SUPPORTING THE LEGAL FRAMEWORK TO ENHANCE THE QUALITY OF LEGAL EDUCATION IN UKRAINE

CHALLENGES AND OPPORTUNITIES

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I. INTRODUCTION

The United States Agency for International Development (USAID) Fair, Accountable, Independent and Responsible (FAIR) Justice Project in Ukraine is designed to support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary. The project focuses on four main objectives:

- Support the development of the legislative and regulatory framework for the judiciary that complies with European and international standards;
- Strengthen the accountability and transparency of key judicial institutions;
- Strengthen the professionalism and effectiveness of the judiciary; and
- Strengthen the role of civil society organizations as advocates for and monitors of the judiciary.

The purpose of this report is to present (1) the background of the legal framework in enhancing the quality of legal education in Ukraine, (2) an overview of the international assistance of legal education reforms, (3) challenges concerning legal education reform, and (4) suggestions for demand-driven opportunities by the FAIR Justice Project to assist in developing a consensus on legal education reforms and supporting a legislative framework to incorporate such reforms.

II. BACKGROUND OF THE LEGAL FRAMEWORK

The Constitution of Ukraine, Article 35, guarantees the right to a higher education to every person. Legal education is covered by the Law of Ukraine “On Education” and “On Higher Education”. Currently, there is not a separate law regulating legal education in Ukraine, although there has been considerable discussion to create one.

The Law on Higher Education establishes legal, organizational, and financial principles for the higher educational system of Ukraine, and sets forth four qualification levels, which are equally applicable to legal education: Junior Specialist, Bachelor, Specialist and Master. The Law on Higher Education establishes levels of accreditation for higher educational institutions and sets forth procedures for such accreditation, as well as reorganization and liquidation. This is particularly relevant as it limits the level of independence of legal education requiring the statutes of private higher educational institutions to be approved by the Ministry of Education and Science of Ukraine (“Ministry of Education”).

There are a number of regulations of the Cabinet of Ministers of Ukraine and the Ministry of Education that impact legal education such as licensing higher educational institutions, establishing higher educated specialist training, developing an educational process in higher educational institutions, and establishing state standards for higher education.

The Cabinet of Ministers issued the 2001-2005 Development of Legal Education Program as well as the Comprehensive Action Plan for Education Development in Ukraine, which was to provide for a high quality of higher education in Ukraine and its integration into the European and global educational community.
Several draft laws on higher education have been submitted to the Verkhovna Rada over the years. A rather progressive draft law, dated December 17, 2010, was submitted by MP Yuriy Miroshnychenko to the Verkhovna Rada. While the Expert and Scientific Department of the Verkhovna Rada believes the Miroshnychenko draft Law does not comply with the Law on Higher Education, particularly with regards to the definition of the educational levels, the State bodies responsible for accreditation of the higher education institutions, and licensing, it is still pending in the Verkhovna Rada.

Another draft Law on Higher Education was written in February 2011 but has yet to be submitted to the Verkhovna Rada. According to some legal education experts, it contains the most progressive provisions for legal education reform in Ukraine. This draft Law foresees the autonomy of higher educational institutions by reducing the State’s authority and allowing the most important issues to be decided by the leadership and staff of the universities.

III. INTERNATIONAL ASSISTANCE ON THE LEGAL EDUCATION SYSTEM OF UKRAINE

International Renaissance Foundation (IRF)

Georgiy Kasianov, IRF Educational Program Director, believes it is almost impossible to change the legal framework affecting legal education, given the current political situation in Ukraine as well as the commercialization of legal education.

Several years ago, the IRF reviewed six educational laws for the purpose of creating an Education Code, and concluded its work with two words: Mission Impossible. There were too many competing interests to develop a consensus and no political will.

The IRF was successful in conducting two training courses for educators on their rights and obligations, and in compiling a report on the system of accreditation and licensing of higher educational institutions in Ukraine.

American Bar Association Rule of Law Initiative (ABA/ROLI)

Country Director Michael Lechner, Legal Specialist Bill McGilton, and Staff Attorney Tetyana Rogozianska stated that ABA/ROLI is not currently working on legal education reform.

Previously, in 2009, ABA/ROLI, working collaboratively with a working group within the Ministry of Education, led the process of drafting the Concept of Development of Higher Legal Education in Ukraine (“ABA/ROLI Concept Paper”). The ABA/ROLI Concept Paper provided suggestions for the development of a higher legal educational system in Ukraine, which included:

- Ensuring a legal education standard;
- Strengthening the historic and legal component of national legal education on the basis of the gradual implementation of national legal trends;
• Establishing mandatory profound studies in the national law at all higher legal education institutions;
• Strengthening the study of different components of European and international law;
• Achieving stage-by-stage de-attestation of departmental higher legal education;
• Ensuring the integrity of higher legal education and legal practice;
• Strengthening the moral and ethical component and patriotic orientation in higher legal education;
• Directing the reform of higher legal education to comply with the requirements of a reformed legal system; and
• Differentiating lawyers’ training between state and non-state higher educational institutions.

Taras Finikov

Taras Finikov is the Pro-rector on international projects of the University of Economics and Law “KROK” and President of the International Charitable Foundation for Research of Educational Policy, which was created 10 years ago with Polish and Czech Republic academics to discuss issues concerning the development of regional education management policies.

While serving as Deputy Minister of Education in 2009, Mr. Finikov worked with ABA/ROLI on developing the ABA/ROLI Concept Paper. While no direct action was taken on the ABA/ROLI Concept Paper, the Ministry of Education issued its own concept paper on legal education, which, reputedly, extracted only 10% of the suggestions set forth in the ABA/ROLI Concept Paper.

Mr. Finikov supports the idea of having an independent review of all draft Laws on Higher Education by a committee of Polish, Czech, Ukrainian, European and American experts.

National University of “Kyiv-Mohyla Academy”

Andriy Meleshevych, Dean of the Kyiv-Mohyla Academy, stated that this is not a good time to get involved with legal education reform. There is no political will; there is no partner in the Ministry of Education; and there are numerous competing interests. Legal education reform is too controversial and too political. Additionally, he believes it cannot be achieved without reforming the entire higher educational system.

The Dean believes that changes can begin with the creation of the Association of Deans of Law Schools, which would become a “bottom up” power creating political will in representing the interests of law schools before the government.

David Leavitt of the Leavitt Foundation

David Leavitt described his Foundation’s work, called the USAID BUILD Initiative, with several law schools in Ukraine in which U.S. attorneys and law professors teach an Advocacy Procedure Course that includes advocacy in adversarial proceedings, ethics and values. Over 600 students have received the training, which is provided in two semesters per year (10 weeks
of 80 minutes/weekly in the fall and winter semesters) in Kyiv, Kharkiv, Lviv, Chernivtsi, Simferopol and Odessa.

Mr. Leavitt plans to create a western style law school in Ukraine for students who have obtained a masters of law degree in Ukraine and have passed the LSAT and TOEFL exams. Given the anticipated cost of $22,000 annually, the Levitt Foundation will provide tuition-deferred student loans. The law school will conduct its classes using Socratic teaching methodologies rather than the Soviet style of teaching. The students will graduate with a J.D. degree. Mr. Leavitt believes that even if the law school does not receive accreditation from the State, law graduates will be in demand from prospective employers due to the high quality of teaching instruction at the law school.

**OSCE Meeting**

Oksana Syroyid, National Project Manager in the Rule of Law Unit of the Organization for Security and Cooperation in Europe (OSCE) Project Coordinator in Ukraine, stated that, “nothing is going on in legal education.” She believes the following: There is no connection between the legal profession and legal education in Ukraine. There is no partner in government on legal education reform, in particular Dmytro Tabachnyk, Minister of Education. Not one person in the Ministry of Education is dealing with legal education. Very little progress on legal education will be made so long as Minister Tabachnyk remains in office. The Academy of Legal Science may be a potential partner, although it is currently inactive. There are no State standards of legal education. The current requirements of legal education are based on the Soviet approach to education and the law with over 400 hours devoted to criminal law. There are many competing interests in legal reform, legal professional reform, and legal education reform.

Ms. Syroyid suggests working directly with the five major law faculties: Kharkiv National Law Academy, Odessa National Law Academy, National University of “Kyiv-Mohyla Academy,” Taras Shevchenko National University and Lviv National University, which could develop a consensus on legal education reforms.

OSCE spent the past three years with OSCE experts from Germany, France, Poland, and the United Kingdom, as well as Ukrainian experts, to analyze the content of legal education courses in Ukraine using curricula from six law faculties. The analysis was based on Council of Europe recommendations pertaining to the State’s responsibilities in legal education, particularly as they relate to the respect for higher education, the guarantee of freedom in legal education, and the autonomy of universities.

**OSCE Conference**

OSCE conducted a four-day conference “The Role of Legal Education in a Society Governed by the Rule of Law: Challenge for Ukraine,” (“Conference”) which was organized in cooperation with law faculties of the National University of “Kyiv-Mohyla Academy” and the Lviv National University in Lviv from October 20-23, 2011. At the outset of the Conference, OSCE issued a report entitled “State of Affairs of Legal Education and Science in Ukraine (Results of Research)” (“Report”).
The Conference began with an opening session during which Iryna Zaverukha, Professor of Administrative and Financial Law at Lviv National University, gave an excellent overview of the challenges of the legal education system in Ukraine and provided a comparative analysis of legal education in Ukraine with the European practice of legal education in Poland, Germany, France and the United Kingdom.

Following the first day of the Conference, the attendees were divided into five working groups for two days of discussion as follows: 1) Theory of Law; 2) Constitutional Law and Human Rights; 3) Administrative Law and Administrative Procedure; 4) Criminal Law and Criminal Procedure; and 5) Organization of the Educational Process for Training Lawyers.

Groups 1 through 4 discussed the content of courses and curricula pertaining to the substantive areas of law of the specific working group. Group 5 on the Organization of the Educational Process for Training Lawyers discussed the broader issues concerning the role of a lawyer, the educational and testing requirements for becoming a lawyer, the organization of legal education, and the legislative requirements to incorporate the recommended changes to legal education.

During the plenary session on the fourth day of the Conference, a leader of each working group gave the recommendations of the respective working group. Groups 1-4 provided draft model curricula for each training course within the substantive area of the working group. OSCE intends to submit these draft model curricula to the Ministry of Education for its review and potential implementation.

Group 5 on the Organization of the Educational Process for Training Lawyers presented several recommendations, as follows:

1. The Ukrainian legal profession should be similar to the European legal profession, rather than the current Soviet perception of an attorney.

2. There should be only five classifications of attorneys: Advocate, Notary, Prosecutor, Judge, and Legal Advisor.

3. The legal educational requirements to qualify as a Ukrainian attorney will include the completion of a Master’s Degree in Law. The Specialist Degree in Law should be eliminated.

4. In order to be admitted to the legal profession, graduates with a Master’s Degree in Law should pass a State unified examination.

5. The State unified examination should be conducted by a separate entity of which members should be elected by their legal education peers.

6. The structure of the Educational Plans should be changed to include 2/3 legal disciplines (of which 2/3 will be foundational and obligatory, and 1/3 selective), and 1/3 general humanitarian disciplines.
7. Rather than amend the Law on Higher Education to incorporate changes to the legal educational system in Ukraine, a separate and new Law on Higher Legal Education should regulate legal education.

8. Major unresolved issues include licensing, accreditation and evaluation of law faculties. While there was a lively discussion on these three areas during the working group sessions, a consensus could not be reached, except for the need to have one entity providing the accreditation standards, while another entity evaluates the law faculties according to the accreditation standards. The group also agreed that licensing should be conducted by the State based on the accreditation procedures.

9. Other unresolved issues are State funding of legal education, and the qualifications and competencies of those who can teach at law faculties, i.e. must they be only academics or could they include practitioners?

While OSCE listed several observations in the Report, the biggest obstacle is implementation of its recommendations, witnessed by the fact that although certain representatives of the Ministry of Education and the Ministry of Justice were invited to attend the OSCE Conference, none attended. Most recommendations emanating from the Conference will require either amendments to the draft Law on Higher Education or, alternatively, a new Law on Higher Legal Education.

**IV. CHALLENGES**

Many of the challenges listed below were derived from the OSCE Conference, while some were mentioned in the meetings described above.

1. There is no political will in Ukraine for legal education reform, particularly in the executive branch, Ministry of Education and Ministry of Justice. We were advised not to work on legal education issues, i.e. do not waste our time until the current Minister of Education leaves office.

2. Legal education has become a highly commercial enterprise with competing self-interests, which will make it very difficult to change the legal framework pertaining to legal education.

3. Given that the legal education system in Ukraine has become profitable, numerous law departments have been created at technical and industrial universities, some of which do not provide high quality legal education. For the purposes of this report, law faculties and law departments will be collectively referred to as law schools.

4. The legal education system is cumbersome with no clear State standards, numerous state regulations, and inadequate infrastructure, e.g. law school libraries are poorly equipped.

5. There are numerous entities providing legal education services, which are substandard, particularly the law schools associated with industrial universities, such as the Agricultural University, the Ship Building Institute, and the Aviation and Polytechnic Universities.
6. Few law schools provide a universal legal education in which the law graduate can practice in any discipline. Most law schools have specialties, which narrow the professional opportunities for their law graduates.

7. The legal education system continues to reflect the Soviet perception of the role of a lawyer, which is to represent the social interests of the State, rather than to protect the client, which is the view of an attorney in democratic countries. The current curricula of legal education in Ukraine reflects that perception in that a disproportionate amount of law school credits are devoted to criminal law, criminal procedure and criminalistics. Consequently, between 60-70% of law school graduates become law enforcement officers, while advocates are viewed as criminal defense attorneys (see draft Law on the Bar and Practice of Law).

8. Given the disproportionate amount of focus on criminal law and related areas, there is little attention on civil law, particularly administrative law.

9. Law professors and law students have little involvement in the quality of legal education. E.g. curriculum is State-driven rather than based on an individual-centered approach, while the content of text books is State-driven rather than determined by law professors and law school deans.

10. The remnants of Soviet teaching methodology permeate the legal educational system. Law students are not taught critical thinking, critical analysis, legal reasoning or legal writing. The essential skill of a law student is memorization as law students are tested on accurately reciting laws and codes.

11. The current accreditation procedures are fundamentally flawed as they focus only on the quantity of services rather than their quality. Essentially, there is no assessment mechanism of the quality of legal education in Ukraine. Additionally, those who prepare the accreditation procedures are the same as those who evaluate adherence to the accreditation procedures, which is an invitation for biased results.

12. Testing of law students is neither unified, nor fair as it is conducted by each law school. Given that law student enrollment affects the funding of the law school, it is in the self-interests of the law school to pass as many students as possible to enhance its reputation.

13. There are no clear criteria for State-financed law students. This is a very important issue as the State can maintain its control over law enforcement activities by financing law students at law enforcement academies and other law schools. Some suggest that law enforcement academies distort the landscape of law schools as they negatively impact the development of legal science. Others opined that attending a law enforcement academy and knowing criminal procedures does not make an attorney.

14. Law schools have no autonomy and operate under an oppressive number of State regulations.
15. Most law professors are narrow-minded and do not have a visionary approach to legal education reforms. 99% of law professors teach at the same law school from which they graduate, and thus only know that particular method of legal education.

V. OPPORTUNITIES FOR FAIR ASSISTANCE

The opportunities for FAIR assistance in supporting the legal framework for legal education are numerous, given the paltry foreign donor assistance over the past two decades and the emerging interests of some Ukrainian legal educators and parliamentarians in legal education reforms.

While the OSCE Conference was successful in allowing free and open discussion, and while the participants were receptive to radical changes in the legal education system, the mindset of the legal education community as well as the legal community, the Cabinet of Ministers, particularly Ministry of Education and Ministry of Justice, must be broadened to understand and promote the dynamics of the European legal education system.

The underlying concern is to develop a nationwide consensus on legal education reforms while concurrently working with the Verkhovna Rada to ensure the draft Law on Higher Education or, alternatively, a draft Law on Higher Legal Education, contains the substance of the consensus on legal education reforms. Otherwise, the consensus process for progressive reforms could be in vain if those involved in the legislative process pursue a separate and perhaps regressive legal framework for legal education reform.

1. Support the continuation of OSCE’s work in developing a consensus on the legal framework for legal education reform. One-day conferences could be held in three to four regions of Ukraine within the next six months using OSCE’s report on State of Affairs of Legal Education and Science in Ukraine and the Conference methodology. Ideally, OSCE would organize the regional conferences while FAIR funds the conferences. OSCE and FAIR could jointly conduct the regional conferences and be equally responsible for the working groups. FAIR would provide the final report from the regional conferences. In each of the regional conferences, those who attended the OSCE Conference in Lviv who are from the particular region could be asked to help lead the conference to ensure continuity. Most law school deans and law professors who are reputedly closed-minded to reform due to their parochial view of legal education should be the focus of attendees at the regional conferences.

2. Ideally, it would be wise to develop a relationship with the Minister of Education to include him in the discussions concerning legal education reform. However, in light of the Minister’s reputed lack of interest in legal education reform, it is essential to develop partnerships with other formidable legal education entities, such as the Academy of Legal Sciences and law faculties which have traditionally been passive.

3. Support the endeavors of MP Serhiy Holovatiy, Chairman of the National Commission for Strengthening Democracy and the Rule of Law in Ukraine, to either revise the current draft Law on Higher Education or draft a new and separate Law on Higher Legal Education. Monitor the status of the draft Laws on Higher Education or Higher Legal Education (if one
is drafted), stay current on the issues affecting the legislative process of the draft Laws, and provide advice and guidance using European standards of legal education.

4. Support appropriate revisions to regulations affecting the administration of legal education, and propose new regulations, which reflect the consensus on legal education reforms.

5. Review the legal framework of medical education and testing to ascertain which aspects could be replicated in legal education and testing.

6. When the time is appropriate, conduct an analysis (similar to the Venice Commission) of the draft Laws on Higher Education or the draft Law on Higher Legal Education using academics, law professors, advocates and law students from Ukraine, countries with similar legal education issues such as Poland and the Czech Republic, another European country, and the U.S.

7. On the recommendation made at the OSCE Conference, ascertain the State’s cost of providing legal education to a law student on an annual basis. The results of this research will affect recommendations concerning financial costs associated with legal education, particularly the redistribution of State allocation for funding law students.

8. Support the existing association of law schools called the Council of Representatives of Higher Educational Establishments and Scientific Institutions Specializing in Law (“Council”) so that it can speak with one voice on promoting the interests of legal education reform, particularly on the legal framework for legal education. While few law schools are actively involved in the association (Odessa National Law Academy is the only large law school member), Dean Meleshevych of National University of “Kyiv-Mohyla Academy” Law School currently refuses to participate in the Council due to its politicization. Rather than create a new association of law school deans as Dean Meleshevych recommends, work with the existing Council to reduce its political activities and the political tensions among its members. Support its institutional and programmatic growth to include other law schools.

9. Conduct a workshop at the CEELI Institute in Prague with Ukrainian legal educators and parliamentarians involved in legal education with their European counterparts, particularly those from Poland, Germany, France and the United Kingdom, to discuss legal education reforms, particularly the Role of a Lawyer in a Democratic Society, the Role of Legal Education in a Democratic Society, and the Administration of Legal Education in a Democratic Society. It does not appear that a study trip to the U.S. for Ukrainians to visit law schools would be as helpful as meeting with their European counterparts in a central European location.

10. In order to enlighten all Ukrainian law school deans and law professors as to European standards of legal education, conduct regional workshops with law school deans and law professors on the Role of a Lawyer in a Democratic Society, the Role of Legal Education in a Democratic Society, and the Administration of Legal Education in a Democratic Society using those participants at the CEELI Institute to conduct the regional workshops.
11. Become the repository of all relevant documents, laws, concept papers, programs and plans related to legal education reform in Ukraine, to include not only the Law and draft Laws on Higher Education, but also the 2001-2005 Development of Legal Education Program of the Cabinet of Ministers, the Cabinet of Ministers’ Comprehensive Action Plan for Education Development in Ukraine, the ABA/ROLI Concept Paper on Higher Legal Education, and the ministerial Concept Paper on Higher Legal Education. This would enable FAIR to be the one-stop shop on the legal framework for legal education reform in Ukraine.

12. Conduct an analytical review of legal education in Ukraine in order to obtain a baseline of Ukrainian legal education using the international standards on legal education set forth in ABA/ROLI’s Legal Education Reform Index.

13. Provide train the trainer (TOT) workshops using adult teaching methodologies to law professors. Since FAIR actively cooperates with the National School of Judges to develop and implement an initial training program for judicial candidates, FAIR can conduct TOTs for professors of Kharkiv and Odessa National Law Academies which are actively involved in the training of judicial candidates.

VI. CONCLUSION

It is enlightening that after two decades of substantial financial and technical foreign assistance to the rule of law of Ukraine, there has been scant consideration paid to the legal education system, which has suffered from a lack of attention and resources. There are few qualitative characteristics of the Ukrainian legal education system that meet European standards. Indeed, much of the characteristics of the Ukrainian legal education system reflect Soviet vestiges of the role of government, and the role of law, both of which result in a distorted view of the role of a lawyer in a democratic society.