



# **Improving the Effectiveness of Functional Working Groups**

## ***Supporting Implementation of the Action Plan for Justice Sector Reform Strategy***

*Sector for Strategic Planning, Aid Coordination, and European Integration*

*Ministry of Justice, Bosnia and Herzegovina*

Date: 15 June 2010

This publication is submitted for review to the US Agency for International Development.

Prepared by: Fred Mills

## *Recommendations and Conclusions*

**NOTE:**

Author's views represented in this publication do not necessarily reflect the views of the US Agency for International Development or the US Government

## **I. INTRODUCTION**

Component 2 of the USAID Justice Sector Development Project II (JSDP II) for Bosnia and Herzegovina (BiH) seeks to support and strengthen the state Ministry of Justice (MoJ) in carrying out its coordinating role within the justice sector in preparation for European Union (EU) accession. Specifically, the MoJ's Sector for Strategic Planning, Aid Coordination, and European Integration (SSPACEI) is charged with assisting and facilitating the work of five functional working groups (FWGs), each responsible for monitoring and overseeing execution of activities associated with one of the five pillars of reform around which the Justice Sector Reform Strategy (JSRS) is designed. The FWGs are the principal mechanism for pursuing implementation of the overall strategy and, in turn, for achieving justice sector reforms sufficient to qualify BiH for eventual EU membership.

As part of its year 1 work plan, component 2 engaged the services of a short-term international consultant to provide advice and assistance on ways to improve the functionality and effectiveness of the FWGs, with particular focus on the roles and responsibilities of the group chairpersons. The consultancy included review of background information and reports on the JSRS, and progress to date in pursuing implementation; consultation with JSDP II management and staff; observation of two functional working group sessions; in-person interviews with four of the five current FWG chairpersons; a briefing on the new automated action plan tracking system; a focus group discussion with SSPACEI staff; and participation in a justice sector reform status review meeting of international community representatives. The consultancy was carried out in Sarajevo during the period 26 May through 6 June, 2010, with subsequent preparation of draft and final versions of this report by 15 June 2010.

The following sections provide a brief summary of findings from this consultancy, along with a series of recommendations for improving the functionality of the FWGs and accelerating the pace of progress towards implementation of the JSRS. The report concludes with observations on the overall state of justice sector reform in BiH, and how these overarching realities may influence prospects for successful pursuit of recommendations in this report.

## **II. MAJOR FINDINGS IN BRIEF**

### ***A. Overall Working Group Process is Ineffective and Dysfunctional***

While several of the FWGs have made progress in completing activities in some of their areas of responsibility, in overall terms the working group process has proved ineffective as a mechanism for carrying out the action plan for JSRS implementation. All five groups are behind schedule, working group chairs and members alike have shown steadily decreasing levels of engagement in the process, and external stakeholders are increasingly concerned about the anemic pace and intensity of effort. At this point, the process is widely regarded as dysfunctional – both within and external to the working groups themselves – and the broader BiH commitment to justice sector reform, and in turn its prospects for EU accession, are actively being called into question.

### ***B. Working Group Chairpersons Are Not Fully Meeting Their Responsibilities***

A major contributing factor in the failure of the FWG process has been the lack of sustained commitment on the part of working group chairs to the role and its associated responsibilities. Some appear to view the chairmanship as extra work, separate and apart from (and thus less important than) their “regular” responsibilities; others regard the designation as a matter of protocol, i.e., that the role is more

ceremonial than functional. In some cases, working group chairs appear to have given less priority to certain action plan initiatives based on personal views or preferences, rather than pursuing their pillar's full set of implementation activities. Chairpersons routinely fail to attend long-scheduled meetings of their own working groups; or, when they do attend, may remain only briefly or arrive late, more often than not assigning higher priority to other activities.

### ***C. Other Justice Sector Entities Are Not Fully Engaged in JSRS Implementation***

Pursuit of the JSRS action plan is increasingly becoming a state MoJ activity, and more specifically an SSPACEI activity, rather than a BiH justice sector-wide effort. Other entities' participation in working group meetings has become haphazard, at best, with some (notably the Republica Serbska) virtually never attending or contributing to working groups. It has become increasingly uncommon for other entities' senior level or technically expert staff to attend working group sessions; instead, other organizations will send individuals unfamiliar with the JSRS, or even junior level staff, as substitutes for officially designated representatives. The persistent absence of technically qualified counterparts and/or the presence of inferior level representatives were cited by some working group chairs as rationale for their decision to skip scheduled meetings.

### ***D. JSRS Implementation Action Plan is seen as Overly Complex and Unrealistic***

The action plan for implementing the JSRS is an imposing document, dozens of pages in length, specifying nearly 300 discrete activities/tasks to be completed across 15 program areas under the five pillars of justice sector reform. There is growing recognition that action plan development did not adequately consider the collective capacity of the BiH justice sector to carry out such a complex and ambitious agenda, and further that a number of its proposed initiatives may be unrealistic or impractical under current circumstances. There is also no definitive mapping of action plan requirements to EU criteria or expectations for justice sector reform, i.e., it is not certain whether all, or only some, of the plan's activities are mandatory for accession; or that other actions or reforms not included in the plan would be required for EU membership.

### ***E. Risk of JSRS Implementation Failure is Significant and Growing***

There is growing consensus that BiH faces the very real prospect of failure in its efforts to implement the JSRS, in large measure due to the highly visible and obvious deficiencies of the working group process and in turn its lack of productivity. The donor community and EU representatives, as well as indigenous groups committed to establishment of a modern, integrated justice system for the country, are increasingly pessimistic about BiH's future prospects in this regard. The implications of failure to implement meaningful justice sector reform extend beyond delayed (or foregone) accession to the EU; nearer-term ramifications could include diminished levels of support – both technical and financial – from international organizations and donor countries to justice sector institutions.

## **III. RECOMMENDATIONS**

Given the current state of justice sector reform in BiH, any serious effort to reinvigorate the working group process must include measures that under normal circumstances might be considered imprudent. The implications of failure to achieve significant, near-term improvement in FWG dynamics and output, however, suggest that such measures must be seriously considered at this point. And while the ideal, preferred solution to these problems

might be found in greater ministerial and political level commitment to the JSRS, and the overall goals of justice sector reform, catalyzing such commitment is beyond the capabilities of those directly responsible, day in and day out, for implementing the reform agenda.

What is needed instead are tangible, practical recommendations that can be effected (or at least strongly influenced) by SSPACEI, ideally in concert with the international community, in the very short-term future. Accordingly, this consultancy recommends the following measures be pursued by SSPACEI, with support and assistance from the international community in BiH, as appropriate:

### **A. Clarify and Reinforce the Role of Working Group Chairpersons**

Current FWG chairpersons do not evidence a clear, consistent understanding of what their role in the process should be; each has, to varying degrees, come to his or her own conclusions as to what the chairmanship means, and in turn how he or she will approach the responsibility. In too many instances, these self-defined roles are at odds with, and insufficient to, the overall goals and objectives of JSRS implementation for BiH. The role of the chairperson must therefore be clarified, communicated, and continually reinforced for those holding this designation.

First and foremost, chairpersons must understand that leading an FWG is not a pro forma or ceremonial responsibility; nor is it an ad hoc, “attend to when I have spare time” tasking. Rather, effective chairmanship of an FWG requires that each individual consider the role among his or her top two or three priorities – a central component of one’s ongoing duties and responsibilities, and a defining feature of his or her position and role both within the home organization and justice sector more broadly. Effective chairpersons must lead by example, modelling sustained commitment to the reform process through consistent attention to and coordination of action plan initiatives.

Further, chairmanship of an FWG is ultimately not a managerial, executive, or “directive” role. Given the fragmented, decentralized state of the justice sector in BiH, and the absence of hierarchical authorities within the system, no one entity or institution can direct or compel any other to participate or contribute to the reform process, or to any other activity or initiative. Accordingly, working group chairs must rely on personal relationships, informal communication, persuasion and cajoling, etc., in order to obtain input and cooperation from other entities and their staff. While ideally all institutions would be fully committed to JSRS implementation, and equally capable of contributing to its pursuit, that is not the current reality. FWG chairs must recognize and accept this reality, energetically working to engage their counterparts and finding ways to move the reform agenda forward, in spite of the challenges.

The existing arrangement, i.e., in which all chairpersons are senior officials of the state MoJ, has potential advantages in terms of the personal stature and visible position of the incumbents. However, the reform process has unfortunately not gained the full benefit of these advantages, due to these individuals’ inconsistent level of commitment to the chairperson’s role and the working group process. Going forward, it will be vitally important that whoever chairs each FWG demonstrates the attributes and skills denoted in the preceding paragraphs – lesser position and/or personal stature notwithstanding. The individual, not the title or CV, is what will ultimately define a successful chairmanship.

### **B. Alter Working Group Processes to Favor Action vs. Paralysis**

Current working group protocols reflect the standard practice that a quorum (i.e., at least 50 percent of FWG membership) should be in attendance in order to conduct

an official meeting, and in turn to make decisions, take actions, and generally to move ahead with the implementation agenda. While this is certainly the norm for groups or bodies of this nature, the unfortunate result of this adherence to accepted practice has been process paralysis – due to the chronic failure of many if not most working group members to attend meetings. Too often, long-scheduled sessions cannot proceed due to such quorum requirements.

Neither SSPACEI staff nor FWG chairs can compel in-person attendance at such meetings. They can, however, alter quorum rules to change the “default” to favor continued forward progress. For example, working group members who fail to show up for scheduled meetings could be considered to have automatically granted a proxy to the chair, or to SSPACEI, to act or respond on their behalf. Under this approach, the absence of several FWG members need not preclude a meeting from proceeding; these individuals and in turn their employing organizations would simply be represented by others. This approach could offer the added benefit of providing a strong incentive for the entities to ensure representatives attend meetings – to avoid granting their proxies by default to others.

Functional working group protocols could also be amended to establish a “no substitutions” requirement – i.e., that no individual other than the designated entity representative will be permitted to speak or act on behalf of that entity at FWG meetings. Under this scenario, sending an unqualified or junior representative would still result in the granting of proxy to the chair or to SSPACEI, again allowing the meeting to proceed. A less stringent variation on this requirement would demand that any substitutions be approved by the FWG chair in advance, such that only technically qualified individuals would be allowed to substitute for a designated member. Again, the goal would be to ensure that all meetings consist of participants able to speak and act effectively on behalf of their employing organizations.

There are of course risks to affecting these measures – not least of which that other entities will resist such stipulations, or even refuse to accept working group actions or decisions taken by proxy or default. These are legitimate concerns; however, given that the alternative to changing FWG process rules is continued paralysis and ongoing delays in the implementation process, they should be risks worth taking. At this point, there would appear to be little to lose, and much to gain, in pursuing these ideas.

### **C. Rotate Location and Hosting of Working Group Meetings**

Throughout the course of this consultancy numerous individuals mentioned the possibility of holding FWG meetings in locations other than Sarajevo – taking the process, in effect, to the entity members, rather than always expecting them to come to the state MoJ. This is a common sense way of endeavoring to gain buy-in and commitment to a process: by allowing or inviting prospective participants to take an active role in defining or managing that process, in this case by hosting working group sessions. Being treated more as equals, rather than subordinates “summoned” to the chairperson’s location, may help to improve commitment to the process.

As with the previous recommendation there are risks to this one, principally that entities will decline or ignore the invitation to host; or, having nominally accepted responsibility, then fail to follow through and make the necessary facility and logistical arrangements, etc. Again, however, the potential gains would appear to outweigh the possible losses, in that while some justice sector institutions would not avail

themselves of the opportunity, others likely would. And the incremental gains achieved through engaging at least some of the other entities more fully in the FWG process would be worth the overall effort.

As unpalatable as it might be, there is also a further way by which the objectives of this recommendation could be partially achieved, without assuming that entity institutions will necessarily follow through on commitments: by arranging centrally for meeting facilities in other locations. Meaning, state MoJ staff (i.e., SSPACEI) would undertake to acquire meeting space, lodging facilities, etc., in one or more locations outside of Sarajevo, providing direct assistance to other entities in hosting working group meetings in their home cities or regions.

#### **D. Clarify EU Expectations and Simplify the JSRS Action Plan**

The underlying assumption of the working group process and its efforts to execute the action plan for JSRS implementation seems to be that all activities defined in the plan are required for EU accession. That assumption, however, does not appear to be grounded in fact, as apparently the EU has no published standards or criteria by which it assesses candidate countries' justice sectors to determine when they are sufficiently reformed as to qualify a country for membership. It is also not clear that every item in the action plan is mandatory for achieving the objectives of the JSRS itself; or that a smaller number of less complex, less intensive initiatives might not be sufficient to achieve these objectives.

Granted, by all accounts the principal obstacle to successful pursuit of action plan requirements has been the lack of commitment on the part of both individuals and institutions to the reform process. Nevertheless, given the present dire state of that process, and the great risks associated with failing at JSRS implementation, it is the recommendation of this consultancy that SSPACEI revisit the action plan itself – with an eye towards substantially streamlining, simplifying, and clarifying all activities and initiatives included in the document. This should include not only reducing the overall number of activities to the maximum extent practicable, but also specifying who exactly is tasked (institutionally) with executing each activity or initiative. For the majority of items in the plan, the current document lists multiple entities as responsible for accomplishing each activity – a formulation which invariably guarantees delay and/or confusion in completing assignments.

In conjunction with this comprehensive review, SSPACEI should also initiate an in-depth dialogue with EU representatives to clarify expectations/requirements for justice sector reform in BiH associated with accession; and, in turn, to validate the relevance and utility of each activity in the revised action plan towards meeting those standards. It will not be sufficient to simply confirm that the action plan is derived from, and responsive to, the overall strategy. Rather, the purpose of this recommendation is to specify, as precisely as possible, what will be expected of BiH to qualify for EU membership, and in turn to produce a revised action plan that includes only activities or initiatives directly responsive to these requirements.

While these steps may seem to call for backing away from comprehensive reform, the intent is actually to help facilitate such reform – by simplifying and making more readily comprehensible to participating entities what will be required to achieve JSRS objectives. The relative resource levels and staff capabilities of the entity ministries vary substantially; anecdotally at least, there is evidence that some find the current action plan intimidating, even incomprehensible. To the extent these steps can mitigate those sorts of reactions, they will only help to engender greater engagement with and commitment to the working group process.

## **E. Avoid Overreliance on New Automated System**

In collaboration with JSDP II, SSPACEI is preparing to implement a new automated tracking system to assist in monitoring status of action plan items. The idea is that all participating institutions and working group members will have access to the system, allowing for continuous, ongoing updating and visibility of implementation efforts and task progress. This is a very positive development, especially given the potential for online status reporting to eliminate the need to devote excess working group meeting time to such topics. Once the system is fully operational, FWG sessions should be able to focus more on substantive issues and challenges.

There are risks with implementation of such systems, however, not least of which is the tendency for online/automated monitoring, updating, reporting, etc., to substitute for personal interaction and communication. Too often, these kinds of systems end up inhibiting collaboration and engagement, rather than facilitating it, by allowing process participants (particularly those less than fully committed to the effort) to reduce their involvement to merely inputting data or responding to system prompts. Unless carefully integrated into a broader, proactive process management design, automation could actually encourage disengagement from the reform initiative by simplifying the task of maintaining minimal compliance with role expectations.

Avoiding this outcome will be a matter of ensuring that, rather than reducing expectations for engagement and communication, introduction of the automated system is accompanied by *increased* demands for participation and input. Again, by allowing FWG meetings to focus more on substantive matters, technical issues, policy or political challenges, etc., working group chairs and SSPACEI should strive to make attendance at these sessions – as well as staying engaged and involved between meetings – a more appealing and worthwhile prospect.

## **F. Consolidate BiH Justice Sector Strategic Planning Activities in SSPACEI**

The final recommendation of this report is perhaps the most imprudent, and thus most challenging to pursue, of all the ideas resulting from this consultancy. Yet it is the one which – over the longer term – holds perhaps the greatest promise for catalyzing genuine collaboration among justice sector institutions in BiH in pursuit of JSRS implementation. And that is to encourage other entities to establish and/or integrate their strategic planning capabilities within the existing state MoJ planning unit (i.e., SSPACEI), rather than creating separate planning units within each entity.

The advantages of this approach are several, and potentially significant. First and foremost, creating a single, integrated justice sector strategic planning staff would eliminate the need for the additional levels of coordination, review, revision, etc., that multiple discrete planning units would inevitably entail. Co-locating planning staff from across the sector in a single organization could result in faster resolution of issues or disagreements, and ultimately reduce the number of such disconnects, by creating the sort of continuous dialogue and in-person interaction between entity representatives that today is all too rare. Enabling less experienced staff from other entities to work side by side with SSPACEI planners could also accelerate development of key competencies and skills of long term value to their home organizations.

The largest advantage to be gained from this approach, however, would be in the quality and viability of future strategies and action plans resulting from such an integrated effort. The products of such collaborative engagement would be more readily understood and accepted by the justice sector as a whole, and therefore more

likely to be pursued; individuals and institutions typically evidence greater commitment to plans/initiatives in which they have a vested interest, and in which they have invested significant time and energy. And ideally, again over the long term, this approach could produce a cadre of professionals, working across the BiH justice sector, who think of themselves as part of a justice *system* – rather than as employees of stand-alone entities, with narrowly prescribed authorities and functions.

While this may not be a recommendation which can realistically be implemented in the near term, it is one which this consultancy nevertheless would commend for serious consideration as a promising path to pursue in future. Particularly in the unfortunate event that the current JSRS and action plan are ultimately abandoned, and/or that a fundamental rethinking of the overall approach to reform becomes necessary, such a fully integrated and collaborate strategic planning capability could greatly improve the odds of success next time around.

#### **IV. SUMMARY AND OVERARCHING ISSUES**

This consultancy has focused specifically, as earlier noted, on problems with the functional working group process, and in turn on how some of these problems might be resolved or at least mitigated in the near term. In examining this relatively narrow issue, however, it is readily apparent that much larger, more difficult challenges underlie the problems with the functionality of the FWGs – and that these larger issues will make the task of reenergizing the working group process exceptionally difficult, regardless of the quality or viability of recommendations included in this report.

The fundamental problem is the absence of meaningful incentives for either individuals or institutions to fully engage in and support implementation of the JSRS, and in turn the larger goals of justice sector reform in BiH. While all the entities ostensibly contributed to and endorsed the strategy at the time of its creation, the real test of institutional commitment comes after the document has been signed – and the hard work of bringing concepts to reality begins. It is this test that the justice sector in BiH is failing, individually and collectively. Unless and until some means are found to engender genuine support (if not enthusiasm) for the task of justice sector reform – until there are both “carrots” for contribution and “sticks” for intransigence – the situation will continue to deteriorate, with abandonment of the effort and in turn the goal of EU accession no longer an impossible or unthinkable outcome.

In an ideal world, of course, neither carrots nor sticks would be required; all justice sector institutions and the individuals within them would understand the importance of comprehensive reform, and the benefits to be gained from European integration. The reality that this level of understanding has yet to be achieved within the BiH justice sector only serves to highlight the critical need for more effective leadership: from the ministerial and political levels, certainly, but also from the senior most civil servants within the respective institutions. It is incumbent upon these individuals, ultimately, to articulate the case for proactive pursuit of the justice sector reform agenda, and to make achievement of the goals of the JSRS a priority within their organizations – in deed as well as in word.

Given today’s institutional inertia, however, and the accompanying (or determinative) absence of political leadership in pursuing JSRS implementation, for now it must fall to other actors, both within and external to government, to reenergize and move forward the reform agenda. Mid-level managers and key ministry staff; nongovernmental organizations and professional groups; the press, and perhaps academic institutions; and even the public at large must all become far more active and vocal in advocating for serious reform of the justice sector in BiH. And while the international community can play an important role – including via the potential leverage it wields vis-à-vis resource support to justice sector

institutions – for genuine reform to take root and succeed it must ultimately become a Bosnian effort, not a perpetual extension of international expectations and good intentions.

All of these difficulties and challenges notwithstanding, there are at least a few hopeful signs. SSPACEI has expanded to include a solid cadre of qualified staff, a new generation of justice sector professionals with skills and talents well suited to help advance the reform agenda. While overall performance is not what it should be, some current FWG chairs have at least taken proactive steps – such as hiring additional staff to assist with JSRS action plan tasks, or providing in-depth background information to assist other entities in understanding the rationale for various legislative actions. And there is at least anecdotal evidence that some chairs have come to recognize that personal communication and relationship building will be vital, if the working group process is to succeed.

Building on these hopeful elements, in concert with pursuit of the recommendations described in the preceding section, seems the only realistic path to follow at this stage of the BiH justice sector reform process. Whether or not satisfactory progress will eventually be realized, and whether or not functional working groups can become a viable means of achieving it, only time will tell.

## **APPENDIX: Characteristics of Effective Working Group Processes**

### Formally Established Mandate and Responsibilities

- Working group charter jointly developed and formally agreed to by all participating organizations.
- Defined, documented standards and expectations for group outputs or products.

### Appropriate Institutional Infrastructure and Supporting Systems

- Dedicated staff resources for organizing, facilitating, and documenting working group activities.
- Logistical support and physical facilities conducive to productive operations.
- Communication and information systems for both internal and external users/stakeholders.

### Consistent Membership, Participation, and Contribution

- Relevant technical background and appropriate organizational level or status.
- Ongoing availability for meaningful participation and engagement.
- Long-term commitment to individual membership and zero tolerance for absences or substitutions.

### Regularly Scheduled Meetings and Continuous Interim Communication

- Standing schedule of working group sessions/events, ideally established on an annual cycle.
- Formal process for communicating and sharing information between meetings (e.g., teleconferences, weekly email updates).

### Standard Operating Procedures and Protocols

- Mutually agreed upon ground rules for group discussion, debate, and decision-making.
- Established methodologies and timeframes for external input and stakeholder communications.
- Standardized formats/templates for working group materials – agendas, background or issue papers, post-meeting summaries, product outputs.

### Shared and/or Rotating Leadership Responsibilities

- Meetings chaired or co-chaired by different working group members on a regular cycle.
- Distribution of leadership roles on an issue- and/or interest-driven basis.

### Defined Roles for Technical/Substantive Issue Areas

- Designated lead agency for groups or clusters of technical, policy, or managerial issues.
- Sub-working groups and/or supplemental technical teams (temporary or permanent) for new, specialized, or one-off projects or taskings.

### Genuine Institutional Commitment to Collaborative Engagement

- Participating organizations recognize and accept the value of working group processes and outputs.
- Ongoing, sustained support for the working group as a/the primary vehicle for joint initiatives.

### Regular Review and Renewal of Working Group Mechanisms

- Group self-awareness and continuous assessment of impact and effectiveness.
- Periodic update and revision of working group charter, SOP's, protocols, etc.