



**Report of civil society organizations (CSOs)
on implementation of the Action Plan
for Implementation
of the Justice Sector Reform Strategy (JSRS)
of Bosnia and Herzegovina**

Reporting period: 1 January – 31 December 2010

Date of the Report: 20 December 2010

I EXECUTIVE SUMMARY

At the beginning of 2010 *the Memorandum on establishment of mechanisms for monitoring and evaluation of Justice Sector Reform Strategy of Bosnia and Herzegovina (JSRS)* was signed with the Chairman of the Conference of the Ministers of Justice, the Presidents of the High Judicial and Prosecutorial Council of BiH and Judicial Commission of Brcko District. The established mechanism is unique not only for Bosnia and Herzegovina, but also for the neighboring countries, and as such relies on best practices of the democratic western European societies with regard to participative monitoring and evaluation of public policies by civil society organizations (hereinafter: CSOs).

The Memorandum established the responsibility of five civil society organizations for regular monitoring and evaluation of reform measures and activities contained in the Action Plan for Justice Sector Reform Strategy of Bosnia and Herzegovina, and these are: Association for Democratic Initiatives – ADI, Helsinki Committee for Human Rights in Bosnia and Herzegovina – HCHR BiH, Association “Vaša prava Bosnia and Herzegovina”, Human Rights Office Tuzla, and Center for Civil Initiatives – CCI.

Relying on the long-term advocacy experience in the field of democratization and protection of human rights, as well as on the knowledge of issues in the BiH justice sector, these organizations got involved in the process of monitoring, evaluation and reporting on this extremely important reform policy, in order to contribute to an efficient establishment of the judicial system in BiH, which is responsible towards all citizens of Bosnia and Herzegovina, fully harmonized with EU standards and best practices, and ensures the rule of law.

For civil society organizations, the establishment of a mechanism for evaluation and monitoring of implementation of the JSRS is an indicator of positive developments and opening-up of justice sector institutions of BiH. Additional affirmation of this is represented by the *Memorandum on establishment of a Donor Fund for Implementation of AP JSRS of BiH*, which has recently, after a longer delay, been approved by all institutions in the justice sector in BiH. This Memorandum envisages the allocation of approx. 30,000.00 EUR annually of the future Fund for CSOs involved in the process of monitoring and evaluation of implementation of JSRS in BiH.

In the last twelve months, these five civil society organizations prepared two quarterly and one mid-year report on monitoring and evaluation of implementation of AP JSRS of BiH. This annual CSOs’ report presents an independent assessment of the implementation of reform measures and activities of the Action Plan for JSRS as they were carried out by responsible institutions in the period from 1 January to 31 December 2010. Each CSO has committed itself to monitor the implementation of the JSRS within a specific strategic pillar, which corresponds with the priority activities of each organization. Thus, ADI monitors the reform activities of Pillar 1 – Justice System; Helsinki Committee for Human Rights examines progress related to Pillar 2 – Execution of Criminal Sanctions; Association “Vaša prava Bosnia and Herzegovina” is focused on Pillar 3 – Access to Justice; Human Rights Office Tuzla follows Pillar 4 – Support to Economic Growth, and CCI analyses measures determined within Pillar 5 – Well-Managed and Coordinated Sector.

On the basis of a series of established contacts and exchange of information during the past year, it can be stated that there has been an adequate level of openness of institutions for cooperation with CSOs in the

monitoring of JSRS reform, while practical challenges encountered in the course of CSOs' monitoring activities (data collection and analysis) primarily reflect institutional challenges related to the implementation of this reform of outstanding importance. The timely realization of the JSRS requires that all justice sector institutions of BiH are completely dedicated and at full capacity, in accordance with the revised Action Plan and the deadlines for the implementation of planned activities set therein.

With respect to the reporting period September – December 2010, there has not been significant progress in terms of fulfillment of measures and activities set by the AP JSRS. Recent General Elections in BiH caused a major delay in the implementation of most activities, and were used by some justice sector institutions as an excuse for not carrying out the reform measures and activities. Moreover, the lack of resources (human and financial), still inadequate and inefficient horizontal and vertical coordination, but also certain political resistance have significantly slowed down the timely and consistent implementation of the justice sector reforms in BiH.

Analyzing the progress achieved in the past reporting period, we reach the conclusion that the reforms, due to the obvious lack of political support, are carried out exclusively at the operational and technical level, and only measures and activities that are considered less 'political' are being implemented, which is inevitably reflected in very limited progress. Finally, the Progress Report of the European Commission for 2010 confirms this assessment, as it unequivocally points to a significant slowdown of the reforms in the justice sector in BiH.

Even though a certain number of planned activities have been carried out since the Strategy's adoption, the process of implementation of the Action plan of JSRS is marked by a series of difficulties that are, among others, reflected in still insufficient institutional capacities for planning and policy analysis, still inadequately efficient system of horizontal, and especially vertical sectoral coordination and cooperation at the level of BiH, entities, cantons and Brčko District of BiH, inadequate level of commitment to the implementation of defined JSRS activities and to the process of monitoring, evaluation and reporting on its implementation.

In addition, the analysis of the reports of the Technical Secretariat for the monitoring of the implementation of AP JSRS of BiH shows that there is no uniform degree of implementation at the level of BiH, entities, cantons and Brčko District of BiH. If such a trend continues, those levels of government in BiH, which lack sustained commitment to the implementation of measures and activities of AP JSRS and, hence, fall behind considerably in the implementation of the reform, could significantly undermine the coherence of the overall justice system in BiH.

The fact that, after examining the proposals of the annual budget of some justice sector institutions in BiH for 2011, it was impossible to establish any relationship between the submitted budget requests of these institutions and the activities of the AP JSRS of BiH to be implemented in 2011 (more detailed information is provided in the Report for Strategic Pillar 1 – Justice System), is a cause of serious concern. Accordingly, it is questionable whether the justice sector institutions of BiH intend to implement the AP JSRS activities in 2011 at all. This 'failure' of justice sector institutions is unacceptable, especially when taking into account the support they have received through the technical assistance project of the Spanish Agency for International Development Cooperation (AECID) for the creation of medium-term institutional strategic plans and their linking with the medium-term budget framework. Also, it is necessary to emphasize the complete absence of cooperation of the Federal Ministry of Justice and the Ministry of Justice of Republika Srpska in the creation of institutional strategic plans within the mentioned AECID's project. Unless there is an immediate change of the current direction, and the guarantee of unambiguous political support for the

implementation of AP JSRS of BiH by the entities' ministers of justice, these two ministries will almost certainly become bottlenecks of further implementation of APJSRS of BiH, and will thus significantly impede the fulfillment of this very demanding reform process.

The key challenges in implementation of AP JSRS that also affected the efficiency of CSOs' monitoring have remained virtually unchanged throughout the year. The non-attendance of meetings of functional working groups on part of certain justice sector institutions in BiH, failure to submit or significant delays in submission of reports on implementation of activities by certain institutions, insufficient information contained in most of the submitted institutional reports, inadequate engagement of the entity ministries of justice and of the Judicial Commission of Brčko District (JC BD) in the work of TS for the monitoring of implementation of JSRS and the continuing insufficiency in the institutional capacity building for strategic planning, policy analysis, and project cycle management in entity ministries of justice in BiH and in JC BD in BiH, continue to pose an insurmountable obstacle to the significant progress in achieving the defined reforms. The fact that there is an attempt to revise or completely eliminate a number of reform activities without respecting the established procedures for the revision of the AP JSRS of BiH, as pointed out in the reports for individual strategic pillars (eg. Report for Strategic Pillar 2 – Execution of Criminal Sanctions), represents a cause for concern. In order to increase the responsibility and the quality of the implementation of the reforms by the competent institutions, the authorities in BiH should, in the coming period, invest further efforts in strengthening the capacities of the Office for Auditing of the Financial Operations of the Institutions of BiH and respective audit offices at entity level, with a view to carrying out impact assessments of key programs of AP JSRS.

Recommendations related to Strategic Pillar 1 – Justice System

1. As a precondition of successful implementation of JSRS it is necessary to build human and technical capacities of entities' and cantonal ministries of justice for development and implementation of strategic plans. Particular attention must be paid to additional training of entities' ministries of justice employees, in the field of data collection, analysis and database creation, all necessary for efficient monitoring of AP JSRS.
2. In order to ensure accurate and timely implementation of tasks determined in AP JSRS, at the level of organizational units of responsible institutions, as well as at the level of Functional Working Group and Technical Secretariat, it is necessary to organize the working processes more efficiently, and the preparation of internal rulebooks of procedure needs to be ensured. These rulebooks must provide clear distinctions of responsibilities between the responsible authorities, but also sanctions for those who do not fulfill their obligations.
3. It is necessary to work on continuous education and information of all key institutions and individuals participating in the implementation of the JSRS, so as to create a sense of ownership of the JSRS and understanding of its importance for BiH in the process of Euro-Atlantic integrations.
4. In order to ensure the quality of implementation, monitoring and reporting within Pillar 1 – Justice System, it is necessary to conduct a revision of existing indicators. It is essential to introduce impact and outcome indicators in addition to the existing process indicators, and to determine priorities and quality standards for implementation.
5. It is essential to approve, as soon as possible, the Financial Plan for implementation of JSRS and to conduct the evaluation of harmonization of budgets of justice sector institutions of BiH and

Financial Plan of JSRS, as well as the evaluation of appropriations, on the basis of which budgetary measures should be proposed for the institutions concerned, in order to ensure necessary means for further implementation of JSRS.

6. The issue of coordination and consultations between the Ministry of Justice and the Ministry of Finance, as well as legislative authorities in the budgetary process, needs to be resolved systemically and incorporated in the existing practice in order to ensure that the financing of the priorities of the AP JSRS is incorporated in the budget when it is drafted.
7. In order to ensure the efficiency of the implementation of JSRS, the institutions should increase the capacity of human resources, in terms of number and competences, to respond to the requirements and demands of the program budgeting through education of existing employees, but also recruitment of new employees that possess relevant competences.
8. It is necessary to build the capacities within institutions at all levels in order to ensure optimal results in the area of securing and managing the donor funds (project management).

Recommendations related to Strategic Pillar 2 – Execution of criminal sanctions

1. Review and, as soon as possible, adopt the Proposal of Law amending the Law on Execution of Criminal Sanctions in the Parliament of FBiH;
2. Initiate the implementation of regular activities of the Coordination Body for Harmonization of Law in the Field of Execution of Criminal Sanctions in Bosnia and Herzegovina, whose creation and operation did not start in accordance with the identified deadlines;
3. Do not remove from the AP JSRS but start implementing, as soon as possible, the activity 2.2.3.3. 'Coordination Body for Harmonization of Standards and Legislation periodically analyses the status of prison facilities and gives recommendations for improvement of current status';
4. Retain the reform activity 2.3.3.1. 'Introduction of unified standards in independent inspection of prisons', as an essential additional guarantee for the prevention of ill-treatment of prisoners, in accordance with Rule 93 of the European Prison Rules, and intensify the implementing activities;
5. Carry out the reappointment of the representatives in Functional Working Group for the monitoring of implementation of JSRS of BiH for Strategic Pillar 2 – Execution of Criminal Sanctions, and introduce additional measures in order to ensure their regular participation and unobstructed work of the FWG 2;
6. Define the priorities for financing by IPA funds, through the identification of operational priorities set by the Functional Working Group for monitoring of the implementation of JSRS of BiH for Strategic Pillar 2 – Execution of Criminal Sanctions.

Recommendations related to Strategic Pillar 3 – Access to Justice

1. Enhance the coordination between State institutions responsible for implementation with the respective entities' and cantonal institutions and Brčko District, with focus on greater individual accountability of those responsible in the justice sector institutions for the efficiency of coordination, and thus for the quality and speed of implementation of measures of Pillar 3;

2. Center for Judicial and Prosecutorial Training of FBiH and Center for Judicial and Prosecutorial Training of RS should provide additional targeted training of judges and prosecutors that participate in proceedings on the provision of international judicial assistance, with particular reference to building technical and personnel capacities of those employed in the competent institutions, as well as technical competences and resources that are at the disposal of particular institutions;
3. Court of Bosnia Herzegovina should ensure full and consistent application of Art. 13 of the Law on the Court of BiH (currently Art. 7 of the Law on the Court of Bosnia and Herzegovina) and include the authorities responsible for the implementation of that specific activity;
4. Ministry of Foreign Affairs of BiH should intensify activities related to the establishment of unified criminal records for BiH citizens convicted abroad (especially for those BiH citizens that were not born in BiH);
5. Reach consensus, as soon as possible, within parliamentary committees on the Proposal of Law on Free Legal Aid, and re-submit the agreed text of the law in the procedure of the Parliamentary Assembly of BiH, with the objective of adopting the Framework Law on Free Legal Aid at the BiH level, and thus fulfilling the obligations that Bosnia and Herzegovina undertook by its accession to the Council of Europe and the European Convention for the Protection of Human Rights and Fundamental Freedoms, embedded in the Constitution of Bosnia and Herzegovina.
6. Promptly implement the Conclusion of the Third Conference of Ministers of Justice held on 22 December 2009 that relates to the obligation of cantonal and entities' MoJ, as well as JC BD BiH, to prepare an overview of current status of free legal aid. The overviews need to be submitted to the MoJ BiH for consolidation for the next meeting of the FWG 3 in order to, as soon as possible, define priorities in resolving problems identified in practice, eg. the role of the parties in the civil procedure is defined by the right to be heard and the new Law on Civil Procedure no longer recognizes the principle of aid to lay parties.
7. Ensure more adequate and more transparent access of CSOs to courts, and especially courts in cantonal and entities' centers, in relation to monitoring the implementation of JSRS of BiH.

Recommendations related to the Strategic Pillar 4 – Support to Economic Growth

1. Enhance vertical and horizontal communication and coordination between the actors responsible for the implementation of measures of Strategic Pillar 4 - responsible authorities: Ministry of Justice BiH and entity ministries of justice.
2. It is essential to additionally strengthen the capacities of the Ministry of Justice BiH for monitoring the implementation of measures of Strategic Pillar 4 – Support to Economic Growth.
3. Ensure financial resources from entity budgets in 2011 for the implementation of Action Plan with respect to Strategic Pillar 4 – Support to Economic Growth.
4. Urgently solve the issue of financing, competence and responsibility of the Association of Mediators of BiH in respect to more functional implementation of Strategic field 4.1. Mediation and alternative resolution of commercial disputes.
5. Adopt the Laws on Court Fees in the remaining cantons in FBiH - responsible authorities: cantonal Ministries of Justice.

6. Resolve the issue of loss of instrument for forced collection of fees as a result of amendment of Law of Tax Administration – responsible authority VSTV and FMP.
7. Promptly secure political will to enact a set of laws at the state level (Law on State Property Distribution) and at the FBiH level (Law on Real Property Rights and Law on Cadastre), which would enable a more efficient reform of land administration.
8. Finalize the analysis of number and status of land registry clerks in FBiH and RS with the proposal of measures for improvement of their status.
9. Include the representative of JC Brčko District in the work of SKOZA (Advisory and Coordination Board for Land Administration).

Recommendations related to the Strategic Pillar 5 – Well-Managed and Coordinated Sector

1. Justice sector institutions in BiH should develop a sense of ownership of the document Justice Sector Reform Strategy of BiH (JSRS), so that it becomes the key document of the State of Bosnia and Herzegovina and the society as whole on the road of our country to the Euro-Atlantic integrations, on which there is a high degree of agreement of political options in Bosnia and Herzegovina.
2. Officials within all institutions are accountable for ensuring wider understanding, responsibility and efficiency of key personnel in the implementation of Action Plan of JSRS, which has to be understood as a priority task of all responsible institutions, and which will form the basis, among others, for measuring the success of ministers and other political appointees, and the Government as whole.
3. In this respect it is extremely important that at the sessions of ministerial conferences justice sector institutions of BiH are not represented by assistant ministers or expert associates, but exclusively by competent ministers, as this would be their concrete expression of political responsibility. Otherwise, absent ministers send the message that this key reform is not their priority. Therefore, CSOs once again call upon the ministers of justice sector institutions of BiH to take full responsibility for reform obligations they committed themselves to and as defined by the AP JSRS.
4. All justice sector institutions in BiH that are members of the Ministerial Conference are obliged, in accordance with the Conclusions of IV Ministerial Conference, to adopt, if they have not yet done so, institutional medium-term strategic plans that will be completely harmonized with the priorities and activities determined by the AP JSRS of BiH.
5. It is extremely important to ensure that the measures of AP JSRS are duly adopted and made operational in annual working plans of all justice sector institutions in BiH responsible for their implementation. One transitional modality could be that the Technical Secretariat for monitoring of the implementation of JSRS of BiH, in cooperation with secretaries-general of responsible justice sector institutions of BiH, at the end of each year, and before starting to draft the annual work plans for the following year, inform the competent justice sector institutions of BiH on activities of AP JSRS for the coming budget year. Secretaries-general of each of the justice sector institutions should then ensure that the institutions incorporate the corresponding measures of AP JSRS of BiH in their annual working plans.

6. Active engagement of Ministries of Justice of BiH and entities, HJPC and JC BD is needed to ensure that the Technical Secretariat functions at its full capacity, which implies greater financial resources for the work of TS, changes in its structure, including the replacement of those members that are not able to take the responsibility for their obligations in the context of more efficient implementation of JSRS.
7. Active participation of all members of functional working groups is needed, as well as a more regular participation of members of the Technical Secretariat (TS) at timely scheduled meetings, because it is unacceptable that the FWG or TS meetings are postponed due to lack of quorum. One of the main causes for this situation is the chronic lack of capacity in most institutions, and thus the reassignment of existing capacities accompanied by more efficient planning and coordination within institutions may at least in short-term overcome these deficiencies.
8. When revising the Action Plan (AP JSRS of BiH) it is essential not to merely shift deadlines for implementation of planned activities to next quarter or next year without any explanation, or without adequate and reasoned explanation, which has been the practice so far. This practice has to stop as soon as possible, and each shift of deadlines in the AP has to be explained and reasoned in detail.
9. Consistent implementation of the finally agreed Memorandum for the Use of Donor Fund for Implementation of JSRS of BiH is essential, together with reaching agreement among representatives of all institutions involved in the process of implementation of JSRS on fair distribution of raised financial resources, on the basis of high-quality projects and utmost transparency of the entire process, with mutually agreed criteria for all financial transactions in order not to, in any way, threaten the existence and purpose of the Fund. After the consent of the Government of RS to the signing of the Memorandum on Establishment of the JSRS Fund, it is necessary to ensure continuous training and professional development of the TS of JSRS Fund, and request entities' ministries to submit, as soon as possible, their opinions on Draft Memorandum of Understanding on Establishment of the JSRS Fund.
10. Enhance the coordination and cooperation of Federal Ministry of Justice and cantonal ministries of justice, which proved to be one of the key obstacles for improved implementation of the JSRS of BiH in the past period, since it is evident that, irrespective of existing mandates of these institutions, cooperation needs to be improved.
11. There is a continuous need for the establishment of better coordination within the institutions involved in the reform process, especially at the level of cabinet/board of assistant ministers, secretaries-general of ministries, and among all sectors responsible for more efficient implementation of this Strategy.
12. In accordance with the Action Plan for the Implementation of the JSRS, it is necessary to ensure, as a matter of urgency, the establishment of special units or designation of existing officials that will carry out the function of strategic planning and coordination of donor assistance in ministries of justice in FBiH, RS and JC BD, as this is one of the key obstacles to more efficient implementation of AP JSRS in the forthcoming year 2011, but also until 2013.

13. Initiate additional capacity building activities in MoJ BiH, entities and PK BD in the field of approximation of BiH legislation with the *acquis communautaire* of EU, which has to be one of the priorities in the implementation of the JSRS of BiH.
14. The process of restructuring of cantonal ministries of justice and administration should be approached with seriousness and responsibility; it should not be politicized during discussions with representatives of responsible institutions and political leaders. This would certainly contribute to improved quality of the implementation of JSRS. For this reason, the issue of restructuring of cantonal ministries should be discussed at ministerial conferences in the presence of all ministers and other responsible persons involved in the process of implementation of JSRS of BiH.

Recommendations related to improved monitoring of JSRS Action Plan

1. Comply with the planned and assumed obligations, and specified deadlines, and introduce the system of sanctions or repercussions for those institutions or individuals that are not implementing their obligations.
2. Ensure regular delivery of reports on progress in implementation of JSRS of BiH and its AP, which has not been the case so far; this segment of the implementation of JSRS needs to be significantly improved.
3. Considering that certain activities of JSRS and its Action Plan contain the execution of a number of activities and not just one task, it is essential that certain reform activities are re-defined as specific tasks, and priority ones are singled out. To that effect, we also recommend the revision of the process of assessment of the status of implementation of reform activities in order to harmonize the status that specific institutions use in their reports with the definition given in JSRS. In this respect, it is necessary to adequately train personnel of all justice sector institutions responsible for reporting in competent institutions.
4. Revise indicators of activity implementation, which currently lack clarity, in order to ensure quality with respect to implementation, monitoring and reporting on AP JSRS. In addition to existing process indicators, it is essential to introduce outcome indicators, with respect to reform objectives, define priority measures and establish quality standards of implementation.
5. Carry out the scoring of achieved results in accordance with the relevance and scope of implemented activities, together with brief narrative explanation, in order to make it clear for everyone what achievements have been made in the reporting period and which measures have not achieved the expected results.
6. Justice sector institutions responsible for JSRS implementation should ensure adequate capacity and time for reporting on implementation of planned activities within given deadlines, and fully respect and abide by the provided mechanisms for coordinated monitoring of the JSRS implementation through the functional working group (FWG) meetings. They should also jointly consider the need and the possibility of introducing additional mechanisms that would ensure higher level of institutional discipline needed for more efficient implementation of JSRS of BiH in the coming year.

7. Additional improvements are needed in the established system of identification of risks and description of problems in the implementation of AP JSRS through their classification (eg. financial, organizational, political, challenges connected to human resources and their competence, etc.), as well as in the obligation to give recommendations for overcoming them and possibly to amend the AP JSRS in the forthcoming period.
8. Ensure essential capacity of the Office for Auditing of the Financial Operations of the Institutions of BiH with the aim of revising the impact of key programs of the AP JSRS.
9. In addition to the above-mentioned, we recommend that the civil society organizations in charge of monitoring the JSRS Action Plan intensify their communication with other civil society organizations throughout BiH, and try to organize thematic discussions, round tables and public platforms with topics on specific JSRS measures and activities. Namely, the capacities of civil society organizations in the justice sector are still not significant since only a small number of organizations is familiar with the reform measures in the justice sector in BiH and so is the case with the broader public. This is an issue that requires further intense work, with the aim of improving the current situation.