

Bosnia and Herzegovina
MINISTRY OF JUSTICE



Bosna i Hercegovina
MINISTARSTVO PRAVDE

**BOSNIA AND HERZEGOVINA JUSTICE SECTOR
REFORM STRATEGY**

2008 - 2012

Sarajevo, June 2008

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Foreword

In March 2006, during a Conference on the funding needs of the State Justice Institutions of Bosnia and Herzegovina (hereinafter BiH) held in Brussels, the Council of Ministers of BiH, donor countries and the European Commission made a declaration in which they committed to the principle that the Ministry of Justice of BiH should develop a comprehensive Justice Sector Plan covering the entire country. The declaration envisioned that such a strategy would “*serve as a catalyst for further developing and strengthening of the Justice Sector of BiH as a whole*”.

Although national strategies and plans, such as the Medium Term Development Strategy and Public Administration Reform Strategy, as well as international agreements such as the European Partnership Plan, do provide high level frameworks to guide some aspects of planning and budgeting in the justice sector of BiH, to date there has been no single strategy that focuses solely on the sector as a coherent system made up of an inter-related set of institutions.

The lack of a sector strategy was an impediment in several regards. For one, the lack of coherent and coordinated action in the justice sector undermined the positive effects achieved so far through reform of the justice sector. It also hindered justice sector institutions in their planning and prioritisation of the use of the limited resources available to them. Furthermore, without a sector-wide strategy the close interrelations between the various institutions and components of the justice sector, in particular the impact one set of reform initiatives in one part of the sector might have on another part, were not taken into consideration when planning.

The overall objective of the Justice Sector Reform Strategy is to create a joint framework of reform for justice sector institutions in BiH that sets out agreed priorities for the future development of the sector as a whole, as well as realistic actions for reform.

This strategy was created through a joint effort between the ministries of justice of the State of BiH, the entities, and cantons, as well as Brčko District Judicial Commission and the High Judicial and Prosecutorial Council. It is the result of a highly participatory and consultative process that encompassed key justice sector institutions of Bosnia Herzegovina, including representatives of professional associations of judges and prosecutors, bar associations, association of mediators and NGOs. Its aim is to provide a strategic framework for addressing key issues within the justice sector over a five year timeframe.

In the course of the drafting process, the absence of consensus led to the exclusion of certain strategic programs/ recommendations from the strategic framework. These strategic programs include the establishment of Supreme Court of Bosnia Herzegovina, developing a single funding of the judiciary and adoption of single criminal and civil substantive and procedural legislation. While presently excluded from the strategy, it has been agreed that these issues need to be further discussed, at the latest during the course of constitutional reform process in BiH.

We use this opportunity to thank all those who have actively contributed to the development of this strategy either through participation in the technical working groups tasked with developing specific strategic programmes for the justice sector or in the consultation processes that fed into each stage of the strategy's development. We would also like to thank the British Government for their technical support in the preparation of this strategy.

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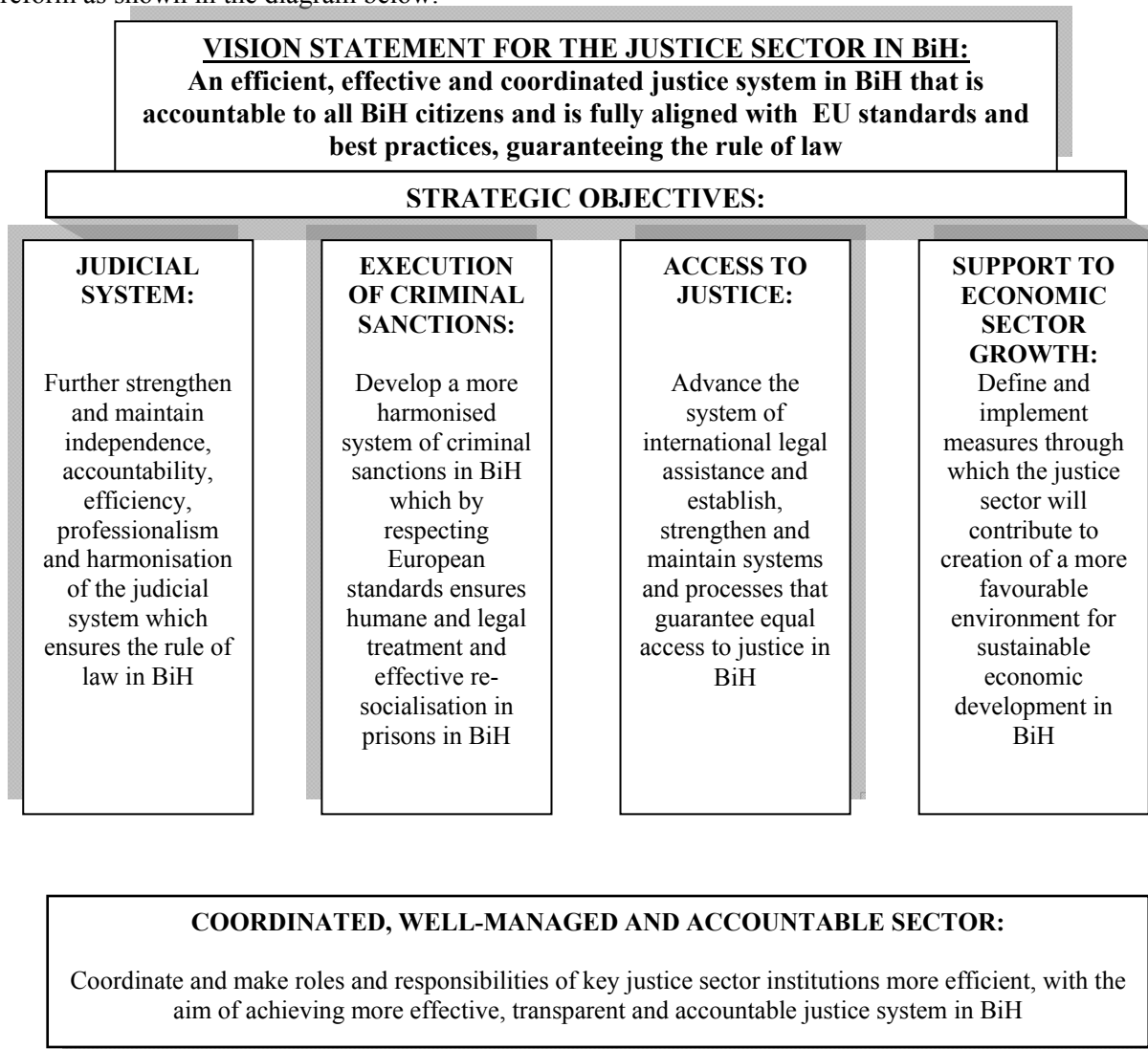
President

Executive Summary

Background to the initiative - The overall objective of the Justice Sector Reform Strategy ('the JSRS'), as agreed at the March 2006 Conference on the funding needs of the State Justice Institutions of BiH, is to create a joint framework for reform for justice sector institutions in BiH, that sets out agreed priorities for the future development of the sector as a whole.

Development of the JSRS - The strategy development process took place from December 2006 to December 2007 when the final draft document was submitted to the various governments of BiH for adoption. The methodology used to develop the JSRS was designed to reflect the complex governance arrangements within the justice sector of BiH. It included extensive consultation and consensus building efforts to ensure agreement between key justice sector institutions on the future directions of reform, as well as their ownership of and support for the final document, and its subsequent implementation. The starting point for the development of the JSRS was the identification of the key drivers of reform based on the findings and recommendations found in a range of key strategic documents relevant to the justice sector of BiH, as well as extensive consultations with the sectors' key stakeholders.

Based on the strategic guidelines and directions derived from these documents and consultations, five key pillars of reform were identified. The strategic framework for the justice sector of BiH was agreed, consisting of an overarching vision and five strategic objectives, each on linking to one of the pillars of reform as shown in the diagram below.



A range of medium-to-long term actions (i.e. strategic programmes) were developed under each of the five pillars of reform to address the key issues identified through research and consultation. The implementation of these programmes will contribute to the achievement of the vision and strategic objectives set out above.

Bodies responsible for JSRS development - The development of the JSRS was overseen by a Steering Board, comprising the ministers of justice of: the State Ministry of Justice of BiH; the Federation of BiH, the Republika Srpska, Posavina and Tuzla canton; plus the President of the Brčko District Judicial Commission; and the President of the High Judicial and Prosecutorial Council. For each of the identified pillars of reform, a technical-advisory working group was established to propose to the Steering Board: the strategic objectives for each of the strategic pillars; the strategic programmes required to address key issues within the pillars; timeframes within which to implement the programmes; institutions responsible for the implementation of actions, and key indicators to assess progress against each of the programmes.

Implementation of the JSRS - The strategy recommends the establishment of bi-annual Justice Sector Ministerial Conferences, the main purpose of which will be to monitor implementation of the JSRS, as well as provide overall political and strategic direction. A permanent functional working group will be established for each of the five strategic pillars, comprising of senior level representatives from relevant justice sector institutions and stakeholder groups. These functional working groups will have responsibility for developing annual joint work plans and for taking forward all of the activities envisaged under a specific strategic pillar.

The overall coordination of implementation activities, including maintenance of systems for monitoring progress and provision of secretariat support to the Ministerial Conferences, will be entrusted to the Sector for Strategic Planning, Aid Coordination and European Integration (SSPACEI) of the Ministry of Justice of BiH. It is envisaged SSPACEI will be supported in this role by strategic planning units that are to be established in the entity Ministries of Justice, as well as the Judicial Commission of Brčko District.

Links to institutional strategic plans and budgets - The JSRS is a preliminary step towards a coordinated, continuous cycle of strategy development, planning and implementation of interventions for the ministries of justice (including the Brčko District Judicial Commission), and more generally the governments in BiH. Additional effort and resources need to be committed by all other justice sector institutions to cascade the implementation, monitoring and assessment of JSRS objectives, primarily through the development and execution of strategic plans for each institution. Actions taken to accomplish the JSRS objectives also need to be coordinated and consistent with the medium-term expenditure frameworks at each level, and must be reflected in the budget submissions of each of the institutions to which this strategy relates. If additional resources are needed, negotiations based on the rationale presented in this document need to be initiated with ministries of finance and governments.

Structure of the Justice Sector Reform Strategy

The strategy document is structured as follows:

- **Section 1** provides the introduction to the JSRS by presenting its principal objectives and outcomes, as well as the methodology used for its development and adoption. The latter involved a highly consensual and cooperative process in which all relevant justice sector institutions in BiH were included.
- **Section 2** sets forth the key drivers of reform, reflecting key reform components, of existing strategic documents relevant for the justice sector, as well as feedback from consultation processes.
- **Section 3** presents the priority issues facing the justice sector, grouped into broad areas or pillars of reform. Although not all-encompassing, the issues set out here are those that must be resolved in the coming five-year period if the key drivers for further reforms in the justice sector are to be addressed.
- **Section 4** lays down the vision statement and the strategic objectives for the justice sector of BiH in the period 2008 – 2012, which have been agreed by the relevant justice sector institutions.
- **Section 5** sets forth the strategic programmes. These are a set of agreed activities to be implemented by 2012 in order to address the key strategic issues identified in this Strategy and to accomplish the agreed vision and strategic objectives for the justice sector in BiH.
- **Section 6** explains in more detail the issues that have been raised but not resolved in the process of developing this strategy. These issues will be addressed through the constitutional reform process.
- **Section 7** provides an overview of the medium-term budgetary forecasts for the justice sector in BiH and the potential implications this can have on the JSRS implementation.
- **Section 8** sets down the main factors to consider in relation to the implementation of the JSRS in the following five-year period. It includes discussion of the governance arrangements for decision-making and monitoring of the JSRS.
- **Section 9** explores the main considerations for individual justice sector institutions as they develop or revise individual institutional strategic plans to be in line with the broad strategic directions set out in this document.
- **Annex 1** provides more detailed information on the activities conducted in each of the phases in the development of the JSRS, as well as the basic assumptions made in approaching the development and management of the JSRS.
- **Annex 2** gives more detailed background information on each of the individual strategic programmes presented in Section 5.
- **Annex 3** gives an overview of concrete policy initiatives that stem directly or indirectly from the activities agreed in the JSRS.
- **Annex 4** gives an overview of concrete legislative initiatives that stem directly or indirectly from the activities agreed in the JSRS.
- **Annex 5** gives more detailed information regarding the basic considerations that justice sector institutions need to bear in mind when developing individual institutional strategic plans.
- **Annex 6** provides more information on the institutions and individuals who participated in the development of the JSRS and the timeline of their meetings.
- **Annex 7** provides more detailed information on the consultation process conducted throughout the JSRS development.

Section 1: Introduction to the Justice Sector Reform Strategy

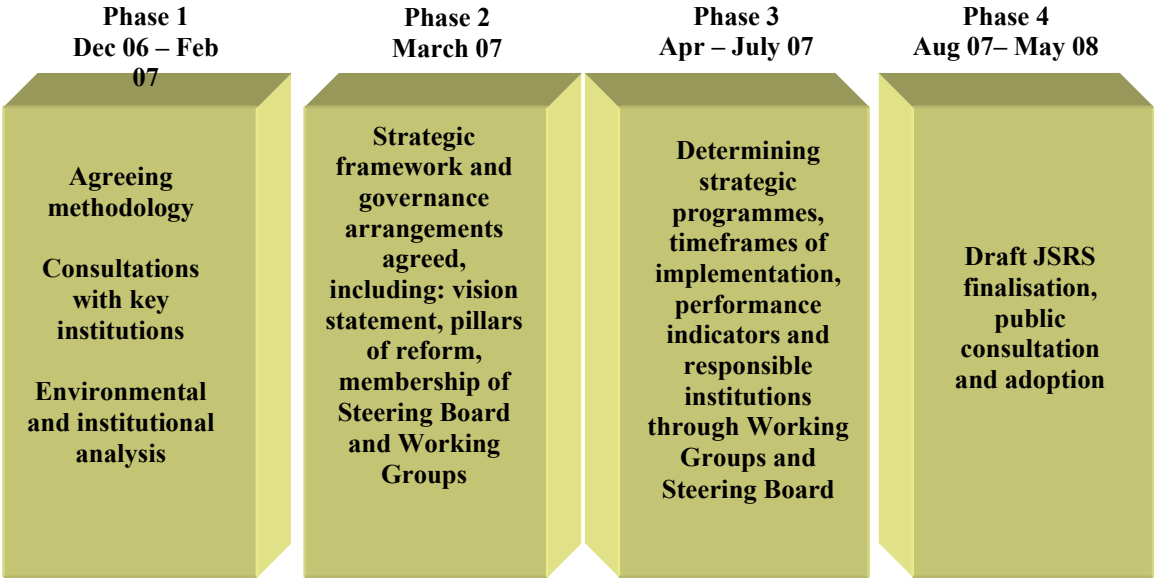
The overall objective of the JSRS is to create a joint framework of reform for justice sector institutions in BiH that sets out agreed priorities for the future development of the sector as a whole, as well as realistic actions for reform.

The other desired outcomes of the JSRS include:

- *Developing a framework for identifying potential projects for Instruments for Pre-Accession assistance and other donor funding; and*
- *Enhancing communication, coordination and cooperation between the various institutions and segments of the justice sector in BiH.*

The methodology of the JSRS development was purposefully aligned to the complex governance arrangements within the sector. It was therefore structured around conducting extensive consultations and securing consensus of key justice sector institutions in BiH on future directions of reform. The actual development process was divided into four distinct phases, which are presented in Figure 1 below.

Figure 1: Development phases of the Justice Sector Reform Strategy of BiH



The entire development process of the JSRS was managed by a Steering Board comprised of Ministers of Justice at the State and entity level, of Posavina and Tuzla cantons, as well as the President of the Brčko District Judicial Commission and the President of the High Judicial and Prosecutorial Council. For each of the identified pillars of reform technical advisory working groups were established, tasked with developing proposals for presentation to the Steering Board, including high level strategic objectives, a set of medium- and long-term activities (i.e. strategic programmes) assessed as necessary in order to meet these objectives, timelines for programme implementation, institutions responsible for implementation and key indicators against which to measure progress of each of the programmes.

Annex 1 gives more information on the different phases presented in Figure 1, as well as more detailed information on the work of the Steering Board and the working groups.

Section 2: Key Drivers for Reform

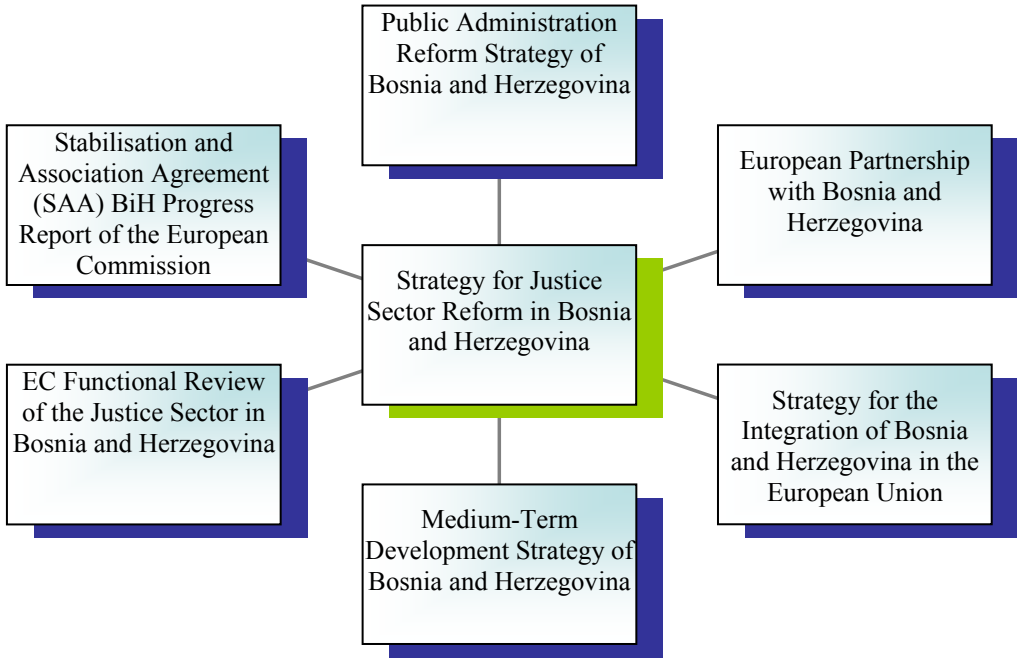
Recent years have seen significant progress in the reform of the justice sector in BiH, particularly in the area of the judiciary. Nonetheless, the justice sector is currently at a crossroads. The sustainability of reforms executed to date is in doubt, unless action is taken to build upon achievements to date, as well as to address weaknesses still persistent within the overall justice system.

As an initial step in the strategy development process, it was important to ensure that any agreed initiatives for reform contained in this strategy are aligned with overall reform efforts in BiH. Therefore, a number of key drivers of reform were identified during Phase 1 of the strategy development process. This was achieved by identifying the key components of reform emerging from existing strategic documents of relevance to the justice sector, as set out below, and further analysing them in light of information gathered through consultations with key justice sector stakeholders. The resulting drivers of reform, described later in this section, informed decisions as to what should be the key pillars of reform contained within this strategy as described in section 3.

Existing reform initiatives of relevance to the justice sector

The major directions of action for the justice sector in the medium- to long-term have been set by relevant country-wide strategies adopted by the governments in BiH, as well as by international agreements and relevant analyses conducted by international organisations. These strategic documents are graphically presented in Figure 2.

Figure 2: Strategic documents of relevance for justice sector reform in BiH



Although the individual actions, requirements and recommendations set out in these documents differ, a number of highly interrelated key components of overall reform have emerged from them as being necessary to underscore all main reform and EU integration initiatives. These components are presented below.

- The forthcoming European integration process, coupled with the complex decentralised structure of BiH, necessitates establishing mechanisms for ensuring *legal harmonisation*, as well as *effective and efficient policy coordination* between levels of government;
- Effective harmonisation and coordination are highly difficult to achieve without *developed capacities within government bodies*, notably in regard to staff numbers, skills and equipment;
- Capacities pertaining to *policy development and strategic planning*, particularly within centres of government and ministries, are needed to facilitate harmonisation and coordination that is essential to meet the increasing demands of reform;
- *Systems of accountability* must be put in place to provide assurance that reform initiatives are answering the demands of the public and the European integration process alike;
- The key to greater levels of accountability, as well as effective harmonisation and coordination is establishing *performance management systems* that enable decision-makers, as well as the public, to better assess progress achieved in reform initiatives and identify areas in which additional initiatives are needed;
- Underpinning each of these components are the ways in which *information* is *collected, shared, analysed and presented* as preconditions for effective management of current and future reform initiatives throughout BiH.

Strategies dealing with special issues within the justice sector

In addition to the above cross-government or sector wide strategies, a number of strategies dealing with more specific issues within the justice sector have commenced or been completed. These include:

- The strategy against juvenile delinquency for the period 2006 to 2010 (adopted by the Council of Ministers of BiH in July 2006);
- The strategy for dealing with unresolved war crime cases in BiH (currently under development); and
- The Transitional Justice Strategy for BiH (currently under development).

Actions identified in these strategies are not repeated in the JSRS as the JSRS seeks to identify and obtain consensus on previously unidentified or agreed areas of reform. In order to ensure that the measures foreseen in the JSRS are aligned with those foreseen in the above justice sector specific strategies, the implementation of all four strategies will need to be coordinated. To ensure coordination, all four strategies should be monitored through the ministerial conferences which will function in the manner described in Section 8.

The institutions responsible for implementing the initiatives foreseen by the above-mentioned strategies should on a regular basis report to the members of the ministerial conference about progress according to the methodology that will be used for monitoring the JSRS.

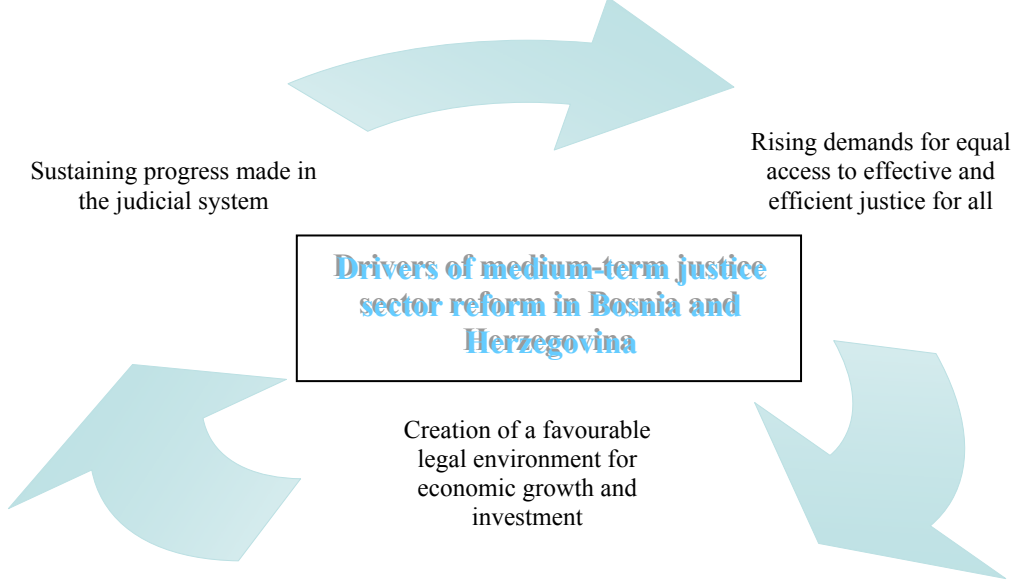
Finally, on the basis of conclusions adopted at the meeting on the reform in justice sector held on 27 September 2007 in the building of the Institutions of Bosnia and Herzegovina, the BiH Ministry of Justice had formed two working groups with tasks to implement some of the meeting conclusions.

1. The working group responsible for drafting a proposal for establishing the satellite departments of the Court of Bosnia and Herzegovina did not reach a consensus to support this project. However, the members of the working group consensually supported the need to strengthen the capacities of the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina in terms of human resources and space.
2. As for the working group responsible for drafting a proposal for establishing the Appellate Court of Bosnia and Herzegovina, a majority of its members supported the project that needs now to be further assessed and implemented.

Drivers of Reform

After identifying the key components of reform emerging from existing strategic documents, a further analysis of these issues and consultation across the justice sector led to a number of key drivers of reform being identified. These drivers helped to inform decisions on the key strategic pillars of reform to be included in the JSRS, as described in Section 3. The drivers of reform are graphically presented in Figure 3 and described in more detail below:

Figure 3: Drivers of medium-term justice sector reform in BiH



- **Sustaining the progress made in judicial system reform (criminal and civil justice).** There has already been considerable progress in reforms of the judicial system in BiH. Progress achieved so far relates primarily to the formation of a High Judicial Prosecutorial Council (HJPC) for BiH which creates the preconditions for an independent, effective and efficient judiciary. Changes to the criminal and civil procedures have enabled BiH to come closer towards achieving European standards and best practices in the delivery of justice. However, there remain problems of coordination and harmonisation within the judiciary and between levels of government, as well as problems that arise due to a lack of institutional capacity and judicial budgetary funding.

These threaten to undermine the positive results achieved so far and necessitate swift action in relation to: harmonisation of laws and court practice; consolidating budgetary funding of the judiciary; eliminating the crippling backlog of cases within the courts and slow court execution; as well as securing judicial accountability and professionalism. A further key factor in sustaining the progress made to date in criminal justice reform is the need for thorough and comprehensive reform of the system for execution of criminal sanctions, which has markedly lagged behind judicial and police reform within the overall reform of the criminal justice sector.

- **Rising demands for the rule of law, and equal access to effective and efficient justice for all.** Recent justice sector reforms have raised the expectations of the public towards the judiciary. Citizens and NGOs are increasingly demanding greater transparency and efficiency from justice sector institutions. The complex governance arrangements of the country, coupled with persistent fiscal constraints, render the system vulnerable to inequalities. The poor general economic conditions also risk compromising the ability of individuals and legal entities to ensure citizen and institutional rights are legally exercised before justice institutions in BiH. Key factors in increasing equal access to justice include raising public awareness about the ways in which the justice sector should operate and how information can and should be accessed. The lack of a comprehensive legal aid system for criminal and civil cases must be rectified in order to ensure that economic status does not inhibit the capacity of citizens to pursue their rights before the law.
- **Creation of a favourable legal environment for economic growth and investment.** Sustainable economic progress is one of the key overall objectives in the long term for BiH. The justice sector plays a significant role in fostering economic growth and stability. For that purpose, in the medium- to long-term period, the justice sector has clearly to demonstrate effectiveness, efficiency and transparency in its work. These are critical contributory factors which will enhance increased investments and commercial activities. The mechanisms that are supported by the justice sector to ensure the swift and effective resolution of disputes between commercial entities are of particular importance. Equally important for sustainable economic growth are systems to define and protect property ownership rights.

Each of these drivers of the reform, places a set of specific issues and challenges before the justice sector institutions which need to be addressed in the near future. The following section of the strategy puts forward the basic pillars of reform in the justice sector in BiH which will enable these drivers to be addressed, and presents the specific key issues that this strategy aims to address in the following five-year period.

Section 3: Pillars of Reform in the Justice Sector

The current justice sector in BiH faces a number of issues that require immediate attention in the coming five-year period. These issues can be grouped into several broad areas. Although the justice sector itself encompasses much more than the areas identified for the purpose of this strategy, it has been concluded that interventions in these areas will produce the greatest impact in relation to key reform needs, and will answer the specific demands of the drivers of justice sector reform as identified in Section 2 of this strategy.

The three main areas, or *pillars*, of reform in the justice sector which directly stem from the key drivers of reform as identified in Section 2 are the following:

- *The judicial system*
- *Increasing access to justice, and*
- *Supporting economic growth.*

As stated previously, one of the key preconditions for sustaining progress achieved in criminal justice reform to-date is the reform of the system for execution of criminal sanctions. Given the multitude of issues that need to be addressed in this area, for the purpose of this strategy, the area of execution of criminal sanctions has been identified as a fourth pillar of reform in the following five-year period.

Underlying each of these four key areas of reform, a further consideration which is of particular importance given the complex legal and institutional arrangements in BiH, are the systems, processes and capacities for coordinating and harmonising reform initiatives. Addressing this cross cutting need is imperative to ensure that reform efforts on each of the levels are geared towards similar strategic directions and are aligned with the requirements of pending EU integration. Unless the capacities of ministries of justice to manage the reforms and hold themselves and others accountable for progress achieved (or not) are developed, the success of the planned reforms will be jeopardised. Accordingly, issues relating to the coordination, management and accountability of the justice sector have been identified as a fifth pillar of reform.

The key pillars of justice sector reform in the following five-year period are presented graphically below:

Figure 4: Pillars of justice-sector reform



Beyond the issues that will be resolved in a coordinated manner through this strategy, each institution at each level of government faces its own set of challenges. The issues addressed in this strategy are those for which imminent, but also cooperative, coordinated and, in most cases, joint action is needed in order to rectify those deficiencies assessed to be of priority significance for the overall justice system.

Those issues specific to individual institutions will be addressed by them through institutional strategic plans, which will sustain the broad directions of action laid down in this strategy. The main considerations to consider while linking this sector strategy and individual institutional strategies are further elaborated in Section 9.

Section 4: Vision Statement and Strategic Objectives

The justice sector in BiH needs to respond to the key drivers of reform and address the issues it is currently facing by striving to achieve a number of requirements in the long-term:

- Efficiency
- Effectiveness
- Alignment with EU standards
- Coordination
- Accountability
- Ensure the rule of law

All reform efforts in the medium to long term should be directed towards accomplishing the following vision for the justice sector in BiH.

VISION STATEMENT FOR THE JUSTICE SECTOR IN BiH:

An efficient, effective and coordinated justice system in BiH that is accountable to all BiH citizens and is fully aligned with EU standards and best practices, guaranteeing the rule of law

For each of the pillars of reform identified in Section 3, the following strategic objectives have been set:

STRATEGIC OBJECTIVES:

| | | | |
|---|--|---|---|
| <p>JUDICIAL SYSTEM:</p> <p>Further strengthen and maintain independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH</p> | <p>EXECUTION OF CRIMINAL SANCTIONS:</p> <p>Develop a more harmonised system of criminal sanctions in BiH which by respecting European standards ensures humane and legal treatment and effective re-socialisation in prisons in BiH</p> | <p>ACCESS TO JUSTICE:</p> <p>Advance the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH</p> | <p>SUPPORT TO ECONOMIC SECTOR GROWTH:</p> <p>Define and implement measures through which the justice sector will contribute to creation of a more favourable environment for sustainable economic development in BiH</p> |
|---|--|---|---|

COORDINATED, WELL-MANAGED AND ACCOUNTABLE SECTOR:

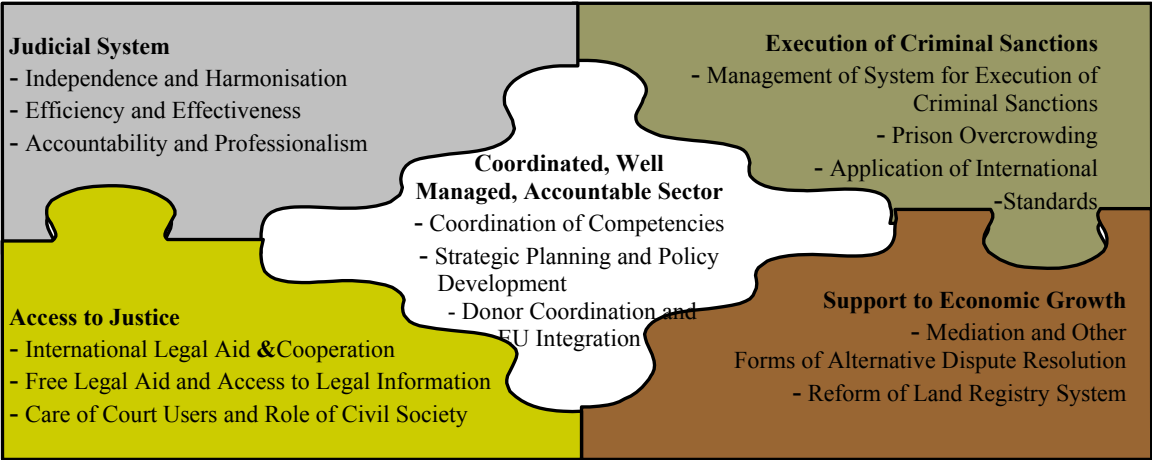
Coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, transparent and accountable justice system in BiH

Section 5: Strategic Programmes and Programme Indicators

In order to achieve the agreed vision for the justice sector in BiH and to make progress towards the accomplishment of the strategic objectives set out in Section 4, a series of strategic programmes have been identified for the coming five-year period.

Strategic programmes, for the purpose of this Strategy, have been defined as a set of related activities that are directed towards the accomplishment of a strategic objective. The strategic programmes - agreed through a consultative process with representatives of key justice sector institutions (as described in Section 1) - are presented in summary form in the figure below. For ease of presentation and for monitoring the implementation of this strategy, the strategic programmes have been grouped into several sub-areas of initiatives, each one corresponding to one of the 5 pillars of reform.

Figure 5: Strategic programmes of the Justice Sector Reform Strategy



As Figure 5 implies, the strategic programmes are interrelated and the implementation of one set of programmes has an impact on the implementation of each other set. The five-year timeline for implementation of this strategy is presented with the strategic programmes in the later part of this section.

In the remainder of this section a tabular overview of the agreed strategic programmes is given for each strategic pillar and strategic sub-areas. For more detailed information on the background to each of the listed strategic programmes by pillar and sub-area please refer to Annex 2 which provides the following information for each sub-area of initiatives (as set out in Figure 5 above):

- o A brief overview of achievements to date and current issues; and
- o An overview of expected benefits or outcomes from the agreed initiatives.

Pillar 1: Judicial System

Strategic objective: To further strengthen and maintain independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH

The issues concerning the judicial system in BiH that are addressed through this strategy have been divided into three sub-groups, and for each of these a number of strategic programmes were developed as set out in the following tables. Although summarised briefly below, more detail on the background analysis which fed into discussion on how best to address these issues is contained at Annex 2.

1.1 Independence and Harmonisation

There are five main issues that fall under this sub-group that will be addressed through specific strategic programmes, the first three of which relate to further protecting judicial independence. The current process of preparing and executing judicial budgets could potentially be vulnerable to undue political pressure, and as such the role of the HJPC as an intermediary between the judiciary and the executive authorities in the budgeting process needs to be strengthened. The ability of the ministries of justice, as well as the Brčko District Judicial Commission, to set strategic guidelines and priorities for budget planning for the judicial system also needs to be strengthened, but such decisions also need to be based on a thorough and up-to-date assessment of the financial needs of judicial institutions, as current judicial budget plans and projections are often based on information that does not reflect current realities.

Factors relating to harmonisation in the judicial system include the current disparity in processes for appointing judges to the Constitutional Court of BiH and those used to appoint judges to the constitutional courts in the two entities. Another relevant issue is that the laws that regulate the functioning of prosecutors in the Federation of BiH require further streamlining as currently the regulation of prosecutors occurs at both the cantonal and the Entity level.

A number of other issues relevant to this sub-group were also identified, but in each case a decision was taken by the Steering Committee that these would be better dealt with through the Constitutional Reform process that is underway. These are described in more detail in Section 6 of this strategy and related to the establishment of single substantive and procedural laws in criminal and civil matters; creating a single budget or single source of funding for the judicial institutions; and the possible establishment of a Supreme Court.

Pillar 1: Judicial System – Strategic area 1.1: Independence and Harmonisation

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|--|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 1.1.1 Develop and implement formal mechanisms for preparing, adopting and executing budgets of the judicial institutions in BiH which ensure the independence of the judiciary | | | | | | MoJ BiH, entities and cantons and JC BD and HJPC | 1. The role of the HJPC vis-à-vis the role of executive and legislative authorities in terms of preparing, adopting and executing budgets is strengthened and enshrined in legislation; 2. Improved ability of the managers in courts and prosecutors offices in the process of planning and executing the budget; 3. Improved coordination and consultations between the MoJs and MoFs, as well as between the legislative authorities and the HJPC; 4. Individual budgets for all courts and prosecutors offices established* |
| 1.1.2 Strengthen capacities of the Justice Ministries, Brčko District Judicial Commission and HJPC in preparation and execution of their budgets, in accordance with competencies as defined by law | | | | | | MoJ BiH, entities and cantons and JC BD and HJPC | 1. Financial requests prepared in line with strategic priorities and realistic needs of the judiciary in BiH |
| 1.1.3 Develop a study of the realistic financial needs of the judicial institutions in BiH, taking into consideration priorities of the judiciary | | | | | | MoJ BiH, entities and cantons and JC BD and HJPC | 1. A study prepared and adopted as the basis for future financing of the judiciary in BiH; 2. Methodology for future projections of financial needs of the judiciary agreed |
| 1.1.4 Investigate the possibility of harmonising the procedure for the selection of the BiH Constitutional Court judges with the existing procedures for the selection of judges for the RS and FBiH Constitutional Courts | | | | | | MoJ BiH and HJPC | 1. An analysis of the implications of harmonising the procedures for the selection of BiH Constitutional Court judges with the existing procedures for the selection of judges for the RS and FBiH Constitutional Courts developed and implementation measures proposed |
| 1.1.5 Enact single law on prosecutors offices in the Federation of BiH | | | | | | MoJ FBiH, cantons and HJPC | 1. The organisation of prosecutors offices regulated on the level of the Federation of BiH |

* It should be noted that a certain number of performance indicators under strategic program 1.1.1 has already been implemented by the Ministry of Justice of the Republika Srpska.

Expected outcomes of the strategic programmes:

- More streamlined system for preparing realistic budgets of judicial institutions in BiH that are in line with agreed strategic directions of action;
- Independence of the judiciary further safeguarded, including a more transparent process of appointing judges of the Constitutional Court of BiH leading to more independent and better qualified judges;
- Assistance to BiH to meet its pledges under the European Partnership for BiH.

1.2 Efficiency and Effectiveness

One of the key impediments to efficiency and effectiveness in the courts is the backlog of cases, which at the end of 2006 stood at 1.9 million cases.¹ Around 56% of this total related to execution cases for small value claims, and around 20% for violation cases. Removing small claims enforcement cases from the system will clearly be an important first step in addressing this issue, but this will require legislative changes. Backlogs also exist in prosecutors' offices, to some extent stemming from changes to legislation in 2003 which led to the transfer of a large number of cases from the courts to the prosecutors, but a full analysis needs to be carried out to gain a full understanding and make subsequent recommendations. One issue in particular that needs to be explored in terms of reducing the backlog of cases in the prosecutors offices is the use of alternative measures of criminal prosecution.

A number of operational issues also need to be addressed if efficiency and effectiveness are to be improved in the judicial system. The physical and technical conditions of the courts and prosecution working environments are very poor, and the use of ICT is under-developed, although in the case of a latter a strategy has been developed by the HJPC to computerise the courts by 2012. Management capacities and capabilities of court presidents and court secretaries, as well as of chief prosecutor and prosecutorial secretaries need to continue increasing. The human resource needs of the courts and prosecution offices also need to be properly analysed so that the number of judges and prosecutorial staff are at an appropriate ratio to case flow. Finally policy and regulations pertaining to the administration of courts and prosecution offices need to reflect any changes in operations geared towards greater efficiency and effectiveness.

The table overleaf sets out a total of eight strategic programmes which have been developed to deal with these issues.

¹ Figures based on statistical information compiled by the HJPC for 2006.

Pillar 1: Judicial System – Strategic area 1.2: Efficiency and Effectiveness

| Strategic programs | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|---|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 1.2.1 Conduct analysis of the required changes to legislation, to decrease the number of backlog cases in the enforcement procedure initiated on the basis of "authentic documents" (such as unpaid utility bills) and propose appropriate measures | | | | | | MoJ BiH, entities, cantons BD JC and HJPC | 1. Analysis conducted and corresponding measures identified and implemented so that these types of cases are dealt with through administrative procedure |
| 1.2.2 Conduct an analysis of backlogs in the prosecutors offices and recommend the necessary measures for resolving this issue (legislative or other measures) | | | | | | MoJ BiH and entities, BD JC and HJPC | 1. Analysis conducted and measures identified and implemented with the aim of reducing backlogs in the prosecutors offices |
| 1.2.3 Introduce alternative measures for criminal prosecution with aim of reducing pressures on the courts | | | | | | MoJ BiH and entities, BD JC and HJPC | 1. Develop analysis and give recommendations based upon comparative experiences in using alternative measures of criminal prosecution including the implications for introducing these mechanisms in the legal practice of BiH, and for the courts in BiH; 2. Based on the analysis change legislation to introduce alternative measures for criminal prosecutions |
| 1.2.4 Develop and adopt a plan for funding the reconstruction of the courts from domestic, credit and donor resources, based on the architectural and technical plan of the HJPC | | | | | | MoJ BiH, entities, cantons BD JC and HJPC | 1. Plan developed and adopted; 2. Sources of credit and donor funds identified and funds activated; 3. Plan for finding funds for ongoing financing of courts' capital investment needs from domestic budgets developed and adopted |
| 1.2.5 Implement in full the measures relating to the computerisation of the judiciary as foreseen by the HJPC Strategic plan | | | | | | MoJ BiH, entities, cantons BD JC and HJPC | 1. Sources of donor funds identified and funds activated; 2. Fund raising plan for ongoing financing of ICT in courts and prosecutors offices from local budgets developed and adopted |
| 1.2.6 Provide ongoing training in management for managerial staff in the institutions of the BiH judiciary | | | | | | HJPC, CEST FBiH, CEST RS and BD JC | 1. Training programme defined and implemented |
| 1.2.7 Develop policy and issue appropriate legislation, to regulate the courts and prosecutors offices administration | | | | | | MoJ BiH and entities, BD JC and HJPC | 1. All requirements for the efficient, effective and accountable work of courts and prosecutors' administrations defined; 2. Qualifications structure for the staff of courts and prosecutors offices improved and the skills of the administrative staff upgraded; 3) The position, rights and duties of staff of courts and prosecutors offices adequately defined |
| 1.2.8 Conduct analysis of the number of judges and prosecutors needed | | | | | | HJPC | 1. Conduct analysis of number of judges in relation to case inflow and identify instances in which changes in numbers are needed; 2. Develop analysis of prosecutorial staff (especially the ratio of expert associates and trainees in relation to prosecutors) in comparison to the existing number of cases and case inflow in order to determine the appropriate ratios |

Expected outcomes of the strategic programmes:

- Increased efficiency of court work via introducing a case management system that will enable the sharing of information, the generation of statistics, and the recording of significant trends, as well as through greater uniformity in the way in which courts are administered, and opportunities for sharing best practice;
- Reduction in backlog cases which will increase capacity of courts and prosecutor to deal with other types of case, aside from enforcement cases;
- Increased efficiency and reduction in backlogs will contribute towards an improved public perception of courts and prosecutors.

1.3 Accountability and Professionalism

There are five key issues that need to be addressed under this sub-group. The first relates to the need to reform the system of performance standards and performance monitoring for judges and prosecutors to bring it in line with EU standards. This has already begun with a decision taken by the HJPC in 2006 to introduce a time management system for monitoring performance of courts, and a number of pilots underway. However, the system needs to be rolled out across BiH, and indeed further developed, for example through the gradual introduction of the European Commission for the Efficiency of Justice (CEPEJ) recommendations related to the introduction of optimum and foreseeable timeframes for processing cases. A second issue is the need to improve the application of disciplinary procedures, which is still at its formative stages in BiH, and a body of consistent practice still needs to be developed to ensure that the system is fair and transparent. A third issue is that the system of bar examinations needs to be made more consistent across BiH and modernised to be aligned with current international best practice. Ongoing professional development of judges and prosecutors, as well as technical and administrative staff needs to continue to be improved in line with the strategic plans of the Judicial and Prosecutorial Training Centres (JPTC), and more young legal professionals need to be attracted to the judiciary and greater use made of apprentices, volunteers and experts associates. Finally accountability and professionalism could also be improved if there were harmonised records and statistics and timely access to criminal records made possible for legal practitioners.

The table overleaf sets out a total of seven programmes which have been developed to deal with these issues.

Pillar 1: Judicial System – Strategic area 1.3: Accountability and Professionalism

| Strategic programs | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|--|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 1.3.1 Develop and complete the application of timeframes of proceedings in all courts and prosecutors' offices in BiH | | | | | | HJPC* | 1. Timeframes of proceedings developed and applied in all courts, including the Court of BiH; 2. Timeframes of proceedings for prosecutors' offices in BiH developed and applied |
| 1.3.2 Begin setting up a system of foreseeable timeframes in processing cases in courts, in accordance with the recommendations of the Council of Europe (CEPEJ) | | | | | | HJPC* | 1. Analysis of possible foreseeable timeframes, based on type of cases and courts, conducted; 2. Timeframes set and applied |
| 1.3.3 Improve provisions pertaining to disciplinary responsibility of the judges and prosecutors in the Law on HJPC BiH | | | | | | MoJ BiH and HJPC | 1. The existing provisions of the Law changed and disciplinary procedure clearly defined and implemented in practice |
| 1.3.4 Reform and improve the system of bar exams in BiH | | | | | | MoJ BiH and entities and HJPC | 1. Harmonised criteria and programmes for bar exams in BiH established |
| 1.3.5 Establish a legal obligation for hiring apprentices, volunteer apprentices and expert associates in all courts and prosecutors' offices in BiH, proportionate to the size of the courts and prosecutors' offices | | | | | | MoJ BiH, entities and cantons, BD JC and HJPC | 1. The obligation defined by law with clear criteria for employing apprentices and expert associates |
| 1.3.6 Implement the adopted medium-term strategic plans for training of the judges and prosecutors of JPTC FBiH, JPTC RS and BD JC and enhance these plans in order to satisfy current and future needs of judges and prosecutors | | | | | | HJPC, CEST FBiH, CEJP RS and BD JC | 1. All priority measures from strategic plans implemented; 2. Strategic plans enhanced in order to ensure training includes those areas that the judges and prosecutors consider are relevant for their current and future work, as well as ensure that judges and prosecutors are trained in all relevant human rights' conventions and are informed about the decisions of the Court of Human Rights in Strasbourg; 3. Programs of joint training for prosecutors and police officials prepared |
| 1.3.7 Harmonise records and statistics, as well as provide conditions for accessing criminal records | | | | | | MoJ BiH, entities and cantons, BD JC and HJPC, MoS BiH and entity ministries of interior | 1. Records and statistics harmonised and access to them made readily available |

* In the process of defining timing criteria and standards, the HJPC is obliged to consult and coordinate with the State, entity and cantonal MoJs as well as the District of Brčko Judicial Commission, before criteria and standards are finalized.

Expected outcomes of the strategic programmes:

- More efficient and accountable court system due to increased pressure on judges and prosecutors to meet performance standards;
- Greater uniformity in standards for the Bar Examination across BiH, leading to an improvement in the quality of lawyers entering the profession. Likewise, more legal graduates and young legal professionals enter and stay within the system;
- Improved system of continuing professional education for judges and prosecutors in BiH;
- Improved public perception of the judiciary.

Pillar 2: Execution of Criminal Sanctions

Strategic objective: To develop a more harmonised system of criminal sanctions in BiH which by respecting European standards ensures humane and legal treatment and effective re-socialisation in prisons in BiH

The issues concerning the execution of criminal sanctions in BiH that are addressed through this Strategy have been divided into three sub-groups, and for each of these a number of strategic programmes were developed as set out below. Although summarised briefly below, more detail on the background analysis which fed into discussions on how best to address these issues is contained in Annex 2.

2.1 Management of the system for execution of criminal sanctions

There are three main issues that fall under this sub-group. The first is that currently the legislative framework for criminal sanctions is Not harmonised, which leads to inconsistency in execution of laws and regulations across BiH. Secondly, there is no managerial level (such as a prisons administrative agency) between individual prisons and the Ministry of Justice, nor are there operational managers for specific functions such as health and education, all of which leads to a lack of overall coordination and consistency in administration and inefficient use of resources. Thirdly, a better use of prison space and resources could also be achieved through re-categorization of prisons in BiH.

The table below sets out three strategic programmes designed to address these issues.

Pillar 2: Execution of Criminal Sanctions – Strategic area 2.1: Management of the System of Execution of Criminal Sanctions

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|-----------------------------|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 2.1.1 Harmonise all standards and regulations pertaining to criminal sanctions execution in Bosnia and Herzegovina | | | | | | MOJ BiH and entities, BD JC | 1. Standards and regulations are harmonised |
| | | | | | | | |
| | | | | | | | |
| 2.1.2 Establish prison administrations using harmonised legislation and standards | | | | | | MOJ BiH and entities, BD JC | 1. Directors and at least 2 to 3 assistants appointed; 2. Basic material conditions for the Directorate functioning created; 3. Legal status of the prisons defined as organisational units of the Directorates |
| | | | | | | | |
| | | | | | | | |
| 2.1.3 Conduct re-categorisation of the prisons and classification within the prisons | | | | | | MOJ BiH and entities, BD JC | 1. Re-categorisation of the prisons completed |
| | | | | | | | |
| | | | | | | | |

Expected outcomes of the strategic programmes:

- Development of a coherent system for the enforcement of criminal sanctions in BiH that puts it in a better position to meet European and International standards;
- Better strategic and operational management of prison resources and facilities, which in turn ensures the equal application of prison standards pertaining to staff management, development of programmes for healthcare and treatment, as well as efficiency and effectiveness;
- Established basis for effective and efficient performance monitoring aimed at enhancing prison standards;
- By segregating policy management from operational management, ministries of justice are in a better position to dedicate resources towards enhancement of the overall system so that it can respond to the registered trends within the criminal justice sector.

2.2 Prison overcrowding

Overcrowding is an endemic problem in BiH, and if action is not taken most, if not all, prisons will fail to meet European standards. Three specific issues need to be addressed if the overarching problem of overcrowding is to be tackled. The first of these relates to the fact that conditional release is currently used to a very limited extent and to varying degrees at different levels of government and there is no probation system. Secondly, the non-custodial sanctions currently prescribed by the criminal laws, in particular community service, are not used at all or are used to such a limited extent that they that have almost no impact on overall prisoner numbers. Finally there is an urgent need to reconstruct existing facilities or build new prisons in order to improve the conditions for prisoners and ensure facilities are in line with international standards.

The table below sets out the strategic programmes which have been developed to address these issues.

Pillar 2: Execution of Criminal Sanctions – Strategic area 2.2: Prison Overcrowding

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|-----------------------------|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 2.2.1 Develop conditional release system | | | | | | MOJ BiH and entities, BD JC | 1. Increased percentage of persons on conditional release (in line with the requirements outline by the law) in comparison with 2007; 2. Criteria for Commissions work defined and harmonised; 3. Analysis conducted and proposals developed for probation system |
| 2.2.2 Achieve recognition for execution of alternative sentences and implement the "community service" institute | | | | | | MOJ BiH and entities, BD JC | 1. Pilot community service and recommend general solutions; 2. Adopt and implement implementing regulations; 3. Prepare studies on introduction of other types of alternative sentences |
| 2.2.3 Improve conditions by reconstructing existing prisons, abandoned military facilities and construction of the state prison | | | | | | MOJ BiH and entities, BD JC | 1. A coherent plan of reconstruction of the existing facilities and construction of the state prison developed; 2. Increased accommodation capacity in comparison with 2007. |

Expected outcomes of the strategic programmes:

- Reduced overcrowding and pressure on prisons, resulting in greater respect of human rights;
- Prisons better able to meet European standards as well as more effectively sustain order and security within the prisons;
- Better segregation of prisoners and limited contact between prisoners of different categories;

- Increases possibilities for effective treatment of prisoners, including rehabilitative work, as a result of fewer pressures on limited space;
- Increases scope for reintegration of offenders into society, through maintaining greater ties with the community rather than severing it by incarceration. Incarceration would only be used for more serious offenders and those offenders that pose the greatest threats to society.

2.3 Application of International Standards

There are seven main issues that need to be addressed in relation to the application of international standards in the criminal sanctions system of BiH. Firstly, at present there is very little scope for tailored programmes to be provided to specific groups of prisoners such as women, juveniles, long term prisoners, substance abusers and mentally incapacitated prisoners, because of the lack of appropriate facilities or policies in prisons themselves or of capacity in the ministries of justice to design larger scale joined-up programmes. Secondly, healthcare provision in prisons is underdeveloped. Thirdly, there are currently no regular systems of independent monitoring and oversight over the prisons in BiH to assure legislative bodies and the wider public that prisoners are being treated in line with international conventions. Fourthly, there is no formal system of continued professional education for prison staff and managers. A further two issues are that an analysis of the use of alternative custody methods needs to be made, as well as of the conditions in police and prosecutorial custody facilities. Finally, the system of amnesty and pardoning in BiH is underdeveloped and not clearly defined in law.

Pillar 2: Execution of Criminal Sanctions – Strategic area 2.3: Application of International Standards

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|-----------------------------|--|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 2.3.1 Advance the system of treatment for specific categories of prison population (minors, women and persons under obligatory treatment) | | | | | | MOJ BiH and entities, BD JC | 1. A joint plan for treatment of specific prisoners categories adopted and implemented; 2. Additional accommodation for these categories provided |
| 2.3.2 Advance the system of health protection for the entire prison population | | | | | | MOJ BiH and entities, BD JC | 1. A joint health protection plan, agreed with the Health Ministers, adopted and implemented |
| 2.3.3 Establish a system of independent prison inspection in BiH | | | | | | MOJ BiH and entities, BD JC | 1. Laws and by-laws passed; 2. Chief Prison Inspector appointed, with provision of minimal conditions for work |
| 2.3.4 Develop and implement coherent system of education and training for prison staff in BiH | | | | | | MOJ BiH and entities, BD JC | 1. A coherent and harmonised programme of education and training passed; 2. Method and mechanisms for implementation of continuous training identified |
| 2.3.5 Introducing alternative measures for custody | | | | | | MOJ BiH and entities, BD JC | 1. Conduct an analysis of existing and possible alternative measures of custody with a proposal of measures for introducing alternatives |
| 2.3.6 Enhance the standards regarding the procedure of incarcerating individuals and keeping incarcerated individuals and suspects by police and prosecutors | | | | | | MOJ BiH and entities, BD JC | 1. Make an encompassing analysis of existing standards with a proposal of measures for enhancing these standards |
| 2.3.7 Developing a legally defined and harmonised system of amnesty and pardoning in accordance to international standards | | | | | | MOJ BiH and entities, BD JC | 1. All measure for legally defining and harmonising the system of amnesty and pardoning identified and implemented |

Expected outcomes of the strategic programmes:

- Improved chances of rehabilitation amongst specific categories of prison population and reduction of risk to specific categories in prisons;
- Improved health care system within prisons which is effective, efficient and sustainable and aims to reduce the risks of serious epidemics/other health related problems inside and outside prison establishments;
- Objective and authoritative assessment of prison conditions which can support compliance with European and International standards and drive future reform;
- Development of higher and more uniform standards across the prison service;
- Improved professional skills of prison staff;
- BiH is better placed to meet relevant European and International standards.

Pillar 3: Access to Justice

Strategic objective: Advance the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH

The issues concerning access to justice in BiH that are addressed through this Strategy have been divided into four sub-groups, and for each of these a number of strategic programmes were developed as set out in the various tables below. A brief summary of each sub-group of issues is summarised here, supplemented with more detailed background analysis at Annex 2.

3.1 International Legal Aid and Cooperation

The justice sector needs to be in a position to enable BiH to comply with its international obligations such as Council of Europe Conventions, as well as cooperate with ministries of justice in other countries, particularly in relation to the fight against organised and international crime. BiH's location and recent history mean that it has to deal with a lot more requests for mutual legal assistance than most EU countries. Furthermore a recently adopted resolution by the Council of Europe Parliamentary Assembly on prosecution of offences within the International Criminal Tribunal for the Former Yugoslavia (ICTY) identifies a number of obligations in the field of international cooperation that it will be a challenge for BiH. Although much has been done by the state MOJ to increase its capacity in this area, further reform and professional development is required. There is evident need for further specialisation within courts and prosecutors services in the area of international legal aid and cooperation. Only well designed and harmonised training programs can ensure uniformity and equal application of relevant laws and conventions by the courts in BiH. Lack of capacity for budget planning and budget preparation seriously undermines capacity within courts to allocate resources necessary for the purpose of extradition and transfer of individuals. There is also a lack of a comprehensive database of citizens of BiH who have committed crimes abroad, and inside the country, which unnecessarily complicates cooperation efforts.

The following table sets out a total of five strategic programmes which have been developed to deal with these issues.

Pillar 3: Access to Justice – Strategic area 3.1: International Legal Aid and Cooperation

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|---|--|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 3.1.1 Establish mechanisms that ensure targeted professional development programmes in international legal aid and cooperation for judges and prosecutors in BiH, as well as for civil servants in the bodies that have a role in providing international legal aid and cooperation | | | | | | MOJ BiH and entities, BD JC, HJPC and CEST FBiH and RS | 1. Harmonised programmes of professional training in the field of international legal aid for a targeted group of judges and prosecutors in BiH developed and adopted, and continuously and consistently implemented. 2. Strengthen capacity and equip staff in the Sector for international legal aid and cooperation of BiH MoJ |
| 3.1.2 Ensure harmonisation of court practice in BiH related to international legal aid and cooperation | | | | | | BiH Court, FBiH and RS Supreme Courts, BD Appeals Court, BiH and entity MoJ and BD JC | 1. Full implementation of Article 13 of the Law on BiH Court, in particular those aspects that refer to the Court competence for harmonisation of the court practice in BiH, in the field of international legal aid and cooperation, as well as implementation of other regulations regulating this area |
| 3.1.3 Clearly define the extradition and transfer procedures for convicted persons and set up financing procedures for these through budgets of the appropriate ministries and BD JC | | | | | | MOJ BiH and entities, and BD JC | 1. Model of financing for the procedures of extradition and transfer of convicted persons defined by legislation, through changes to entity Criminal Procedure Code and passing of the Law on international legal aid in BiH; 2. Harmonisation of the entity and BiH Criminal Procedure Code, law on asylum and law on citizenship |
| 3.1.4 Pass a new law on international legal aid and cooperation in criminal matters in BiH | | | | | | MOJ BiH | 1. New law on international legal aid and cooperation in criminal matters in BiH adopted and implemented consistently |
| 3.1.5 Establish a registry of convictions for BiH citizens convicted abroad and in country | | | | | | MOJ BiH and other competent institutions | 1. Legal framework established; 2. Single register of BiH citizens convicted abroad is established and maintained; 2. Single register of BiH citizens convicted abroad and of aliens convicted in BiH is established and maintained by the BiH MoJ; 3. Single register of BiH citizens convicted in the country is established and maintained by BiH MoJ, entity MoJs and Brcko District Judicial Commission |

Expected outcomes of the strategic programmes:

- Strengthened capacity of the judiciary in BiH to deal with this subject matter and increased awareness of ILA obligations leading to better cooperation on civil and criminal matters;
- Increased implementation of European and other international obligations, especially, Council of Europe Conventions and improved cooperation with other states;
- Consistent and equal application of the law regulating international legal aid and cooperation throughout the courts of BiH and clearer and more streamlined functions and responsibilities among all actors in the justice chain.

3.2 Free Legal Aid and Access to Justice

BiH is yet to establish a viable and comprehensive legal aid system. Court appointed lawyers are paid months in arrears, if at all, and high costs for defence attorneys result in a reluctance to even inform defendants of their right to a defence attorney. Although some jurisdictions in BiH have locally regulated the provision of free legal aid, there is no consistency. The big challenge in this area is to find a comprehensive system that provides minimum equality before the law for all citizens of BiH, whilst allowing some flexibility for local circumstances and which is also sustainable within the current budget constraints of the justice sector. There is no single international best practice model that can be directly applied in BiH. In addition, the Division for Criminal Defence of the Court of BiH must be embedded into the administrative structure of BiH as currently it exists outside of it. The resolution of its status and mandate still remains a challenge to be tackled in this implementation period.

The table below sets out four strategic programmes which have been designed in order to address these issues.

Pillar 3: Access to Justice – Strategic area 3.2: Free Legal Aid and Access to Justice

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|---|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 3.2.1 Create legal and institutional framework for the establishment of a harmonised free legal aid system in BiH in civil and criminal matters | | | | | | MoJ BiH, entities and cantons and BD JC | 1. Entity and cantonal laws on free legal aid in civil matters passed; 2. harmonised laws on free legal aid in criminal matters in BiH and entities; 3. Institutional bodies for provision of free legal aid in civil and criminal law matters established and providing services |
| 3.2.3 Define legal and institutional framework for ongoing implementation of the training programme for free legal aid providers | | | | | | MoJ BiH and entities, and BD JC | 1. Training programmes defined and implemented |
| 3.2.4 Analyse the established free legal aid system in criminal and civil law matters in terms of the effectiveness and efficiency of the free legal aid system | | | | | | MoJ BiH, entities and cantons and BD JC | 1. Analysis conducted and implementation activities commenced |
| 3.2.5 Resolve the status of the Department for Criminal Defence of the Court of BiH | | | | | | MoJ BiH | 1. Future status and financing of the Department for Criminal Defence of the Court of BiH assumed by BiH |

Expected outcomes of the strategic programmes:

- Compliance of BiH with key European and International Conventions, most notably compliance with the European Convention on Human Rights;
- A common legal framework and minimum standards guaranteeing equality for all before the law;
- A streamlined system of legal aid based on clear standards for receiving free legal aid and similar standards for those providing free legal aid in the entire BiH;
- Enhanced effectiveness and sustainability of legal aid through the provision of training programmes and impact assessment studies of various models of free legal aid provision.

3.3 Care of Court Users and Role of Civil Society

BiH has recently adopted a Care of Court Users Strategy, which aims to assist courts to meet the needs of ordinary citizens and build public trust and respect for the court system. Citizens will have more respect for processes and decisions when they understand them, and conversely, complex procedures that are poorly explained can also discourage people from pursuing legitimate claims. The key task now will be to implement the strategy throughout BiH, to help create public confidence in the court system.

There is currently a lack of active participation by civil society organisations in the justice sector of BiH, thus negatively impacting on the range of interests that are accounted for in strategy, policy and law development processes. Key issues are building a more systemised model for encouraging the active involvement of diverse interest groups in the aforementioned processes thus ensuring better representation for all parts of society, and also to build the capacities of those groups to contribute effectively such processes.

The following table sets out the strategic programmes that have been agreed to deal with these issues.

Pillar 3: Access to Justice – Strategic area 3.3: Care of Court Users and Role of Civil Society

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|-------------------------------------|--|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 3.3.1 Ensure full implementation of the Care of Court Users Strategy in BiH | | | | | | HJPC, MoJ BiH, entities and cantons | 1. Action plan for Strategy implementation developed, adopted and implemented |
| 3.3.2 Increase the level of information accessible on organisation and work of the courts and prosecutor's offices in BiH to the wider BiH public | | | | | | HJPC, MoJ BiH, entities and cantons | 1. Increase the transparency of court proceedings for all parties in the proceedings: witnesses; victims; public and media, including the complete application of the Freedom of Access to Information Law; 2. Establish a strategy of work with the public for the courts and prosecutors in regards to investigations, processing and sentencing for those cases of particular interest for the public (war crimes, organised crime and sexual violence) |
| 3.3.3 Explore modalities for a more active engagement of the NGO sector in BiH in monitoring the justice sector work in BiH | | | | | | HJPC, MoJ BiH and entities, BD JC | 1. A study with recommendations on modalities of more active engagement of the NGO sector in BiH on monitoring the work of the justice sector developed |

Expected outcomes of the strategic programmes:

- Implementation of selected programmes should increase fair and equitable access to justice and ensure that services provided through the courts meet the needs of ordinary citizens;
- Increased focus on the needs of citizens; building the commitment of court actors to improve their focus on the citizen and deliver results that matter to them;
- Greater trust and confidence in courts of BiH, both for current court users, and for the citizens who may be court users in the future.

Pillar 4: Support to Economic Growth

Strategic objective: Define and implement measures through which the justice sector will contribute to creation of a more favourable environment for sustainable economic development in BiH

The issues concerning support to economic growth in BiH that are addressed through this strategy have been split into two main sub-groups, and for each of these a series of strategic programmes developed to address the relevant issues. The background to each of the issues is briefly described below, and more detailed analysis can be found at Annex 2.

4.1 Mediation and Other Forms of Alternative Dispute Resolution

Businesses in BiH have insufficient access to Alternative Dispute Resolution (ADR) mechanisms that would help them avoid time consuming and costly court proceedings. Court centred commercial litigation is particularly damaging to small and medium enterprises. Some pilot initiatives to trial ADR mechanisms such as mediation have had positive results, and have provided evidence, backed up by experience internationally, that a movement away from purely court-centred litigations can have a number of benefits. These include releasing valuable business assets that have been blocked because of disputes, freeing up scarce judicial resources by reducing the number of cases that reach court, and reducing costs. Another benefit is that ADR mechanisms can provide access to justice for those who cannot afford an attorney for litigation. ADR is relatively new concept which at the moment requires much more attention by local authorities. Minimum required infrastructure has already been established but the challenge now sits in the need to promote and widen ADR throughout the country. In order to achieve this, Ministries of Justice needs to develop capacities to set strategic direction for ADR. Association of Mediators has to develop a comprehensive training programme for future mediators and uniform set of guidelines and rules governing the work of mediators. It also has to open additional offices in order to bring ADR to other regions in BiH.

The table overleaf sets out a total of 10 strategic programmes aimed at improving the breadth and quality of ADR services provided in BiH.

Pillar 4: Support to Economic Growth – Strategic area 4.1: Mediation and Other Forms of Alternative Dispute Resolution

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|--|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 4.1.1 Ensure strategic guidelines for development of Alternative Dispute Resolution (ADR) | | | | | | MoJ BiH | 1. Conduct an analysis of experiences to date in the application of mediation; 2. Action plan for promotion of ADR in BiH passed and implemented, including activities related to supporting the BiH Association of Mediators in promoting mediation |
| 4.1.2 Promote benefits of ADR at the level of executive authorities in BiH | | | | | | MoJ BiH | 1. Raised awareness and trust in ADR at the level of executive authorities in BiH |
| 4.1.3 Continue promoting ADR among the business, legal and academic community | | | | | | BiH Association of Mediators, Bar Associations | 1. Amendments to code of ethics of the bar association in FBiH and RS adopted, in terms of the obligation to inform the parties on the possibility of dispute resolution through mediation; 2. Programme of education on ADR developed and implemented at the relevant faculties in BiH; 3. Increased number of information sharing meetings with businessmen and other service users, with the aim of promoting ADR in BiH |
| 4.1.4 Define clear mechanisms and activities of promoting and encouraging the use of mediation among the judges in BiH | | | | | | HJPC | 1. Plan of long-term promotion and encouragement of the use of mediation among the judges in BiH developed |
| 4.1.5 Strengthen the role of the BiH MoJ in defining policies for ADR and in the establishment of a system to evaluate and monitor the implementation and effectiveness of mediation | | | | | | MoJ BiH | 1. Strengthen the capacity of BiH MoJ to develop policies related to ADR; 2. A system to evaluate and monitor the application and effectiveness of ADR defined and established |
| 4.1.6 Improve the capacity of the Association of Mediators in BiH in the development of: human resources; system of standardisation; training; licensing; and service provision | | | | | | MoJ BiH, Association of Mediators of BiH | 1. Secretariat for administrative and technical support for the BiH Association of Mediators established and operational; 2. BiH Association of Mediators awarded the EN 45103 standard for licensing of the mediators; 3. Training programme for mediators in BiH advanced |
| 4.1.7 Conduct induction training and provide ongoing professional development on successful referral of cases to mediation, as part of the professional development of judges, expert associates, apprentices and others | | | | | | HJPC, MoJ BiH and entities, and BD JC, CEST FBiH and RS, | 1. Training programme defined and implemented; 2. The number of trained judges, expert associates, apprentices and others increased in comparison with the previous period; 3. Repository of knowledge on trained persons established (data base, materials, etc.) |
| 4.1.8 Ensure a system of provision of mediation services throughout BiH | | | | | | MoJ BiH and entities, and BD JC, Association of Mediators of BiH | 1. Optimal number of offices for mediation in BiH established in full capacity, with defined network of reporting, storing and exchanging of information and data |
| 4.1.9 Conduct a study on modalities of the wider application of mediation and other types of alternative dispute resolution in BiH | | | | | | MoJ BiH | 1. Study with recommendations developed |
| 4.1.10 Develop an action plan for enhancing the work of commercial departments of courts | | | | | | HJPC | 1. Action plan developed |

Expected outcomes of the strategic programmes:

- Strengthened role of Ministry of Justice of BiH in developing policy on mediation and potentially other forms of ADR in line with results in legal practise in BiH, as well as international experience, and facilitate the development of a BiH -wide strategic approach to developing mediation and other forms of ADR to other types of disputes aside from commercial ones;
- Increased awareness of key institutions of the benefits of mediation and ADR;
- Reduction of pressure on courts and ease conflict and tensions between disputing parties;
- Clear mechanisms making referrals from courts to mediation easier;
- Improved quality of mediation services in BiH.

4.2 Reform of the Land Registry System

Ensuring reliable and secure property rights and the development of effective land registry services is a major challenge for BiH. Work is already underway to create a modern, digitised system of managing land register and cadastre data, but further areas where urgent reform is needed include finalising and streamlining the relevant legislative framework for overall land registration reform, improving the standards of land registration services including building technical and managerial capacities and facilities, as well as standardising quality of services, in both land registry offices and administrative bodies.

Pillar 4: Support to Economic Growth – Strategic area 4.2: Reform of Land Registry System

| Strategic programmes | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|---|--|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 4.2.1 Finalise legislative framework needed for optimal functioning of the land registry system | | | | | | MoJ BiH and entities, and BD JC | 1. Property Law and Law on division of state property adopted, and the law on court fees amended with the aim of harmonising court fees for land registry procedures throughout BiH |
| 4.2.2 Ensure unified standards of quality in terms of providing services in the land registry offices | | | | | | MoJ entity and cantons, and BD JC* | 1. All rulebooks recommended in Strategic Guidelines for Land Registry Administration in BiH passed |
| 4.2.3 Develop criteria and regulations regulating the number and status of land registry employees | | | | | | MOJ entity and cantons, and BD JC* | 1. Criteria and regulations developed and implemented |
| 4.2.4 Strengthen capacities of the entity MoJs to address the needs of the land registry system | | | | | | MOJ entity and cantons, and BD JC | 1. Set up and make operational special departments for land registry business in entity MoJs; 2. Develop and implement training programme in development, monitoring and evaluation of policies in this area for the entity MoJs staff |
| 4.2.5 Strengthen capacities of the land registry offices in terms of the land registry administration needs | | | | | | MOJ entity and cantons, and BD JC and HJPC | 1. Develop and implement a program of ongoing professional advancement for staff in land registry offices; 2. Modernise work processes and management systems in the land registry administration |
| 4.2.6 Ensure mechanisms for harmonised legislation in the land registry sector in BiH | | | | | | MOJ entity and cantons, and BD JC, LACAB BiH* | 1. Full harmonisation of all regulations in land registry sector in the entire BiH achieved |
| 4.2.7 Contribute to better coordination with institutions in the land registry administration sector | | | | | | MOJ entity and cantons, and BD JC, LACAB BiH* | 1. Full and ongoing cooperation with the Land Administration, Coordination and Advisory Board (LACAB) BIH established, which should continue its work in accordance to this Strategy |

Expected outcomes of the strategic programmes:

- Clear legislative framework, facilitating more efficient and transparent work and better customer service, at the same time ensuring that customer service standards are clear in land registries throughout BiH, resulting in increased trust;
- Greater efficiency in the land registration sector, as each institution performs its role in coordination with the others;
- The development of a coherent system for land registration in BiH, leading to legal certainty about property rights and creating a better climate for investment.

Pillar 5: Well-Managed and Coordinated Sector

Strategic objective: Coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, transparent and accountable justice system in BiH

The issues concerning creating a well-managed and coordinated justice sector in BiH that are addressed through this strategy have been split into three main sub-group, and for each of these a series of strategic programmes developed to address the relevant issues. The background to each of the issues is briefly described below, and more detailed analysis can be found at Annex 2.

5.1 Coordination of Competencies

BiH's complex governmental structure and multitude of justice sector stakeholders, who often have ambiguous inter-institutional mandates and responsibilities have led to a number of problems including duplication and coordination problems that lead to an inefficient and ineffective use of scarce resources and unequal provision of justice related services. Although sometimes necessary, legislation is not always the best solution to coordination problems, and functional mechanisms for inter-institutional working can offer a more flexible and effective way forward. However, as has been identified by a number of formal reviews of the justice sector and general public administration of BiH, such mechanism and capacities are largely missing.

The table on the following page set out three strategic programmes that have been developed to address this issue of the need to ensure there is proper coordination between justice sector institutions.

Pillar 5: Well-Managed and Coordinated Sector – Strategic area 5.1: Coordination of Competencies

| Strategic programs | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|-------------------------------|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 5.1.1 Establish and hold ministerial conferences, with HJPC President in attendance | | | | | | MOJ BiH and entity, and BD JC | 1. Initiate and hold ministerial conferences at least every six months, with HJPC President in attendance as well; 2. Initiate and hold at least quarterly meetings of the MoJ secretaries and Assistants to Ministers and Brčko District representatives; 3. Strengthening capacities of the Bosnia and Herzegovina MoJ's SSPACEI for the purpose of providing technical assistance for these meetings |
| 5.1.2 Strengthen the coordinating role of the Bosnia and Herzegovina MoJ | | | | | | MOJ BiH | 1. Clarification of legal provisions regulating the coordinating role of the Bosnia and Herzegovina MoJ and formal coordinating mechanisms with entities and BD JC |
| 5.1.3 Conduct in depth analysis of the impact of the MoJ restructuring at the cantonal level | | | | | | MOJ F BiH and cantons | 1. In depth analysis conducted, with recommendations |

Expected outcomes of the strategic programmes:

- Promotion of better coordination and consultation between different parts of the justice sector in BiH at both political and technical level that will ensure more harmonious and effective management, monitoring and evaluation of the multiple tasks involved in the reform processes so that the justice sector as a whole meets collective objectives.
- Improved efficiency by decreasing duplication of effort and increasing coherence by approaching problems jointly from a sector-wide perspective;
- Prioritisation of reforms across the whole sector, will have a greater impact than directing scarce resources to areas which may be less in need than another;
- Coherence of reform: improvements in one area may be dependent on corresponding changes in another;
- A greater focus on citizens resulting in reform that has a greater chance of success because it takes full account of citizen needs as well as the intricate relations between the various levels and segments of justice sector.

5.2 Strategic Planning and Policy Development

Until recently, none of the ministries of justice in BiH, nor the Judicial Commission of Brčko District, had the organisational and human resource capacity to take charge of coordinating justice sector strategic planning and policy development or for initiating harmonisation of justice sector legislation between different layers of government in BiH. In 2006 the state Ministry of Justice of created a Sector for Strategic Planning, Aid Coordination and European Integrations (SSPACEI) with the mandate of coordinating relevant planning activities at the institutional and sectoral level. However, SSPACEI is under-resourced and will not be able to carry out its full range of responsibilities without the full complement of staff envisaged in the Rulebook. Entity Ministries of Justice and the Brčko District Judicial Commission do not yet have any similar units. Overall ministries of justice at the state and entity level, the Brčko District Judicial Commission and HJPC rarely exchange information or gather data in a coordinated manner in order to facilitate strategic planning, policy making and law drafting functions.

The table below sets out 2 strategic programmes with the aim of addressing these issues.

Pillar 5: Well-Managed and Coordinated Sector – Strategic area 5.2: Strategic Planning and Policy Development

| Strategic programs | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|--|-----------|-------|-------|-------|-------|---------------------------------------|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 5.2.1 Establish institutional capacities for strategic planning and policy development | | | | | | MOJ BiH and entity MOJs and BD JC | 1. Smaller units for strategic planning established and operational in the entity MoJs and Brčko District Judicial Commission; 2. Centre for policy development, documentation and research established in Bosnia and Herzegovina MoJ |
| 5.2.2 Develop and maintain a system of collection, analysis and exchange of all relevant information among the key justice sector institutions | | | | | | MOJ BiH and entity and BD JC and HJPC | 1. Types, ways of collection and access to relevant information defined; 2. System of collecting, analysis and exchange of information established between the justice sector institutions and NGO sector |

Expected outcomes of the strategic programmes:

- Development of more informed, appropriate and more strategic justice sector policies in BiH that are better coordinated between the levels of government and between the various justice sector institutions;
- Better communication and cooperation between justice sector institutions and between justice sector institutions and the NGO sector.

5.3 Donor coordination and EU integration

Until recently the greatest weaknesses in relation to donor coordination in the justice sector of BiH were the absence of a forum at sector level for a with the donor community on procedural and substantive integration of aid, and the lack of a state-wide justice sector strategy. Although these two weaknesses have now been addressed by the aforementioned creation of SSPACEI and the development of this justice sector strategy, more reforms are needed to ensure a transition from donor led approach to one that is led by local institutions. Even greater challenges are faced in relation to EU integration, but capacities within the Ministry of Justice of BiH and entities, as well as the Brčko District Judicial Commission are scarce. Mainstreaming EU integration functions into day to day operations at the professional level is likely to be difficult, especially given that in general, knowledge of the relevant justice system EU is very limited.

The following table sets out two strategic programmes designed to address these donor coordinated and EU integration related issues.

Pillar 5: Well-Managed and Coordinated Sector – Strategic area 5.3: Donor Coordination and EU Integration

| Strategic programs | Timeframe | | | | | Responsible institution(s) | Indicators of implementation |
|---|-----------|-------|-------|-------|-------|--|---|
| | 12 mo | 24 mo | 36 mo | 48 mo | 60 mo | | |
| 5.3.1 Establish and maintain a mechanism for coordination of the justice sector institutions to effectively coordinate with the donors | | | | | | MOJ BiH and entity, and BD JC and HJPC | 1. Mechanism of joint coordination with donors defined and implemented with clear division of competencies among the institutions |
| 5.3.2 Establish the infrastructure and capacities in BiH and Entity MoJs and Brčko District Judicial Commission_for support to the process of regulation harmonisation in the BiH justice sector with the <i>Acquis Communautaire</i> | | | | | | MOJ BiH and entity, and BD JC | 1. Persons or units for harmonisation of the regulations established; 2. Civil servants trained and acquired appropriate specialist skills in the field of harmonisation, including the application of the policy and regulations impact assessment tools |

Expected outcomes of the strategic programmes:

- More strategic and systemic approach to donor coordination at sector-wide level that will act as a first step towards Sector Wide Approach (“SWAP”) to donor programming and funding²;
- Improved institutional and sector capacities to efficiently and effectively prepare, coordinate and carry out the upcoming EU justice matters related accession process in BiH.

² Although there is no single, widely accepted definition or model of a sector-wide approach to provision of donor support, the central idea of a SWAP is that in a given sector in a given recipient country, all significant donor interventions should be consistent with an overall sector strategy and sector budget that have been developed under the leadership of the recipient country.

Section 6: Key Unresolved Strategic Issues of the Justice Sector

The justice sector stakeholders involved in the development of this strategy identified a number of issues, described in more detail below, that will have significant impact on both the independence and efficiency of the judiciary and need to be urgently reviewed and resolved in order to enable further progress of the sector. However, when discussing the various options for addressing these issues, the stakeholders involved encountered the limitations of the current constitutional arrangements in BiH and as such were unable, in spite of their best efforts, to reach agreement on the best way forward.

Although in recent years politicians in BiH, with support from the international community, have initiated actions for resolving some of the most serious issues facing the country's judicial system, for example by transferring certain responsibilities to the state-level government and the creation of a state-level judicial infrastructure including the State Ministry of Justice, the High Judicial and Prosecutorial Council, the Court of BiH, the Prosecution Office of BiH, as well as substantive and process laws in criminal justice, none of these reforms have been formally embedded in the constitution of BiH. As the process of constitutional reform has recently been reignited, and given the differing views of different justice sector stakeholders on the issues described below, it was unanimously decided that it would be best to consider the following options as part of the package of issues being addressed through the constitutional reform process.

Unresolved issue (i): Fragmented financing of the judicial system

The process of annual budget preparation for courts and prosecutor's offices in BiH has changed dramatically in recent years since the Independent Judicial Commission (IJC) and later on the HJPC of BiH began to take an active role in assisting the courts in preparing draft budgets. However, the current system of financing is extremely complex requiring the HJPC to interact with 14 different ministries of justice (including the Brčko District Judicial Commission), 14 different ministries of finance, 14 governments and 14 parliaments in BiH in the process of budget adoption. As a result, the current system of the financing, features significant budgetary inequalities across 14 jurisdictions in BiH. It is impossible, as a result, to develop and implement any long term strategies, policies and priorities for the judiciary in BiH in a coherent manner. The current system of financing courts also hampers the efficient and effective allocation and spending of scarce budgetary resources.

The Working Group for the Judicial System strategic pillar explored two possible options aimed at remedying this issue.

OPTION No. 1: Transfer the financing of the judiciary to the level of BiH

The first option draws upon the Functional Review of the Justice Sector in BiH prepared by the European Commission. This study acknowledges that the lack of a centralised funding authority causes, inter alia, significant inequalities in the administration of justice in BiH, jeopardises the independence of the judiciary and impedes the effective and efficient maintenance of the rule of law in BiH. As a result, this study spells out the following recommendation: “Court and Prosecutors’ Offices in BiH should be financed at the level of BiH from the budget year 2007.” In addition, Option no. 1 reflects the priority set out in the European Partnership for BiH which reads as follows: “Transfer financing of judiciary on the level of BiH”, as well as a priority to: “Establish the central body for execution and monitoring of budgets (judiciary)”.

The transfer of funding to the level of BiH would mean that there would be a centralised funding authority and accordingly the possibility of a sector-wide coherence in strategic planning, policy development and priority setting for the entire judiciary in BiH. Instead of interacting with a large number of stakeholders, such a financing system would enable the HJPC to lobby far more effectively with a single counterpart (i.e. the Ministry of Justice of BiH and Parliamentary Assembly of BiH) for the interests of courts and prosecutor’s offices, to prioritise their requirements, to ensure equality in terms of funding based on more realistic and well-thought-out figures, to allocate funding efficiently and effectively and to provide financial planning and assistance.

Such a financing system would also minimise the potential for political influence in the process of budget development and execution and over the court’s in general. In this way the budget process would become more transparent, fair and non-discriminatory.

OPTION No. 2: Transfer the financing of the judiciary from the level of 10 Cantons to the Federation of BiH

Due to the lack of consensus among the Working Group members with regard to option no. 1, the Working Group also explored the option to transfer the financing of the judiciary from the level of 10 Cantons to the Federation of BiH level of authority. This option would mean that the judiciary would in future be financed from 4 jurisdictions i.e. the State, the Federation of BiH, Republika Srpska and Brčko District budgets. This option would partially remedy the current fragmentation of the financing system of judiciary in BiH by reducing financing from 14 to 4 sources. Though an improvement on the current situation, this is also not the optimal solution as financing would still be fragmented.

It should be noted that neither of the 2 options above implies the establishment of a “single judiciary” in BiH. The four existing jurisdictions (i.e. BiH, Federation of BiH, Republika Srpska and Brčko District) would preserve their respective mandates as four “individual” jurisdictions, regardless of the financing source.

Challenges to consolidating the financing of the judiciary

If and when a decision on consolidating the financing of the judiciary either at the Federation of BiH level or at the state level of BiH, the implications for distribution of indirect taxation revenues as well as implications for the budgets of each of the respective levels will need to be considered in detail. Likewise, the existing responsibilities and authorities of ministries of justice (i.e. the Judicial Commission of Brčko District) of those levels from which the authority for financing the judiciary is being transferred have to be re-examined and adjusted to the changed circumstances.

The relationships between the executive, legislative and judicial branches will also have to be reconsidered and changed to reflect the newly established arrangements. Implications for other parts of the justice sector and links to other parts of the public sector will also need to be examined.

Before any political decision is made or actions initiated, a comprehensive and extensive analysis of the consolidation of the financing of judiciary and its implications on the existing legislative, institutional, financial and budgetary framework in BiH needs to be conducted. The findings from this analysis will then need to be reviewed by political decision-makers. This analysis should be driven by the ministries of justice, Brčko District Judicial Commission and the HJPC in BiH, although donor assistance could be sought to provide financial assistance and expertise to conduct the analysis.

Unresolved issue (ii): Harmonisation of substantive and process civil and criminal laws

Legal experts and individuals from judicial practice have assessed that the current ad hoc bodies established for the purpose of harmonising civil and criminal substantive and process laws are neither efficient nor sustainable. This situation is a result of the constitutional and administrative framework of BiH in which the state level does not have authority to promulgate civil and criminal laws which could be applied throughout BiH. The experiences of other federal states differ in this issue, but a majority have, at a minimum, harmonised criminal laws. Considering the lack of consensus at this time to enable the drafting of single laws, an agreed approach to dealing with this issue will need to be decided over the timeframe of this strategy.

Harmonisation of court practice

A state governed by the rule of law is characterised by the equality of all citizens before the law and its natural corollary, unity in interpretation of the law. Fragmented interpretation of the law poses a threat to the equality of citizens. Unity in interpretation of laws is a guarantee designed to secure individual interests and the stability of business relations. Harmonised interpretation of the law has a heightened importance in the present context of political, economic and social transformations in BiH and further EU integration, especially since the latter will bring about a large increase in the number of legal texts further affecting unity of interpretation in court rulings. At this moment, BiH does not have a mechanism which ensures the unity of the interpretation of the laws throughout the entire BiH.

Nowhere is this more relevant than in the present dilemma about which Criminal Code should be applied in war crimes cases. To date war crime case proceedings in the entities have mainly applied earlier criminal codes, which allow for a maximum of 20 or 40 years of imprisonment (depending upon the entity), while the Court of BiH applies the Criminal Code of BiH, which carries a maximum of 45 years imprisonment. Defendants at the Court of BiH contest these sentencing discrepancies. While the Constitutional Court of BiH has issued a ruling attempting to resolve these sentencing variations, legal practitioners insist that the decision is not binding at the entity level.

The failure to acknowledge the binding nature of Constitutional Court decisions is worrying and only serves to further exacerbate an already difficult situation, both in this specific example and in numerous other instances. Such examples of dramatically inconsistent practices can be found on all issues—from civil cases to pre-trial detention decisions, and calls into question equality before the law and legal certainty.

Establishment of common jurisprudence in numerous areas is urgently required, in particular, both practitioners and the people of BiH want to see sentencing practices strengthened and harmonised. In light of the above, the Working Group for the Judicial System explored an option, as described below, aimed to remove this evident shortcoming in the judicial system. Although no agreement was reached through the strategy development process, as mentioned above, an arrangement for this issue needs to be sought at the latest during the constitutional reform process.

BiH does not have a Supreme Court of BiH and therefore none of the advantages that a Supreme Court provides. A Supreme Court is required to perform the dynamic role of interpreting the law, and to see that the law is equally applied by courts, thus ensuring homogeneity in judicial practice across BiH. As guardian of the law, a Supreme Court contributes towards maintaining legal security and the protection of freedoms and fundamental rights.

Aware of the problem that the lack of a Supreme Court of BiH poses, the Council of Europe Parliamentary Assembly issued a Resolution 1564 (2007) on “Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)”, whereby it called upon the authorities of BiH to, *inter alia*: “ensure the harmonisation of case-law, consider setting up a national supreme court, or grant the powers of a supreme court to an existing court so as to secure legal certainty;”.

Section 7: Implications of the JSRS on Medium-term Budgets

Introduction

The implementation of the JSRS has financial implications for all government bodies with justice sector responsibilities. This section explores the context within which funding for the JSRS will be found and the implications of the JSRS on medium term budgets.

All 14 governments, with justice sector responsibilities, in Bosnia Herzegovina have introduced a new system and processes for budget planning. The system and processes are common to all 14 jurisdictions. The new budgeting system and process has been in place at BiH, Republika Srpska and Federation of BiH levels for four years. In Brčko District and the ten Cantons the new budget system has been in place for the last two years.

The three main features of the new budget processes are:

- The use of programme budgeting to structure bids and financial management
 - Each spending unit groups its activities into a limited number of programmes
 - The programmes are managed collectively to achieve an overall operational objective or objectives
 - Each year the programmes submit bids for additional resources as well as indicating ways in which efficiencies and cost reductions will be achieved
- The compilation of three year budgets at all levels
 - Each government, advised by their MOF, determines budget ceilings for all budget users for a three year period
 - Budget users can plan in the medium term with three year spending allocations covering recurrent and capital spending
- The requirement to supply performance information for both existing funding allocations as well as bids for future increased funding
 - Each budget user must demonstrate an efficient and effective use of the current funding
 - In addition performance data must be supplied to indicate target performances for the next three years in terms of outputs, outcomes and efficiencies

The focus on budget planning now takes place in the first half of the year with an end date of 30 June. By that time all governments should have approved their Budget Framework Paper setting the factors which have led to the revenue forecasts, general fiscal strategy and the determination of budget ceilings for each budget user for the next three years.

Budget prospects for the medium term

The Budget Framework Papers approved in 2007 offer some clear indication of the overall budget prospects for the next three years. It is within this context that actions listed in JSRS will have to compete for scarce resources with all of the other sectors. Each sector in Bosnia is facing the demands and needs of citizens together with the pressures from the international community to upgrade services and create additional functions.

Current forecasts expect an annual GDP growth of around 5.5% for the medium term. BiH will continue to have to operate a tight fiscal strategy, maintaining a strong control over public spending to avoid even higher current account deficits. The revenues controlled by the Indirect Taxation Authority are forecast to increase by just over 3% per year. Even when other revenues are taken into account the prospects for funding growth in the medium term are limited. Each sector within the public sector as a whole will have to secure the maximum output from existing resources as well as bidding for the limited increase in funds which are available. These increases will have to fund salary increases as well as extra staffing and other increases in running costs and capital spending.

The 14 governments with a justice function have just completed another round of Budget Framework Papers (BFP) for the period 2008/2010. These BFP's take the form of preliminary budgets and set the framework for the annual budget determination by each government. These latest BFP's provide a clear guide for the implementation of the JSRS as they set out the current expectations for spending in the justice sector across the 14 governments.

The funding position of the justice sector has to be set against the overall financial situation across the 14 governments. Over the next three years the BFP's are forecasting overall spending levels as follows:

| Millions KM | 2007 | 2008 | 2009 | 2010 |
|------------------------------------|------|------|------|------|
| BiH | 750 | 861 | 910 | 1002 |
| Brčko | 223 | 193 | 189 | 192 |
| Republika Srpska | 1730 | 1784 | 1839 | 1907 |
| Federation BiH | 1435 | 1402 | 1486 | 1531 |
| Cantons | 1764 | 1769 | 1776 | 1833 |
| TOTAL | 5902 | 6009 | 6200 | 6465 |
| % annual increase (overall) | | 1.8% | 3.1% | 4.3% |

These spending levels will have to cover salary increases, higher costs for materials and sustaining as large a capital programme as possible. There will be severe competition for the limited additional resources at all levels, with several other sectors also having very strong claims for priority funding growth.

A brief analysis of the BFP's, from the justice sector perspective, shows that there are a number of factors underpinning the demand for extra resources in the justice sector:

- The need to provide replacement funding for projects and developments initially funded by international donors, e.g.
 - The transfer of current international funding to BiH, over the next three years, for the State Registry, State Prosecutor and State Court. This will result in an additional annual funding requirement of over KM14 million by 2010 simply to maintain the current position.
 - The funding requirement of HJPC to replace international funding of its operations which will total over KM 3 million by 2010
- The need and commitments to complete the funding of institutions according to the approved Rulebooks, especially in relation to staffing levels, e.g.
 - BiH MOJ will expect to have a further 45 staff by 2010
 - Republika Srpska Attorney General's Office to have an additional 33 staff by 2010
 - Republika Srpska Ministry of Justice to receive KM 3 million to support more adequate levels of spending on non staffing items for existing services
- The need to fund new developments to fill gaps in the framework of services within the justice sector, e.g.

- BiH proposals for the creation of a more widely available civil and criminal legal aid system, which will hopefully start in 2008
 - In the Republika Srpska the establishment of a special department within the Regional Court Banja Luka, in line with the Law on Fight against Organised Crime and Heavy Forms of Economic Crime
- The provision of international donor funds to support additional services within the justice sector. At a future date, these new developments will need to be funded from BiH sources, and this will place further pressures on funding by committing funds in advance. Examples include:
 - The capital expenditure to construct a State Prison facility costing over KM 24 million, with an eventual estimated minimum annual cost of KM 6 million in 2010
 - Procurement of additional ICT equipment for 86 courts and prosecutors' offices in Federation BiH and Republika Srpska. Until now, these activities were financed by the International community (EC, USAID, ICITAP, Norwegian Government etc.), and now activities are being transferred to domestic source of financing, for which needs in 2008 are KM 2,94 million, in 2009 KM 3,96 million and in 2010 KM 3,33 million (presented in the capital investments of the HJPC).
 - Federation BiH Ministry of Justice for the unit for land-registry administration requiring KM 3,2 million in 2008, KM 3,2 million in 2009 and KM 3,2 million in 2010. Financing will be from donor funds but eventually the costs will have to be borne by Federation BiH budget funds.

In addition to the examples quoted above there are other projects and developments, supported currently by international donors, which will require BiH funding to sustain the services in the longer term. It will be necessary to assess the full level of current dependency on international funding for current services in order that a complete picture is obtained of the requirement for BiH replacement funding to maintain existing services. For example, Federation BiH will receive over KM 3 million for the next three years to support land registration, but at the end of this period the costs will have to be supported from the Federation BiH budget. The assessment should also include the consequential demand for BiH resources from internationally funded capital developments of both construction and equipment projects, especially ICT projects. The justice sector has received a massive amount of ICT investment, funded by international donors, and this investment has to be funded to maintain, repair and replace ICT equipment which is fundamental to the operation of existing services. This will place a very significant burden on materials spending across all governments.

Within the budget process for all governments, there is an expectation that savings from improved management of existing services, or the deletion of some existing services, will create some funds which can then be applied to new projects and developments. However, an examination of the BFPs reveals that virtually no savings have been identified in the justice sector. A critical source of funds for new projects is thus not available, thus intensifying the sector's need to compete with other sectors for the limited 'growth' funds. As the sector is funded by 14 governments, and is thus very fragmented, it is unlikely that significant resources can be found from savings. If the justice sector had a single budget it is possible that some rationalisation of services could lead to savings and provide funding for new projects.

In view of the demands which flow from the programmes in the previous sections of the JSRS, and in the light of the budget processes being followed by governments a critical task within the action plan for JSRS will be the construction of an affordable funding strategy to underpin the action plan. In their programme formats the budget priority review tables submitted by all justice sector institutions provide a detailed base from which a comprehensive financial picture for the sector can be developed. In looking ahead to the implementation of JSRS it will be vital that a comprehensive strategy is compiled taking into account:

- The detailed current financial position of all justice sector institutions as set out in the programme budget tables provided to all 14 governments
- An assessment of the current level of dependency on international funding and the future implications for BiH funding
- A rigorous review of all funding in the justice sector to identify any savings to be afforded in order to provide some funding for the additional services and operations set out in JSRS
- A creative examination of ways of funding developments in the justice sector which is not wholly constrained by the current jurisdiction divisions.

Conclusions

The new budget process offers much opportunity for the justice sector to be funded at improved levels. It is a sector which has already had a significant amount of support for strategic development and increased performance. The implementation of the JSRS should further enhance this progress. Other sectors may be starting with a weaker position but as they become more effective, the competition for resources will intensify.

The justice sector will have to promote its case based on sound evidence, commitment and delivery even to stay in its present position. In order to meet the expectations of the JSRS, the justice sector, overall, will have to access much higher levels of funding from all governments. This will be a severe challenge in the years ahead, starting with the budget cycle for 2009/2011 in early 2008. It is likely that the sector will be more successful if its bids are underpinned by a sound longer term coordinated strategy.

Section 8: Implementation of the JSRS

Managing the implementation of the JSRS

The strategic objectives and programmes determined in the preceding sections set the strategic courses of action for addressing the key issues facing the justice sector in BiH in the coming five-year period, which have been agreed between the relevant justice sector institutions through a highly consensual and consultative approach. Given the complexity of the legislative and governance arrangements of the sector, a similar process also needs to be adopted for monitoring implementation progress against indicators determined in the JSRS.

The responsibility for implementation of the objectives and programmes envisaged in the JSRS will lie with all responsible institutions identified in the strategy. Political and strategic oversight of JSRS implementation will be provided by Ministerial Conferences that will take place on a bi-annual basis. Such conferences are a new concept in the public administration of BiH, but an instrument, nonetheless, widely used in other federal states. The members of the Ministerial Conferences would be the ministers of justice of BiH, entity, and cantonal levels, as well as the President of the Brčko District Judicial Commission. The President of the HJPC should also attend and participate in all Ministerial Conferences. Apart from closely monitoring the implementation of the Strategy and providing the political and strategic direction for the Strategy, Ministerial Conferences may be used as a forum for discussing other related issues which fall outside the realm of this Strategy but are of concern for the justice sector, such as those strategies mentioned in Section 2. Ministerial Conferences, if prepared and managed successfully, can become a good example for other sectors seeking to improve the level of coordination and cooperation among key stakeholders.

For all the pillars of the JSRS each Ministerial Conference will firstly review progress of the previous six months against proposed joint annual work plans and decide upon any needed changes for the following six months. If programmes need to be re-modified or changed the members attending the ministerial conference will have a mandate to do so. It is of utmost importance that Ministerial Conferences become a recognisable event in the calendar of governmental business and wide support for them is ensured. SSPACEI of the Ministry of Justice of BiH will be in charge of organising these conferences and performing the role of technical secretariat and adviser to them.

For each of the strategic pillars, permanent functional working groups will be established. These will be responsible for developing annual joint work plans and be in charge of taking forward all the activities identified within a particular strategic pillar. The Steering Board responsible for overseeing the development and approval of this strategy is responsible for appointing these working groups before its mandate expires. Ministries of justice of BiH and the Brčko District Judicial Commission, represented by their respective secretaries or assistant ministers or other relevant positions in the case of the Brčko District Judicial Commission (depending on the strategic pillar in question), should be members of these working groups, together with other key justice sector stakeholders (such as the HJPC and others).

It is recommended that the permanent working groups meet at least quarterly and that this forum be used by its attendees to discuss other matters of relevance for the justice sector, aside from those set by the JSRS. SSPACEI will perform the role of the technical secretariat for the work of the functional working groups making certain that identified appropriate activities are undertaken, monitored and reported within the designated timeframe and achieve the anticipated outcome.

In addition to providing secretariat support to the above bodies, SSPACEI will be responsible for overall coordination of all activities envisaged in the JSRS, including collection of data for monitoring and evaluation purposes as described in Section 9. Once the strategic planning units are established in the entity Ministries of Justice (as planned within this Strategy), they will be a major support to the SSPACEI in overall coordination and implementation.

Given the critical nature of the coordination role to the successful implementation of the JSRS, it is of utmost importance that SSPACEI of the Ministry of Justice of BiH is fully staffed and that entity ministries of justice create smaller but similar units which will assist in the process of managing the implementation and making future strategies. It is also important that these units invest time, energy and resources in continuous building of its analytical capacities in monitoring and evaluating the progress against plans and developing new justice sector plans and policies. SSPACEI still needs to gain the trust of other justice sector stakeholders if it desires to be driving force of the reforms. This requires SSPACEI to become a centre of excellence, a hub of knowledge and information, offering its services to all in the justice sector.

Policy initiatives foreseen by the JSRS

Aside from establishing effective governance arrangements, the successful implementation of the JSRS depends largely on the capacities of justice sector institutions, in particular the ministries of justice and the Brčko District Judicial Commission, to develop analyses and accompanying policy recommendations for key issues identified in this strategy. Sustainable reform in the justice sector is dependent on developing capacities and processes for conducting holistic reviews of relevant policy issues within the sector and proposing adequate policy initiatives needed to address these issues.

A policy unit should be established within the Ministry of Justice of BiH and it should, at a minimum, lead and coordinate initiatives for the development of relevant policy analyses, but also support the decision-making process of the Ministerial Conferences.

Likewise, the JSRS explicitly foresees a series of legislative initiatives as ways of addressing core issues of the sector. It should be noted, however, that legislation is only one of many policy instruments governments can use to support a set strategic direction of action. All legislative initiatives should be preceded or accompanied by either a policy analysis or a wider consultation process (or preferably both). This is needed in order to ensure that the solutions/measures put forth by law are in accordance with international best practice and in conformity with practical needs and capabilities in BiH.

However, given the current practice in BiH and the fact that policy capacities are still underdeveloped, the JSRS foresees distinct programmes for conducting both policy analyses and for developing (or amending) legislation, which should not be developed or approved without sound supporting analysis. Conducting wider consultation as a part of the development of both policy analysis and legislative initiatives is not only recommended, but will be required.

For ease of subsequent institutional or sector-wide action planning, the strategic programmes which will require policy analyses or legislative initiatives are presented in Annexes 3 and 4.

Monitoring and Evaluation of the JSRS

Information gathering on progress made against the indicators as defined by the JSRS and the sharing of this information will be a key component of the monitoring and evaluation of reform initiatives taking place in the justice sector in BiH. An indicator is a measure that helps to determine whether progress is being made toward a certain objective and by how much.

Given the complex legislative and governance arrangements, it is not surprising that BiH still lacks a comprehensive system of collecting, sharing and analysing performance management information for the justice sector as a whole. Nonetheless, this does not make the monitoring or evaluation of the JSRS impossible. The indicators as defined in this Strategy have been designed with the current rudimentary state of performance management systems throughout the justice sector in mind, as well as the modest capacities within the relevant justice sector institutions, particularly the ministries of justice, to analyse performance information in relation to policy.

In light of the arrangements described above for JSRS implementation, the strategic planning units of BiH and the entities, in particular SSPACEI can maintain a relatively simple system of monitoring basic progress against the JSRS, at least for the first cycle of strategy planning. Through either questionnaires or direct consultations with relevant justice sector institutions, as well as through the regular meetings of the permanent functional working groups, the strategic planning units can provide input into the Ministerial Conferences on the status of implementation of individual initiatives within the JSRS. Likewise, an annual evaluation (based on regular progress reports prepared at least quarterly) prepared by SSPACEI with assistance of the strategic planning units in entity ministries of justice and the Brčko District Judicial Commission is to be used as a basis for revisions to the JSRS.

Based on inputs received directly from individual institutions or via the permanent functional working groups, the progress of strategic programmes as set in this Strategy can be reported as being in one of the three phases:

1. **GREEN** – the strategic programme has been implemented in line with the timeframes and the indicators as set by the JSRS, or progress is on track and no delays in implementation are being anticipated. Strategic programmes that have a GREEN status do not require any further actions and should be assessed in term of impacts they have had on implementation of overall strategic objectives or potentially will have once fully implemented.
2. **AMBER** – there are delays in the implementation of the strategic programme which requires the attention of the members of the permanent functional working groups and remedial actions decided upon during their regular meetings.
3. **RED** – the strategic programme has not even been initiated. This requires attention and action by members of the Ministerial Conferences to whom an explanation of the delay must be provided. This type of assessment can be made without too much difficulty, and will rapidly give an overview of progress, as well as allowing assessment of the dynamics of implementing each strategic programme and the strategic objective to which each of them contribute. Progress reporting of this nature will be provided at least semi-annually to members of the Ministerial Conferences, and quarterly to the members of the permanent functional working groups, and should be the basis for setting the agenda of these meetings.

Section 9: Links between the Sector Strategy and Institutional Strategies

A *sector*, in the sense used for the purpose of the development of this strategy, is a group of public services that come under a single broad category such as health, education or transport. There is no single definition in European and international practice of what institutions constitute a *justice sector*, and much will depend on the specific constitutional, legal and institutional arrangements that exist in any given country. However, for the purpose of this strategy the justice sector includes, but is not exclusively limited to: the courts; judiciary; prosecution; ministries of justice on each of the levels (including the Brčko District Judicial Commission); the HJPC; and correctional services. Agencies involved in alternative dispute resolution, alternative sanctions, and provision of legal aid as well as respective training centres for the judiciary are also included.

To date, a number of functionally orientated strategies and plans have been prepared by justice sector institutions in BiH, including the state and entity level Ministries of Justice, the Brčko District Judicial Commission, the HJPC and the Prosecutor's office of BiH. However, these have all been developed from the perspective of an individual institution, using a variety of methodologies, with little attention being given to understanding the structure and dynamics of the sector as a whole. Although national strategies and plans, do provide high level frameworks to guide some aspects of planning and budgeting in the justice sector of BiH, until the development and adoption of this strategy there has been no single strategy that focuses solely on the sector as a coherent system made up of an inter-related set of institutions.

Various countries have adopted different models of justice sector strategy development, of varying degrees of complexity, based on their specific political, social and economic circumstances, and the capacities of the institutions involved. At a minimum, a sector wide approach should result in better communication and cooperation between institutions involved in shaping and delivering justice sector services. As envisaged in this Strategy the establishment of Ministerial Conferences and permanent functional working groups to consider the cross-cutting issues defined in this document, will also provide for regular communication and consultation in relation to shared issues. At the other end of the spectrum, a sector-strategy can result in the introduction of more complex sector wide investment plans, joint governance arrangements or shared performance indicators.

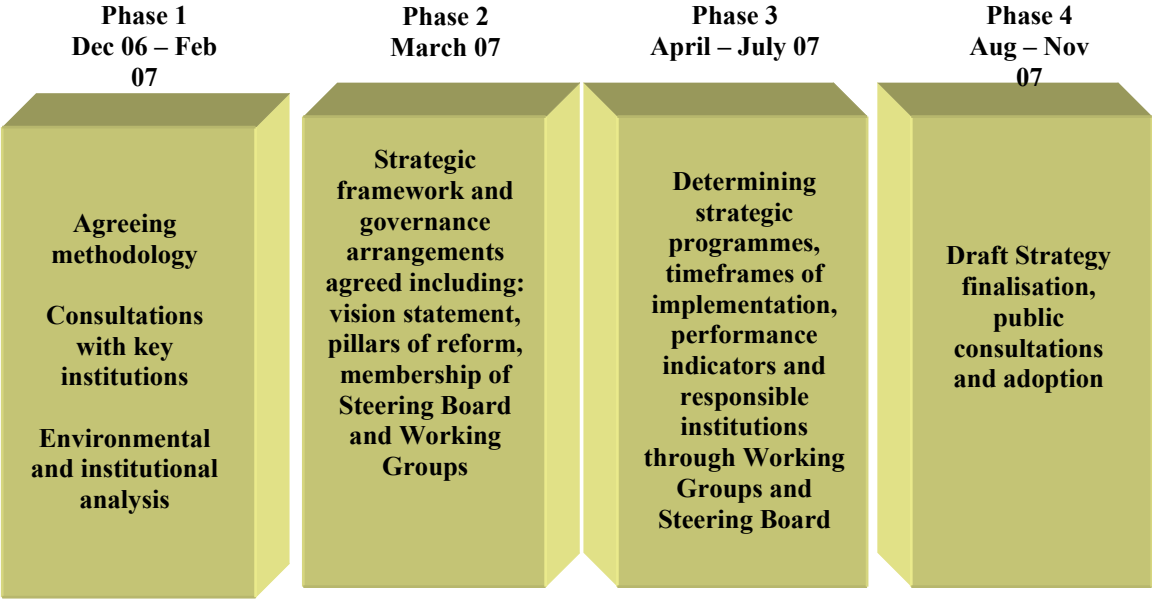
The exact benefits resulting from a sector wide approach will depend on the level and type of cooperation and joint-working that takes place. It will also largely depend on the extent to which the reform initiatives agreed through the process of JSRS development and articulated through this document are permeated through the strategic and operational plans of each of the individual institutions that comprise the justice sector in BiH. The development of a new strategy for the sector as a whole does not mean that these institutional plans will become redundant; they will become critical for the successful implementation of the JSRS and for ensuring that the strategic programmes as laid down in this document are reflected into annual plans of the government and annual budgets.

This sector strategy provides a framework within which individual institutional strategies in the justice sector should be developed or reviewed. It is expected that each institution will ensure its strategies and action plans take account of the responsibilities assigned in the JSRS, although it may be necessary to include additional initiatives that are specific to the institution concerned and not addressed by the JSRS. The intent of this document is not to regulate the planning methodology to be used by the institutions of the justice sector. However, in order to support the institutional planning efforts, which will be key to the implementation of this strategy, some more detailed guidelines are given at Annex 5 that need to be taken into consideration when conducting strategic planning at the level of individual institutions.

Annex 1 – Methodology for development of the JSRS

The methodology used to develop the JSRS was purposefully aligned to the complex governance arrangements within the justice sector. It was structured around an extensive consultation process and securing consensus of key justice sector institutions and stakeholders in BiH on the desired future direction of reform. The development process was divided into four distinct phases, which are presented in Figure 6 below.

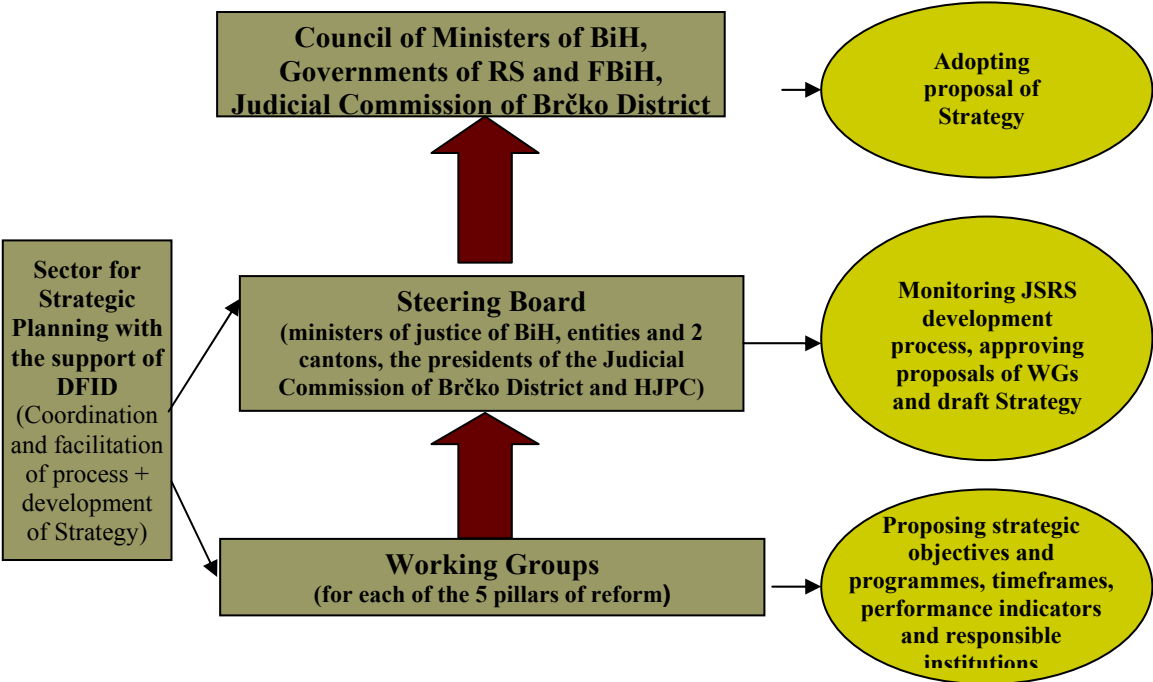
Figure 6: Development phases of the Justice Sector Reform Strategy of BiH



The different phases set out in Figure 6 above are discussed in more detail below:

- **Phase 1:** In the period from December 2006 to February 2007 a series of activities took place. Firstly, an analysis of existing strategic documents, such as the European Partnership, the Strategy for EU Integration of BiH and the Medium-term Development Strategy, was made in order to identify all agreed measures of relevance to the justice sector in BiH. Structured questionnaires were sent to over 30 different justice sector institutions and direct interviews were conducted with around 20 of them (including relevant professional associations and representatives of civil society) in order to gain insight into the priorities and issues of the justice sector from the perspective of individual institutions. Direct interviews were held with around 15 different international institutions and donor agencies. This phase resulted in the identification of the key drivers of reform and the pillars of reform (the ‘strategic framework of reform’), as well as the identification of the governance arrangements for further JSRS development and approval, all of which were endorsed by the institutions consulted in this phase.
- **Phase 2:** On March 28th 2007 a meeting was held with the ministers of justice of the State and entity levels, the President of the Brčko District Judicial Commission, and the President of the High Judicial and Prosecutorial Council at which time political endorsement was given to the proposed strategic framework of reform and the governance arrangements of JSRS development and approval. The governance structure for the JSRS and the relevant roles and responsibilities of each of the relevant institutions is presented in Figure 7 below.

Figure 7: Roles and responsibilities of JSRS development and adoption



- **Phase 3:** From April to July 2007, five working groups, each focusing on one of the 5 pillars of justice sector reform identified in Phase 2, met to discuss and agree upon strategic objectives for each of the pillars of reform (Judicial System, Execution of Criminal Sanctions, Access to Justice, Support to Economic Growth and Well-managed and Coordinated Sector). They also discussed the key strategic programmes of action needed to accomplish these objectives and address key issues, as well as proposed timeframes of implementation, indicators of performance and institutions responsible for implementation of strategic programmes. The Working Groups comprised justice sector institutions of relevance to the strategic area in question, including representatives of the ministries of justice of BiH, the entities and selected cantons, the Brčko District Judicial Commission and High Judicial and Prosecutorial Council and also representatives of professional associations of judges and prosecutors, bar associations and non-governmental organisations active in the justice sector. Representatives of relevant donor agencies working within each of the five pillars of reform also attended the Working Group meetings as observers. The Steering Board for the JSRS, which comprised ministers of justice of BiH, entities and two cantons, the presidents of the Judicial Commission of Brčko District and HJPC met twice in this period to discuss and decide upon the proposals of the Working Groups. Annex 6 provides more detail on the JSRS Working Groups and Steering Board.
- **Phase 4:** Based on the decisions of the Steering Board the first draft of the Justice Sector Reform Strategy was developed and made available for public consultations organised through focus group discussions held during September and October 2007. The draft document was made available for review and comment by the wider public by having it posted to the web site of the Ministry of Justice of BiH. Notification of the availability and web address of the draft JSRS was also provided over three separate days, in five major newspapers, which exposed the JSRS to a readership of 516,500 people. Based on the comments generated through this consultation process, a revised draft of the JSRS was presented to the Steering Board for final approval. After this, the JSRS was submitted to respective governments for review and approval. Annex 7 provides more detailed information on the consultation process conducted during this phase.

Annex 2 – Descriptions of Individual Strategic Programmes

This Annex describes in more detail the background analyses which informed discussions leading to the agreement of the overall strategic framework and the strategic objectives and programmes contained in this strategy, as set out in Section 4 and 5.

Most of the information and data that was used to inform the development of this strategy already existed in the various strategic documents described in Section 2, so it was not necessary to engage in extensive primary information and data generation. In order to ensure that all the information contained in the documents suited the JSRS context some information required further substantiation, assessment and updating due to the time that had elapsed since publication.

The information and data that were collated from existing documents derive from, but are not exclusively limited to, the Functional Review of the Justice Sector in BiH, the reports of the European Commission's Committee for Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), the website of the European Commission for the Efficiency of Justice (CEPEJ), reports and analyses prepared by: the OSCE Mission in BiH; USAID; ABA-CEELI; DFID; and OHR, as well as annual reports of the HJPC and Registrar's Office of the Court of BiH. Budgetary information presented in Section 7 is based on the Budget Framework Documents of the State and two entities adopted at the time the JSRS development commenced. Extensive consultation with key justice sector stakeholders during Phase 1 of the strategy development process was used to further corroborate and update information and data gathered through the analysis of these existing documents.

The remainder of this Annex sets out the background analysis produced for each Pillar of Reform, which was used to inform discussions at the Steering Committee meetings and functional Working Group sessions during Phases 2 and 3 of the strategy development process.

PILLAR 1: Judicial System

Strategic objective: To further strengthen and maintain independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH

Given the scope and complexity of issues facing the judiciary, for ease of discussions within the Working Group, as well as for ease of presentation in this document, the strategic programmes agreed for this pillar of justice sector reform have been divided in the following sub-areas of initiatives:

- Independence and Harmonisation;
- Efficiency and Effectiveness; and
- Accountability and Professionalism.

1. Independence and Harmonisation

Judicial independence is a cornerstone of the separation of powers in democratic societies. Key achievements to date in BiH that have contributed towards achieving judicial independence have been the establishment of the HJPC, which has been assigned with the responsibility of appointing and disciplining judges and prosecutors in BiH, setting and monitoring performance standards of the judiciary and overseeing judicial administration. Nonetheless, despite all the achievements to date, there are certain unresolved issues that threaten the independence of the judiciary, as explained below.

Financing the judiciary

Judicial budgeting is a key mechanism to ensure judicial independence and the current system of financing the judiciary makes it vulnerable to political pressure. Even though the Law on HJPC (Official Gazette of BiH no. 25/04) provides the HJPC with the authority to provide substantive input into the preparation of judicial budgets, the HJPC must play a stronger role in the process and serve as the interface between the executive and the judicial bodies.

The way in which the decision-making process regarding judicial budgets can be regulated, needs to be addressed either through existing laws or enacting new laws, so that judicial independence is not endangered through the process of preparing and executing budgets. Reviewing the funding of the judiciary should use the experience of other countries.

In order to strengthen the overall budgetary decision-making process for the judiciary, the capacities of the ministries of justice and the Brčko District Judicial Commission need to be strengthened, so that they are able effectively to provide strategic guidelines and set priorities for budget planning, thus ensuring that budgetary spending for the judiciary reflects realistic needs of the judicial institutions, as well as strategic priorities of the sector.

Given the large number of changes that have affected the judiciary in recent years, a particularly important issue is the need to conduct an assessment of the realistic financial needs of judicial institutions in BiH, taking into consideration the priorities in the justice sector. Such an assessment could be used as a basis for deciding the future financing needs of the judiciary in BiH, as well as for developing a methodology for future projections of the financial needs of the judiciary.

Appointment Processes

Another fundamental guarantee of judicial independence is a merit based appointment process, based on a transparent and fair procedure. This system has been established for all judges and prosecutors in BiH. The HJPC has the authority to provide suggestions regarding the naming of the judges in the Constitutional Courts of the Federation of BiH and the Republika Srpska (which is stipulated in the Law on the HJPC). Although the Constitutional Court of BiH exists as an institutionally independent body for implementing constitutional-court control, and as such does not belong to the regular judicial authority, it has been assessed that, objectively, there is no reason why a similar procedure for naming cannot be applied to the judges of the Constitutional Court of BiH, namely for the HJPC to give its opinion on the candidates being put forth for consideration. An adequate solution for this will be found during the first year of implementation of the Strategy taking into consideration the current constitutional status of the Constitutional Court of BiH.

Harmonisation of laws and court practice

Aside from independence, the majority of judicial stakeholders identified the issue of harmonisation of laws and court practice as another key issue. The present system lacks a mechanism by which laws and regulations are harmonised across four jurisdictions: the level of BiH, Brčko District, Federation of BiH and Republika Srpska. Practitioners have attempted to resolve this problem by forming ad hoc workings groups, such as the Criminal Codes Implementation Assessment Team established by the Ministry of Justice of BiH in 2003. Following the 2003 judicial reforms, it is clear that the present system lacks one fundamental element to establishing the rule of law—a mechanism by which court practices and differing legal interpretations can be resolved and harmonised.

There is a strong consensus that the laws that regulate the functioning of prosecutors should be harmonised and uniformly regulated at the level of the Federation of BiH, in order to create better pre-conditions for an efficient and effective functioning of prosecutors in the Federation of BiH.

Presently the Court of BiH and both entity Supreme Courts issue verdicts with dramatically different holdings on key legal questions, resulting in divergences in court practice and legal interpretation. This, in turn, undermines the public trust in the lawful delivery of justice and creates a sense of legal uncertainty.

Lack of consensus on options for reform

Although it is clear that the issues relating to the fragmentation of the system of financing for the judiciary, as well as the harmonisation of laws and court practice are very important for the judicial system in BiH, as described in Section 6, consensus was not reached regarding how these issues could be resolved during this cycle of strategic planning.

Although no conclusions were made in relation to these issues during the development of the strategy, progress has been made by the fact that these issues were raised and discussed, and all parties in the discussions acknowledged that they need to be resolved no later than the commencement of constitutional reform discussions. Options for resolving these issues were developed and discussed at great lengths by the Judicial System Working Group and the Steering Board. These options are described in greater detail in Section 6. Although no final conclusions and recommendations about future actions could be made at this time, political discussion in these areas will commence over the period covered by this strategy.

2. Efficiency and Effectiveness

Case backlogs

The present backlog of cases in primarily civil cases hinders steps made so far to enhance the administration of justice. The backlog of cases continues to impact the length of proceedings in newer cases, thereby affecting the overall ability of courts to process cases in a reasonable time. Although the HJPC established a working group to address this problem in 2005, little progress has been made to follow up on its findings and recommendations.

Based on the statistical information compiled by the HJPC for 2006, as of December 31st 2006 the total number of backlog cases was 1.9 million. The largest portion of the total backlog (around 56%) relates to enforcement cases for small value claims (mostly for utility services such as electricity or telephone services). Backlogs of violation cases also comprised a significant portion of total backlogs (20%), although the number of violation cases coming into courts is expecting to decrease in the coming years due to changes to violation laws.

Although the existence of backlogs for other types of cases is still alarming (with, for instance, 29,000 backlog in criminal and 145,721 backlog in civil cases as of December 31st 2006), removing small claims enforcement cases from the system will clearly be an important first step. However, many other steps are also needed, and these should be included in an overall strategy, supported by all parts of the justice sector, to address the backlog, without which the massive backlog of cases will continue to hamper the effective functioning of the judiciary.

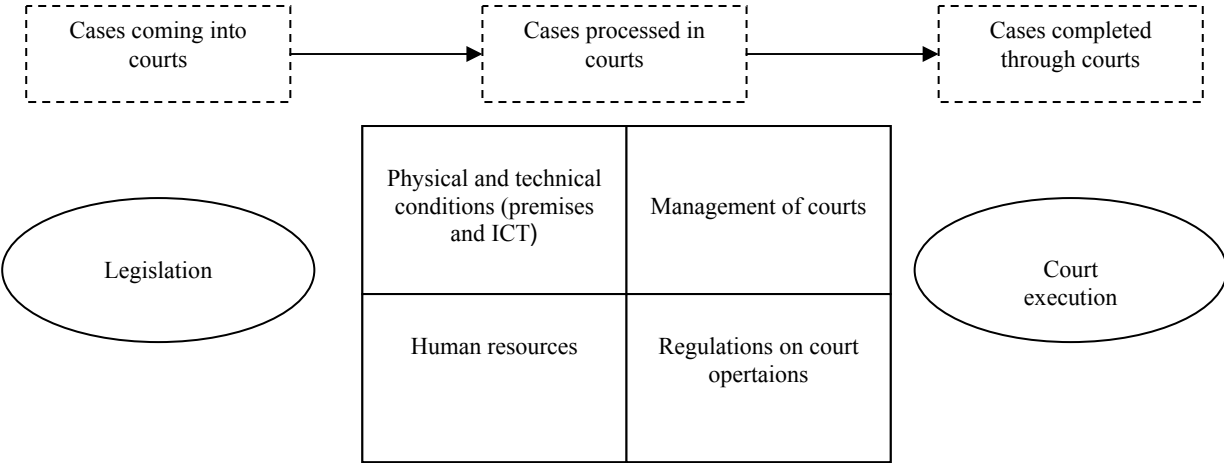
If the high portion of backlog in execution cases for claims of small value is to be reduced, changes to legislation need to be made in order to lower the number of these cases reaching the courts, as has already been done in relation to violation cases. Any new legislative solutions should be based on analyses that have already been made by HJPC, as well as individual donors, of the concrete measures that need to be implemented to reduce the number of executive procedures for small value claims.

Aside from the issue of backlogs in the courts, it will also be necessary to conduct an analysis of the backlogs in the prosecutors’ offices that came as a result of changes to legislation in 2003 by which a large number of cases were transferred from the courts to the prosecutors. Other factors that affect efficiency and effectiveness, which are mentioned here, relate to the prosecutors as well, therefore enhancement in these areas relating to the judiciary are also necessary for the prosecutors. Likewise, possibilities for introducing alternative measures of criminal persecution need to be assessed. In some jurisdictions these have proven an effective way of alleviating the burden on courts.

Operational matters

The programmes proposed for increasing court efficiency and reducing backlogs recognise the fact that these issues are multifaceted, resolution of which depends on initiatives in several different but highly related segments, if a sustainable long-term solution of the problem is to be found. Graphically, the various segments that need to be considered in improving court efficiency and reducing backlogs are shown in Figure 8.

Figure 8: Factors effecting court efficiency and effectiveness



Operations and conditions within the courts greatly affect court efficiency and impede the ability of courts to address the issue of backlogs. As the graph above illustrates there are several dimensions to this:

1. Physical and technical conditions: Facilities in which courts and prosecutor's offices are located rarely meet the standards for guaranteeing efficient and effective work. In recognition of the severity of the situation, HJPC (with donor assistance) developed a country-wide assessment of construction needs for all the courts and prosecutors' offices in BiH that would provide for at least the minimum conditions for effective and efficient operations of the judicial bodies. This plan now needs to be reassessed in terms of its funding identifying the volume and sources of funding (credit, donor and domestic) with a particular analysis of how to ensure budgetary funding for continuous financing of running costs and ongoing technical and material needs.

Information and Communication Technology (ICT) is another key component in efficiency and effectiveness of the courts and prosecutors' offices. In recognition of this, HJPC has in its Strategic plan for 2007 to 2012 foreseen as one of its key strategic objectives (strategic objective 3) the computerisation of courts. The following priorities have been determined: 1) develop and install Case Management Systems (CMS) in all court and prosecutors' offices; 2) install and maintain a judicial wide area network (WAN); 3) provide and install the necessary ICT equipment and 4) organise a functional ICT support in the judiciary. A key consideration, again, is finding appropriate funding for the realisation of these measures. Efforts need to be made to find donor funding as well as assess what measures need to be introduced to secure budgetary funding for the continuous financing of ICT maintenance and training in courts and prosecution offices.

2. Management of courts and prosecutors' offices: Another key achievement in judicial reform has been the introduction of the function of court presidents and court secretaries, as well as chief prosecutors and prosecutorial secretaries, as chief operational managers of the courts and prosecutors' offices. Although it is still premature to make a comprehensive analysis of the effect these roles have had on the operations of judicial institutions, experience to date has indicated that those with stronger leadership and better management have fewer issues with backlogs. This is an indication of the importance of increasing the management capacities and capabilities of court presidents and court secretaries, as well as chief prosecutor and prosecutorial secretaries.
3. Human resources: In terms of human resources, the judicial community has indicated a wide spectrum of issues that need to be considered during the following five-year period that relate to the issue of staff (judge and prosecutor, as well as expert associates and other technical administrative staff). Issues assessed to be of particular importance have been elaborated in the table setting out strategic programmes 1.2.6, 1.2.7 and 1.2.8, in Section 5.
4. Regulations on court and prosecutorial operations: All relevant regulations pertaining to court operations should reflect the changes introduced in court operations geared towards greater efficiency and effectiveness. The HJPC has established a working group for the development of a Rulebook regarding internal court operation and this Rulebook should be adopted by the end of 2007 or beginning of 2008. It should help to introduce efficient and standardised procedures in the courts. Furthermore, the HJPC plans to initiate work on the development of a rulebook that relates to the operation of the prosecutors and which also would foresee measures that increase their efficiency and effectiveness.

3. Accountability and Professionalism

Key components of accountability and professionalism of the judiciary include the following:

- Effective performance standards and performance monitoring systems for the judiciary that are in line with EU standards;
- Effective and transparent disciplinary procedures;
- Ensuring entry exams into the judiciary are uniform and aligned with current international trends in the judiciary, as a pre-condition of ensuring high-quality staff entering into the judicial profession; and
- Continuous training and education of judges and prosecutors, as well as technical and administrative staff.

Performance standards and performance monitoring systems

One of the measures supported by the European Commission for the Efficiency of Justice (CEPEJ) geared toward greater court efficiency and better performance is the introduction of time management systems for the judiciary. With the aim of introducing best European practices in performance management of the judiciary in BiH, in August of 2006 the HJPC made a Decision to adopt a time management system for monitoring performance of courts in BiH to replace the current system of orientation norms. The problem with this time management system is that the present quota system (which provides guidance on the number of cases judges should process) does not take into account the varied types of cases and their complexity, nor is there any incentive to finalise cases in a more efficient manner.

The application of a new performance management system will provide for a more just system of assessing the work of judges, since their performance will not be measured by the number of cases completed, but according to achievement of more precisely defined target timescales needed for processing the legally regulated court actions. It is hoped that, in the long run, this performance management system will also contribute towards decreasing delays in courts. This new system of measuring has initially been introduced in 8 pilot courts. Following this, the system needs to be rolled out to all remaining courts and furthermore developed for the Court of BiH. Likewise, similar measures need to be introduced for prosecutors in BiH.

A further enhancement of the efficiency of the judiciary is seen in the application of CEPEJ recommendations related to the introduction of optimum and foreseeable timeframes for processing cases. Although seemingly similar, the introduction of timeframes that are both optimum and foreseeable is a very extensive reform effort. A gradual approach should be taken, first introducing foreseeable timeframes and only then moving on to introducing optimum ones, reducing target times through business process re-engineering. An analysis needs first to be conducted to identify foreseeable timeframes based on existing practises and trends, supported by recommendations of how implementation would best be introduced in the courts of BiH (whether through piloting or similar).

Disciplinary procedures

Disciplinary procedures and responsibilities for disciplinary issues for both judges and prosecutors are key aspects of overall judicial accountability. The Office of the Disciplinary Council of the HJPC has authority to review and decide on complaints against judges for disciplinary infraction. Judges/prosecutors may be removed from office or otherwise punished only for specified official misconduct and through a process that is meant to be transparent and governed by criteria that must be objective. However, the application of disciplinary procedures is still in the formative stages, and has received mixed reviews. While many judges/prosecutors and legal professionals find that the disciplinary system has contributed to an appropriate seriousness and discipline into behaviour and conducts of judges/prosecutors, others have found that the system is subject to abuse by parties or their attorneys dissatisfied with the outcome of the case.

Furthermore, some members of the judiciary in BiH have expressed concern about the accountability of the Office of the Disciplinary Council in how they conduct their official duties. Allegations were voiced during the development of the JSRS that final disciplinary decisions do not always appear impartial. There have also been complaints that in several instances sanctions have been meted out for behaviour that did not deserve sanctioning. The overall conclusion is that a body of consistent practice needs to be developed so as to prevent any inappropriate abuses of the system and to ensure the process remains open and fair. Further actions toward enhancing disciplinary procedures and creating greater consistency and transparency need to be taken in the medium-term, aiming to ensure that the disciplinary system is used to enhance the work of judges rather than hinder it.

Bar examination system

The system of bar examinations also has challenges that need to be resolved. For one, the criteria and curriculum of examination is not harmonised across BiH thus undermining the credibility of the examination within BiH, as well as among countries in the region and beyond. Furthermore, the examinations are outdated and do not systematically follow reform initiatives within BiH or changes in international legal practice. Further enhancements of the system of bar examinations, with an emphasis on harmonisation and modernisation are, therefore, imperative.

Continued professional development

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses (at least four days annually), the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law. Judges have, generally, been satisfied with the quality and content of the courses and particularly note the increasing use of practical, interactive teaching approaches and a much desired move away from purely theoretical and academic training.

Both Judicial and Prosecutorial Training Centres (hereinafter the JPTC's) have received positive evaluations from the judges and external evaluators. However, course offerings are still not sufficient to cover the full range of training needs and need to be steadily expanded over the next few years. Training efforts are necessary for continuous professional education, but they need to be relevant and of value to the participants in order to have a positive and sustainable impact. Training programmes need to offer an appropriate combination of skills based subjects, such as case management and decision writing, as well as subject matter based trainings. Furthermore, training needs to be expanded to court and prosecutorial staff.

To keep the positive momentum of reform in judicial continuous education the measures foreseen in the medium-term strategic plans of the JPTC's need to be implemented in accordance to available funding and resources, but also need to be enhanced and further developed in order for training to encompass subject matters that the judges and prosecutors consider to be relevant for their current and future work, as well as to ensure that the judges and prosecutors are trained in relation to all pertinent conventions on human rights, and have insight into the decisions of the Court of Human Rights in Strasbourg.

Further enhancements in professionalism in the medium to long term should be directed towards attracting more young legal professionals to the judiciary and the hiring of apprentices, volunteers and expert associates should be promoted among court presidents in line with available resources.

Enhancements relating to accountability and professionalism of the justice sector are also sought through the introduction of single criminal records and statistics and in enabling timely access to these records.

PILLAR 2: Execution of Criminal Sanctions

Strategic objective: To develop a more harmonised system of criminal sanctions in BiH which by respecting European standards ensures humane and legal treatment and effective re-socialisation in prisons in BiH

The issues concerning the execution of criminal sanctions in BiH that are addressed through this Strategy have been divided into the following sub-sections:

- Management of the system for execution of criminal sanctions;
- Prison overcrowding; and
- Application of international standards.

1. Management of the System for Execution of Criminal Sanctions

The legislative framework that governs the area of execution of criminal sanctions is highly fragmented. Furthermore, the capacities of ministries of justice to effectively and efficiently to manage the prisons are very limited. Numerous events in the past few years highlight problems in prison management, most notably the recent escapes of high-profile criminals, as well as repeated instances of riots and inter-inmate violence. The Council of Europe Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (hereinafter: the CPT) in its most recent report on the situation in the prison system of BiH noted, commenting on recent violent disturbances in one of the prisons in BiH, that “*Unfortunately, such incidents are to be expected given the inadequate prison estate, combined with insufficient staffing and a lack of a coherent prison policy and clear prison procedures. Unless concerted action is taken to tackle their underlying causes, they are likely to multiply not diminish.*”

Currently there is no managerial level between the prisons and the ministers of justice, nor are there operational managers within ministries of justice responsible for individual functional areas, such as security, health care or prisoner treatment programmes that could provide guidance and consistency to prisons in their operations. As a result, prison directors often perceive a lack of overall management guidance and support. Lack of management further impedes effective and efficient use of scarce resources. It also makes it difficult for ministries of justice effectively to manage the overall execution of criminal sanctions, as they do not have the information that will enable them to analyse prisons and prisoner populations based on the current situation and predicted future trends.

The result of all of this is noticeable variation in the financial, material and staff resources between prisons, not only between levels of government but also between prisons within a single jurisdiction. This variation in resources directly leads to variations in operational delivery, in particular in the way that legal provisions and international standards are implemented. The overall system is thus highly vulnerable to external criticisms, internal dissatisfaction and court litigation.

Measures for enhancing the overall management of the system for execution of criminal sanctions have been targeted as a key component of this Strategy under the reform pillar of execution of criminal sanctions.

It must be noted that, although the members of the Working Group for execution of criminal sanctions are unanimous in the need to establish a prison administration as a way of achieving better operational management over the prisons, the issue of how many prison administrations (one for the entire BiH or several administrations for each of the jurisdictions) was not discussed nor agreed by the Working Group members. Rather it was decided that this decision would need to be made during the drafting of the new framework law on the execution of criminal sanctions in BiH.

2. Prison Overcrowding

Overcrowding in prison facilities is an endemic problem which must be addressed comprehensively. The number of prisoners within the prisons of BiH often exceeds the capacities of the prisons. Only a small number of prisons and detention facilities in BiH can respect the European standard of 4 square meters of space per prisoner. Overcrowding can cause severe difficulties within a prison system and raises the risk that inmates are being held in inhumane conditions. If prisons are overcrowded, the categorisation of prisoners can not be respected, leading to situations where persons convicted of serious crimes remain in semi-open facilities.

Additionally, overcrowding results in pre-trial detainees not being appropriately separated from other detainees. Working conditions for staff also become unacceptable and extremely difficult. Overcrowding further raises risks of security, disorder, rioting and ultimately serious damage to people and property.

By comparing actual numbers of prisoners with the capacities of each prison according to the European standard of 4 square meters, it is evident that overcrowding is a problem in at least half of all prisons in BiH. Several of the other prisons are nearing their accommodation limits. If no action is taken in the medium to long term most, if not all, prisons in BiH will face an overcrowding problem. For the following five-year period initiatives in the following areas need to be pursued to alleviate the existing pressures on prison accommodation:

- Conditional release: Currently this is used to a very limited extent and to varying degrees at different levels of government. Laws on the execution of criminal sanctions are not harmonised and, as a result, the commissions that decide on conditional release requests differ in their composition between levels of government. Many commissions rely too heavily on judicial representatives and have less influence from correctional officials or pedagogues than is optimal. The lack of a probation system in BiH exacerbates the problem of prison overcrowding. A probation system including developing capacities within prisons to more adequately prepare convicted persons for release needs to be developed in the long-term.
- Alternative (non-custodial) sanctions: The non-custodial sanctions currently prescribed by the criminal laws, in particular community service, are not used at all or are used to such a limited extent that they have almost no impact on overall prisoner numbers. Community service should be piloted to assess results before enacting bylaws for implementing community service. A pilot should indicate to what extent and in what ways capacities in the ministries of justice need to be developed in order to implement and supervise community service. Financial implications of community service need to be assessed and taken into consideration. Once community service has been trialled, it will be feasible to look into the possibilities and benefits of introducing other types of alternative sanctions. Although these measures will lessen pressures on prison accommodation they must be developed as part of a range of sentencing options that aim to lessen the isolation of convicted persons from society.
- Prison accommodation: Assessments of prisoner numbers, trends and current facilities indicate that there is a need to reconstruct existing facilities or build new prison facilities. These initiatives have to be carefully assessed and planned in order to reflect the availability of existing and forecasted resources but also to take into consideration the sector as a whole in order to achieve the highest cost-benefits.

3. Application of International Standards

In regard to the application of international standards, the prison system in BiH, is facing a series of challenges, particularly in relation to prisoner health care, treatment/rehabilitation programmes aligned with prisoner needs and profiles, continuous professional education and training of prison managers and staff, and independent prison inspection.

Prisoners with special needs

At present the development and implementation of tailored programmes providing meaningful activities for specific groups of prisoners (such as women, juveniles, long-term prisoners, substance abusers or highly problematic prisoners) is near impossible, given the absence of appropriate facilities for some of these groups, most notably juveniles, women, substance abusers, as well as a lack of sufficient facilities for mentally incapacitated defendants. The CPT and the Council of Europe have stressed the needs for the “development of programmes tailored to the profile of different types of prisoners” for the prisons in BiH. Currently, the design of new treatment programmes largely depends on the initiatives of individual prisons. There is no capacity in the ministries of justice for designing larger scale joined up programmes. Any plans for changing prisoner treatment regimes must be made with full consideration of budgetary funding availability for implementation.

Prisoner healthcare

Recent CPT reports and reports coming from the individual prisons indicate significant health risks within the prisons due to the inadequate healthcare. Previous analyses of the health care system conducted by the Council of Europe have indicated that while, generally, prisons were organised on humane principles and had access to health care services, there were a number of serious shortcomings. In particular, there is an absence of leadership for healthcare in the prison sector; there is no formal involvement of ministries of health, no guidelines to health care staff and little monitoring. Facilities and equipment also require investment to achieve minimum standards. The development of comprehensive plans, with participation of the ministries of health, is required to improve prison healthcare and eliminate potential risks to public health in the most efficient and cost-effective ways feasible.

Independent monitoring and oversight of the prison system

Systems of independent monitoring and oversight over the prisons in BiH need to be established, to assure legislative bodies and the wider public that prisoners are being treated in line with international conventions and with full respect of their human rights. Presently only the CPT and on an irregular basis the Ombudsman of BiH provides an occasional external assessment of the prison system, while international standards require governments to adopt a regular mechanism for monitoring prisons to safeguard against torture, cruel, inhumane or degrading treatment. This requires appropriate legislative changes and staffing inspectorate functions appropriately.

Professional education for prison staff

Another critical issue that needs to be addressed in the medium- to long-term is continued professional education for prison staff and prison managers. The greatest limiting factor for this is budgetary funding, once current donor assistance in this area ceases. Comprehensive plans for establishing a function of continued education need to be developed with a particular emphasis on how continued professional education can be implemented within available resources.

Alternative custody measures

Stemming from the CPT recommendations, an analysis of the application of alternative measures of custody must be made, as well as the conditions in which persons deprived of their freedom are kept within prosecutorial and police facilities.

Amnesty and pardoning

The system of amnesty and pardoning in BiH is not clearly defined by law, nor is it harmonised between the levels of government in BiH. Furthermore, it is essential that this system is in accordance to best international practises and standards.

It is imperative is that these issues be addressed by each level of government, in a coordinated and harmonious fashion so as to ensure the equal application of international standards and the respect of human rights throughout the prison system in BiH. Coordinated action will enable better use of limited resources to accomplish the required outcomes.

PILLAR 3: Access to Justice

Strategic objective: Advance the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH

For this five-year Justice Reform Strategy the programmes under the reform pillar of access to justice will address the following segments:

- International legal aid and cooperation;
- Free legal aid and access to legal information;
- Care of court users; and
- The role of civil society in issues relating to access to justice.

1. International Legal Aid and Cooperation

International legal assistance is a vital component in the resolution of the large number of outstanding war crimes prosecutions in the region. Under the Constitution of BiH, international legal aid and cooperation is the responsibility of the institutions of BiH. The justice sector must be in a position to enable BiH to comply with its international obligations and, in particular, in the first instance with the Council of Europe Conventions. Furthermore, the ministries of justice, and particularly the Ministry of Justice of BiH, need to co-operate and communicate in their fields of interest with foreign ministries of justice in order to ensure the rule of law generally and in a European context. This is especially important in relation to assisting in the fight against organised and international crime. BiH is required to deal with many more requests for mutual legal assistance than most EU countries because of its particular history and situation. This is likely to continue for the foreseeable future.

The Council of Europe Parliamentary Assembly recently adopted a key resolution on prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia (ICTY). This identifies many obligations for BiH in the field of international cooperation.³ Meeting these obligations poses a serious challenge to authorities in BiH in the process of further EU integration, since the quality of international assistance and cooperation is the parameter which is closely monitored and weighted.

In the last few years the Ministry of Justice of BiH has made significant efforts in order to increase its capacity to carry out this important function and to establish a system whereby tasks are carried out in a systematic manner and staff has adequate specialty knowledge to deal with particular areas. At this moment, a key challenge is to ensure the consistency and equal application of relevant conventions and laws by the courts in BiH. An evident lack of specialised training for the judges and the lack of harmonised court practices in this subject matter mean that implementation is unpredictable. This unpredictability affects the way that BiH is regarded in the international legal arena, and BiH runs the risk of breaching conventions. Furthermore, systematic international legal cooperation needs further to be enhanced by a comprehensive data base of citizens of BiH who have committed crimes abroad, and inside BiH, which at the moment is not available.

³ Resolution 1564 (2007) available at:
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1564.htm>

2. Free Legal Aid and Access to Legal Information

The right to legal aid is one of the fundamental principles underpinning the provision of access to justice for all citizens. Legal aid provision means that criminal liability cannot be determined without the participation on both sides by professional advocates. It therefore constitutes a legal guarantee for defendants or accused to protect their rights and interests in the criminal procedure. The implementation of this right is essential for full enjoyment of granted rights. Free legal aid is also crucial for the fulfilment of key European and International Conventions, particularly the European Convention on Human Rights.

Despite ongoing reforms in a range of rule of law areas, the establishment of a viable and comprehensive legal aid system in BiH still remains an unfulfilled goal. Given the poor financial position of most courts in the country, many court appointed lawyers are paid months in arrears (if at all) for their services. Furthermore, the exorbitant costs of *ex officio* defence attorneys, according to attorney tariffs established by Bar Associations, appears to create a reluctance to even inform defendants of their right to a defence attorney, as well as reluctance to appoint *ex officio* counsel when needed. The result is an ineffective system with poorly motivated attorneys and ill-served clients.

At the moment there are some jurisdictions in BiH which have locally regulated the provision of free legal aid, but models differ from one jurisdiction to another. Legal aid may be provided by a) private lawyers appointed on a case-by-case basis by judicial authorities, b) lawyers employed directly by a legal aid commission or other governing body, or c) by an independent legal services organisation (i.e., a public defender's office or legal aid office) such as in Brčko District and Zenica Canton. These mechanisms are very different and present a challenge, if BiH is to develop a legal framework which will provide for a comprehensive, workable and sustainable system of free legal aid, that is detailed enough to provide for minimum equality before the law for all citizens of BiH, but flexible and inclusive enough to accommodate various local requirements and preferences. Introducing an effective legal aid system also includes resolving the issue regarding the status of the Division for criminal defence of the Court of BiH.

Probably the greatest challenge in this area is to develop a system of legal aid that improves the quality and expands the availability of legal representation while remaining sustainable within the budget constraints for the justice sector in BiH. Continuous monitoring and evaluation of existing models is important to allow the selection of the most effective model of legal aid provision that considers experiences in BiH, but also international best practice as well.

3. Care of Court Users and Role of Civil Society

The recently adopted Care of Court Users Strategy has an important role in improving the rights and freedoms of all citizens of BiH by ensuring equal access to justice, improving standards of court administration and equipping BiH for European Union Accession. The strategy aims to assist courts in BiH to meet the needs of ordinary citizens and, in doing so, build respect for the court and promote public trust and confidence in judicial system in BiH. The Strategy for Care of Court Users sits directly within the ongoing reform of the judicial system in BiH.

The Strategy addresses key weaknesses in the existing judicial system and is intended to assist the HJPC and the respective ministries of justice in BiH to improve the delivery of justice in BiH. The strategy builds directly upon international best practice and lessons learnt from previous care of court user pilot projects implemented in BiH. As a result, the strategy is informed by international best practice and is firmly based upon successful Bosnian-Herzegovinian approaches and methods.

The level of information that is shared with the general public affects the level of trust and confidence amongst citizens towards public institutions. Experience in many jurisdictions has shown that citizens have more respect for processes and decisions when they understand them. Complex procedures that are poorly explained can also discourage people from pursuing legitimate claims. The court needs to become an institution that is better understood by citizens, both in its overall purpose and, when relevant to individual citizens, in its more detailed workings. Such transparency provides the court with opportunities to identify and meet the needs of citizens, thus further building respect for and trust in the court. The best way to encourage compliance with the law is for authorities to implement programmes that foster a sense of personal involvement and responsibility. For example, courts need to be more open and transparent if they are to become respected institutions, and also need to communicate with, and keep users informed – as well as treat users with dignity and respect.

Active participation of the non-governmental sector has to be increased. At the moment, in all sectors there is a lack of active participation of the NGOs and primary activism of international organisations and political parties. Input from diverse interest groups can assist the justice sector as whole in the resolution of present and potential conflicts in society, and assist ensure improved access to justice. It is of great importance to find a systematic model for a more active engagement of the NGO sector in BiH through their greater involvement at all key stages of development of justice policies.

PILLAR 4: Support to Economic Growth

Strategic objective: Define and implement measures through which the justice sector will contribute to creation of a more favourable environment for sustainable economic development in BiH

In the coming five-year period the support of the justice sector to economic growth will be channelled through two distinct areas further elaborated below:

- Mediation and other forms of alternative dispute resolution; and
- Reform of the land registry system.

1. Mediation and Other Forms of Alternative Dispute Resolution

Time consuming and expensive court proceedings are damaging small and medium enterprises in BiH (SME's), hindering commercial litigations, causing mounting costs and reducing businesses access to capital as capital is frozen while under dispute. In recent years, there have been some initiatives aiming to overcome this situation and to help SME's to cut through judicial red tape and unlock these assets. These initiatives resulted in the introduction of some alternative dispute resolution (ADR) mechanisms, notably mediation, in the BiH legal system⁴.

Donor-funded pilot initiatives were launched to test the practical application and challenges of commercial mediation in legal practice in BiH. The pilot initiatives in the Basic Court of Banja Luka and Municipal Court of Sarajevo resulted in the resolution of 340 commercial disputes through mediation, releasing assets to the amount of approximately KM 18 million. This has proved that mediation is a useful tool to remove barriers to doing business in BiH. Mediation provides a number of

⁴ see the Law on Mediation Procedure ("Official Gazette of BiH" no. 37/04), which governs the mediation procedure on the territory of BiH as a whole, and the Law on Transfer of Mediation Activities to Association of Mediators ("Official Gazette of BiH" no. 52/05), which regulates, *inter alia*, the transfer of mediation to the Association of Mediators in BiH;

advantages over the rigid and exclusively “court-centred” litigations. For example, it may assist the judiciary in BiH, freeing up scarce judicial resources by reducing the number of hearings, trials and eventually help to reduce the considerable case backlogs accumulated in many courts throughout the country. It might also help reduce excessive dispute resolution costs, as mediation has proven to be less expensive than court lawsuits.

Mediation can improve also access to justice in a variety of ways by helping poorer segments of society participate in dispute resolution where they might not have been able to afford an attorney for court litigation. To this effect, an EU Directive promoting mediation in civil and commercial matters identifies its primary objective as “ensuring better access to justice”⁵. Additionally, mediation procedure is confidential, so that parties' statements presented in mediation can not be used as evidence in any other procedure unless otherwise expressly decided by the parties.

Finally, as shown by numerous studies, mediation can often allow parties to resolve their disputes while maintaining their business relationship. This is an important aspect in the business environment in BiH, which places a high premium on personal relationships in business. Although mediation will not solve all judicial problems in BiH, it does have the potential to dramatically to improve matters in the commercial area over the long term, if implemented properly.

Aside from the activities related to the wider application of mediation and other forms of alternative dispute resolution, it is also necessary to identify activities that contribute to the strengthening of commercial divisions in the court for those commercial case that still have to go to court.

2. Reform of Land Registry System

To date, BiH does not have a modern, digitised system of managing land register and cadastre data. Unfortunately, available registers are mostly still in paper form or are sometimes non-existent. The transfer of existing records to digital form is currently ongoing within the courts, and it is expected that this digitisation will be completed in a couple of years. This task will require huge financial, human and physical resources for implementation. Once completed the land registry reform programme should establish a basis for reliable and secure property rights, and for the development of land administration services, which are prerequisites for a more certain and predictable business environment.

There are several challenges to be tackled in order to build the necessary foundation for reform in this area. The legislative framework in BiH still lacks key regulations which are the prerequisite for overall Land Administration Reform. There is a lack of substantive laws related to property needed in a modern market economy; in particular, new laws on property rights, on denationalisation and on State property.

⁵ see Commission Proposal for a Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters, COM(2004)718 final – 2004/0251 (COD), available at http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0718en01.pdf;

The quality of land administration services is directly linked with the quality of the service providers. Up-to-date technical knowledge, managerial capacity and a client-oriented approach are all necessary. Continuous professional training is essential to reach an optimal level of qualification for people working in the land registry area. Training to date has focused on jurists and land registry clerks, but must be strengthened in the near future to focus on cadastre staff and IT specialists.

Working conditions in land registration are generally poor. Most of the premises allocated to land registry courts and cadastre offices do not offer any public reception facilities, have inadequate working spaces and are not well maintained. Office furniture and equipment are outdated, and the technical infrastructure is insufficient.

PILLAR 5: Well-managed and Coordinated Sector

Strategic objective: Coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, transparent and accountable justice system in BiH

Achieving a more coordinated and better managed sector require a series of challenging initiatives which are difficult within the context of the complex constitutional and institutional framework of BiH.

For the purpose of this Strategy, efforts will be directed towards the following areas:

- Coordination of competencies;
- Strategic planning and policy development; and
- Donor coordination and EU integration.

1. Coordination of Competencies

Despite the assumptions built into many reform projects in BiH, new laws are not the optimal solution to overcome the dysfunctional system of vertical coordination in the justice sector. With its complex governmental structure and a multitude of justice sector stakeholders all of whom are burdened by ambiguous inter-institutional mandates and responsibilities, and sometimes rival agendas and opposing interests, the justice sector in BiH faces a myriad of problems. The multiplicity of key stakeholders on the same policy field generates duplication and coordination problems that must be urgently addressed.

Experience of other western European countries with complex governmental structures has shown that proper coordination and consultation mechanisms and capacities are the key prerequisites for a functional and coherent sector. These mechanisms need to be based on the regular sharing of information and a solid framework of formal and informal relationships at political and technical level between all relevant sector stakeholders. However, as observed by the Functional Analysis of the Justice Sector in BiH, as well as the Public Administration Reform Strategy for BiH, the justice sector in BiH is currently largely missing such mechanisms and capacities. It therefore needs to establish them and make fully these capabilities operational in the shortest possible period of time.

Whilst politically responsible for ensuring the general functioning of the justice sector, the ministries of justice at all levels (including the Brčko District Judicial Commission) will inevitably be faced with numerous challenges if they are effectively to perform their policy-making function in particular in relation to the judiciary. The judiciary - one of the main components of the justice sector - is an independent branch of government. All ministries of justice will need to keep this independence constantly in mind while exercising its policy-making mandate. For that reason, it will be crucial to develop and maintain the equilibrium of power and partnership relationships between different justice sector institutions, to the extent reasonably possible, particularly with respect to the functions and role of ministries of justice vis-à-vis the HJPC of BiH, the courts and the prosecutorial offices.

The methodology that was used for the development of the JSRS may represent an important first step in this direction. This methodology, among other things, managed to lay the solid foundations of the culture of compromise at both, political and technical level throughout the justice sector, which resulted in consensual and coherent cross-sectoral approaches to problem identification, problem-solving and priority-setting. Accordingly, the programmes below are aimed at building on this to continue to improve the justice sector.

Based on the above, strategic programmes 5.1.1, 5.1.2 and 5.1.3 have been developed to address these issues.

2. Strategic Planning and Policy Development

No reforms can be brought about efficiently and effectively in the absence of political strategic leadership. On the other hand, political strategic leadership cannot be ensured unless it is underpinned by: proper strategy development and policy making machinery; proper coordination and consultation mechanisms and procedures; implementation plans; and monitoring and evaluation instruments. Otherwise, reform efforts will be disjointed, ill-informed, and implemented in a fragmentary manner causing waste of scarce budgetary funds and time.

Strategic planning and policy-making, as well as the management of the dynamic linkages between the two, are typical responsibilities of individual ministers and collectively of respective governments. On the other hand, the preparation of plans, the analysis required to uphold the plans, and the activities required to implement the plans (e.g. policy development and law drafting) are typical tasks of the ministry's administration. Consequently, in order to be able to respond efficiently and effectively to their responsibilities, ministries need professional and skilled administration.

However, until recently, none of the ministries of justice in BiH (including the Brčko District Judicial Commission) had the organisational and human resource capacity to take charge of coordinating justice sector strategic planning and policy development or for initiating harmonisation of justice sector legislation together with different layers of government in BiH. In late 2006, the Ministry of Justice of BiH established a Sector for Strategic Planning, Aid Coordination and European Integrations ("SSPACEI"), with the mandate to assist the leadership of the Ministry of Justice of BiH in its medium-term and annual planning responsibilities, coordinating relevant activities both at an institutional and sectoral level, to help achieve both horizontal and vertical integration.

The newly established SSPACEI is to become a central coordination hub for strategic planning, policy-making, donor coordination and EU integration activities within the Ministry of Justice of BiH, as well as at sector level pursuant to Article 13 of the Law on Ministries and Other Administrative Bodies of BiH. Entity ministers of justice currently do not have any such organisational and human resource capacities which is why Entity Ministries of Justice and the Brčko District Judicial Commission should also establish similar - but smaller - units with the primary task to liaise with the SSPACEI in the Ministry of Justice of BiH in the process of strategic planning, policy development and legislative drafting. Given the fact that the SSPACEI is not yet fully staffed, the Ministry of Justice of BiH will also need to invest in recruiting the remainder of staff so to become fully operational.

Ministries of justice at the state and entity level, the Brčko District Judicial Commission and the HJPC rarely exchange relevant information. Ministries of justice randomly collect substantive statistical data regarding their respective areas of responsibility. None of the ministries possess a central data base of information that would facilitate their strategic planning, policy-development and law drafting functions.

3. Donor Coordination and EU Integration

Where the activities of a number of donors in the same sector are uncoordinated, there is a risk not only of duplication of effort but also of mutual obstruction, with projects under way that conflict with each other. The end result is that funds are wasted. The multiplicity of donors in BiH, each with its own projects, programmes, interests, concepts, structures and procedures, increases the necessity of coordination. For that reason, donor coordination will be relevant as long as a large number of bilateral and multilateral donors operate in BiH.

Although significant progress has been made in recent years, donor coordination in BiH is still a challenge. Until recently, the greatest weaknesses appeared to be the absence of a forum at sector level for a dialogue between the Ministry of Justice of BiH and the donor community on procedural and substantive integration of aid through donors' adherence to justice-sector strategy, policies and priorities. This was further hampered by the lack of a state-wide justice sector strategy.

These two shortcomings are being addressed through the establishment of donor coordination capacity within SSPACEI and through the development of this sector strategy. The next phase of donor coordination envisages a transition from a donor-led approach to a point where the Ministry of Justice of BiH has stewardship of the donor coordination process. SSPACEI has already commenced enhancing country ownership of donor funding through a number of activities including: the establishment of a justice sector donor forum and the conduct of regular meetings; the creation of a database mapping all current and planned donor projects in the justice sector; and the development of a mechanism to coordinate local institutions and identify local funding needs for presentation to international donors.

During the upcoming negotiations for the adoption of the *Acquis Communautaire* on Justice Matters, the Ministry of Justice of BiH is expected to take a principal representative position for the justice sector in BiH. However, the EU integration tasks are substantial and capacities within the Ministry of Justice of BiH to deliver them are scarce. Mainstreaming these EU integration functions into day-to-day operations at the professional level is likely to prove difficult. At present, coordination with the Directorate for European Integrations of BiH (“DEI”) takes place mostly at the political level through the ministerial cabinet and Secretary of the Ministry of Justice of BiH.

Entity ministries of justice and the Brčko District Judicial Commission have a very limited relationship with the DEI, and they have virtually no internal administrative capacity or staff who could take charge of and deal with the EU integration process from the justice sector perspective. In general, knowledge of the relevant justice system EU *Acquis* among ministries of justice in BiH is very limited.

The pressure and workload of EU Integration processes will be intense, and an immense effort will be required to coordinate and implement the process horizontally and vertically. It is therefore important for the key justice sector institutions in BiH to start to engage them in implementing the strategic programmes set out in Section 5.

Annex 3 – Policy Analyses Foreseen by the JSRS

The table presented below includes an overview of policy analyses identified explicitly within the JSRS. During the implementation of the JSRS - in particular as part of the conclusions of regular ministerial conferences – the need for additional policy analyses will no doubt be identified.

Table 1: Policy analyses initiatives explicitly foreseen within the JSRS

| Pillar of reform | Strategic issue | Policy analysis required | Timeline for development⁶ |
|----------------------------|---|---|---|
| Judicial System | Independence and Harmonisation | Analysis of the implications of harmonising the procedures for the selection of BiH Constitutional Court judges with the existing procedures for the selection of judges for the RS and FBiH Constitutional Courts developed and implementation measures proposed | months 1 -12 |
| Judicial System | Efficiency and Effectiveness | Analysis of the required changes to legislation, to decrease the number of backlog cases in the enforcement procedure initiated on the basis of "authentic documents" (such as unpaid utility bills) and propose appropriate measures | months 1 -12 |
| Judicial System | Efficiency and Effectiveness | Analysis of backlogs in the prosecutors offices and recommend the necessary measures for resolving this issue (legislative or other measures) | months 1 -12 |
| Judicial System | Efficiency and Effectiveness | Analysis of number of judges in relation to case inflow and identify instances in which changes in numbers are needed | months 1 -12 |
| Judicial System | Efficiency and Effectiveness | Analysis of prosecutorial staff (especially the ratio of expert associates and trainees in relation to prosecutors) in comparison to the existing number of cases and case inflow in order to determine the appropriate ratios | months 1 -12 |
| Judicial System | Accountability and Professionalism | Investigation about the establishment of harmonised criteria and programmes for bar exams in BiH reflecting needs and best practices | months 1 - 12 |
| Judicial System | Accountability and Professionalism | Analysis of possible foreseeable timeframes in processing cases in courts, based on type of cases and courts | months 12 – 24 |
| Support to Economic Growth | Mediation and Other Forms of Alternative Dispute Resolution | Analysis of experiences to date in the application of mediation in BiH | months 12 - 24 |
| Judicial System | Independence and Harmonisation | Study of the realistic financial needs of the judicial institutions in BiH, taking into consideration priorities of the judiciary | months 12 – 36 |
| Access to Justice | Care of Court Users and Role of Civil Society | Explore modalities for a more active engagement of the NGO sector in BiH in monitoring the justice sector work in BiH | months 12 – 36 |

⁶ Expressed in months from time of JSRS adoption.

| Pillar of reform | Strategic issue | Policy analysis required | Timeline for development |
|--------------------------------------|---|--|---------------------------------|
| Judicial System | Efficiency and Effectiveness | Analysis of comparative experiences in using alternative measures of criminal prosecution including the implications for introducing these mechanisms in the legal practice of BiH | months 12 - 48 |
| Execution of Criminal Sanctions | Application of International Standards | Analysis of existing and possible alternative measures of custody and proposal for introducing these alternatives | months 12 - 60 |
| Execution of Criminal Sanctions | Application of International Standard | Analysis of existing and possible alternative measures of custody with suggested ways of introducing alternatives | months 12 – 60 |
| Execution of Criminal Sanctions | Application of International Standard | Analysis of existing standards relating to procedures of incarcerating individuals and keeping incarcerated individuals and suspects by police and prosecutors | months 12 - 60 |
| Execution of Criminal Sanctions | Prison Overcrowding | Analysis on the development of a probation system in BiH | month 36 |
| Well- Coordinated and Managed Sector | Coordination of Competencies | Analysis of the impact of the MoJ restructuring at the cantonal level | months 36 - 48 |
| Support to Economic Growth | Mediation and Other Forms of Alternative Dispute Resolution | Study on modalities of the wider application of mediation and other types of alternative dispute resolution in BiH | months 48 - 60 |
| Access to Justice | Free Legal Aid and Access to Legal Information | Analysis of the established free legal aid system in criminal and civil law matters in terms of the effectiveness and efficiency of the free legal aid system | month 60 |
| Execution of Criminal Sanctions | Prison Overcrowding | Study on introduction of other types of alternative sentences | month 60 |

Annex 4 - Legislative initiatives foreseen by the JSRS

The following table provides an overview of legislation that the JSRS has identified as necessary, either as direct strategic programmes or as core elements of the strategic programmes. During the implementation of the JSRS – in particular as part of the conclusions of regular ministerial conferences or as part of individual initiatives of the responsible justice sector bodies – it is expected that a need for other legislation or by-laws will be identified.

Table 2: Legislative initiatives foreseen within the JSRS

| Pillar of reform | Strategic issue | Legislative Initiative | Timeline for development | Responsible institution(s) |
|-------------------------------------|---|--|--------------------------|-------------------------------------|
| Judicial System | Independence and Harmonisation | Enact single law on prosecutors in the Federation of BiH | Months 1 -12 | MoJ Federation BiH, canton and HJPC |
| Well-Coordinated and Managed Sector | Coordination of Competencies | Amendments of existing law(s) towards strengthening coordinating role of MOJ BiH and towards establishing formal mechanisms for coordination with entities, cantons, Judicial Commission of Brčko District, HJPC as well as other relevant justice sector institutions | months 1 – 12 | MOJ BiH |
| Access to Justice | International Legal Aid and Cooperation | Law on International Legal Aid in Criminal and Civil Matters | months 1 – 12 | MOJ BiH |
| Access to Justice | International Legal Aid and Cooperation | Establish legal framework for the establishment of a single registry of criminal offences of BiH citizens convicted abroad and in country | months 1 – 12 | MOJ BiH |
| Access to Justice | Free Legal Aid and Access to Legal Information | Law on international legal aid and cooperation in criminal matters in BiH | months 12 – 24 | MOJ BiH , entity MOJs and BD JC |
| Access to Justice | Free Legal Aid and Access to Legal Information | Entity and cantonal laws on free legal aid in civil matters | months 12 – 24 | Entity and cantonal MOJs |
| Access to Justice | Free Legal Aid and Access to Legal Information | Harmonised laws on free legal aid in criminal matters in BiH and entities | months 12 – 24 | MOJ BiH, entity and cantonal MOJs |
| Execution of Criminal Sanctions | Management of the System of Execution of Criminal Sanctions | Framework law on execution of criminal sanctions and harmonisation of all regulations in the area of execution of criminal sanctions | months 12 – 24 | MOJ BiH, entity MOJs and BD JC |
| Execution of Criminal Sanctions | Application of International Standards | Law and by-laws pertaining to the establishment of an independent prison inspection | months 12 – 24 | MOJ BiH, entity MOJs and BD JC |

| Pillar of reform | Strategic issue | Legislative Initiative | Timeline for development | Responsible institution(s) |
|---------------------------------|---|--|---------------------------------|---------------------------------------|
| Judicial System | Independence and Harmonisation | New law or amendment to existing law(s) that would strengthen role of HJPC in preparing, adopting and executing judicial budgets, as well as clarify roles of MOJs in this process | months 12 – 24 | MOJ BiH , entity MOJs, BD JC and HJPC |
| Judicial System | Efficiency and Effectiveness | Legally define policy and pass appropriate regulation, regulating the administration of the courts and prosecutor's offices | months 12 - 24 | BiH and Entity MoJs, BD JC and HJPC |
| Judicial System | Accountability and Professionalism | Establish a legal obligation of hiring apprentices, apprentices - volunteers and expert associates in all courts and prosecutor's offices in BiH, proportionate to the size of the courts and prosecutor's offices | months 12 - 24 | BiH and Entity MoJs, BD JC and HJPC |
| Support of Economic Growth | Land Administration Reform | Property Law | months 12 - 36 | MOJ BiH, entity MOJs and BD JC |
| Support of Economic Growth | Land Administration Reform | Law on division of state property | months 12 - 36 | MOJ BiH, entity MOJs and BD JC |
| Support of Economic Growth | Land Administration Reform | Law on court fees amended with the aim of harmonising court fees for land registry procedures throughout BiH | months 12 - 36 | MOJ BiH, entity MOJs and BD JC |
| Execution of Criminal Sanctions | Application of International Standards | Legally define and harmonise systems of amnesty and pardoning in accordance to international standards | months 12 - 60 | MOJ BiH, entity MOJs and BD JC |
| Support of Economic Growth | Land Administration Reform | Complete harmonisation of all regulations in entire BiH | months 12 - 60 | entity MOJs, BD JC and SKOZ BiH |
| Access to Justice | International Legal Aid and Cooperation | Legally define modalities for financing extradition procedures and transfer of convicted persons (through development of Law on International Legal Aid, as well as amendment to Criminal Procedure Code) | months 24 - 36 | MOJ BiH, entity MOJs and BD JC |
| Access to Justice | International Legal Aid and Cooperation | Harmonise Criminal Process Laws of entities and BiH, Law on Asylum and Law on Citizenship of BiH | months 24 - 36 | MOJ BiH, entity MOJs and BD JC |

Annex 5 - Guiding Principles for Institutional Strategic Planning

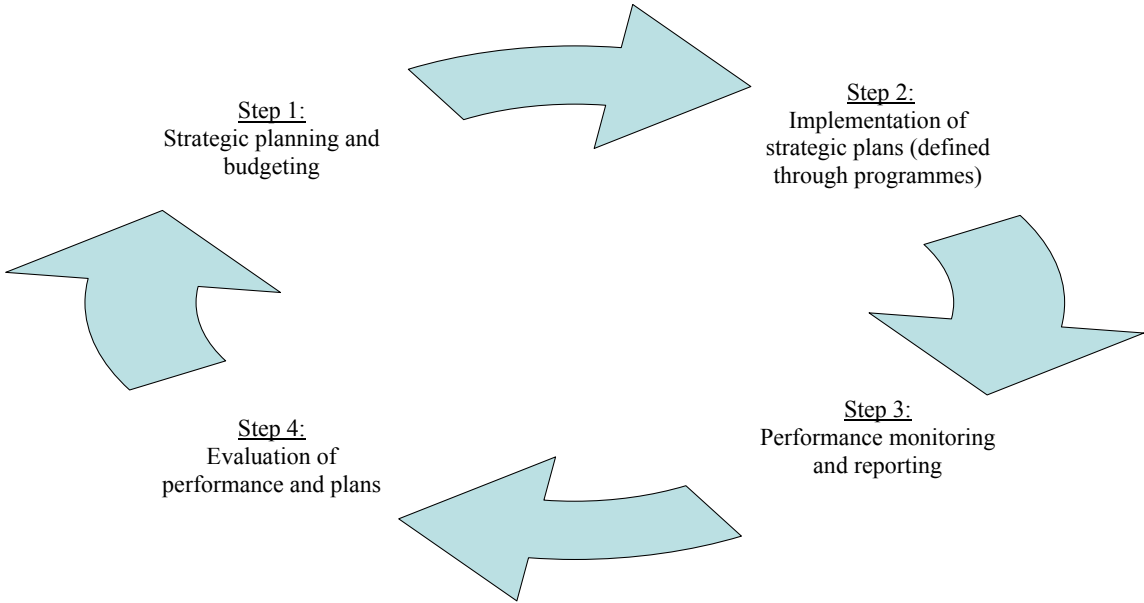
It should be noted that the JSRS is only the first step in a continuous cycle of strategy development, planning and implementation of interventions for the ministries of justice (including the Brčko District Judicial Commission), and more generally the governments in BiH. Additional effort and resource need to be committed by all other justice sector institutions to contribute to implementation, as well as monitoring and assessment of the achievement of the JSRS objectives.

In relation to the JSRS the institutional strategic plans of the justice sector institutions serve a number of distinct, though related purposes:

- To **link the current mandates** of the justice sector institutions with the objectives and priorities as set forth by the JSRS;
- To provide a context to **link the budget process** and other legislative processes with priority issues as identified in the JSRS;
- To provide the **basis for aligning resources** in a rational manner to address the issues faced by the justice sector in BiH;
- To establish a **means of coordinating policy concerns** of public officials with implementation efforts, and to build relevant inter-governmental and other **partnerships** with civil society and the private sector, as well as
- To provide a mechanism for **communicating achievements** to the citizens of BiH.

Institutional, as well as sectoral, strategic planning is only one of the key steps in applying a strategic management approach to planning, budgeting and service delivery that takes into consideration the dynamics of changes within and without institutions and the sectors to which they belong. The steps to strategic management are presented graphically in the figure below:

Figure 9: Strategic management approach to planning, budgeting and service delivery



The key aspects to bear in mind for each of these steps are described in summary in the following sub-sections.

Structure of Institutional Strategic Plans

At minimum institutional strategic plans should include the following:

- **Mission statement:** This provides a concise overview of the purpose of the institution, key roles and responsibilities. This should clarify **why** the institution does **what**, and for **whom** and **how**, in an easy and understandable way;
- **Situation analysis:** This is based on an analysis of data and trends affecting the mission of the institution, this section should indicate the context in which the plan is being developed. The analyses against the institution's mission should draw upon recognised methodologies for appraisal where possible, (such as strength, weaknesses, opportunities and threats (SWOT) and political, economic, social and technical (PEST) approaches);
- **Strategic objectives:** These shall describe the ends to which the institution will strive over the planning period. The strategic objectives describe the measurable achievements that the institution will aim to attain over the period covered by the Strategic Plan (usually three to five years). Key performance indicators and targets need to be specified for the strategic objectives. Ideally, these should be time-bound, and specify dates if to be achieved within the planning period. Minimum performance standards should also be specified;
- **Description of strategic issues:** The problems and barriers to achieving the strategic objectives shall be described. These should be focused and related directly to the strategies and interventions that will be applied by the institution;
- **Programmes:** This section shall provide more detail on the key implementation actions that will be undertaken by the institution in support of its strategies. These interventions should be grouped in relation to the strategic objectives which they intend to address. Ideally, each programme should, at a minimum, be described to include the following highlights:
 - **Operational objectives** (including performance targets and indicators for these objectives) and how they relate to the strategic objectives;
 - **Outputs** that will be directly produced by the programme, and the **timescale** for their delivery;
 - The **inputs** required (in terms of physical and human resources);
 - Which organisational unit of the institution will be responsible for **managing delivery**, as well as details of other government bodies needed to achieve coordinated inputs, where cross-cutting aspects exist;
 - The expected **costs** of undertaking the programme, providing financial details in the format required for annual budget submissions.

There may be ongoing services or tasks undertaken by the ministry which are recurrent items. Insofar as these are to be aligned to the achievement of the strategic objectives, these should be described in the manner above.

- **Monitoring and evaluation arrangements:** This section of the institutional strategic plan shall describe the framework in which the performance targets and indicators of performance at the programme level and at the overall strategic objective level will be managed by the institution. The monitoring and evaluation framework shall include mechanisms for independent verification of key performance indicators and the resources needed for this.

Although the plan should be completed in a uniform structure, the length and detail can be documented as deemed fit by the institution for its purposes. In this respect the Strategic Plan is meant to be a tool that is used within the institution to organise its operational activities and work load, as well as plan and demonstrate how it will, within the scope of its mandate and resources limitation, contribute to the achievement of the JSRS. This is why each of the sections of the institutional strategic plans listed above should incorporate actions and priorities as identified in the JSRS.

Ongoing management and coordination

Implementation of programmes and activities outlined in the institutional strategic plans remain the responsibility of the individual institutions. However, there are several features that should be explicitly acknowledged during implementation. These include the need to:

- Coordinate with other ministries, agencies and organisations of government during delivery; and
- Consult and communicate regularly with stakeholders (both internal and external) on the implementation and performance of the plan.

The organisation of these activities does not need to take a rigid form, and are likely to vary according to the specific requirements of the intervention planned by the respective institutions. Nonetheless, the approach taken by each institution to undertake these tasks should be clearly documented and annexed to their strategic plans.

Revisions to the institutional strategic plans

Strategic plans are not static documents and should be reviewed regularly during their implementation period. It is an integral part of the strategic management of the institutions operations and ties in closely with the annual plan that is submitted to the respective governments in BiH and to the annual budgets submissions to the ministries of finance. It thus needs to ensure that institutional strategic objectives and considerations continue to be aligned to the changing environments as well as to long term justice sector aspirations as defined by the JSRS and all subsequent revisions to it. Indeed, the institutional strategic plans should represent a key sub-component within the overall framework of the JSRS.

Significant changes to the institution's objectives, strategies and programmes, which may occur over the period covered by the plans, should be made through formal revisions to the strategic plans. At the minimum the institutional strategic plans should be reviewed by the management of the institution annually at the same time as the annual plan and budget is produced to ensure that it remains relevant to its objectives.

Performance monitoring

A continuous assessment of performance is a critical part of the ongoing management cycle. Justice sector institutions should establish a performance monitoring framework for gauging the attainment of plan targets and the utilisation of resources. Monitoring is the continuous assessment of implementation of institutional strategic plans in relation to agreed delivery schedules, and of the use of planned inputs. Likewise, the performance monitoring framework serves to inform the respective governments and legislative bodies, as well as other stakeholders including other justice sector institutions, the media and the public about the performance of the institution in performing its mandates. Good practise indicate that six monthly and yearly progress monitoring reports are the principal formal accountability mechanisms.

Evaluation of institutional strategic plans

The final key step in strategic planning is the application of an evaluation framework. Whilst performance monitoring allows for the supervision of operational performance on an ongoing basis, evaluation provides a more comprehensive assessment. Indeed, evaluation is the periodic assessment of an intervention's relevance, performance, efficiency, and impact in relation to stated objectives as well as to the overall JSRS.

Evaluation necessarily involves consultation with stakeholders. Therefore this process plays an important role in the relationship between institutions of government and the communities they serve. The evaluation process potentially facilitates meaningful and constructive dialogue in the development of government services.

Whilst it may be the last step in the strategic management cycle, the evaluation framework should be designed and planned for from the beginning. In particular, planners must be clear about what the planned interventions must achieve, and reflect this clarity of vision in the appointment of targets and selection of performance indicators to measure the attainment of targets.

Moreover, an overall evaluation of the JSRS will be undertaken, firstly, on an annual basis, and then to lesser frequency once the planning process has been successfully integrated throughout the justice sector in BiH. Consequently, each institution shall also need to delineate in its strategic plan its intentions to undertake an evaluation of its strategic plans in this context. Appropriate financial resources should be set aside for evaluation tasks, if deemed necessary by the institution.

Strategic planning as an integral part of overall operations in the institutions

Regardless of how simplistic the approaches to introducing strategic management approaches to planning, budgeting and service delivery are taken by each of the institutions in the justice sector, the challenges and requirements that the approaches described above should not be underestimated. In order to reap the benefits that stem for strategic management and from linking initiatives of individual justice sector institutions to the initiatives planned and agreed through the JSRS development process, it is necessary that, firstly, the management of the institution is committed to strategic planning.

This means that resources (including not only financial and material, but also time) must be made available to the team responsible for developing, monitoring and evaluating the strategic plans. Ideally, there should be an organisational unit within the institution (that is organisationally linked to the most senior managerial positions in the institution, like the secretary of a ministry for instance) that will be solely responsible for strategic planning (in close coordination with other organisational units of the institution).

However, in circumstances where this type of arrangement is not possible (due to staffing or budgetary constraints) the top operational managers of the institution (i.e. heads of departments or assistant ministers) together with the highest managerial level in the institution become the core strategy team, with each, within their own capacities, contributing to developing, monitoring and evaluating strategic plans. But in these cases the ultimate burden for strategic planning then falls on the senior operational manager (like the secretary of a ministry or court president and similar). Strategic planning then becomes an integral part of the institutions operations and something that ultimately links into ongoing activities of the institution.

| Working Group | Strategic Areas | Institutions invited to participate in the Working Group | Dates of meetings | WG representatives who attended the meetings |
|---------------------------------|--|--|-------------------|---|
| Execution of Criminal Sanctions | Management of the System Prison Overcrowding Application of International Standards | <ul style="list-style-type: none"> ▪ Ministry of Justice of BiH ▪ Ministry of Justice of the Federation of BiH ▪ Ministry of Justice of the Republika Srpska ▪ Brčko District Judicial Commission ▪ Association of penologists of Federation of BiH ▪ Association of penologists of Republika Srpska <p><u>Observers:</u></p> <ul style="list-style-type: none"> ▪ Council of Europe; ▪ OHR/EUSR | 10 – 11 May 2007 | <ul style="list-style-type: none"> ▪ Duško Šain, Ministry of Justice RS; ▪ Milanko Renovica, Ministry of Justice BiH; ▪ Milutin Tijanić, Association of Penologists RS; ▪ Rešad Fejzagić, Ministry of Justice FBiH; ▪ Smaila Kikić, Brčko District Judicial Commission; ▪ Zulfikar Bojičić, Association of Penologists FBiH |
| Access to Justice | International Legal Aid and Cooperation Free Legal Aid and Access to Legal Information Care of Court Users and Role of Civil Society | <ul style="list-style-type: none"> ▪ Ministry of Justice of BiH ▪ Ministry of Justice of the Federation of BiH ▪ Ministry of Justice of the Republika Srpska ▪ Brčko District Judicial Commission ▪ Ministry of justice of Una-Sana Canton ▪ Bureau for Legal Aid of Zenica-Doboj Canton ▪ High Judicial and Prosecutorial Council ▪ Association of judges of BiH ▪ Association of judges of Federation of BiH ▪ Association of judges of the Republika Srpska ▪ Bar Association of the Federation of BiH ▪ Bar Association of the Republika Srpska ▪ Registrar Office of the Court of BiH ▪ NGO “Vaša Prava” <p><u>Observers:</u></p> <ul style="list-style-type: none"> ▪ OSCE, ▪ USAID JSDF, ▪ ABA ROLI, ▪ OHR/EUSR | 24 – 25 May 2007 | <ul style="list-style-type: none"> ▪ Snježana Marjanac, RS Ministry of Justice, ▪ Dzemaludin Mutapčić, Federation BiH Ministry of Justice, ▪ Nada Majinovic, President, Brčko Judiciary Commission, ▪ Amina Ruždić, Lawyer, HJPC, ▪ Fatima Bašić, Head of unit for judicial bodies at the state level, Ministry of Justice BiH, ▪ Nikola Sladoje, Assistant Minister, Ministry of Justice BiH, ▪ Džemerina Memagić, Director, Cantonal Legal Aid Office, Zenica-Doboj Canton, ▪ Vahid Čoralić, Ministry of Judicial Affairs, Una-Sana Canton, ▪ Vildana Helic, President, Judges Association, Federation BiH, ▪ Nataša Vukovic, Special Adviser for relations with the Ministries of Justice, Office of the Registrar, BiH State Court, |

| Working Group | Strategic Areas | Institutions invited to participate in the Working Group | Dates of meetings | WG representatives who attended the meetings |
|---|--|---|----------------------|---|
| Support to Economic Growth ⁷ | Mediation and Other Forms of ADR | <ul style="list-style-type: none"> ▪ Ministry of Justice of BiH ▪ High Judicial and Prosecutorial Council ▪ Association of mediators of BiH ▪ Bar Association of the Federation of BiH ▪ Bar Association of the Republika Srpska ▪ Centre for Training of Judges and Prosecutors of the Federation of BiH ▪ Centre for Training of Judges and Prosecutors of Republika Srpska <u>Observers:</u> <ul style="list-style-type: none"> ▪ International Finance Corporation (IFC), ▪ JRP, ▪ OHR/EUSR | 29 – 30 May 2007 | <ul style="list-style-type: none"> ▪ Biljana Marić, JTPC RS, ▪ Dragiša Jokić, Bar Association RS, ▪ Fatima Bašić, Ministry of Justice BiH, ▪ Gordana Osmančević, HJPC, ▪ Obren Bužanin, Association of Mediators BiH |
| | Reform of Land Registry System | <ul style="list-style-type: none"> ▪ Ministry of Justice of BiH ▪ Ministry of Justice of the Federation of BiH ▪ Ministry of Justice of the Republika Srpska ▪ High Judicial and Prosecutorial Council <u>Observers:</u> <ul style="list-style-type: none"> ▪ SIDA Land Registry Project ▪ OHR/EUSR | 31 May – 1 June 2007 | <ul style="list-style-type: none"> ▪ Momir Zubac, Assistant Minister, Ministry of Justice BiH; ▪ Ediba Tafro, Expert Associate, MoJ FBiH; ▪ Nikola Kovacevic, Assistant Minister, Ministry of Justice RS; ▪ Elmira Pasagić, Secretariat Director, HJPC |
| Well-managed and Coordinated Sector | Coordination of Competencies Strategic Planning and Policy Development Donor Coordination and EU Integration | <ul style="list-style-type: none"> ▪ Ministry of Justice of BiH ▪ Ministry of Justice of the Federation of BiH ▪ Ministry of Justice of the Republika Srpska ▪ Brčko District Judicial Commission ▪ Ministry of justice and administration of Tuzla Canton ▪ Ministry of Justice and Administration of Posavina Canton ▪ High Judicial and Prosecutorial Council <u>Observers:</u> <ul style="list-style-type: none"> ▪ OSCE, ▪ OHR/EUSR, ▪ JRP, ▪ JSDP | 12 and 13 June 2007 | <ul style="list-style-type: none"> ▪ Jasminka Mijatović, Ministry of Judicial Affairs, Tuzla Canton, ▪ Jusuf Halilagić, Ministry of Justice BiH; ▪ Milana Popadić, Ministry of Justice BiH; ▪ Safeta Sejdić, Ministry of Judicial Affairs, Posavina Canton; ▪ Sven Urke, HJPC. |

⁷ This Working Group included members of existing professional working groups for land registry administration reform and programme for alternative dispute resolution.

Steering Board Meetings

The first steering board meeting took place on 19 June 2007, and was attended by Bariša Čolak, BiH Ministry of Justice; Džerard Selman, RS Ministry of Justice; Feliks Vidović, FBiH Ministry of Justice; Nada Majinović, President, Brčko Judicial Commission; Jasminka Mijatović, Ministry of Judicial Affairs, Tuzla Canton; Safeta Sejdić, Ministry of Judicial Affairs, Posavina Canton; and Niko Grubešić, BiH Ministry of Justice. The only absentee was Branko Perić, President HJPC.

The second steering board meeting took place on 10 July 2007. It was attended by all steering board members: Bariša Čolak, BiH Ministry of Justice; Niko Grubešić, BiH Ministry of Justice; Džerard Selman, RS Ministry of Justice; Feliks Vidović, FBiH Ministry of Justice; Nada Majinović, President, Brčko Judicial Commission; Jasminka Mijatović, Ministry of Judicial Affairs, Tuzla Canton; Safeta Sejdić, Ministry of Judicial Affairs, Posavina Canton; and Mladen Jurišić, member of the HJPC.

On 13 September 2007, instead of convening the meeting, steering board Chairman Mr. Čolak has forwarded the first draft of the Strategy to all steering board members. He has requested from all steering board members to submit their comments within 15 days. Mr. Čolak has received comments from two members of the steering board within given deadline.

The fourth steering board meeting took place on 18 December 2007. It was attended by following steering board members: Bariša Čolak, BiH Ministry of Justice; Niko Grubešić, BiH Ministry of Justice; Feliks Vidović, FBiH Ministry of Justice; Nada Majinović, President, Brčko Judicial Commission; Jasminka Mijatović, Ministry of Judicial Affairs, Tuzla Canton; Safeta Sejdić, Ministry of Judicial Affairs, Posavina Canton; and Branko Perić, President of the HJPC. Džerard Selman, RS Minister of Justice was not present.

Annex 7 –Consultations Supporting the Development of the Strategy

The process of developing the Sector Strategy has been highly participative and consultative, facilitating input into the Strategy from justice sector institutions, the non-governmental sector, and the wider public in BiH.

The following table provides an overview of the main activities during each phase of the consultation process:

| Phase | Activity |
|--|---|
| <ul style="list-style-type: none"> ▪ Phase 1: September 2006 to February 2007 | <ul style="list-style-type: none"> ▪ Review of existing legal framework, strategies and other relevant documents; ▪ Stakeholder analysis; ▪ Consultations with BiH Ministry of Justice Head of Sectors; ▪ Structured interviews with core justice sector institutions; ▪ Development of a discussion paper, Stakeholders and consultation for the development of the Justice Sector Reform Strategy in BiH; ▪ Roundtable stakeholder presentation of the JSRS project, methodology, initial findings, key justice sector strategic issues and next steps. |
| <ul style="list-style-type: none"> ▪ Phase 2: March to early May 2007 | <ul style="list-style-type: none"> ▪ Meeting with the BiH, Federation BiH and RS Ministers of Justice, President of the Brčko Judicial Commission and the HJPC President to sign off on a Joint Statement regarding the development of the JSRS. |
| <ul style="list-style-type: none"> ▪ Phase 3: Early May to mid July 2007 | <ul style="list-style-type: none"> ▪ Working Group meetings to develop goals and programmes for the following strategic issues: 1. Judicial System; 2. Execution of Criminal Sanctions; 3. Access to Justice; 4. Support to Economic Growth; and 5. Coordinated and Well Managed Sector; ▪ Steering Board Meetings to approve the outcomes of the Working Groups. |
| <ul style="list-style-type: none"> ▪ Phase 4: Mid July to November 2007 | <ul style="list-style-type: none"> ▪ Development of draft JSRS and approval by Steering Board; ▪ Public consultation: 28 day consultation period; focus groups in Sarajevo, Mostar, Banja Luka and Brčko; ▪ Presentation of the public response to the draft JSRS to the Steering Board; ▪ Drafting of final JSRS and approval by Steering Board. |
| <ul style="list-style-type: none"> ▪ All phases | <ul style="list-style-type: none"> ▪ Press work at key stages of the development of the JSRS. ▪ Donor coordination meetings (see separate report for more detail on the donor coordination stream). |

Consultation activities that supported the development of the draft JSRS

Desk Study, Interviews and Questionnaires

As previously described in Section 2, the development of the JSRS first focussed on involving key justice sector stakeholders in the identification of the strategic issues to be covered by the JSRS and in the development of goals and programmes for those issues. The strategic issues were developed after: a desk study of relevant policy papers; a review of responses to questionnaires that were sent out to 29 stakeholders; and 18 structured interviews with the main justice sector stakeholders. The strategic issues and the proposed methodology for developing the strategy were then presented to a wider stakeholder group at a roundtable event held on 26 February 2007. This event was well attended by over 40 representatives of the BiH justice sector (institutions, professional associations and NGOs) and members of the international community in BiH (donors and institutions), who expressed an active interest in and support for the development of the JSRS.

Steering Board and Working Groups

In line with the strategic framework approved by the BiH Council of Ministers and the governments of the Republika Srpska, the Federation of BiH, and Brčko District, a Steering Board was formed. As previously reported, this Steering Board consisted of the BiH Minister of Justice, the RS Minister of Justice, the FBiH Minister of Justice, the President of the Brčko Judicial Commission, the Minister of Judicial Affairs, Tuzla Canton, the Minister of Judicial Affairs, Posavina Canton, and President of the HJPC. The role of the Steering Board was to review and approve the recommendations developed by expert working groups consisting of BiH experts on each of the five strategic issues to be covered by the JSRS, together with some international observers. The role of the working groups was to develop practical and achievable goals and programmes for each issue. Further detail on participants of the Steering Board and the Working Groups is provided in Annex 6.

Consultation activities on the draft JSRS

A draft JSRS was developed based on the input from the consultation with the Working Groups and Steering Board, which was then opened up for further public consultation. The consultation phase on the draft JSRS lasted 28 days from 1 to 28 October 2007, in accordance with Council of Ministers' Rules on Public Consultation in Legislative Drafting (which had been adopted in September 2006). Originally, the consultation period was scheduled to last for 21 days, but it was extended due to requests from local judges and prosecutors.

By this stage, the JSRS has high visibility with key justice sector stakeholders in BiH, as the draft JSRS had been developed based on the inputs from the key justice stakeholders. Consultation on the draft JSRS sought to increase the visibility of the JSRS and receive input from an even wider stakeholder group.

The following activities and events were used to spread the news about the public consultation period on the JSRS to a wider public audience in BiH:

- **Four Regional Focus Groups in Sarajevo, Brčko, Banja Luka and Mostar.** In selecting invitees to the focus groups, SSPACEI focused on selecting organisations that were not represented at all in the working groups: NGOs (human rights, women's rights, youth rights, rule of law, legal aid), gender centres, cantonal bar associations, notaries associations, associations of court secretaries, and chambers of commerce. The following table shows which stakeholders were invited to and attended each Focus Group.

| Location and date of Focus Group | Organisations invited to participate in the Focus Group | Organisations which were represented at the Focus Group |
|----------------------------------|---|--|
| Sarajevo 1 Oct 2007 | <ul style="list-style-type: none"> ▪ Law Faculty, Sarajevo ▪ Law Faculty, East Sarajevo ▪ Association of Notaries Federation BiH ▪ Vasa Prava ▪ Agency for Gender Equality BiH ▪ Regional Bar Association, Sarajevo ▪ Bar Association, East Sarajevo ▪ Legislative Commission, House of the People, Federation BiH ▪ Legislative Commission, Presidency ▪ Chamber of Commerce, Sarajevo ▪ Chamber of Commerce, East Sarajevo ▪ Balkan Investigative Reporting Network ▪ Association of Young Lawyers ▪ BISER (women's NGO) ▪ Gender Centre Federation BiH, | <ul style="list-style-type: none"> ▪ Branislava Crnčević-Čulić, senior expert associate, Agency for Gender Equality, BiH; ▪ Marijana Dinek, executive director, Foundation BHVI (women's NGO); ▪ Božana Kordić, lawyer, Helsinki Committee BiH; ▪ Nedim Hogić, general secretary, Association of Young Lawyers BiH; ▪ Ermin Korda, lawyer, Vasa Prava BiH; ▪ Mubera Kadrić, director, Centre for Entrepreneurship Development, Chamber of Commerce, Canton Sarajevo; ▪ Borislav Jamina, advocate, Chamber of Commerce RS; ▪ Nuna Zvizdić, executive director, Žene ženama (women's NGO). |

| Location and date of Focus Group | Organisations invited to participate in the Focus Group | Organisations which were represented at the Focus Group |
|----------------------------------|--|---|
| | <ul style="list-style-type: none"> ▪ Centre for Civic Initiatives ▪ Open Society Foundation ▪ BiH Women's Initiative (women's NGO) ▪ Foundation for Local Democracy (women's NGO) ▪ Helsinki Committee for Human Rights ▪ American Bar Association Rule of Law Initiative ▪ Save the Children UK ▪ Žene ženama (women's NGO) ▪ Democratic Youth Movement (youth NGO) ▪ Constitutional Commission, House of the People, BiH Parliament ▪ Constitutional Commission, Presidency, BiH Parliament | |
| Brčko 10 Oct 2007 | <ul style="list-style-type: none"> ▪ Bar Association, Brčko District ▪ Vaša Prava, Brčko District ▪ Gender Commission, Brčko District ▪ President of the Legislative Commission, Brčko District ▪ Legal Aid Office, Brčko District ▪ PRONI, Centre for Youth Development ▪ Centre for Improving Brčko (youth NGO) ▪ Fountain of Youth , Brčko (youth NGO) ▪ Chamber of Commerce, Brčko District | <ul style="list-style-type: none"> ▪ Zdravko Popović, rule of law monitor, OSCE Brčko; ▪ Amra Hamidović, legal advisor, OSCE Tuzla; ▪ Ermin Korda, lawyer, Vasa Prava BiH; ▪ Nenad Živković, lawyer, Association of Young Lawyers BiH; ▪ Eleonora Emkić, project manager, PRONI Centre for Youth Development, Brčko; ▪ Radmilo Ivanović, deputy secretary, Brčko District Judicial Commission. |
| Banja Luka 11 Oct 2007 | <ul style="list-style-type: none"> ▪ Transparency International ▪ Vaša Prava ▪ Helsinki Citizens Assembly, Banja Luka ▪ International Lex ▪ Gender Centre, RS ▪ Open Society Institute, BiH ▪ Youth Communication Centre (youth NGO) ▪ Partner BL (disabilities NGO) ▪ Law Faculty, Banja Luka ▪ Regional Chamber of Commerce, Banja Luka ▪ Health for All (youth NGO) ▪ Centre for Civic Initiatives | <ul style="list-style-type: none"> ▪ Aleksandra Petković, senior expert associate for legal issues, Gender Centre, Government of RS; ▪ Nikola Dorontić, development coordinator, Centre for Social Work, Banja Luka; ▪ Radmila Ivanović, expert associate for legal issues, Chamber of Commerce RS; ▪ Željko Bubić, advocate's trainee, a Goran Bubić's Advocate's Office; ▪ Zoran Petković, legal advisor, OSCE Banja Luka; ▪ Dijana Marjanović, lawyer, Vasa Prava BiH; ▪ Ermin Korda, lawyer, Vasa Prava BiH; ▪ Dragana Dardić, project Coordinator, Helsinki Citizens' Assembly, Banja Luka; ▪ Aleksandar Živanović, president, Association of Mediators, BiH. |
| Mostar 16 Oct 2007 | <ul style="list-style-type: none"> ▪ Association of Notaries, Federation BiH ▪ Law Faculty (Sveučilišta), Mostar ▪ Law Faculty (Džemal Bijedić), Mostar ▪ Association of Court Secretaries, BiH ▪ Vaša Prava ▪ Association of Young Lawyers ▪ Žene BiH, Mostar (women's NGO) ▪ Forma F (women's NGO) ▪ Regional Bar Association, Mostar ▪ Centre for Civic Initiatives, Mostar | <ul style="list-style-type: none"> ▪ Ahmet Salčin, southern regional manager, Vasa Prava, BiH; ▪ Ermin Korda, lawyer, Vasa Prava BiH; ▪ Ivan Matešić, ministerial advisor, Ministry of Justice Federation BiH; ▪ Nela Sefić, legal advisor, OSCE Mostar; ▪ Ivana Čavar, project assistant, Centre for Civic Initiatives; ▪ Ivana Stipanović, assistant professor, Law Faculty, Mostar (Sveučilišta); ▪ Danka Ovčina, member, Chamber of Notaries, Federation BiH; |

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|----------------------------------|---|--|
| | | <ul style="list-style-type: none"> ▪ Julijana Petrović, legal advisor, MPDL / IRS; ▪ Mirela Babović, lawyer, Žena BiH; ▪ Edin Rizvanović, Dean, Law Faculty Mostar (Džemal Bijedić); ▪ Mirjana Penava, executive director, NGO Forma F, Mostar; ▪ Marija Vidić, assistant professor, Law Faculty, Mostar (Sveučilišta); ▪ Mladen Jurišić, president of the South Mostar Municipal Court. |

- **Discussion at all the focus groups was lively and engaged.** Participants raised a number of issues, most of which focused on the need to harmonise court practice, financing of the judiciary and the need for single criminal and civil laws. Participation in the Sarajevo focus group was disappointing, where many of the key civil society stakeholders did not attend. Follow up with stakeholders who did not attend the Sarajevo Focus Group found that the main reasons for non-attendance related to internal capacity and problems with internal communication.
- **The draft JSRS was posted on the BiH MoJ website for the duration of the consultation period,** in downloadable format, with clear instructions on how to submit comments on the draft to SSPACEI. There were 6158 individual visits to the website during this 28 day period.
- **The BiH MoJ Press Officer distributed a press release, announcing the availability of the draft JSRS for public comment,** to all the major press agencies in BiH on 1 October 2007, most of which reported the story the next day. The BIRN agency, the Oslobođenje daily newspaper and the Nezavisne Novine daily newspaper also conducted more detailed interviews with the BiH Minister of Justice about the development of the JSRS during the first week of October 2007. The BiH MoJ Press Officer also distributed a press release announcing the extension of the consultation period on 19 October 2007.
- **Advertisements informing the public about the consultation period were placed in the five main daily newspapers** on Monday 1 October, Wednesday 3 October, and Friday 5 October 2007. In addition, advertisements drawing attention to the extension of the consultation period were placed in the same newspapers on Tuesday 23 October 2007. Based on statistics on the readership for each newspaper, it is estimated that these advertisements will have reached a total of 516,500 readers based on the following readership breakdown:

| Newspaper | 01/10/07 | 03/10/07 | 05/10/07 | 23/10/07 | Total number of readers/ newspaper |
|------------------------------------|----------------|----------------|----------------|----------------|---------------------------------------|
| Dnevni Avaz | 60,000 | 60,000 | 100,000 | 60,000 | 280,000 |
| Dnevni List | 8,500 | 8,500 | 10,000 | 8,500 | 35,500 |
| Glas Srpske | 13,000 | 13,000 | 15,000 | 13,000 | 54,000 |
| Nezavisne Novine | 20,000 | 20,000 | 25,000 | 20,000 | 85,000 |
| Oslobodjenje | 15,000 | 15,000 | 17,000 | 15,000 | 62,000 |
| Total number of readers/day | 116,500 | 116,500 | 167,000 | 116,500 | |

At the end of the 28 day public consultation period, written comments and submissions had been received from the following sources:

| Institutions who provided written comments on the draft JSRS |
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| Cantonal Prosecution Una-Sana Gender Centre of the Republika Srpska Government Chamber of Notaries of Federation BiH NGO Anti-Corruption Team Brčko Districts Association of Young Lawyers BiH Citizen Association "Milićanin" Milići Law Faculty (Sveučilišta) in Mostar "Vaša Prava" Municipal Court Livno County Court Bijelina HJPC Cantonal Court Livno Municipal Court Konjic Cantonal Court Mostar Cantonal Prosecution Orašje Cantonal Prosecution Zenica Cantonal Prosecution Livno Supreme Court RS Cantonal Court Široki Brijeg Cantonal Court Sarajevo Cantonal Court Odžak Constitutional Court BiH Municipal Court Mostar Municipal Court Travnik Municipal Court Kiseljak Municipal Court Bugojno |

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| Institutions who provided written comments on the draft JSRS |
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| Cantonal Prosecutor's Office, Western-Herzegovina Canton |
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| Cantonal Prosecutor's Office, Sarajevo Canton |
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| Convicts of Kula and other prisons |
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| Save the Children UK |
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