REPORT ON THE 14th CONFERENCE OF THE INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

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The USAID Nove Pravosuddya Justice Sector Reform Program in Ukraine (New Justice) is designed to support the Judiciary, the Government, the Parliament, the Bar, Law Schools, Civil Society, Media and Citizens to create the conditions for an independent, accountable, transparent, and effective justice system that upholds the rule of law and fights corruption in Ukraine. In achieving this overarching goal, New Justice focuses on the following objectives:

Objective 1: Judicial Independence and Self-Governance Strengthened.
Objective 2: Accountability and Transparency of the Judiciary to Citizens and the Rule of Law Increased.
Objective 3: Administration of Justice Enhanced.
Objective 4: Quality of Legal Education Strengthened.
Objective 5: Access to Justice Expanded and Human Rights Protected.

Pursuant to Objective 3: Administration of justice enhanced, and Objective 4: Quality of Legal Education Strengthened New Justice sent a delegation of representatives of the graduates of the Michigan State University (MSU) Judicial Administration Certificate Program in Ukraine and a faculty member of the Rule of Law Certificate Program to the 14th Conference of the International Association for Court Administration as well as the International Justice Forum being held in conjunction with the International Association of Judges (IACA Conference) in Nur-Sultan, Kazakhstan from September 17 to 18, 2019.

Pursuant to Expected Results 3.1.1., 3.1.2. and 3.1.3, New Justice plans to conduct an expert review of the current case weights, as well as design and implement a new case weighting study and prepare recommendations for changing the case weights. The case weights will help the judiciary make informed decisions regarding the number of judges necessary to handle the workload, balance the workload of judges in individual courts, contribute to transparent case assignment, and serve as justification of the judiciary’s budget requests. Therefore, as presented in the attached conference draft agenda, this activity specifically supported the following expected results:

- 3.1.2: Strategies, policies, and procedures for managing court operations, and providing quality services to the public implemented;
- 3.2.3: Judicial personnel demonstrate competencies in key areas of management and operational support;
- 4.3.1: Modern instructional methods adopted and implemented to ensure effective practice oriented, skills-based learning and formally adopted into school curriculum.

During the IACA Conference, the Ukrainian delegation has been exposed to a wide range of practical tools through engaging an international community of expertise, gaining practical knowledge focused on devising solutions to common challenges, utilizing already-developed tools, gaining exposure to new methodologies, and accessing best practices that can be applied in Ukraine.
The Ukrainian delegation included two judges of the High Anti-Corruption Court, chiefs of staff from trial courts and court of appeals, as well as a local faculty member of the Rule of Law Certificate Program, and New Justice Legal and Judicial Specialist Ashot Agaian and Judicial Administration Specialist Serhii Suchenko. Some of the proposed members of the delegation are faculty members or graduates of the Michigan State University (MSU) Judicial Administration Certificate Program. Having key active court staff members together at the IACA Conference yielded significant benefits such as forming a group of reforms-oriented leaders in the area of court administration with a progressive approach to work and will encourage further advances in judicial administration. These participants discussed new ideas during the conference and decided what and how new initiatives can be pursued in Ukraine following the conference.

The IACA Conference brought together hundreds of judicial system leaders, judges, and judicial administration professionals from around the world to discuss approaches to improving justice administration. The program offered a unique opportunity for participants to share outcomes with colleagues from other countries, network with court managers and leaders from around the world; and learn more about enhancing administration of justice and reaching court excellence. Conference topic areas included: equal access to justice, court governance and leadership, technology and its deployment, judicial and court performance and efficiency, promoting the rule of law, court-related education and development programs, independence and accountability of the judiciary, efficient allocation of judicial resources, and other sessions to strengthen court professionals.

Previous experience demonstrated that participation at such conferences have positive impacts on promoting judicial reform in Ukraine. Participation at previous IACA conferences led to the development and adoption of the Strategic Plan for the Ukrainian Judiciary, which included enhancing opportunities for professional development for court staff as a strategic issue, inspired by the original idea to design and implement the MSU Judicial Administration Certificate Program in Ukraine, and provided the impetus for a pilot e-court project as well as the online dispute resolution platform. As a result of the MSU Certificate Program, the most active court administrators established a Civil Society Organization called “Court Management Institute”, with a goal to promote and advance modern court administration practices in Ukrainian courts.

The sections that follow include summaries of the Conference’s sessions, lessons learned and best practices that can be applied in Ukraine, and conclusions.
SESSION SUMMARIES

The IACA Conference covered some of the central issues that policymakers, judges, technologists, and lawyers will face. These sessions took place in panels. Each panel was chaired by leading legal figures with presentations by experts in each topic, with panelists then responding, and thereafter, contributions from the floor. A summary of each of the sessions by topic follows.

TOOLS AND METHODS FOR OPTIMIZING THE EFFICIENT ALLOCATION OF JUDICIAL RESOURCES AND FOR MAXIMIZING JUDICIAL PRODUCTIVITY

The discussion focused on the tools currently available to different jurisdictions to evaluate and manage allocation of adequate judicial resources, as well as to assess the quality of work of the judiciary in terms of productivity and timeliness. Sergey Suchenko, New Justice Legal and Judicial Administration Specialist, shared the experience of Ukraine in using modern case weighting techniques in balancing judicial workload, justifying budget requests of the judiciary and making informed decisions regarding the number of judges necessary to handle the caseload of courts. Mr. Suchenko’s presentation can be downloaded here.

Edis Brkic, USAID MEASURE-BiH Deputy chief of Party reflected upon the tools used in Bosnia and Herzegovina for court performance evaluation. Mr. Brkic’s presentation can be downloaded here.

District Judge Chi-Ling Seah from the State Courts of Singapore shared the experience of Singapore in designing and implementing strategies and tools for managing judicial resources in the Singapore courts, which encompasses active use of retired judges as a resource, streamlining case proceedings and using the help of volunteer mediators to provide services to the public, as well as a number of court-annexed services, such as community justice centers. Of special note was the extensive use of dashboards available through ICT solutions in order to manage court operations. Judge Chi-Ling Seah’s presentation may be downloaded here.

Finally, Aslan Tuleyev from the Court Administration of the Republic of Kazakhstan discussed the importance of using weighted caseload as a tool to balance judicial workload, and shared the steps taken by Kazakhstan to this end.

EMERGING TECHNOLOGIES – OPPORTUNITIES AND THREATS FOR COURTS (AI, SMART CONTRACTS, PREDICTIVE ANALYTICS AND MACHINE LEARNING)

Kyle Snowdon, vice-president of Tyler Technologies, USA, opened the discussion by sharing several important insights regarding the process of implementing IT tools in
the work of judicial institutions. He pointed out, that the ideal logical framework which should be applied to software development often crumbles due to financial constraints, poor processes, lack of communication and information exchange. Mr. Snowdon’s presentation was followed by the presentation of Adam Watson Senior Program Manager at Synergy International Systems, USA, who discussed the experience of his company in supporting several judicial systems around the world in transitioning to a digital environment, most notably – Rwanda. Together with Colin Rule, vice-president, Online Dispute Resolution, Tyler Technologies, USA, Mr. Watson also discussed the potential role of artificial intellect in supporting case file review and judgement writing. Richard Goodman, Change Director from Her Majesty’s Courts and Tribunal Service, UK, reflected upon the potential use of ODR mechanisms as a tool to reduce the backlog in courts. This discussion was followed by a joint presentation by Nicholas Wee Teck Huat from Crimson Logic and District Judge Sarah Tan from Singapore, who discussed Singapore’s experience in implementing automated solutions to ensure correct and unified judicial practice.

In addition, the presenters discussed the emerging trend of extraterritorial dispute resolution, that has emerged over the recent years with the appearance of numerous online commerce platforms on the market. The resolution and enforceability of consumer disputes arising from those platforms in domestic jurisdictions is highly limited, if at all available, and quite lengthy due to the nature business conducted by those platforms with sellers, buyers and distributors often located in different parts of the world. At the same time, dispute resolutions mechanisms offered by the platforms themselves offer near 100% enforceability, as the commercial platform holds full power to restrict unlawful parties from entering the market.

EXPANDING ACCESS TO JUSTICE AND REBUILDING PUBLIC TRUST AND CONFIDENCE – CASE STUDIES

This session was devoted to case studies on projects aimed at building public trust and confidence in the judiciary and increasing its transparency from Ukraine, Brazil, and Kazakhstan. Oleg Shakov, Director of International Programs Division, Federal Judicial Affairs, Canada started the session with outline of key topics to be addressed including: a) whether the judiciary shall perform its classical function of delivering justice only or shall expand its mandate to ensuring access to justice for citizens through considering court fees issue, legal representation, reconciliation procedures, b) transparency of judicial procedures as one of the key features of an efficient judiciary that people trust, c) the judiciary shall analyze the use of social media by judges and develop clear policies on how to use them in order to avoid scandals.

Mr. Shakov proceeded with a presentation on improving the courts and community communication within the Canadian-Ukrainian Project “Support to Judicial Reform”. Particularly, the speaker emphasized the importance of horizontal/internal and external communications for the judiciary. He made an argument that the judiciary shall coordinate its communication activities itself while ensuring proper interaction with other branches rather than transferring the communication function to other branches or institutions which all other speakers supported. This presentation can be downloaded here.

The next two speakers presented the outcomes of projects aimed at making the courthouses more user-friendly and open to community members. Judge Fausto
Martin de Sanctis of Federal Appeals Court in Brazil spoke about the Open Doors TRF3 Project – Towards A Citizen's Vision (Open Doors Project) implemented in his court in 2018. The Open Doors Project opened the courthouse for the public, so that students and community members could get acquainted with the courthouse and court operations as well as attend the court hearings. In addition to attending court hearings attendees had lectures at the end of each visit that dealt with subjects related to federal public service, procedural aspects of the court’s operations, and other legal matters that the public was interested in.

The key innovations applied within the Open Doors Project are as follows:

- broader target audience (previously only law students had a broad access to the court for educational purpose);
- broader scope (Trial Court and Court of Appeals, not only in São Paulo, but also in Campo Grande);
- use of technology for scheduling and arranging the visits;
- conducting lectures on the topics that public is interested in;
- use of a Satisfaction Survey Form (project feedback).

The Open Doors Project proved to be successful with 97% of users giving a positive feedback which helps improving the public trust in the judiciary. Judge Fausto Martin de Sanctis’ presentation can be downloaded here.

Chief-Judge Arman Zhukennov of Astana Court presented the project implemented in his court which improved the access to justice and provided a more human-centered approach to delivering court services. The project had two components: a) redesigning the courthouse, and b) redesigning the procedures. Under the first component the court’s leadership removed the physical barriers to the courthouse, removed the long narrow corridors and walls on the first floor of the court and created the front office with open space that has a comfortable waiting area with chairs and tables as well as many desks for navigating visitors through the courthouse and provided services. The second component foresaw creating a back office and arranging the procedures that to the greater extent accommodate the needs of individual visitors. Once the procedures have been optimized, the time for responding to each request dropped twice, which increased the efficiency and quality of court provided services and lead to increase of public trust and confidence in the judiciary.

**COURT RELATED EDUCATION AND DEVELOPMENT PROGRAMS**

During this session, New Justice Legal and Judicial Specialist Ashot Agaian, together with the Law Professor at Yaroslav Mudryi National Law University and Faculty Member for the Rule of Law Certificate Program in Ukraine (ROL Program) Tetiana Tsuvina presented the Ukrainian experience in implementing Certificate Program in the Rule of Law for judges, prosecutors, attorneys, court managers, judicial clerks, and other practicing lawyers in order to improve legal professionals’ and court staff’s skills in applying rule of law in their everyday work. They provided the attendees of this session with background information about the ROL Program and explained that this innovative program provided participants with the ability to not only understand
the rule of law, but also with the tangible skills to apply it in their day-to-day work as justice sector professionals. The speakers spoke about the unique design of the ROL Program as it was designed by the respective Ukrainian and U.S. universities together with New Justice’s support, its unique structure having skills-based modules on the rule of law principles, legal reasoning, consulting and interviewing, dispute resolution, and adversarial elements of the rule of law, and other topics. This presentation can be uploaded here.

Participants of this session found the approach to training legal professionals through the ROL Program very innovative and asked questions about its impact, content of all the teaching modules, and further implementation of this activity.

Jeffrey Apperson, Vice President of the National Center for State Courts spoke about promoting the rule of law by supporting the work of judicial education institutions around the world. Particularly, he presented the activities of the International Organization for Judicial Training that conducts international and regional conferences and other exchanges in order to provide opportunities for judges and judicial educators to discuss strategies for establishing and developing training centers, designing effective curricula, developing faculty capacity, and improving teaching methodology. The speaker presented the upcoming conference on Judicial Training: A Key to Successful Transformation of the Judiciary which will take place in Cape Town, South Africa, on September 22 to 26, 2019. Jeffrey Apperson summarized his presentation with review of successfully implemented training program developed due to participation in the previous international conferences on The Training of the Judiciary. This presentation can be uploaded here.

The next speaker Professor Sergey Pen, dean of the KAZGUU University Law School, spoke about the classical legal education as key to implementing court related professional development programs. Professor Pen made an observation that based on his experience in Kazakhstan, it is difficult to teach approaches to law and court administration that contradict the ones provided by the legal education. Therefore, it is critical to review the curricula and teaching syllabi
that law schools use to teach students and incorporate in them modern approaches to understanding law, access to justice, fair trial standards, and court administration. Professor Pen also stressed the need to develop skills based educational programs and involve more practicing lawyers to teach courses related to procedures.

The session ended with several questions and comments on importance of implementing the ongoing professional development programs for judges, court staff, attorneys, and prosecutors in order to promote the common approach to applying the law with respect to human rights.

**NEW SYSTEMS OF COURT MANAGEMENT AND ADMINISTRATION**

Susan Acland-Hood, CO of HM Courts and Tribunals Service, UK presented the new concept of a one-billion-pound court modernization program launched by the UK courts. The program focuses on several main areas:

- Provision of customer-centric services and elimination of any procedural steps which do not directly advance the customer’s business;
- New ways of access to justice, including extensive use of ODR and mediation;
- Improvement of services to provide better support to people who come to court, such as simplification of forms, better scheduling and public information, and
- Concentrate justice services in fewer but better facilities, ensure data exchange between all relevant agencies.

Jesper Wittrup from Denmark presented the concept of “smart case weighting” where as opposed to the classical approach that relies upon data collection from judges and courts, the case weights are produced on the basis of profound desktop mathematical analysis. According to Mr. Wittrup, this method gives the possibility to design case weights faster, while maintaining a decent level of reliability.

**IT TECHNOLOGIES AND ADMINISTRATION OF JUSTICE**

Colin Rule, vice-president, Online Dispute Resolution, Tyler Technologies, USA, opened the discussion by stating, that information technology in the field of justice has evolved to a point that it is in the process of establishing extraterritorial jurisdictions, which will marginalize the role of the classical courts in certain types of disputes over the next five years. In his discussion, Mr. Rule referred to the concept of “lex mercatoria” (the market law), which was a special set of rules adopted by the medieval market fairs, which was not tied to any particular territory, but travelled along with the market. Mr. Rule compared this with the abundant online commercial platforms such as e-Bay, Amazon etc, which have designed and implemented rigorous rules governing the activity of sellers and consumers, and which are able to enforce these rules in an expedient and efficient manner.

Abdulla Al Majid, Chief Innovation Officer to the UAE Ministry of Justice, reviewed the current policies of the Ministry of Happiness and the Ministry of Possibilities of the UAE, which aim to ensure, that the quality of services provided by any government agency to UAE citizens is comparable to the services of a five-star hotel.
As part of this initiatives, all agencies, including the Ministry of Justice, went through a rating process. The Ministry of Justice received a 5-star rating.

Richard Goodman, Change Director from Her Majesty’s Courts and Tribunal Service, UK, reflected upon the use of technology as the enabler for transformation of quality of justice, and the customer-centered approach taken by UK courts as part of their reform strategy.

Finally, Francesco Contini, Senior Researcher from the Research Institute on Judicial System, Azar Aliyev, Associate Professor, Martin-Luther-Universitat-Halle-Wittenberg and Mimi Zou, co-founder of Deep Tech dispute Resolution Lab reflected on the future of AI in courts together with all the other panelists. Most of the participants were of agreement that it is currently premature to talk about the implementation of any real AI technology in court operations, not to mention “Robo judges”, as this technology is not reliable enough to guarantee stable and fair outcomes. However, there is a growing need for smart court services (including chatbots, legislation analysis tools etc) which could serve as aids for both judges and the public, offering possibilities to work faster and in a more efficient manner.

INNOVATIVE DISPUTE RESOLUTION AT AIFC

Representatives of the Astana International Financial Centre (AIFC) Court (http://aifc-court.kz/) discussed its establishment and operations in light of promoting foreign investment. Christopher Campbell-Holt, Registrar and Chief Executive of the AIFC Court and International Arbitration Center, gave the background information about the AIFC Court and International Arbitration Center (IAC) (https://aifc-iac.kz/). Particularly, he explained that the AIFC was established in 2018 under Kazakh law as a dispute resolution body of the Astana International Financial Center, which is a special economic zone within the City of Astana (recently renamed Nur-Sultan) created by President Nazarbayev that focuses attracting investment in Kazakhstan. The Court is independent in its activities and is not part of the ordinary Kazakh judicial system but is fully funded and administered by the Kazakh Government.

The speaker mentioned that the Court does not have jurisdiction in respect of criminal and administrative proceedings and has jurisdiction in relation to hearing and adjudicating any disputes:

- between AIFC participants, the AIFC Bodies and/or their foreign employees;
- relating to operations carried out in the AIFC and regulated by the law of the AIFC;

Faculty Member for the Rule of Law Certificate Program in Ukraine Tetiana Tsuvina discussing the use of international arbitration in Ukraine with the Rt. Hon. The Lord Woolf CH, Chief Justice of the AIFC Court.
transferred to the Court by agreement of the parties.

There are no administrative fees, so the AIFC consideration of cases is free of charge for all the parties. The court considers cases in the first instance together with an appellate review, which is final and binding on all parties and not subject to appeal to the Kazakh Supreme Court. It has a special fast track procedure for small claims up to the value of USD 150,000.00. The AIFC Court applies English common law, any other law agreed to by the parties, or any other law that the court finds appropriate for the dispute possibly including Kazakh law with decisions issued in English. It has its own procedural rules that have been modelled on English common law procedures and international good practices. Also, the AIFC Court has an e-filling system that enables parties to file cases electronically at the AIFC Court from anywhere around the world without the parties having to be physically present in Nur-Sultan. Unlike private arbitration courts, AIFC Court decisions establish precedent for other AIFC Court decisions, whereas private arbitration court decisions are only binding on the parties to that specific dispute and not precedent setting. The AIFC judgments are enforceable in the same procedure as the local courts’ judgments unlike the international arbitration decisions.

AIFC Court Justices Lord Faulks and Andrew Spink QC then spoke about the importance of judicial independence for similar courts and mentioned that though the AIFC Court judges are appointed by the President of Kazakhstan and are not required to be Kazakh citizens, they enjoy full judicial independence and are not subject to any influence by the state. Their contract also provides grounds for independence in terms of remuneration, and if there are any threats to their independence Justices may unilaterally revoke their contracts with the Government of Kazakhstan. Since 2018, the AIFC Court has received one case which has been considered and enforced.

With respect to alternative dispute resolution at the AIFC, parties can also access arbitration, mediation, and alternative dispute resolution at the IAC, providing privacy and more control by the parties over the appointment of arbitrators and the procedures that will be applied to assist with the resolution of their disputes. The IAC has its own panel of outstanding international arbitrators and mediators who are greatly experienced, independent, and impartial. The IAC is an appointment authority, offering the appointment of arbitrators and mediators from its panel, for arbitrations and mediations conducted at the IAC or elsewhere.

Parties may agree for the IAC to:

- administer their arbitration according to the IAC Arbitration and Mediation Rules, which prescribe procedures for expedited arbitrations, the appointment of emergency arbitrators, and resolution of investment treaty disputes;
- administer their arbitration according to UNCITRAL Arbitration Rules or ad hoc arbitration rules;
- Administer mediations according to the IAC Arbitration and Mediation Rules or ad hoc mediation rules;
- Provide other forms of alternative dispute resolution.

IAC arbitration awards will be recognized and enforceable in Kazakhstan and internationally.
The session ended with questions regarding the impact of establishing the AIFC Court and IAC, and the speakers responded that since January 2018, the increase in terms of foreign investments was USD 8.5 billion due to establishment of the AIFC and respectfully the dispute resolution framework.

LESSONS LEARNED AND BEST PRACTICES

The IACA Conference provided a unique opportunity to collect lessons learned and best practices that can be applied in improving the court administration in Ukraine with the use of modern innovative tools. These can be summarized as follows:

- Focus on opening up the justice system, making it more accessible, and putting power into the hands of the people using it, including: (1) establishing simpler, faster routes to resolving disputes that are clear and easy to use, recognizing that people often want their problem solved rapidly and satisfactorily more than they want their “day in court”; (2) removing unnecessary costs due to complexity, duplication, error and waste so that people are not priced out of justice; and (3) providing easily accessible data and information so that everyone can make informed decisions, and can harness the power of big data in support of justice.

- Focus on providing customer-centered and more personalized court services, plan resources with efficiency considerations in mind, remove redundant operations, re-engineer processes from a customer-centric perspective.

- Focus on using simple and reliable IT solutions which facilitate the work of the courts and citizen access to justice, do not aim to implement high-end systems in absence of basic infrastructure. Contemplate using sophisticated technology such as AI as a tool to simplify and speed up routine activities, but not as a substitute of the judge.

- Promote mandatory use of online solutions for the national system covering all courts together with mandatory use for every litigant involved in a specific case type that is being automated with limited exceptions, thereby building in sustainability beyond a pilot project, i.e., planning for scalability, and ensuring that courts will be consistent in handling cases.

- Involve the whole justice system working together to improve services on an outcome-focused roadmap with clearly identified problems or needs that is based on good planning and alignment of strategic and operational objectives using methodologies that work rather developing new costly solutions, including use of existing and proven software packages whenever possible.
• Involve stakeholders in the development process and ensure judicial leadership and ownership, including extended education programs for court officials, judges and management in each court and regional informational meetings for lawyers and the general public communicating clearly and regularly about online court projects.

• Share knowledge and experience between courts, ensure the establishment of good working practices, and to help courts meet the challenges that may arise during the automation process.

• Promote the wide application of ADR and ODR solutions to reduce judicial workload. Pilot ODR as a backlog management tool. Encourage use and/or development of efficient and cost effective private sector solutions for online dispute resolution, such as Modria (https://www.tylertech.com/products/modria), including engaging developers, designers, and entrepreneurs in creating solutions to meet justice sector needs.

• Expand judiciary’s mandate to ensuring access to justice for citizens through considering court fees issue, legal representation, reconciliation procedures, and providing other court services on high level as in the rapidly developing world, the judiciary shall not only perform its classical function of delivering justice.

• Develop and use simple online tools for citizens to register for certain time slots and services in courts as this is a good practice that can be applied in order to increase efficiency and quality of providing judicial services as transparent judicial procedures are one of the key features of an efficient judiciary that people trust.

• Analyze the use of social media by judges and develop clear policies and train judges on how to use them in order to avoid bad image of the judiciary as judicial conduct in social media is a whole new issue that is arising all over the world and leads to certain negative consequences where not enough attention is paid to it.

• Conduct thorough assessments of infrastructure needs before developing any online solutions for courts. The Kazakh experience demonstrated that modern IT solutions and online tools are useless if there is no Internet and IT infrastructure for that.

• Studies have proved that for regular short period training sessions each month or once in two months for judges and court staff are more effective than long training sessions once a year.
CONCLUSION

As noted in presentations and session discussions at the forum outlined above, promoting online justice tools in Ukraine can improve efficiency of workflow, case management and accessibility of court services (ER 3.1.3.). In addition, online access to court information as well as online help and diagnostics for court users can increase outreach by the judiciary to the public and press (ER 2.1.3) and improve court operations through direct citizen feedback (ER 2.3.2). The forum provided additional insights into the benefits of IT solutions and online court services, that can drive improvement in day-to-day court operations. The forum also highlighted the importance of using alternative innovative dispute resolution techniques such as ODR, inter alia, to reduce court backlogs.

A concerted effort to develop and/or improve online court processes, including simple IT applications, will result in significant improvements in the operational effectiveness and efficiency of the courts. This should ensure that utilization of New Justice resources will meet primary project objectives – enhance administration of justice (Objective 3) and increased accountability and transparency of the judiciary to citizens and the rule of law (Objective 2).