



OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID'S ALBANIAN JUSTICE SECTOR STRENGTHENING PROJECT

AUDIT REPORT NO. 9-182-13-004-P
SEPTEMBER 13, 2013

WASHINGTON, D.C.



Office of Inspector General

September 13, 2013

MEMORANDUM

TO: USAID/Albania, Mission Director, Jim N. Barnhart

FROM: IG/A/PA Director, Steven Ramonas /s/

SUBJECT: Audit of USAID's Albanian Justice Sector Strengthening Project
(Report No. 9-182-13-004-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments and included your response in Appendix II.

The report contains four recommendations to help strengthen mission management and the sustainability of project achievements. Recent developments represent final action taken on Recommendation 2, and the mission has made management decisions on the remaining recommendations. Please provide the Audit Performance and Compliance Division of USAID's Office of the Chief Financial Officer with evidence of final action to close the three open recommendations.

Thank you for the cooperation and courtesy extended to my staff during this audit.

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Abbreviations

The following abbreviations appear in this report:

ADS	Automated Directives System
CD	compact disc
CDCS	country development cooperation strategy
CLE	continuing legal education
CSO	civil society organization
EU	European Union
FY	fiscal year
IR	intermediate result
IT	information technology
JuST	Justice Sector Strengthening Project
NCA	National Chamber of Advocates
NGO	nongovernmental organization
OIG	Office of Inspector General
PMP	performance management plan

SUMMARY OF RESULTS

In 1991 the East European nation of Albania held its first multiparty democratic election after more than four decades of Communist rule. However, according to the Central Intelligence Agency's *The World Factbook*, Albania still faces high unemployment, corruption, weak infrastructure, organized crime, and persistent claims of electoral fraud.

In the justice sector, use of judges' private chambers instead of public courtrooms for hearings and a lack of competency and professionalism among attorneys contribute to opportunities for judges and attorneys to engage in corrupt activities. The important anticorruption and watchdog roles that civil society organizations (CSOs) and the media play are limited because the organizations generally are weak and media is not fully independent.

To address these issues, USAID/Albania's country development cooperation strategy (CDCS) for 2011-2015 has the development objective of "strengthened rule of law and improved governance." The CDCS established the following three intermediate results (IRs)¹ to achieve this objective in the justice sector:

- Improve the enabling environment for policy reform and planning.
- Enhance citizen oversight and transparency.
- Upgrade performance and management capabilities.

USAID launched the Albanian Justice Sector Strengthening (JuST) Project in October 2010 to improve the performance of the Albanian justice sector and strengthen the watchdog and anticorruption role of civic organizations and the media. To implement it, the mission awarded a 5-year (October 2010-September 2015) cost-plus-fixed-fee contract of about \$9 million to Chemonics International Inc. As of March 31, 2013, midway through the contract, the mission had obligated about \$6.2 million and spent about \$4.1 million on the project.

The Performance Audits Division of the Office of Inspector General (OIG) conducted this audit to determine whether the project is contributing to the three IRs by improving the enabling environment for policy reform and planning, enhancing transparency and citizen oversight, and upgrading performance and management capabilities in the justice sector. We found that the project made significant contributions to these IRs by implementing a number of targeted activities (page 4), such as the examples discussed below.

Improving the Enabling Environment for Policy Reform and Planning. The project worked with Albanian officials to make legislative changes, such as new laws mandating the use of digital audio recordings in courtrooms and continuing legal education (CLE) for the legal profession. Project officials also held court leadership conferences with district and appellate court judges, Supreme Court justices, and officials from government agencies, the National Chamber of Advocates (NCA),² civil society and media organizations, and others. These activities helped bring needed reform and encouraged discussion of judicial issues and the exchange of ideas.

¹ According to ADS 201.3.3.3(b), "A (development objective) is the most ambitious result that a Mission, together with its development partners, can affect or achieve." IRs are the set of results that together are sufficient to achieve the development objective.

² The National Chamber of Advocates is the Albanian equivalent to the American Bar Association.

Enhancing Citizen Oversight and Transparency. According to project reports, JuST’s most visible and important achievement is the installation of digital audio recording systems in Albanian courts. As of March 2013, JuST installed the systems in half of the courts and planned to have all courts equipped by the end of the year. Because the project installed the systems only in courtrooms and not in judges’ offices, judges moved hearings from their private chambers to public courtrooms to benefit from audio recording, thus increasing transparency and accountability. Judges credited digital audio recording with improving the behavior of judges and lawyers in the courtroom, and increasing the public’s confidence in the justice sector.

JuST supported investigative journalism by sponsoring the development of “Law School for Journalists.” The project also invited 15 journalists to be justice reporting fellows and trained them to research and write about corruption. Participating journalists formed Albanian Journalists for Justice, an association that launched an Internet site—with the project’s help—to publish fair, accurate investigative reporting and to provide a forum for public comment. Albanian journalists interviewed said the project had improved their ability to report on corruption. The project also gave grants and training to CSOs.



Posters like this are placed in courthouses to inform the public. (Photo by OIG, April 2013)

Upgrading Performance and Management Capabilities. Project officials worked with NCA to establish and jointly fund the country’s first CLE programs. The first two, with the Durres and Vlora regional chambers, had more than 160 training sessions on 12 legal subjects, such as criminal and civil law, ethics, commercial law, and legal reasoning and writing. By June 2012, 322 people had attended—more than 70 percent of all lawyers and assistants registered in the two chambers. In March 2013 the project launched a third CLE program with the Fier regional chamber; the OIG audit team observed a training session there in the following month that was well attended. Additionally, the project entered into a memorandum of understanding with the dean of the University of Tirana law school to assist in creating a legal clinic; developed a legal database of Supreme Court decisions; gave support to the Union of Albanian Judges; installed a courtroom calendar management system; and introduced court-connected mediation programs.

While JuST made significant contributions, the following areas of concern should be addressed.

- Some project activities may not be fully sustainable (page 7). The mission should take action to foster the sustainability of the project’s digital audio recording, mediation, and CLE activities.

- The mission did not have a performance management plan (PMP) (page 10).

To address these concerns, the report recommends that USAID/Albania:

1. Implement a written plan to help make sure the Albanian Government has an adequate, predictable flow of funds to sustain the court information technology infrastructure on which digital audio recording depends (page 8).
2. Implement a written plan to work with the Albanian Government to resolve the impasse within the Chamber of Mediators and to establish it as a functioning organization (page 9).
3. Develop a written plan for the National Chamber of Advocates to create a training department capable of managing a nationwide continuing legal education program. That plan should (1) set clear milestones and (2) condition future USAID support on achieving those milestones (page 9).
4. Implement a performance management plan by the fall of 2013 (page 10).

Detailed findings appear in the following section, and Appendix I contains information on the scope and methodology. Our evaluation of management comments is on page 11 of the report, and the full text of management comments appears in Appendix II.



This courtroom in Korca has a digital audio recording system that the JuST Project helped install. (Photo by OIG, April 2013)

AUDIT FINDINGS

Project Contributed Significantly to Mission Intermediate Results

The project activities described below are grouped by the IR they fall under in the mission's CDCS. They provide evidence that the project contributed significantly to the development objective of "strengthened rule of law and improved governance" in the justice sector.

IR1.1: Improving the Enabling Environment for Policy Reform and Planning

Law amended to mandate digital audio recording in courts. The project's signature achievement illustrates its approach to reforming policy. The Albanian Minister of Justice told us that some judges did not want digital audio recording in their courtrooms; he said the project's chief of party was his "personal hero" because of his skill in contacting court leaders to pave the way for its acceptance.

The project's staff also drafted procedures to ensure consistent digital audio recording practices, which the Ministry of Justice used as the basis for a June 2012 instruction it issued on implementation of digital audio recording throughout the court system, according to project reporting. In April 2013 the Albanian Parliament passed legislation that project staff helped draft, making audio recordings official court records. The deputy chairman of the High Council of Justice said the project has had a direct bottom-up impact on "changing the rules of the game" at a practical level in courtrooms, which then put pressure on officials to change rules and laws.

Law enacted mandating CLE. The project worked with NCA leaders to draft language for amendments to the "Law on the Legal Profession" to make CLE mandatory for all lawyers. These were enacted in September 2012 as drafted, and they will bring Albania in line with the legal education practices of most other European countries, according to a project report.

Court leadership conferences. IR1.1 states: "In the justice sector, USAID will promote improved dialogue through Court Leadership Conferences, in order to improve planning and implementation capacities and to encourage participatory policy reform processes." The project held a leadership conference in December 2010 that introduced the project to officials in Albania's justice sector, according to project reports, and a second in April 2012 that focused on improving court operations. The project also plans regional leadership conferences for each appellate district after all courts in the district have digital audio recording installed. It held the first in December 2012 in Korca and the second in March 2013 in Durres. The chief district court judge in Korca said many people participated and had an active discussion about problems.

IR1.2: Enhancing Citizen Oversight and Transparency

Digital audio recording. IR1.2.1 states in part: "In the judiciary, USAID will introduce verbatim recording, publication of court proceedings, and maximization of court room utilization where the hearings are truly open to the public." Installing digital audio recording only in courtrooms incentivizes judges to move sessions from their offices to courtrooms, according to the chief of party, thus increasing transparency and accountability. By March 2013, the project reported that it had installed audio recording systems in half of Albania's courts and planned to have all courts

equipped by the end of the calendar year. The chief judge of Pogradec District Court said project staff responded to his needs during installation and lived up to an Albanian saying, “They worked for me as though they were working for themselves.” The chief judge of Tirana District Court said the effect that digital audio recording has in moving hearings into courtrooms and out of judges’ chambers goes a long way toward increasing transparency.

Competitive “Grants under Contract” program. IR1.2.2 states that USAID will support CSOs in their advocacy for key reforms and regulatory changes and their “monitoring and watchdog type activities.” The project implemented a competitive grant program of about \$500,000 that focused on anticorruption and the courts. Its October 2011 quarterly report states that it developed an online forum to facilitate CSO cooperation, launched its first solicitation for grants in the summer of 2011, and conducted training to help CSOs with their proposals.

By March 2013, according to the contracting officer’s representative, the project had awarded a grant to a coalition of three CSOs and grants to six other CSOs, for a total of seven grants. The executive director of one CSO said she appreciated the project’s training on writing detailed and results-oriented grant applications, and that project staff meet with her staff every month to help build employee capacity in finance, report writing, and evaluations. She also credited the contracting officer’s representative with being actively engaged in discussions and meetings.

Support for investigative journalism. A key goal of IR1.2 is that USAID support monitoring and watchdog types of activities implemented by the media. The project supported investigative journalism by sponsoring the development of “Law School for Journalists.” In addition, the project invited 15 journalists to be justice reporting fellows and trained them to research and write about corruption. Participating journalists formed Albanian Journalists for Justice, an association that launched an Internet site—with the project’s help—to publish fair, accurate investigative reporting and to provide a forum for public comment. In January 2013, the U.S. Ambassador and mission director introduced the association and Web site. Journalists we spoke with were very happy with the project’s support and said the training was important in improving their ability to report on corruption in Albania.

IR1.3: Upgrading Performance and Management Capabilities

CLE pilot program. IR1.3.1 states that USAID will establish a CLE program for attorneys. According to project reports, project officials worked with NCA to establish and jointly fund Albania’s first CLE programs with the Durres and Vlora regional chambers. Classes ran from fall 2011 through June 2012 and had more than 160 training sessions on 12 legal subjects, such as criminal and civil law, ethics, commercial law, and legal writing. By June 2012, 322 people had attended—more than 70 percent of all lawyers and assistants registered in the two chambers. In March 2013 the project launched a third CLE program with the Fier regional chamber; the OIG audit team observed a training session there the following month that was well attended. The head of continuing education for the project’s training subcontractor, Albanian Center for Legal Trainings and Studies, told us the project brought in reputable trainers—respected law school professors with good reputations—whom lawyers want to hear.

Assist in creating a legal clinic at the University of Tirana law school. IR1.3.1 states: “USAID will assist in creating a legal clinic within the Public Law School to introduce critical thinking and provide hands-on case practice.” In its first two years, the project reported that progress was slow “ostensibly due to other pending curricular changes” at the school. The chief of party told us he is much more optimistic now because the new dean at the school genuinely wants the legal clinic. As of March 2013, the school reported that more than 95 students had

registered for three CLE programs, according to a project report. The same month, the chief of party and the dean signed a memorandum of understanding for project support in renovating rooms at the school for the legal clinic and a mock courtroom.

Assist magistrates' school in developing database of Supreme Court decisions. IR1.3.1 states: "USAID will also enhance legal research capacities for both the judiciary and practicing attorneys through the creation of a database of catalogued Supreme Court decisions and ratified conventions." The director of the School of Magistrates told us she was very satisfied with project staff, who she said helped develop a searchable database of Supreme Court decisions and in addition helped her develop control procedures for the school's entrance exam. She said they were not bureaucrats interested only in contract requirements, but were genuinely interested in a judicial branch that functions better with less opportunity for corruption.

Support to Union of Albanian Judges. IR1.3.1 states: "USAID will provide technical support to the judges' associations to provide them with the ability to manage their funds, conduct strategic planning, access funding within Albania, and increase their advocacy skills so that they can play a key role in judicial reform issues." The project reported that it worked with the Union of Albanian Judges on strategic planning, developing professional staff, obtaining office space, registering with tax authorities, and convening a conference of judges to address challenges facing the justice sector. By March 2013, according to the project report, the number of judges who belonged to the group had increased to 175 from about 45 when it began. The union president said JuST was the strongest project he has seen in 20 years due to the concrete "revolutionary" changes it is bringing to Albania's judicial system.

Install courtroom calendar management system. IR1.3.2 states: "[N]oting the inefficient use of court space, USAID will provide technical assistance to create a court room calendar management program and to improve the performance of the court chancellor, the court chairman and court administrative staff." The project reported that it developed courtroom-scheduling software (the e-calendar system) and installed it in 11 courts by March 2013, linking it with audio recording data to enable reporting to the Ministry of Justice on the use of digital audio recording by court, courtroom, judge, or case type. The deputy chair of the High Council of Justice told us the system was a significant achievement, and, if a district has enough courtrooms, judges no longer have an excuse to use their private chambers because they can now see which courtrooms are available and make a reservation.

Assistance introducing court-annexed mediation programs. IR1.3.2 states: "In order to address a severe court backlog, USAID will assist in introducing a court-annexed mediation program in a selected number of courts." The project launched two court-connected mediation programs in the district courts of Durres and Korca in the summer of 2011. The mission reported that the programs accepted 216 cases by the end of 2012, of which 147 were resolved in 10 days on average—compared with an average of 57 days for traditional litigation. In October 2012, the project launched a third program through a grant to a local NGO to implement its proposed mediation and restorative justice program. According to a project report, these programs give people another option to resolve conflicts without resorting to courts, thus reducing court case backlogs.

Some Project Activities May Not Be Fully Sustainable

USAID policy emphasizes the sustainability of development accomplishments. In fact, one of seven operational principles in USAID's Policy Framework (2011-2015) is to "build in sustainability from the start."

The JuST contract requires that design of project assistance "favor long-term solutions which could be performed by or taken over by existing Albanian institutions and organizations" when possible. According to the contracting officer's representative, Chemonics demonstrated a strong commitment to sustainability and has undertaken efforts beyond the contract's requirements to make sure activities were sustainable.

However, Chemonics and USAID/Albania officials reported three sustainability concerns that we validated relating to court information technology (IT) infrastructure, mediation, and CLE.

Court IT Infrastructure. The mission's November 2012 performance results assessment identifies the need for the Albanian Government to develop a long-term strategy for maintaining the IT infrastructure that the project's signature achievement—equipping courts with digital audio recording—depends on.

Because the audio recording system is integrated into the current case management system, for the audio recording to achieve its full potential, the case management system needs continued investments, specifically related to the connectivity between the district courts and appellate courts as well as the court websites. Until this is done, the courts will rely on CDs [compact discs] to distribute court hearing records. The project has raised this issue with the Ministry and steps are being taken to address it. Also the Government needs to adopt a long-term strategy to maintain the IT infrastructure to ensure long-term success.

As early as July 2011, the project reported that it faced a challenge with the "IT and communications infrastructure of existing courts"³ and noted that "in some courthouses, existing computers may be too antiquated to support the new technology and unanticipated infrastructure upgrades may be required." After assessing the technical infrastructure of every Albanian courtroom, the project team concluded that "full systems would have to be procured, rather than using existing (often antiquated) computer servers and workstations." Subsequently, in July 2012, the project reported:

[M]uch depends on Albanian Government follow-through with plans to modernize server capacity and network connectivity. While the Ministry of Justice has made progress . . . this area remains a potential challenge for full implementation, especially since the Ministry must rely on outside firms for much of this work. Moreover, budgets remain tight and there are no guarantees that routine upgrading of the IT infrastructure will occur.

³ For purposes of this report, "IT infrastructure" includes communications (network connectivity) as well as physical (computers and servers) infrastructure and the staff resources needed to maintain it.

During our fieldwork in April 2013, we observed that judges and court administrative personnel were using CDs to access audio-recorded sessions. The project chief of party confirmed that current IT infrastructure still does not allow a judge to access audio recordings directly from a central database; therefore, they rely on CDs. The mission's management comments clarify that judges and administrative personnel of a given court can access audio recordings directly from their own court's server, but need a CD to get recordings from other courts. For example, an appeals court judge who needs to review an audio recording from a lower court cannot access it with his or her computer directly from a central database, and so must get a CD of the recording from the lower court.

According to the chief of party, digital audio recording requires the Judicial Budget Office and the Ministry of Justice to coordinate on upgrading network standards and productivity. While the budget office holds the purse strings, the ministry oversees the IT function and relies on outside firms and short-term contracts to maintain the infrastructure. The ministry's IT director told us that the court budget has not included the necessary resources to modernize computer servers and to update and maintain court IT infrastructure.

The mission's management comments clarify that the problem does not stem from the Judicial Budget Office, which they said does a satisfactory job of assessing and planning for routine IT infrastructure upgrades and other IT investments. Instead, the comments state that the problem lies with the actual funding, and that the Ministry of Finance routinely cuts the court budget proposed by the Judicial Budget Office before the budget arrives in Parliament for approval.

The Albanian Government's insufficient funding of court IT infrastructure means that the digital audio recording installed by the JuST Project may not maintain its effectiveness and realize its full potential to help the Albanian judiciary. The ability of the courts to address this problem is limited, the chief of party said, because they can keep only about 10 percent of the fees they generate, with the rest going back to the government's general fund. He noted that, as a matter of judicial independence, some countries have a constitutional provision that requires a certain percentage of the state budget—typically 3 to 4 percent—be dedicated to court administration. To address this situation, we make the following recommendation.

Recommendation 1. *We recommend that USAID/Albania implement a written plan to help make sure the Albanian Government has an adequate, predictable flow of funds to sustain the court information technology infrastructure on which digital audio recording depends.*

Mediation. To provide an alternative to having judges resolve cases in courts, which have significant backlogs, the contract requires Chemonics to implement a demonstration mediation program in three district courts to resolve appropriate cases by a mediator instead. Although the project did this successfully, mediation is still relatively unknown and underused in Albania, according to the mission's November 2012 performance results assessment. The project took an important step toward addressing sustainability, the assessment reported, "by bringing together newly licensed mediators to form the Chamber of Mediators, the foundation for a new profession."

According to a new Albanian law enacted February 2011, the Chamber of Mediators is required to regulate the profession, and the JuST Project has been trying to help it do so. However, by the end of 2012, efforts to help establish the chamber reached an impasse because of disagreement over member voting rights. A provision in the new law enables entities, in addition to individuals, to be licensed as mediators. As explained in a February 2013 memo by the

project's legal specialist, some mediators think that people working for a licensed entity should have individual voting rights, even if they do not have a mediator's license. Other mediators think there should be only one vote per license, and therefore unlicensed mediators working for a licensed entity should not have individual voting rights. According to the memo, the issue of whether people within a licensed entity should have the same voting rights as licensed individuals is one of several potential problems stemming from a legal provision that enables entities, in addition to mediators, to obtain a professional mediator's license.

The absence of a functioning Chamber of Mediators to regulate the new profession places the sustainability of the project's mediation results at risk. Therefore, we make the following recommendation.

Recommendation 2. *We recommend that USAID/Albania implement a written plan to work with the Albanian Government to resolve the impasse within the Chamber of Mediators and to establish it as a functioning organization.*

Continuing Legal Education. NCA is the Albanian equivalent to the American Bar Association. Having it assume responsibility for CLE programs that the project started is key to their sustainability. To make sure this would happen, project staff helped draft language for amendments to the Law on the Legal Profession, enacted in September 2012, making NCA responsible for establishing a mandatory CLE program for all lawyers. The law requires NCA to establish a national school of advocates within 1 year to administer the program.

Despite this requirement, the project's chief of party said, NCA has not taken the steps one would expect to see in preparation for assuming management of the CLE activities and administering a nationwide CLE program by this fall. The project's September 2011 annual report states, "To date, NCA has failed to carry out its statutorily-provided duties of overseeing lawyer discipline and providing continuing legal education . . . to its members at a satisfactory level. NCA has organized ad hoc trainings and seminars for a very limited number of practicing lawyers but no well-established and organized CLE is in place."

The mission's November 2012 performance results assessment also noted that the lack of a training department within the NCA posed a serious threat to the sustainability of CLE and would make the implementation of a nationwide program difficult. These problems still had not been resolved in April 2013 when we conducted this audit.

It is not clear why NCA has not taken the administrative and managerial steps needed to hire staff and to establish a training department capable of taking over the CLE activities and managing a nationwide CLE program. EU and project officials we spoke with said they did not think insufficient funding was the problem; one JuST Project official said Albanian lawyers already pay NCA about \$1,000 a year in membership fees. This point was echoed by NCA's chairman, who said the organization could raise money through license and membership fees.

If NCA cannot meet its statutory duty, the sustainability of CLE activities would be at risk. Therefore, we make the following recommendation.

Recommendation 3. *We recommend that USAID/Albania develop a written plan for the National Chamber of Advocates to create a training department capable of managing a nationwide continuing legal education program. That plan should (1) set clear milestones and (2) condition future USAID support on achieving those milestones.*

Mission Did Not Have Performance Monitoring Plan

According to USAID policy at Automated Directives System (ADS) 203.3.3, “Performance Management Plan,” a mission’s PMP helps it monitor, evaluate, and analyze progress toward achieving results identified in its CDCS and project LogFrame.⁴ The ADS provision requires missions to prepare a mission-wide PMP that includes performance indicators, baseline data, and targets for the CDCS results framework and project LogFrames. The provision includes the following criteria for when a mission should develop its PMP:

Experience has shown that four to six months after CDCS approval is the right timeframe to develop PMPs that include well-defined indicators at the Goal, [development objective], and [intermediate result] level.

The mission has not had a PMP since about 2002, the program officer said. It has been relying primarily on project PMPs and mission portfolio reviews to track progress and contributions to mission goals. She said the ADS requirement to develop a PMP is not triggered until the mission’s CDCS is approved, and USAID/Albania’s CDCS is dated November 2011. However, she agreed that the mission had not met the “four to six months after CDCS approval” criteria set forth in ADS. If it had, it would have had a PMP by the spring of 2012.

The mission director attributed some of the delay to uncertainty regarding USAID’s transitional strategy and plans for regionalization; the Agency has proposed changing USAID/Albania into an office by fiscal year 2014. Nevertheless, the mission director and program officer said the mission plans to have a PMP by this fall to comply with ADS and has taken steps—including scheduling training in July 2013—to make that happen.

Because the mission does not have a PMP, the mission is not receiving the benefits described in ADS 203.3.3. Therefore, we make the following recommendation.

Recommendation 4. We recommend that USAID/Albania implement a performance management plan by the fall of 2013.

⁴ ADS 200.6 defines LogFrame as a logical framework that is a rigorous methodology used when designing projects to focus on the links among project inputs, outputs, and desired outcomes.

EVALUATION OF MANAGEMENT COMMENTS

In its comments on the draft report, USAID/Albania agreed with Recommendations 1, 3, and 4. Recent developments represent final action taken on Recommendation 2, and the mission has made management decisions on the remaining recommendations. We acknowledge these management decisions.

Recommendation 1. USAID/Albania will include a special covenant in its bilateral development objective agreement requiring the Albanian Government to retain and sustain USAID investments made through the JuST Project. It expects the agreement will be signed by October 30, 2013.

Recommendation 2. USAID/Albania states that the impasse over member voting rights was resolved in July 2013 by a decision of the Ministry of Justice and that the Chamber of Mediators is established. As a result, final action has been taken on this recommendation.

Recommendation 3. USAID/Albania agreed to develop a written plan with clear milestones for creating the training department by December 31, 2013, and to terminate assistance if NCA fails to achieve them.

Recommendation 4. USAID/Albania agreed to have a cleared and approved PMP in place by November 30, 2013.

We appreciate the mission's suggestions for clarifying our report and have revised the report accordingly.

The Audit Performance and Compliance Division of USAID's Office of the Chief Financial Officer will make a determination of final action on completion of the corrective actions. The mission's written comments on the draft report are included in their entirety as Appendix II.

SCOPE AND METHODOLOGY

Scope

OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions in accordance with our audit objective. We believe that the evidence obtained provides that reasonable basis.

The objective of the audit was to determine whether USAID/Albania's JuST Project was improving the enabling environment for policy reform and planning, enhancing citizen oversight and transparency, and upgrading performance and management capabilities in the justice sector. USAID/Albania is implementing the project through a 5-year cost-plus-fixed-fee contract of about \$9 million to Chemonics from October 2010 to September 2015. The primary objective is to improve the performance of the justice sector and to strengthen the watchdog and anticorruption roles of civic organizations and the media.

The contract has three components: Court Transparency, Fairness, and Efficiency; Civic Engagement; and Education of the Legal Profession. The audit evaluated the project's progress in all three. It also tested data the contractor used to measure progress toward the project's goals, as described at the end of this appendix. Because the performance indicators we tested are qualitative rather than financial in nature, the requirement to identify the amount tested in relation to the total amount audited is not applicable to this audit.

OIG conducted audit fieldwork in Albania from April 4 to April 30, 2013. We conducted our fieldwork at USAID/Albania and the implementing partner's office in Tirana, and at Albanian Government agencies and beneficiary sites in and around the cities of Tirana, Pogradec, Gjirokaster, Korca, Fier, and Durres. The methodology section below lists organizations where we conducted audit work. Our audit covered the period from mission planning for the project until the end of our fieldwork on April 30, 2013, about halfway through the 5-year performance period.

In planning and performing the audit, we gained an understanding of the project's design, principal activities, and progress toward its goals. We assessed management activities and the significant controls established by USAID/Albania and Chemonics, including the contract and accompanying modifications; annual work plans; PMPs; annual and quarterly progress reports; and mission portfolio reviews. We reviewed USAID/Albania's mission order for monitoring and evaluation, its project approval document, its contractor performance assessment reports for fiscal years 2011 and 2012 of the project, and selected contracting officer's representative trip reports to project activity sites. We assessed the risk of potential problems related to sustainability and gender inclusion, and tested data Chemonics used to measure progress toward the project's goals as described below.

Methodology

To answer the audit objective, we gathered a broad range of testimonial, documentary, and observational evidence to inform our determination as to whether project results were

contributing to related intermediate results in the mission's CDCS. We tracked how USAID/Albania and Chemonics measured progress by reviewing key project documents, such as the contractor's annual work plans, PMPs, and quarterly and annual progress reports. We interviewed officials from USAID/Albania, including representatives from the program, contracting, and technical (rule of law) offices. We also interviewed the contractor's chief of party and other staff members, including component leads.

To learn how stakeholders and beneficiaries view the project's contributions, we conducted site visits and interviews to gather additional observational and testimonial evidence from stakeholders and beneficiaries including:

- The High Council of Justice, the Ministry of Justice, and the Judicial Budget Office
- Judges and administrative personnel from the Tirana, Pogradec, Korca, and Durres district courts, and the Tirana, Korca and Durres appellate courts
- A Supreme Court justice
- The Magistrates' School, NCA, a regional Chamber of Advocates (Fier), and the University of Tirana law school
- The Union of Albanian Judges
- The Journalists for Justice Association
- NGO/civil society officials from Partners Albania, the Center for Civic and Legal Initiatives (and students), the Albanian Foundation for Conflict Resolution, Community Center of Gjirokaster, and the Albanian Center for Legal Trainings and Studies
- CLE pilot program law professors
- Mediation beneficiaries
- The team lead for the EU's Euralius Project
- The head of the Rule of Law and Human Rights Department of the Office of Security and Cooperation in Europe's Tirana office

We tested a judgmental sample (not projectable to a broader population) of data the contractor used to measure and report progress on its performance indicators and verified reliability and validity. Data sampled covered indicators from each project component and came from the project's FY 2012 annual implementation report and January-March 2013 quarterly progress report. We selected 17 data from 9 of 22 performance indicators reported in the contractor's February 2013 PMP,⁵ which covered about 40 percent of the indicators.

⁵ The Consolidated List of Indicators shown on page 14 of the February 2013 PMP actually shows 28 performance indicators, but we subtracted 2 index indicators ("World Bank Governance Indicator" and "NGO Sustainability Index") and 4 indicators relating to establishing a legal clinic at the University of Tirana law school, for which no actual data has yet been reported.

MANAGEMENT COMMENTS



August 28, 2013

Memorandum

To: IG/A/PA Director, Steven Ramonas

From: USAID/Albania Mission Director, Jim N. Barnhart /s/

Subject: Management comments of Audit of USAID's Albanian Justice Sector Strengthening Project (Report No. 9-182-13-00X-P)

I would like to thank you for the draft audit report on USAID/Albania's Justice Sector Strengthening Project (JUST), and the opportunity to provide comment before the report is finalized.

We very much appreciated the collegial spirit, honest discussions and hard work that were demonstrated by IG staff during their one month stay in Albania.

As a general comment, I note that the language of the draft report does not capture a main finding that was expressed during the exit conference in-country and during the exit teleconference: that the JUST project has been remarkably successful, has made substantial improvements to Albania's judicial system in a challenging environment, and is highly appreciated by counterparts across the board. I believe it necessary that the final report should effectively communicate this essential finding. It is also important to provide background on what has enabled this success: sound and careful project design, dedicated and capable project leadership, and very pro-active engagement by Mission staff with Government of Albania counterparts, Albanian judges and Albanian lawyers.

Please find USAID/Albania's specific comments to recommendations below.

Recommendation 1. *We recommend that USAID/Albania implement a written plan to help make sure the Albanian Government has an adequate, predictable flow of funds to sustain the court information technology*

USAID/Albania's response: We agree with the recommendation. The Mission will require the Government of Albania's commitment to the sustainability of USAID's efforts through the signing of the bilateral Development Objective Agreement (DOAG). The DOAG will include a Special Covenant that requires the government to retain and sustain USAID investments made through the JuST project. The DOAG will be signed by October 30, 2013.

As the audit report correctly points out, GOA funding for court IT infrastructure on which audio recording depends is not sufficient. The concern is specifically with computers, server capacity, network connectivity and the reliance on CDs for accessing court audio records.

We wish to clarify that the required IT maintenance and upgrade to which this report is referring is not specific to the Digital Audio Recording (DAR). Thanks to rapid advancement in IT technologies, the DAR that is being implemented in Albania software with low operating requirements, meaning it does not rely on any special operators or equipment other than those routinely used by the courts in their everyday business, such as computers, workstations and servers, which Albanian courts have had in place for over ten years. Although not adequately funded, maintenance and upgrade has not proven to be a meaningful impediment to another existing IT system, the electronic case management system (ICMIS), which has been in place in the courts for over 5 years now, and which relies on the same IT equipment as audio recording.

In addition, we wish to highlight that the GOA has become increasingly more aware of the importance of IT investments in the courts, including operations and maintenance. The improvement of court IT infrastructure is already amongst the priorities of MOJ as laid out in its Strategic Plan of 2011-2013. The MOJ has established a special IT Directorate, currently composed of 7 persons, that covers court IT infrastructure. Contracts with specialized IT private companies for the maintenance and improvement of the court IT infrastructure are in place and are funded through the MOJ budget. The Judicial Budget Office's assessment and planning for routine IT infrastructure upgrades and other IT investments are satisfactory, with a positive trend in actual funding. Thus, as of March 2013, implementing legislation has made it possible for the courts to keep 10% of their service fees, a provision that had been in place for a long time, but which had not been implemented before due to a lack of government action.

We plan to continue work with the Judicial Budget Office and the MOJ to highlight the importance of adequate planning and funding for court IT infrastructure, focusing particularly on the issue of court interconnectivity, so that judges of other courts can access the recordings of a different court directly from their computers without relying on CD media.

We wish to recommend three clarifications to the report regarding details of court IT Infrastructure:

The second sentence in the first paragraph on page 5 states, "The project chief of party confirmed that current IT infrastructure still does not allow a judge to access audio recordings directly from a central database therefore, they rely on CDs." We wish to clarify this is accurate in referring only to judges of other courts (for example, those of the courts of appeals) who need to access audio recordings of a different, lower level court. All judges and administrative personnel of a given court, however, do have access to all of the recordings of that same court,

as the audio files are stored in the main server of the court. This distinction is important.

The first sentence of the second paragraph on page 5 states, “According to the Ministry’s IT director, the Judicial Budget Office’s budget for courts has not included the necessary resources to modernize computer servers and update and maintain court IT infrastructure.” As explained above, the problem lies with the actual funding, and not with the planning of the Judicial Budget Office, which we have found to be exercise sound budgetary practices. The court budget compiled by the Judicial Budget Office is cut routinely by the Ministry of Finance before it arrives for approval in Parliament.

The last sentence of the second paragraph on page 5 states, “The team lead of the European Union (EU)’s Euralius Project..., said that the Ministry of Justice has only one permanent person in its IT department, which is not adequate to oversee court IT infrastructure.” We find this statement from the team lead of Euralius to be inaccurate. As indicated above, the IT Department is composed of 7 persons, with whom we have had very good working relationships since the beginning of this project.

Recommendation 2. *We recommend that USAID/Albania implement a written plan to work with the Albanian Government to resolve the impasse within the Chamber of Mediators and to establish it as a functioning organization.*

USAID/Albania’s response: The Chamber of Mediators was established on July 7, 2013. It has been duly registered with tax authorities and is already operational. USAID, through the JuST Project, intends to support the newly established Chamber in the upcoming project year to increase its organizational and financial capacities.

The impasse because of disagreement over member voting rights was resolved in July, 2013 by a decision of the MOJ to limit the voting rights to the licensed mediators who were also duly registered in the Mediator’s Registry of the MOJ. A licensed mediator can be registered in the Mediators’ Registry only after he/she/it is duly registered with Albanian tax authorities. We believe the MOJ took the right approach in that only duly registered mediators (those who are also registered with tax authorities) can be considered active mediators, and therefore, can have decision making powers in the Chamber of Mediators.

Recommendation 3. *We recommend that USAID/Albania develop a written plan for the National Chamber of Advocates to create a training department capable of managing a nationwide continuing legal education program. That plan should (1) set clear milestones and (2) condition future USAID support on achieving those milestones.*

USAID/Albania’s response: We agree with the recommendation. USAID in cooperation with the National Chamber of Advocates (NCA) will have developed a written plan with clear milestones for the creation of the training department by December 31, 2013. If the NCA fails to achieve those milestones, USAID will terminate assistance to the NCA. If NCA fully cooperates in this endeavor, we expect that the NCA will have a training department in place and capable of taking over the CLE and expanding it nationwide by the end of CY 2014.

The need for a training department to oversee and facilitate the implementation of CLE was initially provided for in the Memorandum of Understanding (MOU) of May 12, 2011 between

USAID and the NCA. According to that MOU, the NCA was to establish the training department two years ago. As of today the NCA has not yet established a training department capable of managing the CLE. Some of the functions expected to be carried out by this department were, as a result, exercised by the training provider in cooperation with the local chambers. In the absence of a functional training department and any plans for the roll out of the CLE, it is very unlikely that the CLE will extend nationwide in its third year, as contemplated by the MOU.

As we approach the third and the last year of our funding for the CLE in accordance with Item 6 of the MOU, the action plan for the training department becomes a necessity for the continuation and sustainability of the CLE beyond our assistance. The MOU already has a provision indicating USAID's intention to terminate support for the program by the third year unless an action plan for its implementation throughout Albania is adopted.

During the initial years of implementation of CLE, we have been building the necessary demand. The more lawyers we are training, the more we are increasing the pressure on the NCA to assume its responsibilities. Ultimately, we believe that it is not USAID funding that will be the determining factor, especially since the NCA does not have financial difficulties, as the report correctly notes. It is the demand from lawyers themselves who have come to value and depend upon CLE that will make the activity self-sustaining.

Currently, the NCA's efforts are focused on the establishment of the School of Advocates, which is also charged with the administration of the CLE. We believe that the establishment of the training department fits very well with those efforts, and can serve as an interim solution until the School is established, and it can be later transferred within the School once it is in place.

Recommendation 4. *We recommend that USAID/Albania implement a performance management plan by the fall of 2013.*

USAID/Albania's response: We agree with the recommendation. The Mission hosted a PMP workshop the last week of July 2013 and is planning to complete the Mission-wide PMP during the first two weeks in September 2013. The Mission will have a cleared and approved PMP in place to track performance of its CDCS by November 30, 2013.

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