

Draft Concept Note (May 24, 2011)

Review of the Criminal Case Process (RCCP) in Serbia – A Procedural Study of Efficiency and Entry Points for Different Levels of Legal Advice and Legal Aid

1. Background and Link to Government of Serbia Strategic Objectives

1. As part of its efforts to meet the requirements for EU accession, Serbia accelerated its reform process among others in areas that aim at strengthening the rule of law and improving the capacity, performance, efficiency, integrity, accountability and professionalism of its justice sector agencies. The Government of Serbia (GoS) prepared and introduced a significant number of new laws and amendments to existing legislation, including several that aim at reorganizing the justice sector, introducing significant changes to the criminal code and criminal procedures code, not all of which have yet been passed. At the same time, however, as the EU outlined in its 2010 report, effective implementation of the laws and related impact assessment have lagged behind.¹ While crime statistics indicate the number of reported crimes in Serbia, with few variations, has changed little since 2003,² the criminal justice process itself is still suffering from inefficiencies that delay judicial decisions, add to lengthy pre-trial detention and impede swift interventions to the detriment of victims and offenders alike. Similarly, key legislation to strengthen access to justice by increasing availability of free legal aid is still pending.

2. A recent review of justice sector reform in Serbia also indicates that while progress has been made in some areas, there is a need for reforms to be more strategic across all sector agencies.³ While progress has been made in police-prosecutor coordination, other areas are lagging behind. For example, a Deputy Ombudsman for the rights of detainees was appointed to monitor places of detention, but police detention procedures remain of concern. In particular, problems have been reported related to detainees' right to have access to a lawyer, doctor and, where necessary, an interpreter.

3. Several of the proposed new laws aim at process improvements, streamlining of functions, and providing access to legal aid, but they also introduce more adversarial processes that are still unfamiliar and together with other structural changes greatly adjust roles and responsibilities of police, prosecution and courts and with it the point at which defense attorneys need to be present. Responsibilities for charging and pre-trial release decisions need to be newly defined to ensure that criminal proceedings not only protect the rights of all involved but are also well coordinated and efficient. Delays in criminal proceedings not only impede access to justice but can have dangerous consequences for communities, victims and offenders alike. It is important to assess how these quite fundamental changes will influence operations and how they can be managed not just from a process efficiency point but especially from the perspective of protecting the integrity of evidence and information and assuring that these changes increase access to justice and duly protect the interests of offenders and victims as well as society at large.

¹ Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2010-2011, Brussels, 9.11.2010 report

² See http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-036/EN/KS-SF-09-036-EN.PDF

³ See Eliamep. Security Sector Reform and Donor Assistance in Serbia 2000-2010. January 2010.

<http://www.eliamep.gr/en/wp-content/uploads/2010/02/SSR-and-Donor-Assistance-in-Serbia-2000-2010.pdf>

4. As a member of the Council of Europe and a signatory to the European Convention on Human Rights, Serbia has an obligation under Article 6 of the Convention and relevant case law to provide effective access to courts, including the systematic provision of legal aid to all.⁴ However, the provision of improved and more inclusive free legal aid mechanisms in Serbia is still largely in the process of design. Currently, the state has very limited resources to address the broad needs for legal aid of its diverse population across all regions, especially the many needs of vulnerable groups, such as Roma, other minorities and the diverse group of displaced individuals. As a result, legal aid in Serbia is provided by a broad range of entities, many supported by international donors, but the demand is still unmet. Funding for the different providers of legal aid is unstable, largely unsustainable, and services are not monitored for quality. In addition, those in need of legal aid often do not know what services are available and how to access them and the quality of legal aid provision is uneven. The Serbian justice sector authorities, aware of these challenges, are in the process of finalizing a strategic framework and implementation action plan for development of an inclusive and financially sustainable free legal aid system, as well as developing the appropriate legislation. This process and future implementation designs would greatly benefit from better understanding where different levels of legal aid could best be offered throughout the criminal justice system process.

5. To support the GoS in its important reform efforts, the Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS) has been established with contributions from key international development partners. The MDTF-JSS, jointly executed by the World Bank and the Ministry of Justice of the Republic of Serbia (MOJ), provides targeted support to Serbia's justice sector to advance justice sector reform and modernization. In close cooperation with the Swedish International Development Agency (SIDA), one of the MDTF-JSS focus areas is supporting the Serbian authorities to develop, coordinate and manage activities that enhance access to justice and provision of free legal aid.

6. SIDA has been supporting justice sector reform in Serbia for some time, especially in relation to police operations and legal aid provision. Support for introducing the new investigative responsibilities of prosecutors and the development of more efficient criminal proceedings are among the priorities of the MOJ for the 2009-2010 period.⁵ Considering that access to justice, including efficient coordination between all actors involved in the criminal justice process and access to legal aid is key for ensuring that Serbia can fulfill its obligations for EU accession, a review of the criminal case process with an eye to access enhancing efficiency and effective delivery of different levels of legal aid is also very much in line with the focus of the MDTF-JSS and the aims of the GoS.

7. The project is also in line with the Bank's Legal Note and Guidance Note on criminal Justice which requires that work with the criminal justice sector has to be

a) *Grounded in a development context*, meaning it should be based on an appropriate and objective economic rationale. This project supports the GoS's efforts to comply with EU accession requirements for the justice sector. EU accession is an important economic development driver for the country. In addition, strengthening the criminal justice sector to more effectively pursue crimes, especially corruption, economic and organized crimes, which are a serious

⁴ See http://www.ccmr-bg.org/upload/document/0912251212_summary_newsletter_.pdf. A package of three documents has been adopted aiming at strengthening procedural rights of suspected and convicted perpetrators in criminal procedures.

⁵ See Priorities of the Ministry of Justice of the Republic of Serbia for 2009/2010, not dated

problem for Serbia's business, reduces economic loss while increasing trust in the government to provide for a more reliable and secure business environment.

b) Should *not involve the Bank in the political affairs of member countries*. The project has the full support of the GoS and other stakeholders. The recommendations resulting from this work will provide an objective basis for all stakeholders to discuss and chose efficiency and effectiveness measures to enhance access to justice.

c) Has to include a *risk assessment and management* component: The risk for this engagement with the criminal justice sector through this study is low. The activities involved are of analytical nature only and a logical extensions of earlier civil justice activities. All relevant stakeholders will be part of the information gathering and consultation process. The resulting recommendations aim at enhancing efficiency and access to justice and will present benefits and draw backs of different options that will inform the current reform process in an objective manner without interfering in the related political debates. The project staff in Belgrade continues to monitor the ongoing legislative process and related debates to ensure that the recommendations properly reflect relevant stakeholder considerations.

2. Purpose

8. This study will identify current procedural and resource related impediments to criminal case processing and legal aid in Serbia, how the new legislation might improve them and what additional issues need to be addressed. As outlined in more detail in the next section, a detailed review of current and proposed new processes is important not only to identifying potential impact and where process efficiencies might be further enhanced but essential to understanding where legal aid can be most effectively targeted and how the absence of legal aid further impedes effective processing. The findings will be used to suggest further steps toward more effective case processing, resource allocation and effectively linking individuals to the right level of legal advice and representation throughout the criminal justice process. The resulting process maps (for the current and proposed new process) are also expected to serve as a resource document to support other technical assistance, including the development of a framework for a national justice information and management system to improve the administration of justice.

9. To provide input to the design of the next phase of justice sector reform in Serbia, the proposed **Review of the Criminal Case Process in Serbia (RCCP)** is expected to improve the provision of criminal justice sector services to Serbian citizens and thereby facilitate Serbia's eventual accession to the EU. The RCCP will (i) assess the current and proposed process criminal matters enter into and move through the criminal justice system, (ii) consider further planned reforms that would impact these processes with a particular view to barriers to access and maneuver the system, including but not limited to impediments to efficient processing, cost, information gaps, and access to counsel; (iii) assess current and future potential entry points for different levels of legal aid and advice, (iv) identify reform and resource gaps to enhance criminal justice processing and legal aid and legal advice provision, and (v) assist in the development of a response strategy.

3. The nexus between efficient case processing and legal aid effectiveness

10. Access to legal aid is universally established as a human right as is access to timely justice – less clarity exists as to how these principles need to be reflected in justice system operations. There is also

limited understanding as to how both principles are interconnected in practice. Only sometimes do justice process reforms aiming at enhanced efficiency consider how access to legal aid can contribute to quicker resolution of cases, even to more cost effective operations. One such exception is a study conducted for the Legal Services Research Centre in the U.K. which provides an example of how the effectiveness of case management reforms is intrinsically linked to the availability of and funding for legal aid services.⁶ Other studies have shown that early availability of defense counsel during the pre-trial period is essential to not only reducing pre-trial detention and the time to trial, but increasing alternative settlement options, including pleas and even reducing the time trials take.⁷

11. When there are doubts about whether or not defendants will be eligible for legal aid or when the system is slow in confirming the defendants' eligibility and helping them secure the services of a legal counsel, uncertainties, delays and inefficiencies inevitably results. The grant of legal aid may be structured in a way that does not encourage or even permit early or alternative resolution of matters. Legal aid assistance, on the other hand, must encourage continuity of representation to avoid unnecessary uncertainties, delays and adjournments, and unproductive hearings. Untimely changes in defense counsel can affect the overall flow of the criminal process and the effective management of the case. Legal reforms affecting the pre-trial process and the trial itself must consider how they affect the way in which legal aid services are provided and funded. How the defense counsel is remunerated by a legal aid program also influences timely processing. If counsel is remunerated for properly preparing the case and identifying issues prior to committal; this can lead to a corresponding reduction in the amount of preparation required later in the process.

12. The pre-trial resolution of evidentiary issues can lead to more accurate prediction of the duration of trials, better estimates of the time required by both counsel, and more efficient scheduling of court time and resources. Eventually, it can lead also to shorter, less costly trials. In British Columbia for example, the Legal Services Society has a strategic case assessment program that helps the Society develop budgets and predict costs and preparation needs for lengthy cases. While the objective of the program has always been quality assurance, it is designed to introduce the discipline of early and detailed planning to the development of the criminal defense and to incorporate peer dialogue in that process.⁸

13. These are just a few examples where efficient processes are linked to effective introduction of quality legal aid and vice versa.

4. Other International Partners Active in this Field

14. In addition to SIDA a number of international partners are active in criminal justice reform in Serbia, especially UNDP and the OSCE and to some extent the EU. The OSCE, as the main international contributor to police reform, supported by several bilateral partners (DFID, USAID, etc.) has been particularly involved in creating a multi-ethnic police force in southern Serbia. In preparation of this study, the MDTF team has and will continue to consult with those donors to ensure activities do not conflict with but built on and contribute to their work. Conversations with the OSCE, in particular,

⁶ See Pleasance, P. and Quirk, H. (2001) *The Criminal Case Profiling Study* London Legal Services Research Centre, Legal Services Commission of England & Wales.

⁷ See for example, Yvon Dandurand, *Addressing Inefficiencies in the Criminal Justice Process*, International Center for Criminal Law Reform and Criminal Justice Policy, June 2009.

⁸ See Legal Services Society. Annual Service Plan Report 2005/2006. Vancouver, BC

indicated great interested in this study on their part since it will provide further insights into access to justice barriers which will support their work focusing on providing advice for adjustments to the legal and policy framework, organizational adjustments and training and technical assistance needs of police and prosecutors.

5. Counterparts

The main counterparts for these activities are the police, prosecution services, courts and, to a limited extent, relevant correction agencies, as well as organizations that provide public defense services; the involved ministries are the MOJ and MOI; other counterparts will be the Serbian Bar Association, law schools and NGOs that are currently providing legal aid services.

After initial discussions with the MOJ, a draft Concept Note has been presented and discussed during a workshop in Belgrade with representatives of all stakeholder agencies in March 2011. The goals, approach, roles and responsibilities were discussed and clarified. At the end of the workshop the Concept Note was unanimously endorsed, welcomed, and supported.

6. Methodology

The methodology proposed is based on similar studies in other countries and will combine a review of the legal framework (current and proposed) with expert interviews and process observations to develop a functional flow chart of case processing and decision making in target locations from initial police contact through the final court decision.⁹ This information will further be reviewed in combination with available case and resource allocation data and sample case file reviews, if needed, to allow for triangulation of interview and observation data. The current state of automation of all courts, prosecutor's offices and most police agencies in Serbia, while still evolving, suggests that case file review is not need and that the case data needed are available from the automated systems. The project team has not been able to completely confirm this assumption which is why the alternative but more time consuming and costly use of case file review eases the data collection for the needed caseload and processing information is included here as an alternative process.

The needed **case or workflow mapping** process will depict how cases move through the criminal justice system from the earliest police report to the final court decision. This will assist in identifying inefficiencies or gaps in processing and resources allocation contributing to delays. This approach also provides the bases for modeling alternative processes, such as the ones proposed in the draft criminal code, and for identifying their potential impact on operations and resources. Mapping the current and proposed process also allows for identifying at what stages in the process access to legal aid is being provided, where it would be needed, and supports identification of the level of legal aid needed at different stages.

15. For the purpose of this study the case and work flow analysis will review how sample criminal cases (i.e., a misdemeanor, felony, and possibly a domestic violence case for which the scenarios are being determined) move through the system from the time they come to the attention of the

⁹ Processes in correction agencies will be part of this review only as they intersect with processes until a conviction is final. While post-conviction processes also require review and adjustment and access to counsel is an issue here too, this phase presents an entire range of additional issues that are beyond the current scope of this study and the current scope of the SIDA support component of the MDTF.

authorities until a case is either dismissed or concluded by the courts. This will include (i) a review of procedural and other relevant legislation to establish the legal processing framework, (ii) compilation of agency case and resource data to aide in the analysis of processing impediments, (iii) a case flow survey following the process through all involved agencies in Belgrade and one rural and one urban location in three or all for of Serbia's major statistical regions, i.e. the Voivodina, Eastern, Western and Southern Serbia.¹⁰ (iv) If the available data from the automated system prove to be insufficient, this will be complemented by a limited review of randomly chosen case files to triangulate the case and survey data. In addition, focus groups and/or interviews with key stakeholder groups involving relevant agencies (police, prosecution, courts, correction, legal aid providers, and NGOs responding to victim and offender needs) will be conducted to identify access barriers that cannot be captured through the regular data collection (i.e. barriers to reporting information to police, etc) and to verify key findings.

16. To ensure that sufficiently detailed and comparative information is compiled a set of two or three sample case scenarios (simple and complex criminal cases involving a theft and a violent matter) will be designed. The sample cases will be developed to also capture potential variation in handling of different victim groups (i.e. women, marginalized groups, displaced people, etc.).

17. The regional data will be collected and analyzed to reflect regional variations in access barriers and resource deployment as well as case load and processing variations. These data and analyses will be used to provide an indication of relative resource consumption and assist in more fully understanding the driving elements of costs and the potential for efficiency gains in the justice sector.

18. All data collection and analysis will be conducted with special attention to gender and minority issues and include disaggregation of data by gender/ethnicity when possible.

19. Data collection and analysis performed will contribute to recommendations for processing, policy and resource improvements where needed. The data collection results and suggested recommendations will be presented to the Serbia counterparts individually as well as during a stakeholder consultation workshop.

7. Project Implementation and duration

20. The main data collection will be conducted over four to five months by a local firm that will be competitively selected; preparatory work and coordination of activities, especially related stakeholder consultations and support for report writing will be provided by a local consultant. The final report is expected to be delivered by March 31, 2012.

21. The process mapping activity will begin with a review of the current legal framework, the proposed new laws and several meetings with expert informants who are knowledgeable about the processes, policies and resource and organizational constraints. A draft process map of the current and new process will then be applied, verified and adjusted during onsite data collections in Belgrade and target locations throughout Serbia. The revised maps will then be the basis for developing reform

¹⁰ If automated data are sufficiently available, all regions can be included. If sample case files reviews are needed the number of locations will need to be limited. The choice may also be to sample mainly urban locations in all four regions if data access is limited in rural areas. The exact choice of location will be made in cooperation with the involved agencies and the data collection firm.

suggestions. The combined results will be discussed with key counterparts and presented for further consultation and comments during a final workshop.

22. Presenting the results in a flowchart of the events in the criminal justice system that summarizes the most common events in the system (including entry into the criminal justice system, prosecution and pre-trial services, adjudication, sentencing and sanctions) results in a practical tool that facilitates (i) discussing the events in the criminal justice system; (ii) various potential entry points for legal aid; (iii) assessing impediments and reform options; and (iv) predicting changes that are likely to occur as a result of new legislation, in terms of agency policy changes, re-organization and changes in staff and resource allocations.

23. This information will provide the basis for inter-agency communications and consultations involving all stakeholders, including relevant GoS agencies, donors, and NGOs, to develop realistic recommendations for improvements in the short-, mid- and long-term as well as agreements for engagement and support.

8. Deliverables

24. Key deliverables include:

- Draft of review report and recommendations.
- Consultations and development of recommendations for process improvements.

25. Agencies and relevant NGOs will be given a copy of the report prior to its final version, allowing them the opportunity to review and comment. The report will then be formally presented in a workshop on access to justice and legal aid in Serbia held in conjunction with the Serbian Judicial Training institute. Final Comments given by the agencies will then be reflected in relevant portions of the report.

9. Budget Estimates

Below is a preliminary budget estimate.

Activity	USD
Draft report of the current legislative framework review outlining the criminal justice process and access issues as well as and implications of proposed legislative changes.	8000
Draft data collection instruments, adjusted data collection methodology and data collection guides.	5000
Detailed data collection and report delivery schedule.	2000
Preliminary a data analysis based on national data available from the key agencies outlining current case flow by select case types by region and select location, disaggregating of gender and ethnic background information of offenders and victims as feasible.	20000
Conduct case flow reviews, sample case file reviews, interviews and focus groups in Belgrade and select regional locations.	80000
Analyze data compiled and draft regional reports with initial findings and	35000

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recommendations. Conduct stakeholder reviews of the findings and recommendations. Finalize regional reports	20000
Draft and submit final report summarizing regional findings and national relevance for review and discussion.	15000
Present key findings and recommendations at a workshop in Belgrade	10000
Adjust final reports based in feedback from the Bank and key stakeholders and submit final report.	8000
TOTAL	203,000

Annex 1. Results indicators

Activities, outputs and indicators

Activity	Output	Results Indicators
<ul style="list-style-type: none"> • Conduct criminal chain assessment • Develop recommendations for process and legal aid improvements 	<ul style="list-style-type: none"> • Criminal chain processing map and report by region, case types and special issue items • Recommendations report based on study data and consultations 	<ul style="list-style-type: none"> • Access to legal aid impediments and criminal justice case processing identified • Improvement recommendations developed related to legal, policy, processing, resource and organizational adjustments

Annex 2. Activities and time line

Month 1:

- Draft report of the current and proposed legislative framework review outlining the criminal justice process and access issues as well as and implications of proposed legislative changes.
- Draft data collection instruments, adjusted data collection methodology and data collection guides.
- Detailed data collection and report delivery schedule.

Month 2:

- Preliminary data analysis based on data available from the key agencies following the current case flow by select case types by region and select location, disaggregating of gender and ethnic background information of offenders and victims as feasible.
- Conduct case flow reviews, sample case file reviews, interviews and focus groups in Belgrade and select regional locations.

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Month 3:

- Analyze data compiled and draft regional reports with initial findings and recommendations.
- Participate in stakeholder reviews of the findings and recommendations.
- Finalize regional reports

Month 4:

- Draft and submit final report summarizing regional findings and national relevance for review and discussion.
- Present key findings and recommendations at a workshop in Belgrade
- Adjust final reports based in feedback from the Bank and key stakeholders and submit final report.