



**REPUBLIC OF SERBIA  
MINISTRY OF JUSTICE**

# **NATIONAL JUDICIAL REFORM STRATEGY**

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# CONTENTS

## **I. BACKGROUND**

- A. Introduction**
- B. Key Principles**
- C. Strategy Goal**

## **II. IMPLEMENTATION**

- A. New Constitutional and Legal Framework**
- B. Implementing Bodies**
- C. Financial Sustainability**

## **III. ORGANIZATION**

- A. Structure**
- B. Implementation**

## **IV. JUDICIAL REFORM FRAMEWORK**

- A. Overview**
- B. An Independent Judicial System**
  - 1. Self-Governing Structure
  - 2. Independent Budget Authority
  - 3. Rule and Policy-making Authority
- C. A Transparent Judicial System**
  - 1. Open Judicial Selection, Promotion, Discipline and Removal from Office
  - 2. Appropriate Access to Court Proceedings
  - 3. Enhanced Public Outreach and Participation
- D. An Accountable Judicial System**
  - 1. Clear Judicial Productivity and Performance Standards
  - 2. Effective Case Management
  - 3. Effective Use of Judicial and Prosecutorial Resources
- E. An Efficient Judicial System**
  - 1. Improved Access to Justice
  - 2. Standardized Training and Education
  - 3. Modern Court Network

## **V. REFORM OF JUDICIARY-RELATED INSTITUTIONS**

- A. Ministry of Justice**
- B. Prosecutors**
- C. Justice Professions**
- D. Penal System**

## **VI. PERFORMANCE STANDARDS**

- A. Rationale**
- B. Performance Indicators**

## **I. BACKGROUND**

### **A. INTRODUCTION**

There is a compelling need for the implementation of strategic reforms at all levels of the judicial system in order to establish the rule of law and legal security in the Republic of Serbia.

The need for reform is caused by a sharp conflict between the outdated political and legal system based on the 1990 Constitution and the new social relations based on completely different principles and values. The constitutional principles of the current Constitution can no longer be compensated with new modern laws, and they created a judicial system susceptible and open to inappropriate influences. The administration of justice in such circumstances has led to the damage to the reputation of the judiciary as an institution of state. Public trust in such judicial system is fragile.

Various assessments conducted in the previous four years have identified the following weaknesses:

- An inadequate constitutional and legal framework resulting in excessive delays in court proceedings, difficult enforcement of court judgments, lack of accountability of the judicial bodies and even corruption;
- An overly complex and extended system of courts, resulting in higher than necessary operating costs and less efficient access to justice;
- Unclear selection, dismissal, performance, and promotion standards for judges, resulting in inconsistent judicial effectiveness and reducing public trust in the judicial profession;
- A lack of integrated planning, budgeting and performance measurement capacities, reducing the judiciary's ability to effectively monitor and improve system performance;
- Outmoded judicial administration operational practices, hampering effective justice administration and case processing;
- Onerous administrative burdens on judges reducing judicial efficiency and lowering morale in the judiciary's ranks;
- Lack of continuous training for judges and other judicial officials, hindering the development of a modern and professional staff specializing in judiciary management and administration;
- Inadequate curriculum of law faculties, contributing to a lack of preparation for the future leaders in the legal community and the judiciary;
- Poorly equipped and maintained facilities, restricting access to justice and straining the judiciary's resources;
- An overcrowded and outdated penal system, which does not effectively encourage rehabilitation or satisfy international standards of humane treatment; and
- Underutilization of information technology and automated systems, resulting in the continued use of inefficient and labor-intensive administrative practices.

In order to eliminate the above weaknesses, the Government of the Republic of Serbia undertakes to implement the reform program to achieve a more effective, adequate and

modern judiciary recognizing the right of Serbian citizens to access to justice and fair trial within reasonable time<sup>1</sup> by an impartial tribunal.

The *National Judicial Reform Strategy* sets forth the challenges facing Serbia's judiciary within the framework of four key principles and corresponding goals. A separate Implementation Plan outlines the specific steps needed to achieve those goals.

## **B. KEY PRINCIPLES**

An effective justice system is based on four key principles: independence, transparency, accountability, and efficiency, which provide the framework for the design, development and organization of all judicial institutions. A judicial system that is fully responsive to the interests of all citizens will seek to further these key principles at every stage of the development of the judiciary and the law.

This Strategy, which focuses on Serbia's court system, will apply these guiding principles to achieve:

- ▶ a judicial system that is *independent*;
- ▶ a judicial system that is *transparent*;
- ▶ a judicial system that is *accountable*; and
- ▶ a judicial system that is *efficient*.

Through the implementation of these principles, the Strategy will facilitate the EU association process for the Republic of Serbia by ensuring respect for the standards and norms set for the performance of judicial functions in relevant international documents.<sup>2</sup>

## **C. STRATEGY GOAL**

**To regain the public trust in the Republic of Serbia judicial system by establishing the rule of law and legal certainty.**

# **II. IMPLEMENTATION**

## **A. NEW CONSTITUTIONAL AND LEGAL FRAMEWORK**

### **Current Situation**

The 1990 Constitution of the Republic of Serbia is an unavoidable obstacle on the path to the establishment of the rule of law as the supreme value of the constitutional order. Although the Constitution proclaims the principle of the division of power as the form of government organization, instead of the ideological phrase on the unity of the people's government, and

<sup>1</sup> ECHR

<sup>2</sup> The European Charter on the Statute for Judges (Strasbourg, 9-10 July 1998); Recommendation No. R(94)12 of the Committee of Ministers of the Council of Europe on Independence, Efficiency and Role of Judges; Recommendation No. R(2000)19 on the Role of Public Prosecution in the Criminal Justice System; Opinion No. 1 (2201) of the Consultative Council of European Judges on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges; UN Basic Principles on the Independence of the Judiciary (General Assembly Resolution, 1985); and The Opinion of the European Commission for Democracy through Law No. 349/2005, On the Judiciary in the draft Constitution of the Republic of Serbia.

then derived from this division the principle of independence and autonomy of the judiciary as the principle of its institutional independence, and the permanency of the judicial position as the principle of the independence of judges administering justice, unfortunately, it has not been taken further than these principles. The fact that a consistent, comprehensive, complete and consistently developed system of the necessary constitutional principles on the guarantees of independence of the judiciary and the judges is lacking, shows that, in fact, the goal of the creator of the Constitution was not the establishment of an independent judiciary. The true intention of such constitutional definition of the judiciary as dependent and non-autonomous is contained in the idea of preserving the philosophy and the ideology of the then existing political and state legal system. The consequences of such constitutional solution are still present. The judiciary, which is anyway the institutionally weakest branch of government, without constitutional guarantees of independence and autonomy was established as the unprotected branch of government, susceptible and open to inappropriate influences. The administration of justice in such circumstances has inevitably led to the destruction of the reputation of the judiciary as an institution of state. The prosecution, public attorney's office and the Bar, as parts of the judicial system, have inevitably shared the destiny of the judiciary since by the nature of their functions they are linked to it.

It may be concluded that the Constitution has remained the guardian of an obsolete political and legal order which is in sharp conflict with the new social relations based on completely different principles and values. The constitutional principles of the current constitution can no longer be compensated by new modern laws.

### **Judicial System and the New Constitution**

Constitutional principles related to the position of the judiciary and the whole judicial system in the new Constitution must reflect completely new state legal, political and economic needs. They must offer to the judiciary clear and undeniable guarantees of institutional and individual independence and autonomy. Only such constitutional order for the judiciary may give it a chance to be the guarantor of the rule of law as the key prerequisite for the existence of every law-abiding state. The state that aspires to the rule of law and organization based on the constitutional principle of the division of power needs independent courts and autonomous and independent judges. This comes, on the one hand, from the need to achieve the necessary balance between the other two branches and prevent the prevalence of one over the other, and, on the other hand, to protect individual freedoms and civil rights.

The new Constitution must stipulate and guarantee the independence and autonomy of the judiciary honoring the principle of the division of power based on the checks and balances between the three branches.

Institutional independence of courts must be provided by the establishment of a new judicial body as the constitutional category. The establishment, authority, organization, composition and mandate of this body must be a constitutional subject matter.

Individual judges' independence will be guaranteed by the new judicial body having the exclusive competence to decide on the final appointment of judges after their initial three-year appointment, on the promotion, discipline, dismissal, material position, permanence, immunity and education.

The new legal framework must rely on the constitutional principles in order for them to be fully implemented.

**Basic constitutional principles should guarantee:**

- The rule of law as the supreme value in the Constitution;
- That the organization of government is based on the division of power between: the legislative, executive and judicial, and their relations based on a system of checks and balances;
- That the judicial authority is exercised by courts guaranteeing the rule of law, and that the judiciary has the only right to administer justice pursuant to the Constitution and the law;
- That the High Court Council is the guarantor of institutional and individual independence and autonomy of courts and judges, with the establishment, competence, decision-making and composition of the Council constitutionally recognized;
- That the courts and judges are independent and autonomous in the administration of justice and subordinate only to the Constitution and the law;
- That in accordance with the principle of the division of power and parliamentary responsibility of the Ministry of Justice, optimal relations are established between the respective competences of the Ministry of Justice and High Court Council, as the institution responsible for the functioning of the judicial system;
- That the system of courts of the Republic of Serbia comprises: the Supreme Cassation Court, appeals courts, higher and basic courts;
- That the Supreme Cassation Court is established as the new court of highest instance in the Republic;
- That for the purposes of deciding in administrative, commercial, misdemeanor and other disputes specialized courts are established in accordance with the law;
- That the public prosecutor's office is an autonomy government authority prosecuting the perpetrators of criminal and other legally defined punishable acts and filing motions for extraordinary legal remedies for the protection of constitutionality and legality; and
- That the Bar and the Notaries are established as constitutional categories.

**B. IMPLEMENTING BODIES**

The responsibility for the implementation of the goals and activities envisaged in the Judicial Reform Strategy and Action Plan will be entrusted to the 10 member Strategy Implementation Commission.

The Commission membership will include representatives of all relevant judicial institutions. The Ministry of Justice representative will be nominated by the Minister, the Supreme Court representative will be nominated by the Supreme Court President, the representative of the National Assembly Judiciary Committee will be nominated by the Committee Chairman, the

Public Prosecutor's Office representative will be nominated by the Republic Prosecutor, the Judges Association representative will be nominated by the Managing Board, the Prosecutor's Association will be nominated by the Managing Board, the representative of the Bar will be nominated by the Managing Board of the Bar Association of Serbia, the representative of the Judicial Training Centre will be nominated by the Managing Board, the representative of Belgrade University Law Faculty will be nominated by the Dean. Apart from the representatives of the judiciary institutions, the Ministry of Finance will have one representative in the Commission to serve as a link and guarantor of the sustainability of the Strategy implementation in accordance with the budgetary capacity of the Republic of Serbia.

On the basis of the nominations, the Government will appoint the Commission's members for renewable two-year terms. The Commission will, within the scope of its competence, form separate working groups in charge of the implementation of individual Strategy principles and goals.

The Ministry of Justice, High Court Council and the National Assembly Judiciary Committee will oversee the reforms presented in this Strategy. If necessary, the Ministry of Justice and the High Court Council will provide guidance and direction to the Commission on particular aspects of Strategy implementation.

Until the Decision on the establishment of the Strategy Implementation Commission and formal appointment of its members is adopted, the responsibilities and function of the Strategy Implementation Commission will be discharged by the existing Judiciary Reform Commission.

The Commission will be supported by the Strategy Implementation Secretariat. The Commission will be responsible for the setting up, management and supervision of the operations the Secretariat.

As the administrative and technical support to the Commission, the Secretariat will implement the Commission decisions by:

- Preparing draft recommendations and decisions on the basis of the working groups' reports;
- Coordination of the operations of working groups for the implementation of basic Strategy goals;
- Collecting statistical data needed for the strategic decision making;
- Providing comparative analyses and international recommendations necessary to be implemented in the legal system of the Republic of Serbia, for the purposes of harmonization of the legislation for EU integration; and
- All other activities assigned to it by the Commission which are necessary for the Strategy implementation.

Upon the establishment of the Administrative Office, the capacities and the staff of the Secretariat will become an integral part of the Office.

Every three months the Strategy Implementation Secretariat will brief the Minister of Justice and the Chairman of the High Court Council on implementation progress and pending issues in writing. Every six months the Secretariat will have the obligation to inform the Prime Minister and the Parliament in writing on progress achieved and pending issues.

Every year the Secretariat will submit a report to the National Assembly on the Strategy's implementation.

### **C. FINANCIAL SUSTAINABILITY**

Judicial Reform is a long-term and complex process which requires, apart from the changes of the constitutional and legal framework, substantial funds for a range of structural and organizational changes.

In order to ensure a sustainable and successful implementation of the Strategy, the Serbian state will, within the limits of available resources, provide the necessary material preconditions and funding for the goals and activities envisaged in this Strategy.

Successful implementation of this Strategy greatly depends on the support of the international community, in particular the European Commission, Council of Europe, World Bank and other international and regional organizations and government agencies which have so far unreservedly assisted the reform processes in Serbia.

## **III. ORGANIZATION**

### **A. STRUCTURE**

The Judicial Reform Strategy is primarily devoted to the reform of the Serbia's court system. It also addresses, to a limited extent, other parts of the justice system: the Ministry of Justice, the prosecutorial and penal systems, the law faculties, and independent judicial professions.

The Strategy's Judicial Reform Framework, presented in Section IV, outlines the basic goals and outcomes necessary for the achievement of a modern and efficient court system. The basic reform goals for other institutions of the justice system, including the Ministry of Justice, the prosecutors, and the penal system, are included in Section V.

Section VI deals with the performance standards that will measure the progress of the Republic's judicial reform efforts. A separate Implementation plan details the specific timeframes, implementing bodies, and estimated costs associated with each goal defined within the Strategy.

## **IV. JUDICIAL REFORM FRAMEWORK**

### **A. OVERVIEW**

The Republic's Judicial Reform Framework can be divided into 12 fundamental reform goals, three of which fall under each core principle. Collectively and individually, these reform goals and their associated initiatives address the main challenges facing the judiciary today.

The Judicial Reform Framework is summarized in the table below, and detailed in the following sections. Each goal is presented with a summary description of the current situation, the vision for a new judiciary, and the primary steps supporting the reform goals.

The initiatives are grouped according to **short-term** (2006-2007), **medium-term** (2008-2009) and **long-term** (2010-2011) implementation timeframes.

### JUDICIAL REFORM FRAMEWORK

INDEPENDENCE	TRANSPARENCY	ACCOUNTABILITY	EFFICIENCY
Self-Governing Structure	Open Judicial Selection, Promotion, Discipline and Removal from office	Clear Judicial Productivity & Performance Standards	Improved Access to Justice
Independent Budget Authority	Appropriate Access to Court Records & Proceedings	Effective Case Management	Standardized System for Education & Training
Independent Policy & Rule-Making Authority	Enhanced Public Outreach & Participation	Effective Use of Judicial & Prosecutorial Resources	Modern Court Network

## B. AN INDEPENDENT COURT SYSTEM

### 1. Self-Governing Structure

**Current Situation:** Serbia's court system is currently governed by the Ministry of Justice, the Supreme Court President; various court presidents; the High Judicial Council; the High Personnel Council; and the Supervisory Council performing overlapping roles. The judicial system thus lacks a unified and independent executive management framework that provides for better governance, reduced administrative dependence on the Ministry of Justice and better functioning of courts.

**Vision for the New Judiciary:** In accordance with the principle of an independent judiciary, governance responsibility for the court system will, to the greatest extent, be assumed by the High Court Council, while retaining the minimum oversight necessary for the Ministry of Justice to respect the principle of parliamentary responsibility for the administrative functioning of the court system, in order to provide for the constitutional principle of checks and balances between the legislative, executive and judicial powers.

The High Court Council is constitutionally recognized. The High Court Council is the guarantor of the autonomy and independence of courts and judges, and is the management and oversight body for the court system. The High Court Council has a decisive role in the process of judicial selection, promotion, discipline, material status, and removal from office. It is also responsible for human resources, organization and oversight, budget, performance measurement, policy and rule-making and operation of courts, and strategic planning.

The High Court Council will be comprised of 11 members. The permanent judges will elect six members of the Council from their ranks. The Chairman of the National Assembly Judiciary Committee, the Minister of Justice, and the Supreme Cassation Court President will be members of the Council by virtue of their office. The National Assembly will elect two Council members from the ranks of distinguished legal experts with at least 15 years of experience. The Council will be chaired by the President of the Supreme Cassation Court, and his/her deputy will be one of the judge-members. Each Council member will have his/her deputy. High Court Council members will be appointed for five year terms, except those who are its members by virtue of their office. Court presidents may not be elected members of the Council. The Council will decide by simple majority, except with regard to the decisions on

judicial selection, promotion, transfer, discipline, material status and removal from office, which require at least eight votes from Council members.

The decision of the High Court Council is subject to appeal to be decided, in a legally prescribed procedure, by the Constitutional Court of Serbia.

The High Court Council will have a functional link with the Ministry of Justice in certain segments of its activity, which implies exchange of information, preparation of draft decisions that have to be taken jointly, and preparation of draft decisions that are to be made by the Ministry alone.

The High Court Council will be supported by an Administrative Office which will implement activities within its scope of competence. The Administrative Office director will report to the High Court Council on its activities. All details related to the new structure and competences will be regulated by a separate law.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
High Court Council's composition, mandate and organization and operating procedures established by law.	New members elected for the High Court Council. Additional by-laws and operating rules are prepared and adopted.	High Court Council assumes full oversight for all activities under its authority.
Administrative Office under the High Court Council established by law, plan developed for structure and staffing.	Basic Administrative Office services set up and begin functioning.	Administrative Office fully operational.

## 2. Independent Budget Authority

**Current Situation:** There are numerous comments stating that while courts have a degree of influence in the budget formulation process today, the Ministry of Finance, primarily, with the participation of the Ministry of Justice, has a key role in the budget definition and allocation. The judiciary erroneously assesses the financial resources of the Republic of Serbia, not realizing that it is hard to provide sufficient funds to meet all the needs and priorities of the judicial system, particularly if the system has an uneconomical court network and oversized court administration. This places the Ministry in a difficult position in court budget negotiations, and particularly in allocating the funds approved by the Law on Budget. Modern solutions for the management of the judiciary's budget envisage the transfer of the budget authority to those who are most informed of competing requirements and operational priorities (the courts themselves) in order to achieve rational spending of funds and develop a degree of responsibility among budget beneficiaries.

**Vision for the New Judiciary:** Achieving independence of the judiciary requires the introduction of an independent court budget, but only after the creation of the infrastructure and capacities for adequate planning and effective financial management within the judiciary. Until the full capacity for independent financial management is achieved, a transitional budget model under which the High Court Council will present the integrated court budget to the Ministry of Justice, and under which the process of consultations with the representatives of the judiciary will improve, will be an interim solution and preparation for future

challenges. Under the transitional model, the Ministry of Justice will continue to represent the judiciary in negotiations with the Ministry of Finance until budgetary authority is completely transferred to the judiciary in 2011, and until the High Court Council has the capacity and authority to develop, approve and apportion the budget for the judicial system, in conjunction with the Republic's Treasury and the Ministry of Finance. The Administrative Office will have an important role in supporting the High Court Council in taking over this huge task, and, by means of the Budget Law, the National Assembly of the Republic of Serbia will approve an independent court budget on the basis of needs and capabilities. The state will strive to provide for judges all the funds necessary for the proper performance of their duties, and salaries and material position of judges will in the shortest time possible be defined in such a manner as to provide the protection of judges from any pressure with regard to their decisions.

<b>Short-Term Reforms 2006-2007</b>	<b>Medium Term Reforms 2008-2009</b>	<b>Long-Term Reforms 2010-2011</b>
Plan developed and adopted for transitional budget process supported by the High Court Council and the Administrative Office and necessary amendments to laws prepared.	High Court Council assumes authority for the preparation of the judiciary's budget and the Administrative Office prepares the integrated budget for the Ministry of Justice. Capacities strengthened for further transfer of responsibilities.	High Court Council assumes full authority for the judiciary's budget on January 1, 2011, and Administrative office is ready to support and implement the new budget process.

### 3. Independent Policy & Rule-Making Authority

**Current Situation:** Judicial policy and rule making authority rests largely with the Ministry of Justice, restricting the courts' ability to address and respond to operational weaknesses, and at the same time presenting courts' excuse for the poor state of the judiciary. Court procedural rule-making responsibility also currently resides with the Ministry of Justice, which also supervises the implementation of these rules in accordance with the standards of efficiency and citizen complaints. On the other hand, the supervision over specific policy areas is entrusted to a number of judicial bodies, including the High Judicial Council, High Personnel Council and Supervisory Committee.

**Vision for the New Judiciary:** The judicial system will exercise independent policy and rule-making authority through the High Court Council. With the optimal level of authority transferred from the Ministry of Justice, the High Court Council will supervise the implementation of administrative policies from the court rules of procedures, and further improve the effectiveness of case management and court performance, jointly with court presidents and with participation of the Ministry of Justice in accordance with the Law. The High Court Council, supported by the new Administrative Office, will have the capacities for integrated governance of the judiciary, in accordance with its scope of authority as set forth in the law, by assuming the responsibilities of the High Personnel Council and the Supervisory Council.

In the political system of the division of power, for the purpose of the protection of Serbian citizens' interests, and application of the principle of parliamentary responsibility of the Ministry of Justice for the functioning of the judiciary, the Ministry will be functionally linked to the High Court Council, thus retaining the possibility to respond to noted

deficiencies in the functioning of the judicial system, which will be regulated in detail by the law.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
High Court Council designated as the future rule-making body for the judiciary and assumes partial competencies.	High Court Council assumes full rule-making authority for the judiciary.	High Court Council operates in accordance with the best comparative practices.
Plan developed and legal framework approved for integration of the competences of High Personnel Council and Supervisory Committee within the High Court Council.	High Court Council fully empowered to decide in all matters related to court administration.	High Court Council operates in accordance with the best comparative practices.

## C. A TRANSPARENT JUDICIAL SYSTEM

### 1. Open Judicial Selection, Promotion, Discipline and Removal from Office

**Current Situation:** Past practice of the appointment of judges and prosecutors demonstrates that these appointments were often susceptible to political pressure and personal influence. Judges and prosecutors who resisted political pressure and intimidation were often disciplined or removed from office. The establishment of High Judicial and High Personnel Councils significantly mitigated such problems, but since the process of nomination, appointment, promotion and dismissal of judges is limited by the solutions in the Constitution and is flawed in terms of openness of the selection process, the interference of politics and personal influence in the final appointment of judges by the National Assembly of Serbia, and manipulation on the part of colleagues in the dismissal proceedings cannot be completely ruled out. Especially since there are no systematic criteria in place prescribing the requirements for the appointment of future judges, monitoring the performance of permanent judges, or clear rules and regulations for dismissing judges.

**Vision for the New Judiciary:** The process of selecting and appointing judges must serve the institutional and individual independence of the judicial system. The new Constitution must establish and guarantee the autonomy and independence of judges. Individual independence of judges will be guaranteed by the High Court Council as the new judicial body in the constitutional system of the Republic of Serbia.

The High Court Council will have the sole authority to propose nominees for the first judicial appointment to the National Assembly. The proposed nominees will be appointed by the National Assembly for a limited term of three years. Upon the expiry of such term, the High Court Council, in a procedure prescribed by the law, will decide on the permanent appointment of judges, and the decision declaratively confirmed by the Chairmen of the Serbian National Assembly, before whom the elected judges will take the oath of office.

Court presidents will be elected by the National Assembly upon the proposal of the High Court Council, in a procedure to be regulated by a separate law.

After the establishment of the National Judicial Training Institute, successfully passing the Institute’s final examination will be an important criterion for the appointment to the judiciary. The High Court Council will also develop precise criteria for the new manner of judicial nomination, appointment, promotion, discipline and removal from office.

After the promulgation of the new Constitution, i.e. legal framework, a new network of courts with changed jurisdictions and an optimal number of judges will be formed in accordance with the needs and clearly measurable standards, and criteria to be defined by the High Court Council. It is inevitable that on the basis of such standards and criteria the judicial system itself will ensure that the best and most respected judges or lawyers are appointed to the judiciary; also, that the most capable and responsible are promoted to higher courts in accordance with their skills and capabilities, and that those who are average stay in the same instance courts, and that those who do not meet the minimal criteria and standards are not appointed.

This procedure will be regulated in detail by a separate law and carried out by the High Court Council, after having obtained the non-binding opinion of the Judiciary Committee of the National Assembly.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Legal framework for new structure of selection, promotion, disciplinary and dismissal processes prepared.	High Court Council replaces High Personnel Council and Parliament in disciplinary and dismissal proceedings.	High Court Council assumes full responsibility for selection, promotion, discipline and dismissal of judges.
New criteria for the appointment of judges or the selection of judges for new court, promotion, discipline and dismissal approved.	Legal framework providing for supplementary criteria for selection and promotion prepared in harmony with the establishment of National Judicial Training Institute.	New criteria for appointment and promotion of judges taking into consideration initial and permanent training developed and adopted.

## 2. Appropriate Access to Court Proceedings

**Current Situation:** Access to case records is restricted to litigants, counsel, and others on a need-to-know basis. Restricted access protects litigant privacy but constrains public and media access to government processes. Limited access to court proceedings hinders public understanding and objective media reporting. There is a practice of public comments on pending cases and manipulating the data from case files for the purposes of scoring political points. Granting proper public access to case information is undoubtedly an important social value.

**Vision for the New Judiciary:** The public will be granted access to case information and court decisions while preserving litigant privacy to achieve objective perception of public perceptions of courts, judges, and the adjudicative process through transparent approach. Automated systems in courts available to citizens will, in particular, improve public access to case information. The possibility of misinformation and inaccurate reporting by the media will be reduced, improving public understanding and confidence in the judiciary.

The necessary precondition is the professional approach on the part of the media and education of reporters covering the judiciary.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Existing rules and procedures on access to court information reviewed and primary weaknesses identified.	Court rules and procedures revised to promote public access to court proceedings.	An independent survey identifies additional reforms supporting greater public access to court information.
Supreme Court opinions scanned into a database, with access provided to judges, the media, and the public.	Database of Supreme Court decisions installed in law faculties and public libraries.	Appeals Courts decisions added to database, additional public access points installed.

### 3. Enhanced Public Outreach and Participation

**Current Situation:** There are numerous complaints regarding the work of courts. There are differences in views on the key judicial processes where the general public and the members of the judicial profession are concerned. There is also erroneous pinpointing of responsibility on the Ministry of Justice for the situation in all segments of the justice system. Many citizens do not fully comprehend the role of the justice system in a democratic society. The consequence is the public's reluctance to utilize the courts to seek redress for the violation of their basic rights and freedoms.

**Vision for the New Judiciary:** Recognizing that the strength and vitality of the judiciary depends on citizens who understand and support its role, the judicial system will proactively educate the public and the media to understand its role and functions, and change the poor image that many have of judges and the judicial institutions. The establishment of public relations offices within the High Court Council and courts will ensure more pro-active communications with the public and the media. The High Court Council, and in time all lower courts, will utilize an automated system to carefully track and respond to citizen complaints.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Public Relations Office and Information Desk established in the High Court Council.	Public Relations Offices and Information Desks established in the Supreme Cassation Court and selected courts.	All courts equipped with public relations officers and information desks.
A single mechanism for recording all judicial system complaints is established.	Judicial system complaints are collected and assessed in an annual summary report.	High Court Council's annual report integrates annual summary report of citizen complaints.

## D. AN ACCOUNTABLE JUDICIAL SYSTEM

### 1. Clear Judicial Productivity and Performance Standards

**Current Situation:** Neither the Ministry of Justice nor the courts have the ability to accurately assess judicial productivity and court system performance. Lacking uniform standards and regularly updated statistical information at both the system-wide and the individual court level, the judiciary's leaders are unable to adequately assess the performance of court systems or the judges serving in individual courts. This deficiency impedes effective control over the judiciary's performance.

**Vision for the New Judiciary:** The Ministry of Justice and the High Court Council will oversee the redesign of the process, methodology, and standards for the preparation and transmission of judicial and court efficiency statistics to achieve maximum accuracy and consistency, and conform with the best practices identified by the Council of Europe and other international bodies. Specifically, a system will be introduced that allows for both system-wide judicial productivity monitoring and monitoring by court presidents of individual judge performance. The development of the information technologies will enable daily monitoring of efficiency of judges and courts.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Criteria for assessing judicial productivity reviewed and new criteria defined by the High Court Council.	High Court Council assumes Supervisory Council's responsibility for reviewing judicial productivity.	All judges held accountable to a revised standard of judicial productivity with regular performance reviews.
New judicial automatic productivity data systems tested in commercial and general jurisdiction courts.	A uniform data collection system is initiated throughout all courts, with training for court staff.	National judicial productivity data system is fully functional.

### 2. Effective Case Management

**Current Situation:** Most judges and staff have had no training in case management practices. They are also constrained by rules and procedures that require senior judges to spend large amounts of their time on administrative issues, diverting their time and expertise to non-judicial matters and directly contributing to the serious case backlogs facing the Republic's courts. Scheduling practices impede efficient case processing and inconvenience parties. Moreover, existing case management systems are based almost exclusively on time and labor-intensive manual collection and entry practices that are inefficient, costly and diminish both transparency and feedback.

**Vision for the New Judiciary:** Through case management automation, revised scheduling procedures and new professional positions, judges and court presidents will have greater time to focus on their adjudicatory functions. Court administration tasks will be performed by an increasingly professional cadre of court administrators and new judicial staff. All courts will strengthen their administrative capacities, primarily in case processing automation. Case management and IT modernization will lead to increased efficiency and transparency of court administration, particularly after the introduction of integrated software within the

Administrative Office which will enable the production of precise statistical reports on the performance of individual courts and their case backlogs.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
New professional staffing positions in court administration identified and proposed.	New professional court administration positions created.	Courts fully staffed with new court administrators.
Scheduling changes proposed to reduce average case duration.	New calendaring changes implemented in select courts.	New calendaring system implemented in all courts.
Commercial Courts develop case management automation system.	Automated case management system installed in select Commercial Courts.	Commercial Courts complete full automation and system integration.
Select Municipal and District Courts modernize internal IT systems.	General jurisdiction courts automate case management and integrate IT networks.	Scanning begins of key case documents as the initial step to electronic case files.
Plan proposed transferring service of process to the private sector.	Transfer begins of service of process responsibility to the private sector.	Service of process responsibility transferred to private sector.
Commercial Courts conduct weighted caseload analysis to refine staffing requirements.	Modifications to Commercial Court staffing levels, and select other courts, based on weighted caseload analysis.	General jurisdiction courts modify staffing levels based on weighted caseload analysis.

### 3. Effective Use of Judicial and Prosecutorial Resources

**Current Situation:** Criminal case processing follows the inquisitorial model in which investigative judges work with police and prosecutors to conduct criminal investigations and collect evidence. This model is mostly regarded as inefficient and time consuming because of the redundant judicial resources it requires and the inferior role it assigns to the prosecution. Moreover, because plea bargaining is not allowed, criminal case processing is backlogged and subject to repeated delays.

**Vision for the New Judiciary:** Noting that inquisitorial systems have been replaced in several neighboring countries with more efficient and less-resource-intensive adversarial systems, and the “reasonable time” requirement stipulated by Article 6 of the European Convention for Human Rights, the Republic will gradually shift to a system that limits the roles of the investigative judges, and prosecutors will assume responsibility for collecting evidence to ensure more efficient criminal case processing. Additionally, to address criminal case backlogs and delay, prosecutors will be permitted to employ judicially supervised plea bargaining.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
New legal framework adopted, implementation and training begins.	Investigative judges and prosecutors assume new roles.	Investigative judges and prosecutors performing roles in accordance with best practices.
New legal framework adopted to enable plea bargaining, training in the implementation of the new law begins for judges, prosecutors and attorneys.	Judges, prosecutors and attorneys implement the new legal framework.	Criminal procedure is more efficient in the Republic's courts.

**E. AN EFFICIENT JUDICIAL SYSTEM**

**1. Improved Access to Justice**

**Current Situation:** Access to justice is restricted by a limited budget for legal aid, a poor legal framework and insufficient dissemination of legal and court-related information. And with government revenues for justice administration limited, efforts to collect court services fees and consolidate service locations may further restrict access to justice. The result: the citizens of Serbia who most need assistance and access to justice are often underserved or have access to justice restricted by the current judicial process.

**Vision for the New Judiciary:** In the future, the judiciary must consistently promote equal access to justice for all, including indigent citizens, through more concentrated and effective legal aid programs. The new law will set up an integral system of legal aid which will provide for more effective assistance to defendants in civil and criminal cases, and enable a development of standardized criteria for granting legal aid. Systematic and well-publicized alternative dispute resolution (ADR) programs hosted and promoted by the ADR Center, will ensure new, more efficient and less expensive avenues for dispute resolution and considerably reduce the burden on courts and judges, which will, in turn, increase the efficiency of the judicial system.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Legal aid system reviewed and a new law creating a integral legal aid system adopted.	Institutional support for legal aid is provided and the system is put in operation, criteria for granting legal aid are defined.	Legal aid for civil/criminal cases provided using clear means test.
Existing ADR Center programs reviewed and additional programs proposed.	ADR Center receives approval from the Ministry of Justice and High Court Council to expand programs.	ADR Center begins a comprehensive program.

## 2. Standardized System for Education and Training

**Current Status:** Over the last several years, responsibility for judicial education and professional training has largely been assumed by the Judicial Training Center (JTC). Currently there is no developed and comprehensive curriculum for judicial and staff training. In general, current training efforts are inadequate, both for new and experienced judges and staff. The curricula at law faculties, while improving over the last few years, must insist more on practical skills clinics which will provide better training for the judiciary's future leaders and legal practitioners.

**Vision for the New Judiciary:** The enactment of the new Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Judges' and Prosecutors' Assistants will create conditions for organized acquiring and improvement of theoretical and practical knowledge and skills necessary for the autonomous, professional and efficient administration of justice.

The Government will establish the National Judicial Training Institute by 2008. This independent judicial institution, which will operate under the supervision of the High Court Council, will assume the present mandate, functions, and resources of the Judicial Training Center. Both the President of the Supreme Cassation Court and the Minister of Justice will be members of the Institute's Management Board. The National Judicial Training Institute will administer a standardized multi-level initial and continual education and training program for judicial officers. The training will emphasize case management techniques to address the significant case backlogs in the Republic's courts.

Successfully passing the examination prepared by this Institute will be an important criterion for the first appointment of judicial nominees. Permanent education in the judiciary will be mandatory. Additionally, law faculties will strengthen the departments for the judiciary, and expand clinical and practical training for future legal professionals and leaders of the judiciary.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Judicial Training Center conducts training of the judiciary and training of trainers, Ministry of Justice and High Court Council prepare and approve a plan for a National Judicial Training Institute.	National Judicial Training Institute established by law, trainers begin training of new judges and permanent training.	Results analyzed and curriculum of the National Judicial Training Institute improved, final comprehensive training program developed, its implementation begins.
International assistance for the new National Judicial Training Institute facility is secured.	New training curriculum for judges developed and approved by the High Court Council.	New training curriculum for court staff developed and approved by the Ministry of Justice and High Court Council.
Ministry of Justice, High Court Council and law faculties agree on design of new curriculum and judiciary departments.	Law faculties strengthen judiciary departments and offer additional practical training opportunities.	First students trained by new curriculums graduate and begin preparing for careers in judiciary and the Bar.

### 3. A Modern Court Network

**Current Status:** Currently, there are currently 187 special and general jurisdiction courts in the country, with several large urban courts accounting for the vast majority of cases, while a number of courts in different regions feature minimal caseloads. Additionally, the Supreme Court is burdened with a large number of cases. The consequence is that the overall court system is imbalanced by an overly complex and costly network of facilities that does not reflect the actual workload or current needs of the Republic's judiciary.

**Vision for the New Judiciary:** To address budgetary constraints and strengthen the judiciary's structure and administration, the court network will be rationalized on the basis of precise criteria, statistical data, taking into consideration the need for easy citizen access to justice.

On the basis of the new constitutional and legal framework, a new system of court jurisdictions will be introduced by the establishment of the new Supreme Cassation Court. Courts of Appeals will for the most part take over the jurisdiction of the present Supreme Court, and general jurisdiction courts (higher and basic) will, with minor changes, retain their present jurisdiction. Specialized courts will be established to decide in administrative, commercial, misdemeanor or other disputes.

Additionally, information technology modernization will allow careful monitoring of court performance and efficiency by means of integrated software which will produce precise reports on the work volume load of individual courts and judges, enabling precise parameters for adequate rationalization of the court network and reduction of costs.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Adoption of the new constitutional and legal framework for the change of court organization and jurisdiction.	New courts operate in accordance with the constitutional legal framework, and court network is rationalized.	Rationalized court network operates efficiently and in accordance with the best comparative practices.
Primary capital investments required for major urban courts identified and proposal for international assistance prepared.	International assistance secured for capital investments in major urban courts.	Reconstruction and construction of new court facilities completed.

## V. REFORM OF JUDICIARY-RELATED INSTITUTIONS

### A. MINISTRY OF JUSTICE

In accordance with the Constitutional principle of the division of power, based on the checks and balances between the three branches of government, an optimal relation will be defined between the Ministry of Justice and the High Court Council, as institutions responsible for the functioning of the judicial system.

Based on the principle of parliamentary responsibility of the Ministry of Justice for the functioning of the judicial system, new legal framework will provide for a functional link

between the High Court Council. The content of the functional link will be precisely defined by the law, will not relate to the administration of justice and will enable the Ministry of Justice to react in the cases when serious problems arise in the functioning of the judicial system.

By means of the implementation of the judicial reform presented in this Strategy, the Ministry of Justice will harmonize its competences and structure to the requirements of the EU integration process, while performing its primary functions in accordance with the scope of competence defined by the law.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Ministry provides professional and staff support to the implementation of the Judicial Reform Strategy and implements legal reform.	Ministry provides professional and staff support to the implementation of the Judicial Reform Strategy and further harmonizes legislation.	Change of competence and structure of the Ministry completed, necessary activities related to the accession process carried out.

## B. PROSECUTORS

The position of the public prosecution in the present justice system and the relation of this judicial authority towards other authorities are vague. In practice, and also in theory, two different approaches have been present, both radical. In the first, the prosecution should be almost equal to the court, both in terms of selection, permanence, dismissal and all other important issues. In the other, the prosecution is an ordinary executive authority with rigorous internal organization and discipline.

However, the public prosecution, by its legal nature, is not only an executive but also a judicial authority that has to be operationally autonomous, which defines its position in the judicial system and its relation to the other branches of government. It is without doubt that the only true answer lies in the middle, which means that the public prosecutor must not be an ordinary civil servant, but he/she cannot have the status equal to that of the independent judge either.

This Strategy envisages exactly such a position of the prosecution. The reform of the judiciary presents an important opportunity to improve the autonomy, accountability and effectiveness of the prosecutors, who by law work closely with Judiciary and the Ministry of Interior.

Apart from the key prosecutorial function of prosecuting criminal and other punishable acts as stipulated by the law, the new constitutional and legal framework will change the scope of competence of the prosecutor's office by means of clear definition of its role in the protection of the constitutionality and legality. Legal security is achieved by departing from the past traditional system of extraordinary legal remedies against final and enforceable decisions. In accordance with the principle of legal security the decisions on the violation of legality and constitutionality belongs only to courts, and the prosecutor's role and right is to bring such issues in exceptional cases before the highest court.

The nature and the degree of the Public Prosecutors' authority, as stipulated by the law, are such that they prosecute without hindrance all perpetrators of criminal acts, including government officials for the acts committing while in office, and especially the acts of corruption and abuse of power.

The prosecutors will, while honoring the principles of hierarchical subordination, be given a far greater autonomy in their work, which will also carry greater responsibility for their work in accordance with objective criteria, and will for the most part be free from political influence. The considerable limitation of the investigative judges' role will allow prosecutors to have the most important role in the investigation. This role, which involves the obtaining of criminal evidence, will become effective upon the promulgation of the new legal framework.

Criminal prosecution of the crimes stipulated in ratified international conventions and other cases specifically prescribed by the law may be subject to subsequent instructions issued by the Ministry of Justice, on behalf of the Government of the Republic of Serbia. The procedure for the promulgation of these instructions will be precisely regulated by the law, so that the Government may exercise its authority in a transparent manner.

The Republic Public Prosecutor, War Crimes Prosecutor and Organized Crime Prosecutor will be elected by the Parliament for a renewable term of six years, which shall be regulated by the law. The Government proposes nominees, having previously obtained the opinion of the State Prosecutorial Council. The manner of selection of the appeals, higher and first instance prosecutors is the same.

The State Prosecutorial Council is a category defined by law. The State Prosecutorial Council provides for the functional autonomy of the prosecution. Deputy Public Prosecutors are elected by the National Assembly for the period of three years, upon the proposal of the State Prosecutorial Council. After the expiry of the trial period, the State Prosecutorial Council will decide on the appointment for life tenure. Moreover, the Council will also decide on the promotion and discipline, except in the area falling within the scope of competence of the Republic Public prosecutor.

The State Prosecutorial Council will have 11 members. The deputies from all levels of the prosecution will elect six members from their ranks. A member of the Judiciary Committee of the National Assembly, the Minister of Justice and the Republic Public Prosecutor will be members of the Council by virtue of their office. The National Assembly will elect two Council members from the ranks of distinguished, renowned legal experts with over 15 years of experience. The Council will be chaired by the Republic Public Prosecutor, and his/her deputy will be from the ranks of Deputy Prosecutors. Each Council member will have his/her deputy. State Prosecutorial Council members will be appointed for five year terms, except those who are its members by virtue of their office. The Council will decide by simple majority, except for the decisions on the selection of Deputy Prosecutors, their promotion and discipline, which require at least 8 votes of the State Prosecutorial Council members.

<b>Short-Term Reforms 2006-2007</b>	<b>Medium Term Reforms 2008-2009</b>	<b>Long-Term Reforms 2010-2011</b>
New role and performance criteria for prosecutors established by law, and State Prosecutorial Council created.	Prosecutors receive training for expanded role in evidentiary collection and case management.	Additional training programs for prosecutors established in order to improve criminal case proceedings.

## C. JUSTICE PROFESSIONS

### 1. ATTORNEYS

The area of legal practice must be regulated in order for this profession, which is a part of the justice system, to be governed in accordance with the principles of democratic system of government. Accordingly, it is necessary to ensure more efficient and better quality provision of legal aid as the basis for the exercising of civil rights and liberties, rule of law and proper functioning of the justice system, with consistent recognition of the principle of independence and autonomy of the legal profession.

Moreover, there is a need for the harmonization of the rights and obligations of attorneys with the generally accepted international standards set forth in the UN and Council of Europe documents.<sup>3</sup>

The specificity of the legal profession in comparison with other professions is reflected in its obligation to provide professional legal assistance to parties in the proceedings before courts or other state authorities, when it is so stipulated by the law regulating such proceedings. That is why the legal profession will be defined in the new constitutional and legal framework as an independent profession within the public order, developed for the purposes of offering legal assistance.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Enactment of the new Law on Legal Practice.	Harmonization of the rights and obligations of attorneys with the new Law and accepted international standards.	Legal practice as an autonomous and independent judicial profession operates in accordance with the new constitutional and legal framework and standards.

### 2. NOTARIES

The Republic of Serbia does not have within its justice system the institution of Notary. Considering that notaries existed only in some parts of the Republic of Serbia and all this more than 60 years ago, there can be no institutional continuity from the historical and legal standpoint.

A democratic society based on the rule of law requires primarily legal security and certainty in all legal affairs. To meet these requirements, it was considered appropriate to entrust the tasks of vital importance for the whole society to a separate public service.

The key function to this public service will be performed by the Notary. The state delegates to this institution the powers of drawing up and keeping public documents, issuing copies of such documents, their attestation and other tasks delegated to the Notary by courts.

<sup>3</sup> Basic principles on the role of lawyers, Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, UN Doc. A/CONF. 144/28/Rev. 1 at 118 (1990); Recommendation Rec (2000)21 of the Council of Europe Committee of Ministers on the freedom of exercise of the profession of lawyer (adopted on October 25, 2000 by the Committee of Ministers; and Guidelines 98/5/E 6 of the European Parliament and Council dated February 16, 1998 for the facilitation of the activity of lawyers in member states in which the lawyer did not obtain his/her qualifications.

The establishment of the notaries will contribute to legal security and considerably ease the burden currently placed on the courts.

The organization and functioning of this service will be regulated by a separate law that will embody the key principles pertaining to the institution of Notary as contained in the Roman Law .

<b>Short-Term Reforms 2006-2007</b>	<b>Medium Term Reforms 2008-2009</b>	<b>Long-Term Reforms 2010-2011</b>
Drafting and enactment of the new Law on Notaries and establishment of the Notary Association.	Notaries as an independent legal profession operate in accordance with the new legal framework and harmonize their activities with the relevant international standards.	Notaries public as an autonomous and independent judicial profession operate in accordance with the new legal framework and standards.

#### **D. PENAL SYSTEM**

The penal system, which includes 34 prisons holding over 8,100 prisoners, faces many problems after years of a lack of investment and outdated legislation. The prisoner rate per population is high in Serbia compared to other countries in the region partly because there has been minimal use of non-custodial sentences. This has led to overcrowding and increased costs. Prisoners are not held in conditions in line with international and human rights standards due to poor infrastructure and facilities, limited opportunities for rehabilitation programs and limited staff training.

The penal system also faces major new challenges dealing with special prisoner populations such as high security prisoners accused of organized or war crimes, a rising rate of juvenile offenders and increasing healthcare problems such as drug abuse. There has also been relatively modest support from international donors to reform efforts in comparison with other justice institutions, such as the courts or the police.

To address these challenges, the Ministry of Justice's Department for Execution of Penal Sanctions (DEPS) has developed a Penal Reform Strategy, which sets out the primary reform priorities. The Penal Reform Strategy is based on three key goals:

- To hold each prisoner safely and securely, in humane conditions in line with international standards;
- To promote the use of non-custodial sanctions to punish and rehabilitate offenders; and
- To reduce re-offending by prisoners after release.

DEPS has established twelve Commissions to lead reforms in priority areas, and intends to establish two more Commissions. Some progress has already been made by the Commissions to implement key reforms. The new Law on the Execution of Penal Sanctions has been enacted in the Parliament which provides an important framework to reform the penal system in line with international standards.

<b>Short-Term Reforms 2006-2007</b>	<b>Medium Term Reforms 2008-2009</b>	<b>Long-Term Reforms 2010-2011</b>
Based on the Penal Reform Strategy and Action Plan, implementing Commissions propose legislative amendments and action plans, penal facilities reconstructed.	Facility reconstruction and construction in accordance with the European standards completed, detention and reception units relocated outside the prison grounds, integrated connections and reporting system developed.	Reconstruction of facilities and staff training completed, legal framework implemented in accordance with the new European standards, communications improved, IT system is integrated and reporting enabled.

## **VI. PERFORMANCE STANDARDS**

### **A. RATIONALE**

Achieving the reform goals identified in this Strategy requires regular measurement of implementation progress during the 2006-2011 period. Given the scope of the relevant reform goals and initiatives, the most applicable and useful performance indicators reflect objective standards of judiciary's performance.

The Strategy Implementation Commission, in its capacity as the primary coordinating body for the Strategy's implementation, will be responsible for collecting the data required to evaluate the reform process. Based on the trends and relative progress reflected by the performance indicators, additional support in specific reform areas may be necessary.

### **B. Performance Indicators**

The Strategy's performance indicators are directly linked to the Judicial Reform Framework and are grouped in the four core areas of Independence, Transparency, Accountability and Efficiency. The specific indicators and metrics reflect various components of the Strategy, in each of the primary reform areas, and will be defined in the Implementation Plan.