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# BOSNIA- HERZEGOVINA

## BOSNIA-HERZEGOVINA DEMOCRACY AND GOVERNANCE ASSESSMENT

MAY 2007

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## **DISCLAIMER**

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## EXECUTIVE SUMMARY

### Assessment Objectives

This assessment of the status of democracy and governance (DG) in Bosnia and Herzegovina is intended to inform USAID’s development of a new long-term strategy for supporting democratic development and good governance in the country. With many existing DG activities about to conclude, the assessment is especially timely for setting priorities for new DG program interventions over the next three to five years. The assessment follows the USAID-recommended framework for strategy development methodology, which calls for a four-step analytical process followed by recommendations for programming priorities.

### Political Background

A good understanding of the political background of a country is fundamental to a sound DG assessment. In the case of Bosnia, the best current starting point is the 1992-95 war that grew out of the collapse of the Yugoslav state and the Dayton Peace Accords that brought the fighting to an end in 1995. Dayton did not create a new country or change state boundaries, but it profoundly changed the internal structures and political dynamics of the independent Bosnian state.

Unfortunately, years later it appears that this government structure prevents the Bosnian state from performing many of its sovereign responsibilities efficiently, if at all. In the last 18 months or so, Bosnia has begun an open, realistic “beyond Dayton” discussion centered around constitutional reforms. However, it appears that no broad consensus about national identity or state structures underpins this public debate about the future of the country.

The political triangle comprising the national government and the two entity components of Bosnia has coexisted uneasily but in relatively stable fashion since Dayton. This stasis also has led to a kind of locked-in status quo political balance due to constitutional, statutory and electoral structures and political dynamics. This equilibrium symmetry is now breaking down, mainly due to rapid political and economic changes occurring in the Republika Srpska. There, a consolidation of political authority around the governing administration and market-oriented economic reforms are yielding economic growth, greater political stability and a clearer sense of direction. The same changes are not taking place in the Federation. The emerging asymmetry presents very serious risks to, but also new opportunities for, democratic development and political change in Bosnia.

### Status of Democracy

In order to identify principal DG issues, the report analyzes five key elements of democracy: consensus, inclusion, competition, rule of law and governance. The lack of a consensus or common vision about the basic nature of the Bosnian state stands out sharply as the country’s fundamental issue. Dayton did not solve this problem, nor have the 12 years since. There is simply still no agreed-upon “Bosnia.” The country’s citizens do not share a strong sense of common national identity, and allegiance to the state is weak.

The polity is fairly inclusive but only within the parameters of ethnicity and settlement patterns brought on by the war. Political debate and competition is vigorous, with parties very active and

elections meeting international standards. Rule of law is still weak, but in a broad sense the country is governed by law rather than by arbitrary state action. However, the basic legal institutional framework reflected in the Dayton structures does not work well and is an important part of the fundamental governance problem—dysfunctional government. The bright spot in governance is at the local level, where progress is being made.

## **Principal Democracy and Governance Challenges**

### **State Parliament**

The lack of unifying state institutions is a dominant issue when looking at how to improve performance and strengthen legitimacy at the state level. State Parliament should play a stronger role in representing all citizens' interests in a directly accountable way. Its structure and limited authority make this national responsibility difficult to carry out. USAID should consider legislative strengthening at the state level, with certain focused activities with the two entity parliaments for pragmatic reasons.

### **Rule of Law**

Building respect for the rule of law is closely related to the state-building process and should be considered an important element in addressing DG issues. The administration of justice is inefficient and does not enjoy public confidence, but many of the system's deficiencies are amenable to modernization interventions. Rights protection, especially for minorities, will depend on the rule of law. USAID's involvement, which emphasizes state-level institution-building and public service delivery improvements in the courts, has the correct strategic focus. It should be continued.

### **Local Government**

The local government system is improving and donor programming, particularly USAID's, is achieving visible results in improving governance at the level closest to the citizens. With a recommended strategic focus on national-level issues local government programming has a lower priority, but it is making an important contribution to improved governance where it is most visible to the people. The planned new GAP II project should be designed in a way that its activities directly support national state-building objectives as well.

### **Political Parties**

Currently, political parties and leading politicians appear to be more a part of the problem than a part of the solution to Bosnia's governance problems. Nonetheless, they will be in the forefront of any "beyond Dayton" discussions and they will have to act as midwife for any new consensus about the future of the Bosnian state. They are not demonstrating that kind of political will now. USAID should work with political parties, but only at the national level in connection with state-building issues, especially constitutional reform and the role of State Parliament and its legislators.



## Civil Society

USAID has provided important institutional development support to civil society with considerable success. It is time for a new focus of engagement with civil society, one that contributes directly to the overriding DG strategic goal of helping Bosnia to build consensus around new constitutional structures and government institutions to support a modern, functional European nation state. Building public support for unifying state institutions and constitutional reforms, that is “demand side” civil society programming, can be the critical new element of USAID DG programming that strategically links the other institution-building work such as rule of law and local government to the core objective of helping to build a new consensus about the future of the Bosnian people and the state.

## Media

Media programming, to the extent continued, should be folded into the civic engagement efforts in order to improve the communications capabilities of NGOs and other civic groups in their broad-based advocacy work.

### **“Unifying State Institutions in a Reformed Constitutional Structure”**

The recommended objective of USAID’s Bosnia DG program could be concisely stated as “Unifying State Institutions in a Reformed Constitutional Structure.” Having stronger, better performing state institutions that help to unify the nation at the state level, and a reformed constitutional structure that makes this feasible, should be the “big picture” objective for USAID. Demonstrable results in the administration of justice, local government and civic activism can show progress toward this ambitious overall strategic objective.

This strategy is designed to help create consensus for democratic state-building in a post-conflict society. USAID DG programming also will support a broad range of other USG activities and foreign policy interests in Bosnia.

What might Bosnian democracy look like in four to five years if this DG programming is successful? Other major variables will influence the course of events, but USAID should hope to see a sharply improved court system and better local government performance. Most important, Bosnia will have in place a reformed constitution approved by a vote of the State Parliament and the Bosnian people. Strong civic activism will have had a direct influence on political leaders and the highest-level political decision-making in this process. Bosnia and Herzegovina will be a fully sovereign state, will be a member state of NATO, and will have achieved candidate status for accession to the EU.



## 1. ASSESSMENT OBJECTIVES

USAID decided to conduct a democracy and governance assessment in Bosnia and Herzegovina (BiH) at this time to inform the development of a new long-term strategy for encouraging democracy, good governance and the rule of law. Within the next year, the USAID Mission in Sarajevo will design new democracy and governance (DG) activities, to run for the next three to five years. Some parts of the existing program portfolio have been or are likely to be phased out, in some cases because those projects have come to a natural end. The Mission seeks expert analysis to help set long-term priorities for DG programming and provide recommendations for whether it should make interim adjustments in current programming in light of the priorities suggested by the assessment report.

Democracy International (DI) fielded a team to conduct this assessment under the firm's Indefinite Quantity Contract with USAID for Democracy and Governance Analytical Services. The team consisted of Glenn Cowan, principal of Democracy International, as team leader; Charles Costello, former USAID Deputy Assistant Administrator, Director of the Office of Democracy and Governance, and Mission Director in three countries; Brenda Pearson, an experienced Balkan expert who has worked extensively in Bosnia; and Reuf Bajrovic, an independent Bosnian analyst. The team gathered information for the assessment from interviews conducted during a three-week stay in Bosnia from mid-January to early February 2007, from documents provided by USAID and implementing partners, and from a recent literature review. Over the course of the field work, the team conducted more than 60 interviews in Sarajevo, Mostar, Brcko and Banja Luka.

The team has conducted this assessment in accordance with the methodology and framework of the USAID Office of Democracy and Governance, as laid out in *Conducting a DG Assessment: A Framework for Strategy Development*. This framework prescribes a four-step process and a recommended set of questions and analytical issues. The steps are:

1. Analysis of the status of democracy and governance in the country using five analytical "lenses" (consensus, inclusion, competition, rule of law and governance) for the purpose of identifying the principal DG challenge(s) facing the country;
2. Consideration of the country's political actors, interests, resources and strategies, leading to an understanding of how the political game is played;
3. Analysis of the institutional arenas in which political actors operate for the purpose of understanding their relevance to the principal DG problem and identifying opportunities for democratic advancement and constraints to change;
4. Consideration of the interests and resources of donors, including USAID, and other strategic considerations important to USAID, leading to identification of recommended areas for DG programs.

The framework is designed to lead to a document and discussion that lay out problems and possible solutions, suggest priorities and provide a basis for subsequent program choices and more specific program design. Following the assessment, it is expected that the USAID Mission will carry out the detailed sector analysis and consultation with prospective partners needed to select specific program activities and design program interventions.

## 2. POLITICAL BACKGROUND

The Dayton Peace Accord did not create a new country, but it changed profoundly the internal structure of a pre-existing state, which today casts doubt on what constitutes the basic definition of the Bosnian state. The current structure bears little relationship to that which existed before the war. Unfortunately, it is becoming increasingly clear that this government structure, in and of itself, prevents the state from performing many of its sovereign duties efficiently, if at all. There are a host of problems beyond that of state structure, but even were these other difficulties moderated, the artificiality of the state structure would still be debilitating. As the Venice Commission noted, the state structure

is neither rational, nor efficient . . . power is scattered on too many levels and is usually exercised by political or administrative units that are too small to function efficiently . . . A state the size of Bosnia-Herzegovina cannot afford constitutional arrangements that are too complicated as a result of which more than 50 percent of the GDP is spent on financing the bureaucracy.<sup>1</sup>

In the last 18 months, Bosnia has begun a realistic “beyond Dayton” discussion. If this political conversation is to result in a viable state, it can only be based on stronger institutions at the state level. The state institutions must demonstrate to Bosnians of all ethnicities that it is in their best interests to be part of a single state. No such broad consensus about national identity and state structures currently exists. Only if the politicians and elected leaders change the political dynamics will people begin to believe in a common future, but this assumes political will on their part, which is not the case with most political leaders in BiH. Pressure for change will also need to manifest itself from other quarters, such as public opinion, civic activism, interest groups, regional developments and the international community.

Self-sustaining state-level institutions need to be encouraged, or there is a real risk that the limited gains in state-building made in the past 12 years will evaporate, with unpredictable and perhaps dangerous consequences. This lack of unifying state institutions is a dominant theme in the current discussion of how to encourage democratic development and good governance.

The recent history of Bosnia is well known to USAID and does not need retelling in this document. How this past is reflected in current politics, however, is germane. In the years after Dayton, an equilibrium developed among the Republika Srpska (RS) entity, the Federation entity and the state level or national government of BiH. To a degree, a similar relationship existed among the three main ethnic populations. No single structure or group was predominant; the economy was managed reasonably well (although economic performance remains unsatisfactory); political freedoms and the rule of law were expanded; and socio-economic indicators improved slightly, though they remain below pre-war levels. The uncertain peace resulting from Dayton has held. The operating principle among donors was, in effect, one of mutually assured and incremental improvements at the entity level and among constituent peoples. Assistance was provided to both

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<sup>1</sup> “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative.” European Commission for Democracy through Law (Venice Commission), CDL-AD (2005) 004, Venice, 11 March 2005.

entities of BiH and to the state to help them improve in their respective spheres but with the unstated goal of maintaining a certain symmetry based on political realities on the ground, so that no power center became too strong or advanced at the expense of the others. Built-in structures providing for minority veto power reinforced this situation.

This managed stalemate has been broken in the past year or so. The political situation in Bosnia at the beginning of the assessment was redefined by several factors: a) the failure of the constitutional changes in the Bosnian State Parliament in April 2006; b) a national election campaign designed to accentuate and inflame ethnic differences (due to the fact that the constitutional reform debate before the elections placed this issue at the center); c) the voiced (and likely real) lack of concern with the European integration process; and d) since the elections and for the first time since the war, the RS is in an advantageous position in relation to the Federation, with the likelihood that the economic and other reforms taking place in the RS will ensure a long-term asymmetry between them.

In April 2006, Party for BiH (SBiH) parliamentarians, led by Haris Silajdzic, along with some members of the Croatian Democratic Union (HDZ), one representative from SDA and one independent MP, voted against the constitutional amendment package.<sup>2</sup> Silajdzic used the issue of constitutional change as an opportunity to return to political life and jumpstart his pre-election campaign.<sup>3</sup> Silajdzic called for defeat of the amendments on the grounds that they were not substantial and made the RS too strong as a separate entity. His counterproposal was premised on a new constitution based on European standards and, more importantly, one that would abolish the entities.

The election campaign was centered on the failed constitutional reform and the promise (or threat) by Milorad Dodik, Prime Minister of the RS, that he would “call for a referendum on independence of the RS if the threats to the RS continue.” This clear provocation by Dodik in response created much disquiet, especially in the Federation, and focused the election campaign once again on basic ethnic and personal security issues rather than the socio-economic problems of the country. Analysts tried to calm the situation by pointing out that there was no legal basis for the RS to hold a referendum on independence. These arguments mattered little in the face of Silajdzic’s retort that “had the constitutional reforms been adopted in the BiH Parliament, the RS would have been emboldened and would have been given an opportunity to call for a referendum.”

During this protracted and obviously divisive debate, the Office of the High Representative (OHR) was mute. Many Bosnians interpreted this as proof of the inability or unwillingness of the OHR to address this perceived deepening crisis, and voters reverted to fear of the past and old habits of selecting parties that presented themselves as the defenders of “vital national interests.”

EU integration had for some years acted as a strong impetus to a continued acquiescence to Dayton’s constitutional strictures. The prospect of joining the EU, even if at some distant date, had

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<sup>2</sup> After this vote HDZ split along the lines of support or opposition to the constitutional amendments, with those who opposed them leaving to form a new party, HDZ-1990.

<sup>3</sup> Haris Silajdzic had lost the elections for the Bosniac member of the BiH Presidency in 2002 to the SDA leader Sulejman Tihic. Silajdzic had left BiH, returning only to bring down the constitutional changes in April 2006.

provided a modicum of glue to a sometimes tenuous country vision. Central to EU goals, police reform with creation of a unified state police structure and reforms in the public broadcasting system were expected at the end of 2005. The Serb Democratic Party (SDS), faced with the political risk of supporting this controversial decision, determined not to bear the political cost of perceived compromise and instead allowed the Party of Independent Social Democrats (SNSD) to take over the RS entity government eight months before the general elections. It has not gone unnoticed that Milorad Dodik thus far has skillfully managed to avoid transferring police competencies to the state level and has clearly stated that any reform that threatens the existence of RS entity powers will not be acceptable. This stance presents a serious challenge to the power and influence of the international community in Bosnia, and it has a potentially devastating effect on the EU integration process, which had been one of the few goals shared among the three ethnic groups.

While the SNSD leadership clearly placed RS entity interests above those of Bosnia in general, they also, in a very short period, pushed through a series of reforms that have advanced the economic and governance position of the RS and made palpable the shortcomings of the Federation. For the first time since Dayton, the compact based on an assumed symmetry of development has been broken. SNSD was able to quickly form a government and in the first 60 days of governing attracted several billion KM of foreign capital. RS Telecom has been sold to Serbia Telecom for some 650 million Euros. The Czech state power supply company has entered an agreement with the RS entity government to invest 1.5 billion Euros in construction of a new thermal power plant. Investment in a tourist resort in the south of Bosnia, in the proximity of Dubrovnik, Croatia, will amount to over half a billion Euro. Alone, these three projects account for more than 2.5 billion Euro of direct foreign investment, which is more than the total amount invested in Bosnia in the last ten years. Besides these foreign direct investments, the RS entity government has signed an agreement with *Strabag*, an Austrian private firm, on development of a modern highway system in the RS. According to this agreement, the Austrians will build over 300 km of highways in the RS through a joint financing agreement of more than 2 billion Euros.

Such a sudden surge in direct foreign investment in Bosnia can be attributed to perceived stability of the SNSD-led government in the RS. Security of foreign investment is an issue that Dodik has continuously brought to public attention as the top priority of his government. Besides the increase in foreign investment, the RS entity government has, for the first time, allocated a serious percentage of its own budget for investment in infrastructure and other capital improvements. Sarajevo Canton and Brcko District still have the highest per capita investment ratios in the country, but the RS entity government has devised new and innovative ways to increase public-sector investment. For example, there will be a new development fund for the east part of Bosnia, which will receive about 100 million Euros in the next year alone. The funds have been directly transferred from the privatization of RS Telecom to this new body, which will allocate money to municipalities based on projects proposed to the government.

The long-term impact of the RS entity government's recent flurry of deal making with foreign state-owned companies remains to be seen, but the separate path being followed in the RS highlights the dilemma of Bosnian state-building. The more any one entity government makes strategic economic investment decisions on its own, the harder it becomes to approach the development of the country as a whole. Unfortunately, this is another example of the lack of political will that

has to be taken into consideration when formulating strategies for strengthening Bosnia-Herzegovina as a viable state seeking rapprochement with Europe.

Nonetheless, this frenzy of economic activity in the RS leaves both the Federation and the central Bosnian state looking ineffective and even apathetic. The Federation particularly is revealed as a weak “partner” when compared with the new vitality of the RS. The old habits of the Croatian and Bosniac parties of dividing Federation government ministries by ethnicity and then ignoring their ineffectiveness due to ethnic sensitivity will become even more apparent and galling to the voters. Although inter-ethnic coalitions of Croat-Bosniac national parties in Bosnia seemingly reflect agreement and cooperation, in fact mutual communication and common policy planning on the level of the Federation government is close to nonexistent. This is especially evident in regards to policy implementation at the level of cantons and municipalities.

These and other dysfunctions in the Federation prevent its government from even attempting seriously to follow the RS’s example. The current political response from the Federation government has been to criticize the RS government’s leadership rather than to make any effort at internal reform. This allows RS government leaders to appear decisive while Federation politicians produce nothing but rhetoric, and unfortunately appear to be entirely unconcerned with governing to achieve results.

One important unanswered question at the beginning of this assessment was whether political leaders in the RS would agree to a more constructive role for the whole of Bosnia. The new vitality in the RS has in many ways been positive for the country, as it seems to have contributed to some impetus for change and economic growth in the rest of the country. However, the negative effect of the ethno-nationalist rhetoric on the social fabric in Bosnia could be dangerous and has to be taken into account. **The risks and opportunities presented by this developing structural asymmetry are the most critical issues to be understood in formulating USAID’s new DG strategy to underpin upcoming programs.**

## 2.1. STATUS OF DEMOCRACY

The DG Assessment Framework calls for analysis of five key elements of democracy: consensus, inclusion, competition, rule of law and good governance. After considering the political situation, it is clear to us that a lack of **consensus** is the most serious obstacle to continued democratic development in Bosnia. **Governance** has been improved in the past decade, but competent service delivery and the need to build a solid social compact still require that considerable attention be given to public administration. The **rule of law** has improved substantially in recent years but the country cannot yet guarantee equal protection and due process to all citizens regardless of where in Bosnia they may find themselves. **Competition** and **inclusion**, albeit somewhat constrained, were not currently priority concerns.

### 2.1.1. Consensus

**There is no consensus or common vision of what constitutes the Bosnian state.** Moreover, there is no agreement on how to move toward such a consensus or even on what the acceptable alternatives might look like. There is simply still no agreed-upon “Bosnia,” and without such an agreement Bosnia will never be a stable, democratic, multiethnic country. Dayton did not settle



that issue; it only bought time to try to consider the issue in peace. The accords may be considered “successful” in delivering more than a decade of peace, but that same period of time clearly demonstrates that the Dayton arrangements have not proven successful in creating structures or an agreed road map leading inexorably to a permanent, consensual resolution of the most basic issues of statehood and national identity.

From our reading, meetings, conversations and observations, we have concluded that people living in the lands now called Bosnia think of themselves more as Bosniacs, Croats, Serbs, Christians or Muslims, or perhaps as residents of an entity, canton or municipality, than as common citizens of the Bosnia-Herzegovinian state. The central state is so weak and has such little relevance to daily life that for many it has ceased to exist, and there is no agreement on what a different state would look like. Leaders of the Federation (and one presumes their followers) voice objection to a Bosnia with a permanent RS entity. Many RS residents say they will not abide a Bosnia without an RS entity. Croats are unsettled by any construct that leaves them without a majority over some governmental unit – even one as dysfunctional as a canton. Immovable object meets irresistible force, acted on by obstructionist elements.

Bosniac leaders have shown little interest in the success of an entity they view as transitory at best. Their future vision is of a Bosnia without the Federation entity or the RS entity, so from their perspective there is little point in strengthening the Federation. By not caring if the Federation as a governmental unit succeeds, they make its failure predictable.

The Croat vision for Bosnia is less clear but certainly would include measures to protect and perpetuate ethnic divides and their disproportionate power. The Croats do not seem to care that the cantonal system is dysfunctional so long as they have control of several of their own.

The leaders of the RS and probably most Serbs do not see their interests adequately protected in a Bosnia without an RS entity. They are widely viewed by Croats and Bosniacs as intending eventually to divide the country permanently through partition. Even the hoped-for balm of European integration does not seem to be having the calming effect that was once expected.

### **2.1.2. Inclusion**

Bosnia’s constitution enshrines the “vital national interests” of the constituent peoples and in doing so guarantees both political inclusion and exclusion by ethnicity. Bosnia’s broader civil and political life is similarly fractured. Everyone can vote but not for some candidates or some offices. Citizens are guaranteed the right to live anywhere, but custom, recent history and fear dictate mostly ethnically based settlement patterns. Inter-ethnic marriages, once common, now are rare. Different and required alphabets guarantee inclusion for some, exclusion for others. Agreed upon positions and proportions of public-sector jobs are dictated by ethnicity, resulting in affirmative action for all with equal protection for none. Bosnians filter public discourse by ethnicity, including as valid their group’s views, excluding as invalid the views of other groups. The public square is available to all – one opinion, one voice and one group at a time. People who long for open and candid discourse feel frustrated and marginalized.

Despite this apparently bleak picture, in everyday life the society is inclusive, even if this is often true only within ethnic bounds. Regardless of ethnicity and residence, citizens can generally rely on some due process and equal protection enforced by a reasonably independent judiciary. Voting



is frequent and elections are freely contested even if turnout could be better. The press is free and vibrant, albeit frequently irresponsible. Media ties to special interests are well known and the consequent exclusion of certain views is to be expected. Petty corruption, particularly in education, occurs without regard to ethnicity.

Organized civil society increasingly provides a vital inclusive arena in this fractured society. Although too dependent on foreign donors, NGOs and less structured organizations are active and appropriately disorganized, duplicative, inefficient and messy – all for the better. NGOs active in politics do not appear constrained even if their goals and objectives are transparently partisan. Economic life, although diminished by the continuing dysfunctions of corruption, does not obviously suffer from ethnic exclusions. Unlike in the public sector, private-sector employment and promotion are mostly merit-based.

### **2.1.3. Competition**

Constrained by the bounds of inclusiveness discussed above, much of Bosnian public life is competitive. Elections are frequent and hard fought. Political parties are free to organize, recruit members, nominate candidates and campaign. Elections are administered fairly and competently, votes are counted as cast, and those elected take office and serve under the law. The Dayton system has certain functional oddities but nevertheless provides for significant checks and balances.

There is also a vigorous competition of ideas, in the media and elsewhere. Freedom of speech, expression and the press seem well established. The media sector is loud and fractious, if sometimes less than professional. A large number of civil society organizations, albeit generally sustained by foreign donors, compete for public attention and influence and provide one check on corruption and abusive government power.

Other institutions exist, inside and outside the government, to provide checks and balances on governmental power, although in practice many of these institutions are ineffective. There is a market economy and economic competition is very real, although the private sector remains limited and government policies and procedures still limit more open competition.

### **2.1.4. Rule of Law**

The rule of law as a general concept does not represent a fundamental problem in the context of identifying the core issues that affect democracy in Bosnia. In this broad sense, the country is governed by law, and the law is generally respected and followed. Neither the country nor the government can be considered lawless or operating mainly through the arbitrary exercise of power.

When analyzed in the context of what we see as a clear lack of consensus on the fundamental nature and organization of the state, however, the constitutional and legal structures that underpin formal governance in the country legalize and contribute to the gridlocked, dysfunctional political system that characterizes Bosnian democracy. In that sense, the legal system, particularly as reflected in the powers and authorities of the various levels of government and the jurisdiction of the courts, does become a part of the fundamental governance problem. Only programs that address constitutional reforms and a better definition of the permanent nature of the state can bring basic rule of law considerations into alignment with governance choices that will support a func-

tional, modern state. Of course, those choices themselves have substantive legal content as manifested in constitutions and statutes, so they also need to be informed by good legal analysis and draftsmanship at every step.

As with much else in Bosnia, the Dayton institutions, while perhaps immediately functional, provide a poor framework on which to build a permanent rule of law structure. Four disparate legal systems, each affecting in whole or in part Bosnia (at the state level), the two entities and the Brcko District, make it difficult to rationalize the justice sector. Lack of any overriding judicial authority makes disputes that arise from conflicting interpretations or procedures between jurisdictions problematic. A State-level Supreme Court with discretionary appellate jurisdiction, for example, would be desirable, but its utility would be questionable unless the legal authorities of the central government were expanded and the question of finality of entity Supreme Court judgments resolved. In other words, agreement on substantial constitutional changes is a pre-condition to any worthwhile decision to create a national Supreme Court. (A state court and a constitutional court at the state level already exist, but with limited attributes and jurisdiction.)

Within the current system, citizens do not expect to receive anything approaching a timely and impartial adjudication of their cases. The courts are burdened by a plethora of minor civil cases, mostly stemming from pro forma non-payment suits brought by various public/private utilities against their own customers. Case backlog in general represents a serious deficiency in the administration of justice. Even when not so constrained, the system overall badly needs modernization and does not yet enjoy the full confidence of the public. Further, citizens express concern about their rights should they be traveling in or choose to move to an area where they would be a minority. Equal protection and due process are present to some extent, but are not guaranteed.

### **2.1.5. Governance**

The essential problem of governance in Bosnia is the Dayton constitution, which vests all power not expressly granted to the national government to the entities and then grants next to no authority to the Bosnian state government. Put differently, the essential governance problem is the ethnically driven set of values and perceived “national” (read ethno-religious) interests that underlie the Dayton constitution and obstruct the consolidation of a single nation-state. Aside from international relations, military matters, trade, customs, monetary policy, limited financial management and cross border transportation, there is no real national government. To the extent governance affects daily life, Bosnia has two separate and distinct systems, one functioning, the other not.

The Federation is divided into 10 cantons, each of which functions essentially independently, exercising nearly the entire powers one ascribes to a state in the U.S. or Mexico, a Laender in Germany or an Oblast in Ukraine or Russia. The cantons are further divided into 81 municipalities. The cantonal system is a failure whose only “redeeming” feature is to provide one or another ethnic group control over a subnational governmental unit. This comes at the price of bloated payrolls, increased costs, ineffective service delivery, corruption and all manner of other dysfunctions, particularly in the health and education systems. The municipal governments are left with varying competences, uncertain funding and a sometimes fractious politics undercut by ethnic distortions and the unfortunate imposition of partisan local government. Municipalities cannot

rely on the cantons to perform their functions and do not have the resources to provide services themselves.

The RS, unfettered by the cantonal system, has improved local service delivery in the past year or so but remains hampered by its Communist past, replete with inefficient Communal Services organizations in their new private guise. These now “private,” albeit municipally or RS government-owned, companies provide most of the essential municipal services (such as water, electricity, lighting, heat, refuse disposal). They remain both inefficient and ineffective and need to be either fully privatized and responsive to customers and owners or brought back under direct government management, accountable to elected officials and ultimately the voters.

The Federation government is failing while the RS government has begun to reform many of its institutions and liberalize its economy. The old system of parity between the entities (albeit at a low level of development) no longer exists, and this gap continues to grow. Federation entity politicians and government leaders are not interested in solidifying an entity they view as temporary, while the leadership of the RS entity is moving to solidify what it views as a permanent entity. The disparity of service delivery will become more evident in the coming years and will act to further separate the entities.

The bright spot in governance is at the local level, where progress is being made in both entities. Many donors, USAID included, are giving greater attention to local government development. While this may be considered a positive for strengthening democratic self-government at the local level, the strategy issue raised for assessment purposes is whether local-level governments or local civil society will play a significant role in the near term on the national issue identified as most critical – lack of consensus on national identity and the basic nature of the state.

### 3. PRINCIPAL DEMOCRACY AND GOVERNANCE CHALLENGES

The Mission has provided background “scene setters” in each of the areas of DG, and rather than re-cast each we have included them as Appendix A to this document. The comments that follow build on these thoughts and represent the team’s views in these areas, particularly related to programming recommendations.

#### 3.1. State Parliament

The lack of unifying state institutions is becoming a dominant issue in discussions of how to encourage democratic development and good governance. Given the possibility of expanded powers, the State Parliament may be the only state institution capable of making significant progress to improve people’s lives, but not unless it becomes a responsive political institution. To date, state parliamentarians have not had to act as popularly elected politicians. This body lacks nearly all the mechanisms, democratic deliberative processes and skills necessary to propose and debate policy and legislation. State Parliament also lacks authority in areas that actually affect people’s lives in BiH. High turnover rates only worsen this situation.

Given the closeness of the April 2006 vote that rejected the adoption of constitutional amendments, there is hope for near-term passage of some package of reforms. If these reforms are adopted, it is imperative that state parliamentarians be given the professional training needed to discuss the most pressing issues confronting the country. Parliament will need to develop strong political caucuses that cross ethnic lines in order to debate the urgent policy reforms of the constitution, police and judiciary. Elected parliamentarians and their staff members need continued training and assistance in the drafting of legislation. The committee structures are fragile and will need to be strengthened, especially since the state has gained new competencies in the areas of taxation, defense and intelligence, which will require more vigorous engagement by parliament. Parliamentary committees will need to be developed in order to oversee the executive branch effectively.

Soon, the parliament and government will need to develop their own capacity to conduct research and analysis. International advisors drafted much of the existing legislation, and contentious legislation was implemented by international decree. It will be important for civil society and think tanks to raise the bar of policy debates through their active participation in parliamentary affairs. As the international community, mainly through the OHR, begins to reduce its imprint, the government and parliament will need to solicit public support for legislative initiatives and implementation.

Public opinion polling indicates that citizens have a high degree of cynicism and low degree of trust in their state institutions, including parliament, while at the same time they expect the government to solve problems. There is a tendency for the public to view state institutions as more corrupt and incompetent as they take on more competencies. There is precious little time before the public utterly loses confidence in the State Parliament’s ability to do its job. Direct assistance to bolster it may yet reverse this course.

### 3.2. Rule of Law

As stated earlier, building respect for the rule of law in Bosnia is closely related to the state-building process and should be considered a crucial element in addressing DG issues. However, we do not see the absence or deficiencies of the rule of law as fundamentally inhibiting democratic development in the country. At the very least, unchecked executive authority does not dominate the entire political system, as is the case with respect to rule of law in so many other countries. The constitutions and legal framework generally meet human rights standards, although the ethnic definitions of citizenship are problematic and even discriminatory against minorities. Whether the legal framework of the government at all levels makes for a functional, modern state meeting European standards is a different question, one that we treat in the context of governance and constitutional reform.

But rule of law in general cannot be considered a strong attribute of the Bosnian system, even if it is not considered a fundamental or core problem blocking democratic development. This is so because the legal system and the courts do not do a good job of “delivering the goods” in a governance sense. The administration of justice needs to have a strong public services delivery element.

Many of the problems with the administration of justice should be amenable to modernization interventions, and USAID is heavily involved in that effort. Court facilities and infrastructure are substandard. Information technology systems for filing, recordkeeping and case management need further upgrading. Budget levels are insufficient to bring the courts up to an efficient operating level that meets European standards. As a result, the courts suffer from excessive case backlogs, drawn-out procedures and long delays in reaching final judgments. These shortcomings cause a loss of public confidence in the justice system, thereby undermining respect for the larger principle of rule of law and weakening the foundations of democracy.

Since the end of the war in 1995, in fact, significant advances in many areas of the law have been achieved, albeit often with the heavy-handed involvement or even imposition of the international community through the Office of the High Representative. A new criminal code and code of criminal procedure based on the adversarial system are now in operation, with major assistance from the U.S. government.

The state-level High Judicial and Prosecutorial Council (HJPC), established in 2004, has independent authority to appoint all judges and prosecutors nationwide. This authority was used to make all sitting judges reapply for their positions and be subjected to a thorough vetting of their qualifications and judicial record. Some 30 percent of judges were not reappointed. HJPC has disciplinary powers over judges and prosecutors and has established both a code of ethics and, more recently, performance standards to be used to evaluate judges’ work performance. HJPC is also working to improve system-wide budget planning.

HJPC has received substantial assistance from donors, including USAID. It is generally seen as a qualified institutional success, with good results in strengthening judicial and prosecutorial independence from undue political interference and establishing uniform, higher standards for judges and prosecutors throughout the country. HJPC has been less successful in achieving another of its stated objectives – unified state-level funding for the courts and judiciary. Funding for the budgets for the courts come from the entities, and the courts themselves are entity (or cantonal) institu-

tions with the exception of a State Court and State Constitutional Court with limited jurisdiction. In the Federation there are 10 cantonal jurisdictions as well as ministries of justice. For Bosnia overall, 14 different, ostensibly autonomous budgets and administrative oversight units exist. This budgetary control has sometimes been used to try to interfere with judicial or prosecutorial independence.

Since 2006, however, HJPC has been able to establish objective criteria and procedures for selection of judges and prosecutors nationwide, as well as a uniform salary and benefits structure. Judges are well paid by Bosnian standards, giving them greater financial security and the ability to maintain their integrity against outside corrupting influences. Also, a relatively good ethnic and gender balance has been achieved in the judiciary.

All prosecutors and judges have been trained in the new criminal code and code of criminal procedure, with assistance from OPDAT, in the two entity-level regional Judicial and Prosecutorial Training Centers (JPTCs). All judges are now subject to mandatory Continuing Judicial Education at the JPTCs.

In spite of what are seen as these institutional successes, the operational weaknesses of the court system remain serious. A huge case backlog exists, due in large part to the dumping onto court dockets of voluminous unpaid utility bill claims that do not belong there. Modern case management systems are nonexistent, and the full use of computer-based information technology is limited. Low pay for non-judicial staff causes high turnover and also hampers court administrative efficiency.

A serious problem exists with respect to enforcement of judgments, which in the eyes of the users of the system is the ultimate standard of functionality of the system. This is also the case with notices of hearings, summonses and subpoena orders at earlier stages of proceedings. Government itself often fails to comply with court orders, which brings into serious question the applicable reality of the rule of law. But Constitutional Court rulings in cases dealing with controversial political issues are respected by governments at all levels.

USAID is heavily invested in the administration of justice through its five-year Justice Sector Development Project (JSDP). The project provides support to HJPC at the core institutional level in management and strategic planning; judicial standards, ethics, performance and discipline; and finance and budgeting. With the courts themselves, JSDP is helping to modernize court operations through a methodology using Model Courts with a well-defined technical package of improvements. The courts are receptive to these interventions, as they are seen as practical, immediately useful and visible to the public. JSDP also provides assistance to strengthen the capabilities of the State Ministry of Justice, but that ministry remains weak and does not play its role effectively.

In 2006 the Mission carried out a mid-term evaluation of JSDP that also looked at sectoral issues. Although generally favorable, the evaluation called for a greater USAID involvement and leadership in promoting a much-needed participatory justice sector strategy document and implementation action plan. Ultimately, the Mission decided to defer to DFID on this issue, as DFID had already begun work on a sector strategy with the MOJ. USAID decided to concentrate on the narrower issue of judicial independence and expects to lead a stakeholders' working group on that



topic once the draft strategy document has been presented. MOJ/DFID progress on the sector strategy exercise has been slow in the past year, with limited true “local ownership,” although DFID is conscientiously supporting the MOJ effort to produce a draft document internally for broader public review and comment later. Whether it will build broad-based momentum for reform remains to be seen, and its slow pace is worrisome.

The team concurs with the findings and recommendations of the 2006 evaluation, which remain current and therefore are not repeated in great detail in this assessment report. They call for priority on legislation to reduce case backlog sharply, accelerated roll-out of Model Court practices, legislation to achieve unified state-level funding for the court system and greater efforts to strengthen the weak MOJ to enable it to play a lead role in the justice sector strategy exercise. USAID has already acted on recommendations to eliminate legislative drafting assistance at MOJ and commendable, but failed efforts to create legal aid offices for criminal representation of indigents.

### **3.3. Local Government**

Local government as a governance arena is taking on greater developmental and political significance in Bosnia, and directly elected mayors are achieving greater prominence locally as political actors. Demand and support for greater decentralization of competencies and fiscal resources appears to be growing. This is evidenced by the advocacy role of local governments in the passage of the revenue sharing formulas contained in the state-level value added tax (VAT) law and in the passage of local government legislation in both parts of BiH.

A serious local government strategy exercise has been carried out with broad participation, and it includes action recommendations to deepen the decentralization process. The RS entity has enacted a progressive local government law, and the Federation entity has adopted a similar statement of principles on local government, backed by the respective municipal associations in both entities.

A national VAT was agreed upon and passed into law in 2006. The VAT not only strengthens state finances, a desirable objective, but also provides for assured revenue sharing with municipalities on a fixed formula basis with objective, transparent, verifiable criteria. Funds are transferred directly from the state treasury to the municipalities without first going to the entities, as was previously the case. This frees municipalities from capricious political decisions about amounts to be transferred, which was a problem, particularly at the cantonal level in the Federation entity.

The planned entry of many more donors into the local government arena (we suspect in part due to their frustration with other levels of government) raises the issue of donor overcrowding or over-resourcing the sector. A plausible case can be made for USAID exiting the sector on these grounds, especially given our concern that local government programming may not have a direct and immediate enough impact on the core issue of national consensus. Others argue that strong local government institutions help to create more confidence and space for serious discussion of the issues and alternatives for restructuring political institutions and competencies at other higher levels.

In any case, it should be noted that USAID has a recognized donor leadership role in local government programming based on the accomplishments of its GAP project. USAID was able to leverage \$10 million in Swedish SIDA co-financing for GAP, doubling the level of resources to put into the project, an uncommon donor partnering achievement for USAID.

Practically speaking, as of the time of this assessment USAID had already decided that it wants to continue its successful local government development work (GAP II). The Dutch, in addition to the Swedes, have offered to co-finance a new project, meaning that the planned USAID commitment of \$10 million over five years will be leveraged into a \$30 million total funding level for the project, a very significant DG investment.

Therefore, taking the new project as a given, representing USAID's largest direct investment in governance during the planning period of this assessment, we do recommend that it be designed to better support the Mission's revised DG priorities. This can be done by building in more "upward linkages," that is, mechanisms whereby local governments and civic organizations engage more directly on the critical issue of national consensus and the local interests at play in achieving consensus agreement at the national level.

In addition, activities in any new project should help to build cross-entity cooperation (this is being done in the current project) and not serve to harden entity level governments at the expense of the state level or municipal governments themselves. The vision should be to see local governments as part of a national whole, without prejudging the future status of the entities or the structures, competencies and institutions of the state on the basis of the current status quo.

The priority for national consensus building requires an openness to change that should not in any way be undercut by otherwise valuable support for improved local governance. Local government programming must be consistent with the defined DG strategy at the national level and for Bosnia as a whole.

### **3.4. Political Parties**

The continuous election cycles since the cessation of the war in 1995 have produced a distorted political experience more focused on competition than governance. Political party assistance to date has correctly concentrated on areas of campaign performance, but future programming should be directed to the organizational and governance aspects of party development at the state level.

We are particularly concerned about engagement with the political parties at the local level. Local Mayors and Councils are elected on a partisan basis and are likely to remain so. Nevertheless, local government can find nonpartisan approaches to most if not all of the challenges it faces. There need not be a partisan political focus to providing government services. There should not be a Party A way to repair a street as against a Party B way to repair a street. Such a discussion should be centered simply on the best way to do the job. By definition and intent, introducing political party development programs into this venue cannot help but further politicize a society already fractured rather than held together by politics. Introducing more partisan local government would be a disservice.



At the other end of the spectrum, the State Parliament needs to become more political. Its members should be encouraged to act as if representing constituents directly. Party caucuses should encourage policy debates and committees should hold field hearings to gather constituent opinion. We would encourage full engagement in a politically centered parliament program with the State Parliament but would reduce or halt further work with the entity deliberative bodies. Working with the Federation Parliament has not proven successful and is not likely to be more fruitful in the coming years. Under current conditions, strengthening the bodies in the RS may only increase the widening governance gap between the two.

Public opinion polling, though it has been a significant contribution to the development of Bosnian parties, is now widely available from Bosnian and regional firms, and the parties have the resources to fund their own research. There is no obvious need to continue to fund public opinion research for them. In fact, the top three finishers in the October 2006 elections had their own pollsters. The skills transfer has been completed, and we recommend no further USAID assistance in this area.

### **3.5. Civil Society**

Like much else in Bosnia, the organization of civil society is a consequence of the Dayton Accord and the donor community's imperatives. Dayton established the strong entity-based framework for advocacy, policy debate and consequent governance. Donor requirements have compelled much of civil society to organize as NGOs rather than adopt a frequently more responsive informal organizational model.

There are more than 7000 NGOs registered in Bosnia but probably only 5 to 10 percent are active and viable. For more than a decade the main partner for civil society has been the international donor community, and NGOs continue to depend heavily on international donor funding, which generally determines their activities.

Direct political advocacy by civil society needs to be more fully developed. USAID should concentrate its civil society support on building the advocacy capabilities and sustainability of a limited number of key NGOs working in the area of governance. There is much room for improvement and expansion of civil society in this role as political advocate. To date there has been a plethora of organizational and goal-setting exercises at the expense of membership development and active policy engagement. USAID should encourage two or three broad-based, statewide, membership-based NGOs to serve as an important public voice with the main political institutions.

Lessons can be found in the Centers for Civic Initiatives (CCI) civic movement called GROZD (Civic Organization for Democracy) in 2006. GROZD gathered more than 400 different NGOs and collected half a million signatures in the pre-election campaign. Using the strength of this petition, GROZD challenged political candidates to accept a 12-point civil platform developed by member consensus. The movement succeeded tactically, but some view it as having failed in its main strategic aim. We disagree, thinking GROZD accomplishments to be very significant, at least organizationally. That they were unable to accomplish a substantive political goal is hardly reason for condemnation. Further, it is apparent that any supposed strategic failure depends entirely on what it is the individual informant expected GROZD to accomplish. If a participant

wanted a political victory, GROZD is blamed for failing to deliver votes. If someone else wanted the parties to adhere to the civil platform and they did not, then GROZD is said to have failed.

GROZD was mostly successful, and there is much to be learned from the experiment that could inform further advocacy support programs. This was, after all, the country's largest ever NGO networking effort. Its leaders cite a number of problems: (1) a poor strategy for approaching parties; (2) internecine fighting; (3) a late start; (4) poor public education outreach, and (5) unrealistic expectations. But these problems all suggest important lessons. It would be unfortunate were USAID to dismiss the exercise as a failure instead of learning from its tactical success.

### **3.6. Media**

USAID has played a vital role in media development since its initial engagement in 1995. Many of the USAID programs and direct assistance are laudable achievements in a politically complicated and occasionally dangerous environment. American assistance has improved greatly the quality of journalism and establishment of leading media outlets. International assistance has a poor track record in media development in Bosnia. The USAID programs by comparison, however, have demonstrated a reasonably good return on investment. USAID has given itself too little credit for its achievements.

As many journalists, publishers, and station owners stated, "the main problems of a free media are behind us." Funding was made available in a critical juncture during the war and immediately following. The overall media framework is developed. Bosnia is in 19<sup>th</sup> place on the Freedom of Media List. Freedom of Expression and freedom of the media are guaranteed by the Constitution, the European Convention on Human Rights and several national laws including the Law on Protection for Defamation and the Law on Communications. The freedom of the press largely contributes to a thriving private media, which consistently scores higher in public trust than the public broadcasting services.

#### **3.6.1. Current Trends**

The media seems to be entering a consolidation phase that will decrease the total number of unsustainable media outlets but may give rise to powerful media fiefdoms, which has been the regional trend. International investment in the media is unlikely before the consolidation because there is too little advertising revenue. The media is increasingly using market research to guide its programming and to respond to demands from its domestic audience.

The financial independence of the public broadcasters remains a problem despite the collection of television fees, advertising revenue and donor assistance. The three main public broadcasting channels remain largely dependent upon the state budget, which is often bitterly fought over by political ethnic blocs. Many of the local television and radio stations are still under state ownership and are dependent upon cantonal and municipal government funding. Although the stations were supposed to be privatized in 2002, their sustainability is in doubt.

Media associations such as the United Media Industry (UMI) and Association of Electronic Media are still in the development stages despite their earlier formation. The associations seem to struggle with implementation of business plans, agreement on subscriber dues, and general ra-

tionale for existence. It is unlikely that the professional associations will contribute much to needed reforms.

### **3.6.2. Quality of Journalism**

There are two factors that contribute to the relatively low quality of journalism. First, the overabundance of media outlets means that there are always positions available regardless of the journalists' qualifications. Secondly, universities woefully under-prepare students for careers in journalism. There are five faculties that graduate about 120-150 students each year throughout the country. The theoretical focus of the university education is not complemented with practical training or development of production skills. A sweeping reform of the journalism faculties is urgently needed.

The postponement or avoidance of higher education reform created a need for journalist training outside the university system. International donors have provided funding and training for thousands of journalists in the past 12 years, but the training offered has been uneven in quality. Many journalists mentioned that the U.S.-funded training programs that focused on management and production skills were the most helpful. Experienced journalists have a low level of interest in further training; some complain that they are "over-trained." The most senior journalists in Bosnia are resistant to outside advice and training, and some have admitted to sending interns or designating a "permanent trainee" to attend donor venues.

### **3.6.3. Regulation**

Ethical and professional guidelines for journalists are found in the Press Code of Conduct, which is a self-regulatory instrument. The key self-regulatory body for print journalists is the Press Council, which is an independent NGO. The Council is charged with solving disputes between the public and the press but has no power to fine newspapers, revoke licenses or sanction publications. The Press Council is at a critical state in its attempt to establish a self-regulatory framework for the print sector.

The Communications Regulatory Agency (CRA) regulates the electronic media. The Law on Communications established the CRA as an independent nonprofit agency that regulates the television and radio, public telecommunications networks and licensing. The legal independence of this agency guarantees the independence of the electronic media from government interference. The Communications Regulatory Agency cannot offer all types of protection, but it has been praised for setting standards of journalistic conduct. The CRA simply transfers EU regulations as the easiest way to regulate, but this may not necessarily be the best method for Bosnia. For example, nearly 30 percent of the viewers in the RS watch foreign media. Croatian television broadcasts dominate the market because they can beam territorial signals from Croatian territory instead of via satellite, which means that no license fees or revenue taxes are collected.

### **3.6.4. U.S. Government Assistance**

The U.S. Government has spent about \$38 million for media development since 1996 in order to support independent broadcast and print media. The goal has been to create a self-sustaining, independent media in Bosnia that is free of political influence and provides citizens with easy access to objective information to make informed social and political choices. There were four key

objectives: (1) training journalists, (2) improving production skills, (3) creating legal and regulatory framework, and (4) identifying a local partner to transfer activities. The U.S.-based study trips and internships with American broadcasters such as CNN were universally praised as providing critical management training. Much of this has been accomplished, and it is time for USAID to end direct support to Bosnian media except to the extent that the media is a tactical component of other USAID DG programming

### ***Media Centar Sarajevo***

USAID assistance was particularly critical in the creation of the Media Centar Sarajevo (MCS). The MCS conducted programs on market research, business plans, sustainable media, educational support and training, legal framework and support of journalists' organizations. The MCS became a very effective delivery mechanism for selected USAID Media training activities. The MCS initially offered grants to more than 90 percent of the journalists who participated in training programs, but this is no longer the case. These trainings and American educational exchanges are cited as the cornerstones of private media development and management.

### ***Center for Investigative Journalism***

The Center for Investigative Journalism (CIN), which has been sustained by USAID since its inception, aims to create the working conditions and training that would allow journalists to practice investigative journalism. Most newspapers in Bosnia do not have the staff resources or time to develop in-depth reporting that relies on multiple sources and background evidence. The CIN sought to develop a market for investigative journalism by providing high quality stories to media outlets free of charge that would raise the public's demand.

There are a number of difficulties with this project, notwithstanding the relatively late transition of managerial responsibilities from international consultants to local staff. The essential problem is that there is no commercial market for investigative journalism. The primary clients are daily newspapers that do not run long articles, especially ones that are available to their competitors or available on the CIN website. On a positive note, the project succeeded in recruiting and training journalists from all geographic regions of the country on investigative techniques. Journalists learned to build stories through gathering evidence from multiple sources, whereas most news articles only quote a government official or director in charge. An indirect benefit is the new network of journalists who now have resources around the country that can provide inexpensive or free research to their colleagues located elsewhere.

### ***Private Electronic Media***

Private broadcasters such as Mreza Plus and TV Hayat said that USAID assistance for equipment such as lighting, studios and other equipment was critical to their establishment. The owners repeatedly praised US-based management training as vital to their early survival. The select group of media outlets including Mreza Plus, NTV Hayat, Radio Stari Grad, Nezavisne Novine, and ATV would probably not have achieved their acknowledged status if not for USAID funding. Unfortunately these significant early contributions were not always well targeted or managed, and they encouraged an unrealistic number of media outlets. Market forces will sort this over saturation out in the next years.

There are essentially two questions regarding assistance to the media: Does the media require continued assistance, and should USAID, given reduced funding, continue to provide it? The media in Bosnia have made enormous progress in the past decade but still fall short of producing high-quality journalism, free from political influence. Aside from the European Commission, the Open Society Fund and the Swedish Helsinki Committee have committed to continuing media assistance.

As stated above, it is time for USAID to disengage from its direct media development effort. Journalists may be as usefully trained as they can be at this juncture. Eventually, university graduates with journalism degrees will be prepared to enter the job market. The legal and regulatory framework guiding journalism is sufficiently developed if not fully implemented. The regulatory associations are formed but will remain less influential than they should be until publishers and owners find them useful. This is a slow but deliberate process that will force adherence to professional and ethical standards. And, finally, the decreased state funding and limited advertising revenue will force a consolidation of the media market.

## 4. UNIFYING STATE INSTITUTIONS IN A REFORMED CONSTITUTIONAL STRUCTURE

The core DG problem is a lack of consensus on the basic nature and authorities of the State at the national and subnational levels. However obvious it may appear, this conclusion can serve as a defining analytical and programmatic principle for donors wishing to assist Bosnia-Herzegovina. A sound DG strategy should give highest priority to addressing the core problem, and lack of consensus *is* the core problem.

Can Bosnia remain a single national entity under the Dayton construct, or does its future as a nation depend on a new constitutional framework? Many argue that the current Bosnian state cannot succeed and therefore will not survive indefinitely under Dayton.

As we see it, the “big picture” or overarching objective for all USAID DG programming over the next three to five years should be to help create and strengthen unified state institutions and a reformed constitutional structure. USAID should focus on building social consensus in favor of a reformed Bosnian nation-state that can protect the interests of all citizens, with workable public institutions framed in a workable constitution based on consensual agreement and ratified by popular vote.

Some might argue that the current constitution and existing institutions could serve as the foundation for a solid nation-state if only the parties would exhibit greater willingness to work together. We see this as no longer feasible given the strong identification of the current constitution and some institutions with the political status quo. If Bosnia is to prosper, a new or modified structure will have to realign the powers of the state and the entities or their successors and local governments.

The tough, hardnosed political bargaining inside government and among political parties that will be a necessary part of this process can best be facilitated by the diplomatic initiatives of the Embassy, not USAID. In particular, USAID’s involvement with a constitutional change process should focus on mainly on civic engagement and participation to create favorable conditions for change, described more fully below.

## 5. PROGRAM RECOMMENDATIONS

USAID's support for unifying state institutions should emphasize the courts, which are the institutional foundation for the rule of law and the best arena for USAID to carry forward an existing successful institution-building effort at the state level. Strengthening the state MOJ helps to build a needed executive ministry that can relate effectively with HJPC in the administration of justice.

Planned local government programming, while not dealing with state-level institutions, nonetheless can support improved institutions and governance at the municipal level in ways that open greater possibilities for change at higher levels. Cross-entity activities can break down counter-productive barriers to better governance. Suggested new legislative programs and with political parties in their work in parliamentary bodies would also be designed to strengthen those institutions' and organizations' role in state-building, especially on the question of constitutional changes and would be aimed at these goals:

1. Constitutional reform
2. Democracy qualifications for NATO membership
3. Adoption of EU standards and meeting political criteria
4. State Parliament
5. State-based rule of law (HJPC, MOJ)
6. Cross entity local governance/decentralization

These are all strategic goals that deal with the long term solidity of the Bosnian nation, but at the same time USAID cannot ignore more immediate needs. Quality of life and the near-term prospects for economic improvement will, to a considerable degree, affect how much effort and risk Bosnians are willing to accept in their state-building exertions. Failed government and instability, particularly if asymmetrical as between the existing entities, are more likely to lead to dissolution than consolidation. Better government and improved conditions might lead to continued stasis but are more likely to make the risks of an altered and strengthened state worth the effort if viewed as necessary to protect these gains.

This suggests that USAID, in addition to fostering state-building in the strategic sense, should also see that its programs are aimed directly at improving quality of life. Better governance, rule of law and a better standard of living are likely to increase faith in a strengthened state, making such reforms more likely. In rule of law this would mean improved court administration and public access to the court system. In local government it would mean improved delivery of public services and greater citizen participation in setting service and investment priorities. Objectives would include:

1. Effective local government service delivery
2. Improved administration of justice
3. Political parties acting as partners in governing
4. Civil society advocacy for good government

Current debate on constitutional reform, police functions, State justice entities, access to State media and other nation-state issues have initiated an energized public discussion on possible consensus about state-building. A continuation of this discussion is crucial to Bosnian unity.



The resurgence of the RS and its likely trajectory towards further reforms is leading to better social and economic conditions for its residents. Improvements in RS probably cannot be matched in the Federation due to structural dysfunctions and a lack of commitment on the part of leadership elites. The old programming basis of entity symmetry is no longer a sufficient basis for two-entity programming. State-building and competent management of nationwide functions are now more important than improvements in entity governance. At the same time, improved living standards can provide the impetus for placing trust in government that is necessary to any new state construct. As such, we think USAID programming can aim to encourage policy and management change from above while at the same time improving services and building demand for change from below.

What ties the public institution-building activities (ROL and DLG) fully into the recommended new strategy is the proposed larger engagement with civil society in programs directly supportive of unifying state institutions and improved constitutional structures. Civil society activities will concentrate on building public support for national institutions that can meet European standards and are part of a new constitutional compact that will satisfy EU accession criteria as well as meeting Bosnian needs. This “demand side” programming is the highest priority for a new DG strategy that seeks to achieve systemic impact in democratic state-building. Civil society advocacy to generate momentum for significant constitutional reform and state institutions capable of carrying out their national responsibilities is essential to “local ownership” and sustainability of any post-Dayton definition of Bosnian national identity and nation-state governance.

Our recommendations take notice of funding realities and existing commitments and the necessity for the Mission to consolidate programs and reduce implementing units. Much of this program is also supportive of US State Department policy goals, which include a Bosnia that is:

- effectively, efficiently, and democratically governed, and fully engaged in bettering the lives of its citizens, and
- pluralistic, tolerant, and welcoming of different faiths, traditions and viewpoints

## 5.1. Governance Programs

The local government programs under GAP should be continued and expanded as well as being augmented with new initiatives aimed at the strategic goals of supporting civil society advocacy development and improved state structures. GAP II should continue to work with its legacy municipalities and add new municipalities as budgets permit.

The current GAP implementer requires that participating municipalities accept the entire range of GAP initiatives as a condition of GAP participation. We recommend a change in this requirement to permit greater programming flexibility and implementation of GAP II plans resulting from effective citizen participation mechanisms. It is contradictory to suggest that the program is responsive to citizen input while it includes a strictly imposed set of program goals and objectives.

To foster a vibrant citizen participation effort as a component of GAP II, we suggest that the GAP II implementer or USAID directly:



- a. Award a grant or grants to one or more Bosnian organizations to design and manage community development programs as companion citizen input mechanisms to the GAP II projects (we understand that the SIDA funding underwrites small scale local projects). Local citizens in GAP cities would be identified and provided the technical and material assistance necessary to their organizing citizen structures to provide input to the GAP planning process. These citizen participation mechanisms would remain in place through the life of the GAP programs to advise local governments on implementation and any new GAP initiatives.
- b. These local citizen groups could also function as one local component of the USAID-funded national advocacy effort aimed at fostering state institutions. Either as an organization or as interested individuals, these activists would be encouraged to participate nationally or at the local level in communications efforts designed to educate voters on constitutional reform, State Parliamentary proceedings, and other efforts to strengthen state institutions. These local groups might also be a point of contact for the USAID State Parliamentary program designed to create linkages between parliamentarians and their constituents.
- c. We also think it is important for municipalities to work together, particularly across entities in both parts of BiH. To further this goal, we suggest that the GAP II implementer subcontract with a formal joint venture of the two entity-based Associations of Municipalities and Cities to conduct cross-entity conferences, training and other cooperative ventures designed to augment GAP II goals. Aside from the practical provision of technical assistance, we think it is crucial to the goal of strengthening state institutions that the local governments interact on a non-entity basis as frequently as possible.

***Governance Program Activities and Results***

- a. analysis of local government budget procedures, accounting and other cost control measures aimed at implementing modernized financial management systems, particularly including CIP planning;
- b. evaluation of current local government business regulation practices leading to technical assistance designed to provide efficient licensure, permitting and records management;
- c. create local ward level or lower community development partners as one platform for active and effective citizen participation mechanisms;
- d. assess citizen goals and objectives and teach the design and use of citizen surveys that would inform all local government program elements and measure changes in citizen satisfaction resulting from these and other programs;
- e. investigate zoning, site planning and subdivision controls and implement changes to integrate land use planning with building and zoning regulations; and
- f. engage the Associations of Cities and Municipalities in cross-entity training and advocacy programs particularly aimed at increasing the role of the mayors and councils in an active role with the State Parliament.

## 5.2. Rule of Law Support Programs

JSDP runs through 2009, so the medium-term parameters for USAID engagement in rule of law are already clearly established. The outlines for future activities are also fairly clear, subject to later revalidation and updated analysis (see below). If key results in JSDP are not achieved, a much more skeptical assessment of future prospects for assistance will be required.

Based on this assessment as well as our definition of the critical DG problem and recommended strategy, USAID's rule of law programming has the correct strategic focus. It is designed to strengthen state-level institutions and set national standards for the administration of justice even when delivery of services through the courts operates mainly at the entity and cantonal level in local courts.

State-level jurisdiction is currently limited to war crimes and "economic crimes" (i.e. major corruption and organized crime), and no state-level supreme court is a final arbiter on legal questions. However, this is merely a reflection of the limited authority of the national government under the current constitutional structures and is not likely to change much in the absence of a broader agreement on constitutional reforms.

It is in this area of constitutional reforms – consensual agreement to create a national social compact on the fundamental nature and definition of the Bosnian state – that the rule of law reappears as a new element of a revised DG strategy built around the issue of consensus. Consensual agreement on a post-Dayton constitutional structure necessarily involves conferring legal authorities on government at all levels in accordance with whatever new arrangements and structures are agreed upon. This may involve donor assistance on constitution drafting or restructuring of the jurisdictional bases of the court system.

As current programming runs for two more years, it is too early to say what USAID's involvement might be in any specific fashion at that time. The point to be made is that a strategic focus on building consensus for reforms assumes some changes in constitutional and legal structures and basic legal "rules of the game." Even if USAID's civil society-oriented involvement focuses more on "demand side" processes to stimulate civic engagement, the Mission should be ready to offer assistance on legal issues as part of constitutional reform that goes beyond the boundaries of a courts improvement project such as JSDP or its successor. Presumably, this would not take the form of a free-standing project, but rather be part of whatever activity(ies) the Mission settles upon to help build national consensus to overcome ethnically driven political differences.

### *Rule of Law Program Activities and Results*

- a. design and implement better systems for publication and delivery of notice of hearings and summonses;
- b. increase the effective use by judges of subpoena and contempt authorities to ensure compliance with court procedures;
- c. assess weaknesses in the current system in order to provide for stronger, more expedited enforcement of court judgments;

- d. most importantly for court administration, a more sophisticated, computer-based, integrated case management system;
- e. technical assistance support on an as needed basis for constitutional and statutory analysis and drafting as part of a constitutional reform, state-building process;
- f. establish “minor case” court or other form of Alternate Dispute Resolution as part of efforts to clear backlog;
- g. improved administrative procedures adopted and implemented across entities in both parts of BiH.

***Possible Program Outcomes***

- case disposition ratio improves and case backlog decreases (beyond that with legislative changes achieved under JSDP);
- improved public trust in justice system and satisfaction with administration of justice services;
- higher percentage of court judgments enforced, on a more expedited basis;
- modern case management system online and fully in use in all courts;
- unified funding of court system (if not fully realized under JSDP);
- specific legal inputs to state-building process improve constitutional framework.

**5.3. Civil Society Support Programs**

Since the end of the war, Bosnia has essentially been driven by the provisions of the Dayton Accord. This has not resulted in a consensus on the nature of the Bosnian state. Arguably, there is less agreement now than at any time since the war. It is unlikely that a consensus will ever be reached unless it is in large part demand-driven from the bottom up. Obviously, a new cadre of less divisive leaders would help; but the prospects for such a change are not promising, certainly not in the near term. We think that organized civil society acting in concert with responsible political actors can begin a national conversation that will help foster a consensus process.

We recommend that USAID select one or two Bosnian NGOs or other civil society organization(s) and provide them with the technical and material assistance needed to design and manage a long-term national campaign aimed at improving the political environment for state-building. The implementer(s) would:

- a. write a strategic policy, marketing and business plans;
- b. design and execute membership recruiting efforts;
- c. identify coalition partners;
- d. sponsor policy research;
- e. conduct opinion surveys;
- f. write a communications strategy,
- g. design advertising;
- h. create advocacy and constituency development plans; and
- i. undertake all of the strategies and tactics of a modern national issues advocacy campaign.

This campaign would be coordinated with and gain strength from the local advocacy efforts supported under GAP II. One target of its advocacy efforts would certainly be the State Parliament, particularly those members, caucuses and committees receiving assistance from the USAID political parties program.

No single organization can successfully motivate every sector of society. The principal program implementer(s) will develop messages designed to obtain broad support, but other organizations will have to communicate that support from their own perspective if the message is to be compelling. As important, the media has to hear this message from a variety of sources. We think USAID should encourage other actors in civil society to support this campaign principally by improving their communications capabilities. We recommend that USAID fund technical assistance efforts, either through the program implementers or directly, to train multiple civil society organization communications directors. In some cases this might include funding the director position.

### ***Possible Program Outcomes***

- National NGO(s) dedicated to state-building advocacy while also engaged with business, academic, religious and other civic interests;
- NGO(s) build nationwide dues paying membership, employ trained communications professional(s), develop nationwide communications programs, and develop policies on constitutional reform, EU standards, state governance and justice reform;
- State parliamentary hearings held in response to constituent demand;
- Media sector engaged in a fashion to make it responsive to NGO/citizen state-building policies;
- Constitutional reform debate supported by national media;
- Public opinion favors consensus agreement on nation-state due to broad public support effort;
- Political parties adopt effective State platforms based on citizen demand; and
- National NGO(s) linked to GAP II “demand side” citizen participation mechanisms.

## **5.4. Parliament and Political Party Support Programs**

The national political parties have demonstrated an ability to organize and campaign at a level that no longer warrants direct campaign assistance. Working to improve their capabilities at the entity level in BiH is contrary to the goal of national consensus, and local level political work will only act to exacerbate an already too partisan local politics. Nevertheless, the parties will continue, for better or worse, to play a central role in the political future of Bosnia, including any debate and eventual agreement about the nature of the state. This debate should be centered at the State Parliament, and we recommend that USAID support a program to provide technical assistance to the political parties and their members in their role as parliamentarians.

This would not simply be a parliamentary strengthening program, although it should have some of the aspects of such a program due to the rudimentary state of development of the State Parliament. Activities would include assistance with the organization and management of constituent services and other citizen advocacy work. Citizens would be encouraged to approach State Parliament as a means to redress grievances and members must be prepared to respond to such entreaties. Holding of field hearings, even if just for informational purposes, would be one way of to foster these new relationships.

Parliamentarians also need support in researching policy alternatives and performing the financial analysis associated with such choices. This program would include support for policy formulation through a sub-grant to Bosnian think tanks or individual experts, some of which would support GAP II decentralization goals. Constituency development efforts would be centered on the local citizens groups supported by GAP II, coordination with the consensus advocacy efforts sponsored by USAID and joint programs with the USAID-supported communications directors from a wide array of civil society organizations. Taken as a whole, this program would provide the top-down support for consensus that complements the bottom-up activities funded by USAID through its civil society and local government programs.

At the same time, we think the national parties may be at a point where broader democratization goals can be advanced as necessary to their success at the polls. Issues of internal democracy, inclusive membership, broad issues-based campaigns, membership development, open candidate selection and other transparent processes would be in their self-interest. This suggests a party development program, but in keeping with the overall goal of supporting the State, these should be addressed only on the national level and only with parties interested in cross-entity development and multi-ethnic appeals throughout BiH.

***Possible Political Party Program Outcomes***

- State Parliament increased administrative capacity;
- State Parliamentarians active in state-building in response to constituents;
- State Parliament field hearings on constitutional reform and other State institution-building debates;
- Package I/II governance provisions debated;
- Membership of national parties increased, particularly cross-entity and among multiple ethnic groups;
- Policy positions, candidate selection, fund raising and expenditures and other party activities openly debated and resulting from transparent processes.

## 6. CONCLUSION

We recommend “unifying state institutions in a reformed constitutional structure” as the main DG program objective going forward. USAID support alone cannot effect constitutional change, nor should it expect to. However, effective assistance in rule of law and local governance can contribute significantly to improved government institutional performance in those two key areas. Civil society programming, no longer designed simply to strengthen civil society per se, becomes the critical new tool to support civic activism in favor of a new and workable consensual agreement on the nature of the Bosnian state and the national identity of its citizens.

So many unforeseeable events will influence Bosnia’s destiny that it is difficult to draw a detailed picture of what a democratic Bosnian state and society will look like in four to five years. Under a best case scenario, using the recommended strategy and programming, we will see a sharply improved court system and better local government performance. Most importantly, Bosnia will have in place a reformed constitution approved by a vote of the State Parliament and the Bosnian people. Strong civic activism will have had a direct influence on political leaders and the highest-level political decision-making in this process. Bosnia will be a member of NATO and will have achieved candidate status for accession to the EU.

Even if we assume that such fundamental changes will come to Bosnia only incrementally and over a longer period of time, we still can expect to see significant visible improvements in the administration of justice and local governance that strengthen Bosnian democratic institutions. Civil society activism and leadership toward national consensus on state-building objectives will have generated continuing momentum for fundamental constitutional reform of the “temporary” Dayton structures through a peaceful political process.

## APPENDIX A: SECTOR POLICY BRIEFS

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### SECTOR POLICY BRIEF: RULE OF LAW IN BOSNIA AND HERZEGOVINA December 2006

For a more detailed description of the rule of law environment in BiH, consult the The Open Society Fund's 2006 report "Democracy Assessment in Bosnia and Herzegovina." The following is an edited excerpt from OSF's report.

#### I. BACKGROUND

The BiH legal system is *de jure* and *de facto* made up of four distinct legal systems with concurrent and overlapping competencies: the State of Bosnia and Herzegovina; the entity of the Federation of BiH; the entity of Republika Srpska; and the Brcko District. In addition, the ten cantons in the Federation of BiH also have certain legislative and executive powers. When discussing Bosnia's fractured legal system, it is important to note that State-level laws can only trump entity laws in those areas where the State has specifically been granted supreme authority. Thus, the four jurisdictions apply slightly different but equally authoritative civil, criminal, penal and criminal procedure codes and there is no mechanism to reconcile conflicting interpretations or procedures.

Over the past several years State-level competences have expanded through transfers of powers from entity and cantonal ministries to new state level institutions, such as the State Court, State Prosecutor's Office State Ministry of Security, Indirect Taxation Authority, State Ministry of Justice and the High Judicial and Prosecutorial Council (HJPC). However, parallel executive, legislative and judicial institutions remain. The State Justice Ministry has authority over the other 13 ministries of justice (entity and cantonal) others only regarding competencies that the other ministries have ceded to the State Ministry. Outside those areas, the State Justice Ministry is just one among equals. The same is true for the ministries of finance and ministries of interior (which run the local police). There are two exceptions: the HJPC and the Ministry of Security are unique State-level institutions, with no local counterparts. Their authority, and that of the Security Ministry's constituent law enforcement bodies, extends throughout the whole country.

A particular feature in BiH is the Office of the High Representative (OHR) which is the highest authority in Bosnia and Herzegovina under the Dayton Constitution. The High Representative and his/her counterpart, the Brcko District Supervisor, have unlimited "Bonn" powers to impose legislation, strike down or ignore judicial decisions, and wield supreme executive authority. The HighRep can overrule elected BiH officials. The multinational Peace Implementation Council oversees the work of the OHR and the Brcko District Supervisor. The High Representative's extra-legal position and his/her ability to exercise the Bonn Powers are intrinsically contrary to the principle of the rule of law. Although the current HighRep has used the Bonn powers sparingly, previous HighReps used it to significantly impact domestic political and legal issues, such as proclaiming laws and appointing/removing government officials. Thus, the Bonn Powers give the HighRep the ability to potentially undermine the independence of the judiciary.



Bosnia's unique, complex legal and executive structure poses considerable challenges to consistently and effectively implementing the rule of law in BiH. The Dayton Constitution deliberately created multiple semi-autonomous regions and a weak central state as a means of ending the war. However, 11 years after the conflict, the Dayton Constitution is one of the elements hindering the State's ability to create a unified judicial system, thereby impeding the uniform development and consistent application of laws throughout the entire territory.

## II. KEY CHALLENGES IN THE JUSTICE SECTOR

### 1. A Horizontal, Not Vertical, Legal System

The justice sector in Bosnia faces significant challenges from the micro- to the macro-level, laws regulating justice sector institutions lack harmony. Even in areas where the laws are in sync, their implementation is uneven. Thus, for example, different courts and prosecutors' offices have established different substantive and procedural norms for preliminary hearings, plea bargain agreements, and bail determinations. This means that in addition to not having equal access to justice in civil or criminal matters, citizens in the same situation are subject to unequal justice.

In actuality, most provisions in the Criminal, Criminal Procedure, Penal and Civil codes are identical. However, it is important to note that in those situations the different jurisdictions are not applying the *same* law. In other words, the Federation may apply anti-corruption law that happens to be identical to State anti-corruption law, but the Federation is still applying Federation, *not* State, law. Because of continuing political sensitivities concerning State versus entity authorities, current discussions of justice sector reforms are framed in terms of "harmonizing" rather than "unifying" the four legal systems.

### 2. Inefficiency, Corruption and Lack of Credibility

Most Bosnians are extremely cynical about the independence and integrity of justice sector professionals. Despite reforms in the BiH judicial system, a high number of citizens still complain about the inefficient, unresponsive and corrupt nature of judicial bodies, particularly at the local level and particularly in civil matters, which affect the broadest segment of society. There is a widespread perception that even basic documents such as drivers' licenses and birth certificates can only be obtained in a timely manner by greasing the wheels. In civil and criminal matters, for the right price charges can be dropped, verdicts can be bought, and cases can be buried or pushed up. Whatever results money cannot get, political influence will.

Federation court reports suggest that the principal problem is in the number of cases pending, transferred into the next year over and over, always with an excuse (e.g., insufficient number of judges, inadequate legislative competence). The vast majority of these cases are non-payment suits filed by utility companies against non-paying customers. Administrative law in Bosnia has not developed sufficiently to address these *de minimus* claims and utility companies have taken no steps to create alternative collection mechanisms, so they end up as law suits in civil court, taking their place in the queue alongside or in front of more serious property, family and other civil disputes. Sarajevo Canton and the Banja Luka municipal district have the largest case backlogs by far, but the problem is more widespread. Some jurisdictions have little or no backlog, but use it as an excuse for inefficient or corrupt practices. Alternative procedures to deal with utility service debt collection would go a long way to improving judicial efficiency and responsiveness.



Law schools in the region, Bosnia included, are doing little to adequately train the next generation of leaders. First, law faculties have failed to adopt modern, interactive teaching techniques and materials. Instead, the vast majority of law professors continue to use teaching techniques that emphasize rote memorization, depriving students of the opportunity to develop critical thinking skills. Second, there are crucial voids in the curricula at most law schools, in particular the absence of meaningful ethics instruction and the lack of preparation in advocacy skills. Third, law schools are perpetually under-funded. The absence of adequate resources translates into, among other things, limited access by students to up-to-date materials on both domestic and international law. Legal education reform is crucial to the promotion of rule of law within BiH, as well as to Bosnia's EU membership aspirations. Future judges, prosecutors, and advocates need the skills to adjudicate cases properly, fairly prosecute criminals, or successfully advocate for their clients' rights. Society as a whole benefits from properly trained legal officials. However, law schools in the region are doing little to train the next generation of leaders.

### III. STRUCTURE OF THE BIH COURTS

In FBiH and in RS, there are five judicial instances: in FBiH, the Constitutional Court of FBiH, the Supreme Court of FBiH, 10 cantonal courts, municipal courts, and minor offense courts; in RS, the Constitutional Court of Republika Srpska, the Supreme Court of Republika Srpska, district courts, basic courts, and minor offense courts. Pursuant to the Law on Courts of the Brcko District BiH, Brcko District BiH and the Court of Appeals of the Brcko District BiH.

The Constitutional Court of BiH is the highest judicial authority on disputes arising between entities and between government institutions over the application or non-application of provisions of the BiH Constitution (the Dayton Accords). When making its decisions, the BiH Constitutional Court considers, *inter alia*, the BiH Constitution and laws, as well as the European Convention for Human Rights. The BiH Constitutional Court may consider judgments by any court where a violation of Constitutions rights are alleged. BiH Constitutional Court decisions are final and binding. Entity parliaments appoint six of the nine judges for five years terms. The FBiH appoints four and the RS appoints two. The remaining three members are appointed by the President of the European Court of Human Rights.

The Court of Bosnia and Herzegovina was established pursuant to the Law on the Court of BiH, which came into force on December 8, 2000. The Court has criminal, administrative, and appeals departments and is managed by a Registry. The State Court is *sui generis*, functioning as a self-contained court of first instance, a court of appeals, and a court of cassation. The State Court has jurisdiction only over specific types of crimes, namely, war crimes, financial crimes (e.g., official corruption and human trafficking), and crimes against the State (e.g., treason and terrorism). Unlike the BiH Constitutional Court, which is the final authority on questions of constitutionality, the State Court operates alongside, not above, the Federation and RS Supreme Courts. It has no power to review decisions by other (not lower) courts. The Federation and the RS Supreme Courts function autonomously, as do the Brcko District Appellate Court, handling all civil matters and all criminal matters lying outside the State Court's authority.

Similarly, BiH does not have a single prosecutorial system and the BiH State Prosecutor's Office is not the highest prosecutorial institution in the country. It is also a *sui generis* institution applying only the criminal and criminal procedure codes of the State of Bosnia and Herzegovina, and

applying them only to itself. Because entity courts are not subordinate to the State Prosecutor, it is not possible for him to guide the work of entity prosecutors, let alone more subordinated levels (cantonal prosecutors in the Federation of BiH, and district prosecutors in the Republika Srpska). Furthermore, when the State Prosecutor refers a case to an entity or lower court, that case is no longer governed by State law. So, for example, when the State Prosecutor refers a war crimes case to a different (not lower) court, that case must proceed under ordinary murder, rape or assault laws because the Federation, RS and Brcko District Criminal Codes have no provisions related to “war crimes.”

#### **IV. HIGH JUDICIAL AND PROSECUTORIAL COUNCIL (HJPC)**

Since May 2004, when the Law on the High Judicial and Prosecutorial Council was adopted, the process of vetting, appointing and disciplining judges and prosecutors in BiH has been the sole competence of the High Judicial and Prosecutorial Council of BiH (HJPC). The HJPC replaced the previous three high judicial and prosecutorial councils (one at state level and two at entity levels), which had been established in 2002 as part of the overall “Rule of Law and Access to Justice Reform in BiH” under the auspices of the international community and the leadership of the Office of the High Representative. The Independent Judicial Commission was established, tasked with conducting the process of re-election of all the judges and prosecutors in BiH. In order to enable the establishment of the high judicial and prosecutorial councils, it was necessary to amend entity constitutions, which was also done by intervention of the High Representative. This was the first time that the legislature in BiH was prevented from appointing judges and prosecutors, which had been the case until then.

Members of the HJPC, 15 in total, are representatives of courts, prosecutors’ offices, and bar associations, as well as two members appointed by the BiH Assembly and the BiH Council of Ministers. The primary task of the HJPC is to secure an impartial, independent, and professional judiciary within its competence, as prescribed by Law. Members of the HJPC:

- (1) appoint judges, including presidents of courts, lay judges and auxiliary judges, in all courts at state, entity, cantonal, district, basic, and municipal levels in BiH, including the Brcko District BiH, with the exception of constitutional courts of BiH entities;
- (2) appoint chief prosecutors, deputy chief prosecutors and prosecutors in all the prosecutors’ offices at state, entity, cantonal, and district levels in BiH, including the Brcko District BiH;
- (3) give proposals to competent authorities in relation to their nominations and appointments of judges of the Constitutional Court of Republika Srpska and appointment of judges of the Constitutional Court of the Federation of Bosnia and Herzegovina. In effecting duties set by this paragraph, before giving its proposal, the Council shall seek written opinion from the relevant constitutional court;
- (4) receive complaints against judges and prosecutors, conduct disciplinary procedures, set disciplinary responsibility, and deliver disciplinary measures against judges, lay judges, auxiliary judges and prosecutors;
- (5) decide on appeals in disciplinary procedures;
- (6) decide on temporary removal from duties of judges, lay judges, auxiliary judges, and prosecutors. The same Law sets competences of the HJPC, as well as procedures for the process of election and appointment of judges and prosecutors, as well as forms of offenses and

disciplinary procedures against judges and prosecutors. HJPC is also in charge of overseeing court administration in all but the State-level courts.

## **V. FINANCING OF THE JUDICIARY**

Despite the establishment of a single High Judicial and Prosecutorial Council of BiH, the system of financing remains a considerable problem in effecting judicial independence. Namely, municipal and cantonal courts in the Federation of BiH are financed by cantonal budgets, making them dependent on the local executive authorities. This system of financing of the BiH judiciary is inadequate as it may lead to uneven access to justice for BiH citizens. It is thus possible for the local political authorities to influence the effectiveness of courts by denying or providing financing irregularly, thus, influencing citizens' rights to quick, fair and effective access to justice. Furthermore, as there is no state level system for re-distribution of resources from the wealthier to the poorer parts of the country, some courts work in relatively acceptable financial conditions, whereas others (due to a lack of funds) experience severe problems in every day operations. This situation is exacerbated by court debts, which can pile up for various reasons, including the court's obligation to pay high private defense attorney fees ("tariffs") in cases where criminal defendants claim they cannot afford counsel.

## **VI. DUE PROCESS IN BIH**

The Constitution of BiH guarantees the right to a fair hearing in civil and criminal matters, as well as other rights related to criminal proceedings in Article II/3.e), and that right is guaranteed by entity constitutions as well. The BiH Criminal Code, the BiH Criminal Procedure Code and the BiH Civil Procedure Code were adopted in 2003, at the same time that the Court of BiH and the Office of the BiH Prosecutor were established. These codes were prepared under the direct guidance and strong influence of the international community. One of the results is that the adversarial system replaced the inquisitorial system. This was accepted widely as a step forward. Still, it should be noted that criminal legislation is a peculiar mixture of continental and common law, with instruments of one system inserted into the other. This hybrid, with a mixture of two systems of law, is focused largely on the principle of efficiency, sometimes to the detriment of the principle of fairness.

BiH Constitutional Court decisions are adjusting criminal legislation and procedures as legal practice under the new system develops. Decisions from the European Court of Human Rights may also impact this process, as BiH has acceded to the Council of Europe, and BiH citizens may now lodge applications with this Court in cases of complaints related to rulings by domestic courts. Laws on Civil Procedure in BiH, FBiH and RS are largely based on the prescribed constitutional principles, but civil justice is rather marginalized in comparison with criminal justice, which receives significant attention and funding from the international community. Amendments of legislation gave priority to the assumed "efficiency" and the still unattained effectiveness of proceedings, and less to equality and fairness, which can ultimately lead to very negative consequences. The best example is the new institute of plea bargaining. Plea agreements have become one of the core mechanisms within the criminal procedure in BiH since its introduction in 2003. As part of the intensive reform of the criminal justice system, this common law based mechanism allows prosecutors and defendants to negotiate aspects of sentencing, provided that defendant admits fully to the crime and agrees to give up certain key rights, such as the rights to public trial

and to appeal. The BiH judiciary has quickly adapted to the use of plea agreements and embraced their use in all manner of cases, from the most minor trespassing offences to crimes against humanity. Plea agreements are designed in theory to maximize scarce judicial resources thereby enhancing the fair administration of justice for all. Although termed as a “shortened proceedings” in the national legal framework, there should be no curtailing of the respect for fundamental human rights, as observed in the shot history of using this institute in BiH.

One of the elements of the right to a fair trial is the possibility of receiving legal assistance in access to court. The courts are only required to provide legal aid to indigent and socially vulnerable groups in criminal cases when the defendant makes a specific request. Criminal procedure legislation at all levels regulates the issue of *ex officio* defense and provides for the possibility of a court-appointed, court-paid lawyer when the crime in question carries a potential sentence over 10 years, and in cases where the “interests of justice so require.” There are no public defenders in BiH. All defense attorneys are private practitioners. The RS Civil Procedure Code provides for the possibility for a representative of an NGO providing legal aid to appear as legal counsel, and the Brcko District BiH has a Legal Aid Office, which some believe is the model of regulating the legal aid system across BiH. In the Federation recently passed amendments allowed courts to appoint as *ex officio* representation lawyers/attorneys from *sui generis* institutions, such as legal aid offices in both civil and criminal matters. This is a great step forward, but only one of several needed to set up legal aid offices. Currently only Zenica-Doboj canton has such law. The other nine Cantons throughout the Federation have not yet prepared or adopted new laws on legal aid as a prerequisite for setting up the *sui generis* offices.

Although there have been several attempts, there is still no law on legal aid applying to the BiH State Court. The NGO Vasa Prava (“Your Rights”) is only civil legal aid organization that operates throughout the country.

## VII. DEVELOPMENT PROBLEM

Within the context of a very complex social, political, and economic system, a fragmented judicial system has been established, with a large number of pending cases. Courts are overburdened and slow, and citizens are displeased with what they perceive as a lack of professionalism within the judiciary.

Despite interventions by OHR and the international community, the “Court of BiH” project has not unified the judicial systems in BiH. Rather, four separate, though almost identical, legal systems co-exist uneasily side by side. Many feel that the international community and OHR have focused mainly on the State Court, which handles war crimes, organized crime and other financial crimes, corruption, and crimes against the State. General crime, civil, extra-judicial and administrative procedures that play out in the entity and Brcko courts and the constitutional courts enjoy far less attention from the international community.

It is important to note that despite the legislative changes, BiH citizens still spend a long time waiting for valid judgments. In one of its decisions, the BiH Human Rights Chamber observed that, pursuant to Article 6 of the European Convention, the state has a positive obligation to organize its legal system in such a way so that it provides for all persons not only the right to a fair trial in relation to their civil rights and duties, but also to guarantee the “reasonable time” of dura-

tion of such proceedings. The FBiH Ombudsmen's report for 2004 also indicates violations of the right to a fair trial in that proceedings sometimes continue for ten, even 15 years. Official data on duration of proceedings before BiH courts is not available, although it is officially gathered — including the duration of investigation, wait time for a hearing, length of appeals procedure for either civil or criminal charges. Moreover, in the domestic legal system, there is no effective legal remedy allowing an applicant to appeal against excessively long proceedings. On the positive side, the law stipulates that criminal suspects may not be held in custody for more than 12 months, so a defendant does not languish in jail while his/her case languishes in court. Persons accused in State Court may be held up to two years, due to the severity of the crimes alleged and the high potential for defendants to flee Bosnia.

### **VIII. ACTIONS TAKEN TO DATE**

Judicial reform in BiH was launched in 1998. However, real progress only began in 2003, following the establishment of the High Judicial and Prosecutorial Council (HJPC), State Ministry of Justice, State Prosecutor's Office, and BiH State Court, which contains the War Crimes Chamber. One of the first steps in the reform was the re-appointment of judges and prosecutors, with a concurrent reform of legislation, which brought systemic novelties into procedural legislations. The process of re-appointment of judges and prosecutors by the HJPC was almost completed a year ago. However, the latest amendments to the Law on the HJPC made the Council in charge of the appointments of minor offenses judges as well, and the process is still on-going. The number of judicial posts was decreased by 30%, and 20% of the remaining positions have been filled by new judges. There are several disciplinary procedures under way, mainly in relation to unethical conduct, but also some related to alleged incompetence. A foreign national had been the chief disciplinary prosecutor until August 2005, when the HJPC appointed a BiH national to this post. The BiH national is not doing a very good job of protecting the judiciary against the appearance of impropriety, at least not at the national level. During his tenure, the State Constitutional Court President was on trial for months and never forced to go on suspension, or at least step down from the presidency. The BiH State Court President just suspended a judge who is on trial for sexual harassment, after repeatedly requesting the Disciplinary Prosecutor take action.

According to the Council of Europe, inaugurating the War Crimes Department of the Court of BiH, and the Special Section for War Crimes of the Office of the BiH Prosecutor was “the most significant event in the area of judicial reform in BiH in the past several months.” With it, all the necessary institutional and legal preconditions for prosecuting war crimes in BiH in compliance with the highest European standards have been met. BiH thus became the first country in the region to become an equal partner of ICTY in prosecuting persons indicted by The Hague using local resources.

The Office of the Registry was established on the basis of an Agreement between the High Representative and the Government of BiH, signed on December 1, 2004. The Registry administers and provides support services for Section I for War Crimes, and Section II for Organized Crime, Fraud and Corruption of the Criminal and the Appeals Departments of the Court of Bosnia and Herzegovina, as well as to provide services of support for the Special Department for War Crimes and the Special Department for Organized Crime, Fraud and Corruption of the Office of the BiH Prosecutor.



Courts and prosecutors still lack sufficient staff and adequate resources. In December 2005 the High Representative decided to freeze judicial salaries in an effort to contain costs. A Working Group comprising representatives of state and entity ministries of justice agreed to reduce judges' salaries by 10% to allow for financing of other operational costs, prosecutors and support personnel. As of 2007, local Bosnian judges and prosecutors will be financed solely by the state.

Since reforms have not brought improvements in terms of pending cases and enforced judgments, the European Commission will invest several million euros in the introduction of IT into judicial administration. The HJPC is proposing the establishment of a single Centre for Training of Judges and Prosecutors in BiH, to be financed by the state budget as of January 1, 2007. The Council of Europe, in collaboration with the European Commission, played an important role in providing support for the existing two training centers, mainly through assistance in training events (for judges and prosecutors) and the establishment of a system of initial training (for future judges and prosecutors).

Reforms in court budgets are still needed to strengthen judicial independence. In the future, each court will submit its own budget proposal to the competent ministry of justice, along with comments by the HJPC. (This would be in compliance with the entity laws on courts and the Law on HJPC, although this law is still in the legislative procedure in the Federation of BiH.) Also, the relevant parliaments will approve budgets for each individual court. The HJPC has proposed an initiative to unify the Federation judicial budget in order to make the process more cost-effective. However, this initiative is stalled, pending the formation of a new parliament and the appointment of new FBiH justice and finance ministers.

The prison system in Bosnia does not meet international human rights standards. Prisons are generally overcrowded, with inadequate medical facilities and few or no provisions to accommodate the needs of juvenile offenders. The new state level Law on Enforcement of Criminal Sanctions has been adopted, developed with assistance from Council of Europe experts, and the Council of Europe is also leading efforts to improve detention facilities. However, there is still no clear and comprehensive prison reform strategy in BiH. Such a strategy would need to discuss creating a single prison administration for BiH, consider alternative detention measures, and elaborate a National Action Plan for Combating Drug Abuse that included inmate treatment programs. The government has approached international donors to fund construction of a new maximum security state (closed type) prison that could house approximately 400 persons. Under current project plans, the prison would cost approximately 14.2 million euro. To date, no international donor has pledged money for this project.

All the measures aimed at improving the situation in the judiciary are supported and publicly advocated by the authorities and politicians. However, what really moves the changes is the engagement of the international community. On one hand, this is good, as it does move changes. But on the other hand, it is a problem, *inter alia*, because it imposes certain solutions that may cause problems in implementation.

## **IX. THE U.S. GOVERNMENT ASSISTANCE**

The Justice Sector Development Project (JSDP) is a five-year USAID initiative being implemented by the East-West Management Institute (EWMI). The JSDP is committed to enhancing

the capacity of the justice system to maintain and strengthen the rule of law. An overarching goal of the JSDP is to provide institutional support that furthers judicial independence and the fair and efficient administration of justice throughout BiH. In particular, the JSDP is dedicated to reform measures that strengthen the High Judicial and Prosecutorial Council of BiH and the State Ministry of Justice, institutions that are newly established and play a key role in justice sector policy. The JSDP is further dedicated to improving court administration in BiH courts.

### **Component 1 - Strengthening the High Judicial and Prosecutorial Council**

JSDP provides various expertises to the HJPC to help ensure its successful transition to a viable domestic organization. JSDP is assisting the HJPC with institutional development in fulfilling its constitutional authority to govern the judiciary. Current areas of collaboration include justice sector policy-making, organizational planning and management, codes of ethics for judges and prosecutors, judicial performance standards, and expert technical assistance to meet specific institutional needs

### **Component 2 - Court Administration Reform**

JSDP is spearheading court administration reform through its Model Court Initiative introduce eleven reform activities in the model courts – among other things, a common case number system, judicial and court management, case backlog reduction, and public access to court services. Each year an additional four to seven courts are incorporated into the project.

### **Component 3 - Supporting State MOJ/Legislative Process**

JSDP is supporting the institution of the State MOJ to carry out its mandates by providing technical assistance and training for sectors' development and strengthening the legislative process by helping implement the requirements of the newly enacted Uniform Drafting Code, including a “dos and don'ts” drafting manual, compiling a database of drafters and training in legislative drafting and EU harmonization. JSDP is also promoting citizen participation in the legislative process using draft laws proposed by the BiH MoJ.

### **Component 4 - Criminal Legal Aid Reform (ended January 2007)**

JSDP is working with BiH counterparts to reform the current system of court appointment of counsel in criminal matters. JSDP is assessing the ex-officio system and the public defender office model with regard to the cost and quality of criminal defense representation. In addition, JSDP is promoting the introduction of standards for court appointments, the tracking of statistics relevant to representation of indigent criminal defendants, and the reform of the attorney tariff system.

### **Grants Program**

The JSDP will solicit grant proposals through an open call for proposals designed to encourage creativity among potential grantees in advancing justice sector goals. The JSDP will identify illustrative project activities in its Request for Applications (RFA) to provide general guidance. The RFA will identify two broad grant categories:



**Advocacy Grants:** These grants will support efforts to draft, advocate and/or implement laws, regulations, policies and practices relating justice sector reform. Activities might include research and analysis that produces reform recommendations, trainings or technical assistance, access to justice initiatives, or other projects addressing key issues facing the justice sector.

**Public Education Grants:** These grants will support efforts to increase public awareness of the judicial and legislative systems and reform efforts in these sectors. Activities might include brochures or other publications that educate the public about the functioning of the judicial and legislative systems, media campaigns, local opinion polling, the establishment of information centers, or other public education initiatives.

The American Bar Association Central European and Eurasian Law Initiative (CEELI) currently implements a legal education reform program in (BiH). This program, which began in spring 2005 and ends on July 31, 2007, focuses on skills-based legal education reform, through activities such as support for the development of law school clinical programs, internships and moot court competitions.

ABA/CEELI is assisting the Banja Luka Law Faculty to develop a pilot legal clinic program, which focuses on work with live clients. Students offer free legal aid for indigent people, under the supervision of practicing attorneys as mentors. The live-client clinic provides free legal aid in the field of civil, and partially, administrative law. ABA/CEELI is also assisting the Bihac Law Faculty in developing a simulation legal clinic program that provides a hands-on experience to future law students and helps them develop practice-based professional skills and values in the field of civil law (procedural and substantive). Both clinics include a classroom-based skills workshop and an external office internship component.

ABA/CEELI first implemented the Judicial Reform Index (JRI) in BiH in 2001. The JRI review consists of the expert collection and analysis of first-hand intelligence about the actual state and progress of judicial reform in a country (or region) and compares that information to 30 important indicators of judicial reform in emerging democracies. In 2006 ABA/CEELI implemented the second JRI in BiH, and this analysis reflected a number of positive achievements in the area of judicial reform that have been achieved since 2001. They noted in particular the establishment of the single HJPC. However, the newness of many of changes led ABA/CEELI to observe that it was too early to determine the effectiveness or impact of the reforms.

**SECTOR POLICY BRIEF:  
POLITICAL PARTIES IN BOSNIA AND HERZEGOVINA  
December 2006**

**I. BACKGROUND**

As Bosnia and Herzegovina (BiH) slowly consolidates its structures of governance and its political culture, a number of disturbing trends persist. Although the 2006 General Elections showed some improvement the voter turnout stayed only a bit above 50%. The personality and position-driven calculus of politics in BiH has shown no signs of abating, and expectations of government and politicians are very low.

For a variety of understandable reasons, great numbers of BiH citizens have lost faith in the ability of the existing political system to effect positive change but the decline in turnout is partly caused by frequent elections that have not brought about substantial political change. As a result, issues of long-term development and comprehensive democratic change within parties and the parliaments have been superseded by the needs of campaigns and the results to be gained through elections. Election cycles precluded party and parliamentary activities that would have encouraged long-term development in a continuous way. Actually, the 2002 General Elections were the first post-war elections in BiH to allow a full 4-year mandate to elected officials and MPs.

Not all of the blame for the current situation can be laid at the feet of political parties as institutions. The complicated, multi-layered and redundant systems and levels of governance and regulation, as well as the poor economic situation would challenge even the best of political parties from consolidated democracies. An unfortunately large proportion of BiH citizens believe, with some justification, that parties have served to deepen and further complicate an array of already serious problems. Indeed, there is ample evidence that political elites – and those who support them – profit handsomely from the status quo. Because parties have managed to insulate themselves from their constituents and in many cases their own base, the incentives facing governing elites are often at odds with the public interest, and politicians are allowed to ignore vital issues. Because the legislative process is often haphazard and disarticulated from practical, real world concerns, failure to act on even simple matters is viewed as acceptable. The accountability of political actors and institutions to their constituents and public must be improved.

Another constraining factor is that of ethno-nationalism, which continues to permeate politics, fragment the political spectrum, mute policy discussion, and complicate institutional design and operation of political structures. These constraints place limitations on expected results for both parliamentary and political party programs.

**II. ROLES OF INTERNATIONAL ORGANIZATIONS IN RULING BIH**

The governmental and legislative functions in the country are heavily influenced by, and often subject to the direction of, the Office of the High Representative (OHR). Parliamentarians and parties see less importance in carrying out ‘shadow’ or narrowly circumscribed governance functions, and therefore feel less incentive to be active or responsible. In addition, parties remain less connected to society because citizens, civil society organizations, and economic interest groups perceive that the parties are not conduits to real political authority or policy-making.

Nevertheless, power and authority eventually must shift from OHR and the international community in general to local indigenous political institutions. The OHR is scheduled to close in summer 2007, and to transition to the Office of the European Union High Representative. The Peace Implementation Council<sup>4</sup> (PIC) will consider any further duration and scope of mandate of the OHR at its session planned for mid February 2007.

Strong, democratic political parties will be critical to fully carry out their roles and functions in a democratic system when the OHR withdraws.

### III. POLITICAL PARTY DEVELOPMENT CHALLENGES

Political parties in Bosnia-Herzegovina do not fare well in public opinion surveys.<sup>5</sup> To regain the trust of people, a political party must be able to seriously and systematically tackle the issues of relevance for the people. Some political parties are relatively new and inexperienced. Many frequently lack the ability to play their roles of mobilizing and representing citizens and linking them to governance. Also, parties often do not give citizens a sense of meaningful political identity and participation. Even in the case of some older parties, links with the general public are often scarce, and often civil society organizations and social movements attempt to substitute for the role of parties. Non-party activism, however, does not necessarily improve the performance of democracy: it tends to reflect single issues and not the wide diversity of policies with which most parties are concerned.

As in many developing countries, political parties in BiH are often personality-based and lack the organizational capacity to campaign nationwide, present ideologically compatible candidates, and recruit and train pollwatchers. BiH political parties lack comprehensive strategies on how to govern after winning office, and are often ill-prepared to staff, administer, and oversee government agencies. A democratic election serves only a limited temporal purpose if the resulting government cannot at least partially meet voters' expectations.

Challenges can be summarized as follows:

- Various and often competing levels of power and authority between the entity and the BiH institutions;
- Ethnicity as the primary identifier among parties and voters;
- Lack of policy identification among parties;

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<sup>4</sup> Following the successful negotiation of the [Dayton Peace Agreement](#) in November 1995, a Peace Implementation Conference was held in London on December 8-9, 1995, to mobilise international support for the Agreement. The meeting resulted in the establishment of the **Peace Implementation Council (PIC)**. [The Steering Board members](#) are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey. The Steering Board provides the High Representative with political guidance. In Sarajevo, the High Representative chairs weekly meetings of the Ambassadors to BiH of the Steering Board members. In addition, the Steering Board meets at the level of political directors every three months. For more information on PIC see at [www.ohr.int/ohr-info/gen-info/#6](http://www.ohr.int/ohr-info/gen-info/#6)

<sup>5</sup> See UNDP Quarterly Report 2004, October – December, p. 13. This polling suggests that the main reason for not voting (42.7% of the people in BiH who did not vote: 44.6% in the F BiH, 40 % in the RS and 15.5% in Brcko District) is lack of confidence in politicians and their ability to make a difference.

- Parliamentary institutions of insufficient accountability, responsibility and lack of the ownership over the legislative process.

Notwithstanding these constraints, it is inevitable that there will be a transition in power and authority from OHR and/or the international community to local indigenous political institutions.

#### **IV. IDENTIFIED NEEDS**

##### **1. Insufficient Institutional Political Party Development**

Institutional development can be defined as the process whereby parties become better organized, practice democratic values and establish rules and procedures that will allow them to compete more effectively and be more successful in elections and at implementing their policy preferences. In order to institutionalize themselves, political parties need to evolve in a process that closely follows the public sentiment and parallels social development. It requires a flexible mix of guiding ideas, underlying interests, democratic practices and rational decision-making.

###### ***1.1. Organizational Strength***

In comparative terms, political parties in BiH appear relatively strong and prominent in BiH. Parties appear to have relatively comprehensive organizational coverage of the country. Party members are major players in parliaments and executives at all levels of government. State funding of political parties has provided parties with a built-in resource base.

However, parties do not effectively deploy their organizational resources at the local, intermediate and national levels. In this sense, parties should be able to use the material capacity as well as the human and financial resources that a party has, including the skills and the personnel with which these are managed. Deployment and political promotion of younger party members is not effective in BiH.

###### ***1.2. Political Identity***

Although political parties widely understand the importance and utility of researching the electorate, they have not yet developed the institutional capacity to undertake and analyze this research themselves. They appear to understand how useful polls and focus groups can be for responding to the priorities and preferences of the electorate, but do not yet generally have the funding to conduct this research reliably or the expertise to design, oversee or analyze this research themselves.

Political parties have weak bases for researching and formulating public policy. Think tanks are still developing in BiH, and parties have not developed this expertise ‘in-house.’ Because parliaments are weak both politically and institutionally, they lack the committee staff and research structures that often stimulate policy development within parliamentary caucuses and thus within parties.

Political parties accept the importance of developing organizational structures and strategies for promoting themselves in the mass media, but to this point have poorly developed capacities in the area of communications and public relations. They appear willing to make improvements in this

area, but have yet to do so. A few of the parties express frustration that the mass media does not cover their positions and activities accurately or sufficiently.

### ***1.3. Internal Democracy***

As was the case in other Central and Eastern European (CEE) countries, most of the biggest political parties in Bosnia-Herzegovina were formed in early 1990s. Some new political entities have appeared after the war 1992-1995 but most of these did not gain wider influence in the political spectrum. Again, as was the case elsewhere in CEE, parties started as social movements rather than as political parties, and in BiH many have had strong national or even nationalistic orientation. As a consequence, their organizational structure is very weak. With the exception of the post-communist successor Social Democratic Party (SDP) to a certain extent, only a minimal role is played by the general party members, whereas a dominant influence is exerted by party leadership. In many cases the recognition of what party members are and what they might do is often lacking. In other words, the parties in BiH are more cadre than mass, more general than specific in their target audiences and more concerned with votes than with members. The National Democratic Institute (NDI) has been working since 1996 to strengthen the role of members within political parties in BiH. The International Republican Institute (IRI), starting in 2004 in BiH, has been working on strengthening membership orientation of political parties as well. Although some improvements are noticeable, much more should be done to support the development of a variety of internal party mechanisms and tools to involve membership in policy planning and the decision making process. A general sense of the lack of internal democracy appears to be a significant reason for people not to trust political parties in BiH in general, negatively affects people's will and interest to join parties (apart from carrier building aims).

Democratic values and practices are crucial for democratic institutionalization and the development of party strength. It is preferable to practice democracy within one's party. When this is not the case, voters readily perceive the contradiction and a party that does not practice what it preaches is less likely to be favored at election time.

### ***1.4. Internal Unity***

BiH has witnessed disruptive divisions of political parties. Such divisions happened in almost all of the bigger parties in BiH, from the centre-left to those at the centre-right and the extreme right side of the spectrum.

While a diversity of opinions is to be cherished and defended within a party, splits and erosion of party membership in BiH have been caused more by the lack of a solid internal democratic structure, rules and procedures as well as ideologically vague organizations. The divisions within political parties in BiH have brought only fragmentation and instability of the political scene. Divisions also reflected negatively on the work of the legislatures, by making it difficult to form stable and lasting alliances.

Disagreements occur from time to time in any large organization. The worst consequences of factionalism, splits, and loss of public confidence can be minimized by having mutually agreed upon rules and continued due process so that democratic pluralism will not lead to deep divisions. In general, this can be accomplished by ensuring internal democracy and by adhering to the party

principles, program and statutes. These measures are also important preconditions for any eventual coalition building attempts.

### ***1.5. Campaigning Capacity***

In comparative terms, political parties in BiH appear relatively strong and prominent. Parties appear to have relatively comprehensive organizational coverage of the country although ethnic and entity division of the country marks and limits their achievements at the elections. State funding of political parties has provided parties with a built-in resource base.

In pragmatic terms BiH political parties are almost universally understaffed and weakly organized. They do not possess the resources or personnel of the parties of Western Europe. They often remain fragile, lacking both a strong organizational structure and a solid party identity. They are mostly catch-all parties, developing as organizations with very loose electoral constituencies that appeal to a wide clientele of voters. Although the party system in BiH has evolved, in many ways parties can still be characterized as “electoral parties” that are likely to offer ideological and policy programs to win the elections as opposed to the parties from developed democracies that concentrate on winning elections to implement their programs. Consequently, candidate selection system, although varying from party to party, mostly serves to secure sinecures for party cadres than to allow promotion of new political ideas and approaches.

## **2. A Desirable Party-Civil Society Relationship**

Parties still do not have strong collaborative relationships with civic organizations nor do they appear to generally enjoy civil society’s trust. Civil society organizations are ambivalent about political parties – hoping that parties will become more responsive, but at the same time disappointed in past party performance. Parties generally show an interest and willingness to work more closely with civil society, but appear to lack a good knowledge of BiH’s civil society sphere and do not yet have a strategy and/or ‘know-how’ to accomplish this.



**SECTOR POLICY BRIEF:  
MEDIA IN BOSNIA AND HERZEGOVINA  
December 2006**

**I. BACKGROUND**

The uniquely complex political situation in BiH impacts significantly the development of the media. Following the practice of western liberal democracies, freedom of expression and freedom of the media in BiH in general are guaranteed by the Constitution, the European Convention on Human Rights, and several national laws including: the Law on Protection from Defamation (hereinafter: Defamation Law) which decriminalizes defamation, and the Law on Communications, which established the Communications Regulatory Agency (CRA).

Following is an edited excerpt from the Open Society Fund's "Democracy Assessment in Bosnia and Herzegovina," a 2006 report that summarizes the development of the BiH media.

**1. Independence of BiH media**

*1a. Press*

The press is not subject to regulations in terms of editorial policy and content; instead, its ethical and professional standards are incorporated into the Press Code of Conduct, which is a self-regulatory instrument. The key self-regulation body is an independent non-governmental organization, the Press Council, established jointly by all the associations of journalists in BiH. The Press Council tries to resolve any disputes between the readers/the public and the press using only the journalistic tools available: right to a response, publication of correction, apology and rebuttal. The Council has no power to sanction, issue or revoke licenses, or fine newspapers and magazines. So, the government has no legal mechanisms of direct influence over editorial policies of the press.

*1b. Commercial RTV sector and the Communications Regulatory Agency*

As for electronic media, and in compliance with the practice of western democracies, regulation rests with the Communications Regulatory Agency (CRA). The Law on Communications regulates the communications sector in the country and establishes the CRA as a functionally independent, non-profit agency regulating the RTV sector, public telecommunications networks and licensing, and defining basic conditions of operation of joint and international communications structures. CRA is responsible for planning, coordination, allocation and assignment of the spectrum of radio frequencies. In essence, this means that the legal independence of the Agency guarantees also the independence of electronic media from government interference.

*1c. Public broadcasters*

There is a public broadcasting system, made up of three broadcasters: BiH Public Broadcasting Service (hereinafter: BHRT) covering the level of the state; Public Broadcasting Service of the Federation BiH (RTFBiH) at the level of the Federation BiH; and Public Broadcasting Service of Republika Srpska (RTRS) at the level of Republika Srpska. Public broadcasters are funded by the RTV subscription fee (TV set ownership tax), advertising and sponsorship. Editorial independ-



ence from government is further guaranteed by the fact that public broadcasters may not receive any state subsidies for regular programming and production. Finally, as public broadcasters are also subject to the rules of CRA, independence of public broadcasters is conditioned by the independence of CRA.

## **2. Positive and negative indicators of media development**

In the past ten years, the media in BiH have gone through a difficult period of post-war reconstruction, which entailed an expansion of the media sector, adoption of a series of laws relating to the media, establishment of regulatory and self-regulatory bodies, and development of the media market. The overall process has been marked and, to a large extent, determined by continuous efforts of political elites to maintain control over key media, particularly public ones, as well as constant efforts of international players (especially the High Representative, the European commission, USAID, as well as many others) to prevent the establishment of political control over the media, to assist the development of independent media, and to establish a functional legal framework for activities and development of the media sector. Such a polarized arena--with political elites on one side, and the international community on the other--leads to constant conflicts, delays in reforms, as well as hindrance in the implementation of laws which have been adopted, or rather, imposed by the international community and the Office of the High Representative. For example, until October 2005 and the adoption of the Law on the BiH Public Broadcasting System, in the past ten years the BiH authorities had not adopted a single law related to public broadcasting service at state or entity levels. All the decisions on these laws were imposed by the High Representative.

### ***2a. Positive indicators***

Today, there is a plethora of media outlets in BiH, particularly as compared with a relatively small population of some four million. Namely, according to information from the CRA public register of the media, in 2005 there were 42 television and 146 radio stations. Of these, 104 are private -23 TV and 81 radio channels. The situation is similar with print media, with seven daily newspapers and almost 50 weekly and bi-weekly publications, published on regular basis.

According to information available in relation to ownership over key media, at the moment BiH has no cases of serious media concentration which may represent any threat to fair and open market competition. The Avaz publishing company can be said to have gone further than any other in establishing a strong vertical ownership structure, as it includes the leading daily paper, the largest printing house, and the strongest distribution system, including several special publications such as Azra, Sport and Express. Still, all this does not put Avaz in a monopolistic situation in print media, particularly in view of the versatility and number of print media in the country.

The situation with Zeljko Kopanja in Banja Luka is similar, as he owns a printing house, Nezavisne novine daily, and the NES radio station. Again, even here one cannot speak of indications of monopolization, but rather about skillfully associated elements of media industry, which secure a clearer future of this company in a different situation. Moreover, reports on the ratings of electronic and print media in BiH do not indicate that any single media outlet dominates the market.

According to the report on self-sustainability of the media sector in BiH, published in 2005 by IREX, this is the data on circulation of newspapers in BiH (from no less than once a week, to

daily): Dnevni avaz 40.2%, Vecernje novosti (from Serbia) 11.9%, Oslobođenje 9.8%, Vecernji list (from Croatia) 9.3%, Blic (from Serbia) 8.0%, Glas srpski 7.8%, Nezavisne novine 7.7%. The same report cites the following data on circulation of magazines: Glorija (from Croatia) 16.1%, Azra 12.3%, Express 9.2%, Slobodna Bosna 9.1%, Dani 8.1%.

The media market can be said to be entering the consolidation stage, which will lead to a decrease in the total number of media outlets, and the creation of several powerful players in the field. Major international media corporations have shown limited interest in investing in the BiH media sector due to: administrative barriers; uncertain legal environment for businesses, oversaturation in the media sector, and a limited advertising market. The two major exceptions thus far are the Slovenian Kmecka družba, which bought a considerable stake in the Oslobođenje daily, and the arrival of TV Pink from Serbia and Nova TV from Croatia through local station OBN.

### ***2b. Negative indicators***

BiH is obliged to implement the Competition Law, as required by the Stabilization and Association Agreement (SAA) with the European Union. However, ineffective and complicated administrative structures have prevented the implementation of the Competition Law and the establishment of the Competition Council, so that even today more than three years after the adoption of the Law, the Competition Council has not become truly operational. An additional problem is the lack of ownership transparency of companies in general. Namely, there is no central register of print media, nor a central register of commercial companies, either in the Federation BiH or in BiH as a whole, thus no real transparency of ownership over the media.

In addition to public broadcasters--BHRT, RTF BiH and RTRS--there are also 74 TV and radio stations under state ownership, at municipal and cantonal levels across BiH. These remain largely dependent on municipal and cantonal government budget financing. Although the privatization of these broadcasters was supposed to commence in 2002, there has been no major advancement in this area. This remains an issue affecting the future independence of radio and TV stations from the ruling structures.

The key pillar of the overall independence of public broadcasters is their financial independence. However, public broadcasters face enormous difficulties in the collection of the compulsory monthly RTV fee, which puts them in a particularly difficult financial situation. Namely, compared with the pre-war rate of collection of the RTV fee of some 80 to 85%, according to unofficial estimates, in 2003 it was between 20 and 30%. After the introduction of a new system of collection through fixed-line telephone bills in 2004, the level of collection of the fee grew across BiH to 53 percent in 2005. Although the new system of collection is more effective, it has not delivered ideal results and it has often been used as a tool for pressuring public broadcasters. There is an almost systematic, politically motivated boycott of the fee, practiced by a considerable number of Croats in BiH. The leading Croat political parties in BiH demand a different model of public broadcasters, with separate ethnic channels for each of the three constituent peoples. Thus the level of collection depends on which telecom collects it in which part of the country.

## **II. IMPORTANT HIGHLIGHTS**

Despite significant levels of international assistance to BiH media, commercial media continue to suffer from poor professionalism and weak ethical standards. Moreover, media outlets in BiH are

still struggling to become financially self-sustaining. One particularly disturbing downward trend is that reporting seems to be taking on more of a nationalistic tone.

The development of the Communications Regulatory Agency (CRA) as a transparent and balanced authority in the field of broadcast regulation is generally considered a success. The CRA has been praised for setting standards of journalistic conduct at radio and television stations, although some believe that the imposition of a code of conduct (and associated penalties for violations of the code) may have led editors to limit the investigative risks journalists take in broadcast newsrooms. Nevertheless, there is room for the CRA to grow. Sanctions levied on outlets that violate CRA rules and guidelines remain low so that fines do not jeopardize the financial stability of stations and individuals. As a result, some outlets tend to accept the cost of potential sanctions as part of doing business.

The Press Council is at a critical stage in its attempt to establish a self-regulatory regime for the print sector. While internal steps are being taken to set the Council's new business strategy in place, much will rely upon the ability of the Press Council to build credibility among the largest players on the print media scene. Implementation and review of the Council statute—particularly in regard to membership in Council bodies and potential conflict of interest—are the next challenges for Council leadership.

Media-related associations may represent the best and worst in Bosnia's media sector development. The United Media Industry (UMI) has brought together leading nationwide television stations with major advertising agencies to make a substantial collective investment in the purchase of quality audience research that will improve each member's ability to make management decisions regarding programming, advertising sales, and marketing. On the other hand, the recently unified journalists' association (BH Novinari) struggles with implementation of a business plan after dealing with the theft of member pension contributions by a former employee. The Association of Electronic Media is led by a dynamic individual but has no supporting organizational structure, business plan, or a functioning system to collect member dues.

The broadcast media sector has shown considerable progress over the past three years, with leaders emerging in both radio and television that prove success comes from implementation of proven, modern media management strategies. Bosnia-wide television outlets are on the forefront, marked by their decisions to purchase quality audience research through UMI and to use this data in the process of making programming, scheduling, sales, and marketing decisions. Radio stations, such as Radio Stari Grad and Radio Kameleon, employ style guides, detailed business plans and advanced branding and marketing techniques. Obstacles still exist. Television stations are reluctant to use their own funds to commission quality domestic productions and Bosnian production houses are forced to seek commercial sponsors to cover the total cost of making any new programs that would be offered to broadcast outlets. The radio market remains over-saturated, with more than 60 stations funded through cantonal or municipal budgets, and other stations shored up by finances from political or personal interests. No market correction is likely to take place as long as these artificial support structures continue to play significant ownership roles at scores of radio stations.

In contrast to the advances in the electronic sector, print media may have made the least progress over the past few years. The opinion remains that the overall quality of journalism in BiH is still

poor. Financial viability is a struggle at many print media outlets and circulation rates are low. Pressure on print media now takes the form of economic coercion, where firms (and their political or religious support structures) threaten to pull advertising accounts if newspapers or magazines publish unfavorable articles - or fail to print articles favorable to advertisers.

The low quality of journalism is also a direct result of a corresponding lack of quality university-level journalism programs. Students receive an outdated and theoretical education that is of little use when actually working at media outlets. Practical training is best sought through domestic media development organizations such as Media Plan Institute and the Media Centar Sarajevo, where students and practicing reporters can improve basic professional skills and develop more advanced competencies in investigative journalism or issue-based reporting.

In spite of the many challenges still to face within the BiH media environment, international donor interest understandably wanes after 10 years and more than \$100 million. The European Commission will focus on specialized technical assistance and projects that support the Communications Regulatory Agency. Other traditional media donors, such as the Swedish Helsinki Committee and the Open Society Fund-BiH (and the Open Society Institute Network Media Program), will have a more targeted approach to allocating decreasing funds that includes association development and media-related research.

### **III. U.S. GOVERNMENT ASSISTANCE**

The U.S. Government, through the U.S. Agency for International Development (USAID), has allocated over \$38 million since 1996 to support independent broadcast and print media in Bosnia-Herzegovina. The goal of USAID assistance is to create a self-sustaining, independent media in BiH, which is free of political influence and provides citizens with easy access to objective information to make informed social and political choices.

Strengthening the Independent Media (SIM) project, implemented by Chemonics International started in October 2003 with main goal to help media outlets provide useful information to citizens as a basis for making informed judgments and to identify areas where public pressure can be usefully applied. This activity supports the development of independent, objective, private media in BiH through training and technical assistance in newsroom management, business development, independent domestic production, and legal, regulatory and policy issues. The project is scheduled to end in December 2006.

USG assistance to media outlets in BiH blends elements of four components. Journalism training and assistance aims to improve content and build readership/audience, enabling stations and publications to increase advertising and sales revenues. Production assistance builds skills and enables partners to create polished productions on topics that help citizens become better informed or more socially sensitive. Legal and regulatory work helps outlets level the economic playing field while fostering more ethical and balanced coverage. An important part of Strengthening the Independent Media (SIM) project was to work closely with a Bosnian NGO partner and gradually transfer activities to this partner over the life of the project. Because of their relevant past performance, trained staff, and high-quality broadcast production facilities, the project selected Media Centar Sarajevo (MCS) as the Bosnian NGO best qualified to be the project partner. The MCS is currently both an implementer of USAID Media program activities and a recipient of USAID

support and technical assistance through its subcontractor relationship with Chemonics International. In programmatic areas, the MCS has been effective as a delivery mechanism for selected USAID Media training initiatives. MCS coordinated the USAID-financed pre-election project. Working in conjunction with USAID Media staff, the MCS managed the activities of twenty Bosnian media outlets that participated in the creation of election-oriented programs throughout the country.

A project implemented by the New York University (NYU) and its subcontractor Journalism Development Group (JDG) focuses on the creation of a permanent local organization called the Center for Investigative Journalism. This organization is dedicated to the practice of investigative reporting by local reporters that meets the highest international standards. The center's mission is to train reporters and editors, and help set Bosnia's news agenda by breaking critical stories that no news organization will be able to ignore. This project is implemented under the 3-year, \$1.7 million grant with NYU.

**SECTOR POLICY BRIEF:  
CIVIL SOCIETY IN BOSNIA AND HERZEGOVINA  
December 2006**

This policy brief provides background on the current state of civil society and non-governmental organizations (NGOs), and development challenges that Bosnian civil society is to face in the future. The paper is to assist the Democracy and Governance Assessment team to gain understanding of the strengths and weaknesses of the NGO sector in Bosnia and Herzegovina (BiH), together with other actors of civil society.

**I. BACKGROUND**

Civil society is a difficult term to define because it carries a wide set of values. USAID-BiH civil society programs align with a broad definition of civil society that allows for diverse interests and activities:

*"That space between individual and the state where citizens associate according to their own wishes, values, and interests<sup>6</sup>."*

In other words, civil society is a sphere of citizens' life outside of their homes and between the state and economy. Therefore, this term encompasses any kind of organized social life of an individual that is voluntary, self-generating, and independent from the government but also bound by some shared norms of interaction. This associational realm can be either *formal*, as in the case of non-governmental organizations (NGOs), or *informal*, for example citizens' groups. As Thomas Carothers notes, ". . . it is a mistake to equate civil society [only] with NGOs. Properly understood, civil society is a broader concept, encompassing all the organizations and associations that exist outside of the state and the market."<sup>7</sup>

In BiH, the NGO sector is accepted as an engine and, in some cases, a proxy for civil society since the Dayton Peace Agreement. The development of civil society in BiH has been greatly influenced by a complex and unique political and economic environment comprising internal divisions, policies driven purely by party politics or ethnicity, and intensive international involvement that sometimes diminished and discouraged local initiatives.

According to the 2006 USAID NGO Sustainability Index<sup>8</sup> the BiH NGO sector continues to build upon and improve its overall sustainability every year. The improvements are the result of the increased effectiveness of NGOs, particularly increased public exposure and activism, and recognition, legitimacy and cooperation with the government. High scores for the Advocacy and Public Image dimensions are reflected in the improvement in the Organizational Capacity and Infrastructure dimensions where local constituency building and increased networking and cooperation between NGOs are significant components. The Legal Environment in which NGOs operate has not been improved for many years, although there have been some changes. The full ef-

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<sup>6</sup> See, for example, "Civil Society, Democratization, and Development: Clearing the Analytical Ground," in *Democratization*, 1:3, (autumn 1994).

<sup>7</sup> See "Think Again: Civil Society" in *Foreign Policy Magazine*, Winter 1999-2000 edition.

<sup>8</sup> USAID NGO Sustainability Index is being developed annually and it serves as a main indicator for USAID BiH Civil Society Strategic Objective: [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/).



fects of these changes, and the direction these will take, are not yet evident. The Financial Viability dimension remains the most tenuous, but there is evidence of improvement resulting from further consolidation of NGO activities.

Despite these improvements, the sector continues to face many challenges. NGOs continue to depend heavily on the international donor community. Some NGOs have begun to effectively diversify their funding sources in order to counteract the withdrawal of international donor funding and to prepare for access to EU pre-accession funds, others are less likely to make this transition. There is already evidence of a decrease of NGO sector size and activity, and there is likely to be a further marked decrease in the NGO sector. Cooperation between NGOs and the business community continues to be minimal.

Approximately 7000 local associations, foundations, and organizations are registered in BiH. Of those, one-half are active. Only 229 organizations and associations are registered at the state level, while others are registered only at the entity or local level.

## **II. DEVELOPMENT CHALLENGES**

There are several challenges that BiH NGO Sector and civil society need to address in the next period in order to ensure financial and organizational sustainability of the Sector as well as to increase civic activism and participation in decision making processes.

### **1. Role of the High Representative**

Established to ensure implementation of the civilian aspects of the Dayton Peace Agreement, the Office of the High Representative (OHR) is the most powerful political actor in BiH. Ten years on, OHR's overriding objective is to ensure that BiH is a peaceful, viable state on course to European integration. During this period, OHR (and the international community more generally) have played the major role in holding government to account, which has probably had the effect of "squeezing out" civil society. In addition, OHR has not adequately consulted or involved civil society. The main challenge for entire civil society in 2007, as OHR announced its close out, is how to effectively replace OHR in holding government accountable and monitoring their work.

- Over the last few years, NGOs have strengthened their policy analysis and formation capacity to be utilized both within civil society and in government. Some of the policy research organizations have created good relationships and built credibility within the government structures. However, this needs to be further developed, so that the government gets accustomed to using the policy research and evidence based research for their policy decision making.
- Civil society needs to assume a greater advocacy and watchdog role with respect to the implementation of new policies and legislation advancing reform.
- NGOs need to move away from their general approach and move toward greater issue orientation and interest representation to effectively pressure the government.



## 2. Legal and Fiscal Environment

Bosnia has three governing bodies, the State, the Federation and the Republic of Srpska (RS). While each law established a reasonably progressive legal framework for NGOs, many challenges remain.

- NGO registration on State level is still inconsistent due to the absence of written instructions and documented procedures for the implementation of the law. Registration officers continue to abuse their authority and very often deny applications for reasons such as the applications were submitted at an inconvenient time.
- There is no unified registrar of NGOs that would provide information on all registered NGOs in whole BiH.
- The taxation of NGOs, fundamental to the sustainability of the sector, remains unsettled. It is necessary to develop tax policies to encourage NGOs to engage in economic activities, to provide appropriate incentives for donor giving, and to provide preferential tax treatment to public benefit organizations.
- The public financing of NGOs, also critical to NGO sustainability, and an important mechanism for partnership, lacks clarity, predictability, and transparency. Enabling and transparent mechanisms for public financing – in addition to tax reforms – are badly needed at all levels of government, especially the higher levels (cantons, entities, and state).
- The capacity of lawyers working with NGO resource centers to provide legal support to NGOs, and the capacity of registration officials (especially at the State level) to implement the respective laws, remains weak.
- The VAT Law came into force on January 1, 2006 and its impact on the NGO sector still remains to be seen. Overall, NGOs see this as another burden on their already weak financial sustainability.

## 3. NGO Coordination and Networking

In the past, the NGO coordination issue was the main focus of the international community. There were numerous attempts to create a coordination body for local NGOs. These attempts did not bring any tangible and/or sustainable results, as the process was driven by internationals, rather than by local NGOs. In 1996, the international community created a NGO Council – a coordinating body for international and local NGOs. Although the NGO Council is providing professional services to its selected members, it is still perceived as a “donors” and “Sarajevo” forum rather than a “policy” and “BiH” forum. Also, the sustainability of the Council is questionable in terms of inadequate domestic ownership from the outset, differing opinions about the future aims and orientation of the body, an unstable financial base, and limited external recognition of - and confidence in - the organization.

In 2005, a new NGO Resource Center<sup>9</sup> was created by the Center for Civil Society Promotion and throughout 2006 it has become increasingly active. Its long-term effects are still to be seen. Al-

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<sup>9</sup> Please visit the official web site of Ngo Resource Center: <http://www.civilnodrustvo.ba/>

though it received funds from USAID and EC, the Resource Center is fully run by the local NGO. It maintains an electronic database of local NGOs in BiH, provides legal and financial management services, training, facilitates information sharing, and offers a library of materials for NGOs. The main objective of the Resource Center is to craft strategies and programs to develop and regulate the sector, to introduce institutional mechanisms to provide for public-private partnerships, and to serve as an intermediary support organization. Located in Sarajevo, this is the only local resource center and it is still in the early development phase in terms of membership base and fundraising. Last year, the Resource Center and its network drafted a series of strategic documents and sent it to the Council of Ministers for further discussion and finally for adoption. All the documents are to streamline the cooperation between the NGOs and government. These include: 1. Agreement between the Council of Ministers of BiH and the NGO Sector; 2. Agreement between Local authorities and NGO sector; 3. Quality standards of cooperation between the Government and NGO Sector in BiH; 4. Development Strategy of NGO Sector in BiH; and 5. Code of conduct for the NGO Sector in BiH.

Poor networking among NGOs in the past has led to a situation where too many organizations are recreating the wheel. As a result, “there are lots of wheels, but no cars.” This situation is also preventing NGOs from effectively accessing information, transferring knowledge, leveraging resources, maximizing results, and elevating the status and clout of the sector. At the same time, there are a number of networks representing key sub-sectors, e.g. women, youth, and various health concerns. While some of these are relatively new, others have existed for quite some time.

The largest and the most recent network that grew up in movement was the one initiated by the Center for Civil Society Promotion as a pre-election civic movement called GROZD – Civic Organizing for Democracy<sup>10</sup>. It gathered around 400 different NGOs and gained a half a million of citizens’ signatures through a petition addressed towards the political candidates in the frame of Civic Platform with clear 12 expectations. This movement was financially supported by USAID Bosnia and Open Society Fund and it was the largest NGO networking effort ever done in BiH. Their future effects are to be seen.

#### **4. NGO- government cooperation**

The most dynamic NGO-government relations are at the municipal level. However, there is no effective mechanism for transferring knowledge from more to less experienced municipalities and encouraging the replication of successful models for NGO-government cooperation.

The cooperation with the other levels of the government is less dynamic due to the fact that state government is a highly decentralized body with limited specific competence. There is no formal policy or framework that provides for NGO-Government cooperation at the state level. Effective mechanisms for public-private partnership are limited. With respect to civil society, in particular, there is no office, department, or staff member responsible for liaison with NGOs. In addition, the state government has limited revenues by which it could provide public financing to NGOs.

There is a lack of political will within state government to pursue improved relations with the third sector. The latest example for the government unwillingness to improve the cooperation

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<sup>10</sup> Please visit the official web site of GROZD [www.grozd.ba](http://www.grozd.ba)

with NGOs is related to the initiative of the NGO Resource Center. The Council of Ministers has still not responded to the NGO Resource center on the documents received a year and a half ago (mentioned in section 3 above). Until the new government is formed, these documents will remain untouched.

## **5. Capacity and Professionalism of the Sector**

A significantly smaller number of registered and active NGOs could be described as professional organizations. Civil society in BiH is quite diverse in terms of the level of organizational capacity. Nonetheless, a critical mass of professional NGOs is perceived to exist. Many of these have been operational for some time, tend to be based in urban centers, and have benefited from investments in capacity building. These organizations have reached a higher stage of development relative to newer organizations, those based in rural and remote communities, and/or informal groups. The urban-rural divide is still a development challenge, whether in terms of the sector or grassroots democracy.

More professional NGOs have built their skills that include strategic planning, proposal writing and budgeting, organizational management and governance, financial management, project management, human resources and volunteer management, service provision, advocacy, coalition-building, media relations, fundraising, and monitoring and evaluation. They demonstrate higher levels of confidence and a greater degree of sophistication in assessing their own strengths and weaknesses. However, continued professional development or advanced training is critical to the further development of their organizations. These include organizational and financial management, volunteer mobilization, issues of fundraising and philanthropy, public relations, policy analysis and formulation, and monitoring and evaluation.

In anticipation of reduced levels of support by the international community in the coming years, NGO leaders will need skills to manage change effectively including the development of strategies and partnerships to ensure sustained activity. As NGOs begin to diversify their funding base, financial management is becoming increasingly complicated and requires a greater degree of sophistication. And, as a handful of these NGOs begin to receive direct funding from major foreign donors, issues of contractual and regulatory compliance are coming into focus in a way that was not the case when an international intermediary organization was involved. As for the NGOs and informal groups beyond this elite, and particularly those working in small towns and rural communities, their capacity building needs are greater and much more basic.

One category of civil society organization that appeared to be largely overlooked by institutional capacity building efforts was foundations. This group requires training in strategic planning, financial management, particularly managing funds from multiple donors, monitoring and evaluation systems, and fundraising and public relations strategies may be needed in some cases.

Within civil society, some key issue-based organizations still exhibited limited organizational capacity, i.e. labor unions, political parties and business associations. This low level of development adversely affects their ability to act as change agents.

## 6. Public Image of the Sector

There appeared to be a healthy degree of self-assessment among NGOs as to why there was not more and better coverage of the sector in the mass media. There is an obvious need for improvement in better articulation of mission, issues, and results; greater responsiveness to the needs of journalists, e.g. in terms of newsworthiness and deadlines, and; a more proactive approach to – and sustained engagement of – the media. A few NGOs have proved very successful in establishing relationships with the media.

The GROZD initiative produced and attracted a great deal of media interest and coverage in the pre-election period. The NGO sector now needs to take advantage of this ‘catalyst’ and continue to seek out and develop interesting ways to maintain and succor media interest. There is some concern that the GROZD initiative may have distorted the picture of the overall sector and, although there was a strong public relations and awareness raising component, it is not clear to what degree the media and public has received and understood the message.

NGOs need to further develop their public relations skills and the ability to relay their missions, and express ideas clearly. Without improved effectiveness in this area, the increased publicity may not necessarily translate into improved public image.

## 7. Financial Viability of the Sector

Besides difficult economic conditions in BiH other factors are presenting greater challenges to financial sustainability. First and foremost are issues pertaining to tax policy. There is a problematic lack of incentives for philanthropic giving, especially by businesses. While there is little information on business attitudes in BiH, a limited study by ICVA of several leading businesses found that they would be more inclined to support NGOs if tax incentives were introduced.<sup>11</sup> The failure to distinguish between the status of private businesses and public benefit organizations is placing an undue tax burden on NGOs. With respect to income generation, enterprising NGOs that engaged in such activities are hardly surviving due to their tax obligations. Income generation by NGOs is allowed under new legislation at the state and entity levels. The issue of related tax liabilities at the state level is unclear. At the entity level, it is perceived to be sufficiently burdensome to act as a disincentive. As for public opinion on the matter, polling conducted by the OSCE suggests that support does exist for tax benefits for NGOs.<sup>12</sup>

The second major point of discussion was limited public awareness about – and positive image of – the NGO sector and the impact this has on the ability of NGOs to raise money or in-kind contributions and to mobilize volunteers. The challenge for NGOs is that until citizens, the business community, and public institutions clearly understand the role of NGOs and can see the tangible results of their work, it will be extremely difficult to cultivate domestic resources. In terms of investment by businesses, the ability of NGOs to demonstrate public relations value is crucial.

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<sup>11</sup> See Perspectives on the NGO Sector in BiH, November 2002, p. 37.

<sup>12</sup> According to the poll, which was conducted in October and November 2003 by PRISM Research, 26% of respondents indicated that NGOs should receive tax benefits ‘in any case,’ while another 35% answered yes ‘under the condition that their work is controlled.’

Businesses were more likely to sponsor a person or family ‘in need’ or a sports club than an NGO because the level of recognition they received was considerably higher.

In March 2003, the Office of the High representative took action to halt inappropriate use of public funds by state owned or controlled enterprises. Specifically, a law was passed restricting donations by state owned or controlled enterprises in both entities. Gifts by such enterprises can be made only for sports, cultural, social welfare, and humanitarian purposes and are subject to a number of procedural restrictions.

Many companies are starting to develop corporate social responsibility strategies. The NGO Foundation Mozaik initiative to award socially responsible corporations was launched in November 2005 and the first awards will be given for 2006. NGOs are becoming increasingly aware of the general principles of corporate philanthropy, but still do not apply the pressure necessary to increase corporate philanthropy.

The more diversified the funding, the more confident NGOs appeared to be in terms of their financial viability. Despite the diversification of international and domestic funding, scholars and practitioners agree, however, that NGOs in BiH are still heavily dependent upon foreign donors. According to research conducted by the Civil Society Promotion Center, domestic NGOs have generated nearly 77% of their funding from foreign sources in recent years. Findings from the Civil Society assessment in 2004 show that a majority of NGOs interviewed received anywhere from 70% to 100% of their funds from foreign sources. A few indicated that the overall percentage of their expenses covered by foreign sources was below 30%. Only four claimed that they were operating with no funding from the international community.

## 8. Volunteerism

At present, BiH lacks legislation governing the rights and obligations of volunteers and the legal entities hosting them. There is also no clear legal definition of ‘volunteer.’ As such, volunteers in BiH are operating in a legal vacuum.<sup>13</sup> According to ICNL, “NGOs may not conclude contracts with volunteers without the fear that the state inspectorate might treat the volunteer as an employee and find the NGO in violation of the labor law.” Among other challenges, there is a lack of voluntary culture in BiH, poor economic and living conditions among many citizens that make it difficult for them to focus beyond their most immediate needs, limited public awareness and positive impressions of NGOs, and insufficient NGO ‘roots’ within communities. Volunteer mobilization is the most critical area for the further development and sustainability of NGOs.

While it may be difficult to mobilize volunteers in BiH, it is not impossible. Research on volunteerism, carried out by ICVA in 2002 found that 55% of the 70 NGOs it interviewed had volunteers. Of these, 61% had 10 or fewer volunteers, while 16% boasted more than 30.<sup>14</sup> Increases in volunteerism in BiH are credited, in part, to training and awareness raising efforts by NGO networks.<sup>15</sup>

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<sup>13</sup> See ICNL Semi-Annual Report: Bosnia and Herzegovina dated 15 December 2003, p. 4.

<sup>14</sup> See *Perspectives on the NGO Sector in BiH*, November 2002, p. 24.

<sup>15</sup> See *Nations in Transit Report*, 2003, prepared by Freedom House, p. 157.

## 9. Provision of Social Services

Up until recently, the public and government correlated NGOs strictly with the provision of humanitarian services. Today, the range of goods and services that NGOs provide is growing and these service-provision NGOs are becoming more recognized by local governments and governmental institutions. Some governments have outsourced services to NGOs, although, in most cases, grants appear to be the funding mechanism of choice rather than service contracts. Capacities for transparent and professional grant-making/service procurement appeared to vary widely. The lack of quality assurance standards and tools within the sector was deemed to be problematic on a number of fronts. First, inconsistent service provision by the sector and incompetence by individual NGOs undermines the image of the sector. Second, at this nascent stage of cooperation, it is difficult for NGOs to authoritatively present their performance capabilities and professional standards to governments and others seeking to procure services.

NGO Resource center has developed and proposed the quality standards for service provision in order to improve the cooperation between the Government and NGO Sector in BiH. However, this is still being reviewed by the government together with the other documents from the package addressed to the BiH Council of Ministers.

## 10. Issue Advocacy

So far, nearly all advocacy successes had some form of foreign involvement, whether in terms of funding, facilitated dialogues, assistance with policy analysis, or other technical assistance. Understanding and applying issue advocacy is complicated by a range of factors, whether the power of OHR to enact legislation and provisions by decree, lingering communist mentalities within government and beyond, or NGOs aversion to politics. The government acknowledges NGOs primarily as social service providers rather than advocates or watchdogs. Within civil society, many NGOs have yet to fully appreciate or embrace this role. Or, even if they do, some fail to understand advocacy as a *process* that involves education and mobilization of the public, not just a dialogue between elites in civil society and government.

While conceding many of these shortcomings and challenges, domestic NGO advocacy campaigns, and public-private partnerships are occurring and are producing results at various levels of government and on a diverse set of issues. Issue-based coalitions are in existence and have proven effective in addressing the interests of women, youth, and persons with disabilities, debilitating illnesses, special needs, and suffering from addiction. The engagement of different NGOs in issue-based coalitions on similar issues at a regional level provides a foundation upon which to build coordinated initiatives at higher levels of government in the future. NGO capacity in this area has only recently been developed and as experience is accumulated and confidence built, bigger initiatives are likely to follow.<sup>16</sup> Finally, the prominence and success of some initiatives, e.g. the direct election of mayors campaign, is helping not only to build public awareness but also to open the doors for greater dialogue between NGOs and government on policy issues.

In order to further develop advocacy capabilities, it is needed to place greater emphasis on building policy analysis capabilities within civil society and links need to be created between policy

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<sup>16</sup> The experience of CCI provides a case in point.



research organizations and action-oriented groups working. This is one of the first challenges that GROZD plans to address after the election results are implemented and the new government is formed.

## 11. Involvement in policy development

Since 2003, there has been a substantial progress in the policy development process in Bosnia and Herzegovina. Factual evidence and analysis are playing a greater role and policy research organizations (PROs) have been a major provider of this information. The evidence indicates that PROs have been successful in convincing the policy community that they are purveyors of objective, disinterested advice and analysis, and in this they appear to have distinguished themselves from advocacy NGOs.

There is no question that the quality of local analysis *and* its targeting on the most important issues improved. This improvement was certainly produced in part by the substantial capacity building efforts of the USAID/Urban Institute/Policy Development Project. We do not have the ability to causally link the stronger research and communications by local organizations fostered by the PRO Project with the changed attitudes by decision makers towards the use of evidence and analysis in the policy process. But the coincidence is clear.

According to the Urban Institute's policy paper evaluation report<sup>17</sup> the policymakers who were interviewed thought that objective information is becoming more important in policy decision making. They cited two principal reasons: the application process for joining the EU demanded more concrete information and evidence, and the public is becoming more knowledgeable about key issues so that politicians will have to become better informed to be credible. They also noted that locally generated analyses would have to increase to fill the void left by the decreasing role of the international community. In short, the prospects in Bosnia for PRO development appear quite positive.

## 12. NGOs and Political Parties

There is a lack of cooperation between political parties and other actors in civil society for the purposes of advancing an issue agenda and specific policy reforms. Most NGO leaders are opposed to 'compromising their morals' or 'tarnishing the image' of their organization or the sector through association with political parties. Partially this problem stemmed from the fact that the word for 'politics' and 'policy' in the Bosnian language is exactly the same. Clearly, an aversion to politics among NGOs is hindering their meaningful entrance into the policy arena.

NGOs also fear that cooperation might lead to cooption of NGOs by political parties. Stronger NGOs appeared less worried about such an outcome and more willing to engage political parties to advance their causes. In 2004, CCI's successful lobbying of - and cooperation with - political parties contributed to the passage of constitutional amendments and new legislation providing for the direct election of mayors in FBiH. In addition, a 'youth to youth' and 'women to women' ap-

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17 "Were Bosnian Policy Research Organizations More Effective in 2006 than in 2003? Did Technical Assistance Play a Role? - Urban Institute, written by Raymond J. Struyk, Kelly Kohagen, and Christopher Miller, November 2006



proach to cooperation between NGO networks and clubs within political party structures (as well as factions within elected bodies) was highlighted as producing tangible, positive results.

In 2006, before the latest general elections, all of GROZD's activities were directed toward political parties, inviting political parties for cooperation to achieve 12 points from the Civic Platform. Thirty six political parties signed the Platform and therefore agreed to follow through these issues after (or if) they get elected to power. They have agreed to the fact that GROZD will monitor the work of the future government and act as a watch-dog organization by informing the public and achievements or failures of the government to fulfill the expectations from the platform. This is the first time that NGOs clearly stepped into the political arena and initiated direct relations with political parties.

**SECTOR POLICY BRIEF:  
LEGISLATIVE STRENGTHENING IN BOSNIA AND HERZEGOVINA  
December 2006**

**I. BACKGROUND**

The Parliamentary Assembly is the lawmaking body at the state level in Bosnia and Herzegovina (BiH). It consists of two houses: the House of Peoples and the House of Representatives. The House of Representatives has 42 deputies, of whom 28 are directly elected from the Federation and 14 directly elected from the Republika Srpska National Assembly for a four-year term. The House of Peoples has fifteen deputies, of whom ten (5 Croat and 5 Bosniaks) are selected by the Federation Parliament and five by the Republika Srpska National Assembly.

The Parliamentary Assembly is tasked with enacting legislation, which is necessary to implement the Presidency's decisions or to carry out the Assembly's responsibilities; determining and approving the revenue sources and budget amounts for the operations of BiH's state institutions; and deciding whether to ratify international treaties.

In addition to the Parliamentary Assembly, there is the Republika Srpska National Assembly ("RSNA") and the Parliament of the Federation of Bosnia-Herzegovina ("Federation Parliament"). The bicameral Federation Parliament has a 98-member House of Representatives, which is directly elected for a four-year term, and a 58-member House of Peoples, consisting of 17 Serb, 17 Bosniak, 17 Croat and seven "other" deputies, who are elected by the cantonal assemblies. The Federation Parliament elects a President and two Vice-Presidents, comprising of one Bosniak, one Croat and one Serb.

The RSNA has 83 deputies, who are directly elected for a four-year term. RSNA also elects a President and two Vice-Presidents, consisting of one Bosniak, one Croat and one Serb, for a four-year term. Also, there is the Council of People, which has 28 delegates (8 Serbs, 8 Croats, 8 Bosniaks, and 4 national minorities). The Council of People is charged with reviewing RSNA's decisions and determining whether the legislation adopted by the RSNA violates the national interest of constitutionally recognized people.

Overall, the BiH Parliaments are relatively weak institutions, suffering from a lack of human and material resources. Furthermore, the BiH Parliaments are marginalized by the executive branch of government, which controls legislative agendas and allow minimal parliamentary participation in governing and policy-making processes.

USAID/BiH has provided minimal support to the BiH Parliaments over the past few years. Assistance to the BiH Parliaments has been primarily through a larger political party program carried out by the National Democratic Institute ("NDI"). NDI works with the BiH Parliaments to support the professional development and efficiency of caucuses and committees. NDI has also assisted BiH Parliaments in becoming more transparent and professional institutions by developing official websites, updating the Rules of Procedure and commenting on Codes of Conduct.

While USAID's parliamentary strengthening programs implemented by NDI have been well-received and resulted in some noteworthy achievements, this work has not been broad and deep enough to make serious improvements to the overall institutional capacity of BiH Parliaments. In

late 2005, USAID started a two-year legislative strengthening program implemented by OSCE to strengthen the institutional capacity of the Parliamentary Assembly of BiH while increasing public participation in the legislative process.

## **II. PROBLEM STATEMENT**

BiH Parliaments face a number of challenges. First, BiH Parliaments do not possess the necessary autonomy, authority, and capacity they need to represent the will of BiH citizens, make laws, and provide oversight on the other two branches of government. Most of the legislative responsibilities are either carried out or heavily influenced by the Office of the High Representative (“OHR”). Due to parliamentarians’ minor role in government, they tend to be relatively inactive and uninformed about key policy issues. Additionally, many parliamentarians lack a true understanding of their roles and responsibilities as legislators. Parliamentarians must be prepared to carry out their full responsibilities once the OHR closes as planned in summer 2007.

Second, BiH Parliaments suffer from structural constraints and weak support services, which impede efforts to strengthen the role and authority of BiH Parliaments. For instance, the Parliaments suffer from an insufficient numbers of MPs to adequately conduct legislative functions, a diffuse leadership created by multiple chairs, a lack of professionally trained staff, limited access to policy expertise, and inadequate resources and facilities.

Third, citizens are not engaged in the legislative process and there is a disconnect between the public and the Parliaments. There is little public support for, participation in, and understanding of parliament and the legislative process. Interaction and communications between MPs and citizens is infrequent and few resources are available to MPs to engage in constituency services.

Fourth, the committees within Parliaments are relatively unproductive due to insufficient time to review legislation, lack of professional staff, poor public outreach, the lack of hearings or public input on draft legislation and a lack of discussion or debate on committee issues.

Finally, ethno-nationalism is a factor that continues to restrict the full development of the legislative branch. Ethno-nationalism defines the political spectrum, mutes policy discussion, and complicates the institutional design and operation of political structures. As long as ethnic considerations are the primary driving factor in developing and discussing key political issues, BiH political institutions and processes will be adversely affected.

## **III. GENERAL ANALYSIS OF THE SITUATION**

In less than a decade, the BiH Parliamentary Assembly (PA) underwent tremendous evolution within a difficult environment. It was often at the cutting edge of innovation: its 2000 Standing Orders, for instance, were the first in the region to entrust a significant role to committees. Also, the Secretariat’s staff enjoyed the protection of a professional status before any other in BiH, through a Rule Book also from 2000, anticipating civil service legislation at all levels. Recently, the PA of BiH was among the first in the region to run a TV program, establish a drafting code, or have its own Research Center. Although the situation is far from optimal, the availability and use of information technology in daily work are way above the average in other administrations in BiH.

Of course, this positive record is not the PA's exclusive merit, and owes largely to the contribution of the foreign programs and consultants. Also, apart from the results already mentioned, other interventions did not leave much of a mark.

Parliament faces a number of systemic problems. Many of the newly established processes and procedures are extremely fragile and far from sustainable. The sheer volume of legislation places an enormous strain on an already fragile bureaucracy. This strain is increasing as the State gains new competencies in areas such as defence, indirect taxation and intelligence. The Parliament is largely marginalized by the executive branch of government which controls legislative agendas and allows minimal parliamentary participation in governing and policy-making processes. There is little public participation in the legislative process, partly due to the perceived marginalization of Parliament and partly to the fact that there is little tradition of encouraging citizens' involvement in parliamentary business. Citizens groups, businesses and other organized interests are disengaged from the legislative process. This accounts, in part, for the relatively low public standing and lack of respect for the Parliaments, the low quality and lack of implementation of laws, and the alienation of the people from the overall democratic political process

Management of the legislative process within BiH Parliaments suffers from systemic weaknesses, including ineffective procedures, poor use of IT, a lack of adequately trained professional staff and an almost complete absence of specialized legislative services. The BiH PA Registry Office coordinates the flow of documentation and information within the BiH PA and between the BiH PA and external interlocutors. Developing a Registry Office with streamlined procedures is central to increasing the efficiency and effectiveness of Parliament as a whole. The newly created Legal Office is important since it will be the link between the BiH Council of Ministers and the BiH PA, taking legislative proposals from the Council of Ministers and preparing drafts for consideration by Parliament. This new office must be fully operational as quickly as possible. A Parliamentary Research Centre (PRC) has been established. However, it only services two committees. The PRC's capacity must be strengthened to enable it to engage with all committees and across the full spectrum of Parliamentary business. Strengthening the management capacity of the Secretariat, the principal body responsible for the day to management of the Parliament, is central to increasing efficiency and effectiveness and to ensuring that public funds are properly managed. This must be underpinned by better use of IT, to manage the considerable volume of Parliamentary business.

The BiH PA committee structure is incomplete and weak. Many committees lack the basic skills necessary for thorough legislative scrutiny and there are few opportunities for the public to have an input into draft legislation.

BiH Parliaments, particularly the BiH PA, will be expected to assume additional responsibilities once the OHR leaves and when BiH enters into a Stabilization and Association Agreement with the EU. This will lead to a transfer of those executive responsibilities currently carried out by the OHR to the BiH PA. The High Representative has stressed the need for the BiH PA to be in a position to take over these functions as soon as possible.

### **Expected increase in size**

The USG, together with the main PA parties, launched an initiative for constitutional amendments in early 2006. These amendments would dramatically increase the number of MPs in the PA--even by 100%. The first attempt to pass the amendment package in the PA did not succeed, but another try is expected in early 2007. Apart from its political value, such a measure would have positive aspects for the functioning of the PA. Having more MPs may make multiple committee memberships less needed, allowing parliamentarians to specialize more. Also, absences due to international activities and other reasons would impact less on the capacity to reach a quorum. And of course, the prestige and visibility of the legislative body would benefit.

There are downsides, however, with the package. If the number of MPs were increased by 100 percent, the turnover of members would be much higher. The small Secretariat, therefore, will suddenly be called to assist an unprecedented number of MPs, an unusual percentage of which will have no experience of the house's business. This is likely to place tremendous stress on the management systems of the PA, both in relation to its function as a legislator, and concerning the internal functions supporting all business processes.

### **Expected increase in workload**

Besides an increase in the number of MPs, an increase in parliamentary workload must also be expected. This will result from two factors, the first of which is the announced demise of the OHR in 2007. From 1998 to quite recently, much of the State-level legislation came from there. In such cases, the PA's role was simply that of a rubber stamp, expected to re-enact the High Representative's text without any discussion, or amendments. As this anomaly will cease, an increase in the required amount of parliamentary work can be expected, particularly at the committee level.

The EU integration effort will further increase the workload. In January 2005, BiH started negotiations with the European Commission on a Stabilization and Association Agreement (SAA), which is hoped to be signed in the course of 2007. This process requires the adoption and execution of a National Plan for the Implementation of the Acquis, as an instrument to adjust BiH's legal system to the over 83,000 pages of EU legislation (the *acquis*), which shall provide the basis for BiH's actual EU membership. The tremendous increase in parliamentary activities that this will require is self-evident.

### **State of staffing arrangements**

The expected changes outlined above mean that in the near future the PA and its Secretariat will face unprecedented challenges. Facing them will require a properly staffed and equipped organization, with strong management systems and clear internal processes in all areas of business. Unfortunately, at the moment the PA is far from matching such a description: its staffing arrangements are poor, and its management systems quite patchy.

The number of staff in the PA Secretariat has never been high, and never beyond a 1:1 ratio to the number of MPs (in most other European parliaments, staff is significantly larger in proportion). As the number of MPs and legislative workload increase, the Secretariat's size is unlikely to grow at the same speed. A proposed new Rule Book of the Secretariat, now under discussion, includes

a staffing plan of up to 140 positions, which would roughly match the expected increase in the number of MPs.

Chances of a faster pace in the implementation of the new Rule Book are slim. The main condition would be a rebalance of the State budget based on the availability of additional revenues. This happened before, but may meet opposition now. Additionally, the same package of reforms is expected to raise the number of MPs may also create two new State ministries.

### **State of Management Systems**

The management systems of the PA consist of the procedures, routines, and other tools linking the Secretariat and the MPs for the achievement of the organization's common objectives. At the moment, it is a rather irregular landscape. On one side, the need for improvements is acknowledged, and several innovative features were already introduced both by the PA management alone and upon advice of foreign consultants. On the other side, even when a management system was introduced anew, implementation was not complete. The main reason for this seems to be simple time pressure: with the Secretariat understaffed in most departments, all available time is spent in the routine tasks required for the PA to function. This leaves little to invest on embedding new initiatives into standard procedures, and even less for the management to monitor their implementation by the staff.

There is a notable lack of planning and coordination, with little integration among the various segments of business processes, even in closely related area.

## **IV. POTENTIAL LEGISLATIVE ASSESSMENT ISSUES/QUESTIONS**

1. What are the expectations for the legislative system in Bosnia among members of the following?

- General public
- Political elites
- Legislators
- Political parties
- International community

2. What are the roles and functions of the state Parliament and the entity parliaments? What is the relationship between the state Parliament and the entity parliament?

3. What is the legal framework under which the current legislative system is governed?

4. Is there political support and will for strengthening the powers and authorities of the state Parliament among the:

- General public
- Political elites
- Legislators
- Political parties

- International community?
5. What role do political parties play in the legislative process? Constructive or obstructionist? What problems in the political party structure and system contribute to weak legislative institutions?
  6. How do the current legislative bodies (State and entities) perform their primary legislative functions – representation, lawmaking, and oversight?
  7. How open are the legislative bodies to public participation from NGOs, public, think tanks, media, etc? What are the types of interaction between these groups and the legislative bodies?
  8. How is legislative work currently performed? Are the rules (and conduct) of legislative process and procedures sufficient? What is the role of committees in the legislative process?
  9. What is the role of the legislative bodies in lawmaking?
  10. Do any of the legislative bodies have any type of long-term development plan or strategy for strengthening their institutions?



**SECTOR POLICY BRIEF:  
LOCAL GOVERNANCE IN BOSNIA AND HERZEGOVINA  
December 2006**

**I. BACKGROUND**

There is widespread acknowledgement that structures of governance as developed in Bosnia and Herzegovina (BiH) since 1995 are neither particularly efficient nor accountable, and may not be sustainable in the long run. The public sector's share of GDP exceeds 50% and is growing, while 90% of public spending goes to the entities and cantons - the "fat middle". Continued low levels of public investment and a strong bias towards merely funding operating costs, combined with a legacy of the past which contributes to passivity and cynicism towards public institutions, have eroded the core legitimacy of the democratic process. Citizens increasingly choose not to participate in elections and other feedback opportunities.

Local government is at the crux of many of the current political, economic and social developments in BiH. This level of government presents a rare opportunity for optimism in Bosnia's public sector and provides real life examples of the benefits of public administration reform. In the last years, through their own efforts and with moderate amounts of foreign assistance, municipal governments have undertaken numerous reforms which are beginning to pay dividends. In public opinion surveys, municipal governments in BiH are consistently viewed by citizens as the most trustworthy level of government, and the second most trustworthy public institution behind the police. In USAID-sponsored polling, indicators of confidence in and satisfaction with local governments have marked steady increases since 2001.

The successful achievement of many development objectives depends on local governments becoming more effective, efficient, responsive and accountable. Critical in this process are municipal institutions which govern closest to the average citizen. Their work tends to be most scrutinized by the citizenry, as well as the most directly connected to meeting urgent community needs and providing critical services. Without transparent, accountable and efficient local governing structures and authorities that are trained to perform their role well in a democratic society, citizens will not be satisfied with the government response to their needs, local businesses will in effect face disincentives to do business legally, and local initiative will be strangled.

**II. DEVELOPMENT CHALLENGES**

Bosnia's 143 municipalities, which were until recently nearly all at a uniformly low level of development, have begun to differentiate themselves. Approximately 50 municipalities have made sizable improvements in professional and administrative capacities, in customer service, and in financial management. Many, but certainly not all, of these improvements have been accomplished with the assistance of foreign donors. A larger group of municipalities, however, is in a more reactive mode, focused more on everyday survival, waiting for directives to come from higher level governments rather than embarking on self-directed reform. In these municipalities, waiting times for basic municipal services are long, and procedures are often unclear and needlessly circular. The growing gap in the capacities and willingness of municipalities to improve services and planning is a consequence of the fact that some municipalities have made positive improvements. However, to the extent that laggard or undeveloped municipalities remain stag-

nant, this trend will increasingly become an excuse to hamper further fiscal decentralization. Service provision improvements must be registered among a wider swath of municipalities.

Many municipalities in BiH are objectively overstaffed, partly as a result of the socialist legacy, partly as a result of the war, when municipalities took on large numbers of personnel to attend to ad hoc duties. A handful of municipalities have begun addressing the staffing problem, either by shifting staff to departments with higher demands, or by actually letting go of redundant personnel. In general, municipal staff are often poorly educated for their vocation, with very little ongoing professional training offered. The training that does occur is usually supply-driven and financed by foreign donors. (There are, however, first signs of the development of an indigenous, demand-driven training market.) Inefficient human resource patterns (both in terms of quantity and quality) represent a sizeable drag on municipal operating budgets and municipal performance.

In both entities, there is increasing attention on deficiencies in the legal framework in which municipalities operate. Both entities have recently passed local self-governance laws. Although not fully implemented, the situation in the RS is more closely resembles a “normal” transition situation. The RS local self-government law is not fully implemented, and is in need of further improvements, but required improvements are mostly incremental in nature. In the Federation, an important first step was taken in summer 2006 with the adoption of the framework law on local self-governance. This law establishes important principles in line with the European Charter on Local Self-Governance, but because of the more fractured governance structure in the Federation, full implementation will be considerably more complex. Simply put, the cantons make governance reform in the Federation much trickier.

Municipalities in BiH, relative to higher levels of government, are dramatically underfunded according to regional and worldwide comparisons, with only 8% of all public revenues accruing to municipalities. A major problem, particularly in the Federation, is the fact that the process of systematic functional decentralization has only just begun. Systemic underfunding of local governments is objectively a major problem that needs to be addressed. At the same time, municipalities need to make concrete improvements in how their currently spend their scarce resources, with a view towards improving capital to operation budget ratios.

The system of public finance in BiH is in a state of transition. The introduction of the Value Added Tax (VAT) in 2006 allowed for the adoption in both entities of formula-based revenue allocation systems. In the Federation, this meant moving from 10 different systems of local self-government finance to one; in the RS the change was more subtle but also important, with more transparent variables designed to better reflect cost of service. In both entities, equalization formulae were introduced to help the poorest municipalities improve services.

Two-way communication between municipalities and finance ministries on both revenues and expenditures is still in its infancy. The promises of the new revenue allocation systems, including greater transparency and predictability, have yet to be fully realized. On the expenditure side, there has been some movement towards a unified treasury system for municipalities in the RS, but major questions remain on the functionality of the system (particularly in terms of broader financial management and planning) as well as technical implementation issues. In the Federation, the finance ministry has yet to develop substantial capacity for forward thinking in regards to munic-

pal finance at either the political or technical levels. In the medium-term, there may also be movement in the Federation towards requiring municipal treasury systems.

Because of a chronic lack of capital spending on all levels of government over the past 15 years, municipalities face ever growing demands for repairs to infrastructure necessary for both basic quality of life as well as commercial development. Unfortunately, current revenue sharing formulae and own-revenues often do not allow for completion of mandated basic services, much less capital improvements. Largely due to IMF pressure against entity-level debt laws designed to enact realistic, objective criteria under which municipal lending may occur, a commercial credit market for municipalities to finance longer-term infrastructure has yet to develop. In addition the enabling environment for finance of longer-term projects has yet to be adequately developed, even as an increasing (but still relatively small) number of municipalities are considered credit-worthy. The lack of an acceptable enabling environment for municipal debt is problematic not only because of the decay of infrastructure, but also because it constrains the market-based incentives that would otherwise exist for municipalities to improve their financial fundamentals.

Strong collective municipal interest representation and information sharing is critical for the long-term development of the municipal sector. Both entity municipal associations have made progress in the past years, especially in regards to improving the capacities of their professional staffs. Similarly to ministries, however, both associations are often in the reactive mode regarding upcoming policy or fiscal shifts. Associations generally do not drive policy debates. As with ministries, at least part of the problem is associated with the lack of domestic ownership in policy-making: nearly all major policy initiatives in post-war Bosnia-Herzegovina have been driven by foreign institutions. Another part of the problem lies with the mayors themselves: many do not understand the role of their association and often do not feel ownership. It has been common to hear mayors talk of their respective municipal association in the third-person plural (“they”) instead of the first-person plural (“we”), although there is increasing realization of the importance of collective representation. Vital next steps for municipal association development include developing stronger information sharing and policy analysis, formulation and promotion capacities, and more robust internal governance and management systems.

### **III. USG INTERVENTIONS**

USAID began working with municipalities in late 2001, through a \$6 million cooperative agreement with CHF which implemented a broad municipal development project in 14 municipalities in Central Bosnia. This was primarily a micro-credit program aimed to form functioning chambers of commerce, using the prospect of cooperative loans as an incentive, but the project also began to install “One-Stop Shops” in partner municipalities. The idea of the One-Stop Shop is to standardize municipal service provision and make it easier to access and more transparent. Instead of knocking on random doors in the municipal building in search of information of how to apply for a construction permit, for example, a citizen simply goes to the One-Stop Shop, which is bright, open, and resembles a modern bank.

After receiving overwhelmingly positive responses from mayors and citizens, USAID designed a new project for implementation in northern Bosnia building on the general concept. This was a \$6.5 million contract from 2002-2005, implemented by Padco, Inc. This project conducted process engineering, installing IT systems and One-Stop Shops in 12 northern Bosnia municipalities

to reduce waiting times and improve citizen satisfaction with services. The project also made the municipal budget process more professional and transparent.

USAID conducted an assessment of the municipal sector in late 2004. The assessment proposed a number of concrete policy interventions needed to move towards improved governance in BiH. Based on the assessment, Swedish SIDA decided to match USAID’s planned \$10 million investment in the Governance Accountability Project (GAP). GAP is a 3-year \$20 million project (2004-2007) implemented by DAI to improve the customer service profiles and the administrative/management systems of 41 local governments through direct municipal interventions, including the construction of One-Stop-Shops, which dramatically reduce waiting times for citizens by consolidating customer service for the entire municipality at one location. The project is also helping local governments to improve management of their finances by providing technical assistance designed to help them better control and rationalize revenues and expenditures. GAP works on improving the policy and fiscal framework for local governments, and drafted landmark revenue allocation legislation to provide more equitable and predictable funds to municipalities, which was passed in 2006. This effort required considerable pushing on the part of the ECON and POL section heads, as well as the DCM and the Mission Director. In the end, both entities parliaments voted for the legislation against the strenuous objections of both finance ministries (who wanted to control funds on an ad hoc basis).

USAID, SIDA and the Dutch Government are now planning a follow-on to GAP, which is anticipated to be a \$30 million, five-year project to start in August 2007. GAP2 will expand the reach of the assisted municipalities to 70 (i.e., half of Bosnia’s municipalities, and about two-thirds of the population), and will continue important policy work in line with the USG’s efforts to make governance structures in BiH more efficient.

**Summary of USG local governance interventions in BiH**

<b>Project Name</b>	<b>Implementer</b>	<b>LOP Amount</b>	<b>Dates</b>	<b>Main Focus</b>
MEDI	CHF	\$6.5m	9/01-9/04	Micro-Credit; Business and mayor associations; rudimentary One-Stop Shops in 14 municipalities
LGSA	Padco	\$6.5m	9/02-9/05	Process reengineering; One-Stop Shops, budget improvements; financial management systems; capital planning, LED
GAP	DAI	\$20m (\$10m USAID)	7/04-8/07	Process reengineering; One-Stop Shops; policy and fiscal reform, financial management systems; community grants in 41 municipalities
GAP2	TBD	\$30m (\$10m USAID)	8/07-8/12	Demand-driven assistance in 41 legacy municipalities; core assistance in new 30 municipalities, including One-Stop Shops and financial management systems; governance reform; co-financing of capital projects



## **APPENDIX B: MEETINGS**

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### **US Embassy and USAID**

- Valerie Chien, USAID
- Yolanta Christova, Good Governance Advisor, USAID
- Michael Henning, USAID
- Kristine Herrmann-Deluca, Director, Democracy Office, USAID
- Timothy Hughes, Chief of Party, USAID
- Elmerina Ahmetaj Hrelja, Advisor for Ministry of Justice, USAID
- Eugene Murret, Adviser for Court Administration, USAID
- Lisa Gregory, First Secretary for Political Affairs, United States Embassy
- Graham Mayer, First Secretary, United States Embassy
- Roy Phillips, Senior Policy Analyst, United States Embassy

### **Implementers**

- Lejla Bicakcic, Managing Director, CIN/NYU
- Hakan Gustafsson, Municipal Interventions Director, Governance Accountability Project
- Milun Grahovac, Municipal Coordinator, Governance Accountability Project
- Brankica Lenic, Policy Advisor, Governance Accountability Project
- Slavica Rokvic, Regional Coordinator, Governance Accountability Project
- Rudy Runko, Chief of Party, Governance Accountability Project
- Denisa Sarajlic-Maglic, Policy Director, Governance Accountability Project
- Barbara Broomell, Director of Program for BiH, IRI
- Kelly Kimball, Senior Program Assistant, National Democratic Institute
- Niamh O'Connor, Country Director, National Democratic Institute
- Steven Tweedie, Director of Parliamentary Programs, National Democratic Institute
- Elvis Zutic, Program Director, National Democratic Institute

### **Donors and International Organizations**

- Dzermal Hodzic, Task Manager, European Union
- Michael Weichert, Regional Coordinator, Friedrich Ebert Stiftung
- Raffi Gregorian, Supervisor for Brcko District, OHR
- Michael Stechow, Senior Democratization Officer, OSCE
- Anneli Von Wachenfeldt, Democratization Officer, OSCE
- Trefor Williams, Director, Democratization Department, OSCE
- Boris Divjak, President of the Board, Transparency International, BiH

## Government Officials

- Ljubo Beslic, Mayor, City of Mostar
- Medzida Kreso, President of The Court, Court of BiH
- Amela Odobasic, Head of Public Affairs, Communications Regulatory Agency
- Kemal Huseinovic, Director General, Communications Regulatory Agency
- Dunja Mijatovic, Director of Broadcast Division, Communications Regulatory Agency
- Milorad Dodik, Prime Minister, Republic of Srpska
- Ivana Levi, Advisor, Prime Minister's Office, Republic of Srpska

## Others

- Patrick Gaynes, Managing Director, Aegis Equity
- Natasa Tesanovic, General Manager, Alternativna Television
- Dennis Gratz, Attorney
- Borka Rudic, General Secretary, BiH Journalist Association
- Zdravko Grebo, Director, Center for Interdisciplinary Postgraduate Studies University of Sarajevo
- Amela Mehic, Account Director, DPP Studio
- Ramiz Mehakovic, CEO, DPP Studio
- Mirjana Penava, Executive Director, FORMA F
- Tarik Jusic, Program Director, Media Centar Sarajevo
- Boro Kontic, Director, Media Centar Sarajevo
- Zoran Puljic, Executive Director, Mozaik
- Darko Aleksic, Director General, Mreza Plus
- Mirjana Kusmuk, Deputy Editor-in-Chief, Nezavisne Novine
- Dragan Jerinic, Managing Editor, Nezavisne Novine
- Zeljko Kopanja, Co-founder and editor, Nezavisne Novine
- Jasenko Selimovic, Head of the President's Office, Socijal Demokratska Partija





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