

# Strategy Paper of the IJC 2001 – 2002

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## INTRODUCTION

*In a country where the rule of law prevails, courts accord equal justice to all, rich or poor, powerful or weak, hero or villain... this is not yet the situation in BiH (1)*

The Independent Judicial Commission (IJC) was formally established by the High Representative as a Civilian Commission under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina (BiH). It is the lead international agency for judicial reform in BiH and was given the power and responsibility to guide and co-ordinate judicial reform activities in BiH(2). The purpose of this paper is to outline the IJC strategy for judicial reform for the next eighteen months and beyond.

Most of the recent complaints about judges and prosecutors made by the public concern delays and inefficiency in the judicial system. The public perception of the current judiciary is decidedly not positive. The reports of JSAP produced over the last two years confirm that the public is

correct in its assessment. The underlying causes of this dissatisfaction are many and varied. The structure of the judiciary reflects in many ways the legacy of communism. Politicians are used to exercising influence over the judiciary and judges are used to obeying. Under-funding of the judiciary creates a relationship of dependency with the executive. Outdated procedural laws do not help the courts to deal with cases efficiently, but at the same time the judges themselves are reluctant or unwilling to use the tools at their disposal to speed cases up. Neither the judges nor the court staff have any apparent perception of the fact that they should be providing a public service and the courts are not organised to do so.

The IJC will promote the development of a more independent, impartial and competent judiciary and judicial system in BiH, which deliver timely justice in accordance with the law. Specifically, the IJC will assist and guide the judicial system to operate in accordance with the highest international and European standards and ensure that its institutions respect and uphold the rule of law. IJC anticipates and welcomes the co-operation of local legal institutions in this project. Despite the dark overall picture of the BiH judicial system, there are many causes for optimism, especially greater recent co-operation between institutions in each entity and the enthusiasm of many individual judges and prosecutors for change.

Rakel Surlen, Director

July 2001

## **1 IJC GOALS FOR JUDICIAL REFORM**

### **1.1 Overview**

The Constitution of BiH provides that the country shall be a

democratic state operating under the rule of law. However, despite the emphasis placed on the rule of law by the Peace Implementation Council, there is still a long way to go before the understanding of and the reality of what it means to operate under the rule of law evolve within BiH. Development of an independent and impartial judiciary, delivering timely justice in accordance with law, is fundamental to the rule of law. Reaching that goal will require effort at different levels and the use of a variety of tools, including new legislation, especially on procedure, new structures, much training and the development of new attitudes amongst those working in the judiciary and the public.

In determining its reform priorities, the IJC has relied largely on the identification of the main problems and the analysis of their various causes as identified in the reports of other international agencies in BiH, especially those of JSAP on political influence on the judiciary and on the effect of delays on the delivery of justice in BiH. The overall goals of IJC are:

- to improve the independence of the judiciary
- to improve the quality and efficiency of the judicial system

In working towards these goals, the IJC will take an active, leading role in some of the more important or urgent fields of activity. On other issues, the IJC will rely more on its mandate to guide and co-ordinate the reform process and will support other agencies, both national and international, in their undertaking of various projects. The IJC will also design specific projects for additional donor funding.

All judicial reform must take account of the fact that BiH is part of the civil law tradition and all reforms should be compatible with that heritage, as well as with European norms and standards in general and Council of Europe guidelines.

The next two sections in this part of the paper identify the

goals that the IJC intends to see achieved over the next eighteen months, divided into those of improving the independence of the judiciary and those of improving the quality and efficiency of the judicial system.

## **1.2 Improving the independence of the judiciary**

In order to achieve freedom from external political influence for the judiciary, it is necessary to have an appointment and dismissal system for judges and prosecutors that depends on professional qualifications rather than political influence, adequate financing that is not dependent on the relationship of individual courts or judges with politicians, and the provision of proper security for judges and courts. It also requires judges who have sufficient personal integrity to resist any attempted improper influence and whose behaviour is amenable to proper disciplinary and ethical systems.

Some progress was made with the introduction of laws on judicial and prosecutorial service in both entities in 2000. Those laws provided for the creation of commissions in the Federation of BiH and councils in the Republika Srpska (RS) charged with significant tasks in respect of the appointment, discipline and dismissal of judges and prosecutors. One of those tasks is the conduct of a Comprehensive Review Process to determine whether current judges or prosecutors are unsuitable to hold office. Monitoring the implementation of those laws, especially the review process, is the main priority for the IJC for 2001. Indications so far are that further work is necessary to refine the legislation in respect of many aspects of the work of the commissions and councils.

By December 2002, the IJC intends to see:

1. Improvement in the quality of the judiciary by removal from office of unsuitable judges and prosecutors through the ongoing Comprehensive Review Process and enforcement of appropriate standards and procedures of professional conduct.
2. A fair, objective and transparent appointment process for judges and prosecutors that conforms to European standards and ensures adequate representation of minorities.
3. Further de-politicisation of the appointment, disciplinary and dismissal processes by restructuring the Commissions and Councils and clarifying and extending their competencies.
4. Improved funding of the judiciary by giving the judiciary more control over its budget and by ensuring full and timely payment of salaries and operating expenses.
5. Development of the legislative framework for the provision of security for individual judges and prosecutors and court buildings.

### **1.3 Improving the quality and efficiency of the judicial system**

It is questionable whether the courts of BiH really deliver justice in accordance with the law, despite that being their primary purpose<sup>(3)</sup>. Cases take years to resolve and are then overturned on appeal. Successful plaintiffs are often unable to enforce their judgement. Judges themselves acknowledge that they are not sufficiently familiar with some aspects of the law to be able to deal properly with cases. They lack copies of legislation, commentaries and training. The performance of lawyers is generally poor, and witnesses and parties frequently fail to attend hearings. The system itself is more focussed on producing statistics than in ensuring the resolution of disputes.

The broad topic of improving the quality and efficiency of the judicial system thus encompasses a number of different aspects, revolving around the issues of the timeliness of judicial decision making, the ability of the judiciary to make decisions in accordance with the law and the various legislative and operational constraints that prevent judges from working as well as they might. Inadequate procedural laws have been identified as the primary reason for delays in the judicial process<sup>(4)</sup> , but their reform alone will not reduce delays or prevent the increase of case backlogs without provision of training and legal information, reform of court administrative and management systems and a fundamental shift in attitude of the judiciary. Improving efficiency is a priority for the IJC.

By December 2002, the IJC intends to see:

6. Increased efficiency in civil cases by the introduction of modern civil procedure legislation in both entities that is compatible with European standards and practices and that is implemented by the judiciary and other relevant agencies.

7. Improvement in the ability of creditors to enforce judgements by the introduction of modern legislation on enforcement of civil judgements in both entities that is compatible with European standards and practices, that strikes the right balance between the rights of creditors and debtors, that is not unduly burdensome for the judiciary and that is fully implemented by law enforcement agencies and the judiciary.

8. Progress towards increasing the efficiency and effectiveness of the courts in general and to increase public access to them by developing a strategic approach to reform of court administration and management, including the introduction of new technology and equipment.

9. The creation of government funded judicial training institutes in each entity that are properly funded and operational.

10. Judges and prosecutors trained on the anticipated new criminal procedure codes.

11. Improved provision of legal information to judges and prosecutors, especially access to legislation, commentaries, and decisions of superior courts.

12. The development of a properly regulated legal profession whose members provide proper professional service to their clients, who are subject to appropriate codes of ethics and a functioning disciplinary system and who have the right to practice in any courts in either entity.

13. Improved co-operation between courts in each entity and Brcko on all matters necessary for completion of their functions.

14. Unification of the rules and procedures governing minor offence courts, including the funding and appointment systems as well as minor offence procedure itself.

6. Completion of the ongoing unification of the judiciary in Herzegovina Neretva Canton, including the City of Mostar.



## 2. IMPLEMENTATION OF IJC GOALS

Clearly, fulfilment of the goals outlined in the previous section will depend on a number of internal and external factors, many of which are out of the control of the IJC. Principally, the plan has been drafted on the assumption that local authorities will continue their expressed support for many of these initiatives and that international agencies will continue their work in particular areas or in particular initiatives.

IJC must remain able to respond to other demands and priorities as they arise and so this strategy plan will be flexible. For example, the IJC is pleased that the Ministries of Justice from time to time request its advice on various law reform initiatives, and it is hoped that this co-operation will develop further. It is anticipated that from the end of 2001 or beginning of 2002 the IJC, along with the Legal Department of the Office of the High Representative (OHR), will take up its mandate in the District of Brcko, although the delineation of responsibilities is still under discussion. Brcko has therefore not been referred to in particular in this paper.

The IJC also anticipates the development of more project proposals than those referred to in this paper, as needs and opportunities become clear. IJC involvement may include the identification of projects, the development of a project proposal and the seeking of funding and could extend to finding contractors, overseeing the project and assisting with logistical issues.

Annex III is a timeline for implementation of the IJC's goals until the end of 2002 and Annex IV provides a more detailed outline of the IJC workplan with reference to specific objectives and with activities set out in periods of six months. IJC will supplement these activities by various co-ordination functions, such as:

- the holding of regular judicial reform co-ordination meetings to ensure that both the IJC and other organisations are fully informed of all judicial reform initiatives;
- co-ordination of trial monitoring activities of other organisations, including the development of standard reporting forms, to ensure that all monitors understand the limits of their work, that resulting information is channelled to the right organisation and that implementation of reforms is monitored;
- collating information on past and current judicial training activities, to identify gaps in training activities and to ensure that appropriate local professionals are engaged in giving as well as receiving training.

### **3 OTHER CURRENT AND FUTURE ISSUES FOR JUDICIAL REFORM**

The goals and activities outlined in this paper reflect what the IJC considers priorities for reform. They do not reflect the whole ambit of judicial reform. There are some issues that would be better dealt with later and others that are simply beyond the capacity of the IJC in the next eighteen months. As progress with the priority projects becomes known, these omitted areas could become part of the IJC strategy, or they could be taken up by a follow-on project or other institution.

One important such issue is the structure of the judiciary. There are many ways in which the structure of the court system could be improved. BiH has many courts and many judges for such a small country, but despite this cases still take a long time to resolve. Streamlining the system would not doubt produce cost-savings that could be used to improve court funding in general.

However, the IJC does not believe that it is appropriate to deal with these issues at this time or until proposed

procedural and other reforms have taken place. Criminal procedure reform should eliminate need for five judges in all first instance courts and would allow many courts in small municipalities to reduce numbers of judges significantly. Civil procedure reform may remove the Federation requirement to have three judges sitting on every case. At the same time, changes in the appeal system may make it desirable to give municipal courts greater first instance jurisdiction, so that parties can more easily exercise two rights of appeal. While procedural reform could have considerable impact on the internal organisation of each court, more fundamental structural changes to the court system will need to be addressed through other legislation.

There are many other questions. For example, could the different levels of prosecutors' offices be merged? Would it be possible to create more flexibility with judges appointed to the municipal court bench in general and able to be moved from court to court? Should judges be prohibited from sitting in a town if they have recently been working there as a lawyer or prosecutor in order to ensure the appearance of independence? Should minor offence courts be referred to in the constitution or be merged into the regular courts?

Interesting as these problems are, they are better addressed at a later stage of the reform process, once the implications of the various procedural reforms are known. In the meantime, the IJC encourages local governments to take their own initiatives on these issues and will also remain aware of these issues when working on other reform projects. However, the IJC is opposed to the creation of specialised courts, given the existing multitude of courts. Problems in the way that courts deal with particular types of case are generally related principally to lack of knowledge or training, which will not be solved by shifting cases from court to court. There are many different ways to address some of these problems and solutions should be sought within the current

judicial framework.

A related issue is the question of prison reform. There are some acute problems, especially in the Federation, with the capacity of penal institutions, for example for mentally disturbed prisoners, and in both entities with regard to juvenile detention. However, while other organisations such as the Council of Europe and the UNMIBH Human Rights Office are dealing with this issue on different levels, the IJC does not intend to take any initiative of its own.

Another issue that the IJC will consider later is the adequacy of the basic legal education provided by the country's five law faculties. This is a complex and difficult issue. While in some senses it might seem fundamental to the development of the legal profession as a whole, the other training initiatives included in the IJC strategy should enable judges and other legal professionals to receive on-the-job training that will, to some extent, ameliorate any possible deficiencies in the education received at the faculty.

On the procedural law side, having a suitable legislative framework for administrative litigation will become an important issue with the development of a market-oriented economy based on private ownership. USAID intends to work in the area of administrative procedure in general, and will be developing its project plan late in 2001. The IJC will ensure that this and other possible initiatives are appropriately coordinated and fit within the overall efforts in those matters.

Finally, OHR has been undertaking a number of projects to do with judicial reform that, at least in the meantime, will remain within OHR. These include institutional development of the Court of BiH and related legislation, the Constitutional Court of BiH and merger of that court with the Human Rights Chamber, development of a free legal aid scheme, criminal procedure reform and draft legislation on court experts. The IJC will assist OHR as necessary or requested on any of these

issues.

#### **4 MAJOR PRIORITIES FOR THE IJC**

As noted above, the IJC strategy is flexible in its approach and priorities may need to be changed from time to time. The various projects described in Annex IV will require differing amounts of resources. It may prove necessary for the IJC to transfer resources from one project to another in order to ensure implementation of particularly important goals<sup>(5)</sup>. Should this be necessary, and for the sake of transparency, the IJC at this stage sets its priorities in order of importance as:

- Completion of the Comprehensive Review Process. (This process is time-limited by law and the relevant periods expire early in 2002.)
- Completion of reform of the appointment process for judges and prosecutors
- Reform of court administration and management
- New legislation on enforcement of civil judgements
- New legislation on civil procedure

#### **5 FUTURE JUDICIAL REFORM ACTIVITIES**

It is foreseeable that the reforms promoted in this paper will receive setbacks and not everything will take place according to the proposed schedule. Some of the projects outlined may not be completed until after 2002. In particular, training is an ongoing part of all the reforms and should any major legislative initiative be delayed, the necessary support training will also have to be delayed. The final stage of any reform must be the monitoring of results to ascertain whether the reform had any practical effect. While the IJC will use the trial monitoring process to assist in this stage, it is likely that many results of the reforms implemented as part of this strategy will not be seen until after 2002.

The IJC intends to update this strategy from time to time to take account of changes and to give a better indication of what will and will not be completed by December 2002, which is the planned end of the IJC mandate period.

Judicial reform is an ongoing process, however, and the end of the mandate does not mean that judicial reform should end. A preliminary view of possible judicial reform activities anticipated for 2003 and onwards is given in the timeline in Annex VI. The need to monitor the effect of reforms as well as identifying other reform needs is an important function in any society. These are ongoing processes, along with, of course, the related legislative drafting, institution building, training and other activities that are part of actual reform. What agency should deal with these issues in the long term in BiH, and whether it is domestic and/or international, is something to be determined later.

## **Annex I**

[Decision of the High Representative Providing the IJC with a Comprehensive Mandate, 14 March 2001](#)

## **Annex II**

[The Courts of BiH](#)

## **Annex III**

[Timeline for IJC activities July 2001 – December 2002](#)

## **Annex IV**

This annex contains the detailed outline of the IJC strategy for implementing its goals, as referred to in section 2 of the

text.

<b>PROJECT 1</b>	<b>COMPREHENSIVE REVIEW PROCESS</b>
<b>Goal</b>	Improvement in the quality of the judiciary by removal from office of unsuitable judges and prosecutors through the ongoing Comprehensive Review Process and enforcement of appropriate standards and procedures of professional conduct.
<b>Specific objectives</b>	<ul style="list-style-type: none"><li>• Institutional support for Commissions and Councils in this process</li><li>• Completion of ongoing Comprehensive Review Process.</li></ul>

**Timeframe**  
**July – Dec.**  
**2001**

- Ensure that the Commissions and Councils work efficiently with due regard to their obligations.
- Assist the Commissions and Councils with the review of complaints against judges and prosecutors and identify serious complaints warranting further investigation as a matter of priority.
  - Conduct IJC investigation of serious matters that involve misconduct by judges and prosecutors and present findings to Commissions and Councils for further action.
- Provide assistance to the Commissions and Councils in examination of Personal Review Files in order to identify cases for further review.
- Ensure that appropriate cases go to the Final Review stage and that recommendations for dismissal are made where appropriate.
  - Ensure due process for judges and prosecutors under review.
  - Liaise with other organisations concerning the submission of complaints against judges and prosecutors that come to their attention.
  - Recruit domestic lawyers and investigators by September 2001 to staff the Commissions and Councils for nine months to support the appointment and review process.
- Assess whether the Comprehensive Review Process should be extended past the current deadlines (early 2002).



<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• Continue as above as necessary, depending on the time limit for completion of this process.</li> <li>• Following completion of the Comprehensive Review Process, continue to ensure appropriate standards of professional conduct by monitoring the handling of disciplinary complaints by the Commissions and Councils.</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• Funding for temporary staff for the Commissions and Councils is provided by the government of Finland.</li> </ul>

<b>PROJECT 2</b>	<b>APPOINTMENT OF JUDGES AND PROSECUTORS</b>
<b>Goal</b>	A fair, objective and transparent appointment process for judges and prosecutors that conforms to European standards and ensures adequate representation of minorities.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Implementation of new appointment procedure (adopted in July 2001 pursuant to a Memorandum of Understanding between the Commissions and Councils and the Ministers of Justice of the RS and the Federation).</li> <li>• Amendment to legislation on appointment to reduce opportunities for political obstruction.</li> </ul>

<p><b>Timeframe</b> <b>July – Dec.</b> <b>2001</b></p>	<ul style="list-style-type: none"> <li>• Attend all Commission and Council meetings on appointment in order to ensure that the new appointment procedure is complied with and applied uniformly throughout BiH. The new procedure should assist in having the best applicants selected and ensure adequate representation of minorities.</li> <li>• Advise Commissions and Councils on appointment process in order to ensure that unsuitable candidates are not recommended.</li> <li>• Promote amendments to the Federation Law on Judicial and Prosecutorial Service in order to eliminate the ability of appointing authorities to obstruct the process.</li> <li>• Identify training needs for Commission and Council members to enable them to carry out their functions properly.</li> <li>• Recruit domestic lawyers and investigators by September 2001 to staff the Commissions and Councils for nine months to support the appointment and review process.</li> </ul>
<p><b>Jan. – June</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Continue attendance at Commission and Council meetings and support and advice as above.</li> <li>• Codify a uniform standardised appointment process throughout BiH, including the preparation of books of rules fully regulating the appointment process, and ensure that it meets European standards.</li> </ul>
<p><b>July – Dec.</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Continue monitoring of appointment procedure throughout BiH.</li> </ul>

<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• Funding for temporary staff for the Commissions and Councils is provided by the government of Finland. See <i>Project 1</i>.</li> </ul>
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<b>PROJECT 3</b>	<b>REFORM OF COMMISSIONS AND COUNCILS</b>
<b>Goal</b>	Further de-politicisation of the appointment, disciplinary and dismissal processes by restructuring the Commissions and Councils and clarifying and extending their competencies.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Amendments to legislation on disciplinary procedure including necessary books of rules and codes of ethics in force.</li> <li>• Commissions and Councils restructured and with full-time staff.</li> <li>• Commission and Council members and staff trained on procedures.</li> </ul>
<b>Timeframe July – Dec. 2001</b>	<ul style="list-style-type: none"> <li>• Develop project proposal and seek funding for provision of expert international advice on models for suitable disciplinary system for BiH and provide all necessary assistance for the expert(s) in carrying out project.</li> <li>• Appoint, in conjunction with local authorities, working groups to prepare amendments to the current legislation on disciplinary procedures based on the findings and recommendations of the expert(s) as above.</li> </ul>

<p><b>Jan. – June 2002</b></p>	<ul style="list-style-type: none"> <li>• Work with domestic officials in drafting legislation, books of rules and ethical codes covering disciplinary procedure and professional ethics. In addition, the legislation will also deal with the question of membership and staffing of the Commissions and Councils, to allow more full-time members and full time professional and administrative staff. The question of abolition of cantonal level commissions could also be dealt with at this stage.</li> <li>• Identify training needs and assist in providing trainers and development of training programmes for Commission and Council members and staff.</li> <li>• Develop project proposal for provision of technical assistance for Commissions and Councils by the provision of an expert in ethics enforcement to provide short-term advice and seek funding for this proposal.</li> </ul>
<p><b>July – Dec. 2002</b></p>	<ul style="list-style-type: none"> <li>• Engage expert technical assistance on ethics enforcement. <ul style="list-style-type: none"> <li>• Implement training programmes as developed above.</li> <li>• Assist Commissions and Councils in identification of full time members and other institutional development.</li> </ul> </li> <li>• Ensure passage of legislation, books of rules and ethical codes.</li> </ul>
<p><b>Funding requirements</b></p>	<ul style="list-style-type: none"> <li>• Short term technical assistance on model disciplinary systems. <ul style="list-style-type: none"> <li>• Training for Commission and Council members and staff.</li> </ul> </li> <li>• Short term technical assistance on ethics enforcement.</li> </ul>

<b>PROJECT 4</b>	<b>COURT FUNDING</b>
<b>Goal</b>	Improved funding of the judiciary by giving the judiciary more control over its budget and by ensuring full and timely payment of salaries and operating expenses.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Passage and implementation of legislation to create separate court budget offices at entity level. (These offices would be able to prepare and argue before Parliament for court budget requests, thereby eliminating the role of the Ministries of Justice. The draft laws are currently in the legislative process in both entities.)</li> <li>• Passage and implementation of similar legislation at cantonal level.</li> <li>• Exploration of other approaches to budget issues that would assist in dealing with problems of late and incomplete payment of court budgets and salaries.</li> </ul>
<b>Timeframe July – Dec. 2001</b>	<ul style="list-style-type: none"> <li>• Support passage of draft legislation at entity level.</li> <li>• Support, if necessary, the development of the institutional capacity of the budget offices. (At present, it is expected that this will be pursued by ABA-CEELI, including the provision of training on budgeting for court budget office staff.)</li> <li>• Begin study of the underlying problems with court funding and, if possible, make recommendations for further action.</li> <li>• Monitor payment of salaries to judges and court staff throughout BiH.</li> </ul>

<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• Encourage passage of budget office legislation in the cantons as necessary.</li> <li>• Complete study referred to above and present results to Ministries of Justice.</li> <li>• Begin work on implementation of recommended reforms, if any and if possible.</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• Continue to monitor court funding issues in general and the implementation of the budget office legislation.</li> </ul>
<b>Funding requirements</b>	

<b>PROJECT 5</b>	<b>COURT SECURITY</b>
<b>Goal</b>	Development of the legislative framework for the provision of adequate security for individual judges and prosecutors and court buildings.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Policy decision taken on whether to create a court police system in the RS to parallel that in the Federation. (Court police are responsible both for court security and enforcement of court orders.)</li> <li>• Implementation of such policy decision, if necessary.</li> </ul>

<b>Timeframe</b> <b>July – Dec.</b> <b>2001</b>	<p>Development and training of the court police is largely in the hands of UNMIBH. The IJC should only:</p> <ul style="list-style-type: none"> <li>• Work with UNMIBH and RS officials to determine whether to create a separate court police system in that entity or whether to continue with the current system (in which the regular police are responsible for court security and enforcement of court orders).</li> <li>• Support as requested the efforts of UNMIBH to create the court police in the Federation (and the RS, depending on the results of the determination above), including any necessary amendments to legislation or internal rules, lobbying for funding and ensuring that the regular police continue to assist the courts in the absence of the court police.</li> </ul>
<b>Jan. – June</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• As above. UNMIBH is expected to begin a substantial reduction in its strength in mid-2002, in anticipation of closure of the mission at the end of that year, so major initiatives for development of the court police should be completed by June 2002.</li> </ul>
<b>July – Dec.</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<b>Funding</b> <b>requirements</b>	

<b>PROJECT 6</b>	<b>CIVIL PROCEDURE REFORM</b>
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<p><b>Goal</b></p>	<p>Increased efficiency in civil cases by the introduction of modern civil procedure legislation in both entities that is compatible with European standards and practices and that is implemented by the judiciary and other relevant agencies.</p>
<p><b>Specific objectives</b></p>	<ul style="list-style-type: none"> <li>• Revised civil procedure legislation in place in both entities that will, amongst other things:             <ul style="list-style-type: none"> <li>• Introduce case management techniques</li> </ul> </li> <li>• Ensure greater concentration of hearings             <ul style="list-style-type: none"> <li>• Increase the role of the parties in adducing evidence                 <ul style="list-style-type: none"> <li>• Limit reliance on court experts</li> </ul> </li> </ul> </li> <li>• Require appellate courts to make final decisions</li> <li>• Reduce the numbers of judges sitting on individual cases</li> <li>• Possibly introduce new methods of taking evidence</li> <li>• Permit greater sanctions against parties disobeying court orders             <ul style="list-style-type: none"> <li>• Improve the rules on service of court documents.</li> </ul> </li> <li>• Judges, lawyers and court staff trained on the use of the new codes.</li> </ul>



<p><b>Timeframe</b> <b>July – Dec.</b> <b>2001</b></p>	<ul style="list-style-type: none"> <li>• Develop a co-ordinated plan of action for civil procedure reform with ABA-CEELI (currently working in this area) for approval by the entity Ministers of Justice.</li> <li>• Ensure that appropriate working groups to draft legislation are appointed in both entities and take a co-ordinating role as between the two working groups. <ul style="list-style-type: none"> <li>• Take the lead in working with these groups, along with ABA-CEELI and IRZ, to ensure that a working draft of legislation is well underway by the end of the year. Provide model laws and other material as appropriate.</li> </ul> </li> </ul>
<p><b>Jan. – June</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Have working draft of legislation prepared by February 2002.</li> <li>• Hold seminar to introduce draft to judiciary and others and obtain comments and suggestions for improvement.</li> <li>• Complete draft for presentation to government in March/April 2002.</li> <li>• Support passage of legislation in both entities.</li> <li>• Develop comprehensive training programme for all civil judges and affected court staff and begin implementation.</li> </ul>
<p><b>July – Dec.</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Continue with training programme and preparation of any other material such as commentaries.</li> <li>• Monitor implementation of new legislation, if in force.</li> </ul>
<p><b>Funding requirements</b></p>	<ul style="list-style-type: none"> <li>• Seminars to introduce reforms to the judiciary.</li> <li>• Training programme.</li> <li>• Commentaries and other legal information.</li> </ul>

<b>PROJECT 7</b>	<b>ENFORCEMENT OF CIVIL JUDGEMENTS</b>
<b>Goal</b>	Improvement in the ability of creditors to enforce judgements by the introduction of modern legislation on enforcement of civil judgements in both entities.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• A new law on enforcement of civil judgements in both entities that, amongst other things: <ul style="list-style-type: none"> <li>• is compatible with European standards and practices</li> <li>• strikes the right balance between the rights of creditors and debtors <ul style="list-style-type: none"> <li>• does not permit undue delay</li> </ul> </li> <li>• is compatible with the current banking, property and employment systems <ul style="list-style-type: none"> <li>• is not unduly burdensome for the judiciary</li> </ul> </li> <li>• is fully implemented by law enforcement agencies and the judiciary. <ul style="list-style-type: none"> <li>• Judges, lawyers, court staff and the staff of affected organisations trained on the new codes.</li> </ul> </li> </ul> </li> <li>• Development of any necessary institutions e.g. agencies for the seizure and sale of goods.</li> </ul>

<p><b>Timeframe</b> <b>July – Dec.</b> <b>2001</b></p>	<ul style="list-style-type: none"> <li>• Develop a co-ordinated plan of action for reform of the law on enforcement of civil judgements with ABA-CEELI (currently working in this area) for approval by the entity Ministers of Justice.</li> <li>• Ensure that appropriate working groups to draft legislation are appointed in each entity and take a co-ordinating role as between the two working groups.</li> <li>• Assist with the organisation of a seminar for judges and others on enforcement in September 2001 (in conjunction with IRZ and ABA-CEELI). <ul style="list-style-type: none"> <li>• Take the lead in working with these groups, along with ABA-CEELI and IRZ, to ensure that a working draft of legislation is well underway by the end of the year. Provide model laws and other material as appropriate.</li> </ul> </li> </ul>
<p><b>Jan. – June</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Have working draft of legislation prepared by late 2001/early 2002.</li> <li>• Hold seminar to introduce draft to judiciary and others and obtain comments and suggestions for improvement.</li> <li>• Complete draft for presentation to government in early 2002.</li> <li>• Support passage of legislation in both entities. <ul style="list-style-type: none"> <li>• Develop a comprehensive training programme for all civil judges and others and begin implementation.</li> </ul> </li> <li>• Develop strategy for any necessary institution building.</li> </ul>

<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• Continue with training programme as necessary.</li> <li>• Continue with institution building as necessary.</li> <li>• Develop commentaries on the new legislation and practice.</li> <li>• Monitor implementation of new legislation, if in force.</li> </ul>
<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• Initial seminar on problems with existing legislation (IRZ and ABA-CEELI).</li> <li>• Further seminars to introduce reforms to the judiciary. <ul style="list-style-type: none"> <li>• Training programme.</li> <li>• Commentaries.</li> </ul> </li> <li>• Institution building.</li> </ul>

<b>PROJECT 8</b>	<b>COURT ADMINISTRATION REFORM</b>
<b>Goal</b>	Progress towards increasing the efficiency and effectiveness of the courts in general and to increase public access to them by developing a strategic approach to reform of court administration and management, including the introduction of new technology and equipment.
<b>Specific objectives</b>	Development of strategy for low-cost low-tech reform of court administration that can be implemented by each court without further assistance. (This project must be well co-ordinated with local institutions especially the Ministries of Justice and the Associations of Judges and other initiatives that involve computerisation of court registries.)

**Timeframe**  
**July – Dec.**  
**2001**

- Develop a project proposal for a two-stage project involving a preliminary assessment of the problems in this field and the development of workable low-cost solutions, to be followed by a pilot project in a limited number of courts throughout BiH to implement the recommendations made in the first stage. Training needs for court staff should also be identified.

The assessment would include, but not be limited to factors such as:

- the role of the court president in general, and in particular in the allocation of cases among judge
- the quota system used to assess the performance of judges
- the introduction of case management techniques
  - case registration and numbering
- the historical case backlog and how to deal with it
- ongoing reforms in related areas such as the role of judges in issuing certificates, land registration, company registration, etc.
  - the opening hours of courts
- attitudes to public service among court staff
- the introduction of technology in courts
  - the books of rules on internal organisation and their lack of flexibility.
- Obtain funding for the proposal and ensure implementation is begun.

<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• First phase of project to be completed.</li> <li>• Obtain further funding if necessary to implement the pilot project stage, identify suitable courts for implementation of the pilot project and ensure that work begins.</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• Complete pilot project and further refine the strategy for adoption in all courts without further technical assistance.</li> </ul>
<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• Both stages of project.</li> </ul>

<b>PROJECT 9</b>	<b>JUDICIAL TRAINING INSTITUTES</b>
<b>Goal</b>	The creation of government funded judicial training institutes in each entity that are properly funded and operational.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Institutional development of the existing Interim Inter-Entity Training Board and eventual transition to a permanent institution.</li> <li>• Passage of legislation creating judicial training institutes in each entity.</li> <li>• Institutional development of training institutes.</li> </ul>

<b>Timeframe</b> <b>July – Dec.</b> <b>2001</b>	<ul style="list-style-type: none"> <li>• Ensure that the Interim Inter-Entity Training Board has a strategic plan for 2002 and is more self-sufficient in terms of organisation and strategic vision.</li> <li>• Encourage Board to co-sponsor at least one training session by December 2001.</li> <li>• Ensure current draft legislation to create judicial training institutes is enacted in both entities.</li> <li>• Work with both entity governments to ensure that appropriate space and funding is available for the institutes. Strategic management planning should also begin.</li> </ul>
<b>Jan. – June</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• Ensure that the new training institutes begin functioning.</li> <li>• Ensure that the relationship of the Interim Board to new institutes is resolved as well as its permanent role and status.</li> </ul>
<b>July – Dec.</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• Continue to assist the training institutes and/or Interim Board with training proposals, funding proposal, etc as necessary.</li> </ul>
<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• There will be a continuing need for funding for large training initiatives, apart from those discussed elsewhere in this paper.</li> </ul>

<b>PROJECT 10</b>	<b>CRIMINAL PROCEDURE TRAINING</b>
<b>Goal</b>	Judges and prosecutors trained on the anticipated new criminal procedure codes.
<b>Specific objectives</b>	Creation and implementation of comprehensive inter-agency training programme for the judiciary on new criminal procedure legislation.

<p><b>Timeframe</b> <b>July – Dec.</b> <b>2001</b></p>	<ul style="list-style-type: none"> <li>• Provide comments on the proposed draft legislation if requested. The IJC is concerned to ensure that where possible all changes to criminal procedure mirror those anticipated for civil procedure (or vice-versa).</li> <li>• Work with UNMIBH, US DOJ, AFD and others to develop a comprehensive training programme on the expected changes to criminal procedure, including determining who will conduct the training, programme design, financing and recipients. It is anticipated that although the final details of the law will not be known at this stage, the broad shape of the reform will be sufficiently clear to enable a training programme to be planned. Local judicial training bodies should also be included in these activities to the extent possible. <ul style="list-style-type: none"> <li>• Secure financing for all phases of training.</li> <li>• Begin initial training in late 2001.</li> </ul> </li> </ul>
<p><b>Jan. – June</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Ensure training programme is conducted. It should be completed by mid-2002.</li> </ul>
<p><b>July – Dec.</b> <b>2002</b></p>	<ul style="list-style-type: none"> <li>• Develop commentaries on new legislation and practice. <ul style="list-style-type: none"> <li>• Monitor implementation of new legislation.</li> </ul> </li> </ul>
<p><b>Funding requirements</b></p>	<ul style="list-style-type: none"> <li>• Training programme.</li> <li>• Commentaries and other legal information.</li> </ul>

<b>PROJECT 11</b>	<b>ACCESS TO LEGAL INFORMATION</b>
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<b>Goal</b>	Improved provision of legal information to judges and prosecutors, especially access to legislation, commentaries, and decisions of superior courts.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Development of project proposal for an initial needs analysis.</li> <li>• Development of resulting project proposals for specific assistance.</li> </ul>
<b>Timeframe</b> <b>July – Dec. 2001</b>	<ul style="list-style-type: none"> <li>• Develop project proposal for needs assessment of courts in terms of provision of laws, court decisions and commentaries.</li> <li>• Obtain donor funding for that proposal and ensure contractor appointed to implement project.</li> <li>• Provide information and assistance to the project contractor as required, which could include survey of existing situation in courts on issues to be determined by the contractor.</li> </ul>
<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• Needs assessment completed.</li> <li>• Develop further proposals for specific projects based on needs assessment.</li> <li>• Obtain donor funding for that proposal and ensure contractor(s) appointed to implement project(s).</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• Oversee implementation of further projects and provide assistance as necessary.</li> </ul>
<b>Funding requirements</b>	<ul style="list-style-type: none"> <li>• Needs assessment.</li> <li>• Further projects as identified.</li> </ul>

<b>PROJECT 12</b>	<b>LEGAL PROFESSION</b>
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<b>Goal</b>	The development of a properly regulated legal profession whose members provide proper professional service to their clients, who are subject to appropriate codes of ethics and a functioning disciplinary system and who have the right to practice in any courts in either entity.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Passage of harmonised legislation on the legal profession in each entity.</li> <li>• Development of ethical codes and disciplinary systems for the legal profession.</li> <li>• Development of a structure for co-operation between the Bar Associations.</li> </ul>
<b>Timeframe July – Dec. 2001</b>	<ul style="list-style-type: none"> <li>• Support the passage of the draft law on the legal profession in the Federation.</li> <li>• Continue to provide advice and support to the drafting of the law in the RS and support its eventual passage. Ensure that it is harmonised with the Federation law on key issues.</li> </ul>

<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• Ensure that the two entity Bar Associations agree on umbrella structures between them with the appropriate instrument drafted to execute that agreement.</li> <li>• Assist as necessary in providing any support for the institutional development of the Bar Associations, including developing disciplinary systems, codes of ethics and mechanisms for providing continuing legal education. (At present, it is expected that this will be pursued by ABA-CEELI.)</li> <li>• Use the IJC trial monitoring groups to encourage complaints about lawyers to be channelled in the right direction.</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<b>Funding requirements</b>	

<b>PROJECT 13</b>	<b>INTER-ENTITY JUDICIAL CO-OPERATION</b>
<b>Goal</b>	Improved co-operation between courts in each entity and Brcko on all matters necessary for completion of their functions.
<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Passage of legislation on various issues to do with inter-entity co-operation.</li> <li>• Development of the role of the Commission on Inter-Entity Judicial Co-operation.</li> </ul>

<b>Timeframe</b> <b>July – Dec.</b> <b>2001</b>	<ul style="list-style-type: none"> <li>• Support passage of legislation on inter-entity co-operation on criminal matters.</li> <li>• Ensure that this issue is also dealt with in the procedure codes referred to above if and as necessary. <ul style="list-style-type: none"> <li>• Encourage formation of inter-entity working groups on judicial reform matters.</li> </ul> </li> <li>• Consider the future role and objectives of the Commission on Inter-Entity Judicial Co-operation and assist the Commission in its activities.</li> <li>• Identify other outstanding issues that need to be resolved in this area and develop working plan for resolution.</li> </ul>
<b>Jan. – June</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• Consider development of legislation on inter-entity co-operation in any remaining judicial matters that need to be dealt with at state and entity level.</li> <li>• Continue to work on resolution of other outstanding issues in this field.</li> </ul>
<b>July – Dec.</b> <b>2002</b>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<b>Funding requirements</b>	

<b>PROJECT 14</b>	<b>MINOR OFFENCE COURTS</b>
<b>Goal</b>	Unification of the rules and procedures governing minor offence courts, including the budgeting and appointment systems as well as the procedure for dealing with minor offence cases.

<b>Specific objectives</b>	<ul style="list-style-type: none"> <li>• Legislation in each entity on the structure of the minor offence court systems and minor offence procedure, incorporating European standards and compatible with the ECHR, harmonised on key issues. (The Federation law should create one system for appointing judges and funding minor offence courts.)</li> <li>• Institutional development of new appointment and disciplinary structures and systems for minor offence judges.</li> </ul>
<b>Timeframe</b> <b>July – Dec. 2001</b>	<ul style="list-style-type: none"> <li>• Provide comments on current draft laws on minor offence procedure in each entity, especially on the proposed appointment and review provisions.</li> <li>• Support passage of legislation in both entities.</li> <li>• Ensure minor offence judges are included in training activities in general and in distribution of legal literature, legislation, compilation of decisions etc.</li> </ul>
<b>Jan. – June 2002</b>	<ul style="list-style-type: none"> <li>• Continue to work on development of appointment and disciplinary systems.</li> </ul>
<b>July – Dec. 2002</b>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<b>Funding requirements</b>	

<b>PROJECT 15</b>	<b>HERZEGOVINA-NERETVA CANTON</b>
<b>Goal</b>	Completion of the ongoing unification of the judiciary in Herzegovina Neretva Canton, including the City of Mostar.

<p><b>Specific objectives</b></p>	<ul style="list-style-type: none"> <li>• Completion of creation of judicial institutions in the Central Zone of Mostar including transfer of the land registry for Mostar to the Central Zone Court.</li> <li>• All judicial institutions in Mostar housed in their own single premises.</li> <li>• Minor offence system unified and multi-ethnic.</li> <li>• Payment of judicial officials and court budgets unified and paid on time and in full.</li> </ul> <p>While there are other outstanding issues, such as unification of the cantonal budget and unification of the Ministry of Justice, these are outside both the mandate and the resources of the IJC.</p>
<p><b>Timeframe</b> <b>July – Dec. 2001</b></p>	<ul style="list-style-type: none"> <li>• Continue to monitor developments and provide advice and assistance if necessary.</li> <li>• Work with OHR South to ensure that the government of the canton takes the necessary steps to solve the outstanding problems.</li> <li>• Consider what steps are necessary to complete formation of multi-ethnic minor offence courts and provide advice and assistance as necessary. (Some problems to do with minor offence courts will be solved by passage and implementation of the draft Federation law on minor offences.)</li> </ul>
<p><b>Jan. – June 2002</b></p>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<p><b>July – Dec. 2002</b></p>	<ul style="list-style-type: none"> <li>• As above.</li> </ul>
<p><b>Funding requirements</b></p>	

## **Annex V**

### Organization Chart

## **Annex VI**

### Timeline for Possible Judicial Reform Activities 2003 and onwards

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(1) JSAP's *Thematic Report IX Political Influence: The Independence of the Judiciary in Bosnia and Herzegovina*, November 2000. JSAP was the Judicial System Assessment Programme of the United Nations Mission in Bosnia and Herzegovina, which ran from October 1998 until its closure on 30 November 2000. The IJC is the successor to JSAP, moving from more diagnostic approach of JSAP to a focus on implementation of reform.

(2) The Decision of the High Representative on the creation and mandate of the IJC is attached as Annex I.

(3) A pictorial representation of the number of judicial institutions in BIH and their staffing levels forms Annex II, which also indicates those judicial institutions for which the IJC is primarily responsible.

(4) See JSAP's *Thematic Report X Serving the Public: The Delivery of Justice in Bosnia and Herzegovina*, November 2000.

(5) The organisation chart of the IJC is presented in Annex V.