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UNITED NATIONS

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JSAP Final Reports

The attached Final Report is one of seven prepared by the staff of JSAP's regional offices and its special office in Livno. They are intended as "handover documents" to provide the Independent Judicial Commission and other agencies involved in judicial reform with a "snapshot" of the state of the judicial system throughout Bosnia and Herzegovina as of November 2000. There was no standard format for these reports. Each team was able to focus on the particular problems and concerns which it had dealt with in its area of responsibility. The reports do not purport to cover all of the work of JSAP during the period of its mandate (November 1998 – November 2000). Instead, they are intended to serve as a guide for international community and the legal community of Bosnia and Herzegovina in their attempts to reform the judicial system and establish the rule of law.

The views expressed in these reports are those of the regional teams, and may not reflect the opinions of JSAP's Main Headquarters, UNMIBH or the United Nations.

1 Introduction

This final activity report will explain the judicial developments that have unfolded in Canton 10 since JSAP chose to open an office in Canton 10's principal town of Livno in February 2000. After a brief political summary, and a review of JSAP's thematic report on Livno prosecution, this report focuses on JSAP monitoring of judicial officers (Minister of Justice, prosecutors, judges) as well as sensitive cases.

During the 1992-95 war in Bosnia and Herzegovina (BiH), the Bosnian Croats, led by the HDZ, consolidated their power by forming the "Republic of Herceg-Bosna", and creating parallel government structures, including a judiciary, as part of HDZ's political aspirations to form a purely Croatian entity capable of secession to the Republic of Croatia. The 1995 Dayton Agreement frustrated these plans. Nevertheless, as much as possible, the Bosnian Croat leadership led by the HDZ has continued to govern the areas under its control as a Croat entity within the Federation of BiH. The political message to BiH and the international community is quite transparent: the HDZ has and will continue to frustrate the development of the Federation of BiH with hopes that it will outlast the local and international political will to maintain the integrity of the pre-war BiH territorial boundaries.

Among the Croat majority areas¹, Canton 10 stands alone as the most obstructionist canton in the Federation. The reasons for this are several. First, Canton 10 shares a border with the Republic of Croatia and thus its separatist aspirations are not hindered by geography as they are in the Middle Bosnia Croat communities in Cantons 6 and 2. Second, Canton 10 essentially escaped close international attention from 1995-98 as international community focus for improved Croat-Muslim relations lay in the City of Mostar. Third, the grasp of power enjoyed by Croat officials in Canton 10 is much more vulnerable than it is in Cantons 3 (Posavina) and 8 (Siroki Brijeg). This third point is largely a result of demographics. While employment law and property law implementation and return are a mere nuisance to the overwhelming Croat majorities in Cantons 3 and 8, any substantial minority returns and representation in government in Canton 10 is a considerable threat to Croat majority status² in Canton 10, and thus to separatist aspirations.³ Recent political developments such as the HDZ call for a referendum on statehood in this upcoming election support the proposition that the Canton 10 HDZ enjoys strong support from HDZ representatives in the Federation.

However, nationalist politics is but one motivating force behind obstruction of the rule of law; the other is purely financial: fraud and corruption. Like other parts of BiH, political control of a canton, post-Dayton, has meant substantive control over the process of privatizing that canton's state-owned companies. The same blueprints for privatization fraud drafted and carried out in the early 1990's in then HDZ-led Republic of Croatia, have been

¹ In addition to the Canton 10 ("Herceg-Bosna"), Croat majority cantons exist in Canton 3 (Posavina), and Canton 8 (Western Herzegovina). Also, the Northern portion of the Canton 7, and specific towns within Cantons 6 (Middle Bosnia) and 2 (Zenica-Doboj) are majority Croat areas.

² Before the war, Canton 10 did not exist in its present boundaries, and a close look at the 1991 census reveals that Croat voting power (49% of population) is matched by that of Serbs (40%) with a minority of Muslims (10%).

³ Many of the principal figures in Republic of Croatia's former ruling party HDZ were born in the Canton 10 region and continue to exercise control over the local politicians who are more and more exposed as mere puppets to external Croatian forces. Local nationalist sentiment is powerful in its own right. On 4 December 2000, upon learning of his decertification as Minister of Interior Branko Matić defiantly wrote High Representative Petritsch about the "sanctity of the Croat (illegal) insignia" and its link to the "Croat people's fight, and continuing dream for freedom".

employed more recently in Canton 10 by the directors and boards of formerly state-owned companies.⁴ As in Croatia, these company heads are invariably part of the leadership of the HDZ party and thus have continued to enjoy favors from the government institutions overseeing privatization, and protection from prosecution for activities amounting to clear cut privatization and/or co-capitalization fraud. The Livno Bus case, covered later in this report, represents a prime example of the sort of fraud that prompted the OHR to suspend the privatization process in this and several other companies in Canton 10.

The political and monetary aspirations of the ruling party in Canton 10 can only be achieved by maintaining a weak, politically motivated law enforcement system. Though such a weak system was inherited from Yugoslav times, these conditions continue to be maintained through a selective under-staffing and under-financing of the judicial establishment, and the selection of a mono-ethnic, highly politicized judiciary.

2 The JSAP Thematic Report and its Recommendations

2.1 The July 1999 Inspection of the Livno Municipal Prosecutor Office

The JSAP Bihac team carried out an inspection of the Livno Municipal Prosecutor's Office in July 1999, supported by Sarajevo and Mostar JSAP teams, as well as the UNMIBH Human Rights Office. The inspection report⁵ included 1) general findings, 2) specific case analysis, and 3) general recommendations for the prosecutor's office and the law enforcement system as a whole. A summary of the report is represented below in three parts.

2.1.1 General Findings

- The study determined that the Livno criminal justice system has consistently failed to apply fundamental judicial principles in both minority-related and other cases.
- Delays were detected at every stage. Sometimes police delayed submission of criminal report to the prosecutor, although police investigation was completed. In other cases, the prosecutor neither respected deadlines for submitting indictments after completion of his investigation, nor did he inform the injured party of his decision on withdrawal from criminal procedure. Further, the investigative judge delayed completion of investigations while the presiding judge (then Katica Tadic) did not schedule the hearings within the deadline prescribed by the Law on Criminal Procedure.
- The Municipal, as well as the Cantonal Prosecutor failed to fulfil their duty to take necessary steps to guide the preliminary criminal proceedings and supervise activities of the police pertaining to the identification of crimes and their perpetrators. This was especially true during the April 1998 Drvar cases including the double homicide of the Serb couple and the violent riot of Croat residents. Prosecutors were found to be passive during the trial hearings.

⁴ During recent judicial investigation of the Livno Bus case, the company lawyer, and current minister of justice, confessed to not drafting the co-capitalization agreement, but rather receiving the agreement in boiler plate form from a Zagreb firm. Also, a majority of the co-capitalized companies in the region have used the auditing services of a Croatian company run by a Croatian citizen, Tihomir Lukovic. JSAP interviews with various law officials have both confirmed his role in the alleged fraud, and law enforcement officials' reluctance to pursue his prosecution.

⁵ *Thematic Report 2: Inspection of the Municipal Public Prosecutor's Office in Livno, Canton 10, During 5-16 July 1999*, JSAP/UNMIBH (Sept. 1999).

- JSAP found that the system was unable to handle repeat offenders and notorious suspects. It appeared that these suspects enjoyed immunity from punishment.
- There was also poor communication among the police, investigative judge and prosecutor.
- Shortcomings were found in the recordkeeping and tracking of the progress of cases in the prosecutor's office. The supervisory role of the Cantonal Prosecutor over the work of the Municipal Prosecutor had failed. Not only had Cantonal Prosecutor failed to instruct Municipal Prosecutor regarding his work, but he also did not use his lawful right to directly exercise any of the rights of the Municipal Prosecutor.
- A pattern of discrimination against minorities in both judicial procedure and police practice was found (arson cases in Drvar, double homicide in Drvar, Drvar riots, Boro Brnic murder case in Livno and Popovic case). There was significant evidence of neglect of the European Convention on Human Rights (ECHR).

2.2.2 Specific Case Analysis

- Drvar riots case JSAP recommended that a change of venue should be made due to the lack of impartiality and delay throughout the procedure (see infra for more complete analysis).
- Double homicide of the Serb returnee couple in Drvar Local police failed to secure the crime scene and to interview some of the suspects. The prosecutor also failed to play his supervisory role over the work of the police. The case was closed without finding a perpetrator.
- Sefik Torlak murder case (murder committed by Boro Brnic) The prosecutor showed total passivity and did not support the secondary victim in her proposals to hear a second opinion concerning mental capacity of the suspect. Many other procedural mistakes were made. The case ended with a final court verdict confirming the mental incapacity of the suspect, based on the opinion of only one expert witness. According to the current Law on Courts for Canton 10, appellate procedure ends up at the cantonal level. Although the secondary victim submitted a request for an extraordinary legal remedy, the Supreme Court only proclaimed irregularities, since according to the Federal Law on Criminal Procedure it could have not cancelled the second instance court decision.
- Notorious suspect Darko Kristo (serious bodily injuries inflicted on Damijan Mihaljevic) Fourteen different police officers took statements from Kristo (leader of Dobro village gang) and there were no indications in the file that the prosecutor had given any instructions to the police. Also, after investigation had been completed, the prosecutor did not submit indictment within the deadline prescribed by the Law on Criminal Procedure. The trial, conducted by Judge Bralo, was marked by numerous witnesses giving testimony that changed markedly from their testimony during the investigative phase. The more recent testimony tends to favor Kristo's theory that he acted in self-defense. A decision is expected shortly. The court demonstrated a complete inability to reprimand or control untruthful witness statements, and the prosecutor has appeared equally unwilling to expose these inconsistent statements as weaknesses in the defense.

- Police brutality case towards Fabijan Pasalic The prosecutor abandoned prosecution at the request of the injured party, although the procedure was supposed to be conducted “ex officio”.

2.2.3 JSAP Recommendations

- A qualified prosecutor to be appointed for Drvar and Bosansko Grahovo⁶
- Livno/Drvar Municipal Prosecutor to be placed on probation period⁷;
- An international lawyer to be assigned to collocate with the prosecutor in Livno
- Representatives of minorities to be appointed in the judiciary in Canton 10
- Processing to begin in cases involving notorious suspects, as well as to establish court police.

Comment: In addition to providing JSAP with a yardstick by which to assess the progress of Mr. Duic while he remained on probation, the July 1999 report sent a warning to Cantonal Prosecutor Bradaric and included sound recommendations for improving prosecutor-police cooperation, as well as his supervisory role over Mr. Duic and other Canton 10 municipal prosecutors. The July 1999 Report placed a bright spotlight on the Canton 10 Justice Ministry’s (Minister Stipo Babic) failures to provide adequate numbers of judiciary officials to the canton, especially to the traditionally Serb towns of Drvar and Bosansko Grahovo. OHR’s review of the July 1999 Report, and subsequent discussions with the Justice Ministry resulted in OHR’s decertification of Justice Minister Babic (decided September 1999) from his justice ministry office and any future public offices in the Federation.

3 Actions Taken by Livno Team to Improve the Effectiveness of the Judiciary

The probation period of Livno Prosecutor Jakov Duic demonstrated for JSAP and the international community just how reluctant the prosecutors and Canton 10 government officials were to make the necessary changes to establish rule of law in the Canton. In October 2000, JSAP began preparations for the probation that would take place under the direction of an international prosecutor⁸ co-located with Mr. Duic. On 9 November 2000, just prior to the arrival of the JSAP officer, Mr. Bradaric and Mr. Duic confirmed receipt of the July 1999 Report with all its recommendations. From the beginning, the JSAP officer saw no local interest in cooperating with this constructive approach to improving the rule of law. Rather, Mr. Duic continued to flout the rule of law in the same manner explained in the July 1999 Report. His complete failure to live up to professional standards was best summed up by the SRSG’s letter of 31 January 2000 which stated that the prosecutor’s office in Livno “would be better left empty than to be filled by a man who has disregarded international oversight and shown little interest in fulfilling his duties.”

Although JSAP’s hopes for Mr. Duic’s improvement were dashed quite quickly, the probation period provided JSAP with a closer look at government obstruction to the rule of

⁶ As of today this prosecutor has not been appointed. On Dec 24th 1999, Cantonal Assembly appointed a Croat candidate Komso (without any working experience in judiciary), and did not take into consideration application of a Serb candidate who was working as a prosecutor prior to this war.

⁷ During probation period when the work of the Municipal Prosecutor Livno/Drvar Jakov Duic was supervised by JSO Eva Lynghjem, serious shortcomings and breaches of law continued. As a result of this, Jakov Duic was dismissed in May 1999, and his job was taken over by the Cantonal Prosecutor Livno Goran Bradaric.

⁸ JSAP and local authorities arranged for Eva Lynghjem, then of the Sarajevo team, to work inside the Livno municipal prosecutor offices in order to monitor Mr. Duic’s progress closely.

law.⁹ First, during the same probation period, Cantonal Prosecutor Bradaric politely and stubbornly refused to exercise any supervisory control over his municipal prosecutors, against local law and against JSAP recommendations. He similarly refused to take over any of the Drvar case load despite the lack of a Drvar prosecutor, and despite his own admissions that his delegation of Drvar and Bosansko Grahovo prosecutions to Mr. Duic created an impossible task for *any* prosecutor. In short, Mr. Bradaric remained content to handle only his excessively light caseload while sitting across the hall from a prosecutor who was clearly failing under the weight of his task. Second, the cantonal government similarly ignored its responsibilities under the law. Namely, the government allowed the justice ministry post to remain open for over three months, and only succeeded in advertising for the Drvar prosecutor post after receiving ultimatums from the OHR. This period demonstrated to the international community that rule of law problems in Livno carried far beyond the office of the Livno Prosecutor, and triggered the opening of the JSAP-Livno sub-office in February 2000.

Upon the opening of the JSAP Livno office, the JSAP team in Livno¹⁰ worked on several different fronts. First, the Livno team developed a close working relationship with the newly appointed Canton 10 Minister of Justice. Second, the team continued to monitor the post-JSAP report activities of the cantonal and municipal prosecutor's offices. Third, the team began monitoring the work of the three municipal courts in Canton 10 and the cantonal court. It was clear from the first that improvements to the rule of law in Canton 10 would only be possible through the co-ordinated efforts of the international community. Thus, while remaining focused on the justice ministry, and judicial and prosecutorial fronts, the JSAP team developed productive partnerships both within the UNMIBH system and with other international actors, especially OHR. This international community co-ordination was aimed at removing rule of law obstacles while simultaneously strengthening the bond between Canton 10 and the Federation government.¹¹ Accordingly, the first three portions of this section – 3.1 Canton 10 Justice Ministry and Government, 3.2 Canton 10 Prosecutor Recommendations, and 3.3 Canton 10 Court Recommendations – will include specific cooperative efforts between JSAP and the rest of the international community, as well the JSAP team's recommendations about improving the judiciary. However, the fourth and final section will contain a sobering account of local and Federation-level obstruction in the resolution of several unresolved corruption and fraud cases. Recent events strongly indicate that neither local nor federation law enforcement authorities have the political will or political ability to prosecute such crimes.

3.1 Canton 10 Justice Ministry and Government

In the wake of considerable international community reservations¹² about her appointment, Minister of Justice Borjana Kristo has been a reluctant and tentative advocate for judicial

⁹ JSAP-HQ withdrew the prosecutor from Prosecutor Duic's offices on 22 January. However, within one month, JSAP opened a sub-office in Livno to carry on prosecutorial monitoring, but also to begin close work with the municipal courts and the justice ministry.

¹⁰ After being assigned to the Bihac Region on 1 February 2000, John Furnari covered Canton 10 from Bihac until moving to open the Livno sub-office 1 March. By 15 March, through close cooperation with Livno-IPTF, Ms. Sanja Robovic was assigned by IPTF to assist JSAP-Livno with oral and written language translation.

¹¹ JSAP initiatives directed at strengthening the Federation-Canton 10 bond discussed *infra* include a) Federation Prosecutor oversight of Canton 10 prosecution, b) Federation Financial Police activity in the growing number of highly political corruption cases, c) Unilateral Federation Prosecutor Commission activity on Canton 10 prosecutor appointment procedure, and d) Pushing for Canton 10 Judiciary recognition of Federation Constitutional Court decision regarding illegal insignia.

¹² In addition to not having passed the BiH bar exam yet, Minister Kristo came into office under the cloud of corruption related to the ongoing Livno Bus investigation. This cloud emanates from the fact that, prior to her ministry position, Minister Kristo worked as company lawyer for the Livno Bus Co, during the period under investigation. A clear conflict immediately arose from her new position as ultimate supervisor of the judiciary (prior to the passage of the new law on judicial service) and possible subject of investigation in the fraud case before the municipal court.

reform and independence in Canton 10. She clearly has walked into an uncomfortable position between the *rock* of international community demands for Dayton implementation, judicial independence and law reform and the *hard place* of the hard-line government that cynically placed her in the justice ministry post. In early meetings in February 2000, the JSAP team learned that Kristo had little experience, no claimed contact with her predecessor¹³, and no support from the Government that had appointed her. The Canton 10 government's lack of respect for Minister of Justice Kristo and OHR directives was blatant.¹⁴ Notwithstanding her pitiful circumstances, she offered the JSAP Team a somewhat positive attitude and politically-calculated efforts toward improving the judiciary in Canton 10. Though she is far from courageous in her reform efforts, she has represented a marked improvement over her predecessor.

The five-month lapse between the decertification of Justice Minister Babic and the appointment of Minister Kristo had added even more urgency to the deteriorating rule of law situation in Canton 10. Thus, the JSAP team quickly demanded, and begrudgingly were given¹⁵, weekly meetings with Minister Kristo to address a long list of administrative and legal matters that needed the Minister's attention. Through the JSAP Team's constant negotiations, recommendations, and periodic use of pressure through close consultations with OHR-Mostar, Minister Kristo has either resolved or has taken substantial strides toward resolving the following list of legal matters plaguing the canton. As explained below, most of these matters required considerable engagement by the JSAP Team and other international community actors.

- unlawful government action in the appointment of the Drvar Prosecutor
- the need to replace Livno Prosecutor Duic for failure to carry out his duties
- the need for the Federation Prosecutor to fill the prosecutorial void in Canton 10
- the unlawful failure of the Ministry of Justice to provide any deputy prosecutors
- the unlawful failure to provide the Ministry of Justice with a minority deputy and an assistant minister
- the unlawful failure to provide requisite Cantonal and Municipal Court Judges
- inadequate numbers and ethnic representation of judges and prosecutors
- illegal insignia in the judiciary
- the need for security in the canton's three municipal court buildings

It was immediately clear to JSAP that Minister Kristo's ability to address these issues would be impossible given the current (March 2000) cantonal leadership of Governor Ivan Ivic, Prime Minister Mirko Mihajlevic, and Assembly President Ante Omazic.¹⁶ Strong international community presence would be a prerequisite. Thankfully, JSAP's arrival in

¹³ OHR decertified former Justice Minister Stipo Babic in September 1999. After a three month government delay in starting the appointment process, Minister Kristo came into office without any handover meetings with Babic, and without any knowledge of the 1999 JSAP inspection or report.

¹⁴ First, the government allowed the decertified, former Minister Babic to keep an office two doors down from Ms. Kristo leading many in the international community to conclude that Kristo was merely a puppet of Mr. Babic. Second, the government provided her with no assistant, and - against a two year old power sharing agreement - failed to appoint a minority for the Deputy Minister of Justice position. Third, the Governor and the Prime Minister disregarded her written requests for information and movement on a series of issues.

¹⁵ After the decertification of Minister of Justice Stipo Babic, and Minister of Interior Letica, Canton 10 authorities created a new government post called "international community liaison". The liaison's sole purpose was to form a buffer between the international community and ministry officials. Minister Kristo's attempts to control JSAP visits in this manner were unsuccessful.

¹⁶ By early February 2000, JSAP had already witnessed the dishonorable behavior of Governor Ivic through his illegal appointment of an unqualified Croat as Drvar prosecutor instead of a highly qualified Serb applicant. Also, the Livno team received valuable political information from Livno Civil Affairs Officer Steven Thoms who had spent over a year studying the Canton 10 political apparatus.

Livno almost immediately prompted increased activity of OHR-Mostar in Canton 10.¹⁷ Coordination between the Livno team and OHR-Mostar was a positive force in efforts to establish rule of law in Canton 10. The information gathered by the Livno team during justice ministry meetings and judicial monitoring assignments became extremely helpful to OHR-Mostar and other principal international actors in the region. Within a week of JSAP's arrival, OHR-Mostar began calling bi-weekly "Canton 10 Principal Meetings" in an attempt to consolidate information, and plan strategies to influence the local government's attitude toward various issues including the rule of law.

Given Minister Kristo's weak political position, and her current government's blatant violations of the rule of law, JSAP saw an opportunity to persuade the Minister to perform her part of these tasks through written appeals to her government based in the rule of law. With JSAP encouragement, and under OHR's watchful eye, Minister Kristo began acting responsibly on a number of issues. Her correspondences to the Governor, the Prime Minister, and the Assembly President on a variety of issues¹⁸ were all based in the rule of law, and recommended swift and resolute actions. Predictably, all her letters went unanswered, and all of the issues remained unresolved for weeks. However, by mid-April, the actions of the Minister had vindicated her as much as they had exposed the level of obstruction and corrupt behavior exhibited by the Governor, the Prime Minister, and the Assembly President.

On April 20, the JSAP team issued a report to JSAP MHQ entitled *Crisis and Chaotic Situation in Canton 10 Judiciary: Need for Urgent Action* (hereinafter the Crisis Memo). The main theme of the Crisis Memo was that the Minister's attempts to solve a variety of judicial problems in Canton 10 were being thwarted by the inaction of her superiors, Governor Ivic and Prime Minister Mihajlevic. Thus, the Minister's unanswered written requests for action became central pieces of evidence that the "rule of law void" in Canton 10 was an intended act of obstruction meant to benefit the HDZ party leaders. The Crisis Memo also formed the basis for the Canton 10 Principals (OHR, UNMIBH, OSCE, UNHCR, EC, SFOR) to reach a consensus that certain key officials in the Canton 10 government must be removed from their offices and decertified from holding future public office. These recommendations led to OHR's removal of Governor Ivic and Prime Minister Mihajlevic on 23 May.

Governor Ivic and Prime Minister Mihajlevic were generally considered to be "puppet" politicians for the HDZ political party. Nevertheless the decertification of both men sent a strong message to the future government that their acceptance of such positions for the HDZ would likely spell the end of their personal political careers in BiH politics. More important to the rule of law, the decertifications highlighted the IC's understanding that even well-meaning justice ministries are powerless when placed within obstructionist cantonal governments.

Now, five months after these decertifications, the JSAP Team assesses that the strong international community action resulted in a net gain for the judiciary and rule of law in Canton 10. Although much of the new (Tomislavgrad-based) government is at least as hard-

¹⁷ In February 2000, OHR-Mostar Regional Head Judge Finn Lynghjem, and his Livno political officer, Jesus Gil Ruiz, began requesting meetings with the Livno team immediately, yielding many positive results. OHR-Mostar's increasing interest in the Canton 10 portion of its area of responsibility culminated three months later in the opening of a satellite office in Livno.

¹⁸ The Governor and Prime Minister failed to respond to the following letters from Minister Kristo: a) letter requesting action on illegal insignia and requesting written information regarding OHR's decision that the Drvar Prosecutor must be suspended due to improper appointment procedure (2/3/00), b) letter requesting cantonal judge appointment be placed on Assembly agenda (06/3/00), c) letter requesting meeting with Governor, Prime Minister and assembly President to discuss need to dismiss Prosecutor Duic (10/4/00), d) letters to Governor and Assembly with Ministry of Justice proposals to the Assembly for the dismissal of Messrs. Duic and Komso (17/4/00) e) letter informing Governor of his need to act in accordance with local law to provide for additional posts for prosecutors and judges in Canton 10 (26/4/00).

line as the former government, Minister Kristo's role in the new government appears more central, and her recent actions since the decertifications demonstrate that she is no longer alienated, if not completely respected.¹⁹ Her new-found authority can be attributed to her positive relationship with new Prime Minister Peljevan. He has supported many of her recent proposals, and appears to have drawn her into the center of HDZ politics. Most recently, she became a candidate for the lower house of the BiH Parliament in the upcoming elections. Currently, the international community awaits whether she will retain her Ministry of Justice post, move to the BiH Parliament²⁰, or be discarded altogether by the HDZ.

The following paragraphs summarize the progress made on each of the tasks facing Justice Minister Kristo over the past year. This section will end with recommendations for future justice ministry work.

3.1.1 Drvar Prosecutor Situation

Several months of JSAP investigation into the circumstances surrounding the appointment of Stanislav Komso as Drvar Prosecutor revealed that Governor Ivic had refused to consider a Serb applicant (Dragan Acic) despite his 15 years of prosecutorial experience because that applicant did not live in Canton 10 as prescribed by Article 28 of the Canton 10 Law on Prosecutors.²¹ JSAP condemned this act as a violation of Annex 7 of the General Framework Agreement for Peace in BiH.²² JSAP's legal opinion in this matter prompted OHR to redouble its efforts to force Governor Ivic to reconsider his decision to disregard OHR's earlier directive to suspend Komso's appointment and to restart the appointment process. Governor Ivic's stubbornness on the illegality of his appointment of the Drvar prosecutor, perhaps more than any other issue, brought about his decertification. Ironically, on 15 May, just seven days prior to his own removal, Governor Ivic finally answered the Minister of Justice's letter regarding Mr. Komso's appointment, and requested that she commence the dismissal procedure for Mr. Komso, and immediately advertise for the Drvar prosecutor post. However, he maintained his opinion that he had every right to ignore the Serb application from the RS.

Shortly thereafter, on 17 May, the OHR's imposition of the Law on Judicial and Prosecutorial Service paved the way for Minister Kristo to advertise the Drvar Prosecutor post. On 26 September, the newly formed Federation Prosecutor Commission (FPC) recommended former judge (Serb) Jasminka Blagojevic for the post.²³ Thus, the Minister of Justice has played a limited but positive role in filling this post in a timely fashion. In a 28 October letter, OHR has agreed with the Government's decision to allow the time period for the FPC to consider applicant complaints to run before finalizing the appointment process. OHR also urged the government to convene an assembly session at the end of November 2000.²⁴ In a

¹⁹ More vigorous actions by Minister Kristo since the emplacement of a new government include: 1) her repeated demands for payment of judicial salaries, 2) her call for constitutional amendments to address illegal insignia issue, 3) her successful addition of four prosecutor and four judicial posts to the judiciary, 4) her successful negotiations with the Minister of Interior to commence court security with Interior Ministry employees.

²⁰ The November 2000 OSCE Elections Appeal Board decision to sanction HDZ by removing the top candidates from eligibility for participation in the BiH parliament has increased her chances of being selected.

²¹ Governor Ivic informed JSAP of this view via letter three months after JSAP's initial inquiry.

²² On 7 April 2000, JSAP MHQ wrote "The provisions and commitments made by the signatories of GFAP supercede entity or cantonal legislation if harmonizing is not possible. Chapter 1, Article I, 2 of Annex 7 to GFAP stipulates that the parties shall ensure that . . . displaced persons are permitted to return in safety without discrimination, particularly on account of their ethnic origin, religious belief or political opinion. The application of [Article 28] is in this case contrary to that commitment unless it by interpretation is harmonized with the GFAP provisions." JSAP MHQ went on to say that harmonization required the consideration of Mr. Acic and, if selected, the requirement that he move his residence to the Federation.

²³ Mr. Dragan Acic's application was rejected by the FPC as incomplete.

recent JSAP discussion with Minister Kristo, JSAP learned that the FPC has not informed Canton 10 officials about the result of the appeals process. Also, she explained that the assembly will not be able to appoint any prosecutors until OSCE gives official notice to each political party of how many seats they have won. Even with strong OHR pressure, it appears unlikely that any prosecutors will be chosen through an assembly session until early February 2001.

Recommendations: If appointed, Ms. Blagojevic, her deputy (Ms. Kukric) and Ms. Reljic (recommended judge) will be the first three Serb judicial officials working in Drvar since 1993. The international community must provide them immediate and substantive support. The Drvar area is clearly a testing ground for the Dayton process of property return and the slow shift back to pre-war ethnic ratios. The Serb population in Drvar is approaching a majority, and ethnic tensions are understandably high. The existence of a regular prosecutor in Drvar will resurrect the important prosecutorial link between police and judge, and will invariably lead to clashes between a Croat police force dedicated to maintaining control of the area and a Serb prosecutor attending crime scenes and requesting police cooperation. The international community should require and attend regular meetings between police/prosecutors/judges, not only to reestablish links between the organizations, but also to monitor cooperation levels amongst them. Failure in Drvar on this matter will undoubtedly trigger similar delays and obstruction elsewhere in BiH.

3.1.2 Livno Prosecutor Situation

The JSAP experience with the dismissal of Prosecutor Duic holds valuable lessons for the Independent Judicial Commission (IJC) into the future pitfalls it will encounter as it oversees the implementation of the Law on Judicial and Prosecutorial Service. Against a mountain of evidence made available by the JSAP Report of 1999, and the Livno team's subsequent assessment of Mr. Duic's probation period, neither Minister of Justice Kristo²⁵, nor Cantonal Prosecutor Bradaric could bring themselves to commence dismissal proceedings against Mr. Duic, and thereby criticize his work. In fact, even after an OHR-Mostar written request²⁶, the Minister of Justice and the Cantonal Prosecutor each sent dismissal requests to the Assembly that were void of any criticism of Mr. Duic, and instead cited OHR demands as the sole cause of their dismissal requests. Mr. Duic stopped working on 12 April, and prior to official dismissal, resigned in May 2000.²⁷ Vindication for the JSAP-led removal of Mr. Duic eventually arrived in June when a two-day inspection of the Livno Prosecutor's Office by the Federation Prosecutor resulted in a very negative report detailing unprofessional prosecutorial activity, echoing JSAP's 1999 Report.

Although the Federation Prosecutor has made some commitment to overseeing Livno Prosecution, Mr. Bradaric remains the acting Livno Prosecutor despite a recent FPC decision (26 September 2000) to disqualify him from consideration for his Cantonal Prosecutor post.²⁸ Although the commission recommended applicant Judge Karmela Lemo (Muslim) to the Livno Prosecutor post, she has been recommended, and received appointment (1 December)

²⁵ Prior to imposition of the new law governing disciplinary action against prosecutors (17 May), local law required that dismissal requests issue from the Minister of Justice and/or the cantonal prosecutor.

²⁶ On 10 April 2000, OHR addressed the Minister of Justice and the Cantonal Prosecutor in a letter requesting that they each fulfill their duties (pursuant to Art. 40 of the Canton 10 Law on Public Prosecutor) to initiate the dismissal procedure against Mr. Duic, and to immediately suspend Mr. Duic pending dismissal proceedings.

²⁷ It appears that Mr. Duic's resignation was prompted by a letter from Federation Prosecutor Babic to OHR complaining about Mr. Duic's illegal activity (abandoning indictment without reason) in a forgery case against the owner of "Lovres" Company in Tomislavgrad.

²⁸ The recent Canton 10 government decision to postpone appointments until after the elections serves HDZ political interests to keep Mr. Bradaric in control of all Livno prosecution, especially several corruption cases that threaten the current leadership.

as a Livno Municipal Court Judge. Thus, no Livno Prosecutor will be appointed, and the Ministry of Justice must commence advertisement for that post with haste.

Recommendations: OHR and the IJC should be especially aware of recent attempts by Mr. Bradaric to ask OHR-Mostar if there was a way for him to keep his cantonal prosecutor post despite his recent disqualification by the FPC. While OHR-Mostar has denied this request, it has indicated in recent international community meetings that Mr. Bradaric is welcome to apply for the Livno Municipal Prosecutor post. Given Mr. Bradaric's chronic failure to move on politically sensitive cases since he took over municipal prosecution, Mr. Bradaric's inadequacy is not just limited to his failure to supervise municipal prosecutors. His own prosecutorial inaction on cases such as Drvar Riots, Livno Bus, Glama, and Bosansko Grahovo Deputy Mayor Civcija confirm his profound inability to address corruption cases or other politically sensitive matters. Mr. Bradaric's appointment to the Livno Municipal Prosecutor post would immediately place the expected Cantonal Prosecutor (Bozo Mihajlevic (Serb) in the impossible position of supervising a dedicated HDZ prosecutor (Bradaric has been the head prosecutor in Canton 10 since the war) bent on protecting the established political hierarchy.

3.1.3 Implementing the Federation Prosecutor Law in Canton 10

Though the international community had generally agreed that the Livno prosecutor had to be dismissed and the Drvar prosecutor had been illegally appointed, the prosecutorial void that would be created by their respective dismissals was a serious concern. During a Canton 10 Principals meeting in April 2000, JSAP Livno proposed a solution to resolve the problem. The solution was a year-old amendment to the Law on the Office of Federation Prosecutors, which authorized the Federation Prosecutor to appoint a deputy Federation prosecutor or a prosecutor from another canton to cover prosecution in cantons with either no deputy or an absent prosecutor.²⁹ Federation Prosecutor Suljo Babic had refused to exercise this authority on two other occasions in Tuzla and Neum. But, the situation in Livno would prove too dire to ignore. The JSAP team first proposed the solution to Cantonal Prosecutor Bradaric in late February 2000 as a way for sensitive cases like the Drvar Riots to receive proper attention.³⁰ Within a week he had already discussed the subject with Prosecutor Babic. By late April 2000 after Minister Kristo commenced dismissal procedures against Messrs. Duic and Komso, she followed JSAP team's recommendation to deliver Mr. Babic a written request for prosecutorial assistance.³¹

Predictably, Babic had no interest in getting involved in Canton 10. However, the dismissal of both the Livno and Drvar prosecutors and sustained international community pressure from JSAP resulted in considerable supervisory and direct Federation Prosecutor activity in Canton 10 from 24 May 2000 through the 30 November 2000.³² However, most recently,

²⁹ See Law on Amendments to the Law on the Federation Prosecutor's Office, Art. 13(a) (30 July 1999)

³⁰ By this time Mr. Bradaric had agreed to take over certain high profile cases in Drvar like the Drvar Riots case in response to JSAP concerns that the illegally appointed Drvar Prosecutor (Komso) could not make court appearances. For Bradaric, the Federation Prosecutor solution was both positive and negative, as it would both relieve him of working on politically sensitive cases in Drvar, and would draw attention to his failure to handle his own jurisdiction.

³¹ In her somewhat cryptic plea to the Federation Prosecutor assistance written 26 April, Minister of Justice Kristo wrote: "we are asking you, within your framework, to manifest your attitude pertaining to the resolution of the current [canton 10 prosecutor] situation in prosecution offices of Drvar and Livno"

³² Federation Prosecutor activity began with the 24-26 May inspection of the all three municipal prosecutor's offices in Canton 10. The negative results of the inspection prompted the assignment of Deputy Federal Prosecutor Miskovic to oversee Canton 10 prosecution from 12 June until 8 July. Next, while continuing Federation Prosecutor oversight throughout the summer, Federation Prosecutor Babic assigned Bihac prosecutor Junuzovic to Drvar (12 July to 11 August). Although Federation Prosecutor activity stopped in September due to personnel limitations, since October 4th, the Drvar and Livno prosecutor offices have continuously been handled Dep. Fed. Prosecutor Bradvica's supervision and by rotating, temporary prosecutors pursuant to the Federation Prosecutors orders.

staffing shortages have forced Deputy Federation Prosecutor Bradvica to discontinue his weekly supervisory visits to canton 10, and similarly, Mr. Babic has failed to provide substitute prosecutors for Drvar and Livno since 1 November and 1 December, respectively. It was the JSAP and international community hope that this Federation activity would have particularly positive effects on the criminal investigations in *Livno Bus*, *Glama*, and *Livno Trans* cases.

Recommendations: The Federation Prosecutor's office needs more staff. The shortage of Deputy Federation prosecutors at Mr. Babic's disposal has considerably hampered his ability to place a federation prosecutor in the region for an extended period of time. In fact, the only federation prosecutor sent to Canton 10 to work directly on any cases was Mr. Vladomir Miskovic. His stay lasted only 20 days, and no federation prosecutor has returned since. Similarly, Mr. Babic has relied on a host of cantonal prosecutors from Bihac and Zenica to spend only two weeks each in canton 10. The result has been a complete halt to any work on the politically sensitive corruption cases.

Though the political reasons are obvious, Mr. Babic's choice of Croat prosecutors to be assigned to Canton 10 does little to further political cases. They have proven to be unwilling to recognize and pursue opportunities to widen and deepen political cases as the local prosecutors they are here to assist. Thus far, there is little evidence that the 17 May law has done anything to remove politics from the prosecutors office. The IJC should consider this whole experience as conclusive evidence that they have no option but to closely supervise the work of these commissions, and consider amendments to the 17 May law that will completely safeguard prosecutors from politically-charged dismissals.

3.1.4 The Denial of Deputy Prosecutors

The JSAP Team's review of the Canton 10 Law on Public Prosecutor revealed that the cantonal government had been illegally depriving the canton of deputy prosecutors in each of its four³³ prosecutor offices.³⁴ This fact, coupled with the government's on-going failure to appoint a Drvar prosecutor, meant that the government had failed to provide five of the eight prosecutors required by law. On the heels of the decertification of the Governor and the Prime Minister 23 May, the Minister of Justice initially acknowledged the lawful requirement for deputy prosecutors and told JSAP of her plans to advertise for all deputy prosecutor posts. Nevertheless, once a new governor and prime minister had been put in place, Minister Kristo attempted to retract her commitment claiming that limited funds, and limited criminal caseloads prevented her from advertising for deputy posts.³⁵ Upon JSAP recommendations, OHR decisively thwarted these plans (presumably forced upon Minister Kristo by the newly formed government) by directing Minister Kristo to advertise for all deputy prosecutor posts.

The advertisement process went on as OHR directed (19 June to 19 August) and by mid-August, the Ministry had received a considerable number of applicants. The FPC has since reviewed the applications, and sent the qualified names onto the Assembly for appointment. Unfortunately, a lack of qualified applicants in the first round of advertising has caused the FPC to recommend appointment for only one Deputy Prosecutor for Drvar, Ms. Snezana

³³ Canton 10 has three municipal prosecutor offices situated in Livno, Tomislavgrad and Drvar, and one cantonal prosecutor office situated in Livno.

³⁴ See Canton 10 Law on Public Prosecutors Office, Article 25 (7 February 1997).

³⁵ The limited criminal cases are the result of no prosecutorial oversight of the police, and reluctance of prosecutors to expand indictments.

Kukric (Serb)³⁶. This means that Minister Kristo should immediately advertise for deputy prosecutor positions for Livno and Tomislavgrad.

Recommendations: The shortage of qualified prosecutors, though extreme in Canton 10, is a problem facing the entire country. If OHR moves to eliminate the investigative judge in the coming months, the IJC should consider directing its attention to well-known judges with a particular flair for the investigation (i.e. the kind of person who enjoys attending crime scenes and directing the police). They exist, and they will play an instrumental role in filling the prosecutor vacancies as they arise.

3.1.5 The Appointment of Deputy Minister of Justice Nedeljko Djuran and Assistant Minister of Justice Ivan Cosic

Pursuant to the internal regulations of the justice ministry, the Livno team recommended that Minister Kristo press for her lawful right to a staff to support her work.³⁷ JSAP and OHR were particularly concerned with the Ministry's lack of a minority Deputy Minister as required by a Federation power-sharing agreement. Under Governor Ivic's government, Minister Kristo had been denied any assistance with the performance of her duties. In the wake of the decertifications, the new government quickly agreed to provide her with Assistant Minister Cosic in May 2000. The more difficult task of obtaining a minority Deputy Minister was achieved through Civil Affairs, JSAP and OHR cooperation.³⁸ Although Minister Kristo clearly relies more heavily on her Assistant Minister, Mr. Cosic (HDZ), she has tasked Mr. Djuran with several duties including the draft of proposed amendments to the cantonal laws on courts and prosecutors. News of Mr. Djuran's arrival travelled quickly back to the RS and encouraged several other Serbs, formerly from the Canton 10 region, to apply for judicial and prosecutorial posts in Canton 10. Several of these Serbs were subsequently recommended for Canton 10 judiciary posts in September 2000.

Recommendation: Mr. Djuran's position is now in jeopardy as the newly elected government will almost certainly fail to appoint a Deputy Minister of Justice. The minority Deputy Minister of Justice in canton 10 represents a significant victory for the international community and it should not be lost. The international community should push for continuation of a minority Deputy Minister of Justice immediately, whether it is Mr. Djuran or not. Another qualified minority candidate worth consideration is current Mrkonjic Grad prosecutor Dragan Acic, former resident of Drvar.

3.1.6 Provision of Requisite Judges in the Cantonal Court and Drvar Municipal Court

Despite the Federation Criminal Procedure requirement of five judges for second instance review of serious crimes³⁹, the Canton 10 government has only provided four judges. International community pressure finally prompted the government to advertise the fifth post in November 1999. After consultations with the JSAP team⁴⁰, on 6 March 2000, Minister Kristo fulfilled her legal duty by providing the Governor with the justice ministry's opinion

³⁷ See Regulation of Internal Establishment of Cantonal Ministry of Justice and Administration, Art. 11-12 (3 Feb. 1997) (requiring Deputy Minister, Asst. Minister, and other assistant posts)

³⁸ In June 2000, the minority political parties could not even put forth a qualified applicant. At the moment when OHR-Livno was ready to abandon its plans for a minority Deputy Minister of Justice, the Livno team offered UNMIBH Civil Affairs Livno the name of Mr. Djuran, a former minor offence court judge in canton 10, former Livno resident living in Srebrenica who had approached JSAP about a property case. Civil Affairs and OHR-Livno negotiated alongside HDZ and minority parties to secure this appointment.

³⁹ See FCP Art. 21(2) (Nov. 1998)

⁴⁰ JSAP informed Minister Kristo that she was legally prohibited from recommending former (OHR-decertified) Minister Babic's application.

on the most qualified candidate, and by stressing the need for immediate action by the cantonal assembly.⁴¹ Despite this, several assembly sessions passed without appointment. On 7 April, the Minister renewed her request to the Governor and Assembly for action on the cantonal judge appointment, and was particularly critical of the Governor's inaction.⁴² The Governor's failure to act on this appointment, as evidenced by the Minister's letters, formed part of the basis for his removal from office. The 17 May imposition of the Law on Judicial and Prosecutorial Service required a completely new advertisement for the cantonal judge post. The Minister of Justice fulfilled her duty to advertise the post under the new law, and as of 22 September, the Federation Judicial Commission (FJC) recommended Judge Ozrenka Vidacak for the post. The last assembly session on 25 October passed without her appointment.

After several discussions, the JSAP Livno team convinced Minister Kristo that the Drvar Municipal Court needed a third judge in order to satisfy the Federation Code of Criminal Procedure.⁴³ The Minister advertised this post in August 2000, and on 26 September, the FJC found three qualified candidates, recommending Ms. Milica Reljic as the most qualified. This appointment is the responsibility of Cantonal Judge Andrija Kolak, who has received the recommendations of the commission, and has consulted with the Drvar mayor who has responded by agreeing with the FJC's recommendations of Ms. Reljic. Judge Kolak has told the Minister of Justice that he will interview Ms. Reljic in early December and he expects her to be sworn in officially in January 2001.

3.1.7 Provision of Ethnic Representation of Judges and Prosecutors

According to the Canton 10 Constitution, "the composition of all the bodies of authority in the Canton and in the municipalities of the Canton *must express the national structure of the population of the Canton, that is the municipality* unless otherwise provided in the Constitution of the Federation".⁴⁴ Since courts and prosecutor offices are "bodies of authority", their composition must take the "national structure of the population into account." According to the Federation Constitution, which supersedes all cantonal constitutions, "the published results of the 1991 census shall be used as appropriate in making any calculations requiring population data."⁴⁵ Since the results of the 1991 census show Croat (50%), Serb (38%), Muslim (10%), it was immediately clear that minorities were drastically underrepresented in the judiciary.⁴⁶

In April 2000, JSAP Livno brought this issue to the attention of both Minister Kristo, and OHR. OHR immediately decided to add this goal of ethnic representation in the judiciary to another JSAP-initiated goal – the need for more prosecutors and judges in the judiciary. Upon the enactment of the law on judicial service, OHR and JSAP worked closely with Minister Kristo to advertise new prosecutor and judge posts in a manner which would reach all ethnic groups.⁴⁷ These efforts yielded a substantial percentage of minority applicants.

⁴¹ The Minister of Justice's 6 March letter was entitled "Cantonal Judge Appointment Proposal on [Assembly] agenda requested".

⁴² The Minister of Justice's 7 April letter is quite forceful, both reminding the Governor of his duty to appoint, and demanding "reasons influencing [the Governor] not to insert the proposal for appointment on the [assembly] agenda.

⁴³ See FCP Art. 21(6) (courts of original jurisdiction must sit in 3 judge panels when reviewing decisions of investigative judges)

⁴⁴ Canton 10 Const., Art. 3 (Dec. 1996)

⁴⁵ Fed. BiH Const. Ch. IX, Art. 3.

⁴⁶ As of April 2000, all four prosecutors were Croat, and of 16 appointed judges, all but 4 were Croat, far more than the 50% figure suggested in the 1991 census.

⁴⁷ While Minister Kristo secured advertisements in newspapers read by both Croats and Muslims, OHR-Mostar placed an advertisement in a newspaper distributed predominantly in the Republika Srpska. Here, it should be noted that the recent appointment of a Serb as Deputy Minister of Justice was also helpful in drawing minority applicants.

Through the work of FPC, the appointing bodies have now received recommendations to appoint four prosecutor applicants, three of which are minority Serb, and one of which is Muslim.⁴⁸ As for the FJC, they have found qualified applicants for three of the five advertised posts. Of these three recommended judicial applicants, two are Serb and one is Muslim.⁴⁹ This overwhelming minority representation appears to have resulted from a lack of qualified Croat applicants. The OHR's 27 October letter to the Governor strongly suggests that OHR will not tolerate any Canton 10 departure from the letter of the new law on judicial and prosecutor appointment.⁵⁰

The cantonal assembly appointment process remains a considerable obstacle to ethnic representation in the judiciary. When the assembly finally convenes, it will likely reject the FPC recommendations for cantonal prosecutor (Serb Bozo Mihajlevic), and for Drvar prosecutor and deputy prosecutor (Serbs Blagojevic and Kukric). However, those appointments not requiring assembly approval appear to have gone smoothly. Most notably, on 1 December, Judge Karmela Lemo (Muslim) became the first Bosniak municipal court judge in Livno Municipality.

3.1.8 Removing Illegal Insignia from Canton 10

Despite the Federation Constitutional Court decision of 19 February 1998 and the OHR directive of 30 July 1999, all governmental authorities including the prosecutors and the judges continued to display the illegal insignia ("Herceg-Bosna" coat of arms) throughout government buildings and upon all official documents including prosecutor decisions and court decisions. While the other nine cantons had taken steps to remove and/or change the insignia, the Canton 10 government has remained completely obstinate to the present day. This illegal activity is especially disturbing within the offices of law enforcement in the canton. For this reason, JSAP Livno has applied continual pressure upon Minister Kristo to take steps to remove the insignia. Although she readily admits that the Federation Constitutional Court decision and the OHR directive effectively trump the local Constitution's blessing of the illegal "Herceg-Bosna" insignia, she has continuously and openly refused to implement the OHR directive, equating such an act on her part with political suicide. Instead, she has claimed that the responsibility lay with the cantonal assembly's need to institute amendments to the local constitution in order to change the cantonal insignia.

After considerable pressure, on 2 March 2000, Minister Kristo took a step forward by delivering the Governor, Prime Minister and Assembly President her written legal opinion that they should comply with the OHR directive.⁵¹ The government's failure to react was partially responsible for their removal from office. After the selection of a replacement government, the Minister's efforts were more direct. On 8 September, she wrote the government a specific proposal to amend certain sections of the Canton 10 Constitution that

⁴⁸ The Federation Prosecutor Commission was forced to disqualify several applicants (mostly Croat) due to a lack of required professional experience. Also, the two existing prosecutors (Bradaric and Skosibusic) were deemed unqualified for the new posts after OHR required the Minister of Justice to obtain their resignations so that *all eight* prosecutor posts could be advertised.

⁴⁹ The Federation Judicial Commission was forced to disqualify several applicants (mostly Croat) due to a lack of required professional experience.

⁵⁰ OHR-Mostar wrote: "I am afraid that neither the Government nor the Cantonal Assembly can refuse to appoint those applicants recommended by the Federation Commission as Cantonal Prosecutor in Canton 10 as well as the two recommended applicants for Drvar."

⁵¹ Minister Kristo requested the government to "undertake all activities within [their] competence that are necessary for implementation of the High Representatives decision and to inform [the Minister of Justice] on [their] action in order to co-ordinate implementation of decisions".

were inconsistent with the decisions on illegal insignia and suggesting a government session to discuss the proposal.⁵² No such session has occurred.

Despite this political obstruction, JSAP has been able to secure the removal of illegal insignia from all prosecutor and judge offices in Canton 10. The breakthrough came days after OHR's imposition of the Law on Judicial and Prosecutorial Service. The JSAP team used the procedural protections in the law against politically motivated dismissal of judges (i.e. requisite commission review) and rule of law principles to convince the judges that their failure to remove the illegal insignia from their own offices would stand as evidence before the commission that they were either politically active judges, or unable to understand or honor the rule of law. The judges and prosecutors immediately removed the insignia from within their offices. However, the illegal stamp still appears on every judicial and prosecutorial decision. While the presidents of courts acknowledge this illegality and blame the Minister and the cantonal assembly for this, they have refused the JSAP recommendation, thus far, to exercise their newly found independence and legitimacy by rejecting the stamp or publicly calling for its withdrawal from use.

3.1.9 Provision of Security to Three Court Buildings

After discussions about security with several court presidents, the JSAP team proposed that the Minister of Justice meet with the Minister of Interior to request provision of security for courts during court hours. This issue was side-stepped by the Minister of Justice until August 2000 when the physical assault of Judge Bozo Mihajlevic took place.⁵³ Although the Minister of Justice failed to speak out against the assault, it did prompt her to start negotiations with the Minister of Interior to secure one police officer per court building to be posted at the entrance during court working hours. Upon the Minister of Justice's request, the courts quickly supplied office space for court security, and this interim security measure began on 10 October in Livno, Tomislavgrad and Drvar. Recently, the Minister of Justice received a positive report from the judges suggesting that the police presence has cut down on courtroom disturbances, and improved morale of the court officials.

Recommendations: Fear of violence or revenge are legitimate factors that hinder Canton 10 judges on a daily basis. The presence of security guards is a small step in the right direction. Easy access (easy arm-twisting) to a judge is practically viewed as a right of the people. Ex parte communications occur regularly with private visits to judges' chambers as well as in passing street conversations. Also, the tradition of respect for judges and their word does not exist in BiH due to decades of politically driven decision making. OHR or the IJC should consider a national public relations campaign focused on the need for the community to adjust their behavior around judges and to respect judicial decisions and the sanctity of the court proceedings. Of course, judges and prosecutors in turn must abandon their comrade-like relationships with parties having business before the court, and accept public trust and a higher standard of moral behavior.

3.1.10 Recommendations for the Justice Ministry of Canton 10

In addition to continued attention to the issues set out above, OHR and the IJC will have to focus on the following issues yet to be addressed by the Justice Ministry.

⁵² In this letter, she tracks language from the Federation Constitutional Court decision (No: U-11/97) stating that articles 4, 8, 9, and 72 of the cantonal constitution are incongruent with the Federation Constitution.

⁵³ The attack against Judge Mihajlevic occurred outside the court, but was related to his work in a prior criminal matter.

- Judiciary salary increases (effective 17 May 2000) must be paid on first of the year. Canton 10 and 7 are the only cantons that failed to adjust their 2000 budgets to accommodate the increase. Continued non-payment is an affront to the judiciary's new-found independence, and to the rule of law.⁵⁴
- Require immediate appointment of those judge and prosecutor applicants recommended by the Commissions⁵⁵
- Require the Federation Prosecutor to reengage in Canton 10 until local prosecution has been brought to full strength.⁵⁶ As recently as 30 November, Federation Prosecutor Babic approached JSAP requesting a joint meeting with the OHR.
- Amendment of Cantonal Laws on Courts and Prosecutors to be consistent with the new Law on Federation Prosecutors, and to lower experience requirements so that all posts may be filled.⁵⁷
- Immediate advertisement of positions that were left open after first advertisement⁵⁸
- Work with the OSCE to request housing information from all judges and prosecutors to determine whether they are illegal occupants
- Begin making public statements in support of judicial independence and against the recent violent acts against judges in Livno and Drvar.

3.2 Canton 10 Prosecutor: History and Recommendations

Control over the prosecutor's office has been an effective weapon for the obstructionist government in Canton 10. Whether it is speedy justice against minority Serb criminals⁵⁹, or more often, no prosecution for clear criminal acts committed by "protected" members of society,⁶⁰ the local prosecutors are either happily or reluctantly serving the controlling political party. The work of JSAP, the support of OHR, and most recently the FPC has

⁵⁴ Against JSAP recommendations, OHR-Mostar struck a bargain with the Canton 10 government promising judicial salary payment including back pay in January 2001 under the new budget. To her credit, Minister Kristo expressed embarrassment when she learned through her fellow Ministers of Justice that Canton 10 was among a minority of cantons that failed to pay the salary increases. In September 2000, she wrote the assembly complaining about the situation.

⁵⁵ See OHR-Mostar letter directing swift assembly action to appoint after 11 November elections.

⁵⁶ Due to personnel shortages and other emergencies, Federal Prosecutor Babic has failed to keep a Federal Prosecutor in canton 10 (Drvar and Livno) continuously. The deputy Federal Prosecutor arrived in mid-June 2000, but was not present from 15 August through 30 September. The Federal Prosecutor has assigned Zenica and Bihac cantonal prosecutors in Drvar and Livno from 1 Oct. through 31 October, but has not committed to November, December or January coverage.

⁵⁷ Examples of possible amendment include reducing 4- and 2-year experience requirements due to lack of experienced personnel in region. Minister Kristo and Deputy Minister Duran have completed a draft amendment that lowers the experience requirement to one year of judicial experience or two years of general legal experience (see Law on Courts, Art. 45).

⁵⁸ The IC likely will have to wait for several weeks or months after 11 Nov to see the appointments of the first wave of applicants. Since many of these appointments will be minority, and over half of the prosecutor posts remain open, it is crucial that the Minister of Justice restart the advertisement to fill the still-vacant posts, and to give the Croat community a second chance to put forth qualified candidates. Without such a second advertisement, the cantonal assembly will be appointing a majority Serb prosecutor team in canton 10. Minister Kristo must be pushed to advertise immediately for those posts (like Livno Pros and Dep. Pros) that no one qualified for during the first advertisement.

⁵⁹ In the Spring of 2000, the chronically inactive Prosecutor Duic was able to process rape allegations against Serb returnee Popovic in a matter of days.

⁶⁰ Boro Brnic case in Livno Court(member of Bakovic gang defended by prosecutor as being temporarily insane at time of murder); Cabrajic case in Drvar Court (prosecutor refuses to indict Cabrajic in gun play incident despite extensive criminal record; Cabrajic shot and killed a Serb police officer less than a year later).

relieved the canton of all four municipal prosecutors⁶¹. While external prosecutors sent by Federation Prosecutor Babic keep Canton 10 prosecution afloat, the international community eagerly awaits the appointment of at least three new prosecutors.⁶² When they arrive, it should be an international community imperative to offer support and guidance to this group. They will face immediate alienation from the local police, and perhaps non-cooperation from the judges.

In July 1999, JSAP made a commitment to focus on Canton 10, and soon thereafter were joined by OHR-Mostar in opening offices in Canton 10. In its early stages of implementation, the IJC must find a way to continue this commitment. The following recommendations have no chance of becoming reality without continued international community support.

3.2.1 The Need for On-Duty Prosecutors

On-duty prosecutors have seldom been present at Canton 10 crime scenes over the past several years. This absence, partly due to staffing and distance issues and partly due to apathy, has had a devastating impact on the general level of professionalism occurring at crime scenes.⁶³ First, the lack of a prosecutor places an additional responsibility upon the on-duty investigative judge, who must assume the role of directing the police on his own. Also, the long term absence of prosecutors at crime scenes has slowly spread like a disease affecting the professionalism of some investigative judges, who (in Livno and Glamoc especially) have frequently turned the obligatory judicial visit to crime scenes into a discretionary decision usually tainted by issues of convenience and politics. Examples of this phenomenon are discussed in the judicial portion of this report.

Second, besides the obvious lack of prosecutorial guidance over police work at the crime scene, the prosecutor's absence has a very negative impact on police morale and police confidence in prosecutors as investigations develop. The seriousness of a criminal investigation in the eyes of the police is understandably, but inaccurately affected by the level of prosecutorial effort displayed. The less often prosecutors appear at crime scenes, the less likely police feel encouraged to perform their investigative work completely. The negative results of this include lost or mishandled evidence, and inaccurate police reports that result in the failure to file criminal charges to the prosecutor's office.

Recommendation: IPTF and JSAP have observed that neither police nor prosecutors have received any formal crime scene training, and local law enforcement authorities lack technical equipment to conduct proper investigations. The international community will have very little success developing a tradition of prosecutorial leadership at crime scenes without training and equipment.

3.2.2 Municipal Prosecutor Supervision and/or Lead in Criminal Investigations

Despite recent changes in the criminal procedure clarifying the leadership role of prosecutors in criminal investigations, Canton 10 prosecutors continue to demonstrate a strong reluctance

⁶¹ Livno Municipal Prosecutor Duic and Drvar Municipal Prosecutor Komso were removed by local authorities after JSAP inspection work and OHR pressure. The Cantonal Prosecutor and the Tomislavgrad Municipal Prosecutor were recently deemed unqualified by the FPC and will lose their posts upon the appointment of replacement prosecutors.

⁶² See *supra* Section III (A): Canton 10 Justice Ministry and Government.

⁶³ The 1999 JSAP Report states: "Irregularities related to the police were found in cases in which the collection of evidence was not carried out properly. . . . Records of the investigation did not have enough detail, statements of the suspects or witnesses were missing in the files, finger prints were rarely taken, and when they were, they were not taken properly."

to perform this role. Although this reluctance begins with the failure to attend crime scene investigations, it continues even after a criminal police report reaches the desk of the prosecutor. The on-going criminal investigation in the *Glama*⁶⁴ case illustrates this point well. Despite clear evidence of criminal activity and clear evidence of poor police investigation work, prosecutors in Livno refused to use their authority under Federation Criminal Procedure Code, Articles 41 or 145, for the crucial opening months of the investigation. In politically sensitive cases such as *Glama*, prosecutorial leadership is especially important to motivate police officers to work despite an often-hostile work environment.

Many criminal cases require a legal or financial expertise not available in the local police force. In such cases, local prosecutors play a pivotal role in recognizing this need and directing the case accordingly.⁶⁵ In the *Livno Bus*⁶⁶ case for example, the preliminary investigations of the police yielded several fraud-related charges against two separate defendants. However, the police's investigative report raised obvious financial mismanagement issues. Had the prosecutor been more involved in the early stages of the police investigation, he would have been able to immediately call upon the financial police for their expert assistance.

Similarly, the *Laus* case and the *Tomislavgrad Housing Authority* case are excellent examples of legally sophisticated cases requiring the prosecutor himself to interview suspects in order to discern whether a crime has been committed. Both of these cases arose from OSCE and Ombudsmen reports that government officials responsible for implementing the property laws had violated Federation Criminal Procedure Code Article 348 by systematically failing to implement the law. Since the implementation of property laws was the focus of the investigation, local police lacking any legal training, let alone training in property issues, were directed by the prosecutors to interview the suspect government officials. The results of these interviews were predictably unproductive, as police had no guidance from the prosecutor on how to interrogate these witnesses. During meetings with JSAP and OSCE, Prosecutor Bradaric admitted that the prosecutors should have conducted the interview themselves, or at least, provided the local police with a list of pertinent questions which would have yielded the necessary information.

Recommendation: The international community's commitment to removing the investigative judge role from the criminal procedure will hasten the need for eager prosecutors. JSAP has observed that some judges relish the leadership role at crime scenes, and feel more comfortable in the investigative judge role than in the role of trial judge. These investigative judges will be more suited to become the new breed of prosecutors envisioned in the upcoming amendments.

3.2.3 Prosecutor and Police Communication

The recommendation for improved communication between prosecutor and police, first stated in the July 1999 Report, provided the impetus for weekly chief of police/prosecutor meetings to begin throughout BiH. A combination of a lack of commitment and a shortage of prosecutors has kept this recommendation from being developed in Canton 10.⁶⁷

⁶⁴ Law enforcement activity in the *Glama* case is featured in the political influence portion of this report.

⁶⁵ See Federation Criminal Procedure Code, Arts. 41 and 145 (1-3).

⁶⁶ Law enforcement activity in the *Livno Bus* case is featured in the political influence portion of this report.

⁶⁷ Mr. Bradaric immediately agreed with this JSAP recommendation and reported in February 2000 that weekly meetings between municipal prosecutors and chief investigators from the Ministry of Interior had begun. However, JSAP monitoring of these events revealed that the

When Mr. Bradaric begrudgingly took over some Drvar responsibilities in April 2000, JSAP had the opportunity to accompany him to several weekly police prosecutor meetings in Drvar with Mr. Bartolovic, Chief of Investigations for the Drvar Police. It was immediately clear that the Drvar police's extreme isolation from prosecutorial contact (a duration of five years) has brought the local police force into a dysfunctional state. Years of crime scenes with no prosecutorial presence, criminal charges left unattended by prosecutors has created a cynicism amongst the police force in Drvar. This cynicism was expressed openly by the chief investigator as he used prosecutorial absence or lack of prosecutorial vigor⁶⁸ as his excuse for the local police practice of filing minor offence charges in cases that by all accounts constituted more serious criminal offences.

At these meetings, Prosecutor Bradaric and Mr. Bartolovic showed very little interest in actually discussing specific cases. Neither of the men brought a list of cases to discuss, and Mr. Bradaric showed no aptitude for leading or directing the meeting in a productive direction. In fact, the only matters discussed were cases the JSAP Team offered as suggested subject matter for dialogue.

Recommendation: The local police's daily operation reports (DORs) should be delivered daily to the prosecutors office so that the prosecutor may immediately identify cases potentially requiring his attention. In this way DORs can form the basis for setting the agenda at weekly police/prosecutor meetings.

3.2.4 Cantonal Prosecutor Supervision

Cantonal Prosecutor Bradaric's failure to supervise municipal prosecutors was well documented by JSAP, and became the subject of a Livno team report to JSAP MHQ. JSAP's experience in Canton 10 underlines the importance of cantonal prosecutor supervision, particularly in the three Croat majority cantons that have chosen to leave serious criminal prosecution in the hands of decidedly less experienced municipal prosecutors.

Recommendation: The excessive municipal court jurisdiction in these cantons does a double disservice to the Federation by facilitating cantonal avoidance of Federation Supreme Court authority, and by subjecting a considerable portion of Federation residents to inadequate representation in serious criminal matters. If the international community is not willing to adjust cantonal prosecutor jurisdiction to mirror that of the other seven cantons, it should immediately seek responsible government action from Cantons 2, 8, and 10 to acknowledge the problem and establish stronger cantonal-municipal prosecutor links to ensure proper oversight of the municipal prosecutors.

3.3 Canton 10 Court Recommendations

3.3.1 The Work of the Cantonal Court

Under Justice Minister Babic, the cantonal court remained understaffed with only four of the requisite five cantonal judges on the pay roll. This affected the proper functioning of the

Livno Municipal Prosecutor had never attended any such meetings in Drvar and very seldom in Livno. Although Mr. Bradaric insisted, in the presence of JSAP, that the Livno Municipal Prosecutor attend regularly, such attendance never occurred. From February 2000 through to the time when the Livno Prosecutor was decertified by OHR in May, Mr. Bradaric never issued the Livno prosecutor any written reprimands on this subject.

⁶⁸ In the *Puhaca* case, the chief investigator conceded that the suspects had participated in the crime of "prevention of return" (FCC Art. 186), but challenged the prosecutor by stating that even if the police drafted a criminal charge based on Art. 186, he doubted the prosecutor would indict on this charge.

court in several ways. First, in serious criminal matters, the Federation Criminal Procedure Code requires a five-person panel during appellate review. Due to the shortage, the president of the court has been forced to have such cases removed to neighboring canton 8 (Siroki Brijeg) to be heard by their cantonal court authorities. Thus, since 1998, the government's failure to appoint a fifth judge has relieved the other four judges of ever reviewing a murder case or other serious criminal activity. Second, when creating three-person panels for civil and lesser criminal matters, the court president has been forced to choose from a pool of four instead of five judges. If only two of the judges have a conflict in hearing the matter, the conflict will either be overlooked or the case moved to another canton.

Unlike district courts in the RS, or cantonal courts in Muslim majority cantons of the Federation, the cantonal courts in Croat majority cantons like Canton 10 do not preside over any first instance criminal cases, and only a select few civil matters like bankruptcy⁶⁹ and administration. Accordingly, even the most serious criminal matters (15 or more years in jail) are handled by municipal prosecutors and judges who often lack the experience and confidence required for the job. This break from former-Yugoslav legal tradition is consistent with Canton 10's current political aspirations to remain separated from the Federation legal system as much as possible. The extra layer of judicial review for serious crimes creates a barrier to the Federation's ability to review the work of the Canton 10 judiciary.

Besides the undue strain that this appellate structure places upon the less experienced municipal judges and prosecutors, there are other unhealthy byproducts of this local law. First, the JSAP team noted that the workload of the cantonal court was quite small compared to that of the municipal court judges. In fact they appear averse to taking first instance cases even when required by law. President Kolak is particularly vulnerable on this point due to his stubborn refusal to hear Administrative cases for several years by blatantly ignoring Federation law requiring the Cantonal Court to hear such cases. Based on OSCE documentation, OHR wrote Kolak in December 1999 about this failure. Second, this unusual arrangement whereby cantonal judges sit only in review, and are seldom reviewed has created an attitude of "untouchability" amongst the cantonal judges far above that deserved by a mid-level appellate court. The best of example of this is the statistics on judicial "pass rates" kept by President of the Cantonal Court Andrija Kolak. His 1999 records show that every judge at the municipal level in canton 10 suffers some form of reversal or correction by the cantonal court in at least 60% of their respective cases. Many judges are wrong over 75% of the time. However, when asked about statistics for the cantonal judges, Mr. Kolak admitted that there are too few cases to create a useful database.

These statistics must be viewed with caution. The JSAP team has often come across questionable appellate work in Canton 10. In several minority employment cases, municipal court decisions supporting reinstatement of the employee have been repeatedly reversed with vague directions for the municipal judge to gather more facts.⁷⁰ The cantonal court decisions

⁶⁹ Canton 10 Law on Courts, Art, 24(4). A rash of bankruptcy cases (approx. 10) triggered by LTK Bank (HDZ bank) were filed this year involving companies in the process of privatization. Just recently, in the wake of employee outrage over the Livno Trans bankruptcy proceeding, the LTK bank mysteriously withdrew all its requests with a note to Cantonal Court Judge Keleva who handles all bankruptcy matters. The relationship between this incident and growing HDZ concern that the Li-bus and Li-trans fraud cases may expose massive privatization fraud cannot be ignored. Future international community representatives in Canton 10 may consider Article 140 of the Federation Criminal Procedure Code, which requires court officials to submit criminal reports to competent authorities if offences have been committed.

⁷⁰ Recently, JSAP discussions with Judge Mihajlevic revealed a procedural obstruction to the resolution of employment cases in Canton 10. In several employment matters concerning Opskrba Co. and Livno Trans Co. municipal court decisions (often in favor of the employee) have been inexplicably reversed by the Cantonal Court. The reversals contain cryptic and unspecific directions to the municipal court of the need to collect more facts.

represent a total lack of guidance, if not a purposefully cryptic message to the municipal court that its *result* is politically unacceptable. In another employment matter emanating from the Drvar municipal court, the cantonal court correctly reversed the municipal court's decision against the employee because the judge refused to hear any of the employee's witnesses. However, when the same case reappeared before the cantonal court panel a year later with the same procedural flaw, the cantonal court affirmed the recalcitrant municipal court judge without explanation.⁷¹

These findings have been made all the more disturbing by the cavalier reactions the JSAP team has received from the cantonal judges when confronted with these irregularities. Panel members on questionable decisions quickly point out that they did not draft or sign the appellate decision in question. It should be noted here that after a three judge panel is chosen, one judge is chosen as the president of that panel and they become responsible for drafting and signing the panel's decision. In Livno, the other two panel members do not receive copies of the case file, and only become familiar with the facts and law surrounding the case through the eyes of the panel president. In addition, there is no pre-draft discussion of the merits of the appeal. Rather, panel members wait to sit with the panel president as a full panel until after the panel president has drafted a decision. The Livno team has not had the time or resources to delve deeper into the workings of the cantonal court. However, preliminary indications are that the combination of power, and shelter from appellate review has created an unhealthy environment in the cantonal court.

At the least, the Cantonal Court must improve the clarity of its decisions in order to avoid the delay of repetitive appeals. However, one cannot ignore the apparent political obstruction underlying this problem. In 1999, OSCE Human Rights-Livno found a large number of minority employment cases unattended at the municipal courts. Although Judge Mihajlevic's (Serb) recent hard work reduced that backlog, these cases remain unresolved due to the Cantonal Courts direction-less reversals.

3.3.2 The Work of the Municipal Courts

On Duty Investigative Judges at the Crime Scene

A careful reading of Article 146(2) of the Federation Criminal Procedure Code strongly suggests, if not requires the on-duty investigative judges to attend crime scenes when called upon by police officers. Since the type of crimes requiring the investigative⁷² judge's presence are not listed, the judges of Canton 10 have differing interpretations of Article 146(2). The Livno team has worked with some Livno Municipal Court judges who feel compelled to go to the crime scene in every instance, and others who have failed to go to even the most serious crime scenes⁷³, opting instead to give the police instructions over the

⁷¹ See *Mrnjavac v. Ministry of Interior*, case #P-62/98 (Drvar police officer alleges wrongful dismissal prompted by his investigation of corruption case) This case was recently sent by Livno Fed. Ombudsmen to Federation Commission as evidence of Judge Josipovic's unsuitability for cantonal court post.

⁷² Judge Vidacak failed to attend a crime scene involving a politically-motivated bombing of a Muslim community meeting house in Municipality of Glamoc which occurred in the early morning before the April 1999 municipal elections. She issued brief directions to the police by phone. The suspect remains unknown.

President of the Court Bralo failed to attend the Glama Glamoc (alleged stolen property including misappropriated humanitarian aid) crime scene after issuing an order to the police to search the Glama warehouse. His failure to direct this search led to seven months of confusion regarding the precise materials confiscated in the search.

Judge Tadic failed to attend an early morning fatal car accident in which only one of three persons (one driver) survived. She gave directives via the phone to get blood sample of the driver. The police complained about the difficulty of the request and Judge Tadic

phone. The Tomislavgrad Municipal Court appears to go to crime scenes regularly. Like prosecutorial presence, investigative judge presence at the crime scene provides direction to the police and raises the seriousness of the matter in the minds of police.

Regular Scheduling of Hearings

In civil matters, the judges regularly fail to schedule timely hearings. Languishing cases are scheduled for hearing only after the JSAP team discovers the case through complaining parties. While there is evidence that some cases are purposely ignored, other cases are simply forgotten because the parties have not made a nuisance of themselves. It appears then that judges establish a priority for cases based not on a reasonable time standards, but on a subjective standard prioritizing cases where they have received outside pressure, or annoying visits from parties and members of the international community. This “squeaky wheel gets the grease” method of resolving cases re-enforces the unhealthy tradition of ex-parte communication, and external influencing of court decisions.

Execution of Orders and Decisions

The execution of judicial orders in Canton 10 continues to be problematic. Court orders fail to receive requisite respect from parties or local police. This is largely the responsibility of Judge Bralo as President of the Livno Municipal Court. When parties fail to comply with court orders, the Judge invariably enters into negotiations or compromises with the parties, rather than respecting the results of his own decisions.⁷⁴ While some unexecuted orders languish for purely political reasons, others appear to sit simply because the court lacks the stomach or courage to enforce. This appears to stem from a lack of self-respect that is re-enforced daily through the actions of judges and parties alike.

The local police are particularly disrespectful of court orders, and tend to pick and choose which court orders they will enforce. In a recent court order for police to impound vehicles of a bankrupt transport company, the appearance of a small group of protestors was enough to call off the execution. Rather than phoning for police back-up, the police told the executing judge to postpone the execution, leave the scene for safety reasons, and to reconsider the order the court issued. The court’s acceptance of this police decision represents lack of self-confidence, and in many cases, evidence of political influence over the courts.

3.3.3 Sensitive Cases under JSAP Monitoring

As will be seen, strong JSAP intervention into Canton 10 created unique opportunities for the Federation authorities to strengthen their authority through Federation law, particularly the Federation Law on Prosecutors. However, JSAP monitoring of certain fraud and corruption cases reveals that the Federation Prosecutor’s actions have been muted severely by internal politics and/or Federation-Canton 10 alliances.

The local political obstruction and high-profile corruption cases created an opportunity for Federation authorities, backed by the international community, to strengthen their control over the cantonal authority while fighting corruption. JSAP and the OHR Antifraud Unit

withdrew it. The crime scene was not secured, and a relative of one of the victims came to the scene and burned the deceased’s vehicle, destroying evidence. Judge Tadic eventually admitted her mistake.

⁷⁴ This phenomenon is especially true in employment cases involving politically powerful directors’ (i.e. Cectura of Livno Bus) failure to return employees to work. There is great reluctance to use judicial tools like monetary sanctions, or court control of company bank accounts to execute orders.

agreed that the Federation Prosecutor Office and the Federation Financial Police should be pressured to commit to the prosecution of several corruption cases. The cases summarized below reflect the how both local and federation law enforcement officials' actions have been muted severely by internal politics and/or Federation-Canton 10 alliances.

Glama case

The *Glama* case contains ample direct and indirect evidence of government corruption, and political pressure exerted on judicial officials by HDZ officials including Ile Krezo and Ivan Damjanovic, both men known to be controlling government action in the Glamoc area on behalf of HDZ.⁷⁵ While one part of the case concerns misappropriation of UNHCR humanitarian aid⁷⁶, a second part of the case concerns expensive agricultural and transport equipment that appears to have been either stolen⁷⁷ or acquired through misuse or abuse of public office.⁷⁸ The case began in late February 2000 when after receiving reliable information that stolen goods were stored in the Glama and Slovenj warehouses, the local police requested search warrants. Within a week of completing a search and seizure of withheld humanitarian aid, farming equipment, and unregistered vehicles from an agricultural factory in Glamoc and Slovenj, the police delivered a stack of documents relating to their activity to the prosecutor without any clear statement of criminal activity. Although the IPTF Joint Task Force found ample evidence of criminal activity and recommended leads to follow in this case, the local police charged no one, and followed no leads on their own initiative. Despite constant oversight of the IPTF and the OHR Antifraud Unit, no substantial action took place in the case by local police or prosecutors.⁷⁹ Through his inactivity, apparently prompted by indirect and direct threats, Investigative Judge Bralo also contributed to the obstruction.⁸⁰

⁷⁵ Mr. Ile Krezo's main position is Deputy General Director of Institute for Money Transfers (ZAP), and his recent political jobs have included FBiH House of Representatives from Canton 10 and more recently Glamoc municipal council member. Currently he is a candidate for FBiH House of Representatives. His partner is Mr. Ivan Damjanovic, the two-time Mayor of Glamoc recently decertified from the mayoral post by the OSCE mainly for his role in obstructing property return. International community sources agree that Mr. Damjanovic continues to have an active role in municipal government decisions. While some of the potential charges in the *Glama* case go to these men directly, other potential charges are against their respective relatives placed in direct control of the facility at *Glama*, Vjekoslav Krezo (Ile's brother) and Marko Damjanovic (Ivan's brother).

⁷⁶ Documentary evidence about humanitarian aid found on premises rented by Glamoc Red Cross and housing reconstruction supplies found on Glama factory premises show that significant amounts of aid have been misappropriated. Though much of the investigation requires considerable document review that has led to the recent (September 2000) participation of the Federation Financial Police, other more transparent criminal acts go on uncharged (such as the illegal distribution and use of humanitarian aid (blankets) by the Center for Business Glamoc to keep scores of potatoes from freezing during the Winter of 1999).

⁷⁷ Several vehicles lacked registration numbers or vehicle identification numbers. Despite the simplicity of this part of the investigation, local police and prosecutors have failed to follow up on this portion of the case.

⁷⁸ Mr. Ile Krezo was the Federation Trade Minister at the time when valuable farming equipment was offered to the Glama Factory at sharply reduced costs with low interests loans through the governments of Japan, Germany, and Norway. Documentary evidence shows that Mr. Krezo and Mr. Ivan Damjanovic have received identical loans for identical equipment. Documentary evidence also shows that Mr. Krezo and Damjanovic have been simultaneously involved in the co-capitalization of the adjoining "Glama" and "Slovenj" factories into several new companies generally referred to as the "Center for Business Glamoc". Much of the privatization and co-capitalization process undertaken by Mr. Krezo and Damjanovic occurred while Mr. Damjanovic held a seat on the Canton 10 Privatization Board.

⁷⁹ The IPTF-Joint Task Force issued a total of 6 letters of non-compliance to four different police officers during IPTF's monitoring of the investigation. Assistant Minister of Interior Drasko Dalic was a key obstructor. Despite assurances to the international community that he would directly see this case solved, he obstructed by a) failing to make written request for a search warrant, failing to file charges for obvious criminal activity, failing to follow leads recommended by IPTF-JTF. Since the opening of the case, the Livno Prosecutor has been dismissed and the Cantonal Prosecutor deemed unqualified by the federation commission, in part due to their failure to take an active role in *Glama* and other politically sensitive investigations.

⁸⁰ Judge Bralo issued search warrants but failed to attend any of the three police searches despite his responsibility under Federation Criminal Procedure Code Article 146. When confronted by JSAP about this failure, Judge Bralo admitted that he was scared that the police had deceived him by not putting the search request in writing, and thus exposing only the judge to politic pressure. Almost on cue, mysterious leaflets (eventually the subject of newspaper articles) were distributed labeling the Judge as a tool of the international community, and suspects in the case (Ile and Vjekoslav Krezo) made unannounced visits to the Judge's chamber at one point threatening the judge with a lawsuit. This had the desired effect as Judge Bralo avoided active oversight of the police in this case, and only acted after pressure from the Livno Team. Most recently, Judge Bralo has been reluctant to investigate or act on the Krezo's recent failure to abide by an earlier court order.

Finally, when Deputy Federation Prosecutor Miskovic arrived in June 2000, some substantive prosecutor directives were issued to the police. However, the police were unable to answer many of the prosecutor's questions because Federation government officials had failed to respond to local police inquiries. Rather than push for answers, the Federation Prosecutor failed to take any action on the case from August 2000 until the present. Meanwhile, the IPTF-JTF and the OHR Antifraud Unit engaged the Federation Financial Police, who became active in the case in late September 2000. Deputy Chief of the Financial Police Miroslav Vidavic assumed control over this matter and assigned two field officers from the Institute for Money Transfers (ZAP) to begin an investigation focused on documentary evidence. During this time, one of the principal suspects in the fraud, Ile Krezo took over as Deputy General Director of ZAP. Recently, on 31 October, both Mr. Vidovic and his boss, the Chief of the Financial Police were dismissed from the Financial Police without cause. The OHR Antifraud Unit confirms a clear connection between these dismissals and the Financial Police's recent efforts in cases like *Glama*, *Livno Bus*, *Livno Trans* and other similar corruption cases around the country. By the end of November 2000, OHR had acted to return Mr. Vidovic to his post as Deputy Chief of the Financial Police. OHR-Mostar has recently taken the lead in monitoring the ongoing investigation in this matter.

Livno Bus

This case illustrates the utter completeness of the corruption in Canton 10's government, and arguably the entire Federation. The case would never have been filed if not for the determination of two ex-employees of Livno Bus who personally filed criminal charges against their former boss, Director Ile Cecura and his partner Zarko Vidavic with the Livno public prosecutor.⁸¹ The public attention on the case forced Prosecutor Duic to request a police investigation that resulted in a basic fraud charge for misuse of funds against Messrs. Cecura and Vidovic related to their attempts to co-capitalize Livno Bus delivered on 23 November 1999. Though there was clear evidence to indict for fraud, and massive room to direct wider police investigations, Prosecutor Duic did neither, choosing instead to wait over two months before requesting a judicial investigation. Prosecutor Duic's proposed witness list was void of politically active Board members like Mate Frenicevic, and frightfully short given the evidence of financial fraud.⁸²

The President of the Court, Judge Bralo, assigned the case to his new investigative judge, Jelena Bulic. It was immediately clear that Judge Bulic had never performed a simple investigation to completion, let alone a financial crime of this magnitude. Although Judge Bralo insisted that he could guide her through the investigation, JSAP soon learned that in addition to her lack of experience, Judge Bulic was recovering from a severe leg break that prohibited her from coming to the office for several months. Judge Bralo eventually took over the case. An immediate conflict arose whereby one of the principal witnesses, Justice Minister Kristo, had been the Livno Bus lawyer, and a member of the original board responsible for drafting the contract upon which part of the fraud charges were based. Judge Bralo acknowledged, but refused to consider the conflict that he and the prosecutor shared because their ultimate boss (capable for starting dismissal procedures against either one of them) was knee deep in a fraud case. JSAP's recommendations for removal were refused.

⁸¹ Miogdrag Popovic and Mirko Garic held several press conferences highlighting their illegal dismissals, and the impending destruction of this once successful company.

⁸² For example, Mr. Zdravko Mihajlevic was not on the list despite direct evidence that Cecura's 1.5 million dm co-capitalization contribution was provided by Glumina bank President Mihajlevic, and that Mr. Mihajlevic was both a member of the old and new boards of the company and thus stood to benefit from the co-capitalization deal. Only some of the old and new boards were listed. No one from the privatization board was listed, and the person responsible for evaluating the state-owned company assets (Tihomir Lukovic) was not listed.

Judge Bralo repeatedly held investigative hearings without notifying the Livno prosecutor or the Federation Ombudsmen of the date though they had specifically requested such information. When the JSAP Team offered the judge clear reasons to widen the witness list and the investigation, Judge Bralo confided to the JSAP team that he was under severe political pressure not to do so, and that high HDZ officials like Mr. Frenicevic would not come if summoned. Constant pressure from JSAP eventually got Deputy Federation Prosecutor Miskovic to take over prosecution for a limited period and to attend two investigative hearings. Upon his arrival, suddenly “untouchable” witnesses like Mr. Frenicevic started calling the investigative judge Bralo to ask for a chance to address the court. Miskovic and Bralo’s questioning of key witnesses like Justice Minister Kristo and Mate Frenicevic were painfully superficial, ignoring every opportunity to point out the witnesses role in the fraud that had taken place. Later, the JSAP Team learned through the court and Federation officials that Mr. Miskovic and Mr. Frenicevic were good friends, and that Miskovic had been sent to do damage control on this case that threatens to drive a stake through the heart of co-capitilization fraud in Canton 10 that appears to be affecting almost every state-owned company in the region.

Deputy Mayor of Bosansko Grahovo (Zlatan Civcija) Case

In March 2000, the Bosansko Grahovo Municipal Council President Slobodan Sablic filed a complaint directly to Cantonal Prosecutor Bradaric (acting as Drvar prosecutor) offering specific evidence that Deputy Mayor Zlatan Civcija had illegally allocated municipal property to “FINVEST” company. Mr. Civcija is known generally to local community as the true power in Bosansko Grahovo, and is the President of HDZ in Bosansko Grahovo and a cantonal assembly member. JSAP repeatedly requested Mr. Bradaric to address this very simple case of misuse of public office. Despite clear evidence of violation of Fed Criminal Code Article 358 (Abuse of Official Authority), the prosecutor’s office has failed to even begin a proper investigation.

Chief of the Department for Construction and Urban Planning (Tihomir Laus) Case

Eight months after the opening of a police investigation into Mr. Laus’s alleged violation of Fed Criminal Code Article 358 (Abuse of Official Authority), the Livno prosecutor’s office under the direction of Mr. Bradaric has failed to indict, or even to request a judicial investigation into the case. This failure has occurred despite clear evidence of criminal wrongdoing supplied by the OSCE and the Federation Ombudsmen (Livno), clear direction from OHR-Mostar to prioritize abuse of authority cases, and clear recommendations from JSAP on how to prosecute. Mr. Duic and Mr. Bradaric have shown great weakness by their inability to directly confront Mr. Laus with his clear property law violations as evinced by his own written decisions. Rather, than ask probing questions, they merely requested a written explanation of Mr. Laus that they allowed him to answer at his leisure. His response was predictably useless to their understanding of the case. More recently, Mr. Bradaric has used the excuse that he wishes to interview other witnesses prior to making a decision about whether to request an investigation from the municipal court. The behavior of the Livno prosecutor amounts to nothing short of a stalling tactic that has allowed Mr. Laus to be re-appointed to his same post following April 2000 municipal elections, and to continue to obstruct property return into November 2000 without any written statement against him from any law enforcement authority.

Drvar Riots Case

The riot occurred in April 1998. The criminal report was submitted on 14 January 1999 against only 6 perpetrators, although many more were involved (there were three different criminal reports written by the police; the least incriminating one was submitted to the prosecutor). Only after considerable JSAP pressure did the Municipal Public Prosecutor (then Jakov Duic) issue a request for investigation in March 1999. However, the procedure continued to drag as the prosecutor never contacted the police in order to get important evidence. His factual description of the committed crime was wrong from the very beginning, as he characterized the riots as “peaceful demonstrations”. The prosecutor ignored evidence of political motivation and possible organizers or ringleaders of the riots. The request for investigation did not include injuries inflicted to Mile Marceta, the then Mayor of Drvar, or injuries sustained by other persons involved in riots. Both the prosecutor and Investigative Judge Janja Josipovic were not interested in establishing the substantive truth. After many meetings that JSAP had with prosecutor Duic, president of Drvar Municipal Council Josipovic and Cantonal Prosecutor Bradaric, Mile Marceta, was finally included in the procedure as an injured party (he was beaten during the riots) and his testimony was taken by the investigative judge (Josipovic). Indictment was finally brought on 3 November 1999 and the first hearing was scheduled for 21 May 2000, but was adjourned for 8 June 2000⁸³.

JSAP was not satisfied with the conduct of presiding judge Drago Campara, after he reluctantly ordered custody against defendant Vijakcic for repeated failure to appear for trial. Custody never occurred as Campara skillfully delayed execution of his own order while simultaneously advising Vijakcic to swiftly appeal. The Cantonal court panel of judges cancelled Campara’s order before the police could locate and transfer Vijackic to prison. Campara was unable to explain to JSAP how Vijackic came to know about and act on the prison order while simultaneously avoiding police detection. At the five hearings held so far, the five defendants gave their statements, as well as the injured party Marceta and several other witnesses. Prosecutor Bradaric (he replaced dismissed prosecutor Duic) was pretty inactive during the procedure and did not show any interest in establishing the truth (i.e. who organized riots, who were ringleaders and he hardly accepted to propose video-tape as an evidence (SFOR recorded the riots). Obstructions continued when one of the key witnesses, a Serb, Sonja Dodik, was supposed to give her testimony. When IPTF made sure that witness Sanja Dodik was going to appear before the court, Judge Campara adjourned the scheduled hearing on a pretext that defendant Branimir Franjkic was going to be absent.⁸⁴ Although three police officers were heard, the prosecutor was not interested in charging them for neglecting their duties during the riots. The prosecutor changed description of facts in the indictment on the hearing held on 12.09.2000, but still did not charge ringleaders although defendant Mara Petricevic could have been seen on the videotape as a person leading the crowd. The riots were still described as a peaceful demonstration. All defendants engaged private lawyers at this stage of procedure. The trial is still going on. The panel ordered an expert opinion to be obtained from a doctor concerning Mile Marceta’s injuries and next hearing is scheduled for 30.10.2000⁸⁵.

⁸³ Since one of the defendants did not show up, the hearing was postponed. Also, procedure against defendant Zrinko Maric was split, because he went to Croatia.

⁸⁴ *Branimir Franjkic informed the judge through a typist that he was going to hospital for a leg injury. He walked into the typist’s office to deliver the news.*

⁸⁵ Deputy Cantonal Prosecutor from Bihac, Stjepan Ivankic replaced Bradaric until the end of October 2000.

4 Conclusion

Despite significant international community accomplishments in Canton 10 this year, the international community can expect the current government in power to continue to misuse the rule of law to obstruct Canton 10 integration into the Federation of Bosnia and Herzegovina, while protecting HDZ officials from prosecution for human rights and financial crimes. Swift and substantive review of existing judges and prosecutors by the FJC and FPC is presently the international community's greatest hope for breathing integrity into a Canton 10 judiciary that remains plagued by undue external influence and internal incompetence. However, recent political moves suggest that the recommendations of the FJC and the FPC will be challenged by the cantonal assembly now that the November 2000 election results indicate that HDZ will control the agenda. During this developmental period of the FJC and the FPC, it will be crucial for OHR and the new IJC to secure the integrity of the new institutions through the creation of sound internal rules of conduct and through the support of FJC/FPC recommendations as they face defiant actions of cantonal assemblies.