



BOSNIA AND HERZEGOVINA »»

Development of the Justice Sector Reform Strategy

In 2006 many key stakeholders in Bosnia and Herzegovina (BiH) would have told you that developing a national justice sector strategy was impossible – at least one that was based on all BiH's justice sector institutions participating and reaching agreement. There were 13 ministries of justice alone to deal with, at state, entity and canton levels of government, as well as a range of other important justice sector institutions.

None of them had ever before come together to agree on anything at a national level, let alone an approach to justice reform. Yet despite the challenges of working in a post conflict and highly politicised country, the United Kingdom's Conflict Prevention Pool (CPP)¹ funded a project in July 2006 to develop a national justice sector plan. And despite the challenges, delays, and political disruptions, all of BiH's justice sector institutions came together to endorse a national Justice Sector Reform Strategy (JSRS) in December 2008. Against many odds, the strategy was adopted by all parts of BiH governments in early 2009, and is now being implemented.

THE BACKGROUND

In March 2006, during a conference on the funding needs of the state justice institutions of BiH held in Brussels, the Council of Ministers of BiH, donor countries and the European Commission (EC) 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 had 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 UK Government contracted Atos Consulting to strengthen the capacity of the state level Ministry of Justice in BiH. In addition to supporting development of the JSRS, the project aimed to build capacity in strategic planning in the MoJ's newly established strategic planning unit and to improve donor coordination in the sector. This case study focuses only on the development of the JSRS.



“The development of the Justice Sector Reform Strategy was the critical step in bringing the BiH justice sector institutions together for the first time to agree a framework upon which to base improvements in the delivery of justice to BiH citizens. The strategy also helps BiH move closer to EU accession. The BiH MoJ is grateful to the UK Government and Atos Consulting for the assistance that was provided to the development of the JSRS and recognises the important contribution this has made to the BiH justice sector.”

Mr. Barisa Colak, Minister of Justice of BiH

THE CHALLENGES

There were many challenges faced during the development of a JSRS, including:

A large number of justice sector institutions

The Bosnian justice sector is highly complex, reflecting the Dayton Peace Agreement² power sharing agreement that ended the conflict in 1995. There are 13 ministries of justice representing different levels of government: the State of BiH; the entities (Republika Srpska and the Federation of Bosnia and Herzegovina); Brčko District and – within the Federation of BiH – 10 cantons. In addition there are also some other, key bodies: the Brčko District Judicial Commission and the High Judicial and Prosecutorial Council (HJPC). For a sector wide strategy to be successful, all of these institutions had to commit political will and resources.

A weak and inexperienced BiH MoJ

The State Ministry of Justice (BiH MoJ) was charged with facilitating the development of the JSRS. This was logical as it was the state level authority. However, it was the youngest justice sector institution in BiH – (created in 2003 as part of the post conflict state building initiatives) and had little standing with other justice sector institutions. It was a young institution trying to establish its relationship and role with the other justice sector institutions. The main competencies of the BiH MoJ focus predominantly on BiH's international legal obligations and state level activities leaving it with little leverage to exert pressure on other justice sector institutions. In addition, the strategic planning unit in the BiH MoJ which was to lead the facilitation of the strategy was only created in 2006. It was significantly understaffed and had no experience in developing a strategy or leading sector wide initiatives.

Weak governance arrangements

The governance arrangements between justice sector institutions in BiH are often unclear, unenforced or disregarded. The institutions in the justice sector are relatively new: established after the end of the 1992 to 1995 war. Governance arrangements between institutions are therefore embryonic. Legislation is vague and rule books are often unclear about the extent of an organisation's mandate, allowing for disputes and power struggles between institutions.

Regional events impacting upon local political positions

The final phase of the development of the JSRS coincided with Kosovo's declaration of independence. At this time representatives from the Republika Srpska withdrew from any activities that might be seen as 'state building'. These events threatened to cause the JSRS process to be aborted.

Little experience or capacity in strategic planning

In an ideal world, everyone who participated in developing the JSRS would have been well versed in strategic planning and sector wide initiatives. Unfortunately, the socialist system which formally governed Yugoslavia did not focus on approaches like these. So there was little expertise available to draw upon.

Some BiH institutions had recently developed institutional strategic plans. And in some thematic justice areas (such as court operations) strategies had been developed. However, most plans and strategies that had been developed had been driven by international actors. The majority of representatives who took part in the JSRS development had never developed a strategy before. Certainly no one had worked to address issues on a sector wide basis.

No culture of public consultation

Legislation setting out the need for public consultation for new laws was introduced during the JSRS development process. Despite the legal requirement, there was little established culture of public consultation. All parties – justice sector institutions, local consultants, representatives from civil society and members of the public – were unfamiliar with the idea, and did not understand how to engage in public consultation.

Difficult political environment dominated by ethnically aligned factions

Politics infiltrates most public sector initiatives and can easily undermine, delay or halt them: particularly those seen as contributing to state building. The Dayton Peace Agreement established political and governance arrangements to try to provide a framework for peace. But that leaves political power at the state level of government delicately balanced between the three main ethnic groups: Bosniaks, Croats and Serbs. Executive decisions must be based on consensus – something that is difficult to achieve.



The State Ministry of Justice was charged with facilitating the development of the JSRS.

PRVA MINISTARSKA KONFERENCIJA MINISTARA PRAVDE U BIH,
PREDSJEDNIKA VSTV BIH I PREDSJEDNICE PRAVOSUDNOG
POVJERENSTVA BRČKO DISTRIKTA BIH
(Sarajevo, 17.12.2008. godine od 10,00 do 14,00 sati)

DNEVNI RED:

- 10,00 – 10,10 sati** **Uvodne napomene i otvaranje Prve ministarske konferencije**
Bariša Čolak, ministar pravde BiH
- 10,10 – 11,10 sati** **Prijedlozi uloga i odgovornosti, kao i temeljnih načela rada ministarskih konferencija**
Niko Grubešić, pomoćnik ministra pravde BiH u SSPKPEI
Rasprava sudionika Prve ministarske konferencije
- 11,10 – 12,10 sati** **Pregled dosadašnjih aktivnosti na provedbi Strategije za reformu sektora pravde u BiH i prezentacija prijedloga Akcijskog plana za provedbu SRSP u BiH**
Niko Grubešić, pomoćnik ministra pravde BiH u SSPKPEI
Rasprava sudionika Prve ministarske konferencije
- 12,10 – 13,10 sati** **Izvešće o praćenju i procjeni učinkovitosti pomoći u sektoru pravde u BiH sa Akcijskim planom za provedbu Izješća**
Niko Grubešić, pomoćnik ministra pravde BiH u SSPKPEI
Rasprava sudionika Prve ministarske konferencije
- 13,10 – 13,30 sati** **Zaključci u vidu deklaracije ministarske konferencije**
Bariša Čolak, ministar pravde BiH
Rasprava sudionika Prve ministarske konferencije
- 13,30 – 13,45 sati** **Zaključci o zajedničkoj izjavi za javnost**
Marina Bakić, glasnogovornica Ministarstva pravde BiH

“The assistance provided greatly improved the capacity of the Sector for Strategic Planning, Aid Coordination and EU Integration (SSPACEI) staff which in turn assisted to build credibility of both the Sector and the Ministry with other domestic and international stakeholders. The Atos Consulting team worked with us as a team and ensured that assistance was tailored to our needs.”

Mr. Niko Grubestic, Assistant Minister and Head of SSPACEI, Ministry of Justice of BiH

THE APPROACH

The approach to developing the JSRS was designed to address the many and varied challenges. The most critical issue was to create genuine ownership of the JSRS at political and institutional level. This meant facilitating consensus and building capacity at local levels.

PHASE ONE

Phase one built political and institutional support for the development of the strategy and identified key reform requirements.

This period coincided with: general elections in BiH; an absence of staff in BiH MoJ; and a lack of understanding of the role and responsibilities of the BiH MoJ across other players – which made consensus building all the more important.

This phase focussed on extensive consultation with justice sector stakeholders at both political and institutional level to:

- » Identify all the stakeholders who needed to be included
- » Identify a workable way in which to keep them all involved
- » Build consensus amongst all key stakeholders of the need for a strategy, the methodology that would be used to develop it and the key issues requiring reform
- » Develop a full picture of the institutional and political environment and the current state of play of existing reform initiatives.

PHASE TWO

Phase two agreed the governance arrangements for JSRS development and to build consensus for the detailed content of the strategy. Importantly, this stage saw the establishment and appointment of the JSRS Steering Board (which included the Ministers of Justice of state and entity level MoJs, as well as of a selection of cantonal MoJs, the President of the Brčko District Judicial Commission, and the President of the HJPC) and the appointment of five technical working groups (one for each pillar of reform) made up of representatives from key justice sector institutions. The steering board and the working groups worked in an iterative way – the working groups developed the substantive technical details of the strategy and as these details were identified they were provided to the steering board for review and feedback. Consultation was also a key part of this phase. In total, close to 100 institutions were consulted from the beginning to the end of the strategy development process, making the JSRS consultation strategy one of the most comprehensive and wide-ranging ever undertaken in BiH.

PHASE THREE

During phase three the JSRS was approved by BiH governments and implementation mechanisms agreed and established. High level political commitment and the involvement of the international community was critical at this phase to ensure that the final draft was approved by the steering board, that the strategy was endorsed by all BiH justice ministers and that it was adopted by all BiH governments. Importantly this phase also focussed on political and institutional commitment to JSRS implementation which was critical in ensuring that the momentum of the strategy development continued.



“The JSRS is the first strategy of such amplitude adopted by all responsible authorities of BiH....This is clearly a success and the JSRS stands as a example of the kind of sector-wide strategy BiH needs in the context of EU integration (and) provides a model that can be duplicated in other BiH ministries.”

Julien Berthoud and Lucio Valerio Sarandrea, Representatives of the Office of the High Representative and EU Special Representative in Bosnia and Herzegovina

THE BENEFITS

The many benefits associated with the JSRS include:

- » A set of prioritised activities that will **improve the delivery of justice to BiH** citizens in a coordinated and harmonised way. These actions are diverse and range from improvements in justice administration through to more effective courts operation and improved standards in prisons
- » For the first time BiH has a **framework of reform** that addresses the justice sector in a holistic way rather than relying on individual strategies that address the justice system in a piecemeal way
- » The JSRS will **harmonise laws** across the country leading to equity in administration of justice for BiH citizens. Before the JSRS, the same crime could attract differing penalties depending upon where citizens lived
- » An example of **collaboration and sector wide** working never seen previously in BiH
- » A schedule of activities that allows **prioritisation and funding decisions** to be made holistically at the sector level, rather than by individual governments thus reducing waste and ensuring that funds are used where they are most needed
- » The **governance structure** that was established to develop the JSRS, notably the steering board, which met at twice yearly ministerial conferences, has become a regular forum. This is the only sector in BiH that has a regular meeting which brings together ministers from across the governments in BiH. A significant achievement in a country where politics often prohibits joint working
- » Enhanced **communication and cooperation** between various institutions and segments of the justice sector in BiH
- » Increased capacity in **strategic planning** in justice sector institutions
- » Increased **credibility and capacity** of the State MoJ
- » A successful example of sector based strategic planning **indigenous to BiH** that is now being adopted in other sectors in BiH
- » An agreed set of priorities, actions and performance measures to **implement and measure progress** against the strategic issues identified in the JSRS
- » An agreed set of priorities for all of BiH against which **domestic and international funds can be allocated**. Already US, EC, Swedish and UK assistance have identified projects that will assist to implement the JSRS
- » A roadmap for assisting the justice sector to fulfil its **EU accession** requirements
- » A framework against which the BiH MoJ can take a **lead in donor coordination** increasing BiH's ownership and control of donor assistance
- » **Increased international funding to the sector**. Now that a sector strategy has been developed a number of donors have pledged in excess of €2 million for the establishment of a sector based basket fund. Once the fund has been established it is expected this figure will rise
- » Increased institutional awareness of **the need for and benefits of widespread public consultation**. Prior to the development of the JSRS, justice sector institutions had very little experience in public consultation and at times were reluctant to seek public opinion
- » **Increased public involvement**. Public input to the JSRS was sought via extensive newspaper advertisements, news articles, focus groups and placement of the draft strategy on the BiH MoJ website. This led to an unprecedented public response for a strategic justice sector document – comments were even received from inmates in BiH prisons
- » A recognition by justice sector institutions of the **benefit of working with civil society** which built a platform for future collaboration which has since been taken further and formalised. This is significant as at the start of JSRS development, the role of civil society in strategy development and implementation was significantly overlooked and now collaboration between state institutions and civil society is set to increase
- » A framework for identifying **potential projects for Pre-EU Accession assistance and other donor funding** leading to improved alignment of donor funds to country needs and aid effectiveness.



An example of collaboration and sector wide working never seen previously in BiH.

“Rule of law and justice reform is at the core of the European Partnership and key to building trust and accountability. An ad-hoc approach would not have been conducive to resolving the fragmentation of the justice institutions and their mandates/jurisdictions.”

Mr. Erik Illes, First Secretary Embassy of Sweden and representative of the Swedish International Development Cooperation Agency (Sida)

THE OUTCOME

The JSRS sets out priorities for reform for the five year period, 2008 – 2012. The strategy identifies the vision for the justice sector: “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” and also identifies five key areas, or pillars, of reform:

- » Judicial system
- » Execution of criminal sanctions
- » Access to justice
- » Support to the economic sector
- » Coordinated, well managed and accountable sector.

For each of the five pillars of reform: an objective; strategic programmes; indicators of implementation; institutions responsible for implementation; and timeframes are identified. In total 70 strategic programmes are identified in the JSRS, and a detailed action plan has been developed to guide their implementation.



WHY WAS THE DEVELOPMENT OF THE JSRS SUCCESSFUL?

Clear **political commitment** to the process was maintained throughout. Political commitment to the JSRS was secured in March 2006 (through a declaration at a conference on the funding needs of the state justice institutions of BiH held in Brussels) and was maintained through the establishment of the steering board and the initiation of ministerial conferences.

The declaration gave the project a clear mandate and was a useful leverage tool when it came to encouraging participation in the strategy development process. The steering board allowed for political commitment to be maintained throughout the development of the JSRS and the Ministerial Conference provided the political endorsement needed to support the adoption of the JSRS by all BiH governments.

The **governance arrangements** for strategy development reflected the political arrangements in BiH, for example, decisions made at working group meetings and steering board meetings had to be by collective agreement of all members. Given that all activities in the JSRS were developed and endorsed by unanimous decision there was less scope for the strategy to be rejected by one or more stakeholders at critical points in the later finalisation and adoption phases.

The **iterative process** whereby the technical content of the JSRS was developed and provided regularly to the steering board for feedback and comment meant that political and technical understanding of the JSRS were developed concurrently. When the final draft of the JSRS was developed, there was already a high level of political buy in from key ministers. Using traditional strategic planning methodologies the strategy would have been developed by technical representatives at a lower level, and the political stakeholders only involved once a final draft document was prepared. Given the challenging political environment in BiH it is likely this latter approach would have meant the JSRS was never endorsed or adopted.

Once the low capacity in strategic planning was evident, a **capacity building plan** was developed and implemented whereby formal training in strategic planning processes was provided to BiH MoJ staff and complemented by intensive coaching and on-the-job learning. This meant that the strategy development process was not delayed whilst the BiH MoJ built its skills and understanding. Over time the consultants handed over more responsibility to the BiH MoJ team as their confidence and skills developed.

There was a **high level of trust and confidence in the project team** as both local and international consultants on the project team had worked with many key justice sector stakeholders on previous successful initiatives. The project had a high level of credibility amongst beneficiary institutions and stakeholders.

Fostering real **local ownership** was key. It was developed through actions such as: running all meetings in local language; allowing international representatives to be observers but not decision makers; preparing all documents in all three official local languages; and executing an extensive consultation approach. Ensuring that BiH MoJ staff, rather than consultants, led activities was also critical. The project fostered this by adopting a coaching and mentoring role, with local consultants working side-by-side with the State MOJ team and progressively building their skills to take on an increasing leader role in designing and taking forward processes and activities.

Consultation is often considered to be a discrete stage in strategy development, usually towards the end of the process. However, in BiH – where there are complex political and institutional arrangements, with a large number of important and interested stakeholders – buy-in and support, can be improved if consultation is integrated into the entire strategy development process from beginning to end, including to the development of the methodology and governance arrangements.



As local consultants we played a key role in the day-to-day implementation of the project, leading key tasks and activities to ensure they were appropriate to the local context. We also built and maintained excellent working relationships with our counterparts in the Ministry, including providing coaching and mentoring support, which meant we could always keep up to date with realities on the ground.

Local consultants working as part of Atos Consulting project team

“Because the process of drafting the JSRS has involved all BiH judicial interlocutors, representatives of BiH Institutions directly concerned by some of the projects and a number of representatives of the international community dealing with the justice sector, the end product is a comprehensive document that really covers properly all important aspects.”

Mr. Julien Berthoud and Lucio Valerio Sarandrea, Representatives of the Office of the High Representative and EU Special Representative in Bosnia and Herzegovina

Activities supportive to JSRS implementation, such as **donor coordination** and **financial planning**, were developed concurrently to strategy development. A key reason why the JSRS has seamlessly moved from development through to implementation is that such complementary processes were established, developed and supported in parallel. The strategy was not developed in isolation of the core functions that would be required to support its implementation.

A **politically pragmatic** approach was adopted when it became clear that consensus could not be reached on a small number of proposed strategic programmes. It was decided that the unresolved issues would still be identified in the JSRS (so not to be forgotten), but that their resolution would be deferred until constitutional reform discussions took place. This meant that the majority of strategic activities would not be jeopardised by the few controversial activities.

The **active support of the OHR**, an important stakeholder in the BiH political environment, was key. The Office of High Representative (OHR) was established by the Dayton Peace Agreement, to oversee the implementation of the civilian aspects of the agreement. It is the highest political authority in the country.

The OHR actively monitored the development of the JSRS and at critical times highlighted its importance to local political stakeholders and helped resolve bottlenecks where they occurred. The Peace Implementation Council (PIC) for BiH included implementation of the JSRS as one of its conditions for transfer of some OHR functions (a priority for BiH politicians). The fact that JSRS was linked to a precondition for changes in the powers and scope of the OHR became a powerful leveraging tool for driving forward the process.

A major strength of the JSRS process was that although it was locally owned, **coordinated international enthusiasm and pressure** was important at key points. Given the political sensitivities in BiH, and the unique governance arrangements which include executive powers for the OHR, the international community provided valuable support to the process, particularly in helping to overcome political blockages and resolve issues where solutions could not be found between local institutions.

The majority of donors indicated early on that they wanted to support the justice sector within an agreed strategic framework. This was an important leverage tool for ensuring that all institutions participated in the process. Throughout the development of the JSRS, donors also committed to implement aid coordination activities and participated in BiH MoJ led aid coordination initiatives.

The UK Government allowed for **flexibility in project design and implementation**, so that the project could respond to challenges as they arose. This allowed the project to maintain momentum and minimise delays.

Effective collaboration between development and political actors was a key factor behind successful development of the JSRS. The Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID) were both heavily involved in the development of the JSRS. The support from both institutions was invaluable with DFID bringing its development expertise and FCO staff bringing political savvy and leverage. Both perspectives were vital to the project and without the active involvement and complementarity of both departments, the project may have failed.





Creating the Justice Sector Reform Strategy involved several challenges, in particular reconciling competing priorities within the BiH justice sector institutions relating to policy goals and resource allocations. However the project team managed to balance these competing demands through pro-active consultation and a comprehensive process of strategic planning and donor co-ordination. Implementation of the JSRS is now a sustainable locally led process.”

HE Michael Tatham, British Ambassador to Bosnia and Herzegovina

CONCLUSION

Despite the challenges, the development of the JSRS was a success for BiH. This success was based upon a combination of strong local ownership, senior political commitment and participation, extensive consultation, political pragmatism, effective cooperation between international actors and a flexible project methodology, including intensive capacity building for local institutions.

THIS INTERESTING INTERPLAY BETWEEN TECHNICAL DEVELOPMENT ASSISTANCE AND POLITICAL CONSIDERATIONS HAS RESULTED IN A SUCCESSFUL MODEL INDIGENOUS TO BIH THAT CAN BE ADAPTED TO OTHER SECTORS IN BIH.

It can also be adapted for other countries characterised by challenging political environments. Development of the JSRS highlighted that – given the political realities in BiH, including the complex and often antagonistic relationship between the state and entity level governments – it is important to measure success not solely by the agreement and implementation of the strategy itself, but also by the extent to which justice sector institutions engaged in the process and cooperated with one another.

WEBSITES

Atos Consulting UK – www.uk.atosconsulting.com/en-uk/markets/international_funding_agencies/default.htm

BiH Ministry of Justice – www.mpr.gov.ba/en

High Judicial and Prosecutorial Council – www.hjpc.ba

Office of the High Representative and EU Special Representative – www.ohr.int

British Embassy Sarajevo – www.ukinbih.fco.gov.uk

¹ Representing the UK's Department for International Development (DFID), Ministry of Defence (MoD) and Foreign and Commonwealth Office (FCO)

² The General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement) was initialled at Wright-Patterson Air Force Base in Dayton, Ohio on November 21, 1995 and signed in Paris on December 14, 1995 by The Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The agreement is also known as the Dayton Peace Accords.

ABOUT ATOS ORIGIN

Atos Origin is a leading international information technology (IT) services company, providing hi-tech transactional services, consulting, systems integration and managed operations to deliver business outcomes globally. The company's annual revenues are EUR 5.5 billion and it employs 50,000 people. Atos Origin is the Worldwide Information Technology Partner for the Olympic Games and has a client base of international companies across all sectors. Atos Origin is quoted on the Paris Eurolist Market and trades as Atos Origin, Atos Worldline and Atos Consulting.

ABOUT ATOS CONSULTING

Atos Consulting™, the global consulting practice of Atos Origin, is a leading provider of business, process and technology consulting services. With more than 2,500 staff globally, it focuses on delivering proven, pragmatic solutions to the telecom, manufacturing, financial services and public sectors.

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