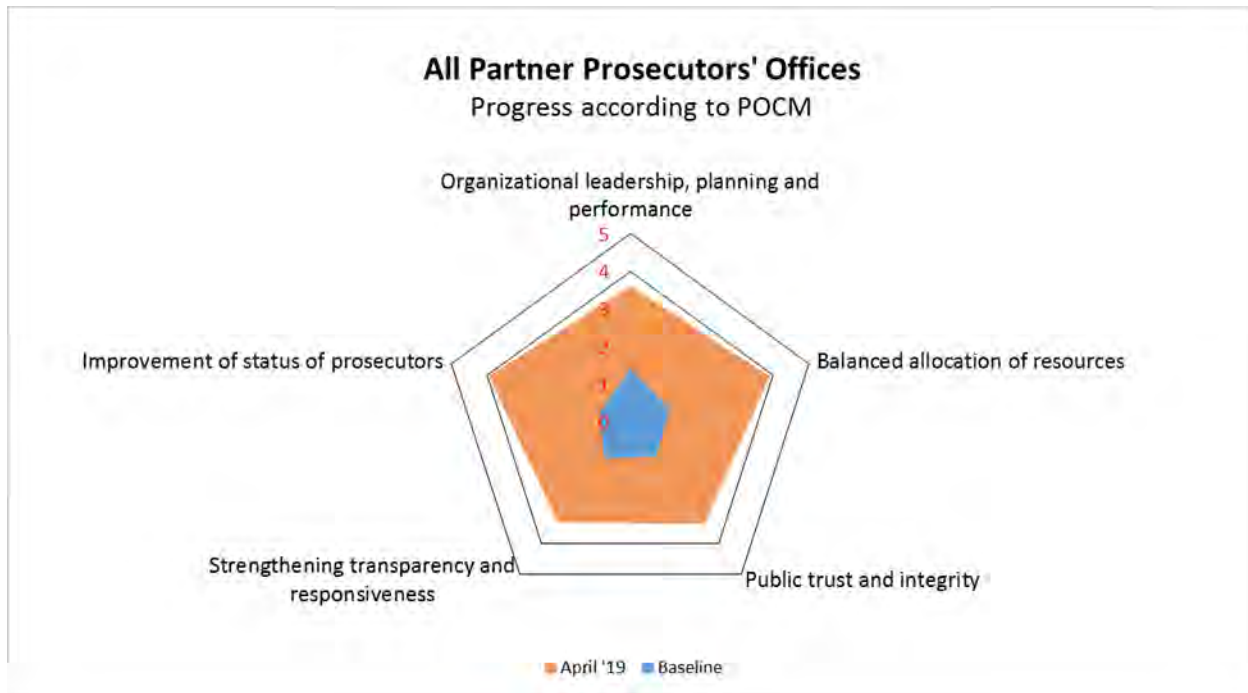


Figure 2 - Progress according to POCM in Five Subject Areas

### Result/Impact 1.1 Strengthened organizational leadership, planning and performance in prosecutor offices

The achievements for above defined result were tracked through Subject Area I on POCM and three performance indicators from the M&E Plan. These performance indicators are:

- 1.1.1 Number of convictions for corruption-related crime in POs that implement Prosecutor Partnership Programs (PPPs)
- 1.1.2 Number of indictments for corruption related crime in POs that implement PPP
- 1.1.3 Conviction rate for corruption related crime in POs that implement PPPs

POCM – Subject Area I shows that capacity of partner POs in organizational leadership, planning and performance increased from 1.3 points on average on baseline to 3.6 points (of maximal 5 points) on average in April 2019, which is a significant improvement.

In discussing judicial statistics for indicators 1.1.1 to 1.1.3 and further in the text for indicators related to judicial statistics, it is necessary highlight that JA used two sources of data. The first one is related to data based upon HJPC List of Corruption Crime. Data for this List were provided to JA annually for calendar years by USAID's MEASURE BiH and represent official data for USAID's JA M&E Plan. The other source of judicial statistical data is based on analysis of the official quantitative HJPC data where corruption crime cases have been labeled as KTK, while economic crime cases are designated by the KTPO label. These data were submitted quarterly and annually to JA by the SDC Project.

In discussing the number of convictions according to HJPC List of Corruption Crime, all partner POs saw an increase in convictions for corruption crime from 204 in 2014 to 230 in 2018, which is an increase by 12.7 percent, but below the target of 244 for 2018 (Figure 3).

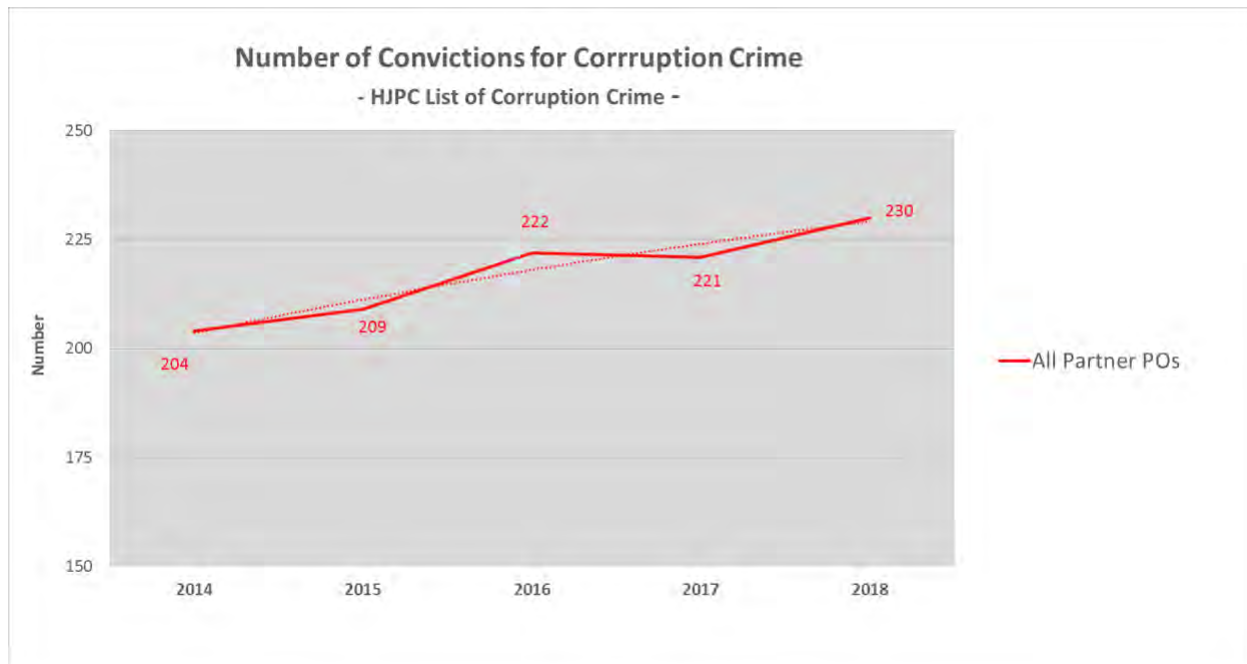


Figure 3 – Number of Convictions for Corruption Crime in Partner POs according to HJPC List of Corruption Crime

However, when using the other sources of data (the official quantitative HJPC data) where corruption cases are labeled as KTK, the figures show that the number of convictions in all partner POs increased from 77 in 2015 to 158 in 2018 (Figure 4), which is an increase by 105 percent and represents a great achievement.

Despite the clear differences in the data received from the two HJPC sources the origin for both sources is the same — the Prosecutor Case Management System (TCMS). However, the parameters for extracting the data are different and beyond the Activity's control. This issue represents one of the future challenges for the judiciary in BiH— how to establish and maintain reliable sources of data for cases of corruption. It is also necessary to highlight that the JA's technical assistance provided in support of a strategic planning process in POs was based on an approach of differentiating between the types of cases, including using the KTK label for corruption cases.

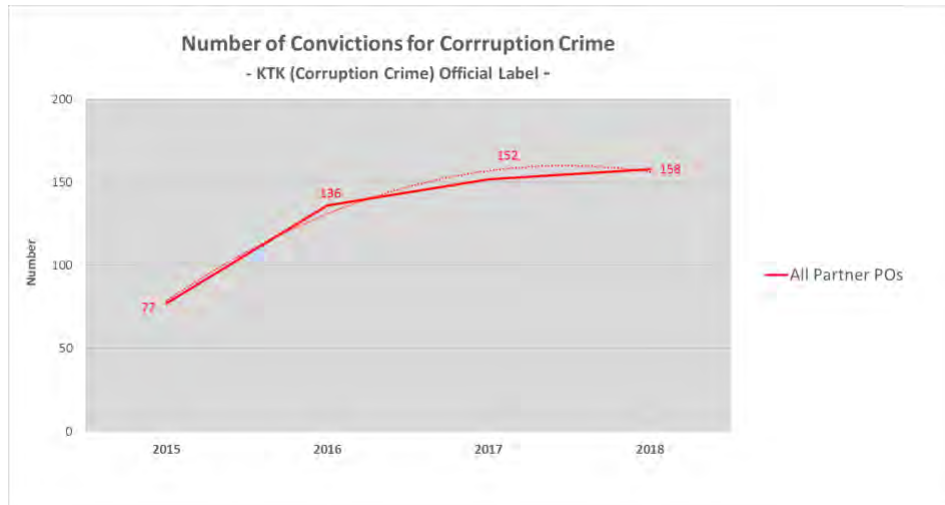


Figure 4 – Number of Convictions for Corruption Crime according to KTK Case Label

Regarding indictments for corruption crime, the HJPC List of Corruption Crime shows that all partner POs increased the number of indictments for corruption crime from 259 in 2014 to 286 in 2018 (Figure 5), an increase by 10.4 percent, but almost equal to the target of 288 for 2018.

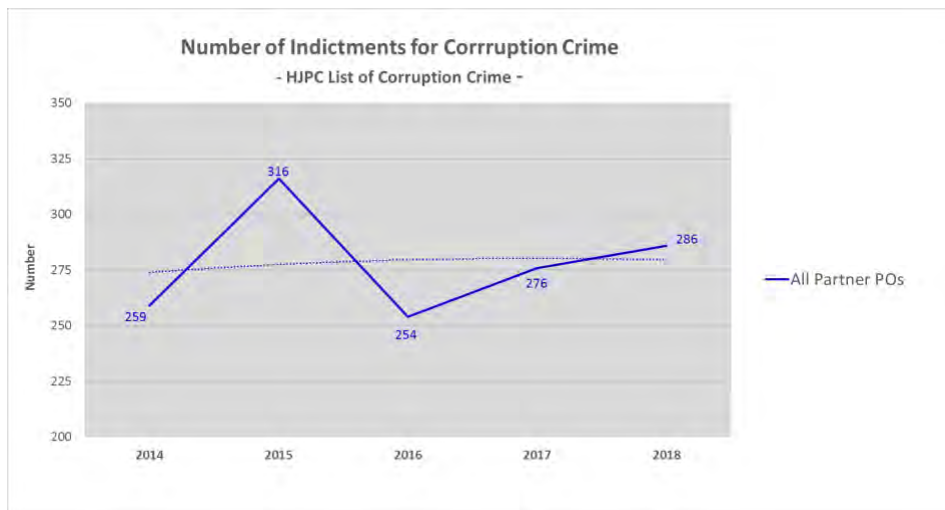


Figure 5 - Number of Indictments for Corruption Crime in Partner POs according to HJPC List of Corruption Crime

The conviction rate for corruption crime in partner POs is generally high and is around 80 percent. The HJPC List of Corruption Crime shows that this rate was 77.0 percent in 2014 and was slightly increased by 1.5 percentage points in 2018 to 78.50 percent (Figure 6). However, the target for 2018 of 88.0 percent was not reached. It should be also noted, that an increase in the generally high conviction rate for corruption crime is very difficult to achieve.

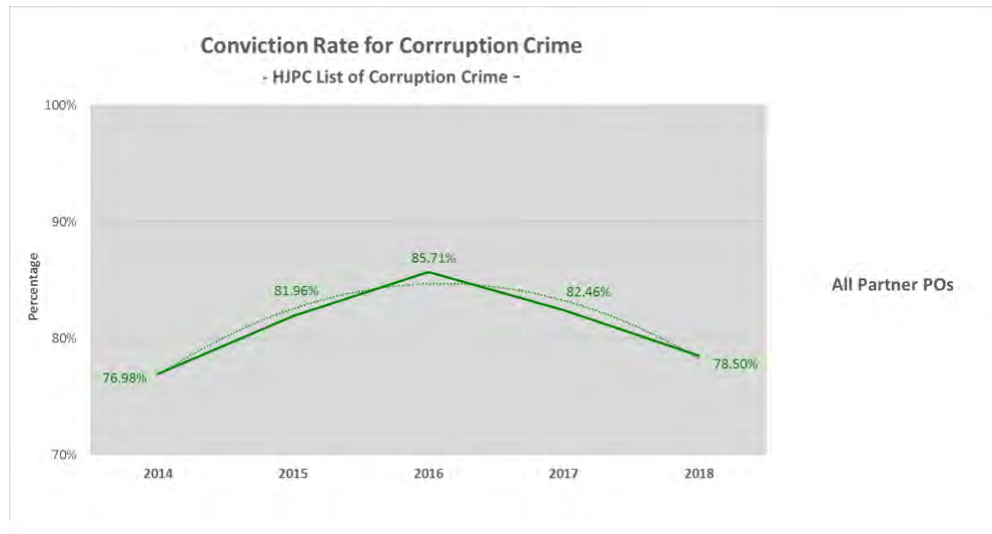


Figure 6 – Conviction Rate for Corruption Cases in Partner POs

### **Result/Impact 1.2 Prosecutors perform functions more efficiently through balanced allocation of resources**

The findings for the above defined result were tracked through Subject Area 2 on the POCM and three performance indicators from the M&E Plan. These performance indicators are:

- 1.2.1 Number of unresolved criminal reports for corruption and economic crime in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.2.2 Percentage of resolved criminal reports for corruption and economic crime versus total number of criminal reports in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.2.3 Number of resolved criminal reports for corruption and economic crime in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)

POCM – Subject Area 2 shows that the capacity of partner POs to balance the allocation of resources was increased from 1.5 points on average on baseline to 3.9 points (of maximal 5 points) on average in April 2019, which is again a significant improvement.

According to the HJPC List of Corruption Crime, all partner POs had 1,835 unresolved reports on corruption and economic crime in 2018 versus 2,149 in 2014 (Figure 7), which was a decrease by 14.6 percent, so the target of 5 percent was met.

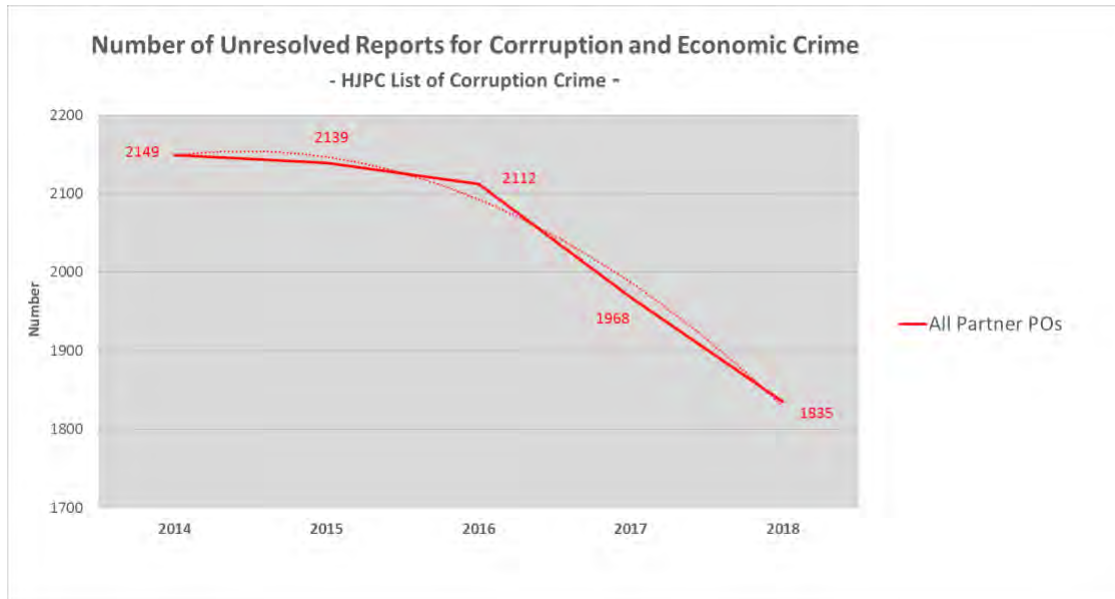


Figure 7 - Number of Unresolved Reports on Corruption and Economic Crime

The percentage of resolved reports for corruption and economic crime in all partner POs in 2018 was 61 percent, up from 53.5 percent in 2014 (Figure 8), which is an increase by 7.4 percentage points, easily meeting the target of 5 percent.

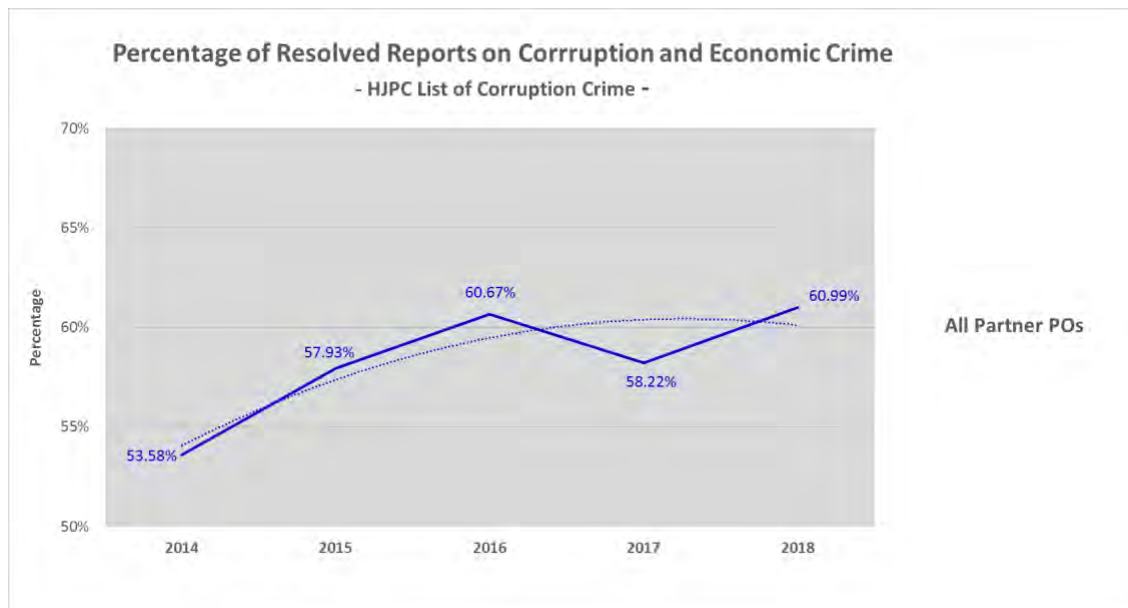


Figure 8 – Percentage of Resolved Reports on Corruption and Economic Crime

However, the target for the number of resolved reports on corruption and economic crime in all partner POs was not met. There were 2,871 resolved reports in 2018 versus 2,482 in 2014 (Figure 9), which although an increase by 15.6 percent, did not reach the target of 34.89 percent. Nevertheless, this is a significant improvement in this area, especially given the fact that there was a reduced number of submitted reports on corruption and economic crime in the observed period of time.

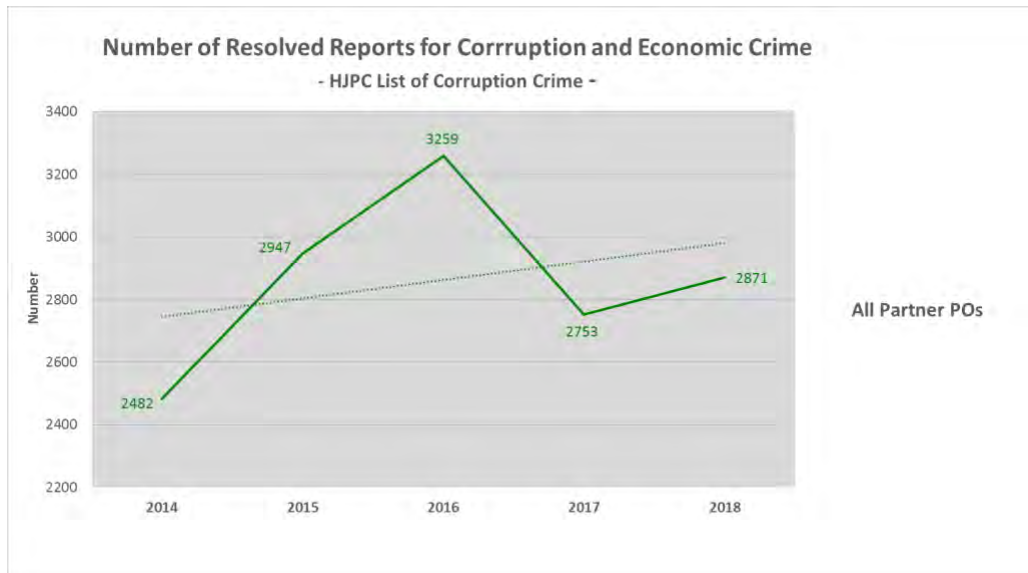


Figure 9 - Number of Resolved Reports on Corruption and Economic Crime

### Result/Impact 1.3 Prosecutors uphold public trust and integrity through prosecution of corruption or other serious crime

The outcomes for the above defined result were tracked through Subject Area 3 on the POCM and four performance indicators from the M&E Plan: These performance indicators are:

- 1.3.1 Percentage of investigations for corruption and economic crime completed within the one calendar year in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.3.2 Number of investigations for corruption and economic crime completed in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.3.3 Number of ordered investigations for corruption and economic crime in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.3.4 Number of unresolved investigations for corruption and economic crime in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)

POCM – Subject Area 3 shows that the capacity of partner POs in upholding public trust and integrity through prosecution of corruption or other serious crime was increased from 1.1 points on average on baseline to 3.4 points (of maximal 5 points) on average in April 2019, which is also a significant improvement.

The number of unresolved investigations for corruption and economic crime was reduced in partner POs in 2018 to 517 in comparison to 2014 when it was 557 (Figure 10). The number is reduced by 7.2 percent almost achieving the target of 8.6 percent.



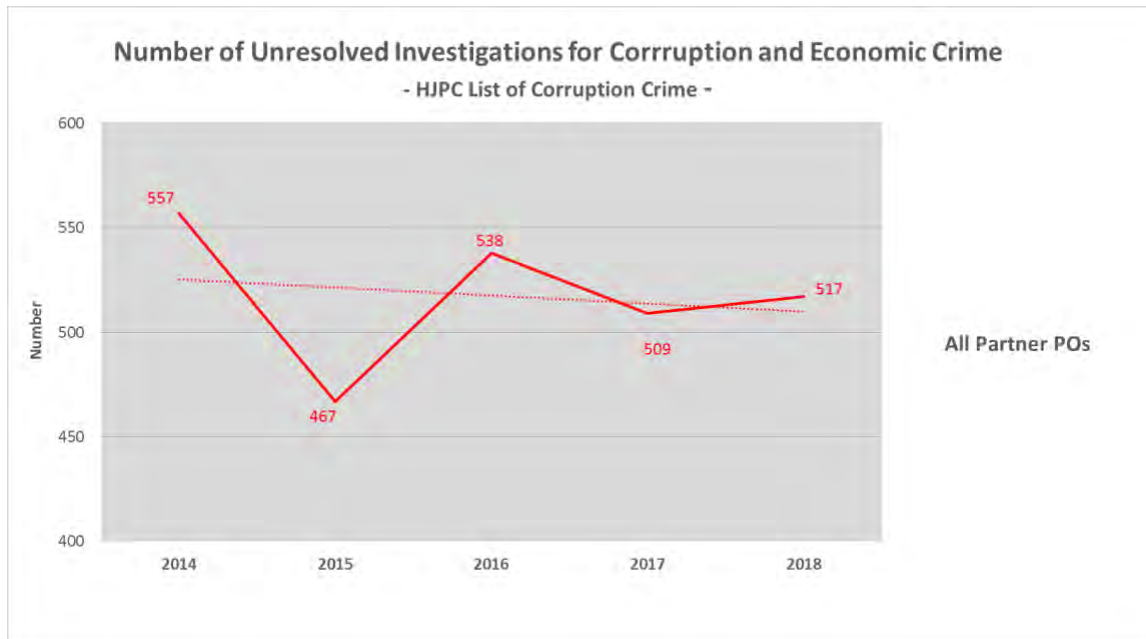


Figure 10 – Number of Unresolved Investigations for Corruption and Economic Crime

The number of resolved investigations for corruption and economic crime in partner POs was 1,075 which is a decrease from 2014 when it was 1,168 (Figure 11). In this case, the target was not met.

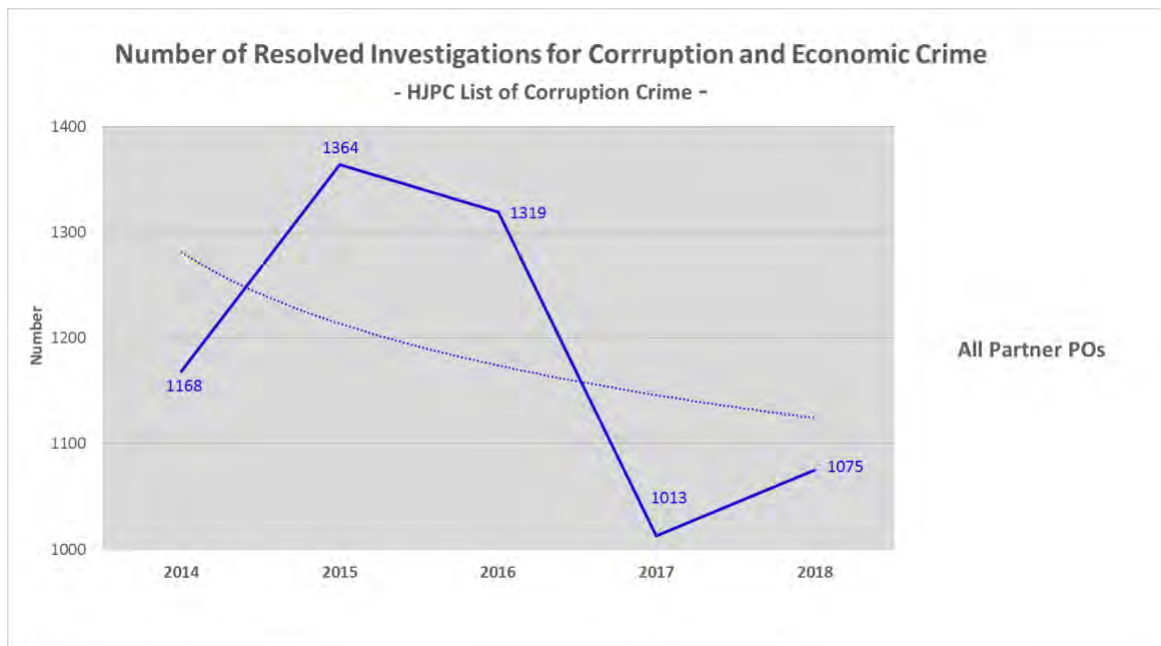


Figure 11 – Number of Resolved Investigations for Corruption and Economic Crime

The situation is similar with the number of ordered investigations for corruption and economic crime in partner POs, since the number of ordered investigations was 1,071 in 2018 in comparison to 1,093 in 2014 (Figure 12).

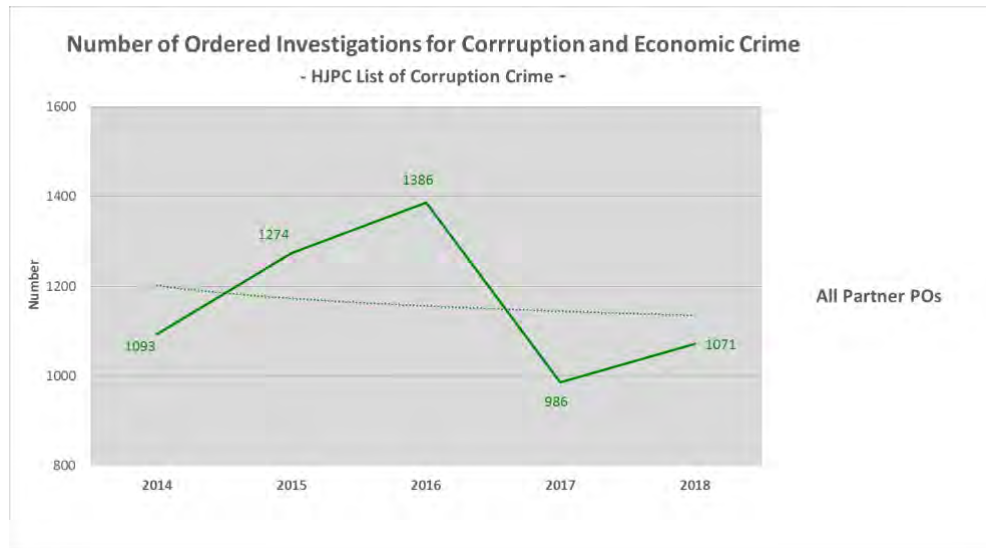


Figure 12 - Number of Ordered Investigations for Corruption and Economic Crime

However, it should be noted, that the diagrams for the number of resolved and ordered investigations for corruption and economic crime follow the diagram for the number of resolved reports for corruption and economic crime, which is expected, so the reduced number of investigations ordered and resolved for corruption and economic crime in last two years is not the result of poor POs' performance, but, rather, the diminished number of reports filed overall. At the same time, the number of unresolved reports for corruption and economic crime dropped.

The percentage of resolved investigations for corruption and economic crime in partner POs remained almost the same in 2014 and 2018 at the level of 67.5 percent (Figure 13), while target was +2 percent, so this target was not met.

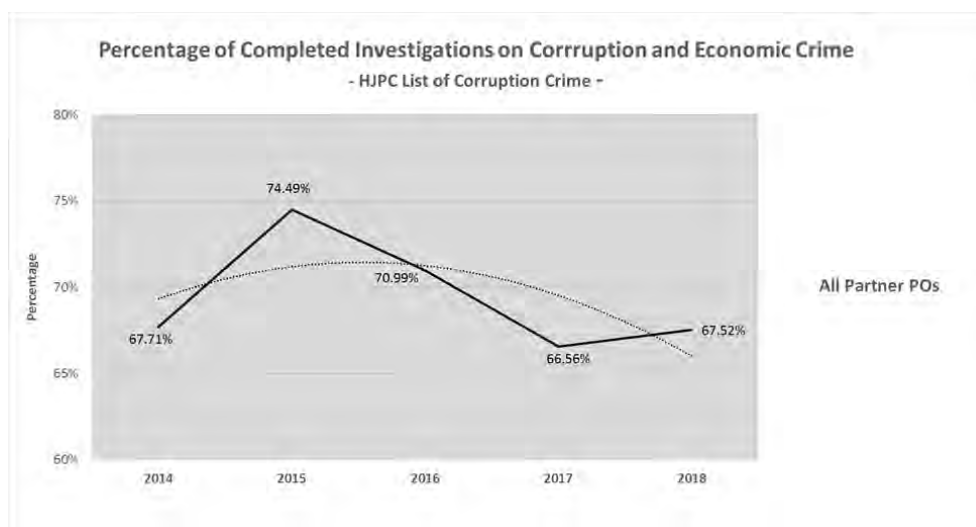


Figure 13 – Percentage of Completed Investigations for Corruption and Economic Crime

**Result/Impact I.4 Prosecutors provide appropriate and accurate information to citizens in order to strengthen transparency and responsiveness**

The achievements for the above defined result were tracked through Subject Area 4 on the POCM and three performance indicators from the M&E Plan: These performance indicators are:

- 1.4.1 Number of POs that regularly disseminate information to the public through their websites including appropriate information on corruption and economic cases in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.4.2 Number of press releases (or other types of communication channels) issued to the public including information on investigation and prosecution for corruption, economic crime cases in prosecuting offices that implement Prosecutor Partnership Programs (PPPs)
- 1.4.3 Percentage of public that agree that BiH POs adequately inform public about their work (net high – strongly agree, agree and somewhat agree)

POCM – Subject Area 4 shows that the capacity of partner POs to provide appropriate and accurate information to citizens in order to strengthen transparency and responsiveness was increased from 1.4 points on average on the baseline to 3.3 points (of maximal 5 points) on average in April 2019, which is a visible improvement.

According to data collected through the M&E Plan for PR Relations of POs with the Public, 16 partner POs regularly disseminated information to the public through their websites including appropriate information on corruption and economic cases (Figure 14). The target for FY 2018 of 9 POs was therefore significantly exceeded.

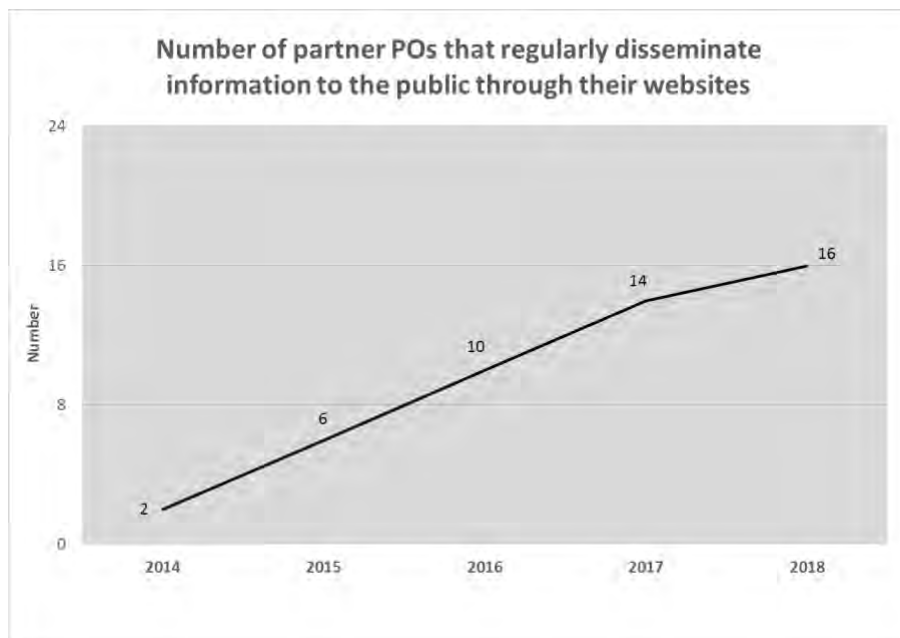


Figure 14 – Number of Partner POs that regularly Disseminate Information to the Public through their Websites

The M&E Plan for PR Relations of POs with the Public shows that partner POs in 2018 issued 5,016 press releases, media statements, answers to FOIA request and information published on POs' web pages. This is 25 percent more than in 2017 and more than 30 percent above the target for 2018.

The data for the percentage of the public that agree that BiH POs adequately inform public about their work were obtained through the National Surveys conducted by USAID's MEASURE BIH from 2016. The baseline value in 2016 was 28.96 percent, (net high – strongly agree, agree and somewhat

agree) in 2017 - 28.76 percent and 26.49 percent in 2018. This data shows that there are no observable changes in public perception in the observed period of time. This is likely due to allegations of corruption in the judiciary and the perceived mishandling of cases, which implied corruption. On the other hand, it is difficult to expect a significant public perception change immediately following an intervention. The target was 31.96 percent and it was not reached.

**Result/Impact 1.5 Prosecutors status improved through performance appraisal, merit-based career advancement or incentives to prosecute cases**

The outcomes for the above defined result were tracked through Subject Area 5 on the POCM and one performance indicator from the M&E Plan: The performance indicator is:

- 1.5.1 Number of PPP Prosecutor’s Offices with score 4 or 5 on JA’s Prosecutor’s Office Capacity Matrix (POCM) for appraisal process dimension

POCM – Subject Area 5 shows that prosecutors’ improved status through performance appraisal, merit-based career advancement or incentives to prosecute was increased from 0.85 points on average on the baseline to 3.95 points (of maximal 5 points) on average in April 2019, which is the greatest improvement of all subject areas of the POCM. All partner POs, (except one) reached grade 4. This means that the number of POs with a score of 4 on JA’s POCM for appraisal process dimension is 19, the target for FY 2019 was 12, so the target was significantly exceeded.

## **COMPONENT 2: STRENGTHENING JUSTICE SECTOR INSTITUTIONS TO UPHOLD PUBLIC INTEGRITY AND COMBAT CORRUPTION**

The contract specifies an Illustrative Programmatic Impact for the Component 2 as follows in Table 3:

*Table 3 - Component 2 Objective and Results/Impact*

<b>Component 2 Objective – Strengthening Justice Sector Institutions to Uphold Public Integrity/Combat Corruption</b>
<b>Illustrative Programmatic Impact</b>
<b>Result/Impact</b>

2.1	Prosecutors investigate and prosecute high profile corruption and economic crime cases free from political or improper influence
2.2	Increased cooperation among state, entity and local justice and other sector actors
2.3	ODC is properly resourced to manage complaints procedures, autonomously reviews conduct of judges and prosecutors and recommends appropriate sanctions
2.4	Disciplinary proceedings are processes expeditiously and fairly and decisions are subject to independent and impartial review
2.5	Public trust in respect for justice sector institutions are increased due to greater ability to act independently and impartially and be held accountable
2.6	Prosecutors and judges are trained in identifying elements of corrupt activities and investigate and prosecute corrupt activities

For Result/Impact 2.1, please see Result/Impact 1.1. to 1.3 for Component 1. For each Result/Impact 2.2 to 2.6, one to three performance indicators were selected for the M&E Plan. Below we provide an overview of developments through time and a comparison of actual performance versus baseline and targets for each performance indicator.

**Result/Impact 2.2 Increased cooperation among state, entity, and local justice and other sector actors**

The developments for the above defined result were tracked through the performance indicator:

- 2.2.1 Number of collaborative mechanisms established and/or improved among justice sector institutions and other parties involved in anti-corruption efforts

JA, in collaboration with HJPC and APIK, conducted the Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary, which brought together the three institutions in the early stage of the Activity to identify issues and formulate recommendations, thus securing the stakeholder buy-in for future reforms.

Additionally, the JA facilitated the signing of the MOU between the HJPC, APIK and USAID which facilitated and strengthened collaboration among the three agencies to increase performance and management capacities, integrity, accountability and transparency of judicial institutions, and which secured the JA's access to judicial institutions, people and information. The JA also contributed to the improvement of judicial statistics on corruption cases as an effective mechanism to prevent blame-shifting among justice sector actors and encourage information sharing as a cornerstone of any inter-agency cooperation in anti-corruption efforts. The JA facilitated an agreement to have 18 out of 20 POs appoint a prosecutor to act as a contact point for cooperation with APIK and to handle individual corruption reports submitted through APIK.

Finally, with the aim of increasing cooperation and coordination among justice sector institutions in their fight against corruption, the JA supported the introduction of the annual justice sector conference on anti-corruption and integrity under the aegis of the HJPC. In total, the JA established 26 collaborative mechanisms, which significantly exceeded the 2019 target of 4.

**Result/Impact 2.3 ODC is properly resourced to manage complaints procedures, autonomously reviews conduct of judges and prosecutors, and recommends appropriate sanctions**

This result/impact was monitored through the following performance indicator:

- 2.3.1 Number of improvements implemented in ODC performance in disciplinary matters

To achieve these results, the JA introduced into ODC operations the Disciplinary Sanctioning Guidelines, the ODC Public Relations and Communication Strategy (2015-2018), an improved ODC annual reporting system and an ODC system for recording incoming cases. In 2019, the JA assisted the ODC develop and launch a new website. The JA also facilitated the orientation program for new disciplinary prosecutors through training and the introduction of the Judicial Discipline Benchbook, which the JA developed. Thus, the actual result is 6 in 2019, so the target of 4 for 2019 was exceeded.

Additionally, the JA conducted an assessment and drafted the report: Disciplinary Case Management System Assessment and Recommendations for Improvements. This document was submitted to the ODC, but, by the time of drafting of this report, it had not been implemented. Implementation is pending EU funding.

**Result/Impact 2.4 Disciplinary proceedings are processed expeditiously and fairly and decisions are subject to independent and impartial review**

The above result/impact was observed through two performance indicators in the JA M&E Plan. These performance indicators are:

- 2.4.1 Judicial Discipline Benchbook and Handbook that will enable ODC staff and disciplinary committees to conduct proceedings more expeditiously and with greater consistency (fairness) developed
- 2.4.2 Percentage of judges and prosecutors which strongly agree with statement that disciplinary process is fair and impartial.

The Judicial Discipline Benchbook was completed and submitted by the JA to the HJPC and was adopted at the HJPC session in September 2019, so this target was reached.

The JA, through the HJPC, conducted three biannual online surveys of all judges and prosecutors in BiH on disciplinary proceedings, in 2015, 2017 and 2019. In 2015, 38.5 percent of the judges and prosecutors who responded to the survey strongly agreed that disciplinary proceedings were fair and impartial. In 2017, the percentage of judges and prosecutors who strongly agreed that disciplinary proceedings were fair and impartial dropped to 34 percent, and in 2019 it dropped to 23 percent. The drop in both 2017 and 2019 could be a result of widely covered corruption scandals within the judiciary involving, in some cases, high level judicial officials. Consequently, the target of 44.5 percent was not reached.

**Result/Impact 2.5 Public trust in and respect for justice sector institutions is increased due to greater ability to act independently and impartially and be held accountable**

Three performance indicators were used to monitor developments in the ability of justice sector institutions to act independently and impartially and be held accountable:

- 2.5.1 Percentage of the public who agree with the statement that the judiciary is not vulnerable to corruption
- 2.5.2 Number of codes of conduct revised for improved standards in judicial conduct
- 2.5.3 Number of courts and POs that adopted Integrity Plans

The data for Indicator 2.5.1 were obtained through National Surveys conducted by USAID's MEASURE BIH since 2015. The baseline value in 2015 was 9.9 percent, while survey conducted in 2018 showed an increase in public perception regarding the statement that the judiciary is not vulnerable to corruption by almost ten percentage points to 19.68 percent, so the target of an 8 percent increase was reached.

With regard to the performance indicator 2.5.2, the JA developed Conflict of Interest Guidelines, adopted by HJPC in July 2016, and also designed the Model Code of Ethics for court and POs' expert associates and advisors which was adopted by the BiH Association of Expert Associate and Advisors in September 2018. The JA supported the drafting of amendments to codes of ethics for judges and prosecutors which were adopted by the HJPC in November 2018. Additionally, the JA also supported the development of the Guidelines on the Development and Implementation of Integrity Plans, which was adopted by the HJPC in 2016.

The Asset Declaration system was revised through the development of the HJPC Book of Rules on Asset Declaration. Its application is pending the resolution of a dispute between the HJPC and the Personal Data Protection Agency over the legality of the asset declaration requirements versus the right to privacy.

The JA supported the development of a Judicial Ethics Handbook adopted by the HJPC in January 2019. The Handbook is a user-friendly single reference education material for judges and prosecutors on the practical application of ethic codes.

In conclusion, actual result for indicator 2.5.2 in 2019 is 6, which exceeds the target for 2019 of 2.

The number of courts and POs that adopted Integrity Plans in 2019 is 98, while the target for 2019 was 20, so this target was significantly exceeded.

### **Result/Impact 2.6 Prosecutors and judges are trained in identifying elements of corrupt activities and investigate and prosecute corrupt practices**

This result/impact was tracked through one performance indicator:

- 2.6.1 Number of judges and prosecutors who earned the certificate of specialized training in the investigation, prosecution and adjudication of corruption and financial crime cases

Forty seven prosecutors earned the certificate of specialized training in the investigation, prosecution and adjudication of corruption and financial crime cases. The target for 2019 was 50, so the target was substantially, if not numerically reached.

In addition, the JA developed the Universal Benchbook on How to Prosecute and Adjudicate Corruption, Organized Crime and Economic Crime (Universal Benchbook) in both English and Bosnian. The Universal Benchbook, which was written by international and national judges and

prosecutors, incorporates the discussions, recommendations, and lessons learned from the aforementioned specialized trainings and as such presents a valuable instrument to secure the sustainability of this specialized expertise. Its development was preceded by a comprehensive training needs assessment carried out by the JA in Year 1. Following its publication in 2019, in collaboration with the Judicial and Prosecutorial Training Centers, the JA delivered three workshops for prosecutors and two for judges on the effective use of the Universal Benchbook in the work of prosecuting and adjudicating serious crime. The workshops were attended by in total 32 prosecutors and 41 judges.

## USAID STANDARD PERFORMANCE INDICATORS

USAID JA BiH M&E Plan included two USAID Standard performance indicators:

- DR 1.3-1 Number of judges and judicial personnel trained with USG assistance
- DR 2.4-1 Number of government officials receiving USG-supported anti-corruption training

Throughout the Activity, the JA was providing technical support to the judiciary in BiH primarily through training of judges and judicial personnel and government officials. Since the beginning of the Activity, the JA organized or took part in organizing 120 events including trainings, workshops, seminars, conferences, roundtables, working meetings and other events.

*Table 4 – Number of Events Sponsored by USAID's JA BiH*

Number of Events					
2015	2016	2017	2018	2019	Total
11	16	37	34	22	<b>120</b>

During the life of the Activity, 2,751 staff members of the POs, courts and HJPC spent 4,220 days attending such events. Considering gender disaggregation, 49.90 percent of attendees were men and 50.10 percent were women.

In Year 5, JA organized or took part in organization of 22 events, with 551 participants from the judiciary in BiH, where 45.90 percent were men and 54.10 percent were women.

Findings for this performance indicators show that the targets for each activity year were significantly exceeded.

Regarding the number of government officials receiving USG-supported anti-corruption training, USAID JA trained 1,776 participants since the beginning of the Activity. 50.25 percent of participants were men and 49.75 percent women.

In FY 2019, the JA organized or supported nine such events with 148 participants. 94 percent of participants were from the judiciary and six percent were officials from other government entities. 52 percent of participants were men and 48 percent were women.

Actual results for these performance indicators are also significantly above the targets specified in calendar years.



## OTHER M&E CONSIDERATIONS

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USAID JA BIH also supported the HJPC in the development and implementation of M&E tools. The Activity developed and designed the following M&E documents that were accepted and implemented by the HJPC in BiH:

- Monitoring and Evaluation Plan for Prosecutors' Offices Public Relations in BiH
- Monitoring Instrument for the Implementation of Recommendations by the Diagnostic Analysis of the Integrity of the Judicial Sector in BiH and Potential Risks of Corruption or Unethical Conduct in Judiciary
- Monitoring Instrument of Implementation of Conflict of Interest Guidelines in Judiciary in BiH
- Proposal for Implementation of Monitoring Instrument of Implementation of Conflict of Interest Guidelines in Judiciary in BiH (to be considered at the HJPC session in September 2019)

In addition, the JA also designed the Monitoring and Evaluation Plan for the Rulebook on Processing Reports on Corrupt Behavior for APIK.

In Quarter 3 of Years 2015, 2017 and 2019, the JA designed and conducted online polls of all judges and prosecutors in BiH with the HJPC Working Group on Integrity and Accountability to determine judges and prosecutors' perception of the fairness and impartiality of disciplinary actions. These polls provided valuable insights and data, which continuously informed the design of JA activities for the last four years.

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