

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

Reporting period: 01 January – 30 June 2010

Date of the Report: 28 June 2010

I EXECUTIVE SUMMARY

Memorandum on establishment of mechanisms for monitoring and evaluation of Justice Sector Reform Strategy (JSRS) signed by the Ministry of Justice of Bosnia and Herzegovina in January 2010, 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 in Bosnia and Herzegovina – **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 justice sector of BiH, **these organizations got involved in the reporting process with the aim to contribute to the building of an independent, well-coordinated and efficient justice system in BiH,** which is responsible towards all citizens of Bosnia and Herzegovina, is fully harmonized with EU standards and best practices, and ensures the rule of law.

The establishment of a mechanism for monitoring and evaluation of implementation of JSRS for civil society organizations is an indicator of positive developments and opening-up of justice sector institutions in BiH. Additional affirmation of the openness and cooperation of all justice sector institutions of BiH with CSOs represents the recently agreed **Memorandum on establishment of a Donor Fund for Implementation of AP JSRS in BiH, which envisages the allocation of approx. 30,000.00 EUR annually of the funds of the future Fund for CSOs involved in the process of monitoring and evaluation of implementation of JSRS in BiH.**

The second joint report of CSOs represents the evaluation of the implementation of reform measures and activities of the Action Plan for JSRS by competent institutions in the **period from 1 January until 30 June 2010.** Each organization has committed itself to monitor implementation of JSRS within a specific strategic pillar, which corresponds to a great extent with the priority activities of each organization. Thus, **ADI (Association for Democratic Initiatives) monitors the reform activities of Pillar 1 – Justice System; Helsinki Committee for Human Rights monitors 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 (Centers for Civil Initiatives) analyses measures determined within Pillar 5 – Well-Managed and Coordinated Sector.**

In all contacts and meetings that CSOs held with the representatives of institutions in charge of implementation of JSRS, all institutions in the justice sector in BiH expressed their support to the CSOs' involvement in and the monitoring of JSRS and demonstrated their willingness to cooperate. **At the outset of the CSOs' involvement in this process, it was concluded that there was an adequate level of openness of institutions for cooperation with CSOs in the monitoring of JSRS reform. At the same time, practical challenges encountered in the scope of CSO monitoring activities (data collection and analysis) primary reflect institutional challenges related to the implementation of this reform of outstanding importance,** which is meant to serve as the initiator and the driver of faster accession of BiH to the Euro-Atlantic Integration and its fully fledged EU membership. The success of the reform requires that all institutions of the justice sector in BiH are completely dedicated and at full capacity for the consistent and timely realization of the JSRS, in accordance with the revised Action Plan and the deadlines set therein.

With respect to the previous report, the main challenges in the implementation of JSRS, which also affected the efficiency of CSOs monitoring, remain unchanged. The key challenges in the implementation of JSRS, which also affect the efficiency of CSOs' monitoring, include non-attendance of meetings of functional working (FWG) groups on part of certain justice sector institutions in BiH, failure to submit or significant delays in of reports on implementation of activities by certain institutions submission to the Technical Secretariat (TS), insufficient

information contained in most of the submitted institutional reports, inadequate engagement of the entity ministries of justice and the Judicial Commission of Brčko District (JC BD) in the work of TS for the monitoring of implementation of JSRS (during 2009 as well as during the present reporting period) and the continuing insufficiency in the institutional capacity building for strategic planning and policy analysis in entity ministries of justice and in JC BD in BiH.

Even though a number of planned activities have been implemented, **it can be concluded that the process of implementation of the JSRS Action Plan is characterized by a series of difficulties that are, *inter alia*, reflected in still inadequate institutional capacity for planning and policy analysis, lack of an efficient system of horizontal and especially vertical coordination and cooperation at the level of BiH, entities, cantons and Brčko District, and insufficient level of commitment to the implementation of defined JSRS activities and to the process of monitoring, evaluation and reporting on its implementation.**

One of the key preconditions for the improved, more consistent, and timely implementation of the JSRS of BiH of all pillars and strategic areas is **the creation of institutional strategic plans and annual work plans that would appropriately assume and elaborate in detail the programs and activities of AP JSRS BiH**, as well as the **integration of institutional strategic plans and annual work plans with institutional budgets**. In this respect, **it is worrisome that**, unlike the cantonal ministries of justice and the Judicial Commission of Brčko District (JC BD) that have invested significant efforts in the previous period within the framework of the technical assistance project of Spanish Agency for International Development and Cooperation (AECID), and are currently finalizing the activities on preparing their strategic plans, **the Federal Ministry of Justice and the Ministry of Justice of RS, although regularly participating to the working group meetings, have evidently not recognized the preparation of strategic action plans as a priority, and thus are currently heavily lagging behind with respect to the implementation of this activity.**

Accordingly, the key requirement to step up activities on the implementation of AP JSRS of BiH is the establishment of **significantly more efficient coordination between responsible justice sector institutions in BiH, at the expert and political level**, which entails active participation of all members of FWGs and all members of TS, as well as participation by all justice sector ministers at Ministerial Conferences, that would ensure the indispensable and constant political support to this complex reform process. In that respect, it would be useful to discuss the issue of the much needed, but clearly politically sensitive and technically demanding modality of restructuring of cantonal ministries of justice and administration (with the purpose of increasing their efficiency with regard to reform objectives) at the Ministerial Conferences, with the presence of all ministers and other responsible persons involved in the process of implementation of JSRS in BiH.

Efficient mid-term and annual planning, as opposed to the present practice, implies also the change of awareness of the necessity of **organizational and professional capacity building within justice sector institutions in BiH as well as a clear political support to consistent implementation of AP JSRS of BiH**. To this effect, if is necessary that the justice sector institutions invest additional efforts and resources in order to promptly **establish considerably strengthened capacities** needed for the implementation of their respective activities determined by the APJSRS of BiH.

The second prerequisite for the efficient implementation of JSRS is **the enhancement of internal communication and cooperation in individual justice sector institutions of the BiH**. Senior managers of justice sector institutions

should be obliged to, *inter alia*, discuss issues related to the implementation of JSRS BiH at regular executive meetings of their institutions, and inform all civil servants of their respective institutions of the conclusions reached.

Given the willingness to cooperate inter-institutionally as well as with the involved CSOs, as expressed by all competent ministries as well as HJPC BiH and JC BD BiH, in order to make the cooperation truly efficient and oriented towards defined reform objectives, **it is particularly important to promptly prepare the communication plan for JSRS of BiH with the view to discuss and adopt it at the Fifth Conference of the Ministers of Justice and President of the High Judicial and Prosecutorial Council of BiH (HJPC BiH) and JC BD BiH, to be held in December 2010.**

- **Recommendations related to Strategic Pillar 1 – Justice System**

In response to the two leading problems identified - lack of funds for implementation of reform measures and lack of dedication on behalf of institutions to implement the reform measures and activities, and in order overcome them, we propose the following:

1. **Conduct an assessment of the level of coherence and harmonization of budgets of justice sector institutions in BiH** and the financial plan on the JSRS, as well as an assessment of allocation of funds, on the basis of which budgetary measures for these institutions will be proposed, in order to ensure necessary funds for future implementation of JSRS. The responsible authority for this activity should be the Technical Secretariat for monitoring of JSRS BiH.
2. **Conduct a review of JSRS and its Action Plan through public consultations at entity and cantonal levels** with the objective of developing ownership of JSRS and its measures by these institutions. The responsible authority for this activity should be the Technical Secretariat for monitoring of JSRS BiH.
3. In addition, it is crucial to **build the capacity of entities' and cantonal ministries of justice in the field of strategic planning and policy analysis**, in order to develop strategic plans and work on their implementation.

- **Recommendations related to Strategic Pillar 2 – Execution of criminal sanctions**

We propose that the **Conference of Ministers of Justice of BiH obliges the Functional Working Group for implementation of JSRS of BiH for Strategic Pillar 2 – Execution of Criminal Sanctions to carry out the following actions:**

1. **Send a letter** to the Parliament of the Federation of Bosnia and Herzegovina requesting the adoption of the Proposal of Law amending the Law on Execution of Criminal Sanctions in the accelerated procedure;
2. **Send a request** to the Coordination Body for the Harmonization of Laws in the Field of Criminal Sanctions in Bosnia and Herzegovina to submit their work plan;
3. **Not to remove the activity 2.2.3.3.** "Coordination body for harmonization of standards and legislation periodically analyses the status of prison buildings and gives recommendations for improvement of current status" from the AP JSRS of BiH;
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 European Prison Rules;

5. **Reappoint representatives in Functional Working Group** for the monitoring of implementation of JSRS of BiH for Strategic Pillar 2 – Execution of criminal sanctions, in order to harmonize the participation of representatives with their tasks and activities performed within institutions they represent;
 6. In addition, we **call upon all responsible justice sector institutions in BiH to implement the Optional Protocol to the Convention against Torture (OPCAT)**, in particular activities related to the establishment of National Preventive Mechanism, to which they are bound pursuant to the BiH's ratification of OPCAT on 24 October 2008;
 7. Moreover, in addition to recommendations related to the implementation of specific reform measures and activities by responsible institutions, we call upon the institutions responsible for implementation of JSRS to:
 - a. **Comply** with the planned and assumed obligations and specified deadlines;
 - b. **Pursue activities of building mutual coordination and exchange of information**, and in this respect to implement reform activities of Pillar 5 – Well-Managed and Coordinated Sector;
 - c. **Introduce the system for sanctioning** those institutions and individuals that are not implementing assumed obligations.
- **Recommendations related to Strategic Pillar 3 – Access to Justice**
 1. Institutions responsible for specific strategic programs and activities **need to undertake faster and more efficient measures for implementation of the Action Plan**, especially by intensifying the coordination between State institutions responsible for implementation and entities' and cantonal institutions and Brčko District.
 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 in BiH.
 3. **Court of BiH 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 implementation.
 4. **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) with the aim of establishing complete and accurate records.
 5. **Accelerate the activities in the Parliamentary Assembly of BiH for enactment of framework Law on Free Legal Aid at BiH level** with the objective of 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 that is embedded in the Constitution of Bosnia and Herzegovina.
 6. **HJPC BiH Secretariat** should promptly commence the preparation of the **Action Plan for implementation of the Care of Court Users Strategy in BiH**.
 7. **Secretariat of the HJPC BiH should undertake activities aimed at appointing PR officials** in courts and prosecutors' offices, and initiating the preparation of the PR Strategy in those courts and prosecutors' offices that have not yet adopted such a strategy.
 8. **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' ministries of justice, as well as JC BD BiH, to

prepare an overview of current status of free legal aid and submit it to the MoJ BiH for consolidation and preparation for the next meeting of the FWG 3.

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

1. **Enhance the vertical and horizontal communication and coordination** between the actors responsible for the implementation of Action Plan with respect to Strategic Pillar 4 – Support to Economic Growth, to ensure more efficient execution of activities – responsible authorities Ministry of Justice BiH and entities' ministries of justice;
2. **Additionally strengthen the capacities for monitoring of the implementation** of the Ministry of Justice of BiH and other institutions responsible for the implementation of measures in Strategic Pillar 4 – Support to Economic Growth;
3. **Ensure financial resources from entity budgets** for the implementation of Action Plan with respect to Strategic Pillar 4 – Support to Economic Growth;
4. **Re-activate the work of Working Group for Mediation** that should work on preparation of recommendations on necessary amendments of court systems supporting the use of mediation in courts throughout BiH – responsible authority Ministry of Justice BiH;
5. **Promptly adopt Laws on Court Fees at the cantonal level in FBiH** – responsible authorities cantonal ministries of justice;
6. **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;
7. **Define the precise authority of SKOZA** (Advisory and Coordination Board for Land Administration) and its role in the reform of land administration;
8. **Adopt the Electronic Signature Law at the FBiH level.**

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

1. There is a **continuous need for the establishment of better coordination within the institutions** involved in process of the implementation of JSRS of BiH, as well as better coordination between justice sector institutions at all levels of government in BiH (State, entities, Cantons and JC BD BiH).
2. It is of **utmost necessity to prepare high-quality strategic plans and to commence the process of additional training of all responsible persons that represent relevant justice sector authorities**, related to the implementation of JSRS in BiH and the revised Action Plan. Strategic planning presupposes the change of attitude of persons within the institutions, towards a stronger focus on reaching the set objectives within a deadline, and timely and proactive organization of working processes. This is a complex and extremely demanding process, but necessary for reaching the expected outcomes in the implementation of this reform strategy. **We call upon entity ministers of justice to urgently ensure the preparation and adoption of Mid-term Justice Sector Reform Strategy**, in accordance with the proposed framework on the basis of the Spanish Agency for International Development and Cooperation (AECID) project.
3. **Consistent implementation of the agreed Memorandum for Utilization of the Donor Fund for Implementation of JSRS of BiH**, together with fair allocation of collected financial resources, full

transparency of the whole process, and agreed and clear criteria for all financial transactions of the said Fund, so as not to jeopardize its future sustainability.

4. **Simultaneously with the preparation of strategic plans, an approximation of financial resources for high quality implementation of JSRS of BiH should be included in the next mid-term budget framework for the period 2010-2013**, and human resources should be strengthened within competent ministries with the aim of achieving a more efficient implementation of JSRS.
5. **Active participation of all members of the Functional Working Group (FWG) at scheduled meetings is essential, as well as participation at the Technical Secretariat meetings** (the representatives of Republika Srpska and JC BD BiH were not present at the last meeting of the TS JSRS of BiH), because it is unacceptable that the FWG meetings are postponed due to lack of quorum. The Ministerial Conferences should be attended by competent Ministers, thereby contributing personally to the improved implementation of JSRS of BiH, which will additionally make the whole process of further implementation of the Action Plan of JSRS more serious.
6. **The level of commitment of institutions seems to be low, or at least it is not demonstrated through the work and participation of members of FWG.** One of the main causes for this situation is the chronic lack of capacity in most institutions. These shortcomings could be overcome in the short-term by **reassigning of existing staff, accompanied by more efficient planning and coordination within institutions.**
7. **There is a continuous need to improve the coordination and cooperation between all justice sector institutions in BiH**, which would create efficient and coordinated system and its harmonization with EU standards and best practices, as an additional guarantee of the rule of law.
8. **On the occasion of the revision of the Action Plan (AP JSRS in BiH)**, it is unacceptable to simply shift deadlines for the 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, and which does not provide a positive example on the road to more efficient and effective implementation of JSRS of BiH and its Action Plan. The most recent example of flawed practices and negative message is the fact that the Medium-term Strategic Plans of entities' ministries of justice have not yet been prepared, although the final deadline, confirmed at the beginning of 2010, is the end of June 2010.
9. **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 of BiH. For this reason, the issue of restructuring of cantonal ministries should be discussed at the following Ministerial Conference, that will be held on 30 June 2010 in the presence of all ministers and other responsible persons involved in the process of implementation of JSRS of BiH.
10. **The involvement of CSOs in the monitoring and evaluation of AP JSRS has been positive and should continue** as it fosters cooperation and contributes to improved relationships and trust between state institutions and civil society, which will in turn have positive effects on the pace of Euro-Atlantic integration process and the prospective membership of BiH in the EU.

- **Recommendations related to the high quality of monitoring of JSRS Action Plan**

1. **All preconditions should be fulfilled to ensure regular attendance of FWG meetings by representatives of all competent institutions**, and to avoid the situation of cancellation of FWG meetings

due to lack of quorum, as it was the case on May 28, 2010 for FWG of Strategic Pillar 5 – Well-Managed and Coordinated Sector. Accordingly, **we call upon all justice sector institutions responsible for JSRS implementation to ensure adequate capacity and time for reporting on implementation within given deadlines**, in order to fully comply with the provided mechanisms for coordinated monitoring of JSRS implementation through the functional working group (FWG) meetings, as well as to **jointly consider the need and the possibility of introduction of additional mechanisms that would ensure higher level of institutional discipline in the implementation of JSRS**.

2. Considering that certain activities of JSRS and its Action Plan comprise execution of a number of activities and not just one task, **it is essential that certain reform activities are re-defined as specific tasks**. 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 persons responsible for reporting in competent institutions.
3. In accordance with the Action Plan for the Implementation of the JSRS, **it is necessary to ensure, as a matter of urgency (before the expiration of the 3rd quarter of 2010), 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**, which is one of the obstacles to more efficient implementation of AP JSRS of BiH.
4. Moreover, we recommend that the **civil society organizations (CSO) in charge of monitoring JSRS Action Plan** on the basis of signed Memorandum with the Ministry of Justice of BiH, and with the aim of “Including the civil society organizations in the process of the implementation of Justice Sector Reform Strategy of Bosnia and Herzegovina (JSRF)”, **intensify their communication with other civil society organizations throughout BiH with the aim of their engagement in reporting on evaluation of the implementation of JSRS and its Action Plan**, and to try to organize thematic discussions, round tables, public discussions and similar events, with topics on specific JSRS measures. As a matter of fact, the capacities of civil society organizations in the justice sector are not very recognizable, because only a small number of non-governmental organizations are familiar with reform measures in justice sector in BiH and with judicial issues of our country in general.