

COUNTRY
PEACEBUILDING FUND
PROJECT STATUS REPORT
30 SEPTEMBER 2011

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| Project No & Title: | PBF/IRF-38/Administration of justice | | | |
| Recipient UN Organization: | OHCHR/UNDP/UNHCR | Priority Sector: | | |
| National Authority: | | | | |
| Location: | Osh and Jalalabad cities and Osh, Jalalabad and Batken oblasts of the Kyrgyz Republic | | | |
| Project Cost: | \$ 1,799,997.00 Total: \$ 1,799,997.00 OHCHR: \$ 965,544 UNDP: \$ 193,215 UNHCR: \$ 641,238 | | | |
| SC Approval Date: | | Starting Date: | 1 July 2011 | Completion Date: 30 June 2012 |
| PBF Outcome and Priority area | <p>1. Members of the legal community (judiciary and lawyers) increasingly apply national and international human rights standards and the judiciary increasingly serves as an independent institution which protects the rights of people and cases of trials resulting in biased and unfair decisions reduced</p> <p>2. Impunity for torture is addressed as a result of enhanced torture prevention through NPM visits and improved investigation procedures for prosecutors, and proposals on rule of law reforms are presented to interested stakeholders based on the assessment of the rule of law area</p> <p>3. The protection environment of the affected population and enjoyment of rights is improved through equal, non-discriminatory and harassment free access to documentation and housing, land and property rights</p> <p>Strategic PMP result: Security sector reforms and judiciary systems put in place and providing services and goods at national and local level that reinforce the Rule of Law (RoL)</p> <p>Government priority areas: Rule of Law, Reconciliation, Management of inter-ethnic relations at community level</p> | | | |
| Project Description: | <p>The overall objective of the project is to strengthen the administration of justice and improve the rule of law, human rights and protection environment for the broader population, particularly those who have been affected during or in the aftermath of the June 2010 inter-ethnic violence in southern Kyrgyzstan.</p> <p>The project will be implemented by OHCHR (Regional OHCHR Office for Central Asia and OHCHR Mission to Osh), UNDP and UNHCR in cooperation with their respective partners at national and local level.</p> <p>Project activities will primarily target southern Kyrgyzstan.</p> | | | |

| Project Status as at October, 2011 | |
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| Funds disbursed: | UNHCR USD 135,031 OHCHR USD 212,313 (n.b. this figure includes funds disbursed for PBF IRF II Infrastructure for Peace project) |
| Delivery rate: | UNHCR 21 % OHCHR 18% (as above) |
| Outputs delivered: | <p><u>UNDP</u> This project component envisages supporting reallocation of 63 judges between different regions of Kyrgyzstan. UNDP Democratic Governance Programme (DGP) was requested by the Office of the President of the Kyrgyz Republic to facilitate the process of rotation of judges in the country, relying on UNDP's experience in collaborating with institutions of the judiciary. The rotation of judges cannot be considered in the framework of the current judicial reform launched in the Kyrgyz Republic. In accordance with the adopted legislation the judges of the Supreme Court, Constitutional Chamber as well as the local judges should be re-selected and newly appointed judges can submit the request for rotation not earlier than five years. During the reign of the previous regimes, reform of the judicial branch was one of the most voiced and long-lasting demands of not only opposition forces but also the wider public as the judiciary system discredited itself and turned into the most corrupt state institution throughout the years since Kyrgyzstan's independence. After last year's government change, judicial reform became one of the focal points of the Constitutional reforms. As a result, fundamental changes in the legal system were introduced, including the elimination of the separate Constitutional court and deputing its powers to the newly-created Constitutional chamber under the Supreme Court. These changes were reflected in the new Constitution which was approved at a nationwide referendum in 2010.</p> <p>Regarding the selection of judges, the Constitution foresees the formation of a Council for the Selection of Judges consisting of 24 members offered by the parliamentary majority, the parliamentary opposition and the Council of Judges, each group providing one third of the council's members. Within its three-year term, the selecting council is responsible for choosing candidates for all vacant judge posts in the country.</p> <p>With a declared aim to get rid of corrupt judges and create an independent and professional judicial system, the parliament announced all judge posts in the country vacant.</p> <p><u>UNHCR</u> The affected population is aware of their right to obtain and possess personal documentation and housing, land and property documents (HLP). Awareness raising campaign about the importance of identification and housing, land & property rights.</p> <ul style="list-style-type: none"> • Free legal counselling on documentation; mobile teams; information and awareness raising campaign. <p>In order to obtain HLP documents, the property owner needs to be in the possession of personal documents. In many cases, the latter were also lost or destroyed during the violence. Therefore, UNHCR together with Danish Refugee Council (DRC) and local NGO Centre for International Protection (CIP) (in cooperation with the State Registration Service (SRS)) provides legal counselling and support plus, where necessary, legal</p> |

representation to obtain new personal and HLP documents.

UNHCR funded mobile documentation teams, composed of government SRS officers (one Passport Officer and one Civil Status Registration Officer), photographers and lawyers from local NGO partner, Centre for International Protection.

688 consultations were provided for 605 people who approached our implementing partner for legal counselling on documentation issues. The main concerns relate to restoration of passports, birth certificates and other civil registration status documents.

Lawyers assisted with the preparation of 582 sets of documents, of these 314 were prepared for passports and the remaining 268 sets of documents were prepared for other civil status registration documents. During the reporting period 106 passports were received and 119 civil status certificates, including birth certificates

Where necessary, lawyers accompany the beneficiaries to the relevant government offices. For cases that require specific actions such as court decision (like proof of identity), the CIP lawyers provide legal representation. 72 cases benefited from lawyers advocating for restoration of documents through representation in front of different state authorities, including ZAGS, Military Commission, Address Bureau, and Information Center. 19 more cases were provided with such advocacy in front of courts.

- **Free legal counselling concerning restoration of property ownership documents as well as housing, land & property rights through mobile legal clinic and in office legal aid service; information and awareness raising campaign regarding housing, land and property rights.**

The legal clinics funded by UNHCR and run by DRC under the ‘HLP Documentation Project’ have contacted all the beneficiaries of the 2010 Emergency Shelter Project (under which transitional shelters were constructed to all who had lost their homes in the June 2010 violence). Now, UNHCR and our implementing partners are working to restore or, more frequently, obtain basic documents establishing or certifying the beneficiaries’ ownership rights to the land. DRC estimates that the current caseload will be resolved – i.e., closed - by the end of 2011.

DRC ran mobile legal clinics offering counseling and support in restoring HLP documents. During this three month period 48 legal clinics and the total number of persons received consultations via mobile clinics and in the office was 1,362. 600 HLP documents establishing real property ownership were issued during July-Sept 2011.

These activities all contributed to the prevention of further forced displacement by offering legal remedies through the provision of property documents and housing certificates, as well as informing beneficiaries about their HLP rights and avenues for redress.

UNHCR implementing partner, CIP Community Mobilisation Teams sensitized the affected communities about the protection consequences of a lack of HLP documents and provided information about related support activities organized by UNHCR.

The HLP caseload is rapidly shifting to the ‘construction procedures’ stage; that is, having registered the ownership rights of the beneficiaries to their land plots, the shelters

(re)built upon each plot must then be registered.

- **Analysis, coordination and monitoring of housing, land and property issues.**

Housing, land and property issues are accorded due time courtesy of UNHCR's HLP consultant whose position is dedicated to analysis, coordination and monitoring of HLP issues as they pertain to our persons of concern. The HLP consultant is supported by other UNHCR colleagues with protection and legal expertise.

Since the HLP consultant arrived at the beginning of the reporting period, he has chaired all HLP Working Groups to ensure coordination and information-sharing between all international organisations and national government agencies working areas relevant to HLP issues. The HLP Working Groups meet on a bi-weekly basis,

In addition, the consultant participates in government meetings (at Bishkek and Osh city levels) regarding HLP issues and also the following meetings: Development Partners' Coordination Council Shelter (and Reconstruction) Sub-Group and Protection Sector. This regular participation serves three purposes: 1) valuable coordination amongst all relevant stakeholders 2) advocating for and ensuring that HLP issues remain on the agenda for discussion or that other post-conflict activities are seen through a HLP perspective and 3) Issues deemed likely to impact upon the HLP rights of our persons of concern continue to be monitored and analysed by UNHCR.

OHCHR

Lawyers, judges and prosecutors have raised their knowledge of human rights standards and have undertaken strategic litigation.

OHCHR continues to observe trials at the municipal, regional and supreme court level on cases specifically related to the June 2010 violence and its aftermath. Through this work a – observations, documentation and advocacy as appropriate - OHCHR and its partners are able to identify gaps in the application of international standards within the justice sector. Of particular interest has been that over the past three months, appeals have reached the Supreme Court, where OHCHR has observed the continuous failure to address allegations of torture and other violations of fair trial standards. Moreover, judges of the Supreme Court upheld guilty verdicts after reviews which failed to respond to claims of serious irregularities and violations of fair trial standards. The claims of defendants and lawyers that confessions to the crime were false and extracted under torture were routinely ignored. Such observations have enabled OHCHR to further develop the patterns of violations in the administration of justice as seen through the three instances and with regard to the response by judicial system of Kyrgyzstan to cases relating to the June 2010 violence. Such analysis feeds into the ongoing preparation of work to be undertaken in the area of strategic litigation.

An international consultant has been hired to bolster the ongoing activities in this area. The consultant has met with key OHCHR team members, particularly those located in Osh, who have undertaken trial monitoring activities, working closely with lawyers and the defendants; meetings have also taken place with representatives of the international donor community involved in improving the justice system with a focus on working with lawyers and prosecutors. Two Russian NGOs have been identified to participate in the mentoring on strategic litigation. All have specialized expertise in strategic litigation in the Northern Caucasus. The first visits to Kyrgyzstan by representatives from these NGOS will take place in November 2011. At which stage, consultations will be held with lawyers to finalise the caseload and way forward regarding the work on strategic litigation.

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| | <p>As part of its ongoing work in Kyrgyzstan, OHCHR chairs a Rule of Law working group that falls under the Development Partners Coordination Committee. Through this working group, OHCHR promotes the exchange of information on activities of donors and their implementers, as well as advocacy strategies to look at ways to further the knowledge of the judiciary and prosecution service on international human rights law and standards. Over the past few months, it has become evident that a number of international partners are intending to work in the area of strategic litigation. OHCHR aims to ensure all efforts in this sphere complement one another.</p> <p>Establishment of a National Preventive Mechanism (OPCAT)</p> <p>After over three years of work on the promotion and implementation of the Optional Protocol to the Convention Against Torture through consultations, workshops, providing financial support for the drafting of legislation on the establishment of a National Preventive Mechanism (NPM), the latter underwent its first parliamentary hearing following the summer recess. Contrary to expectations, it was decided by the majority of votes to reconsider the draft law at the end of November 2011. OHCHR, together with UNDP, OSCE and local NGOs has developed a strategy to raise the work of a NPM. A public relations campaign has been developed that will focus on various media strategies to reinforce the need for Kyrgyzstan to establish the NPM both to meet the obligations of the government in line with the provisions of OPCAT, as well as the entitlements of individuals. In parallel OHCHR will meet with influential deputies and governmental stakeholders.</p> <p>Improved investigation procedures by Prosecutors on allegations of torture</p> <p>Following the April 2011 order by the Prosecutor General for the investigation of allegations of torture to be undertaken by her office, OHCHR has worked with the Prosecutors of Osh City, Osh municipality and Jalal-Abad municipality and representatives of civil society, namely human rights lawyers to further the exchange of information on cases. To provide a framework MoUs were devised to further channels of communication. This has resulted in a forum where allegations of torture can be discussed more openly, as well as the direct exchange of documentation on cases. While the overall response has been limited in relation to follow up and comprehensive investigation by Prosecutors, this mechanism has shown where the gaps and needs are in knowledge and expertise to enable comprehensive investigation procedures to be established. From this work, OHCHR has further refined the requirements for such investigations, beyond political will. One such example is the work to be undertaken with the Prosecutor General, and partners, on the drafting of legislation on forensic expertise.</p> |
| <p>Achievements and challenges</p> | <p><u>UNDP</u></p> <p>During the meeting on discussion the current proposal with President Office representative, General Prosecutor, Chairman of the Council for the Selection of Judges and Deputy Chairman of the Council of Judges the following priorities were set up:</p> <ol style="list-style-type: none"> 1. In the announcement on selection of new local judges indicate ‘those judges who apply to another region will be supported with transportation and lodging’. Several capacity development activities in the light of new constitution and newly adopted judicial laws for newly appointed judges 2. Support the institutional development activities of the Council for the Selection |

of Judges

3. Support the resource centre establishment in regional prosecutor's offices. The complaints submitted to the General Prosecutor mostly report the incidences of torture and other cruel, inhuman or degrading treatment or punishment. To ensure transparency and accountability the General Prosecutor requests to assist in establishing resource centres especially in post-conflict regions (Batken, Jalalabad, Osh region, Osh city, Chui region and Bishkek office, and General Prosecutor in Bishkek) to conduct video-conferences in the remote areas as well as to conduct on-line reception of citizens to discuss their complaints. The video-conferences with regional prosecutor's offices will be open and with participation of international community, civil society representatives and citizens together with their attorneys. Furthermore the resources centres will be used for conducting the capacity building activities for regional prosecutor staff.

UNHCR

The documentation teams assisted persons in affected communities in re-issuing their personal identification documents and civil status registration. This allowed authorities to assist citizens who could not approach government offices for security or other reasons, and at the same time decreased significant delays and queues at the State Registration Service facilities improving ease of access to documentation for many.

Though physical construction of transitional emergency shelters ("phase one") was completed by the end of 2010, many owners still lack the required documents of technical acceptance and final registration of these houses by local authorities. Some local authorities are not paying sufficient attention / support to solving these problems.

Initially UNHCR and the government / State Directorate for Reconstruction and Development (SRSD) had agreed that these documents should be provided in early 2011. This had also been one precondition of the SDRD's "phase two" reconstruction project funded by the Asia Development Bank (ADB) to expand transition shelters. By the end of the reporting period, however, the Government has argued to postpone construction registration for those 2010 emergency shelters that are part of the ADB project until after the 2nd phase is completed - probably early in 2012. UNHCR continues to advocate and push for the immediate registration of those shelters that are not part of the 2nd phase.

UNHCR's HLP documentation activities will help safeguard owners against arbitrary taking of their land, as well as strengthen their ability to obtain compensation in accordance with the law in the event that it is expropriated. Moreover, UNHCR is undertaking more in-depth analysis of the developing situation. Apart from clarifying the legal framework, procedures, and practice regarding expropriation, UNHCR intends to commission informational materials for the public, as well as specific educational modules and training for local lawyers - and, possibly, judges and officials - on how to handle such cases properly.

OHCHR

The ongoing trial observation of OHCHR teams results in the documentation of gaps that will need to be worked by the judiciary, prosecutorial services and lawyers on to ensure fair trial standards are guaranteed. OHCHR continues to consult and advise these bodies. The trial observation continues to provide considerable support to lawyers.

In Kyrgyzstan today, there is a greater, more open debate on the issue of torture, as for example seen in the media reports. Although sent back by the parliamentarians to wait for a further month, this development - the growing demand by many in the country to see torture prevented, as demonstrated by a petition of over 5,000 signatures was recently received on this by parliament). A key challenge remains the lack of widespread political will to secure the adoption of this draft legislation in line with international standards. The financial requirements needed for the establishment of the NPM was given as a key reason for not adopting the legislation at this first reading.

The work undertaken by OHCHR in the past few months with Prosecutors and civil society in the south of Kyrgyzstan on the exchange of information regarding allegations of torture again raised hopes of a more open dialogue that would lead to comprehensive investigations. The message sent by the Prosecutor General upon the issuance of a decision to call for the investigation of all allegations of torture put the political backing to the provisions in the national legislation. Implementation of the decision remains a real ongoing challenge.

The past few months have enabled OHCHR to strengthen even further its partnerships with all those who work in the administration of justice. This has built a solid ground for activities not only being undertaken through this project but for the overall priorities and work of OHCHR in the area of the administration of justice in Kyrgyzstan.