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Abbreviations and Acronyms

ABA/CEELI – American Bar Association/Central East-European Legal Initiative
ACCU – Anti-Crime and Corruption Unit
AFD – Anti Fraud Department
AID – Bosniak Intelligence Service
AU – Analytical Unit (of ACCU)
BHTV1 – BiH television broadcaster
BiH – Bosnia and Herzegovina
CAFAO – Customs and Fiscal Administration Office
CCI – Centre for Civil Initiatives
CIA – Central Intelligence Agency (USA)
CIDA – Canadian International Development Agency
CoE – Council of Europe
CoM – Council of Ministers
CoP – Council of Peoples (RS National Assembly)
CPI – Corruption Perceptions Index (TI)
CRA – Communications Regulatory Agency
CSL – Civil Service Law
DfID – Department for International Development (UK)
DNZ – Democratic People’s Union (predominantly Serb party)
DPM – Deputy Prime Minister
EC – European Commission
EC BiH – Election Commission of BiH
EU – European Union
EUPM – European Union Police Mission
FBI – Federal Bureau of Investigation (of USA)
FBiH – Federation of Bosnia and Herzegovina
FDI – Foreign Direct Investment
FIAS – Foreign Investment Advisory Service (of WB Group)
FMIA – Federal Ministry of Internal Affairs
FOSS – Federal Intelligence Agency
FTV – Federal Television
GDP – Gross Domestic Product
GRECO – Group of States Against Corruption (of the Council of Europe)
GTZ – Gesellschaft für Technische Zusammenarbeit (German Government agency)
HDZ – Croatian Democratic Union
HJPC – High Judicial and Prosecutorial Council
ICTY – International Tribunal for War Crimes Committed in the Former Yugoslavia
IFES – International Foundation for Election System
IFOR – NATO led international peacekeeping force (now SFOR)
IJC – Independent Judicial Council

IMC – Independent Media Council
IMF – International Monetary Fund
IPTF – International Police Task Force
IU – Investigative Unit (of ACCU)
JICA – Japanese International Co-operation Agency
KM – Konvertibilna Marka (Convertible Mark, the BiH currency, pegged to the Euro at the exchange rate 1 EUR = 1.95583 KM)
MP – Member of Parliament
NATO – Northern Atlantic Treaty Organisation
NGO – Non-Governmental organisation
NIS – National Integrity System
OBN – Open Broadcasting Network
OBS – RS Intelligence Service
OECD – Organisation for Economic Co-operation and Development
OG – Official Gazette
OHR – Office of the High Representative
OSA – Intelligence Security Agency
OSCE – Organisation for Security and Co-operation in Europe
OSF – Open Society Fund
PBS – Public Broadcasting Service
PDP – Party of Democratic Progress (predominantly Serb)
PEC – Provisional Election Commission
PM – Prime Minister
PBS – Public Broadcasting Service
PIC – Peace Implementation Council
PRSP – Poverty Reduction Strategy Paper
PU – Prosecutorial Unit (of ACCU)
RS – Republika Srpska
RSMIA – Republika Srpska Ministry of Interior
RTRS – Radio-Television Republika Srpska
SAI – Supreme audit institution
SAP – Stabilisation and Association Process
SBIH – Party for BiH (dominantly Bosniak)
SBS – State Border Service
SDA – Party of Democratic Action (dominantly Bosniak)
SDC – Swiss Development Corporation
SDP – Social Democratic Party
SDS – Serbian Democratic Party
SEE – Southeast Europe
SELDI – Southeast Europe Legal Development Initiative
SFOR – Stabilisation Force (NATO-led)
SIDA – Swedish International Development Agency
SIPA – Security Intelligence Protection Agency
SNAO – Swedish National Audit Office
SNS – Croat Intelligence Service

SNSD – Party of Independent Social Democrats (in RS)
SPAI – Stability Pact Anti-corruption Initiative
SPOC – Stability Pact Initiative to Fight Organised Crime
TI – Transparency International
TI BiH – Transparency International Bosnia and Herzegovina
UK – United Kingdom
UN – United Nations
UNDP – United Nations’ Development Program
UNMBiH – United Nations’ Mission to Bosnia and Herzegovina
USA – United States of America
USAID – United States Agency for International Development
VAT – Value Added Tax
WB – World Bank

Executive Summary

Despite years of reforms, extensive analysis and billions of dollars in international assistance invested into the post-war development of Bosnia and Herzegovina (BiH), the country still faces a serious corruption challenge and only weak and ineffective institutions to combat it.

This study analyses the key public sector institutions necessary to combating corruption, as they comprise Transparency International's National Integrity System. The findings point to a number of newly adopted laws in BiH that reflect global good practice, but also to inconsistent and weak implementation mechanisms and a consequent lack of positive results that might increase public trust in institutions.

The country has made some progress, which is beginning to show both outside (as measured by the Transparency International Corruption Perceptions Index) and within the country: the perception surveys of TI BiH have shown a recent decrease in the willingness to bribe and, with it, less inclination to seek bribes on the part of public officials. Some government services have been enjoying a greater degree of confidence from the public.¹

The study notes the efforts of Supreme auditors, Ombudsmen and selected others, but also makes specific recommendations as to how their operations can be enhanced. It is vital that such agencies present their work together with the improvements that have already come about as a result of their efforts. Their visibility and their co-operation with other institutional pillars of integrity must be improved. And for that, more training of key players is required. Good international practices, acquired through study tours abroad, seem to have left a lasting impression on institutional leaders. The experience of neighbouring countries in adopting the *Acquis* appears to be the most appropriate model for BiH.

Much more reform work is still needed in other fundamental institutions, such as the judiciary, prosecution and the police. The outcome of current reforms remains somewhat unpredictable, partly due to a lack of reliable personnel of high integrity and partly due to the introduction of an unprecedented system in BiH. However, these reforms will help meet the key conditions for the transfer of authority from the international administrators.

A number of vital laws are still in the making, including legislation on public procurement and taxation reform, and although their adoption has taken far too long, they should ultimately have a positive impact on fiscal management.

Nevertheless, the involvement of the international community is a concern, as it leaves institutions ever more reliant on external assistance and decision-making with dwindling motivation to undertake difficult decisions themselves. The international administration must therefore urgently present its exit strategy and commence a brisk transfer of powers to national institutions.

Additionally, the country is burdened by deep divisions and the need to maintain ethnic quotas in institutional settings. Due to the country's strong decentralisation, the principle of subsidiarity, which governs the European Union, must be strictly observed. This state of affairs puts a damper on professional behaviour and is an intolerable burden on the country's budgets.

In addition, and critically, BiH lacks a detailed anti-corruption strategy, one that offers not just a list of laws to be adopted, but one that also details institutional tasks and deadlines with measurable and verifiable benchmarks and indicators. The introduction of such a strategy is a crucial step towards strengthening and enabling coordination of the National Integrity System, which is the best long term solution to reducing corruption in Bosnia and Herzegovina.

Bosnia and Herzegovina

Country Overview and Corruption Profile

Country Overview

The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) ended the war that had raged since 1991, creating the State of Bosnia and Herzegovina (BiH), which had previously been a constituent republic of Yugoslavia. The agreement also created two multi-ethnic constituent Entities within the new state: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). The Federation has a post-war population composed primarily of Bosnian Muslims (Bosniaks) and Croats while the post-war RS has a Bosnian Serb majority. The Constitution (Annex 4 of the Dayton Accords) establishes a central government with a bicameral legislature, a three-member Presidency (consisting of a Bosniak, a Serb, and a Croat), a Council of Ministers, a Constitutional Court, and a Central Bank. The Accords also assigned many governmental functions to the two Entities, which each have their own government, parliament, and police force.

In addition to these two first-order administrative divisions, there is also an internationally supervised area – the Brčko District. The Brčko District is located in north-eastern Bosnia and is an administrative unit under the sovereignty of BiH; it is neither part of RS nor FBiH and has remained under international supervision since it was defined as a condominium.

The three members of the BiH Presidency are elected by popular vote to a four-year term; the member with the most votes becomes the Chairman (unless he or she was the incumbent Chairman), however the chairmanship rotates every eight months. The last elections were last held on 5 October 2002 (the next are to be held in 2006). The Chairman of the Council of Ministers is appointed by the Presidency and confirmed by the National House of Representatives.

The Dayton Accords also provided for the Office of the High Representative (OHR) to oversee the implementation of civilian provisions. The OHR also has the power to impose legislation and to remove officials who obstruct the implementation of the Dayton Accords. The Entities (i.e. FBiH and RS) maintain separate armies, but according to the Constitution, these are ultimately under the control of the BiH Presidency.

In FBiH, the President appoints the Prime Minister, subject to parliamentary approval. The Federation Parliament is bicameral. In practice, parallel Bosniak and Croat government structures continue to exist in some areas of the Federation. In RS, the President and two Vice-Presidents are elected directly, while a Prime Minister, elected by Parliament, heads the Government. The unicameral Parliament, called the RS National Assembly, is elected on a proportional basis. In the town of Brčko, which is a "self-governing neutral district", an internationally appointed supervisor with executive authority is empowered to address issues such as taxation, law enforcement, district management, and composition of the district assembly.

Bosnia and Herzegovina: Political System in Transition

Political Background

The Socialist Federal Republic of Yugoslavia consisted of six republics, one of which was the Socialist Republic of Bosnia and Herzegovina. While the administrative capital of the republic was Sarajevo, the country's main institutions were generally located in Belgrade. There was a great degree of ethnic intermixing among BiH's more than four million citizens. Few areas were ethnically homogenous and so as the language of nationalism begun to dominate in the early 1990s it was clear that of all the ex-Yugoslav republics, BiH was heading for the bloodiest war.

War and Disintegration

After almost a year of conflict in neighbouring Croatia, war stood at the country's doorstep. Bosnia and Herzegovina's declaration of sovereignty in October 1991 was followed by a declaration of independence from the former Yugoslavia on 3 March 1992, after a referendum boycotted by ethnic Serbs. The Bosnian Serbs – supported by neighbouring Serbia and Montenegro – responded with armed resistance aimed at partitioning the republic along ethnic lines and linking various Serb-held areas. The conflict between ethnic Croats and Bosniaks was also intensifying. However, in March 1994, Bosniaks and Croats reduced the number of warring factions from three to two by signing an agreement creating the joint Bosniak-Croat Federation of Bosnia and Herzegovina. On 21 November 1995, in Dayton, Ohio, the warring parties initialled a peace agreement that brought to a halt three years of interethnic civil strife (the final agreement was signed in Paris on 14 December 1995). The Dayton Agreement retained Bosnia and Herzegovina's international boundaries and created a joint multi-ethnic, democratic government. This national government was charged with conducting foreign, economic, and fiscal policy. Also recognised, was a second tier of government comprised of two Entities roughly equal in size: the Bosniak-Croat Federation of Bosnia and Herzegovina and the Bosnian Serb-led Republika Srpska (RS). The Federation and RS Governments were charged with overseeing internal functions.

In 1995-96, an international NATO-led peacekeeping force (IFOR) with 60,000 troops served in BiH to implement and monitor the military aspects of the agreement. IFOR was succeeded by the smaller, NATO-led Stabilization Force (SFOR), whose mission is to deter renewed hostilities. SFOR remains in place although troop levels had been reduced to approximately 12,000 by the close of 2002².

Economic Background

Bosnia and Herzegovina ranked alongside Macedonia as the poorest republic in the old Yugoslav federation. Although the agricultural sector is almost entirely in private hands, farms are small and inefficient, and the republic is traditionally a net importer of food. Enterprises have historically

been greatly overstaffed, a remnant of the socialist economic structure of Yugoslavia. Former Yugoslav leader Tito had pushed the development of military sector in the republic with the result that BiH came to host a large share of Yugoslavia's defence industry. The bitter interethnic warfare in BiH caused production to plummet by 80% between 1990 and 1995, with consequently soaring unemployment and human misery. With an uneasy peace in place, output recovered between 1996 and 1999 at a considerable rate, although from a low base. But in 2000 and 2001, output growth slowed and the GDP still remains far below its 1990 level. However, economic data have their limits, since, although both Entities issue figures, national-level statistics are hard to come by. Moreover, official data do not capture the significant activity of the black market. The Convertible Marka - the national currency introduced in 1998 - is now pegged to the euro, and the Central Bank of BiH has dramatically increased its reserve holdings. Privatisation, however, has been painfully slow. Banking reform accelerated in 2001 as communist-era payment bureaus were shut down. The country currently receives substantial amounts of reconstruction assistance and humanitarian aid from the international community, but will have to prepare for an era of declining assistance.

The Implications of Transition

BiH is a society in transition, and in addition to the legacy of the former socialist political, legal, economic and ideological framework, it must also cope with the burden of a traumatic war experience.

The demanding and complex process of transition involves the dismantling of a dated state concept and the establishment of a new one. Given the peculiar conditions in BiH, this is being made even more difficult by a society slow to make those changes that are a precondition for a stable democratic environment.

The transition countries, including BiH, are finding themselves in a contradictory position. On the one hand, they want to participate in European integration as quickly as possible, in order to catalyse their transformation into developed democracies, while on the other hand, adopting the principle of transparency in work of their public authorities poses a series of breathtaking challenges.

The war has brought about a morale crisis. Old values were left behind without new ones to replace them, creating a feeling of insecurity, aggravated by the lack of a rule of law, general disorder and poor legislation. The previous legal concept of state has been dismantled, while the old system's legislation either remained in place awaiting the formulation of new and appropriate laws or simply ceased to be active, leaving legal gaps. This has jeopardized the credibility of the new democracy, and given rise to insecurity as to the real intentions of the authorities and their ability to initiate profound and sensible socio-economic reform that would create a sound fundament for the development of a democratic society.

Corruption Profile

Bosnia and Herzegovina in CPI 2003

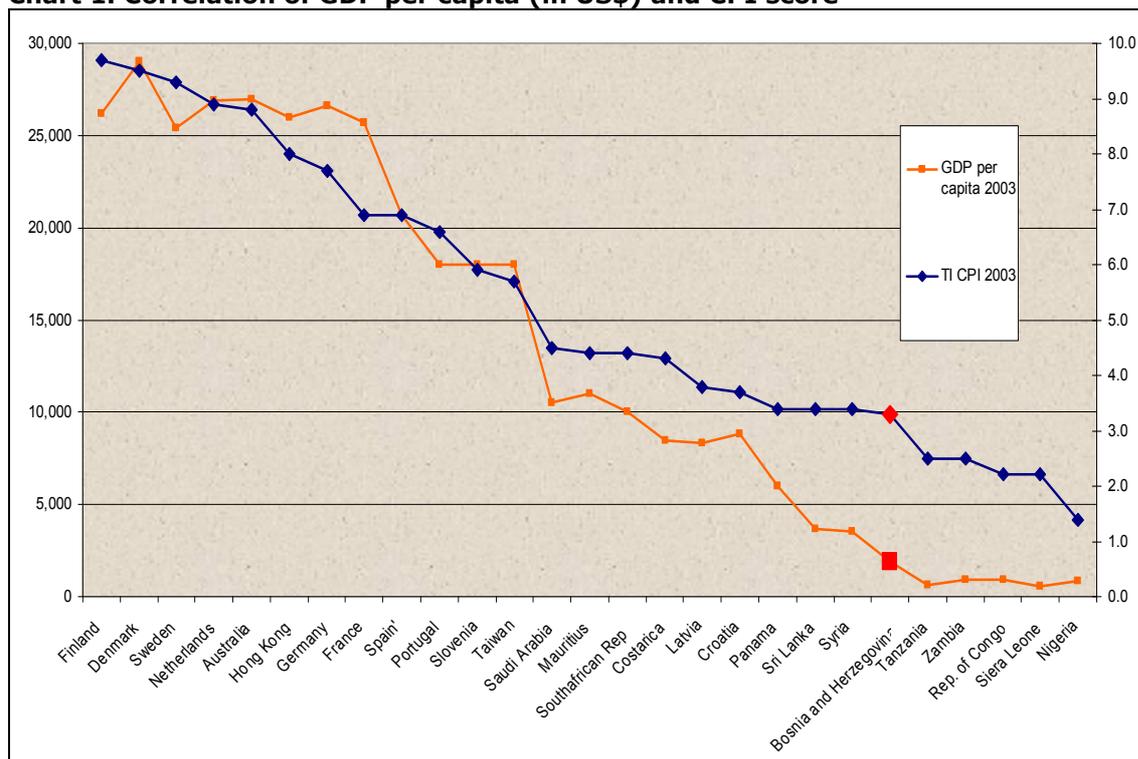
In 2003, for the first time since its introduction in 1995, the Corruption Perceptions Index (CPI), published annually by Transparency International, featured BiH. The CPI 2003 included 133 countries, ranked from those perceived as least to those perceived as most corrupt. "It is a significant success that BiH found its place on the CPI. Up until now, there has not been sufficient interest in the progress of the country. However, recently, six reputable analytical sources have incorporated BiH in their global research. This may represent the greatest recognition, as it finally puts BiH on the radar of the institutions that conduct their research primarily on behalf of major investors and financial institutions," commented representatives of Transparency International BiH on the release of the CPI 2003.

BiH shares a ranking of 70 to 75 with six other countries, and its score is 3.3 out of possible 10. This is, objectively seen, a good result and should serve as acknowledgement for the many institutions in the country in their systematic fight against corruption. Among principal contenders for EU membership, only Romania lags behind BiH; all others are ahead, some by almost 40 places. The fact that BiH scores better than others in the region, such as Serbia and Montenegro, and Macedonia, is not necessarily good enough. Instead the focus should be on catching up with Croatia, Bulgaria, the Czech Republic, Lithuania and Hungary.

Generally, the CPI 2003 indicates a high degree of corruption in both rich and poor countries. Yet it is worrying that 90% of developing countries scored below five on a scale of 10, confirming the necessity of improving comprehensive anti-corruption strategies. These should not be mere wish lists of laws and institutions, but, rather, results-oriented National Integrity System programmes, with measurable indicators and mechanisms for continuous monitoring.

Socio-Economic Priorities in Bosnia and Herzegovina

The only effective anti-poverty strategy is one that attacks unemployment as its first priority and corruption as its second. Citizens have acknowledged that poverty is a consequence of these two problems, which means it can only be tackled by taking concrete actions towards job creation and the introduction of the rule of law. The chart below demonstrates the direct link between standard of living (i.e. level of poverty) and corruption. It is based on the GDP per capita and TI's 2003 Corruption Perception Index for selected countries³

Chart 1. Correlation of GDP per capita (in US\$) and CPI score

Source: TI BiH, 2002

Looking at the overall pattern, one sees that the lower the CPI score, the wider the gap between the GDP line and the more rapid the fall in income. Likewise, to the left of the chart's centre, the GDP line crosses above the corruption line. There the GDP per capita rises rapidly with improving anti-corruption scores. Thus, there is a direct correlation between the two indicators. In the chart above, BiH lies in the lower region, where the GDP per capita curve lies almost flat.

In terms of poverty reduction, regulation of the grey market is crucial in diverting economic activity into legal channels. In addition to building institutions and strengthening the legal framework, this will contribute to rebuilding confidence in the region, attracting both national and international investors and leading to the creation of new jobs. In other words, fight against corruption is also very directly a fight against unemployment, and that means creating an attractive economic environment.

At a regional level, the maximum liberalisation of the movement of people and goods is required, and state authorities need to foster such policies. Criminal laws and procedures should be

harmonised among countries in the region, a process that can be administered and facilitated through the Anti-Corruption Initiative of the Stability Pact for the Southeast Europe. The approaches that follow will function best if harmonised across the region of the Western Balkans. This should be an integration priority and carried out in harmony with the *Acquis communautaire*.

Additionally, the analysis of corruption shows that the phenomenon can be broken down into components, making it easier to combat. Each component is a specific pathway of corruption, through which it infiltrates the system and continues to create the conditions for its own growth. Therefore, an action plan is necessary to lay out a schedule for blocking these channels as well as cracking down on those places where corruption is already well rooted.

The extent and diversity of corruption in BiH point toward large-scale administrative corruption that infects all segments of society, burdening all except a tiny elite with its negative effects. The average citizen feels it through the increased cost of living (an average of 10 to 20 percent in additional costs, as a direct result of bribes, unnatural monopolies, etc.). It manifests itself in other ways, including: foreign debt that becomes a burden because regular revenues are not collectable; lack of foreign investment, estimates suggest it could double if corruption were under control; lack of private sector development on a par with more advanced transition countries, with funds being spent on unproductive sectors (in particular on the expensive and complex government apparatus). Therefore, the entire population suffers and even the, as yet unconcerned, privileged few will suffer in the long-term. Meanwhile, one can only acknowledge the unhappy fact that a young, prospectively well-educated labour force is departing due to the lack of far-reaching structural changes.

Causes of Corruption in the Political System

The old legal and political establishment always resisted acknowledging the full extent of any socially undesirable issue. Even if the existence of such an issue was admitted under socialism, this was done to minimize the social influence of and marginalise the issue, or to portray it as a weakness that "healthy forces would easily resolve".

Certainly, the socialist world was familiar with the phenomenon of corruption, but being undesirable and unacceptable to the system, corruption was not publicly discussed. There were no reliable data on the extent of the problem, so that when the polling of the public opinion reappeared as a social research instrument in transition, it focused attention on an alarming problem that had previously gone unnoticed. Soon it was defined as a key problem that undermines the establishment of an operational legal and political framework for a new democracy.

The Corruption Perception Studies carried out by Transparency International BiH among the citizens of BiH continuously since 2002, sought to diagnose corruption, determine its causes and effects, establish its extent, and to record citizens' individual experiences and their attitudes towards corruption. Thus it was able to offer certain solutions and an anti-corruption agenda.

The first TI's research in 2002 demonstrated most clearly that BiH citizens were aware of corruption. In scale it extended to the 'state capture level' with certain professions, institutions and organisations leading the long list of corruption perpetrators. Political parties, an important part of the political system, were seen by 10.8% of the 1,200 respondents as the most corrupt institution.

Due to the multilevel governance of BiH, it was critical to measure the extent of corruption levels of government, thus assessing who enjoys the greatest confidence among citizens, thus positioning them to champion an anti-corruption agenda. However, the results were rather discouraging in that the perceptions of corruption present in the different levels of government of BiH differed only marginally:

Table 1. To what extent is corruption present at different levels of government (%-age of respondents)?

Level of government	Very extensive	Extensive	Moderate	Little	Very little	Uncertain/ no answer
Municipal administration	26.5	38.8	25.7	4.9	1.5	2.6
Cantonal administration (only for FBiH)	26.8	35.4	25.1	5.3	1.9	5.6
Entity government	31.6	28.4	19.9	6.1	2.6	11.4
BiH Council of Ministers	29.8	28.0	18.7	6.2	3.7	13.3
BiH Presidency	27.8	27.8	19.7	6.7	5.4	12.7

Source: TI BiH Survey 2002

Political and Administrative Corruption

With the management of state-owned companies, appointed on the basis of their party membership, making illegal gains from a privileged and untouchable position, and political parties financed the same way, there is no motivation for the power-holders to change this comfortable environment. Further gains resulting from pre-arranged tenders, competitions, subsidies, or credit that are in fact grant monies, only sweeten the deal, but make privatisation and investment in the BiH economy a very hazardous option and ultimately an unattractive one.

The World Bank's Diagnostic study tackled these phenomena in more detail. The data from the 2000 report indicate that around 2.5% of the total turnover of state-owned companies was transferred to the accounts of the same parties that appointed the management.⁴ This conclusion is supported by the following statistics, also from the report. Over half of the large state-owned companies have signed contracts with state institutions as opposed to just 28% of private companies. Subsidies were received by 76% of state-owned companies but by only half as many private ones. Twenty-seven per cent of the revenue of large state-owned subjects derives from purchases made by public institutions, while the private companies sell much less to the public sector. Almost half of state-owned companies participate in public tenders, yet less than 20% of private companies do so, having experienced unfair competition, with state-owned companies clearly being favoured (most respondents gave this as their reason for not participating). Private businesspeople must even pay higher and more frequent bribes in order to maintain their 'market' position, making the business environment even more difficult and discouraging any development or strengthening of the private sector.

Corruption in the region is characterised by different forms of abuse of power for personal gain. In the past three years there have been several big scandals in BiH which roused public ire, including: an affair in the Customs Administration Office of RS, the department's director and the Minister of Finance both had to resign; a scandal in connection with the sale of banks in RS resulting in the resignation of the remaining Minister of Finance; the case of the military factory "Orao" in Bijeljina which broke the UN embargo to sell airplane components to Iraq, resulting in the resignation of the President of RS (also member of the BiH Presidency at that time) forced by the High Representative; and affairs in connection with electrical utilities of the Entities, in which the directors of these public enterprises had to resign from office. The High Representative in BiH had to exercise his powers on several occasions. In mid-2001 the High Representative removed Mr. Edhem Bičakčić from his position as general manager of the FBiH's "Elektroprivreda" (public electrical utility), based on his actions while Prime Minister, and barred him from holding any public office and from any further involvement in the business of "Elektroprivreda". Former Prime Minister Bičakčić was charged with having created the FBiH Employment Bureau without following the procedure prescribed by law and with giving, without legal justification or consultation with the Government, large sums of money derived from employment contributions to a charity for the families of fallen Muslim soldiers. The money was later used to provide additional capital for a Sarajevo bank. Later it was discovered that money obtained from various BiH missions abroad was transferred to the corporate bank account (allegedly as compensation for war damages incurred),

of a firm which subsequently donated KM 700,000 to the election campaign of the SDA (the party of the former PM). This case has not gone to court yet.

The High Representative also removed Mr. Nikola Grabovac from the position of FBiH Minister of Finance because of the "Am Šped" affair. Mr. Grabovac is alleged to have exempted the company of that name from paying customs duty on certain imported articles. Criminal proceedings have been initiated against the former Minister before the cantonal court in Sarajevo, but no legally effective judgement has been delivered yet. Criminal charges were also brought against Mr. Dragan Čović, Croat member of the BiH Presidency, before the cantonal court in Sarajevo from his days as Deputy Prime Minister of FBiH and Minister of Finance, in connection with the illegal privatisation of the former armaments factory "Soko" in Mostar.

Although a great number of criminal charges have been brought against public officeholders, only one judgement has been delivered so far, although it has not come into effect as of yet. The Basic Court in Banja Luka found Mr. Nenad Suzić, the former RS Minister of Education, guilty of abusing his office. In particular, during his term as Minister of Education, Mr. Suzić approved £ 5,000 (US\$ 8,000) for postgraduate studies in Great Britain for the daughter of a politician, at that time President of the Municipal Assembly of Prijedor (now head of the municipality). The case is now in appeal.

More recently the State Court of BiH has ordered the arrest and detention of Mr. Ante Jelavić (former member of the BiH Presidency and president of the HDZ), Miroslav Prce (former FBiH Minister of defence), and Miroslav Rupčić (former director of "Hercegovina osiguranje"), which may suggest a more resolute approach to organised crime. At the time of writing, it remains unclear whether these former senior Federation officials were suspected of criminal activities related to "Hercegovska Banka" money laundering.

The former Prime Minister of RS, Mr. Gojko Kličković, is still at large. Prosecution authorities in RS have not been able to apprehend him in the past three years. Criminal proceedings against him were initiated on various charges of abuse of power, mismanagement of public funds and conflict of interest, while serving as the Prime Minister of RS.

The general feeling is that high-level politicians are untouchable as even those few charges that are actually brought against them, have been badly mismanaged due to poorly conducted pre-criminal procedure and investigation. The proceedings have largely been hastily initiated, with the aim of appeasing the public or discrediting a political opponent. It is believed that these officeholders will never be held responsible before a court of law because political authorities are able to exert strong direct pressure on the judiciary to halt proceedings against them. Even if these proceedings are carried through, they are drawn out far too long and thus often fall under the statute of limitations. Although executive and legislative authorities no longer have formal influence on the judiciary in connection with the appointment and removal of judges, these two power centres still control the funding of the judiciary, which means that they can indirectly influence the administration of justice. To demonstrate this, consider the example of managers of the oil refinery in Brod, against whom charges were brought in the Regional Court in Doboj. The

Prosecutor's Office had to pay KM 80,000 to obtain expert finance opinion. The proceedings came to a complete standstill until the Government approved funds for the expert opinion almost a year later.

The Austrian publication "Profil" (14 July 2003, issue No. 29) wrote about the case of Đojo Arsenović and Dragomir Vasić, who were removed as RS MPs by the High Representative, Paddy Ashdown. Their bank accounts were closed by his decree with no evidence presented to the public. This article came as a reaction to the analysis of the European Stability Initiative titled: "Travails of the European Raj"⁵. It raised the issue of the extensive powers and the lack of accountability of the High Representative and his office. Following that the article, several other politicians were fired, barred from travelling to the EU or US, and had their bank accounts closed, on allegations of funding criminal networks that may support individuals indicted for war crimes. One of them is Mirko Šarović, the former President of RS and a member of the joint Presidency of BiH.

Most recently, on 30 June 2004, Paddy Ashdown removed 59 elected and appointed RS officials at Entity and municipal level from power. In a four page statement they were accused of "ICTY obstructions" and on those grounds removed from office. Meanwhile 60 municipal bank accounts of their party – the SDS - were frozen and funds of up to KM 1 million transferred to State institutions⁶. This represents the largest single protectorate intervention recorded in BiH thus far. The High Representative has demonstrated that he can bring charges against any individual in BiH without presenting sufficient (or any) evidence and that the entire process of 'democratic' elections comes close to being a farce. Dispossessing legal entities of their funds without a proper public investigation and a trial would be classified as theft in any Western democracy. Regardless of the profiles of the 59 individuals removed from office, many of whom are widely considered to be crooks, no trial has been set and they have had no opportunity to present their case. Besides, pressing criminal charges and presenting a clear case would have done more for the national integrity system of the country and would have painted a powerful image of the 59 individuals and their party. In the days following the publication of this report, the actions of the High Representative are bound to be widely debated.

Economic Corruption

The understanding that corruption is a significant obstacle for economic development in BiH inspired a survey that was carried out by the World Bank at request of BiH authorities. This was the first thorough opinion poll on corruption, carried out in 2000. The research of TI BiH was then the second such poll that was conducted in February and March of 2002 and then again in the same period of 2004.

Comparing the results of these studies indicates that no improvements had been made. Corruption in BiH threatens the reforms that have gotten underway in the country, new businesses are drawn into the area of grey economy, vital natural resources are being exhausted with no control mechanisms in place, and foreign investors continue to avoid BiH due to a high investment risk. A considerable degree of corruption makes the transition period even more difficult, bringing low

production and a growing income gap. The main trend characterising this period is diminishing confidence of the general population in the institutions with dwindling hope for change.

The purpose of this section is to analyse the causes of corruption and its existing manifestations in the economic life of BiH, as well as to detail its impact on economic development and quality of life. The conclusions reached are a powerful aid in raising public awareness of corruption as well as for the development of a practical anti-corruption campaign.

With the transfer of public (state) functions to the private sector, the practice of corruption also migrated, but its effects continue to be broadly felt. TI BiH's 2002 survey brought to light a whole series of myths, prejudices, and misconceptions; such as, that corruption is a matter of culture or that low salaries lead to corruption. The latter is merely a superficial excuse of corrupt elites to justify their kleptocracy. Citizens of BiH realise the rule of law does not only apply to developed countries nor do they believe the notion that "this is impossible to implement here". This dialogue removed the last barrier, which is corruption as a taboo, thus satisfying a precondition for its efficient eradication.

With all its peculiarities, transition opens numerous avenues to corruption, which are not present in countries with an established market economy. These relate primarily to the very property transformation at the heart of privatisation, where the title deeds of massive state-owned objects change hands while many public services or institutions either cease to exist, or continue in a significantly changed form. Beginning at its inception, the suppression of corruption in the transition phase becomes ever more important, together with the positioning of institutions and laws for the time following transition.

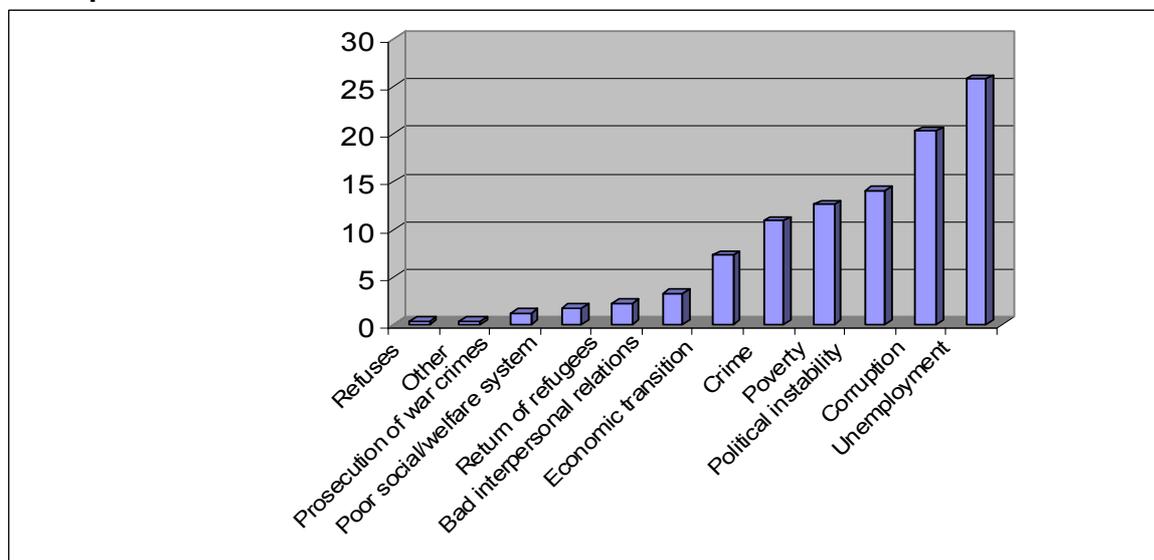
In BiH, very few forces support radical economic reform – beginning with privatisation and leading to the dominance of private initiatives. Instead, most actively resist transition through their quasi-etatist strivings, motivated frequently by personal or elitist interests. Such policies, couched within a nationalist framework, have defined the politics of every government from Dayton onwards, which have been led by national and socialist parties with endemic cronyism. With this kind of government at all levels, BiH has wasted over half a decade that was foreseen for transition. This comes in addition to the five years of war that had already held back the country. The balance is increased foreign debt and a trade deficit, and a corresponding drop in the real value of the economy. The gap between the rich and the poor has grown, producing an ever-smaller group of ever-richer elites. Foreign debt was financed mostly by BiH citizens living abroad and by the donor community, thus, practically subsidising growing corruption and crime.

Causes and Effects of Corruption

Eight years have elapsed since the signing of the Dayton peace agreement; new state structures were adopted including, to some extent, the western model of economic development. Yet there have been no significant changes in the economy. BiH is still among the transition countries with the lowest GDP per capita, coming to US\$ 1,900,⁷ with a still significant gap between regions, in

particular between the wealthier Federation BiH and the struggling RS. The causes of this situation are partly rooted in the choice of a transition path to suit individuals who accumulated illegal capital during the war and who wish to hold on to power and their illegitimate wealth.

Chart 2. Corruption follows unemployment as the second largest problem hindering the development of BiH



Source: TI BiH, Sept. 2002

The connections between the state and economy (inherited from the socialist era) have in many areas not changed significantly, nor has a clear division line been drawn between the private and public interest. This situation has contributed significantly to an increase in corruption among all political and economic institutions in BiH. Simultaneous development of a market economy, the building of new political and social institutions and the redistribution of public goods during the post-war development of BiH have created a very fertile soil for corruption.

In BiH, the extensive bureaucratic apparatus still plays a dominant role, as a result of the socialist legacy. This apparatus remains under control of the officials who have neither the sensitivity nor the flexibility for the endeavours of transition. Also, many laws necessary for the development of private companies have either not been adopted yet, or do not truly support private initiative in their proposed form. Ownership rights have not been precisely defined yet, and unclear contractual rights prevent larger scale lending and a properly functioning financial market. Additionally, the work of courts remains slow, non-transparent and unpredictable. The tax burden, despite reforms, remains complex and still promotes tax evasion by businesses. Therefore, BiH has found itself in a vicious circle of corruption that reduces public revenues, undermines public

trust, weakens the government's credibility and reduces any hope that reforms can bring about a significant change.

The TI BiH survey has identified two forms of corruption that have different effects on the economy: *corruption at high levels of government* and *administrative corruption*.

Corruption at high levels of government enables large companies to adjust the laws and regulations according to their own needs, allowing them to achieve higher turnover. There are complex linkages between politics and businesses, commonly described as 'conflict of interest'. Such a business environment suffocates small and promising firms, while offering growth opportunities, through market distortion, to other firms of dubious commercial competence (either because of ownership by elites or because losses are subsidized to preserve social and political stability). This applies to most of the large state-owned companies and utilities. The existing administrative corruption enables, *inter alia*, the survival of unfit companies that under normal competitive market conditions could not survive, while at the same time increasing the operating costs of what would be successful companies, thereby distorting the allocation of available resources.

How well aware the general public is of these developments is demonstrated by the following data from TI BiH's study on the most important causes of the spread of corruption. The majority of respondents indicated the lack of both legal enforcement and the rule of law as the main reasons for the spread of corruption (30.9%), followed by the general poverty (18%), and lack of morals and honesty (15.9%).

One definition of corruption is the "misuse of public position for personal gain". This means that personal, partisan or family relations may play a role in economic decision-making, regardless of whether such decisions are made by market players or public officials. Making decisions that are important for a wider community based on one's own interest inevitably produces damage that may be defined as the economic cost of corruption.

The economic costs of corruption for BiH include:

- A negative effect on investments and growth (e.g. BiH attracts the lowest level of FDI in SEE and has a lower GDP growth rate than anticipated);
- Negative effect on development of the private sector (e.g. low number of registered private enterprises per capita; low confidence in the economy from the private sector);
- Increased administrative expenditures (e.g. BiH runs the highest transitional figures in total government expenditure – almost 50% of GDP *per annum*);
- Distortions in public sector growth (the public sector remains the largest jobs generator and bureaucracy propagates itself for benefit of job creation; more red tape means more administrative procedures and with those, more corruption);
- Diminishing quality of goods and services (greater administrative expense leads to lower quality of goods and services, both in BiH's private and public sector);

- Increased poverty (in per capita income BiH ranks among the poorest nations in Europe and real GDP growth is in significant disproportion with comparable countries, e.g. the EU candidates);
- Organised crime (it is estimated that billions of KM are being laundered annually through criminal activities, the underworld appears very strong); and
- Diminished credibility of the state (when criminal gangs operate throughout the country, citizens come to see organised crime as more competent than the state).

A slow process, on the part of elites, of using the proceeds of property transformation to drive capacity building, has left state-owned capital languishing, still ruled by a economic policy characterised by conflicts of interests, nepotism and cronyism. Direct consequences of such irresponsible and structurally destructive behaviour are limitations on the development of the private sector, marginalisation of any kind of private initiative, continuing disappearance of assets from the balance sheets of state-owned companies and their consequent impoverishment, and the devaluation of state-owned capital rendering the privatisation process worthless.

Far more dramatic are the long-term and indirect consequences: obstructed flow of new capital, the domestic market losing out, deleterious business climate in the country, lack of foreign investment, lack of strategic interest in the BiH market, layoffs and closing of production plants, paralysis of the economy, 'brain drain' with young people leaving the country, and the impoverishment of average citizens who shoulder these losses through tax policy. The costs keep multiplying. They will not be recovered in a short period, but will require an entire generation.

The TI BiH findings confirmed that the level of public awareness is mature and that the citizens of BiH expect the transition of ownership and hence a change in the economic system. Being aware of the legislative vacuum created by the lack of rule of law, they recognise state-owned companies as nests of corruption and rank them alongside the most corrupt institutions, such as political party leaders. In other words, the state monopoly, minority economic rule, manipulation and theft of state property, and corruption are attributed to the symbiotic relations of transition. The solution is to be found in the still underdeveloped private sector, which needs to be properly regulated and assisted in its growth stage.

The bad marks privatisation has received so far cannot be explained by a lack of public support for transition, but rather by dissatisfaction with the non-transparent methods used in its implementation. The TI BiH research results also show that the so-called 'transition of minds', i.e. adjusting ways of thinking to the new liberal capitalist paradigm, is gaining momentum, particularly among urban populations, younger and middle-aged adults, and those with higher education, exactly those citizens who will build the future of this country.

Organised Crime: a Specific Issue

BiH remains an important transit point on marijuana and opiate trafficking routes to Western Europe. Organised criminal syndicates launder money, but the lack of a well-developed financial infrastructure limits the country's utility as a money-laundering centre. The State and Entities

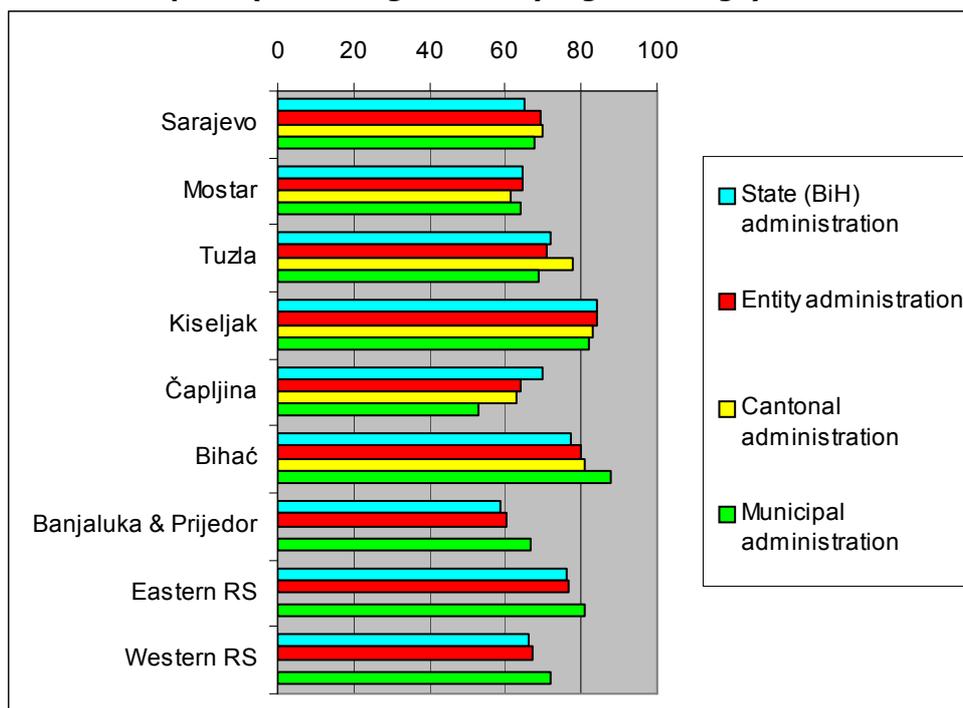
adopted a Law on money laundering prevention in 2003, which sets up additional mechanisms to control inducement for such activities. However, the Balkan route for drug smuggling, human trafficking and other forms of organised crime existed for decades. With the decay of the rule of law, since the war's end, this route has been re-established through BiH and expanded to include also arms trafficking, smuggled excise goods, money laundering etc.

Today, billions of dollars remain in the hands of regional criminals who run white slavery rings, produce and distribute drugs, and deal in other forms of illicit activity. Trafficking is among the most 'popular' as it requires no manufacturing facilities or fixed capital. Prior to the war, drugs were only channelled through BiH, but since the war, drugs are now produced there, and this includes not just 'soft' drugs such as marijuana but synthetic drugs as well. Strong links exist with Kosovo, another international protectorate, where local and regional mafia have established a solid hub.⁸

Endemic corruption in the Balkans also found fertile soil in the *de facto* privatisation of border crossings (through bribery and control of border institutions), as two-thirds of the GDP of every Balkan economy crosses the national border at some point in its life cycle. This enabled the institutionalisation of corruption and close regional co-operation among the mafia, i.e. the proliferation of organised crime. The mafia therefore needed and organised very close ties to the ruling establishment. So, while the countries and people of the Balkans were fighting bloody wars, the elites practically monopolised regional trade and thus got their hands on two-thirds of the GDP. It was in their interest to preserve the monopoly for as long as possible and hence to extend hostilities and unnatural divisions. This condition can only be overcome by full market liberalisation in the region, i.e. lifting customs and trade barriers, and enabling all citizens and businesspeople to move and trade freely. This will give a significant boost to all regional economies, and lend sustainability to BiH.

The linkages with the mafia become more apparent with the involvement of the international community, and through clean-ups and strikes against organised crime in neighbouring countries. The citizens of BiH undoubtedly suspect the entire ruling elite in all regions and at all levels of being equally corrupt: the chart below demonstrates how homogenous the perceptions of BiH citizens of their authorities are.

Chart 3. State capture marked by region: what is the extent of the authorities' involvement in corruption (marks: *high* and *very high* in %-age)



Source: TI BiH, 2002

Bosnia and Herzegovina

The National Integrity System

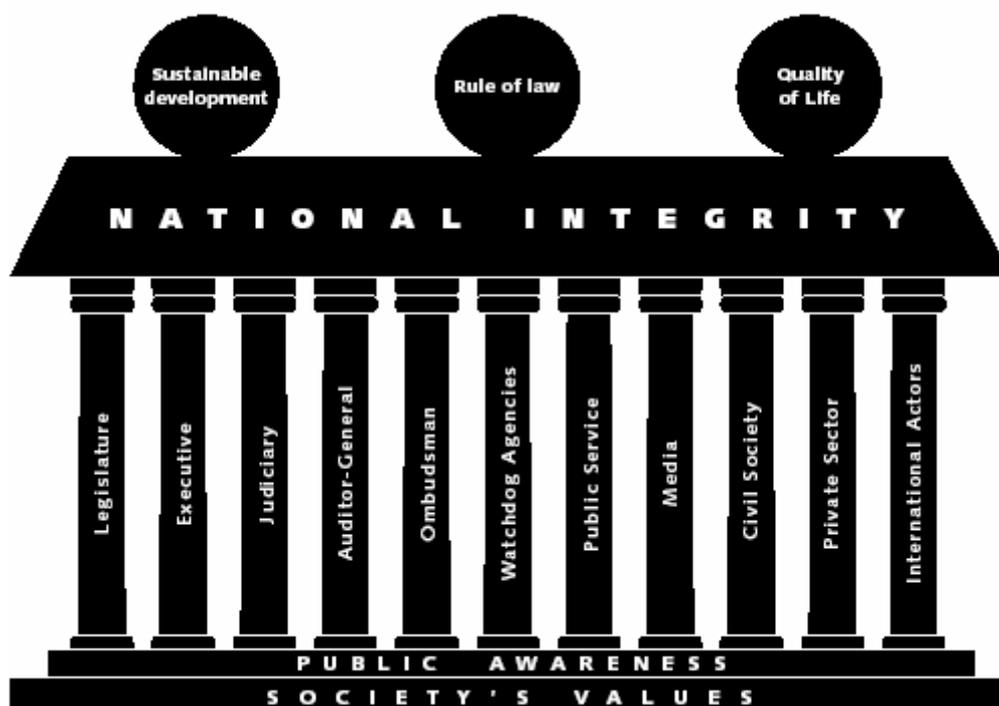
The National Integrity System

All these findings indicate an urgent need to establish the aforementioned horizontal anti-corruption system. In brief, the table below describes the main roles of each pillar of social integrity.

Table 2. Pillars of the national integrity system

SOCIAL PILLARS	ROLE IN SOCIETY
Parliament	Fair elections
Executive	Preventing conflicts of interest
Judiciary	Independence, civic freedoms
Supreme Auditor	Reporting to the public
Ombudspersons	Collecting public reports
Monitoring agencies	Implementation of laws
Public services	Public services' code of ethics
Media	Access to information
Citizens' associations	Freedom of speech
Private sector	Competition, public procurement regulations
International community	Mutual support, technical and otherwise

Only the simultaneous development of all components will lead to the proper development of society, meaning that all pillars and all institutions are equally important and that they need to be established in parallel since they rely on one another.

Picture 1. Temple of National Integrity

Source: Transparency International, Pope Jeremy (ed.), 2000, TI Source Book 2000, Confronting Corruption: The Elements of a National Integrity System

This means then, that gaps and weaknesses must be systematically identified, as well as opportunities for strengthening or upgrading each pillar to form a consistent system. If it were to rely too much on any individual pillar, for instance on a 'benevolent dictator' who suits the interests of the international community in achieving some 'higher' political goals, but who, at the same time, is corrupt and makes the country or Entity even poorer, then this is an unsustainable scenario that would hold BiH back in its development and at the same time increase its debt. Such scenarios have been witnessed in practice until recently.

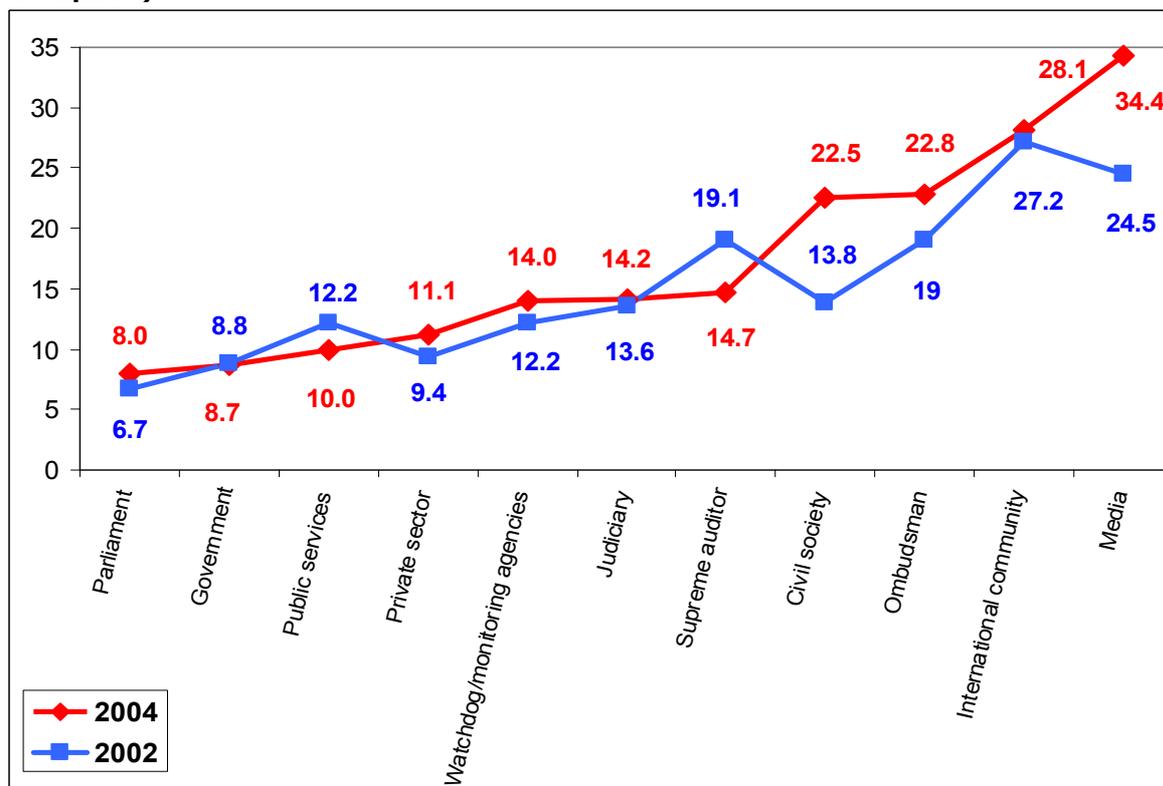
It is also wrong to rely on a small number of pillars that, in the short run, give the impression of a working system, such as through fair and democratic elections, while the absence of other elements contribute, in long-term, to a collapse of the state of law. This will send signals of collapse, no matter how stable the system may otherwise seem at any particular point in time. A breakdown of any pillar cracks the roof of the temple and the spheres of its ultimate goal inevitably fall off.

The national integrity system does not look at pillars individually. Understanding their correlation and the degree of mutual cooperation is much more important. That is exactly why TI BiH has been pointing to the need for strengthening institutional ties and responsibilities, such as those of the international community in BiH, which plays such a uniquely important role. This is a holistic approach to the system, based on combined effectiveness. In other words, a strengthening of the judiciary without implementing simultaneous measures in the police, prosecution, public attorney's office, lawyers etc., will not bring about any sustainable improvements. This is the problem BiH faced at the time of the arrival of the new government after the 2000 elections. Since then, progress has been made in professionalising the judiciary, the police and other institutions of the legal system, with an elected government that is more democratic and reform-oriented. However, the lack of the communication and co-operation between the parallel pillars has inhibited substantive systemic reforms. Even four years after the establishment of the new government there has been no serious sanctioning of crime committed in previous periods. In the meantime, subsequent governments, having proven for themselves the rule that "crime pays", have consciously resumed the corrupt practices of their predecessors. This confirmed the hypothesis that an uncoordinated system is unsustainable in the long-term. Meanwhile, even though the current government is aware of the gaps and shortfalls, it keeps using the remaining corrupt channels for winning quick, illegal gains and rent through the system, or rather through the lack of a system.

Effectiveness of Integrity Pillars

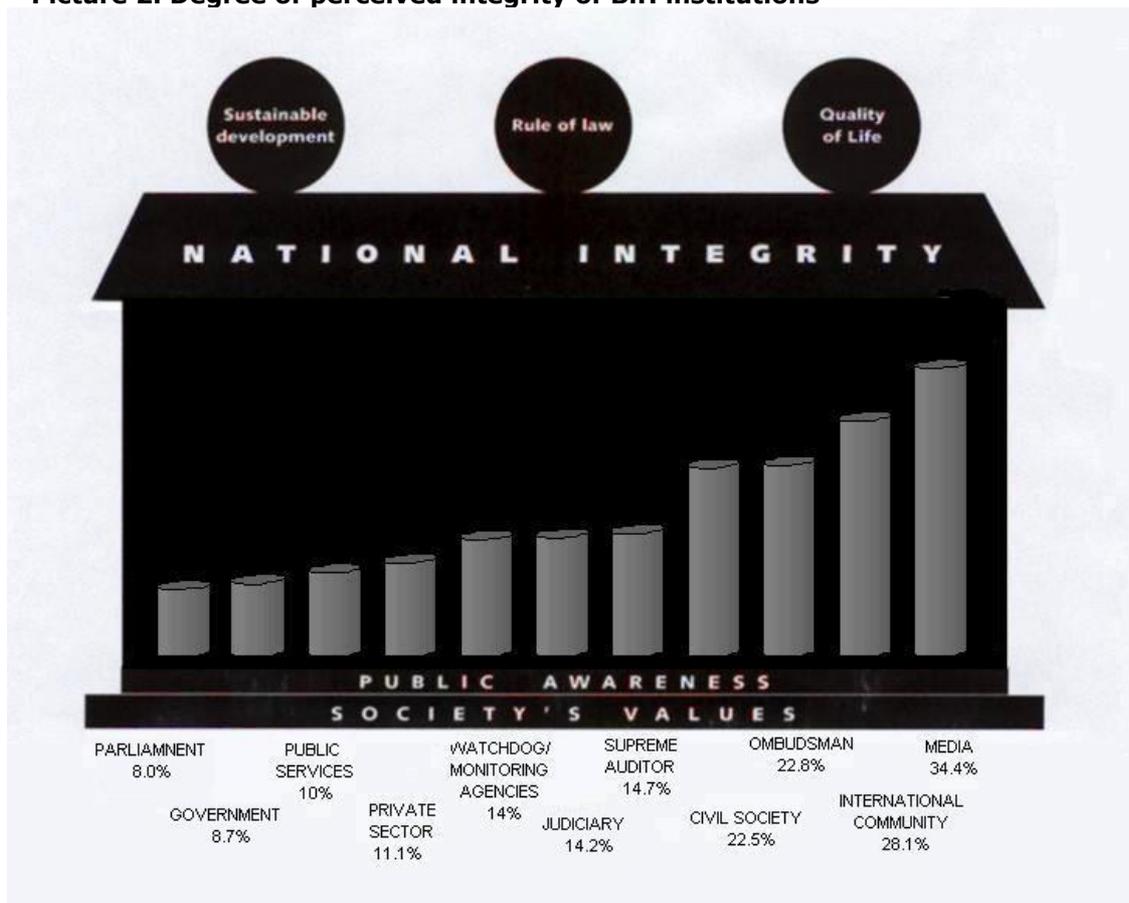
TI BiH has been continuously measuring corruption and has noted a change of perceived effectiveness of the integrity pillars. Most noteworthy is the progress achieved by the media and civil society and the subsequent trust that citizens place in these institutions. The figures below are the mean values for BiH in sum. At the Entity level, there are differences in the perception and effectiveness of different Entity institutions. What matters is that not only that institutions are becoming more professional in their operations, but, perhaps even more importantly, citizens are increasingly ready to seek the support of these institutions in tackling daily corruption. What remains worrisome is that key public institutions that should be the leaders in fighting corruption are lagging far behind the NGO sector and the media, which have only limited options in this struggle. However, with all pillars making a simultaneous effort to improve and to support citizens in combating corruption, much of the know-how and positive progress will translate quickly from one pillar to the other.

Chart 4. Differences in perceived effectiveness of integrity pillars in combating corruption (% responding with *very efficient* or *considerably efficient* in combating corruption).



Source: TI BiH surveys of 2002 and 2004

For the country as a whole, the analysis of the integrity of the eleven pillars presents the following picture:

Picture 2. Degree of perceived integrity of BiH institutions

Source: TI BiH, Feb. 2004

The speed with which reforms have been evolving lately indicates much stronger donor persistence and a greater openness to change on the part of governments at all levels. This has resulted in rapid but noticeable progress in a number of areas, which was unthinkable only a year or two ago, since reforms were never able to produce tangible results in just a few months. More specifically, the areas of the judiciary, prosecution, supreme audit and public procurement are improving at a much faster pace. A number of recommendations from this study are already being taken into account and built into new draft legislation. This is a very encouraging sign and TI BiH looks forward, not only to a higher score for BiH in TI's CPI for the next year, but also to a better economic outlook and prospects for future developments. The progress in strengthening the

foundations and the pillars of the temple of national integrity should start to show, in the medium-term, in terms of sustainable development, the rule of law and quality of life.

Some findings of this study are very relevant for other post-conflict countries undergoing reconstruction, transition, nation building, or all of these. This is especially true for the countries and regions of Southeast Europe, such as Kosovo. The recommendations appear applicable there and to a score of other places where institutional capacities are limited, as in BiH. To that extent, TI BiH looks forward to communicating lessons learned to any other places where they might be relevant and useful.

Executive

As it did with many other institutions, the Dayton Peace Accords introduced many layers of governance to the then-divided BiH. Executive power is held at the State level by the Council of Ministers (CoM) of BiH, effectively forming a central government, yet one with limited responsibilities. The CoM currently presides over eight ministries (Ministry of Foreign Affairs, Ministry of Foreign Trade and Economic Relations, Ministry of Communications and Transport, Ministry of Finance and Treasury, Ministry for Human Rights and Refugees, Ministry of Justice, Ministry of Security, Ministry of Civil Affairs and the newly formed Ministry of Defence) and is presided over by the Chairman, which is no longer a rotating post.

Larger, and regionally more powerful, governments were set up at the sub-national Entity-level, and there are two such Entity Governments, the Federation of BiH and the Republika Srpska. The FBiH contains ten more cantonal Governments with rather unclear competencies that often overlap with those of the Federal Government.

Finally, the list of governments ends with the District of Brčko, the municipal administration that was transformed into the District Government by the Final Arbitration Decision of March 1999. It is a small, flexible government with sizeable revenues and small expenditure (the District is demilitarised and there are no large public investments). Its decision-making is almost totally dependent on the operations of the local OHR and the Supervisor of Brčko, a Deputy High Representative (currently Susan R. Johnson and traditionally a US diplomat post).

The chief of state is the collective Presidency, the chair of which rotates every eight months. The three members of the Presidency (one Bosniak, one Croat and one Serb) are elected by popular vote for a four-year term. The member with the most votes becomes the Chairman unless he or she was the incumbent Chairman. These elections were last held on 5 October 2002.

The Chairman of the Council of Ministers is appointed by the Presidency and confirmed by the State House of Representatives. The CoM is nominated by the Council's Chairman and approved by the BiH House of Representatives. Currently, the Council of Ministers is chaired by Mr. Adnan Terzić (as of 20 December 2002).

In the case of both the State and the Entity-levels, the Prime Ministers (or the Chairman of the CoM) are appointed by the head of state. At the Entity level, the PMs are designated by the Entity Presidents. Their nomination and the approval of their cabinet rest with the Entity (FBiH and RS respectively) national assemblies.

All governments are voted in by parliament and the executive members cannot be members of parliaments at the same time. The complex structures of governance in BiH (FBiH alone has some 200 ministers) drive government expenditures up considerably.

Cantonal governments, ruled by the respective constitutions, have on the least impact on policy, although in day-to-day administration of their jurisdiction, they play a significant role and therefore citizens and businesses interact with them frequently. Entity governments still have the greatest scope of functions and the most direct effect on the development of the country. While their area of competence remains the Entities, their actions are reflected directly in development policy on the State level. The joint institutions of the State represent a compromise detailed in the Dayton agreement. It has been revised several times extending the number of ministries and the quality of their work, assigning them more authority and granting them further decision-making powers. Therefore, the Council of Ministers today has exclusive rights over all the external arrangements of BiH and to representing BiH interests abroad. This is regulated by the Law on the Council of Ministers, stating that each Entity and canton may have its own laws laying out the structure of government, ministries and the internal regulations for each ministry.

The government rules by laws that are laid before the parliament for adoption and by decrees, the natures of which are formally and strictly defined in the respective law. All such draft laws, decrees, decisions etc. are brought before cabinet sessions and consequently signed by the Prime Minister. Every government has a secretary general who is in charge of administrative issues and of cabinet sessions. The secretary general manages the so-called joint services of the government and looks after the administrative expenditures of the staff.

In broad terms, the Dayton agreement continues to undergo structural changes and is constantly revised to reflect an ever-greater centralisation of powers. The current direction is towards Entities dealing more with day-to-day administrative matters, while policy issues and fiscal affairs becoming more the realm of the State level. Despite some resistance on the part of the Entities, particularly RS, this process is irreversible and the role of the Entities is diminishing daily.

All governments are headed up by a Prime Minister and a number of ministries, while some ministries have the deputy PM status, supposedly endowing greater importance to that ministry. In reality, deputy PM posts are normally allocated to coalition partners from a party other than the PM's. The system remains very politicised and partisan. The division of ministries is growing ever more logical. For example, previously a single ministry combined social affairs as well as business development.

The following quote from Minister Milan Bogičević of Economy, Energy and Development in RS following the announcement of the election results demonstrates to what extent the appointment of ministers is being guided by partisan concerns: "My combination, coming from the constituency No. 5 was to become a Minister. I'll tell you a secret. [I should have become the] Minister of Defence. To tell you the truth, I didn't expect this Ministry... However, such was the dice... I will still try to give my best."⁹ All ministers at both levels of government are appointed the same way and the ruling parties in the respective parliaments approve the appointments eventually.

With the continuous downsizing of the executive and adherence to the subsidiarity principle and every layer of government focusing exclusively on an issue (rather than all levels dealing with

virtually everything), a workable decentralised government is possible. It will require much more practice for the treasury in the planning of the budget, and a greater reliance on other pillars, such as the reports of the supreme auditors. Also of solid assistance are the introduction of civil service, the professionalising of the staff and internal reforms. The further application of legislation on themes such as conflict of interest and access to information will not only help citizens and reduce the cost burden of administration, but by setting an operational framework for officials, it will help them to streamline their activities and operate more transparently and accountably. In other words, improvements are visible and the reforms are continuing. Such improvements will also help the civil servants regain trust in their ministers. Anecdotes confirm that the confidence level of civil service professionals remains low. Another major dysfunction of the governments is a lack of vision, priorities and systematic plans. Mere budget planning cannot be a substitute for the lack of an overall development course.

The Law on conflict of interest entered into force on the day following the announcement of the results of the October 2002 elections. The Law governs special obligations of elected officials, executive officeholders, and advisers within the governments of BiH, in exercising their duties. According to this Law, a conflict of interest exists any time an elected official, executive officeholder or adviser has a private interest that may affect the legality, transparency, objectivity or impartiality of their actions in exercising their public duty. Declarations are being submitted ahead of elections and at the end of terms in office. The Law also deals with codes of conduct: setting limits on acting in case of conflict of interest, on certain forbidden activities, on the acceptance of gifts, and the performance of other official activities. The Law also covers the following topics: incompatibility of functions, government investments in private companies, transparency and openness with regard to personal finances and involvement in private business, access to information on government investments and access to companies' annual reports.

The Law empowered the Election Commission of BiH to implement its provisions, enables any citizen to submit complaints on breaches of the Law, and details the related proceedings using the commission's own investigative and sanctioning resources (see section on the Election Commission).

Legislature

Similar to the government, parliamentary assemblies also exist at every level. The list starts with the Parliamentary Assembly, the two-house legislature of BiH. The same structure is preserved in the Federation BiH Parliament, while the RS Parliament has only the House of Representatives and Council of Peoples, which effectively acts as the second house. Each Canton has a Parliament, somewhat smaller in size. Local communities – municipalities – have local councils that assume the legislative role at that level, but these are limited to 31 seats. Such settings are rooted in the respective constitutions and were initially prescribed by the Dayton Peace Accords.

The bicameral Parliamentary Assembly of BiH or *Parlamentarna skupština* consists of the National House of Representatives or *Predstavnički Dom* (42 seats - 14 Serb, 14 Croat, and 14 Bosniak; members elected by popular vote to serve four-year terms) and the House of Peoples or *Dom Naroda* (15 seats - 5 Bosniak, 5 Croat, 5 Serb; members elected by the Bosniak/Croat Federation's House of Representatives and the Republika Srpska's National Assembly to serve four-year terms); note - BiH's election law specifies four-year terms for the State and first-order administrative division Entity legislatures; officials elected in 2000 or earlier were elected to two-year terms on the presumption that a permanent law would be in place before 2002, as was indeed the case. Elections since 2002 have been organised and supervised in accordance with the new law and managed by BiH authorities, i.e. the Election Commission.

The State-level House of Representatives is composed of the following political parties: SDA 21.9%, SDS 14.0%, SBiH 10.5%, SDP 10.4%, SNSD 9.8%, HDZ 9.5%, PDP 4.6%, others 19.3%; seats by party/coalition - SDA 10, SDS 5, SBiH 6, SDP 4, SNSD 3, HDZ 5, PDP 2, others 7. The Parliamentary Assembly has 42 professional staff, besides the MPs. There are no professional legislature offices that analyse regulatory impact or prepare reports on draft laws.

FBiH has a bicameral legislature *Parlament Federacije BiH* that consists of a House of Representatives (98 seats; members elected by popular vote to serve four-year terms) and a House of Peoples (74 seats - 30 Bosniak, 30 Croat, and 14 others); last constituted November 2000. RS has a National Assembly – *Narodna Skupština Republike Srpske* (83 seats; members also elected by popular vote to serve four-year terms). General elections were last held on 5 October 2002 and next are scheduled for the autumn of 2006.

FBiH House of Representatives consists of the following party MPs: SDA 32, HDZ-BiH 16, SDP 15, SBiH 15, other 20; while in RS the seats are distributed as follows: SDS 26, SNSD 19, PDP 9, SDA 6, SRS 4, SPRS 3, DNZ 3, SBiH 4, SDP 3, others 6. As a result of the 2002 constitutional reform process, a 28-member RS Council of Peoples (CoP) was established in the National Assembly giving each constituent nation as well as the category 'others' eight delegates.

A mechanism of parliamentary control over the governments in BiH has been fully developed. Thus, the Parliaments need to approve the budget. The relevance of the various government layers are illustrated by the budgets' size: the State runs a small budget primarily aimed at servicing the foreign debt, the staff payrolls and running costs are limited. Due to the unpredictability of institutional changes and lack of strategic development plans, the budget is exceeded regularly. The Entities' budgets are several times larger than those of the State. Some cantons, such as Sarajevo have their own budgets comparable to the Entity budgets in size. Finally, some cities and municipalities run budgets larger than some cantons do. This is important in light of the management of these resources, in terms of the public procurement procedures (not) applied etc.

The official operating procedures of the Parliaments determine the procedures for adopting a new budget or an annual budget balance sheet. Draft laws, prepared by the government or by Parliamentary committees, are also passed this way. Their formal adoption follows their enacting by the Entity President, or the joint Presidency of BiH in case of the State laws, or their publication in the Official Gazette of the Entity of the State respectively.

The High Representative imposed conflict of interest legislation in May 2002, which seeks to prevent elected MPs from abusing their positions for private gain. Its full title is the "Law on conflict of interest in governmental institutions of BiH". The Law applies across the board, to both appointed and elected representatives and is currently estimated to apply to some 40,000 individuals.

However, in reality, this Law is arbitrarily applied. Furthermore, it is not really adapted to the actual situation and some of its provisions have yet to be implemented. There are cases of drastic penalties for some MPs¹⁰, yet a great number of them go unpunished due to inadequate control mechanisms (a small and weak Election Commission with few direct sanction mechanisms) as will be discussed later in the text.

The work of MPs is regulated in the official operating procedures of the Parliaments, and these procedures naturally apply to opposition MPs as well. However, the chance to express their political opinion depends entirely on the Chairperson of the Parliament, who decides whether to give them the floor or not. Of course, there are many cases of abuse in practice, so that opposition MPs left the parliament floor in protest on several occasions. In many cases discussions are open to public and the presence of the media is obligatory. Only in certain justified cases are parliamentary sessions closed to public, and this is then regulated in the official operating procedure. The current experience with the work of the Parliamentary Assembly demonstrates that national MPs are being manipulated by their respective Entity Parliaments and by national parties, resulting in significant obstructions of parliamentary work due to numerous claims of "national jeopardy" and "national overvote". Therefore, national and partisan interests dominate over the reformist or the EU related agenda.

The work of the parliamentary committees is also public and their reports openly accessible. There are several committees, as per the Statute of the Parliaments (both State and Entity), and every

Parliament selects anew representatives to the committees. However, 'hearings' such as those in the UK Parliament do not exist.

The parliamentary committees may include experts and scientists who are not MPs. They are entitled to vote, but their number cannot prevail during vote counting. In the Parliaments of BiH there is, *inter alia*, a Committee for Economy and Finances (there is no separate committee for finances). Its opinions are not always respected¹¹. Representatives of the Government, including the Ministry of Finance, are invited to the meetings of the committee and they are obliged to attend them.

The current Parliamentary Assembly of BiH has adopted 93 laws since the MPs took office, just over a year and a half ago, and 46 further laws are being discussed at the time of writing. Compared to the previous parliament, which passed only 8 laws, this may signal an improvement. However, bearing in mind that the BiH Council of Ministers sent only a few laws for parliamentary adoption and that the vast majority of them came from the OHR, it only shows a great dependency on the international community's decisions.

Not every legislative institution has adopted a code of conduct. The FBiH Parliament has passed one and it has been in existence for a few months now. The Parliament of RS and the Parliamentary Assembly of BiH have launched separate initiatives aimed at adopting a code of conduct. The drafts are in discussion at the time of writing. The OSCE has been providing some technical assistance by bringing in experts from other countries. Beyond that, the executive authorities have their respective codes of conduct in place at all levels of governance (both State and Entities).

Political Parties

The life of political parties requires very large amounts of money. When they face a lack of funds, political parties often resort to extra-legal means in an attempt to obtain them. This creates an intricate system for the transformation of money into political power. This leads to a situation that is often, but rather imprecisely, called 'corruption'. "In return for financial concessions, political parties, especially those in power, offer certain options to people who appear as philanthropists or donors. This is corruption on the highest level. It spreads among the top tier of political party leadership and economic power brokers. It is a paradox that citizens know visible corruption mostly in health care or the education system (they know the kind of corruption involving € 100 or 200 in an envelope). But this corruption, which takes place at the highest level, where hundreds of thousands or even millions of euros are circulated, is difficult for an average person to gain knowledge of. It is difficult to imagine that those wielding economic power are able to deform people's will, or that they can easily become MPs - which is especially the case in a proportional system.

These are events that often take place behind closed doors and in confidence, so they are difficult or impossible to perceive. Some authors define this form of corruption as 'trading in influence'.¹² However, no evidence exists on organised voter bribery and purchase of votes.

The financial reports of political parties in BiH were legally regulated for the first time for the purpose of the elections held in 1998. Obligations for the disclosure of financial reports were included in the Rules and Regulations of the Provisional Election Commission of BiH (PEC). At that time each candidate was asked to submit a candidate's form together with a financial disclosure form to the PEC. The financial disclosure form included property information for the candidate and close members of his or her family. The candidates who won were obliged to submit a supplementary financial disclosure form to the PEC, upon expiration of their mandate.

At its session held on August 18, 2000 the Parliamentary Assembly of BiH adopted the Law on political party funding. Given that at that time neither the Election law of BiH had been adopted nor the Election Commission appointed, a number of regulations that limited the collection of funds and expenditures for election campaigns were included by the PEC into their Rules and Regulations for the elections 2000.

Finally, the BiH Election law was adopted in August 2001 and the Election Commission was appointed in November 2001.

Political parties are obliged to submit to the Election Commission (EC BiH) three types of financial reports:

- Regular (annual) report for each calendar year, no later than March 31st of the following year;

- Financial report for the period preceding the election campaign, to be submitted with application for certification of participation in elections, detailing the three months prior to the submission the Application for certification; and
- Supplementary financial report, which covers the period from the day of submission of the Application for certification to the day of certification of election results. The report must be submitted no later than 30 days after the certification of election results.

Financial reports must be submitted for each organisational unit of a political party, which holds at least one bank account, as well as a consolidated report for the party as a whole. Even political youth groups are obliged to submit separate financial reports.

Also, each candidate standing for elected office at the BiH or Entity-level is obliged, no later than 15 days from the day of accepting candidacy for the election, to submit to the EC BiH, a signed statement on his or her property situation. The statement should include all income and sources of income, property exceeding a value of KM 5,000, as well as disbursements and other liabilities.¹³

The EC BiH is in charge of auditing party accounts, but due to the absence of professional auditors in the EC, very little has been done yet. The EC claims it is very difficult to hire quality staff, given the salary levels there, while still ensuring an individual's integrity in auditing party accounts.¹⁴ The existing level of public confidence in the EC places it well to pursue these activities, once its staff is expanded.

The Law allows a political party to own an enterprise, however one which deals exclusively in cultural and publishing activities. Annual income of a political party from property owned cannot exceed 20% of the total annual income of that party. A political party is obliged to give any income that exceeds 20% to one or more charity organisations within 30 days after the financial report is submitted. This Law also regulates donations and maximum donation amounts. Legal as well as physical persons can give donations to political parties or their members. A donation can also be a gift given to a political party or its members, service offered to a political party or its members without remuneration that puts that party in a favourable position in relation to other parties. The legal or physical person who has provided a service or sold a product to a political party is bound to present a receipt for it, regardless of who bears the costs for the service or product, and regardless of whether the service was provided or the product given without remuneration.

The total amount of a single donation cannot exceed eight average annual salaries according to official data of the Statistical Agency of BiH, and cannot be given more than once a year. If the total amount of a donation given by one person exceeds KM 100, it must be reported.

This Law also stipulates that State-, Entity-, cantonal- and local/municipal-level bodies, public institutions and enterprises, humanitarian organisations, non-profit organisations, religious communities and companies in which public ownership is at least 25% cannot fund or give donations to political parties. Private companies that perform public services in accordance with their contract with the government cannot give financial support to political parties either.

However, it is public enterprises that are the main funding source of political parties. Since there are still no adequate control mechanisms, parties are still funded from such, so-called 'black' funds.

The Law expressly prohibits exertion of political pressure on legal or physical persons for the purpose of obtaining donations for political parties. It is also forbidden to promise prerogatives or personal gain of any kind to those who give donations to political parties. In reality, however, the opposite happens. In most cases the financially powerful who fund political campaigns ask for favours in return that are often worth a lot more than the amount of money donated. This is a well-known practice in political circles. Although the Election Commission of BiH establishes a financial auditing service, whose job is to check and control the reports submitted by political parties, financial control of political parties remains poor and ineffective.

The Law on political party funding prescribes the obligation of the Election Commission to make all financial reports available to the public and to take appropriate actions to provide easy access for citizens to the information included in those reports. In the run up to the local elections in October 2004, the BiH Election Commission, with the assistance of the International Foundation for Election System (IFES), is producing a user-friendly web-based database. Apart from a traditional approach based on the Freedom of information act in BiH, the database is expected to contain all financial data on political party funding and expenditures, making it immediately available to the public at the Election Commission website.

The Entity-level Election Commissions have been established by the Entity constitutions, but their role remain vague and their appointments partisan. It thus makes no sense to continue financing these institutions and the only valid solution is abolishing them. The partisan politics appears even more sharply in the FBiH EC, as the RS EC demonstrates a somewhat greater level of commitment and diligence¹⁵.

The reality in BiH is that not only do political parties 'naturally' tend to misreport their finances, but that the capacity of the financial auditing service within the EC BiH is too weak to enforce the related regulation. The autumn elections should be a chance to test the use of modern technology in a financial analysis of BiH's political life. Whether it will lead to specific discoveries depends not only on the honesty of political parties but also on the readiness of other integrity pillars for self-improvement and mutual support.

The goal of the legislation in this area is to make all financial flows in a political party public. The Law on party funding has no power, of course, to bring this field into perfect order by itself, but it can increase risks for politicians and prevent them from indulging in certain illegal actions. While the Election Commission is in charge of the implementation and monitoring of financial flows to the political parties, its internal staffing deficiencies prompted the OHR to take an active role not only in monitoring political party funding, but also in banning budgetary financing and in cutting off certain finance channels.¹⁶

Election Commission

After the Parliamentary Assembly of BiH at the session of the House of Representatives, which were held on 21 August 2001, and the session of the House of Peoples, which was held on 23 August 2001 adopted the Election Law of BiH (which entered into force on 28 September 2001), the Provisional Election Commission discontinued its work and the Election Commission of BiH was established. The members of the Election Commission of BiH were appointed on 16 November by the High Representative from a list proposed by the Provisional Commission for selection and nomination, which comprised members of the Commission for the Election and Appointment of Judges of BiH and international members of the Election Commission of BiH. The President of the Election Commission of BiH is elected from its members. It is provided that one Croat, one Bosniak, one Serb and the other member of the Election Commission of BiH shall each serve as president for one fifteen-month rotation during a five-year period. The involvement of the international members of the EC is diminishing over time and the institution is gradually becoming a truly national undertaking.

The Election Commission only took on the responsibility of running elections in 2002, and the first time that it will be fully in charge will be the October 2004 local elections. The Election Commission BiH is responsible for keeping a central voters registry within its database. The EC collects data from the municipal centres for voter registration, checks the data and approves its incorporation into the registry. In election year a temporary voter list has to be published 150 days before the elections while the final list should be published 28 days before the elections.

As indicated in the previous chapter, the EC is charged not only with running general and local elections for all legislative and presidential posts, but also with political party funding and monitoring as well as with cases of conflict of interest.

The Law on Conflict of Interest in Governmental Institutions of BiH was introduced in May 2002 by the decision of the High Representative who exercised the powers vested in him by Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in BiH¹⁷. The Law entered into force on the day following the announcement of the election results for the October 2002 elections. It governs the special obligations of elected officials, executive officeholders, and advisors to BiH government institutions in exercising their duties. According to the Law, a conflict of interest exists in the event that an elected official, executive officeholder or advisor has a private interest that affects or may affect the legality, transparency, objectivity and impartiality of his or her actions in the exercise of the public duty. The Law also deals with codes of conduct: setting limits on acting in case of conflict of interest, on certain forbidden activities, on the acceptance of gifts, and the performance of other official activities. The Law also covers the following topics: incompatibility of functions, government investments in private companies, transparency and openness with regard to personal finances

and with regard to involvement in private business, access to information on government investments and access to companies' annual reports.

The third chapter deals with the role of the Election Commission in the implementation of this Law, as well as with complaints and proceedings before the Election Commission. According to Article 22, the Entities and Brčko District shall enact their own laws within sixty days following the entry into force of this Law. At the Entity-level such a law has not been enacted yet, so the Law on Conflict of Interest in Governmental Institutions of BiH will apply until such laws are enacted.

According to the provisions of this Law, the EC issues instructions, prescribes obligations and organises the register for the purpose of the Law's implementation, and issues the rulebook on maintaining the register. In the provisions that deal with personal financial status, the Law stipulates that high-level officials are obliged to submit regular financial reports on their personal wealth, in accordance with the Law and rules of the Election Commission. Irrespective of that, procedures for the monitoring of assets are not prescribed. However, since the Law stipulates that the Election Commission should ensure accountability of high-level officials, issue instructions, organise the register, etc., the basis for procedures for the monitoring of assets is created.

An investigation is to be launched if there is a request from: the EC, the official potentially affected by the conflict of interest, or from any third party. The EC has, in theory, its own pool of investigators. However, only one has been employed since the Law's adoption. Currently, the Law covers 5057 officials. Taking all their relatives into account, there are around 130,000 persons who can be investigated by the EC (or 60,000 if amendments are passed that reduce the number or relatives the Law covers).

In practice the Commission acts retroactively and almost never initiates prosecution on a conflict of interest. The evidence suggests that whenever the Law, its amendments or its application are being discussed in the State Parliament, scores of MPs submit resignations to the posts where such conflicts exist (such as management or supervisory boards for state-owned companies). Approximately 500 officials have submitted their resignations from such conflicting posts to the EC. The existing EC staff of three must handle all cases of conflict of interest. With only one investigator they surely cannot cope with the tens of thousands of individuals to whom this Law applies alone. When all individuals linked to public officials are taken into account, the Law directly or indirectly applies to almost half a million people in the country. Therefore, discussion as to whether the Law might more effectively target a smaller group of officials may support the actual purpose of the Law. Likewise, appropriate monitoring instruments and possibly a devolution of this mechanism to independent Entity-level institutions may assist the Election Commission of BiH in conducting a timely and in-depth review of conflicts of interest.

It is of prime importance that Entity-level Laws on conflict of interest are passed as soon as possible, although this legally should have happened 60 days after the adoption of the State Law. In the meantime, the only existing Law is being applied to all levels of government, with all its imperfections and limitations. Some of the proposed amendments to the Law are aimed at diluting its essence and lessening its grip on actual conflict of interest. Such attempts are unacceptable

and dangerous. In addition, the current undertakings of the EC are not fully institutionalised yet and rely heavily on personal relations between its staff and other government offices. Such links need to be legally determined and strengthened.

Supreme Audit Institutions

In early 1998 a consensus was being built among some and forced onto others among the various levels of government in BiH, that a supreme audit of public accounts would be required to ensure a more effective and judicious allocation of budget resources. The country at the time was strongly dependent on donor assistance and corruption in the public sector was widespread.

The idea of a supreme audit entity was introduced by the donor community first to the executive power and then to the legislature. This is a common feature in BiH. The inexperienced new governments at that time had little knowledge of independent integrity safeguards, such as Ombudsmen, Supreme Audit Institutions (SAI) and other pillars of the NIS. In their concept of ruling, the public service principle was far from being understood. The governments at the time, comprised of the so-called democratic and non-nationalist parties, found it difficult to allow inspections by an independent institution such as SAI. The government was largely seen as an untouchable supra-power and ruling parties were fond of idolising themselves, thinking that their deeds could not be questioned. Even when they started discussing SAIs with International Financial Institutions and principle donors, who were all requesting more transparency in the public spending as a condition to the generous funding they were supplying the post-war country, the governments were already making cunning plans on how to twist the arm of this future institution, which had yet to be established.

Spontaneous privatisation, draining of funds from public companies, budget spending through phantom firms, massive conflicts of interest, all linked to party networks and partisan politics - these were just too precious a source of income for ruling individuals, the mafia and the select elite. For them, a SAI was potentially too dangerous. As it became obvious that this new pillar would be erected, the governments conspired to install loyal individuals to run this new show. A long search for the appropriate people was carried out from 1998 to 2000. While he or she should by no means have any apparent links to the ruling coalitions, they should be very much willing cover the mismanagement of public funds.

So the process of a SAI's establishment began in 1998 when an independent consultant (London based IMC) was contracted to suggest a model for government audit. From 1 January 2000 to 31 May 2002, the SAIs were supported by the Swedish National Audit Office through institutional development co-operation.

During the period between 1998 and 2000, audit legislation was passed for the Entities as well as for the joint institutions of BiH. The long struggle for legislation coincided with the search for the aforementioned individuals. Soon after the legislation was adopted, the general auditors and their deputies were appointed. The SAIs began auditing the public accounts in January 2001. There was one SAI for each of the three most important governing levels: State of BiH – Joint Institutions, RS and FBiH. The SAI's reports were being submitted to their respective parliaments. The Law does

not anticipate a prosecution role for the SAIs and expects the legislature and the executive to undertake corrective actions. Instead, the SAIs are expected to report any criminal misuse of funds in a timely fashion to the public prosecutors.

The media reports on the SAIs findings have been sensationalist in nature. This is partly because of the nature of the SAI reports themselves. In them they pursue only the mismanagement of funds without praising the laudable behaviour of institutions. The governments claim, on the other hand, that the causal chain of administrative complexity leads to difficulties in planning budget execution and eventually to budgets not being observed, which then results in the SAIs' penalties. Often it is the *ad hoc* solutions of the international community, establishing new institutions, that contributes to poor planning, such as in the execution of budgets.¹⁸

State of Bosnia and Herzegovina

Established by the Law on Supreme Audit of the Joint Institutions, the State-level SAI was staffed with 19 employees (26 are planned) as of early 2003. While their annual reports in 2000 were estimated to cover 80% of budget expenditures, their coverage today appears to be complete. Their audits have a range of direct and indirect impacts. Yet most notable, are the adjustments made in accordance with the SAI recommendations. The treasury account has grown, instead of ministries keeping the funds for themselves. A number of laws were enacted as a consequence of the audits (e.g. Law on procurement). Both houses of the Parliamentary Assembly at the State-level have been discussing the findings and the parliamentary commission has been receiving technical assistance from the OSCE to improve the processing of the analyses. The public expectations of SAIs have also been growing.

Federation of Bosnia and Herzegovina

The institution established by the Supreme Audit Law of FBiH, was staffed as of early 2003 with 30 out of 50 planned employees. Their annual reports since 2001 are estimated to cover 80% of budget expenditures. The critical issue to which both SAIs and donor representatives are pointing is the partisan appointments to the Federal SAI and national divisions. Therefore audit reports are said to be partial to their respective national authorities or ethnic groups and are not nearly critical enough. This is extremely worrisome and calls for a serious reassessment of their operations and for re-appointment of staff on professional grounds, a process that will be independently monitored. The results are very moderate and their greatest impact is perhaps institutional, in terms of the government and parliament being aware of the SAIs and training their staff to understand the role of the SAI and to read its reports. That particularly relates to the Parliament Commission on Economy and Finance. Consequently, the public is also more aware and has a positive view of the SAIs.

Republika Srpska

The institution established by the RS Law on Supreme Audit is staffed, as of early 2003, with 25 out of 32 planned employees. Their annual reports in 2002 were estimated to cover over 50% of budget expenditures. Relatively speaking, the results of the RS SAI were perhaps the most impressive, something that the SAIs, media, donors and the general public seem to agree on. This is often attributed to the courageous personality of Mr. Boško Ćeko, its head. It led to the first ever systematic reports on how public funds were being mismanaged in RS, and to a series of investigations conducted by a team of SAI auditors who have since been deployed to prosecute violations of the law¹⁹. The reports have been debated by the legislative board of the Assembly, which submits laws for adoption, and were discussed by the MPs.

Special Audit

However, the audit saga in BiH has taken on another dimension, in addition to the complex network of SAIs. The OHR has set up a special audit that was meant to target serious instances of fraud, mostly within the utilities and public enterprise sector. Ms. Dale Ralph was appointed by the High Representative to undertake an audit of political party funding in 2000, and larger Entity and cantonal government accounts in 2001, military spending in 2001/2002 and public company spending in 2003. The special audit found hundreds of millions KMs mismanaged in the two electric power companies in the Entities' "Elektroprivredas", the Telecom firm of the RS and the Croatian postal-telecom company in Herzegovina. Currently, the forestry sector is under investigation, where significant illegal profit drain is expected to be found. Perhaps, the highest-profile activity was the spectacular storming of the "Herzegovačka Bank" on the basis of suspected money laundering (operation "Athena" in April 2001), with the strong logistical support of NATO-led SFOR troops. To date, no detailed report on the action has been issued, nor has a proper audit report ever been released.

Overall, the special audit is being performed under the safeguarding of the OHR and has not paid much attention to the institutional settings of existing SAIs. All three Supreme Auditors²⁰ as well as the SNAO's team leader, Henrik Selin, have questioned such an approach, as it "not only fails to support further development of the national SAIs, but also undermines their current work and credibility." However, this statement did not directly challenge the output or the quality of Ms. Ralf's work.

Establishing a strong Supreme Audit Institution

A new set of laws is required that may establish, *inter alia*, a single SAI in BiH. However, the substance of such a law is of far greater importance. There must be further provisions on the appointment of auditors and the integrity of their work, strengthening the merit system and the professionalism of staff.

In addition, the link to respective parliaments must be strengthened. While much of this depends on the increased professionalism of the parliaments themselves, particularly of their economic and finance committee/boards, there must be a further institutionalisation of the linkages in the triangle Parliament-Government-SAI.

Ideally a follow-up mechanism should be devised that will ensure audit recommendations are being implemented. It is pointless for annual reports to keep repeating the same recommendations to certain institutions. The mechanism has to take advantage of existing institutions, by enhancing their current capacities.

Laws should be amended to enable the SAI to either reject calls for audits by the government or to postpone their execution. Provisions should allow the SAI to sub-contract to audit firms that would be accountable directly to them if the SAI is asked to perform extra audits, beyond those foreseen in their regular working plans. Relevant budgets should allocate additional funds for this. The SAI should receive more budget funding to enable them to hire a few more people, which, in return, will enhance their coverage abilities. In addition, they need further training, internal guidelines, better strategic and operational planning as well as human resource management skills.

The Treasury Law must be clearer on the extent that public expenditures are declared in the budget. Only the financial flow is currently being published; various other transactions and compensations are not subject to the law. This limits the scope of the analytical work of the SAI.

The SAI should have legal immunity, similar to that of the special auditor. Special audit must share information with the SAI and ideally engage SAI staff in their inspections. This will enhance capacities of the national SAI, their integrity, while empowering the special audit with a better understanding of the legal and accounting provisions in BiH. Internal audits should be gradually introduced within State-level institutions and in the Republika Srpska, while in the Federation, their range must be broadened. The new internal auditors must receive appropriate training and they should co-operate closely with the SAIs upon request.

Donor funding and particularly the World Bank's structural adjustment operations (budget aid) should be conditioned to reflect some of the aforementioned reforms. Upon adoption of the appropriate amendments, or new laws, and establishment of the appropriate follow-up mechanisms, these funds should be made available as a structural support.

Finally, strengthening of further links with other integrity pillars is required. Working closer with media through a coherent public relations strategy is beneficial. The NGO sector can help promote awareness of the work of the SAI and the benefits of their reports. The business community and their respective associations can benefit from a stronger application of certain SAI recommendations, particularly in the public procurement sphere.

Judiciary

BiH, due to its complex constitutional structure, features a specific division of jurisdictions in the field of judiciary. Currently, judicial power is concentrated at Entity-level through the system of regular courts, magistrates' courts and constitutional courts.

- BiH Constitutional Court (consists of nine members: four members are selected by the Bosniak/Croat Federation's House of Representatives, two members by the Republika Srpska's National Assembly, and three non-BiH members by the president of the European Court of Human Rights);
- BiH State Court (consists of nine judges and three divisions - administrative, appellate and criminal - having jurisdiction over cases related to State-level law and appellate jurisdiction over cases initiated in the Entities; note - a war crimes chamber may be added at a future date).

At the national level, the State Court was established by a decision of the High Representative. This Court belongs to the system of regular courts. In contrast, the Constitutional Court of BiH has the jurisdiction to determine whether the provisions of Entity constitutions and laws are in accord with the Constitution of BiH. The Constitutional Court also has so-called appellate jurisdiction, which is exercised if certain Court decisions in BiH are found to be in contradiction with the provisions of the national Constitution. The BiH Human Rights Chamber is the highest judicial body in the state. The chamber has the mandate to determine whether BiH authorities are violating human rights, as provided for in the European Convention for the Protection of Human Rights and related protocols.

The BiH High Judicial and Prosecutorial Council (HJPC) determined that the Court of BiH will have 15 judges in total. HJPC appoints eight more judges, in addition to the seven appointed by the High Representative. The Prosecutor's Office of BiH has four prosecutors. The BiH HJPC is prepared to appoint more judges and prosecutors to these bodies later if their workload requires it. The FBiH HJPC determined that the Supreme Court of FBiH will have 21 judges and that the FBiH Prosecutor's Office will have nine prosecutors. The RS HJPC determined that the Supreme Court of RS will have 16 judges and that the Office of the RS Prosecutor will have four prosecutors.²¹

The Entities too have their constitutional courts, which in the case of RS did not become operational until earlier this year, after a delay of two years, due to the failure of the RS National Assembly to appoint its judges. Such a lack of institutional and constitutional responsibility led to the massive backlogs at the RS Constitutional Court.

The Entities each also have a Supreme Court and a number of lower courts: there are 10 cantonal courts in FBiH, plus a number of municipal courts; RS has five regional courts. Therefore, the regular courts have two Entity instances and three judicial levels (basic/municipal,

regional/cantonal and Entity supreme courts). Basic or municipal courts have almost the same general jurisdiction over civil and criminal matters. Regional or cantonal courts mostly have second-instance appellate jurisdiction except for the most serious offences and certain administrative disputes. In comparison, the supreme courts of the Entities have second-instance appellate jurisdiction over the decisions of regional or cantonal courts, over extraordinary legal remedies, and first-instance jurisdiction over certain administrative disputes (the Supreme Court of FBiH also has first-instance jurisdiction over certain felonies such as terrorism). Magistrates' courts are currently outside the system of regular courts, while the supreme courts of the Entities have the mandate to determine whether laws and other legal acts enacted at the Entity-level are in accord with the Entity constitutions.

The Laws on courts of the Entities prescribe that regional or cantonal courts decide the legality of final administrative acts in administrative dispute proceedings when no jurisdiction of other courts over that matter has been established. Whereas, the supreme courts of the Entities determine the legality of final administrative acts of Entity-level institutions. This means that there is a formal legal framework at the level of the Entities where the regular courts, through administrative dispute proceedings, control the legality of final administrative acts adopted in an administrative procedure. Any person, whether an individual or legal entity, who finds that an administrative act infringes any of his or her statutory rights or direct interests, is entitled to initiate administrative dispute proceedings. An administrative act is a decision by an administrative authority as to the rights or obligations of a citizen or legal entity. It is always the individual act of an authority, not a decision that has the character of a general act. As a rule, an administrative procedure, which precedes the adoption of an administrative act, has two instances. It is only after the administrative procedure is complete that the dissatisfied party is entitled to initiate an administrative dispute proceeding before the relevant court. The initiation of administrative dispute proceedings does not have the effect of suspending the execution of a decision in an administrative procedure. Actions can also be taken against the 'silence of administration'. In some instances, administrative dispute proceedings cannot be initiated, for example, when the Entity Parliaments (including the cantonal parliaments in FBiH) or the President or Vice-Presidents of the Entities issue certain decisions in accordance with the powers vested in them by the Constitution.

The work of the judiciary received the special attention of the OHR during their recent attempt to depoliticise the courts, when the process of (re-)appointing judges was undertaken. Basically, in a fast-moving process, all the judges were fired, some consequently re-hired, and many new judges hired. This exercise had the goal of eradicating corruption in the judicial ranks although it is still too early to say to what extent it succeeded. This comes in addition to the prior changes to the Entity constitutions of May 2002, imposed by the High Representative, in which the appointment of judges and prosecutors was assigned to the, then newly established HJPCs. The appointment of judges was formerly in the hands of the legislature, whether the nomination was made by the Ministry of Justice or other bodies of the executive.

The task of earlier Entity councils was to carry out the process of re-electing all the judges in BiH. These councils were initially comprised exclusively of national legal experts. However, since there

was no progress in the re-election process, the High Representative imposed changes to the Entity constitutions (2002) in provisions pertaining to the judiciary, establishing the High Judicial and Prosecutorial Council of BiH, along with two Entity HJPCs (for a total of three councils). These councils also include international legal experts (they outnumber national experts), and one representative from each Entity participates in the Council of the other. The High Representative appointed both national and international members of the councils.

The Law on the High Judicial and Prosecutorial Council defines acts of violation of discipline by judges and contains provisions for the establishment of disciplinary organs, including: a disciplinary prosecutor, a first-instance disciplinary commission and a second-instance disciplinary commission. These two commissions are independent and have exclusive jurisdiction over disciplinary matters. The members of the second-instance commission must be members of the HJPC, but the members of the first-instance need not be. However, the disciplinary prosecutor cannot be member of the HJPC. Anyone is entitled to file an application to the disciplinary prosecutor requesting initiation of a disciplinary action against a judge. There is no specially prescribed form for such application. After the disciplinary proceedings (which move through two instances, with the right to file a complaint to the second-instance commission) are completed, the judge can be sanctioned in one of the following ways: written reprimand, fine deducting maximum of 30% from the judge's salary for a period of 6 months, or removal from office. For the duration of the disciplinary proceedings, the judge can be temporarily removed from office. One can come to an inescapable conclusion that laws in advance prescribe the procedure for removal of judges, as well as organs, acts of violation of discipline and sanctions, which indicates that the judges' positions are safe and they cannot be easily suspended or removed from office.

Beside the HJPC's authority in connection with disciplinary proceedings, the High Representative also has the authority to temporarily remove judges (and other civil servants) from office. Acting in the exercise of his powers, the High Representative suspended 14 judges and one public prosecutor in May and July 2002 for obstructing the implementation of the peace agreement. Disciplinary proceedings have been instituted against these judges, but 12 of them immediately resigned from office, so the proceedings were terminated. One of the judges was fined with a 20% salary deduction for a period of 6 months, following sentencing. Another one of the judges was not re-elected to the previously held post in the HJPC, so the disciplinary proceedings were terminated here as well. In addition to these measures, the disciplinary prosecutor and the judges who the complaints were filed against, reached a voluntary agreement on the alleged violations of discipline. One judge admitted to having committed an act of violation of discipline and agreed to be publicly reprimanded. As a rule, disciplinary commissions carry out *ad hoc* examinations of these agreements.

In order to become a judge, a candidate has to meet strict formal requirements: citizenship of BiH, university law degree, have passed the qualifying examination for judges and accumulated a certain number of years of work experience after the qualifying examination. Apart from these formal requirements, judges are required to possess expert knowledge, to be able to show previous work results, to have published scholarly works, to have engaged in professional improvement, to have communication skills, possess personal and professional integrity, and have

the ability to analyse legal problems. Judges cannot be members of political parties, hold any incompatible positions or maintain any other positions that could influence their impartiality or have negative influence on the independence or reputation of their judicial function. Apart from that, judges cannot be members of any other organisation that discriminates on the grounds of race, colour of skin, gender, sexual orientation, religion or ethnicity, nor can they perform any other functions that could interfere with the execution of their role as judge.

In addition to HJPC, the International Judicial Council (IJC) was granted its first mandate by the High Representative on 14 March 2001. Under this mandate, it became the lead agency for judicial reform in BiH. It monitored the previous Comprehensive Review Process for judges and prosecutors, which was established by legislation in both Entities. In addition, the IJC was involved in many aspects of judicial reform, including reform of the key procedural laws in force in BiH and its Entities.

At time of writing, the HJPCs had appointed the judges of the Court of BiH, judges of the supreme courts of the Entities, judges of four cantonal or regional courts and judges of two basic or municipal courts, for a total of 182 judges and prosecutors. (A total of 1,000 judges and prosecutors are yet to be appointed). At the same time around 500 candidates for either judge or prosecutor positions are waiting to be interviewed. It was initially estimated that the appointment process would have been completed at all levels by 1 April 2004 although one must bear in mind that the process started with a delay. It is also difficult to say whether the elected judges are among the most professional, and whether their appointment will make the judiciary in BiH more efficient. What is encouraging, though, is that the appointment procedure was very thorough and that the candidates were required to undergo a variety of tests, which should have a positive effect on the appointment process. Towards the end of 2004 the country should begin to hear feedback on the newly appointed judges.

The judges up for re-election have failed to process their cases in time and this has added to backlog in the courts. Each judge now faces thousands of unfinished cases, as a result of the reform (at the Banja Luka Municipal Court the break-down was ca. 3,000 cases per judge). On the other hand, the process is far from finished. In fact, many critics claim that the internationally driven reform was a top-down process that took far too long and has not ensured an independent and professional judiciary.²²

Yet even the work of the internationally supervised and run HJPC should not be able to dodge scrutiny. In their operations, they are known to have extracted cases out of the regional courts (e.g. in Banja Luka). Neither HJPC nor IJC have such an authority, and, legally, the case documentation may under no circumstances leave the courts. But fear related to the re-election process prompted some judges to pass the documentation to the HJPC staff.²³ This is unacceptable behaviour on the part of international agencies that, in theory, are solely dedicated to building the capacity of national institutions.

The court reconstruction process (reducing the number of courts, merger others, and reducing the number of judges) runs in parallel. Beyond that, important laws governing court procedure have

been enacted this year (including Laws on criminal proceedings, Laws on civil procedure, and Laws on execution procedure). One of the criteria for the election of judges is the ethnic structure of the population in the jurisdiction of the respective court, according to the results of the 1991 census (the last pre-war census). This means that the ethnicity of the judges in a given court must be, in principle, divided according to the pre-war ethnic balance (in terms of Croats, Serbs, Bosniaks and 'others') in that geographic region. The 2000 decision of the Constitutional Court of BiH on the 'constitutionality of peoples', which declares the three primary ethnic groups in BiH constitutive of the entire state, imposes, among other things, this principle for the election of judges. However, this principle now creates a problem for the HJPCs, because in some areas there are only a small number of applications submitted by representatives of minorities or returnees, making it difficult to select the very best. On the other hand, someone may make a good judge but belong to the ethnic group that constitutes a 'majority' in the territory of a certain court, and so cannot be elected because the quota of judges from this ethnic group has already been filled. In certain cases there have not been enough judges from a certain ethnic group, so that the positions have been left unfilled until the best candidates from this ethnic group can be found (e.g. the well-known case of the election of judges to the Supreme Court of Republika Srpska). Likewise, the election of judges from the group 'others' (which includes ethnic minorities not belonging to the three constituent nations) creates serious problems, since there are not nearly enough candidates for these positions.

The Entity ministries of justice are still tailoring the budgets of the courts. The courts project their future budgets, which are subunits of their respective ministries budgets. This must become an issue that the ongoing reforms properly address. With insufficient funds for court operations and staff, the independence of individual judges is only one of problem to be solved in ensuring an autonomous judiciary.

The Brčko District of BiH, which is free from exclusive control of either Entity and is under the administration of the independent Government of the Brčko District (under the exclusive sovereignty of BiH according to the Final Arbitration Decision of March 1999), has its own Judicial Commission. The obligations and functions of the commission include the appointment and removal of judges (as well as prosecutors and lawyers of the Office for Legal Assistance). The Brčko District has only a Basic and an Appellate Court, while the third-instance role falls to the Court of BiH.

The judicial system, unlike the State prosecution, continues to follow the pattern of continental legal practice. Nevertheless, the changes and transformation of the judiciary, under the internationally guided reforms, will require a considerable amount of time and resources. It is still too early to say whether such a legal arrangement, after little preparation or training, will result in the successful transition of the judiciary.

BiH's judicial system does not yet adequately cover commercial activities. There are no commercial courts in BiH and no efficient way to resolve commercial disputes. Contract and property rights are almost unenforceable in practice. Businesses may lodge complaints; however, due to backlogs in the courts, a suit to collect on unpaid accounts takes an average of 1.5 year to

reach trial. Even when there is a positive decision from the court, there may be no way to enforce the judgment. Further discouraging complaints, the plaintiff must pay up-front a sizeable tax on civil suits. More recently, activities have been launched to institutionalise alternative dispute resolution mechanisms, which should help take the burden off the courts and speed up both the commercial and civil cases in judiciary. The newly adopted law has received acclamations, but a change in the very perception of the out-of-court settlement must be improved, to promote that option, rather than parties facing uncertain and lengthy court processes. At the same time, alternative dispute resolution will never provide an absolute alternative to judicial reforms.

A professional category not individually analysed is the public notary, a quasi-judicial institution. The existing law in FBiH and a new unimplemented RS law paint a monopolistic picture of the newly established profession. The draft law, written by the German development agency GTZ derives from the Bavarian model of the notary system. This model does not appear applicable in BiH, which must move towards enhancing its system and minimising costs. For example, the exclusive rights to write contracts are given to the notaries are legally questionable. A limited number of notaries per region will cause their services to be very expensive. And given the fact that they provide only limited reduction in the workload of judges and courts and, in practice, privatise certain public features that are currently carried out by institutions, such as the municipalities, it is highly recommended to revisit the purpose of this law and to reassess its implementation, scrapping it if necessary.

Additionally, lawyers, solicitors and advocates seem also to be lacking in integrity. Anecdotes illustrate that many seek additional funds from their clients to “bribe judges”, money which is never passed to “corrupt judges” and ends up as their extra income. Their clients have no independent means of verifying what they are told and consequently believe that judges seek bribes and that the judiciary is indeed very corrupt.²⁴ An independent inquiry should be set up to examine such claims and to propose immediate and severe sanctions for such criminal activity.

Table 3. Statistics on the prosecution of economic crime by Entity illustrating the inefficiency of the judiciary

Entity Prosecution (2001)	Total No. of indicted persons		Investigation (Investigative judge)	Dismissed	Terminated	Indictment		Damages (KM)	Verdict	Imprisonment (persons)
	Dismissed requests					Dismissed				
FBiH	17602	1664	11326	727	243	8142	761	27,734,621	6892	1564
RS	14208	1867	12105	1420	416	7336	1110	12,661,000	5049	1006

Source: BiH Council of Ministers, Action plan for combating corruption, February 2002

The table above demonstrates massive backlogs and the inefficiency of the system. Such reforms are usually very drawn out and painful in transition countries. Ultimately, very few people are

imprisoned and even then mostly avoid spending the full sentence in jail. However, there is an urgent need to continue with the transformation of the judiciary, as the security and safety of not only the citizens, but also of businesses, depend directly on its speed and success. GRECO recommendations to BiH conclude, *inter alia*, that additional legal and financial measures necessary for courts should be made available in order for them to have easy access to the expertise they need and to allow the use of that expertise as evidence before the courts.²⁵ This is particularly necessary in the case of the rising tide of economic crime as illustrated in the table above.

An appropriate judicial PR strategy, which will demonstrate their efforts to punish economic crime to the broader public is needed. This way the media will be informed of corruption and other sensitive cases that have been handled successfully, also promoting professionalism and ethical conduct among journalists. In return, measures should be taken to improve access to official information for journalists and the general public.²⁶ This would enhance co-operation between different pillars.

Civil Service

After becoming independent in 1992, BiH took on almost all laws of the former Yugoslavia in the field of civil service. After the Dayton Peace Agreement was signed in December 1995, the new governments of BiH adopted a number of laws in this field.

Of course, the development of such legislation has historically run parallel with the legal status of what is now BiH, formerly part of the Kingdom of the Serbs, Croats and Slovenes, the Kingdom of Yugoslavia, and after 1945 as part of the Socialist Federal Republic of Yugoslavia. It should be noted that the Law on administrative procedures was one of the most progressive systemic laws in Europe in the 1980s. This Law, with some minor cosmetic changes, is still in use in most of the states that were once part of Yugoslavia.

The development of a modern law has been influenced largely by the international community, especially by the Office of the High Representative, which has the authority not only to propose but also to impose laws. As a result, besides the well-established continental legal system, BiH legislation now includes legal solutions adopted from the Anglo-Saxon legal system as well.

Civil service is regulated by the Law on civil service in the Institutions of BiH, which was imposed by the High Representative in May 2002 and adopted by the Parliamentary Assembly of BiH in mid-2003. The main principle of this Law is that a civil servant must be impartial and "must not be a member of governing or other boards of political parties and must not be at the command of political parties". This excludes, at least in the form of a legal provision, influence of political parties on civil servants.

In late 2003, the Parliamentary Assembly of BiH adopted the Criminal Code. Section XIX of this Code regulates criminal acts of corruption. From Article 217 onwards provisions are made for sanctions against those who accept or give a bribe, as well as those who act as middlemen in these activities. The perpetrators of said offences are punished by prison terms ranging six months to ten years. The gifts or property gained are forfeited. As this is a new law, it is difficult to predict what the court practice will be in terms of punishment for such criminal acts. Whatever the outcome, it is certain that corruption is now precisely defined as a criminal act and can be punished as such from the State level downwards.

The Civil service board is responsible for reviewing all final decisions, action or inaction on the part of an institution or Agency of the civil service, pertaining to the status of civil servants being handled in accordance with this law and its by-laws, upon request of:

- a) the civil servant affected by the disputed decision, action or inaction;
- b) the institution where the affected civil servant exercises his or her functions;
- c) the Agency for civil service.

The Law does otherwise not prescribe the actual staffing of the Agency at the BiH level. Therefore, in reality, the work of the agencies for civil service remains much politicised and, particularly at the Entity level, the recruitment process is very much influenced by the will of individuals of high rank. The agencies that have been set up thus far are: one at the State level and one in each Entity. However, despite the respective laws, and resulting regulations and declarations, an actual civil service is still inexistent and these agencies are forecast to need a long time to assume their prescribed roles.

Somewhat to the advantage of RS, a DfID project has been supporting the establishment of a professional civil service there for over three years, with some progress. The process has, only recently, opened up a series of issues among RS Government employees, who have begun to utilise some of their newly acquired knowledge. It caused the Government secretariat to realise this will be a long and demanding process. It therefore approached DfID seeking an extension of the current project. The new phase is expected to be closely co-ordinated with the State Agency for civil service and with EU support to the State-level administration. At the same time, the smaller and more flexible RS administration will most likely function as a 'guinea pig' for the process in BiH as a whole. The fact that, at the same time, FBiH administration has received no assistance of this sort may represent a threat to the successful establishment of a civil service at all levels simultaneously.

However, the essence of the Law on civil service is its stipulation that a civil servant is entitled to fair and equitable treatment in all matters, without regard to his ethnic origin, social origin, Entity citizenship, residency, religion, political or other opinion, sex, colour, birth, marital status, age, property, disability or other status.

The level of civil service development achieved indicates that there has been some progress. Still, much remains to be done to create a civil service in BiH that is considered well organised and in accordance with European standards.

On 28 March 2003 in Brussels all three BiH governments (the Council of Ministers of BiH, the Government of RS and the Government of FBiH) placed the Civil Service Reform Agenda before the Peace Implementation Council – an institution of the international community that, as its name implies, oversees implementation of the Dayton Peace Agreement. The Agenda was accepted and its implementation is now under way. The implementation should be completed in September 2004. Bearing in mind the existing reform strategies, a comprehensive and cost-effective plan of activities aimed at fulfilling the following five pledges should be adopted within this period:

- We will ensure a more cost-effective and organised civil service;
- We will ensure that taxpayers' money is spent economically and transparently;
- We will ensure that the civil service remains professional at all times and that it represents the citizens it serves;
- We will ensure that the civil service functions in accordance with EU best practice; and
- We will ensure that the services provided by the civil service are quality-driven and citizen-friendly.

The objectives set forth in the third pledge will be achieved through consistent implementation of the Law on civil service, which will lead to appointments based on qualifications, and by insisting on the professional conduct of civil servants at all levels of power.

Currently, the operations of the Agencies portray more an image of failure as opposed to a success story. No notable progress has been experienced since their establishment and bright young people are more attracted to international agencies and NGOs, than to the civil service. Additionally, the Agencies have been unable to ensure integrity and have thus failed to fulfil their mandate.

It is therefore necessary to make all three Agencies for civil service (at the State and Entity level) operational and to monitor and encourage participation of all the constituent peoples' representatives within the civil service.

Furthermore, it is necessary to promote consistent and continuing professional improvement by building civil servant training capacities in BiH. In addition, the application of the Law on conflict of interest to the civil service and its effective monitoring will assist efforts to create a professional administration.

The work of the Inter-Governmental Working Group (comprised of representatives of both Entity Governments, of the Council of Ministers and acknowledged experts) represents a beginning, albeit a slow one. The group has formed five sub-groups, one for the fulfilment of each pledge. The work on this agenda is synchronised with work on the feasibility study leading up to the Stabilisation and Association Agreement with the EU, which contains sixteen conditions and was handed to the BiH Council of Ministers by the European Commission in November 2003.

One of the conclusions of the feasibility study is that "a lot is being done to create an efficient civil service, including the development of a comprehensive action plan for civil service reform with a cost estimate and clear division of competences." Nevertheless, the road to a functioning, professional civil service remains quite long. Should that goal not be achieved in the short-run, the existing civil service agency model should be scrapped and another model examined and applied.

For the time being, a lack of thorough progress reviews prevents a detailed analysis of the current status of this pillar. Any future upgrading of the existing legislation will therefore have to commence with an independent analysis of the existing status of the agencies.

Police and Prosecutors

Police

According to Article III, Paragraph 3, Item a) of the Constitution of BiH²⁷, which governs jurisdiction of and relations between institutions of BiH and the Entities, internal affairs are within the exclusive jurisdiction of the Entities. Hence, the ministries of internal affairs are established at the Entity level, not at the State level. What is more, in FBiH, which consists of ten cantons, internal affairs are also within the jurisdiction of the cantons. Organisation, work and functioning of the police in RS are defined in the 1998 Law on Internal Affairs, which has been changed and amended on several occasions. Unlike in FBiH, internal affairs in RS are within the jurisdiction of the Ministry of Internal Affairs, acting as a single authority and carrying out its duties directly.

There are ongoing negotiations on the form of police force that will be established at the BiH level, at least for the purpose of serving the BiH Court. In the meantime, the only policing force that remains within the authority of the joint institutions is the State Border Police (SBS), which patrols the borders and border areas. The SBS have fully replaced the Entity police along the country's borders with the aim of improving the level of professionalism and scrutiny of inspections along the porous BiH borders to prevent the proliferation of illicit goods and human trafficking. It is difficult to obtain actual results and compare the performance of the SBS against the Entity police and there have been reports of unprofessional behaviour by the SBS officers as well²⁸. This casts doubt over the practical benefits of the centralisation of such services, other than possible fiscal savings. In terms of integrity, it's clear that continuing strong efforts are required to ensure the appropriate behaviour of the SBS and any other subsequent centralised police units.

Besides the SBS, there are two other security agencies at the State level: Security Intelligence Protection Agency (SIPA) and Intelligence Security Agency (OSA). The differences between the two are subtle, with SIPA having the mandate to protect politicians, diplomatic and international offices, and also to conduct criminal investigation and anti-terrorist activities. Some of the SIPA's staff is uniformed and combines the functions of police and intelligence officers, along the lines of the FBI in the USA. Its creation in late 2002 followed significant pressure from the international community and the director of the new body (Sredoje Nović) was eventually appointed by the High Representative, despite three previous rejections of the candidate put forth by the BiH Presidency. SIPA was placed under the newly established Ministry of Security of BiH. However, of the planned staff of 460, a staff of only 30 is in place. The expected annual budget ranges between 6.6 million KM and 30 million KM, corresponding to the funds available and the cost projections of the head of SIPA respectively.

The OSA on the other hand is expected to combine three existing secret services in BiH: RS OBS (dominantly Serb), AID (dominantly Bosniak) and SNS (dominantly Croat) and follows an unsuccessful attempt by the international community to merge AID and SNS into the FBiH's FOSS.

In 2003, the OHR again pushed for a merger of OBS and the two FBiH' agencies, as FOSS never really took off. It put forward the OHR's administrator for State intelligence agencies, Drago Fers together with the special supervisor of the OSA, Kalman Kochis to begin co-ordinating this work by the early 2005. The OSA was formally established in May 2004 with the appointment of its director and deputy director, while its chief inspector has only recently been approved by the OHR (all three are BiH nationals representing the three ethnic groups). However, experts predict failure. The reason being that party and national interests will dominate over the goals of the Agency while the degree of mutual confidence remains critically low.

The fact of the matter is that the work of these two, highly expensive new agencies may well be merged into one, under the brave assumption that such a beast can be made to work. Currently, this all amounts to a mere overspending of scarce public funds for a project that is purely political, based on a structure that applies to countries much larger than BiH, and which does not represent a development priority at present.

Similar to the public administration, reforms of police and prosecution are also burdened by an attempt to even out the distribution of the three ethnicities within the service. Recent layoffs in 2004 have triggered a political debate on how that balance could be achieved without endangering the reform of the services and the quality of their work. Because in some areas 'minority' ethnic groups are not large enough to satisfy police recruitment needs, the possibility of hiring inappropriate individuals becomes more likely. This is a very serious issue that police and prosecution will have to deal with in the years to come.

Police at the Entity level

A significant problem in the fight against corruption is that although the statistical bulletins published in BiH give an overview of criminal acts reported and convictions over the last 12 months, they present their data aggregated by type of crime and not broken down into individual crimes. The criminal acts that can be classified as corruption offences (giving or taking a bribe, abuse of power and the like) are organised based on the chapters of the criminal codes dealing with the violation of official duties and responsibilities. These criminal acts are presented in statistical bulletins under a common heading along with other criminal acts that come under these chapters, many of which cannot be considered criminal acts of corruption in the true sense of the word. Some of these acts include illegal release of an imprisoned person, embezzlement, illegal appropriation of objects during a search or execution, or the disclosure of an official secret.

An attempt to obtain data on corruption offences in another way, by analysing criminal records of individual courts, would entail manually browsing tens of thousands of pages and a six-month data-collection due to the administrative divisions that would have to be traversed (the Entities, and the 10 cantons of FBiH and 5 regions in RS), provided that access was actually granted to these data in all courts. This problem exists not only in the collection of data on corruption offences but on all other kinds of offences as well. No criminal record contains data on the occupation of the person subject to criminal proceedings. It is therefore impossible to determine

whether there have been, over the past five years, any proceedings against police officers or staff of the Prosecutor's Office. Such data might be obtained from their colleagues, although they will likely evade questions out of a sense of solidarity and refer the investigator to the court's records.²⁹

Federation of Bosnia and Herzegovina

Organisation, management, and jurisdiction of the Ministry of Internal Affairs of FBiH, as well as relations with the cantonal ministries and other institutions, are all regulated by the Law on Internal Affairs of FBiH³⁰, which was enacted by the High Representative (Decision No. 19/02). In terms of this Law, internal affairs within the jurisdiction of the FBiH Ministry of Internal Affairs include, *inter alia*, prevention and detection of acts of terrorism, inter-cantonal crime, narcotics trade and organised crime, as well as the investigation and apprehension of those who commit such crimes.³¹ Although this Article does not expressly mention corruption, on the basis of the well-known links between corruption offences and acts of organised crime and on the basis that corruption often naturally constitutes an act of inter-cantonal crime, that corruption is indirectly also within the jurisdiction of the FBiH Ministry of Internal Affairs (FMIA).

The FBiH Police Department is the authorised to carry out activities within the FMIA's jurisdiction. Organisation and function of the department is defined in the Articles 30–46 of the Law on Internal Affairs. The police director, who is directly responsible only to the Minister, runs this organisational unit of the FMIA. Apart from the general requirements, candidates for the post of police director must also meet some special requirements, the most important of which is that they have never been members of any political party. Furthermore, the police director cannot be appointed from among those persons reported as uncooperative by IPTF/EUPM, persons convicted of premeditated criminal acts or abuse of power, or persons against whom disciplinary proceedings have been initiated for serious violations of office duties. The candidates must have at least 10 years' police experience and at least 4 years of managerial experience (excluding the period between 01 March 1992 and 14 December 1995), as well as proven skills in handling difficult operations.

The appointment procedure starts with the selection of the Police Director from amongst the applicants who responded to a media vacancy ad. An independent board makes the selection. The independent board is appointed by the House of Representatives of the FBiH Parliament. It consists of seven politically independent members: two FMIA representatives and five recognised experts in law, social sciences, criminology, human rights or other related areas. The independent board forwards the police director proposal to the FMIA, which then forwards it to the FBiH Government within seven days. Should the Minister fail to forward the proposal to the Government, the independent board can forward it directly to the Government. If the Government decides to refuse the independent board's proposal, it is obliged to give reasons for that refusal and to ask the independent board to reconsider its proposal. If that happens, the independent board can either change its original proposal or reject the Government's explanation and confirm its proposal, whereupon it becomes final and binding. The independent board can remove the police director from office in the same manner.

It is obvious from this that representatives of the citizenry have a significant role in the independent board. This ensures that the future department director acts in the interest of FBiH citizens, not in the interest of political parties.

In December 2002 the FBiH Government issued its regulation on the Public complaints bureau,³² which specifies that the FMIA Public complaints bureau is the authority competent, *inter alia*, to monitor all procedures connected with internal control of the FMIA, based on complaints lodged with MIA for any reason and by any person. This includes investigations, invocation and implementation of sanctions and the providing of information to interested parties. The bureau submits quarterly and annual reports on its performance to the FBiH Parliament.

The bureau is located within the FMIA structure, but it performs its duties and obligations independently of the FMIA chain of command. It consists of three members (one chairperson and two members): one FMIA representative and two citizen's representatives. Of the two citizen's representatives, at least one must be female. The members of the bureau must be well-known persons with university education. They are appointed by the commission of the FBiH Parliament, provided that they meet the eligibility criteria. The most important criteria include: the chairperson must have at least 10 years' experience in criminal law, or as judge or prosecutor, the bureau members cannot be members of a political party, they cannot have a criminal record (including deleted verdicts) and must have at least 10 years' experience in a legal, social, technical or medical profession.

Article 9 (3) stipulates that if any complaint is lodged in connection with corruption or abuse of power, unit heads will inform the FMIA internal control unit, which will forward the information to the bureau. The bureau will then request the initiation of a full investigation.

As for the fight against all forms of crime, including corruption, one provision contained in the Law on Internal Affairs is worth mentioning as it may pose an obstacle to the successful implementation of activities within the FMIA's jurisdiction. Namely, Article 15 stipulates that the composition of FMIA should reflect the ethnic structure of the population of FBiH according to the 1991 census. So ethnic criteria are placed above professionalism and adequate training in the fight against crime. Consequently, there are homicide or narcotics investigators who have university education, but of a nature not appropriate for the post they hold. For instance, in one case, a forestry-engineering graduate was given the post of a narcotics investigator, but that same job could not be given to an educated criminologist because that would have led to an imbalance in the ethnic structure of the FMIA. Therefore the priority should be given to professionalism and adequate training if better results are to be achieved in combating crime.

Republika Srpska

Organisation, work and functioning of the police in RS are defined by the 1998 Law on Internal Affairs, which has been changed and amended on several occasions.³³ Unlike in FBiH, internal

affairs in RS are within the jurisdiction of the Ministry of Internal Affairs (RSMIA), acting as a single organ which carries out its duties directly.³⁴ Internal affairs in RS include, among other things: execution of professional operations, legal and administrative activities and other duties that ensure protection of life, including personal safety, human rights, civil freedoms and property; prevention of criminal acts; detection of criminal acts; investigating, apprehending and delivering perpetrators to the proper authorities; protection of law and order, etc. It is obvious from the above that corruption, as a phenomenon that is manifested through perpetration of various criminal acts, also falls within jurisdiction of RSMIA. Organisation, guidance, control and coordination of all police activities within the RSMIA jurisdiction lies in the hands of the police director, who is the manager of all RSMIA operations and activities. The institution of police director, as well as the election, appointment and removal of the police director, is regulated in the Law on changes and amendments to the Law on internal affairs³⁵, which regulates the matter in much the same way as the FBiH Law on internal affairs. The key difference between the police director institutions in the two Entities is reflected in the fact that the FMIA director has jurisdiction over internal affairs within the jurisdiction of the FMIA only (excluding those within the jurisdiction of the cantonal MIAs) whereas, the RSMIA director has jurisdiction over all operations within the jurisdiction of RSMIA. This results from the fact that the FMIA is based on principles of decentralisation and coordination, whereas RSMIA functions on principles of centralisation and subordination.³⁶

According to Article 28 of the Law on Internal Affairs, control over the MIA's performance is exercised by the President of Republika Srpska, National Assembly, Government, regular courts, Constitutional Court and citizenry. It is important to note that RSMIA must consider all requests, complaints or proposals submitted by individual persons and legal entities in connection with the RSMIA's performance. In case the complaint refers to violation of its professional duties, a disciplinary proceeding is initiated against the RSMIA member(s) in question. In terms of Article 64 of the abovementioned Law, the most serious violations of professional duties include: illegally obtaining of private or material benefits for oneself or another in connection with professional duty; any action or failure to act in relation to that is suspected to constitute a criminal act committed in the line of professional duty or in connection with professional duty; covering up the facts about a major violation of professional duties of staff and failure of the immediate superior to take appropriate measures, something easily associated with corruption among police staff. The disciplinary proceedings are initiated by the disciplinary commission in which citizens do not participate.

Police at the Cantonal Level

The police in cantons are organised in accordance with the division of jurisdiction between the FMIA and cantonal ministries and in accordance with the constitutional structure of the cantons (in terms of jurisdiction, functions and organs), according to which the Cantons have jurisdiction over establishment and monitoring of a police force bearing the federal uniform and specific cantonal insignia. Ministries of internal affairs have been established in all ten cantons in FBiH, but with certain divergences of internal organisational structures.³⁷ However, as much as the organisational

structure may differ, the jobs and tasks of all cantonal ministries of affairs are identical. The focus will therefore be on certain interesting solutions, which have been applied in the Ministry of Internal Affairs of the Sarajevo Canton.

The MIA of the Sarajevo Canton has, *inter alia*, jurisdiction over protection of life and property, implementation of the cantonal, federal and State constitutions and other applicable laws, monitoring and guiding the work of the police departments, taking measures for detecting and preventing criminal acts, and investigating and apprehending those who committed them.

The MIA of the Sarajevo Canton carries out these activities, as well as others within its jurisdiction, by means of its organisational units at the MIA headquarters, whose structure varies from canton to canton, and between police departments.

Police departments are established at the municipal level within the canton, and they can consist of one or more police stations, and they can have jurisdiction over one or more municipalities. Each police department has a head, who is appointed and may be removed from office by the police commissioner of the Sarajevo Canton.³⁸

The cantonal MIA is managed by the Minister, who is merely a political figure without significant participation in FMIA's police operations. Unlike the Minister, the commissioner³⁹ has exclusive operative authority, managing and monitoring all police activities in the Sarajevo Canton related to public security, crime detection and prevention. The commissioner is responsible for:

- Planning, managing and monitoring all police activities on a daily basis;
- Immediate management of police activities and, in connection with that, organisation, planning, monitoring, guiding and coordinating the work of the police;
- Making decisions on employment and termination of employment contracts in accordance with the law and after consultations with the Minister;
- Assignment and reallocation of staff to and from their posts in the police department and making decisions on reallocation, but after consultations with the Minister, whose opinion will be carefully considered;
- Preparation of the budget for police purposes and responsibility for all financial and material resources allocated for police purposes;
- Preparation of programmes, information, analyses and other materials within the police' sphere of activity;
- Regular reporting to the Minister on actions taken by the police;
- Monitoring of the performance of the professional standards unit, which consists of internal disciplinary control, internal inspections and audits;
- Development of principles of work.

Prosecution

Bosnia and Herzegovina

The BiH Prosecutor's Office was established in September 2002 when the High Representative for BiH issued the decision enacting the Law on the Prosecutor's Office of BiH⁴⁰. The High Representative's decision was hardly surprising given the prevailing perception that crime was on the rise (entirely generated by the media as no relevant studies on crime had been conducted for over 12 years). The fact that criminal activities, especially those in connection with organised crime and corruption, affect economic, fiscal, and commercial well-being as well as other rights and interests of BiH citizens, contributed to the establishment of the Special department for organised crime, economic crime and corruption⁴¹ within the Prosecutor's Office of BiH. The special department consists of a head and prosecutors. The head of the special department is also the deputy chief prosecutor.

The Prosecutor's Office of BiH acts independently as a separate authority of BiH.⁴² The duties of the Prosecutor's Office are carried out by the chief prosecutor of BiH, three deputy chief prosecutors and a number of other assorted prosecutors. The composition of the BiH Prosecutor's Office is peculiar: besides BiH citizens, functions are also carried out by so-called international prosecutors, one of whom is a deputy chief prosecutor and the head of the special department for organised crime, economic crime and corruption.

All prosecutors are appointed by the High Judicial and Prosecutorial Council (HJPC) of BiH in accordance with the procedure prescribed in the Law on the HJPC of BiH,⁴³ which was also enacted as a result of the High Representative's decision. The eligibility criteria for election of prosecutors refer to professional training and skills, as well as work experience, all of which are subject to assessment, whether in the form of a written or oral test⁴⁴ and an interview.

The Prosecutor's Office of BiH is the authority competent to investigate offences that fall under the jurisdiction of the Court of BiH and to prosecute offenders before the Court of BiH, in accordance with the Criminal Code⁴⁵, which was also enacted by the decision of the High Representative. The special department shall, *inter alia*, undertake measures defined by law with a view to investigate and prosecute the perpetrators of organised crime, economic crime and corruption offences as provided for by State Law, when provisions exist that grant the Court of BiH such jurisdiction.

Being autonomous, the Prosecutor's Office is obliged to act transparently, i.e. it shall provide the Presidency of BiH, Parliamentary Assembly of BiH, and the Council of Ministers of BiH, with information on its operations, upon its own initiative or upon request. The Prosecutor's Office is obliged to inform the public about developments and issues of general relevance that come to its knowledge in the course of its operations. When the interest of procedure so requires, the Prosecutor's Office may inform the public and interested parties of individual cases upon which it takes action.

The new hybrid judicial system is an experimental combination of the Continental and Anglo-Saxon models. Many police officers claim it will take a long time before the relevant institutions adjust to the new system and those involved receive appropriate training. Therefore some indicate a potential institutional time gap before efficient prosecution is possible⁴⁶. On the other hand, the judges and the prosecutors blame the police force for being resistant to the new legal settings. The police want to remain in charge of criminal investigation, yet their records speak of inefficiency and lack of integrity. Evidence of that are the leakages during investigations in which the prosecution involved police. Therefore, police must firmly be placed under the jurisdiction of the prosecution.⁴⁷ GRECO also recommends that efforts to limit political influence and to modernise the police force at territorial level continue. Police cooperation with the prosecution appears to be a desired option.⁴⁸ On the other hand, more financial resources must in future be devoted to prosecutors, enabling them to acquire better personnel and material resources.

In early 2003 the Office of the High Representative established a new witness protection program, which is articulated through new legislation as well as amendments to existing laws. The Laws on Witness Protection and Judicial Police of BiH and amendments to the existing Law on the Prosecutors Office and the Law on the Court of BiH are designed to ensure that the Court can be used effectively in the fight against organised crime and corruption. The Witness Protection Law provides essential protection for vulnerable witnesses or those under threat during criminal proceedings. The judicial police will be responsible for security in the Court and for carrying out the orders of the Court. Their actions will be limited to the jurisdiction of the Court and they will co-operate with the police forces in both Entities. The amendments to these laws confine the jurisdiction of the Court to matters that may have substantial detrimental consequences to BiH. These amendments have been deliberately framed to assist the capture and prosecution of the most serious criminal cases, regardless of the identity of the accused.

Both sides agree that it is far too early to say whether or not such legal changes will result in a successful transformation of the prosecution, although, so far, very little appropriate preparation, training and equipping has been undertaken.

Federation of Bosnia and Herzegovina

The Federal Prosecutor's Office is an autonomous body as defined in Article 1 of the Law on the Prosecutor's Office of FBiH.⁴⁹ Being autonomous, the Federal Prosecutor's Office is obliged to act transparently. This means that it will, upon its own initiative or upon request, provide the President of FBiH, Vice-President of FBiH, FBiH Parliament of and FBiH Government with information on its operations. It is also obliged to inform the public about the state of criminal activity in FBiH. When the procedure requires, the Federal Prosecutor's Office may inform the public and interested parties of individual cases upon which it takes action.

The function of the prosecution will be performed by the chief federal prosecutor, two deputy chief federal prosecutors and a number of federal prosecutors in the Office of the Federal Prosecutor. All prosecutors are appointed by the High Judicial and Prosecutorial Council of FBiH.

The Federal Prosecutor's Office is the authority competent to conduct investigations and prosecute potential perpetrators of terrorism, inter-cantonal crime, illegal trade in narcotics and organized crime.⁵⁰ The Federal Prosecutor's Office exercises this authority within the territory of FBiH.⁵¹

Since prosecutor's offices operate at the cantonal level, the federal prosecutor monitors their performance for the purpose of ensuring legality and efficiency.⁵² Within the scope of his or her authority, the chief federal prosecutor may issue general or individual mandatory instructions to cantonal prosecutor's offices, carry out criminal investigations and prosecutions in cantonal and municipal courts, whenever the chief federal prosecutor has reason to believe that cantonal prosecutor's offices have failed to implement the FBiH Criminal Code, or that the prosecution of criminal acts cannot be carried out efficiently under the jurisdiction of a cantonal prosecutor's office.⁵³

Republika Srpska

The situation is very similar in RS. As part of the reform of the judiciary in BiH, the High Representative enacted a set of laws, including the Law on the Prosecutor's Offices of RS. Relevant provisions of this Law are identical to the abovementioned provisions pertaining to FBiH and its cantons. The only difference is reflected in the fact that RS consists of regions instead of cantons, as smaller administrative territorial units, so consequently regional prosecutor's offices were established, which have the same relations with the RS Prosecutor's Office as the cantonal prosecutor's offices have with the FBiH Prosecutor's Office.

Cantons of FBiH

FBiH has divided its prosecution into territorial units that act as autonomous public bodies, but their authority is limited to the territory of their respective cantons. Although there are ten cantons, their prosecution will not be analysed in detail, since the Laws on Cantonal Prosecutor's Offices were enacted on the same day⁵⁴ and by the same office, namely the High Representative for BiH. The provisions concerning composition and internal organisation of the offices and their relations with the FBiH Prosecutor's Office are identical to the abovementioned provisions of the Law on the Prosecutor's Office of FBiH.

Public Procurement

There is no legislation in the field of public procurement at the State level in BiH. This legislation falls within the jurisdiction of the Entities. Meanwhile, the European Union's Public Procurement Programme for BiH has drafted a new procurement framework, which is still in the preparatory stage. A public discussion on the matter was launched in spring of 2004, at the end of which the new model will formally be presented and submitted to the authorities.

The new law envisages the establishment of an Agency for public procurement, which would be a strategic institution at the State level, supervising implementation of the law, organising the training of staff in its application, and preparing models for tender documentation, procedures etc.

The importance of applying transparent procedures at all the levels is illustrated by the size of the budgets. The Entity budgets exceed that of the State by several orders of magnitude (it is primarily used for servicing foreign debt and payrolls), so that appropriate public procurement procedures are even more important at the Entity level. Some of the cantons have budgets comparable to those of the Entities. There is very little control in place to ensure cost-effective procurement. Likewise, some cities and municipalities procure just as much as cantons do, so that they too must be trained in the process.

Until the new legislation is introduced, the current legislation at Entity level remains the FBiH Regulation on the procedure for procurement of goods, performance of services and contracting of August 2003 and the same Law in RS adopted in May 2001.

The governments may opt to procure through their respective secretariats or the ministries can purchase goods and services themselves. This is currently not appropriately regulated by legislation and therefore subject to misuse. The details of the practice are given below.

Federation of BiH

According to the Regulation on the procedure for procurement of goods, performance of services and contracting (Official Gazette of FBiH, No. 40 of 14 August 2003), all major procurements require competitive bidding.

This Regulation contains a list of organs that are bound to implement its provisions and to perform public procurement in accordance with the prescribed rules, as well as instances in which there is no need to act in accordance with the Regulation.

The following methods of public procurement are established in accordance with said Regulation:

- Open bidding

- Pre-bidding
- Limited bidding, which can be:
 - bidding by invitation
 - direct negotiation.

Open bidding

Open bidding is the main method of procurement of goods, performance of services and contracting in FBiH. This procedure is open to all national or international bidders who wish to participate. The invitation for open bids is published in the media. Selection is made between a minimum of three acceptable bids.

The Regulation prescribes all the activities the customer is required to undertake for the purpose of conducting an open bid. This procurement method ensures transparency through:

- the obligation to publish the invitation in the Official Gazette of FBiH, in one of daily or weekly newspapers in FBiH, in foreign newspapers in case of an international open bid, and on the web site,
- publication of the evaluation criteria,
- publication of the place and time of the public opening of bids and the sending of invitations to all interested bidders,
- a public opening of the bids performed by a commission, specially appointed by the customer, in the presence of interested bidders or their authorised representatives.

Competitiveness is ensured through wide publication of the invitation for open bidding, equal bidding conditions for all bidders, and equal evaluation criteria.

Pre-bidding

The abovementioned Regulation defines pre-bidding as a special procedure for the procurement of goods, performance of services or contracting which do not exceed the amount of KM 1,000,000 and which is obligatorily conducted with the aim of "sending a preliminary invitation to the interested parties to submit requests for their participation in the procurement procedure..."

It is conducted in two phases:

- The customer publishes an open invitation to pre-bidding procedure for the purpose of collecting requests for participation in the procedure,
- The customer prepares the required documentation, submits it to eligible and acceptable bidders, and determines the deadline for submission of applications. After that, only the bidders who have been invited (i.e. those eligible and acceptable) may submit their bids.

The customer selects the best bidder from among the submitted bids based on who will be able to perform the procurement most successfully.

The Regulation does not specify whether the pre-bidding procedure should be open or not, but in reality it is closed to the public.

Limited bidding

If there is a limited number of bidders or when the open bidding procedure is impossible to implement due to unpredictable difficulties or higher costs for the customer then limited bidding can be conducted in FBiH only with the approval of the relevant ministry. Evidence of that must be provided that:

- Bidding by invitation can be:
 - a) for goods and works – a minimum of three bidders are directly invited, where the value of procurement does not exceed KM 50,000.
 - b) for services - a minimum of three bidders are directly invited, where the value of services does not exceed KM 15,000.
- Direct negotiation, as a form of limited bidding, is conducted under the conditions prescribed by the Regulation, with the approval of the relevant ministry, by direct negotiations with one bidder for procurement of goods, performance of services or contracting whose value does not exceed KM 15,000.

It is obvious that there is no public invitation, but the rest of the limited bidding procedure, in case of bidding by invitation, is the same as in open bidding, which means that the bids are opened publicly, in the presence of the bidders or their representatives.

Republika Srpska

In RS the field of public procurement is governed by the Law on procedure for procurement of goods, performance of services and contracting (Official Gazette of RS, No. 20 of 18 May 2001), according to which all major procurements require competitive bidding.

The procedures are very similar to those described above, except they are governed by a law, rather than a decision.

The legal regulations in the Entities of BiH have been enacted quite recently. In RS the Law was adopted in 2001, whereas in FBiH the decision was first enacted in 1998. The international community had the greatest influence on legal regulation in the field of public procurement. Their aim was to increase transparency and reduce the possibility of power abuse and corruption. Although the regulations are poor, incomplete and contain conflicting provisions,⁵⁵ they are still applied regularly. The reason for that is the control mechanisms established by competent institutions, such as SAIs.

Given that open bidding is the principal method of public procurement in both Entities, competitive bidding exists in most cases. The application of other procurement methods in BiH is very limited because they require prior approval or consent by relevant ministries or other organs. Their application limits or excludes competitiveness as such, but competitiveness is in practice being excluded in other ways as well:

- Exclusion of the public when decisions are made in case of pre-bidding,
- Exclusion of the public when decisions are made on bids by price,
- Through arranged collection of bids in which the customer prepares three different bids in agreement with the three different firms, by which the procedural requirements would be formally met. That presupposes a mutual agreement between bidders and preparing of bids that would favour one of them. Bidders then make an agreement that the successful bidder hires the staff of other bidders. This practice is very common and is often used in contracting for construction works.

Ombudspersons

In BiH there are three Ombudsman institutions: one at the level of the State of BiH and two at the level of the Entities: the Ombudsman of FBiH and the Ombudsman of RS.

On 3 January 2001 the new Law on the Human Rights Ombudsman of BiH came into force and gave the current legal basis for the Human Rights Ombudsman of BiH. The new Law replaced Annex 6 of the Dayton Peace Agreement, which provided the framework of the Ombudsman office since its inception in 1996.

The State-level institution is set up to promote good governance and the rule of law, and to protect the rights and liberties of natural and legal persons. This is enshrined, in particular, in the Constitution of BiH and the international treaties appended thereto, thus monitoring the relevant activity of institutions of BiH, its Entities, and the District of Brčko. The functions of the Ombudsman's office are described in the rules of procedure. Nevertheless, the very foundations of this institution contradict its purpose. The ombudspersons are being appointed and not necessarily on the basis of merit. The prime motivation for the parliamentary Ombudsman committee when filling the posts is the ethnic identity of the individuals. Minimum requirements have been set in terms of prior legal experience of the candidates rather than their experience in the field of human rights, and only lawyers are allowed to apply. Their mandate is for four years, which corresponds to the mandate of the parliaments electing them, further feeding suspicion of mutual linkages and the politicisation of the post.

The Ombudsman of FBiH and RS are also public institutions with constitutional and legal authority to monitor and exercise the protection of human rights and civil freedoms, as well as to examine activities of any institution of the entity or any person that violates human dignity, human rights and freedoms. This includes cases of ethnic persecution. Each institution has three Ombudsmen, Ms Vera Jovanović, Mr Esad Muhibić and Ms Branka Raguž, as well as Mr Franjo Crnjac, Mr Zlatko Kulenović and Ms Branka Kolar-Mijatović in FBiH and RS respectively. The two institutions co-operate closely with the Human Rights Ombudsman of BiH.

During 2002 alone, the FBiH Ombudsman received 8,510 justified complaints requiring investigation. So far, 7,110 of these cases have been resolved. Around 22,000 citizens contacted the RS Ombudsman in 2002. The office has received 3,158 justified complaints requiring investigation, of which 2,816 have been resolved so far. These complaints generally relate to how the authorities apply their regulations to citizens. However, a failure to react to some decision of the OHR cast doubt on their integrity. The OHR's freezing of the private bank accounts of selected politicians without public debate or evidence to back its claims, should have certainly been a matter for the Ombudsman. Likewise, the Ombudsman has never condemned lengthy SFOR detention of individuals with potential knowledge of alleged war criminals. Such detentions have occurred without any legal justification and access to families and lawyers has been denied to

these individuals for days and weeks (similar to conditions imposed on Al-Qaeda suspects at Guantanamo Bay).

On the other hand, certain reports, such as that of wartime interest charged on back electrical bills, where complainant families were expelled from their homes, have met with official silence, with no action taken to this day to ensure the human rights of the lowest social strata. Another such example was the report of dual medical practice conducted by some doctors in both the public and the private sector. In this, patients were redirected from the socially funded public medicine to private medical institutions. Neither the OHR nor the OSCE have intervened to reinforce the Ombudsman's recommendations on the misuse of public funds and the misleading of citizens.

The Ombudsman should be legally independent in carrying out their functions and no person or governmental authority should be able to interfere with such functions. While the first BiH Ombudsperson was appointed by the international community and the OHR (Mr. Frank Orton), the appointment is now normally confirmed by parliamentary vote. Such was the case of the Entity-level Ombudsman as well as the appointments of Mr. Orton's successors. The Human Rights Ombudsman of BiH as of 1 January 2004 are, in alphabetical order, Mr Mariofil Ljubić, Mr Safet Pašić and Prof. Vitomir Popović. Their integrity and independence appear to remain closely linked to the operations of the OHR and other international agencies in BiH.

In carrying out their functions, Ombudsman may examine any official document, including confidential ones, judicial or administrative files, and can require the cooperation of any person (including official), in particular to provide relevant information, documents, and files.

Cooperation with Entity Ombudsman is, *inter alia*, achieved through regular meetings with the Entity Ombudsman as well as through contacts with the existing field offices of the Entity Ombudsman. The State-level Ombudsman for Human Rights represents Ombudsman institutions in BiH and the international community. Nevertheless, duplication of work and the taking on of responsibilities from the Entity-level by the State Ombudsman are frequent, both legally and in practice. Much of this behaviour was initiated during Mr. Orton's term in office and silently supported by the BiH Human Rights Ministry. Even the audit report of the State Ombudsman from that period barely asserts such operational strategy⁵⁶.

In addition to their work on individual appeals and complaints, the Ombudsman directed a significant effort towards the examination of functional problems of governmental structures at all organisational levels.

Areas of the Ombudsman's work have included: water supplies, land measurement, access to information, real estate, pension payments, and municipal signposting.⁵⁷ During the first eight years of its work, this institution was contacted by 570,000 citizens. Most of these complaints actually dealt with the implementation of property laws and to a lesser extent with issues more directly related to corruption. In this year the workload has decreased as property rights are increasingly being upheld. Over 200 cases are being registered and processed each month at the

State-level Ombudsman office. Decisions, resolutions and reports can be viewed at the BiH Ombudsman website: www.ohro.ba.

The current organisational structure of the Ombudsman institution is very complex, which results in duplication of work and creates confusion among citizens as to the exact jurisdiction of the Ombudsman. A concept has been put forward for the establishment of a single Ombudsman institution at the State level that would incorporate the FBiH and RS Ombudsman institutions. At the request of the President of the BiH Parliamentary Assembly's commission on legal affairs and human rights of the Council of Europe requested the Venice Commission to give an opinion on the constitutional situation in BiH with particular regard to human rights protection mechanisms. In this report the merging of the Entity-level Ombudsman with that of the State is not supported, as the Entity Ombudsman appear to be a "particularly useful feature," enabling greater efficiency and accessibility for citizens⁵⁸. Likewise, the existing plans, which would merge the Ombudsmen into one large State-level institution, with 12 offices throughout the country, will prove to be a costly alternative.

Ombudsman institutions at all levels should, as a minimum, have a common database that would be transparent and accessible to citizens. They should all also publish, in timely fashion, information about their activities. Likewise, a campaign needs to be launched to educate the public on the role and functions of the Ombudsman, to raise the profile of the institution and make it more accessible. On the other hand, the Ombudsman should focus more attention on the failure of authorities to implement its recommendations, possibly issuing special vigorous reports to the parliaments or the public on the matter. Therefore, the priority should not be on a political merging into a single institution, but on depoliticising existing Ombudsman offices and ensuring that existing State and Entity-level offices have a clear division of jurisdictions and roles. In another words, the State Ombudsman, before commencing any constitutional changes, should focus on inter-Entity issues, the operation of State-level institutions' and the District of Brčko. The State Ombudsman office has never fulfilled this mandate. Only once a clear case can be demonstrated for different constitutional settings, should such improvements be undertaken. It appears that such evidence does not exist at present.

At the same time, it is critical that the roles of the parliaments and of the Ombudsman are not confused. Its reports, decisions and rulings must be read by MPs and positive actions need to follow. This may require additional campaigning and training with parliamentarians. Positive actions remain rare in BiH and these should be the highest priority in the operations of this pillar.

Investigative/Watchdog Agencies

Watchdog agencies are formal departments dealing with individual cases of corruption. While some areas with similar activities may be delegated to civil society (e.g. consumer protection), this section only deals with the executive level in BiH.

As a result of severe conditions and the need for permanent corruption monitoring, the Peace Implementation Council for BiH suggested that the OHR should develop a body capable of dealing with organised crime and corruption, of course in cooperation with national institutions. The process of establishing an Anti-Fraud Department (AFD) started in 1998 and completed in August 2000. It has assumed an operational role in helping BiH authorities investigate and prosecute important economic crimes, in addition to its established role of co-ordinating and facilitating the anti-corruption activities of international and national agencies.⁵⁹ The AFD's intent was not to take over fraud investigations completely, but rather to provide support to BiH authorities (primarily the Court of BiH) in the investigation and prosecution of specific cases, and also to identify some systemic and structural weaknesses that need to be addressed to create effective anti-corruption mechanisms.

As BiH passes from a post-conflict zone to a more conventional transition country, approaching the road to Europe, some structural changes were also needed within the OHR. Therefore, the very OHR was restructured⁶⁰ in 2002 and the AFD became, schematically, part of 'Rule of Law' pillar⁶¹ and was renamed to the Serious Crime Unit. Since the new title was not appropriate for its mandate,⁶² it was soon renamed again, this time as the Anti-Crime and Corruption Unit (ACCU). This was, from the very beginning, seen as a temporary institution, accountable only to the High Representative, in the absence of appropriate national authorities to deal with such matters. However, its existence and the way in which it was set up, did not help in the cause of strengthening the country's investigative and watchdog functions.

ACCU currently consists of three subunits: an investigative unit (IU), a prosecutorial unit (PU) and an analytical unit (AU). The IU is in charge of providing assistance and support to national-level investigators (courts), the PU is charged with providing assistance and support to prosecutors' offices, and the AU is in charge of assisting the IU and PU with analytical intelligence. Its staffing and specific skills remain unknown and opaque. Its powers are largely being determined on an *ad hoc* basis, as there are no prescribed guidelines or a legal framework for its activities.

The objectives of ACCU are to "assist the domestic authorities in analysing, investigating and prosecuting illegal activity and following these cases through all phases of the judicial process. Its primary responsibility is to co-ordinate and monitor the domestic authorities during criminal investigations and prosecutions, where the nature of the alleged crimes is such that it could hinder the implementation of the Dayton Peace Agreement and related reform processes. The ACCU

thereby acts as an instrument for reducing the influence of criminal activity and corruption on positive political processes in BiH. In this way the reform effort's synergies are enhanced and accelerated."⁶³

Formally, there are no governmental investigative or watchdog agencies other than the OHR and the ACCU, despite several failed attempts in 1997 and 2000 to set up Entity-level anti-corruption agencies.

Lack of these agencies poses a threat to the anti-corruption fight and to the development of good governance because an illusion is created that the work of BiH governments is progressing. But, the results of their work do not meet citizens' expectations. On the other hand, the OHR's replacement is no sustainable solution either.

In performing its duties, the ACCU cooperates with several institutions on a national level. Usually those are the institutions that deal with criminal activity, such as the police, customs, and State Border Service. When it comes to international institutions it depends on the case. At various times, it works with CAFAO (for customs fraud), the OSCE (regarding special audits of public utilities), and the EU Police Mission to BiH (if police forces are being monitored).

Because it is an extension of the OHR, governments have little choice but to be supportive and cooperative with the ACCU, especially since the High Representative has the ability to remove an official regardless of rank or evidence produced in an investigation. ACCU's work primarily results in the initiation of criminal proceedings. Sometimes those proceedings fail due to a corrupt judicial system, but sometimes they result in convictions.⁶⁴

Non-governmental agencies, on the other hand, enjoy a higher level of independence in relation to the authorities in BiH. This independence stems primarily from their autonomy in decision-making, but also from the diversity of their funding sources. Appointments are made based on merit and the appointment process itself is much more transparent than in governmental agencies. National and international non-governmental watchdog organisations in BiH exhibit a difference in regards to the independence of their work.

Local NGOs acting in a watchdog role are generally independent, but their influence is small due to underdeveloped awareness-raising skills and other capacities. They generally act locally and cannot play a significant role in the monitoring of top-level authorities.

Media

The war in BiH turned most media into propaganda tools at the hands of authorities, armies or factions. Since the Dayton Peace Accord efforts have been made - with limited success - to develop media which bridge inter-Entity boundaries. The most influential broadcasters are the public radio and television stations operated by the Entities. The OHR is overseeing the development of a national public broadcasting service. The OHR and other international organisations have encouraged the development of media that support a civic rather than a nationalist approach.

The number of electronic and printed media has been continuously on the rise ever since the end of hostilities and the entry of the international community to the country. Almost 200 commercial radio and TV stations are on the air, but their development has been hampered by the weak state of the advertising market. It was believed that the larger the number of media outlets, the greater diversity of views that are represented, thus contributing to democracy in the country. Since, their numbers virtually exploded and there have been attempts to limit the influence of some perceived 'undemocratic' alongside efforts to strengthen the perceived 'democratic' media outlets. A number of State-level institutions were set up to supervise the process. A number of companies recently vanished from the market due to insufficient financial support, lack of sustainable strategies and quality market products. Generally speaking, the media still exhibit weak ad sales and even electronic media hardly manage to cover their expenses with marketing revenues. Several regional papers, magazines and broadcasters from Zagreb and Belgrade are gaining an ever-greater audience, which indicates a possible regional merging or company takeovers in a bid to maintain market presence.

This indicates that the driving force behind media start-ups was often not a genuine interest to ensure that the voice of the citizens is heard, but donor money available. To date, no international donor-driven media has managed to achieve sustainability. Their coverage is limited to certain geographic areas, often coinciding with the ethnic frontiers. Professional behaviour is patchy.

Article 3 of the Constitution of BiH guarantees the highest level of internationally recognised human rights and fundamental freedoms, which also includes freedom of thought and freedom of expression. Freedom of expression is also guaranteed to all BiH citizens in Article 10 of the European Convention for the Protection of Human Rights, which was also signed by BiH.

Additional legislation was adopted in October 2000, when the Council of Ministers adopted the draft Freedom of information act, ahead of any other ex-Yugoslav republic. According to this Law, every citizen has a right to access information in the possession of public authorities.

The State legal system is responsible for implementing these laws, while the Communications Regulatory Agency (CRA), since its establishment in 1998, has had a special role in granting or

denying licences for electronic media. It monitors implementation of the Law on Communications, which also includes monitoring the right to freedom of expression. As of 2 March 2001 the CRA became a State agency led by a director and an Agency council composed of three international and four national members.

The CRA was established by decision of the High Representative. Seven members of the Agency council as well as the members of the Agency implementing committee were elected by the Parliamentary Assembly in accordance with the proposal of the BiH Council of Ministers. The Law also regulates Council members' conflicts of interest.

Most CRA decisions are based on the Law on Communications, enacted by the decision of the High Representative in February 2003 as a replacement for the Law on Telecommunications. Under Article 38 of said the new Law, before it issues any rules, the CRA must follow the prescribed procedure: the draft rule is made publicly accessible, the public has at least 14 days to submit comments, the CRA carefully considers every comment submitted and finally adjusts the rule book in accordance with the comments accepted by the Agency council.

Previous cases of the adoption of new rules prove that a similar practice had been observed even before the Law on Communications was enacted. The best example is the rule on broadcast licence fees, which was drawn up in 1999. The original version of this rule stipulated that the fee amount be calculated according to the number and power of each broadcaster's transmitters, not discriminating between broadcasters. However this rule was changed four months later in accordance with the proposal of the BiH Broadcasters' Association so as to differentiate between fee amounts for public and private media.

The Law on Communications also regulates one of the most important functions of the Agency, namely the assignment of frequencies. This is regulated by Article 32:

"The use of radio frequencies shall be subject to an authorisation by the Agency [CRA]. The assignment of frequencies shall be made impartially in accordance with the frequency usage plan and on the basis of objective criteria set up by the Agency. The Agency shall decide on the application within six weeks..."⁶⁵ What is more, Article 36 stipulates "neither the Council of Ministers, nor individual ministers nor any other person shall in any way interfere in the decision-making of the Agency in individual cases."⁶⁶

According to Article 41, all decisions of the Agency council shall be made by consensus, as far as possible.

Procedures for the assignment of long-term broadcast licences are regulated according to the Independent Media Council (IMC) Rule 04/2000, issued in 2000. According to this rule, long-term licences shall be issued to subjects who score at least 24 out of a maximum of 40 points in the assessment process. The following aspects of the application are awarded points: program quality, financial information and viability, technical operations and previous compliance with IMC (today CRA) regulations.

Despite the abovementioned procedures for ensuring transparent and independent decision-making in the CRA, the conclusion of the recent conference on BiH implementation of Council of Europe broadcasting standards, was that the CRA's work could be improved by ensuring better mechanisms for CRA financial independence and by introducing procedures for integration of CRA decisions into the legal system of the country.⁶⁷

The existence of the CRA has brought more order to the media market in BiH. Back in 1998 a total of 380 electronic media outlets existed in BiH. Yet after the four critical conditions for their licensing had been stipulated, the number shrank significantly. The key conditions were:

- programming;
- financial sustainability;
- technical capacities; and
- penalty record (warnings, fines, temporary broadcast bans, licence withdrawals).

These have reduced the number of electronic media outlets to the current 183, of which 41 are television and 142 radio stations⁶⁸. The main television stations are the Entity broadcasters: **FTV** and **RTRS** and the emerging **BHTV1** (which has been postponing the launch of a separate channel for over a year - it should finally go on air in summer 2004). Thus far, as a public broadcasting service PBS/BHTV1 transmitted its programme through the Entity broadcasters. Their coverage is mostly limited to the respective Entity's territory, but both can actually be seen in large parts of the country. The new BHTV1 channel is expected to broadcast across the entire country.

Similarly, there are three principal public radio stations: **Federal Radio**, **Radio of Republika Srpska** and **BH Radio 1**. All three broadcast at separate frequencies and can be received in most parts of the country.

Printed media are diverse. Several newspapers have emerged as dominant in the market. The largest is **Dnevni Avaz**, a Sarajevo daily, with a sensationalist style and superficial coverage. It is considered to be pro-Bosniak (pro-SDA). **Glas Srpske** is printed in Banja Luka and has a Serb bias (pro-SDS), but does not sell outside of RS, or, more precisely, outside the Banja Luka region. **Nezavisne Novine** is also published in Banja Luka but have a nation-wide coverage. There is no national bias, although the paper is said to have close links to the current opposition leader in RS, Milorad Dodik. In addition, **Oslobođenje** is a Sarajevo daily with a pro-Bosniak opposition tinge, while two leading pro-Croat papers are printed in Mostar: **Jutarnje Novine** and the Croatia-based **Večernji List** BiH edition. There are others with limited circulations that do not feature prominently at the newsagents.

A number of magazines carry regular reports on corruption. Their investigative capacities are limited, but sometimes do bring out challenging and factual articles. These are: **Reporter** (Banja Luka), **Slobodna Bosna** (Sarajevo), **Dani** (Sarajevo) and some others to a lesser extent.

The High Representative has banned any further assigning of media frequencies, so that, at moment, it is impossible to register a new broadcast channel. In addition, the CRA has banned the

transfer of ownership of the existing media to any new owners, so that frequencies cannot be transferred to new media outlets. Nevertheless, some transfers have still been accomplished although their legality is being investigated.⁶⁹ Other than that, a better-known case of broadcasters banned in BiH are ERO TV, St. George RTV and Bosniak RTV, all on the basis that they did not meet the prescribed criteria. In reality, these three TV stations used the language of ethnic hatred and their operations were harming international efforts to bring about a peaceful co-existence to BiH.

As far as the newspapers are concerned, these are regulated by the Press Council formed in 1999, through the efforts of the CRA, OSCE and OHR. However, their terms of reference and available legal tools are insignificant compared to those of the CRA and are limited to a role as intermediary service for publishing corrections and formal apologies, and as a citizens' wire to chief editors. Out of the 204 registered printed media publications in RS, 44 appear to have disappeared from the market at the time of writing and, similarly, of the 349 registered newspapers and magazines in FBiH, 81 are thought not to be available any more.

Civil Society

As with the media, there was a common feeling that civil society would bring about a sudden improvement in the democratic climate. Thus a wide range of donors offered rather significant funding for civil society groups. However, to date, the NGO scene remains supply or donor driven, with a significant drop in the number of NGOs as funding shrinks. Most are single project NGOs, centred on one person with no sustainable management and strategy. Only several have been active in the country for a number of years with a growing budget and expanding range of services, with a pool of donors, making them financially and politically independent. Even fewer have managed a mix of international donor and local authority funding. There is also evidence of party-driven NGOs, which by no means suggests integrity.

The lack of more precise legal definitions, which would regulate public authorities' obligations and methods in dealing with civil society groups leads to a situation where authorities only meet the prescribed form of citizen participation, instead of promoting real cooperation with citizens. Simply put, cooperation with the public depends on the good will of individual officials, i.e. on individual personal understanding of the need for such communication as a responsibility. When presented like this, the problem takes on a new dimension because it should not be that civic involvement depends on the personality of particular officials. This approach does not enable good governance, since the process depends entirely on the public official.

Instead, it is necessary to define the lack of real cooperation between citizens and public authorities in a manner that would make public officials see insufficient citizen cooperation as their own responsibility, and not as an opportunity to pursue their own interests in the decision-making process. Even if there is no intention of private gain in this situation, confusion and inadequate transparency of cooperation with the public give rise to suspicions about such work.

To date, the only anti-corruption NGO in the country with the sole focus on good governance, the fight against corruption and the promotion of transparency and accountability in the society, remains TI BiH formed in December 2000 and formally launched in February 2001. It has been involved in scores of anti-corruption campaigns, corruption diagnostics and monitoring, assistance in drafting and amending the critical laws, educating civil servants and the public, whistle-blowing, co-operation with other NGOs, training of investigative journalists etc. This has been achieved with a fair degree of success and the visibility and popularity of the NGO has been continuously on the rise.

The current situation in terms of the submission of comments on proposed laws by citizen's groups is appalling in the Parliaments of both Entities, as well as in the Parliament of BiH. Although legislation makes provisions for such activities, there are numerous reasons affecting the real opportunities for citizens to submit their comments on draft laws or decisions. Some of these include:

- insufficient transparency of the parliament's performance in terms of an annual work plan;
- insufficient transparency of the parliamentary commissions' performance in terms of publicly available session schedules and agendas;
- hastened adoption of laws, which leaves no space for external consultation;
- inadequate level of expertise among citizen's groups in the field of policy research and policy writing.

These reasons reduce the possibilities for citizen's groups to participate in the creation of laws, because the public is not well enough informed about laws that the parliament plans to adopt during the year. Lack of publicly accessible information on the session schedules of certain parliamentary commissions makes it difficult or impossible for civil society activists to plan their participation in the work of these commissions. To 'plan their participation' does not only suppose the physical presence at the sessions, but also to the time needed for reflection on certain topics, for surveys, research or any other necessary preparation for the session.

Adoption of laws by means of a quick procedure is another significant factor that prevents citizens from giving their comments on proposed laws. The Parliaments of RS, FBiH and the State of BiH often pass laws without consultation with the public for a variety of reasons (deadlines in connection with preparations for European integration, demands of the OHR, and the like). The laws adopted in this way are incomplete and often the procedure for adoption of amendments to the new law has to be initiated soon after, in order to solve problems that arise around the newly adopted law. This approach should be used only in the areas that absolutely require urgent adoption.

Inadequate level of civil society expertise in the field of policy research and policy writing is another limiting factor that prevents citizen groups from being a respectable partner for the authorities, a factor often taken advantage of.

Public debates are sometimes initiated by legislative authorities during law- or decision-making processes. This process nominally serves the purpose of informing the public of a problem that would be solved by a new or proposed law, with an aim of eliciting comments on the proposed draft law. In practice, the process does not look like that. Public debates are conceived in a way that allows authorities to make their intentions public but stops them from taking a proactive role in soliciting comments from citizens. Since public debates are organised in such a way, they are open for only 30 days, the whole process results in only a small number of comments from citizen's groups or sometimes none at all.

The authorities tend to follow the prescribed procedure, failing to realise that the main problem lies in that citizens cannot or do not want to participate in public debates for a number of reasons, and that public debates should be improved if better levels of involvement are to be achieved.

A significant gap remains between legal provisions and the actual situation in almost all areas of civil society activity. While there are no obstacles for implementation of certain activities, in practice, citizen's groups very rarely participate in decision-making processes. This is not natural

and it is not satisfactory. However, research has confirmed the existence of new initiatives coming from the non-governmental sector aimed at improving the practical and procedural cooperation between citizens and parliamentarians at both Entity and State levels. As this activity is still under way, its results are uncertain.

While fairly satisfactory formal provisions are a sign of officials' good will in cooperating with civil society, the imprecision of most laws and the failure of citizens and citizens' associations to exercise their rights, indicate a low level of interest on the part of officials to promote such cooperation with the public.

Regional and Local Governments

Regulation of local administration falls exclusively within the jurisdiction of the Entities and is regulated by the Law on local self-governance. In that Law, FBiH is administratively divided into ten cantons, some of which consist of just a few and others of over 15 municipalities.

On the other hand, RS is centralised, and is only divided administratively into municipalities. The country today consists of the total of 146 municipalities. By comparison, before the war, BiH consisted of only 109 municipalities, as basic units of local self-government.

Local self-administration is also differently regulated in the two Entities. In RS there is the Ministry for Administration and Local Administration, whereas in FBiH local self-administration is within the jurisdiction of the FBiH Ministry of Justice.

Local governments, both municipal and cantonal (in FBiH), are elected in local elections that run alternately to the general elections, but with a mandate to the local governments of four years. The next local elections are currently scheduled for 2 October 2004. Each municipality has a local elected assembly consisting of 31 representatives, which then selects the local administration, i.e. the government. Cantonal elections are organised in parallel with municipal ones.

In these elections, more so than in general elections, citizens have a chance to commend the local government for progress it has achieved, or to punish it by voting a new local government to power. Therefore, local governments strive much harder to produce noticeable and verifiable results. Wherever this is the case, the local community is typically more willing to contribute in terms of taxes and other resources.

However, only a small portion of tax revenue is transferred back to the local communities. The bulk stays with the Entities and the cantons (and the State, through the regular direct transfers from Entity budgets). Although these transfers should amount to 30 or 40% of sales tax in FBiH and RS respectively, in reality only some 10% of the collected tax reaches back the municipalities. So, in order to embark on a larger infrastructure project, local governments have to raise additional funds locally. Currently, local governments can engage in limited borrowing. Their ability to raise capital has been strongly monitored and severely limited through the Stand-by arrangement with the International Monetary Fund. Micro fund-raising activities are not uncommon to the municipalities when they conduct minor infrastructure projects.

The municipalities are undergoing the introduction of the treasury system of budgeting. This process should have been completed, but because of inadequate skills and staffing in the municipal offices, the exercise is expected to take a few more years.

A number of municipalities in both Entities are undergoing training in good governance, fiscal management, service orientation etc., which has already rendered a large gap in the quality of municipal governments, a difference that will be intensified when the pioneers receive international quality standard certificates later this year as an acknowledgement of their efforts⁷⁰.

The municipalities, despite recent progress noted, nevertheless remain nests of partisan politics, employment generators along partisan lines and therefore still receive bad marks from citizens for the presence of corruption in their ranks. This is additionally complicated by the ethnic balance, in the pre-war ratio, that must be maintained under pressure from the international community. That feature resulted in many local assembly representatives travelling from regions other than the municipality they represent (or in some extreme instances even from foreign countries where they live) to assembly sessions, at the expense of local taxpayers, whose problems they are barely familiar with.

The cantons have even greater difficulty. They have no historic standing in BiH, or the former Yugoslav region, and are a result of painful wartime negotiations between the federal partners – the Bosniaks and the Croats - on how to structure and decentralise power in FBiH. It resulted in a massive layer of government with a very unclear mandate, frequently overlapping with that of FBiH and the municipalities, and for most offices, merely duplicates authorities. This adds significantly to the fiscal burden on the FBiH citizens. The cantons alone run some 200 ministries with 390 elected officials, who are served by a large staff. The cantons have no record of being efficient or of saving time or costs. There are no efficient cantons among the 10, only better performing municipalities within cantons. This provides sufficient grounds for a healthy public discussion as to whether the cantons should be abolished.

The Law on civil service in the institutions of BiH (Official Gazette of BiH, No. 19/02) regulates civil service issues at the State level, whereas Entity Laws are in force in the Entities, such as the Law on administrative service in the administration of RS (Official Gazette of RS, No. 16/02) and the Law on state administration of FBiH (Official Gazette of FBiH, No. 29/03).

The Law on conflict of interests in governmental institutions of BiH, which was imposed at the State level by the High Representative (Official Gazette of BiH, No. 13/02), makes provisions for adopting related Laws in the Entities and in the Brčko District, with the stipulation that the State Law remains in force until such time as the Entity Laws are enacted in the area of conflict of interest. Accordingly, the provisions under the State Law on conflict of interest apply to local governments. Thus, conflict of interest is treated in a uniform way across BiH, while nepotism and post-public service employment are also regulated.

Like the State Law on civil service, the Entity Laws also stipulate that civil servants must not be members of boards or bodies of political parties, nor be under the influence of political parties, and their employment must be based above all on quality.

As the division of jurisdiction between the State and the Entities is defined in the Constitution, there is no legal provision requiring that any civil servant in the Entity or a lower level of government (cantons or municipalities) be appointed from the State level.

Anti-corruption initiatives

Donor Anti-Corruption Initiatives

Donor organisations have been present in BiH since the beginning of the ethnic conflict. Most of their activities during wartime focused on the delivery of humanitarian aid. After the Paris Agreement⁷¹ was signed and the conflict brought to an end, the scope of work and the amount of funds has been on a constant increase. The first donor conference pledged US\$ 5.1 billion financial aid to BiH. A number of donor institutions have opened offices in the country since then, many of which are still operational. Missions of the World Bank, European Commission, USAID, DfID, GTZ and other bilateral and multilateral donor organisations have expanded. The Office of the High Representative was established and its focus has been on activities in the civil sector. However, the strategy of most donor organisations was to work on reconstructing infrastructure, continue with the delivery of humanitarian aid and work towards establishing a civil society. These activities took place in the period between 1996 and 1998. Since then, the focus has shifted from reconstruction to sustainable development and most funds are now allocated for establishing the rule of law and the development of democracy. A significant element of both is anti-corruption.

As far as the transparency of donor aid procedures in BiH is concerned, the manner of aid delivery of various institutions differs remarkably according to their respective procedures. With almost US\$ 3 billion in donor funds pumped into BiH by the end of 2001 alone, the annual per capita donor spending was US\$ 98, which exceeds any other post-conflict donor intervention by far.⁷² Most bilateral donations are implemented through civil society and the procedures are transparent and fairly effective. Activities of the Scandinavian countries in BiH are the best example of such aid. Large donors like the EU or the World Bank implement their projects through foreign consulting agencies that compete in an open bidding procedure for a given project. This procedure can take a lot of time and there are often delays in the implementation of projects. As a result, the public often questions the transparency of donor procedures. Most commonly, donors blame the bureaucratic apparatus and legal procedures of these institutions.

This report does not include a list of projects funded by international organisations and bilateral donors. Due to the absence of a single database on projects in the country and absence of institutionalised memory in most donor organisations, it is impossible to obtain precise data on all the projects that are under way or have been completed. Another obvious obstacle is the lack of coordination among donors, which, despite the individual examples of good cooperation mentioned, leads to various problems such as:

- After a law is imposed, there is no monitoring of implementation of these laws, which leads to failure in the law's implementation.
- The established agencies often lack financial resources, which come from State or Entity budgets, for the implementation of activities, so activities are not carried out appropriately.

- Sometimes there is duplication of funds from several donors for the same project.
- Projects are not fully implemented, but rather are terminated before the objective is accomplished.

All these and other problems can be prevented by an efficient coordination within the international community, more active involvement of national authorities in project planning and the establishment of a single database on activities of individual donors that would be accessible to donors, BiH authorities and media.

However, the role of the international community in BiH by far surpasses mere donor support and a slight influence on the domestic policy making. In fact, all international relations scholars and experts in international law agree that the sovereignty of the country rests with the international organisations and most dominantly with the mechanisms of the Office of the High Representative.

With the intention of leaving behind a functioning administration and a state with all its prerogatives, the OHR has been playing an increasing role in the BiH society despite frequent criticism both domestic and international and contrary to many of its own statements. Nevertheless, this has resulted in an apparent improvement in the overall climate in the country, including a recent drop in the level of corruption⁷³. In terms of the long-term sustainability of BiH institutions and the concept of the transfer of ownership, the following balance is hardly supportive of the national integrity in the country.

Table 4. NIS in terms of the International Community's involvement

PILLARS	EXTENT OF INT'L COMMUNITY INVOLVEMENT
Parliament	<ul style="list-style-type: none"> - Elections previously run by the OSCE, now by 3 international members of the BiH Elect. Commission board (initially appointed by the OHR); - Prior checking of each MP candidate and once elected retaining the possibility to remove any MP by the OHR and install a replacement, without presenting evidence or holding by-elections; - Imposition of laws by the OHR; - Monitoring of political party funding by the OHR.
Executive	<ul style="list-style-type: none"> - Ministers, deputies and assistants are approved prior to their appointment by the OHR; - Option to remove them without presenting evidence; - 'Soft imposition' of laws and decrees by the OHR – fear of full imposition or sacking leads to 'government' driven solutions; - IC administered ethnic balance.
Judiciary	<ul style="list-style-type: none"> - Prior approval of OHR for most judicial and prosecutorial posts; - HJPCs' members appointed by the OHR, driving the judicial reforms process and the nomination of judges and prosecutors; - IJC's mandate established by the OHR; it reports to the Senior

	Deputy High Representative in charge of Rule of Law matters on a regular basis on matters concerning the above mandate.
Supreme Auditor	<ul style="list-style-type: none"> - Special audit within OHR; - Close collaboration required between the SAIs and the OHR, OSCE and other IC parties.
Ombudspersons	<ul style="list-style-type: none"> - First nominations made by the OSCE, first BiH Ombudsman a foreigner; - Close collaboration with the RRTF of OHR regarding property rights; - Many issues brought to the attention of the OHR, as the next in line in dealing with related problems.
Monitoring agencies	<ul style="list-style-type: none"> - OHR running the ACCU, previously AFD; - CAFAO run by international consultants; - Policing also by EUPM, formerly IPTF.
Public services	<ul style="list-style-type: none"> - Law on civil service imposed by OHR; head of Agency appointed by OHR; - Supervision of the process and subsequent appointments to the Agency by OHR.
Media	<ul style="list-style-type: none"> - Many media financed by international agencies with loyalty + accountability to them; - Members of the CRA initially appointed by OHR; three of seven members international; - OHR with close ties to selected journalists and media, receives positive coverage of their affairs⁷⁴.
Citizens' associations	<ul style="list-style-type: none"> - Some NGOs having a single and continuous bilateral donor driving its policies and agenda.
Private sector	<ul style="list-style-type: none"> - The 'Bulldozer' initiative to remove administrative barriers to doing business is an OHR-driven and administered process; - Other related activities driven by the WB and other donors.
International Community	<ul style="list-style-type: none"> - No means of electing the IC representatives; - OHR accountable to the PIC Steering Board; - Most of its senior employees/diplomats have dual accountability – also to their national governments; - No acknowledgement of errors and acceptance of responsibility.

Source: TI BiH, 2004

The criticism also includes the assertion that there is a lack of regulatory impact analysis within the OHR that often imposes a significant *ad hoc* fiscal burden on the authorities. This further triggers the discussed SAI condemnation and emergency international borrowing in order to overcome short-term crises. Many institution-building solutions are in desperate need of additional funds and often are a low priority in BiH. This demonstrates a lack of the overall strategy, both on the part of the national authorities as well as the international agencies. Sudden switches in competences, such as that made by the OSCE, when it recently shifted its expertise from elections to education reforms, permit the questioning of such organisation's mandates by the public

authorities. In some instances (such as the blocking of politicians' private bank accounts by the OHR), their areas of operation are even beyond the Constitutional Court of BiH's examination and mandate.

A proper ownership of, and responsibility and accountability for the national integrity system can therefore only be achieved when relations with the IC achieve the status of a partnership based on mutual support, rather than a full-scale involvement of the OHR and other international agencies in running the day-to-day business of the country. This is of course easier said than done, and the fact is that national authorities and certain pillars of the NIS may not be sufficiently ready for such a transfer of responsibilities. However, it happens that authorities sometimes seek the imposition of a law or a solution, feeling too weak and too vulnerable to social pressure. This unique symbiosis, weakening the NIS in BiH, continues and is expected to remain in place until at least the end of 2005. Perhaps then the country will be ready for the pullout of the OHR. A gradual phase-out is meant to begin imminently.

Meanwhile, the OHR's solution of replacing its international staff with locals only worsens the matter. While it cuts down on the OHR's running costs, the country will still be driven by an autonomous institution, not subject to elections, and generating, on its own, most features of the NIS pillars. Staffed by national employees who often hold more power than the elected parliament or government, this updated OHR will only aggravate the situation and add to the difficulties of mutual understanding. The national authorities tend to view such individuals as their foes, having no constitutional or other legal knowledge, appointed non-transparently and bearing a greater power than the supposed public authorities. This may have the reverse effect of reducing interest in the general elections, which already have very low turnout, due to a popular belief that the 'actual authorities' have nothing to do with the elections.

Finally, the only appropriate move is to keep enhancing institutional capacities of the governments and to assist in their strengthening through a carefully targeted assistance on technical matters and otherwise, while allowing for ever-greater local decision making and responsibility for the country's democratically elected politicians.

Effectiveness of Government and Donor Activities

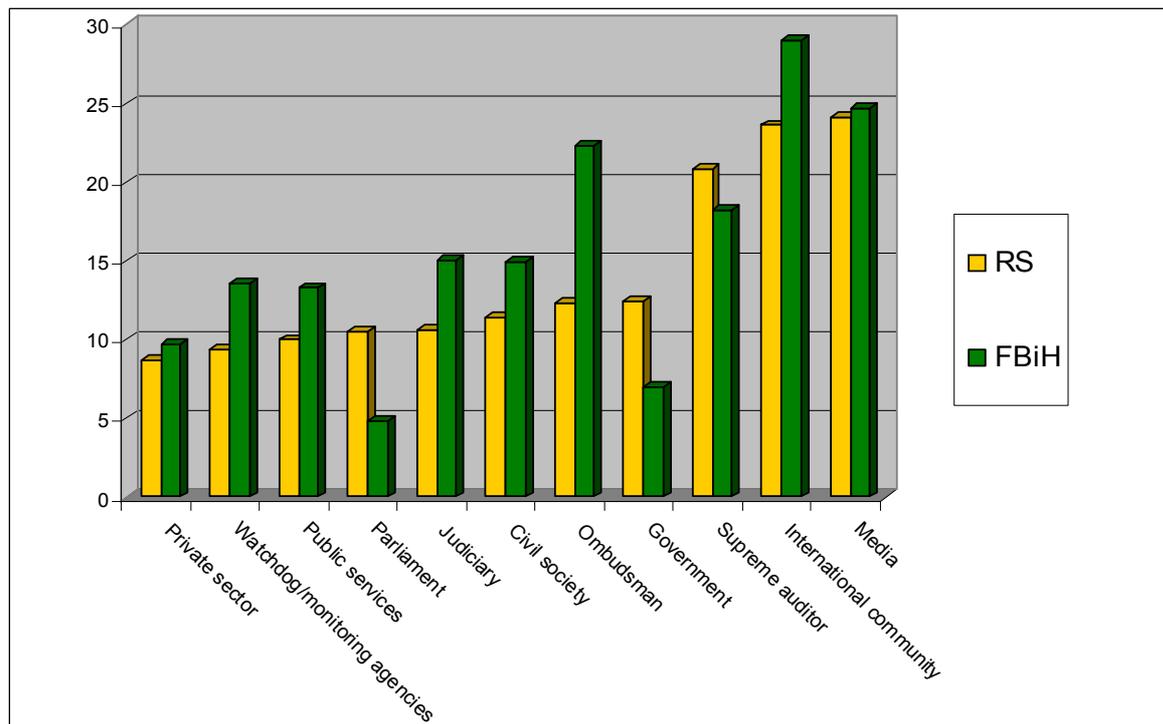
Despite some limited efforts by authorities and donors to draft, present and implement an anti-corruption strategy for BiH, no significant organised progress has been noted. The last such attempt was seen in 2000, when the Council of Ministers of BiH presented an anti-corruption Action Plan which was then partly revived in the Poverty Reduction Strategy Paper that was drafted between 2000 and early 2004. It was finally adopted by the Parliamentary Assembly of BiH in February 2004 and includes a section dealing with corruption and its prevention.

To date, the various action plans remain lists of laws and institutions yet to be created. They look more like wish lists than strategic approaches to the issue that would mobilise all pillars of integrity in their implementation. Therefore, no individual institution has managed to win the hearts of the public.

In a flash pre-election survey, which TI BiH carried out on the eve of the general elections in September 2002 using a representative sample of 1,850 citizens, a series of questions focused on the perception of the different integrity pillars of BiH.

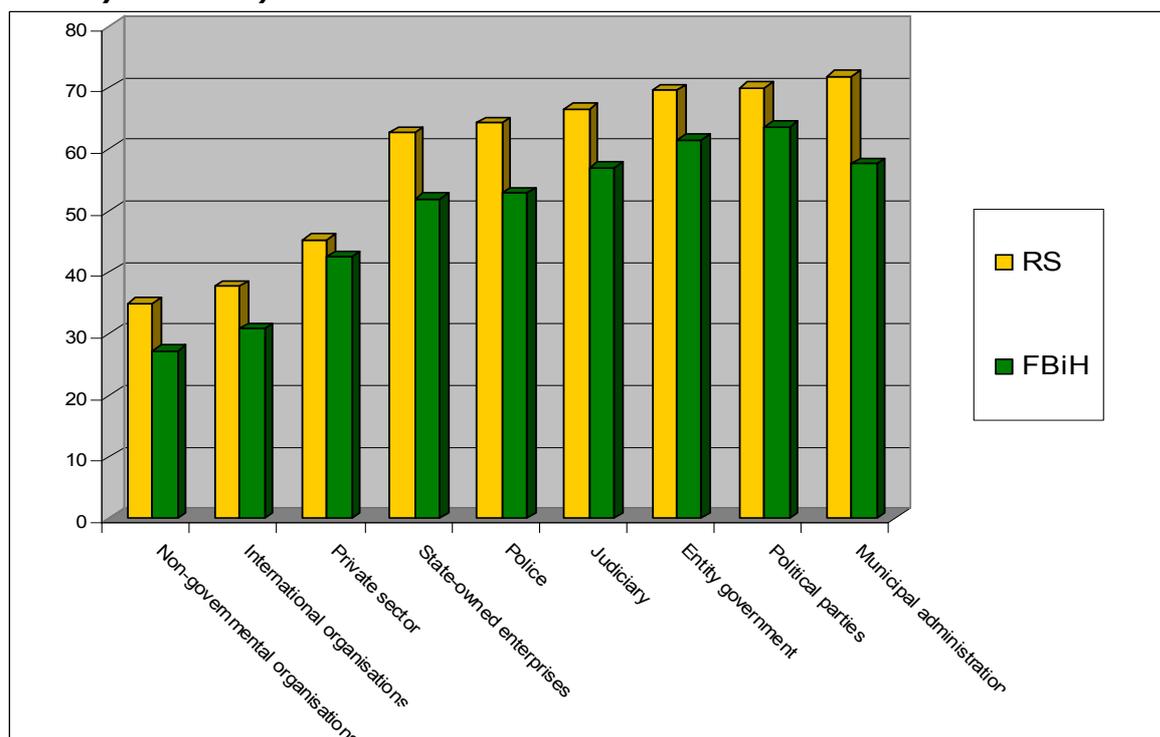
The results were mixed but they show, nevertheless, a low degree of confidence in almost all of the pillars. The chart below details popular feelings regarding the presence of corruption in day-to-day operations of different integrity pillars.

Chart 4. How efficient has this institution been in fighting corruption? (% responding with *considerably* or *very efficient*)



Source: TI BiH Sept. 2002

Chart 5. How much corruption is there in the institution? (% responding with *extensive* and *very extensive*)



Source: TI BiH Sept. 2002

The charts display a very low degree of efficiency associated with each pillar of national integrity. Somewhat better marks have been assigned to the media and the international community. In RS, by comparison, confidence in the Supreme Auditor has also been on the rise as has been the popularity of the Ombudsman in FBiH.

Generally, RS population is more critical of its institutions and they are perceived as less efficient and more corrupt. However, the marks overall do not significantly differ to those of FBiH.

The RS public's perceptions of the pillars provide further evidence for higher levels of corruption in RS institutions. Coming in at the bottom of the list, as least corrupt, NGOs rank alongside the international community, while the institutions where partisan politics play a dominant role are ranked as most corrupt. In RS the local governments are seen as the most corrupt and in FBiH political parties score similarly to the Entity government.

Discussion of Key Issues

General

BiH has been waiting too long for transition – more than ten years. This fact, in addition to a rather unfavourable starting position in terms of the former Yugoslavia, calls for a set of policies that promote unhindered economic growth. The minimum goal of BiH is to catch up with the region, which represents its competition and a basis for comparison with which investors will make decisions on whether to come to BiH or another neighbouring country. In order to ensure that they come to BiH, it will not be enough for BiH to offer conditions identical to those of its neighbours, but - because of the economic lag in absolute terms – it will have to offer better conditions.

This, concretely, means more social sacrifices and the following measures:

- harmonised and then possibly lower tax rates, with transparent and rational public revenue management;
- smaller, faster, cheaper and service-oriented administrative apparatus/bureaucracy;
- a regulatory instead of a repressive control mechanism, one that is professional and well co-ordinated;
- independent and effective system of commercial law;
- legal regulations reduced to minimum, focus on optimisation and functionality;
- removal of trade barriers within the country and in the region;
- reduction of the state monopoly, improvement of quality and reduced costs of communication services and other utility infrastructure;
- quick completion of the privatisation process, with continuous restructuring of the large economic entities and rapid liquidation where necessary; and
- levelling the playfield for the private sector, immediate termination of all privileges granted to the state-owned sector and the purging of politics and partisan decisions from public companies.

These measures will make a significant contribution towards formalising the grey economy, i.e. incorporating it into legal flows. This will, in return, contribute to improved economic stability by introducing market discipline, resulting in better tax collection rates and hence public services. Such an economy, governed by the principles of the European Union it aspires to join should be strong enough to attract fresh investment, and generate capital within the country, making it cheaper and more accessible to businesses, government and individuals alike. All this must be accompanied by a decisive establishment of the institutions of the rule of law, including those for the fight against corruption and organised crime. Only with these conditions met, can BiH hope to become a desirable destination for doing business. And that is when it will begin serious discussions on economic and political integration with the rest of the Old Continent.

Findings and Recommendations

All analyses conducted thus far point to a small number of narrow areas that have far-reaching importance in fighting corruption, so these must become development priorities.

First, BiH must further improve the **accountability and transparency of the public sector**, including public financial management, transparent budgets, prohibition of conflict of interest and depoliticising of the administration.

A significant step forward has been made with the introduction of the treasury system at all levels, as well as with the introduction of Supreme Audit Institutions, which check public expenditures on behalf of parliament and submit reports to elected representatives. At the same time, the public revenue administration has been revamped, first in RS and more recently in FBiH. This helped introduce order in the area of fiscal revenues, expanding the tax base, taxing a much broader set of individuals without exception, thus contributing to a better fiscal policy. It has also enabled specific and detailed discussions on the introduction of VAT in 2005, co-ordinated indirect taxation and linkages with customs, major recipients of donor technical assistance, also due for unification.

The introduction of transparency and responsibility into the tax and customs institutions, which represent the main source of public revenues, enables a gradual increase of the tax base and a linear decrease of rates of both import duties and excise, and taxes, which, in the medium-term, reduces the burden on the balance sheets of businesses and citizens.

Since early 2001, the Supreme Audit Institutions have initiated their work in submitting regular independent reports on public spending to Parliaments at both State and Entity level. These reports have contributed to the introduction and strengthening of financial management in public services and, together with the treasury method of revenue management, total administration costs have been significantly rationalised.

However, much remains to be done to implement the conflict of interest legislation that has been adopted and monitoring mechanisms remain insufficient and understaffed. The administration is gradually being professionalised, although the process remains slow and political party-driven.

The exclusive right of the ruling nationalist parties to appoint the public administration and maintain the ethnic balance works against human rights in the country, rather than in their favour. Additionally, the ruling party's exclusive commentary on the apparent 'national interests' of their ethnic constituencies represents a false interpretation of the constitutional ruling on equal national rights. Ethnic quotas appear to be dragging the country backwards, making the system inefficient and more expensive. Some provisions of this strategy cannot even be implemented in some areas.

BiH must also **increase the competitiveness of the public sector** through restriction of administrative procedures, the breaking of monopolies, and the reduction of individual benefits. Although a coordinated process of analysing and removing administrative barriers for trade and investment was launched as early as 2000, progress is still too slow and the results insufficient.

The recommendations of the Foreign Investment Advisory Service (FIAS) of the World Bank have largely been used as a starting point for creating a stimulating business environment. Any progress will be measured by an increasing inflow of foreign investment to BiH. The approach to implementation of this plan should be similar to the national integrity workshops described below and requires precisely defined terms and independent monitoring. The initial set of recommendations is due for appraisal and thorough updating.

Breaking monopolies is closely but not exclusively related to privatisation. Privatisation must be urgently completed, because its delay is more expensive to the state than the low sale price of the state-owned capital. At the same time, it is important to terminate the privileged position of the public utility companies that are a major obstacle to business, the creation of a better investment environment, and consequently to higher employment. Therefore, as long as there is a monopoly on telecommunications and energy services, tariffs and profit maximisation must be regulated at a reasonable level, and non-market actions taken where necessary.

In general, any exceptions, such as in tax, agricultural or export policies are counterproductive at this stage of development. One rule should be implemented in all areas of planning, which states: the rules of the game must be equal for all players, with no privileged treatment. Such privileges lead directly to the policy of exceptions and the opaque rewards it brings. For instance, the tax base needs to be broadened, and instead of providing incentives to any one industry, tax rates should be lowered linearly and the market should decide who has the competitive advantage.

Greater effort must be made to **involve citizens**, via associations for controlling and curbing corruption, partnership with governments, organising political parties and influencing leaders. So far, little attention has been paid by authorities' to the work of the non-governmental sector, such as monitoring agencies. Neither has the institution of the ombudsperson or even the Supreme Auditor been understood in terms of the functions and benefits they bring to the society. Mutual cooperation of all these pillars is an imperative. In addition to the existing media, there needs to be training in investigative journalism. All these institutions are corrective factors and as such have a great responsibility in the National Integrity System.

Civil society can also supervise political party funding, particularly in the election period as well as prevent conflict of interest by monitoring the illegal symbiosis between the government and institutions with narrow, elitist political interests. Through active and effective work, these key factors will have a positive effect on political leadership, who should understand that their long-term interest is at stake here. The Law on civil service should define the authority of all public officials, including social institutions.

Finally, **comprehensive legal reform** must lead to rationalisation of court and prosecution operations and to the adoption of any laws that will contribute to their professionalising and effectiveness. Police operations must also be subject to ongoing reforms and, in FBiH the coordination between different levels of government must be improved.

Modern laws, harmonised between the Entities, are still missing. While some important ones have either been adopted or imposed by the OHR, a whole series of laws and by-laws is still needed.

The Criminal Code appears to be mixing the Anglo-Saxon and Continental practice, and it may take well more than a year to train the prosecution and the judiciary in implementing it. It must specifically include a separate criminal offence of corruption.

While no anti-corruption law exists *per se*, a clear national agenda with a specific list of priorities definitely needs to be introduced at the State level, with assignments for both the State and the Entities. This should institutionalise the fight against corruption, using, whenever possible, the National Integrity System principles. In doing this, laws must be vertically harmonised, at different levels of government, as well as horizontally. Among the Entities and the Brčko District, the largest possible level of harmony must be achieved, in order to achieve a compatible system.

At the same time, a concerted effort needs to be made to prevent further disharmony between different legal practices (continental vs. Anglo-Saxon) that are the product of the differing approaches of donors and consultants. All this, combined with inherited legislation and a mixture of laws from different periods introduces confusion, increases opacity in the legal system and leads to over-regulation. That is why, in addition to reviewing laws and modernising them, the legislative framework also needs to be deregulated.

The continued work to strengthen the HJPC is expected to continue with the appointment of professionals with greater integrity. Similarly, another important law is the Law on legal aid and cooperation in criminal matters, between the Entities and the Brčko District. Setting up of judge-training centres in Sarajevo and Banja Luka should also continue, in order to provide continuous education for judges, linked to their (re-) appointment.

In order to ensure financing of judicial institutions, it is necessary to adopt laws on court and prosecution budgets. New codes of judicial and prosecutorial ethics represent another safeguard for the legal system.

Although late in the day, BiH must also implement several conventions that have been adopted at the Council of Europe level: a) Convention on Money Laundering; b) Civil Convention on Corruption; c) Criminal Law Convention on Corruption. Unratified remain two important OECD conventions: a) Anti Bribery Convention; and b) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Introducing an Anti-Corruption Strategy

In order to improve the credibility of the state, it is necessary to create an efficient anti-corruption strategy, which should **raise public awareness and create a climate where corruption will not be tolerated**. The first stage in creating an effective anti-corruption strategy is raising public awareness of the harmfulness of corruption as well as educating citizens on the methods of fighting corruption. One of the most worrying results of the TI BiH studies is the willingness of BiH citizens to pay bribes for various services they are supposed to receive without any 'greasing' (employment, utility services, medical or legal services etc.).

This underscores the necessity of raising public awareness of the fact that tolerance of corruption leads only to an increase in the frequency and the amount of bribe (higher demand – higher prices), reduction of living standard and, in general, the transformation of corruption into a way of life. However, in doing this, it is important to demonstrate that there are methods to combat corruption. Therefore raising public awareness must be coupled with a specific anti-corruption agenda.

Second, the anti-corruption strategy needs to **build confidence in the public institutions through participation of civil society**. The second aspect of the strategy is to increase pressure on politicians by introducing representatives of the civil society to monitor state agencies. Citizens may participate in politics by voting, joining political parties, or they may influence the government through the civil society initiatives (non-governmental organizations) that support certain interests and exercise pressure on the government.

This can be done by introducing transparency in the work of all government representatives, using a bottom-up approach and increase possibilities for citizens to find out how the individuals they voted for are performing and what they are financing with their taxes. In addition, citizens, through different non-governmental watchdogs, need to carefully monitor the work and decisions of the government, and to regularly inform the public through the independent and other media and thereby prevent government activities that are not in the interest of the broader public.

If successful, the anti-corruption strategy can **create a better climate for economic development**. It is necessary to alleviate the burden borne by companies and streamline their legal operating conditions (reducing registration and accounting procedures, high and complicated taxes, and foreign trade levies and duties) This will lead to a reduction in the scope of grey economy in BiH and an increase in the number of companies operating legally and paying taxes. This consequently will precipitate structural changes, such as increased budget revenues, increased rate of employment and improved living standards.

Anti-corruption reforms also include building a system of adequate measures to protect the primary economic liberties and rights of individuals and business people. This system of values should include efficiency, economic discipline, protection of property and an obligation to adhere to contractual terms with sanctions in the case of abrogation. The government's role in enforcement and regulation here is desirable. The creation of stable and predictable legislation, an effective administrative service, a professional judiciary and the reduction corruption are necessary for the domestic market to start operating normally and also in order to attract foreign investors.

An anti-corruption strategy in BiH also involves **fighting organised crime**. The only systematic approach lies in developing cooperation with regional and international institutions and particularly with neighbouring countries, primarily Croatia and Serbia and Montenegro. BiH must also adopt universal standards, along the lines of practice in developed countries, for the

prevention of drug trafficking, arms smuggling, money laundering and organised networks for the trade of stolen goods.

The anti-corruption strategy must also be about **institution building**. In countries where a vertical system of accountability does not function, as is the case in BiH, it is particularly important to establish a horizontal system, i.e. to strengthen the institutions and equip them for impartial and transparent operations. Although a whole mythology has grown up around the word 'transparency', it means nothing except exposure to daylight – in other words working open and publicly. In any sector financed by public revenues, from taxes paid by citizens, the margin for secret activity is very narrow, close to non-existent. Only the private sector – individuals and companies – are entitled to secrecy shielding from the public eye. Those sectors of society, whose well-being derives from the labour of others, must respect that fact. They need to account for all funds spent, without exception, and be prepared to bear any legal sanctions for any misuse.

As TI BiH has advocated, the first measure that needs to be undertaken, which would result in a realistic action plan, is organising a **national integrity workshop** for the upper levels of government. This means that State-level authorities (including the wrongly neglected Brčko District, particularly in terms of fighting corruption) should take the lead in organising a gathering of the relevant high-level institutions as well as inviting other, lower levels of government to become involved. An identical workshop is needed for Entity-level institutions. After that, similar workshops are expected in FBiH and they are certainly necessary for RS and the cantons. Each canton could invite the municipalities to get actively involved. Only this way, by mobilising all those levels required for the implementation of reforms, will the concept of 'ownership' will be enabled, allowing BiH authorities to start fighting the plague of corruption themselves.

Appendix

NIS Questionnaire

Executive

- **Can citizens sue government for infringement of their civil rights?**

YES – The Law on Legal Procedure (which is under the jurisdiction of the Entities) lays down the rules for legal procedure according to which the courts argue and decide civil and legal disputes. According to the Law, any individual person or legal entity can be a party to the dispute. The term 'party' to a legal procedure is defined in different ways depending on the criteria used. Given the substantive-legal relation on the basis of which legal protection is requested, the party to a legal procedure is defined by three definitions:

- Substantive legal
- Purely procedural
- Legitimizing definition

According to the substantive-legal definition, the parties to a legal procedure are active and passive subjects of the substantive-legal relation, or, in other words, the person requesting protection of his or her civil rights (complainant) and the person who has violated or infringed that right (defendant). Parties to a legal procedure can also be legal entities, certain state bodies and various forms of associations. When certain state bodies act as party to a legal procedure, they act, according to one interpretation, as parties in the line of duty, or, according to another, as public institutions being a party to the legal procedure.

So, according to these provisions of the Law and said interpretations, citizens can sue government for infringement of their civil rights. Indeed, there have been several cases of citizens filing complaints against the government.

The most frequent complaints against governments are related to labour relationships and social security payments for civil servants. Other matters deal with the wartime confiscation of property and generally target the ministries of the interior or defence⁷⁵.

- **Are there procedures for the monitoring of assets, including disclosure provisions, for Cabinet and other government ministers?**

NO – Elected representatives must submit forms to the Election Commission of BiH and those are made publicly accessible. Appointed officials (members of the cabinet i.e. government ministers) are likewise obliged to submit such data to the Election Commission, according to the Conflict of interest law. There are no procedures for the monitoring of assets of government members, nor are there procedures for disclosure of their assets. Presentation of information about the assets of the cabinet and other government ministers to the public can be initiated by individual persons or the media, but there are no procedures regulating this.

NB: Elected representatives cannot be appointed as members of the government (incompatibility of functions). These provisions and rules apply to all elected and appointed officials at all levels of power in BiH.

- **Are there procedures for the monitoring of assets, including disclosure provisions, for high-level officials?**

NO – While there are prescribed procedures, no institutional capacities for the continuous monitoring of the assets of high-level officials exist. The section of the Law on Conflict of Interest on implementation specifies that the Election Commission must act in a manner that ensures a policy of accountability and credibility of high-level officials.

The Law specifies who is subject to disclosure provisions at the BiH level:

a) Elected officials:

- members of Presidency of BiH
- MPs and members of the Parliamentary Assembly of BiH
- Secretaries general of both houses and the secretary general of the Joint services to the Parliamentary Assembly of BiH
- directors, deputies and assistant directors of all bodies of civil service, agencies and directorates as well as institutes appointed by the Council of Ministers of BiH, the Parliamentary Assembly of BiH or the Presidency of BiH.

b) Appointed officials: ministers and deputy ministers in the Council of Ministers of BiH

c) Advisors to elected and appointed officials as envisaged by the Law on Civil Service to the BiH Institutions

The provisions of this Law, in the absence of an adopted Entity-level Law apply to the same offices in FBiH and RS.

- **Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?**

NO – There are no prescribed procedures either for elected ministers, for appointed ministers or for high-level officials. Elected officials (legislature) are obliged to fill out forms containing basic information on their assets and these forms are then made publicly available. Appointed officials (ministers) also have to comply with a similar obligation, as prescribed by the guiding regulations and the related rules of the Election Commission of BiH.

- **Are there conflict of interest rules:**

a) for ministers?

b) for high level officials?

YES – The legislation in this area obliges elected and appointed officials to comply with legal and other regulations governing their rights, obligations and responsibilities, as well as their compliance with professional ethical standards.

The Law on Conflict of Interest in Governmental Institutions of BiH specifies that elected and appointed officials cannot place their private interest above the public interest. A conflict of interest exists in the event that a high level official has a private interest that affects or may affect the legality, transparency, objectivity and impartiality of their actions in the exercise of their public duty. In that sense, the Law refers to principles of accountability, honesty, conscientiousness, transparency and credibility.

The elected officials cannot vote in case of the motions directly affecting the operations of private enterprise in which the official or his or her relatives have any financial stake. Officials who find themselves in such a situation must abstain from voting and in an open session explain the reasons for their abstention.

The appointed officials and advisors will not engage in any official acts that may have a direct or indirect impact on a private enterprise in which the official or the advisor or their relatives have a financial stake. The officials and advisors in such situations must delegate the decision-making to another body and state in writing the reasons for such delegation.

The Law defines a financial stake as either:

- any interest that enables the official to earn over KM 1,000 per annum; or
- any stake-holding interest exceeding KM 10,000 in an enterprise of any type of ownership.

• **Are there rules and registers concerning gifts and hospitality:**

a) for ministers?

b) for high-level officials?

YES – The Law lays down clear rules but the implementing procedures are not well organised. There is no control over the implementation of formal provisions. In practice, there is no possibility to control private interest. A gift, in terms of the abovementioned Law, is considered to be any money, service, favour, valuable object or benefit given directly to the recipient without remuneration or expectation of remuneration. Gifts received from family members or those not exceeding KM 100 (€ 50) in value are not covered by this Law.

According to this Law, a gift is considered to be “related to the performance of a duty and can include: money, objects, rights, service without remuneration and any other benefit given or promised to the official, such as catering service, overnight accommodation, release from debt or obligation, travel expenses or similar service, tickets, works of art, souvenirs, insurance or similar service, medical or similar service for which the official personally did not pay market price.”

The amendments to the Law stipulate that a gift in an amount not exceeding KM 100 (originally KM 50) may lawfully be kept and does not have to be reported. This also applies to all gifts given by a single donor in a given year. Gifts exceeding the said amount cannot be accepted.

Elected and appointed officials are bound to report any gift exceeding KM 100 to the Election Commission, whereupon it becomes the property of BiH. If there is doubt as to the value of the

gift, the elected or appointed official is bound to request a receipt from the donor. The value of the gift for purposes of this Law is its market value.

According to this Law, high-level officials are not allowed to accept money, checks, or any other securities regardless of the amount. If they do receive any of the above they are required to report it and the funds become the property of BiH. The Law also applies to persons who accept a gift on behalf of a high-level elected official, in the case that the official is aware of the gift.

The Law also regulates special prerogatives of high-level officials. While in office, high-level officials receive salaries and allowances for the duties they perform. High-level officials cannot receive any other allowance, with the exception of remuneration for jobs they perform in educational, scientific, cultural or sports institutions, professional associations and the like, provided that such remuneration does not exceed one third of the regular salary at these institutions or associations.

- **If so, are these registers kept up to date? By whom?**
 - a) Have they legal powers to enforce disclosure?**
 - b) Have they staff to investigate allegations?**
 - c) What powers of sanction are in place against parliamentarians?**
 - d) Have they ever been invoked?**

The Election Commission is in charge of implementing the Law on Conflict of Interest.

- a) YES – To this end, the Election Commission makes all information available to the public, relevant government institutions and the media.
- b) PARTLY – All bodies of power (elected and appointed officials) are bound by law to cooperate with the Election Commission. There have been some problems and cases of resistance and pressure, but there are no major obstructions. The investigative staff of the EC is insufficient.
- c) If an elected official (parliamentarian) is found to have acted in violation of the provisions contained in the Law on conflict of interest in connection with:
 - public enterprises and privatisation agencies,
 - government investments into public enterprises or
 - contracts on personal services
 he or she shall become ineligible to work in civil service or as an advisor for a period of four years following discovery of the violation. Any legal proceedings against the high-level official that acted in violation of this Law must be instituted within four years following the alleged violation.
- d) YES – Sanctions were invoked once against an MP in the House of Representatives of the FBiH Parliament. Several other proceedings are underway, which may also result in sanctions. The only official who has been penalised was a former cantonal privatisation agency head, against whom the Election Commission carried out a conflict of interest investigation during its session of 19 June 2003, enacting the following decision:
 - The official was barred from candidacy to any elected or appointed public post for a period of four years from the moment the breach of law was noted;

- The official was barred from membership on any management board, executive board or supervisory board of any privatisation agency as well as from any executive post in privatisation agencies. This provision applies for one year after the official ceases to perform the official duty;
- The FBiH Parliament was instructed to apply Article 1 (10) of the Election Law of BiH and dismiss the official from the post of member of parliament; and
- The official was fined KM 10,000.

The Election Commission estimates that by the end of 2003 another 179 will have been found to be in direct breach of the Law.

- **What powers of sanction are in place against ministers who are also parliamentarians?**

The legislation of BiH expressly forbids simultaneous performance of ministerial and MP functions at all levels of power.

- **Have they ever been invoked?**

NO.

- **What powers of sanction are in place against ministers who are not parliamentarians?**

The same provisions of the Law on conflict of interest that apply to sanctions also apply to appointed officials (ministers).

- **Have they ever been invoked?**

NO – Sanctions under the Law on conflict of interest have not been invoked against any minister so far.

- **Are there restrictions on post-ministerial employment?**

YES – Former ministers shall not serve on the management board, steering board, supervisory board, executive board, or act in an authorized capacity for a public enterprise. Former ministers shall not serve on the directorate or management board, or as director of a privatisation agency. These provisions apply for one year after the ministers leave office, according to the Law on conflict of interest.

- **Are members of the executive obliged by law to give reasons for their decisions?**

YES – Individual decisions of the members of the executive (ministers, deputy ministers, advisors) must be in conformity with the Law. The decisions of the executive authorities (government) must contain explanation of reasons for their decisions. The governments in BiH are directly responsible

to their respective parliaments. In accordance with this responsibility the executive (i.e. governments) and the members of the executive are obliged to give reasons for their decisions at the request of the Parliament.

- **Do ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?**

YES – Ministers have the power to make the final decision in ordinary contract award and licensing cases. The only restrictions to ministers are the legal possibilities available to them.

- **Are there administrative checks and balances on decisions of individual members of the executive?**

YES – There are administrative checks, such as audit findings and rules regulating the disposal of public funds. Balances on the decisions of individual members of the executive in connection with ordinary contract award are provided by the regulations of the Rulebook on salaries and other allowances of those employed in civil service.

Legislature

- **Is the legislature required to approve the budget?**

YES – The Official Operating Procedure of the Parliamentary Assembly of BiH, as well as the operating procedures of Entity Parliaments, stipulate that Parliament should have control over the work of the government and determine the procedure for the adoption of the budget and annual budget balance sheet.

The Parliamentary Assembly of BiH has parliamentary control over the Council of Ministers of BiH, and the Official Operating Procedure of the Parliamentary Assembly determines precisely the procedure for adopting the budget.

Article 206 of the Operating Procedure of the National Assembly of RS stipulates that budget and annual budget balance sheet be adopted after their draft versions have been submitted. The deadlines for drafts are regulated by a special decision issued by the National Assembly and as proposed by the Government. The draft versions are submitted along with a justification of the budget and the required documentation to the Chairperson of the National Assembly. He or she forwards these to the Parliament for discussion.

The same procedure is effective in the Parliament of FBiH.

- **Are there significant categories of public expenditure that do not require legislative approval? (Which departments does this involve, what are their expenditures and what percent does this represent of the government's annual expenditure?)**

YES – These are the pension and disability insurance fund and health insurance fund, which are directly controlled by the government. These are the two biggest out-of-budget items. The disintegration of the former Yugoslavia led to a legal vacuum and insecurity regarding the exercise of acquired rights. Gaps in existing legislation and lack of cooperation between the countries created after the disintegration of Yugoslavia primarily affected refugees and displaced persons in exile, directly affecting the possibility for them to return to their pre-war homes. Pensioners, displaced persons and returnees to BiH were faced with many problems because the fund of the former Socialist Republic of BiH was initially split into three, and merged into two in early 2002 after the two FBiH funds were united, creating: the Pension and disability insurance fund of RS and Pension and disability insurance fund of FBiH. All the legislation that regulates this issue is adopted at the Entity-level. With the aim of establishing inter-Entity cooperation and cooperation with the Brčko District, the representatives of the pension and disability insurance funds signed the Agreement on common rights and obligations in implementation of pension and disability insurance. However, soon after that the Government of RS approved the unilateral cancellation of the signed agreement and they guarantee that all 184,124 pensioners will continue to receive their

pensions regardless of their place of residence. These problems, along with fictitious payments and money transfers, affect both RS and FBiH equally. Currently, FBiH needs around KM 40 million per month to pay its pensions, whereas in RS this amount is somewhat lower.

The Constitution of BiH gave a more precise definition of Entity jurisdiction in the field of health insurance. In FBiH, this issue is divided between federal and cantonal institutions. Health insurance is regulated in the Law on health care and the Law on health insurance. The implementing institutions are the FBiH Institute for insurance and re-insurance and the cantonal health insurance institutes. The right to health care is exercised in based on categories of the insured (employed, pensioners, students), while the right to health care of refugees and displaced persons remains unregulated.

In RS, health care rights are exercised in accordance with the Law on health insurance. The implementing institution is the RS Health insurance fund. The Law stipulates that the health care costs of refugees and displaced persons who are not otherwise insured be covered by the Ministry for Refugees and Displaced Persons. However, due to lack of allocated funds, refugees and displaced persons who are not otherwise insured because of their legal status were not able to exercise their right to health care in accordance with legal provisions. Projected health insurance needs amount to around KM 140 million annually in RS alone.

- **Are there conflict of interest rules for parliamentarians?**

YES – There is the Law on Conflict of Interest in Governmental Institutions of BiH. The Law and its provision were discussed at length in the main body of this report. It should, however, be noted that the BiH State-level Law, which entered into force on the day following the announcement of the October 2002 election results, remains the only such Law enacted in the country. At the Entity-level such Laws have not been passed yet, so the Law on Conflict of Interest in Governmental Institutions of BiH applies until such time as similar Laws are enacted in RS and FBiH. The District of Brčko has passed its own Law.

- **Are there rules and registers concerning gifts and hospitality?**

YES – This is regulated in Article 10 of the Law on conflict of interest. Paragraph 1 of this Article defines a gift. A gift, it states, is given for the performance of a duty and can include: money, objects, rights, service without remuneration and any other benefit given or promised to the official, such as catering service, overnight accommodation, release from debt or obligation, travel expenses or similar service, tickets, works of art, souvenirs, insurance or similar service, medical or similar service for which the official personally did not pay market price. Elected officials, executive officeholders and advisors may keep a gift in an amount not exceeding KM 100 and they do not have to report it. However, elected officials, executive officeholders and advisors are not allowed to keep a gift exceeding KM 100. They are required to report it⁷⁶ to the Election Commission, whereupon it becomes the property of BiH. Elected officials, executive officeholders and advisors are not allowed to accept money, checks, or any other securities regardless of amount. If they receive any of the above, they are bound by law to report it and such funds become the property of BiH. If there is doubt in respect to the value of the gift the elected official,

executive officeholder or advisor are required to obtain a receipt from the donor. The value of the gift for the purposes of this Law is its market value.

This provision is very difficult to implement. Control mechanisms are not strong enough, so gifts are rarely reported.

- **If so, are these registers kept up to date? By whom?**

YES – According to the Law on conflict of interest in governmental institutions of BiH, elected officials, executive officeholders and advisors are not allowed to keep gifts exceeding KM 100 in value. They are legally bound to report these to the Election Commission and such gifts become the property of BiH. However, in reality, this is impossible to implement due to lack of control mechanisms that would help determine whether elected officials have received gifts and of what value. There is no specialised institution for storing such gifts either.

- **Have they legal powers to enforce disclosure?**

YES – A procedure before the Election Commission is initiated at the request of the Commission itself or at the request of the person concerned. The Election Commission may initiate the procedure on the basis of external reports it receives. The Election Commission has the right to establish the facts by conducting its own investigation or to obtain evidence through other executive authorities. All authorities, institutions and courts of BiH at all levels are therefore obliged to provide the Election Commission with legal and other official assistance as requested.

If the Election Commission has any doubts regarding the alleged breach, then it will contact the suspect and request a statement regarding the allegations contained in the report. If the commission has doubts as to the merit of the allegations made, then it must provide its reasoning upon request.

This provision is also very difficult to implement in reality. There are no adequate control mechanisms for fully investigating suspicious cases of received gifts. There are no expert services at the State Parliament or Entity Parliament levels to implement this provision and ensure its application.

- **Are there powers of sanction in place against parliamentarians? If so, what are they?**

YES – Article 19 of the above Law makes provision for such sanctions. Article 5 stipulates that elected officials, executive officeholders and advisors shall not serve on the management board, steering board, supervisory board, executive board, or act in an authorized capacity for a public enterprise. This provision applies for one year after the elected official, executive officeholders or advisors leaves office. Elected officials, executive officeholders and advisors may not serve on the directorate or management board, or as director, of a privatisation agency. Likewise, this provision applies for one year after the elected official, executive officeholder or advisor leaves office. Elected officials, executive officeholders and advisors are bound to resign from any such

incompatible positions before assuming the duties of their office. According to Articles 6⁷⁷ and 8⁷⁸ of the Law, if an elected official, executive officeholder or advisor is found to have acted in violation, then he or she will be ineligible to stand for any directly or indirectly elected office for a period of four years following the discovery of the violation. In addition, the official, officeholder or advisor may be fined in the amount of no less than KM 1,000 and not more than KM 10,000. The official, officeholder or advisor is also legally bound to return the gift or the equivalent monetary value of the gift. If an elected official, executive officeholder or advisor is found to have been in violation of Articles 1, 5, 6, 7, 8, 9 or 10 of this Law, he or she may be declared ineligible for a position in the public administration or as an advisor for a maximum period of four years following the violation. This provision also applies to elected officials, executive officeholders or advisors on leave from a position in the public administration. In this case, he or she shall sit a public competition in order to re-enter the public administration at the end of the period of ineligibility. What is more, if a close relative⁷⁹ of an elected official, executive officeholder or advisor is found to have been in violation of Article 10, the family member shall be fined in an amount of no less than KM 1,000 and not exceeding KM 10,000. The official, officeholder or advisor may also be fined the equal amount if it is determined that he or she had prior knowledge of the conflict of interest or gift. In reality the problem remains that there are no control mechanisms for monitoring parliamentarians and calling for sanctions when applicable.

- **Have sanctions ever been invoked against parliamentarians?**

YES – Once, although there are cases pending. However, the main problem is that the Law is applied arbitrarily and is not tailored to the situation in BiH. Sanctions were levelled against Mrs Džajić, but other MPs who also violate the provisions remain unpunished. The Law also allows MPs to simultaneously be members of municipal assemblies, and this is not considered a conflict of interest. On the other hand, MPs who work in public enterprises must resign from those posts, before their employment status in the Parliament is regulated. The problem of the National Assembly of RS, for example, is that it can only employ a quarter of its MPs, while the employment status of the others remains unclear.

- **Is there a public gift register?**

PARTLY – All gifts that are reported to the Election Commission become property of BiH, and are sent to the national archives. However, there is no register solely for that purpose. In any case, the practice has not taken root yet since no relevant Entity-level laws have been enacted so far.

- **Are there restrictions on post legislature employment?**

NO – There is no law that regulates the issue. There are provisions on employment during service as an MP but not after their mandate expires.

Elections and Political Parties

- **Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?**

YES – The Election Law, which was adopted on 23 August 2001, establishes an obligation to set up an Election Commission in BiH. However, due to an inability to reach a consensus, the Election Commission was only truly established by a High Representative's decision appointing four national members to the Election Commission of BiH on 16 November 2001.

The international members of the Election Commission of BiH were appointed by the High Representative's decision of 27 September 2001.⁸⁰ In accordance with that decision, the High Representative appointed the three international members of the Election Commission (the head and deputy head of the OSCE Mission to BiH or their designates, and the senior deputy High Representative or his or her designate).

In accordance with Article 2 (5) of the Election Law of BiH, the Election Commission of BiH consists of seven members: two Croat members, two Bosniak members, two Serb members and one representative of the 'other' nationalities.

In reality it consists of three representatives of the international community and four national members.

- **Who appoints the head of the Commission?**

According to Article 2 (6) of the Election Law of BiH, the president of the Election Commission of BiH is elected from among its members. One Croat, one Bosniak, one Serb as well as the further member of the commission shall each serve as the president for one fifteen-month rotation during a five-year period. In practice, the current president of the commission is appointed by the High Representative⁸¹

- **Are there rules on political party funding?**

YES – According to Article 4 of the Constitution of BiH, the Parliamentary Assembly of BiH adopted the Law on Political Party Funding at the 27 July 2000 session of the House of Representatives and the 31 July 2000 session of the House of Peoples. This Law governs the conditions and the manner in which political parties and members of political parties acting on the party's behalf may acquire funds for their activities. Article 3 stipulates that a political party may receive funding from:

- membership fees;
- contributions from individual and legal entities;
- income based on returns on its own assets;

- BiH budget for parliamentary group funding in accordance with Article 10 that governs the funding of parliamentary groups represented in the Parliamentary Assembly of BiH. (The funds are allocated as follows: 30% is equally distributed to each parliamentary group and 70% is allocated proportionally to the number of seats that each parliamentary group has at the moment of allocation);⁸²
 - income based on returns on its own entrepreneurial activities.
- **Are substantial donations and their sources made public?**

PARTLY – According to the Law on political party funding, all sources of political party funding must be made public. A membership fee is a regular amount of money paid by a member of a political party in accordance with the provisions laid out in the statute of the political party. Receipts must be presented for donations given by legal or private entities, regardless of who covered the costs of the service or product, or whether the service or product was provided without remuneration. If the total amount of a donation given by one person exceeds KM 100, then it must be entered into the annual financial report, in accordance with Article 11, which prescribes an obligation to submit the financial report. Article 11 (4) also stipulates that all persons who are required to submit reports must also submit such additional reports as required by the Election Commission of BiH. In reality, however, sources of political party funding are not at all transparent. The existing Law leaves ample room for machinations and the abuse of power, something that political parties do not hesitate to take advantage of. Insufficient financial control mechanisms, as well as interlinkages with organised crime, police and judiciary, allow political parties to have at their disposal enormous amounts of money for election campaigns, which they use to affect the vote, give bribes and exert pressure in their struggle for power.

Mechanisms for the control of political party finance are badly needed. The Election Commission, with its staff and work to date, has not been able to fulfil that function. Its current usefulness is debatable. Its work yielded results when the international community still funded it, but some members have recently resigned due to the lack of financial resources and technical conditions needed for the successful continuation of its work.

- **Are there rules on political party expenditures?**

YES – Such rules do exist at the operational expenditure and campaign expenditure level:

- Operational expenditures: According to Article 11 of the Law on Political Party Funding, political parties are legally bound to keep a record of their income and expenditures. Political parties are also legally bound to submit a financial report to the Election Commission of BiH for each fiscal year. There are no rules on political party expenditures in the true sense of that word. Neither is there transparency of political party budgets in this respect or openness in the work within parties.
- Campaign expenditures: According to Article 15 (10) of the Election law, no political party, coalition, list of independent candidates or independent candidate shall spend more than one (1) convertible mark per registered voter in each electoral race for the purposes of an

election campaign. The Election Commission shall announce the number of voters in the central voters register 90 days before the elections.

After the September 2002 election campaign, many media outlets published information on how much each political party spent on its campaign. However, most BiH citizens noticed a great discrepancy between the information published and what they had observed. Expensive advertising materials, the organisation of concerts and the like confirmed the ineffectiveness of financial control mechanisms and proved that the enormous amounts of money spent in election campaigns did not necessarily appear in financial reports presented. In principle, the bigger the party, the greater the influence of 'black funds' by which political campaigns are funded.

- **Are political party accounts published?**

YES – According to Article 12 (4) of the Law on Political Party Funding, the Election Commission of BiH shall make all reports available to the public, and shall take appropriate actions to ensure that all citizens have easy access to the information contained therein.

Political parties are also legally bound to keep their financial reports for a minimum of six years after submission. This provision is fully implemented in practice. After the election campaign in September 2002, many media outlets published information on how much each political party spent on its campaign.

- **Are accounts checked by an independent institution, are they published and are they submitted to parliament?**

YES – In accordance with Article 14 of the Law on Political Party Funding, the Election Commission of BiH establishes a financial auditing service whose job it is to check and validate the reports submitted by political parties. The audit of the financial report of a political party includes reports from the State and Entity seat (including the Brčko District) and at least two regional offices selected by the financial auditing service. If there are no objections after the final written audit report is submitted to the political party, the auditor confirms the findings of the conducted audit. This validates that the financial dealings of the party, on the basis of the inspected books, documents of the political party, and information and evidence submitted by the executive board, are in conformity with the provisions of this Law. If any objections have been filed, the auditor has to either refuse to officially confirm the audit or change it in accordance with the objection. The certificate issued by the auditor must contain the names of regional offices in which the audit was conducted. The auditor's certificate must be attached to the financial report that is submitted and published in Official Gazette of BiH. Article 17 of this Law prescribes an obligation to submit the report to Parliament. The Election Commission of BiH is bound to submit an annual report on the audited status of party finances to the Parliamentary Assembly of BiH. The report is distributed as parliamentary material.

In reality, Entity Parliaments do not receive any reports, so MPs have no access to such documentation and consequently have no opportunity to discuss it. Members of the Parliamentary Assembly of BiH have never initiated a discussion on the topic, although they have full access to

the reports submitted by the Election Commission. Entity Parliaments have not had the opportunity to see these reports because Entity Election Commissions have never been properly established.

- **Does that institution start investigations on its own initiative?**

YES – This is within jurisdiction of the Election Commission of BiH. This means that, in accordance with Article 13 of the Law on Political Party Funding, the Election Commission of BiH shall have the authority to investigate instances of non-compliance with the provisions of the Law, and may order individuals to answer written questions, to provide documentary and other evidence, and to provide testimony in connection with any investigation that the Election Commission of may initiate. The Commission may initiate an investigation or take appropriate implementing actions, on its own initiative or in response to a complaint filed by a person.

In reality, the Election law is applied and interpreted arbitrarily. This suggests that there might have been several cases of sanctions against elected officials⁸³, but in reality there have not been. No control mechanisms have been developed yet, which would allow the Election law to be fully implemented. So far no political party has been punished for financial mismanagement, i.e. violation of the Law on Political Party Funding.

- **Who appoints the head of the institution?**

The Election Commission of BiH is in charge of hiring and dismissing staff in the financial auditing service. The person appointed as auditor cannot be a member of the executive board of a political party, work as an accountant in or be employed by the political party being audited, be employed by the regional office of that political party or have performed any of the abovementioned duties within the period of three years before the appointment as auditor. The Law on Political Party Funding allows the financial auditing service access to party offices if it believes a more thorough audit needs to be conducted. If access to party offices is denied, it is equivalent to the party in question not submitting the annual financial report and the Election Commission can deny that party the right to stand at the next election. In reality, political parties conform to this provision.

Supreme Audit Institutions

- **Is the national auditor general independent?**

YES – Audit legislation was passed for the Entities as well as for the joint institutions of BiH during the period 1998-2000. The long struggle for this legislation coincided with the search for the individuals who would staff the posts it provided for. Soon after the legislation was adopted, the general auditors and their deputies (repeated later at FBiH level; RS only appointed a deputy in 2003) were also appointed by their respective Parliaments, to whom the SAIs are accountable. The SAIs started the auditing of public accounts in January 2001. There was one SAI for each of the three most important layers of government: State of BiH – joint institutions, RS and FBiH. The Law does not anticipate a prosecution role for SAIs and expects the legislature and the executive to undertake corrective actions.

- **Is the appointment of the general auditor required to be based on professional criteria/merit?**

PARTLY – The SAIs have mostly managed to break away from partisan expectations and present fairly neutral reports to the Parliaments. This is partly due to the change in government in late 2000, which ensured their independence of the ruling elite during the time of legislative adoption and staffing. To a greater extent it is a matter of other circumstances: comparatively high salaries, support from the international community and the support from the media and public in investigating mismanagement that grew with each new report released by the SAIs.

Each SAI is established by the Law on audit of the joint institution, FBiH or RS respectively. They all remain understaffed and their annual reports were estimated to only cover an average of 80% of budget expenditures. While the BiH and the RS SAIs are thought to act more professionally, the audit office of FBiH is seen as partisan and not fully fit to perform its function. The link to the respective Parliaments remains insufficient. Much of this work depends on the professionalisation of the Parliaments themselves, particularly of their economic and finance committees and boards. There must be further institutionalisation and linkages made in the triangle: Parliament-Government-SAI.

- **Is the appointee protected from removal without relevant justification?**

YES – Failure to adopt reports may lead to a call for the replacement of the appointee. Thus, if Parliament rejects a report, it is expected that the Supreme Auditor submit his or her resignation, unless the matter is debated in the house.

The SAIs independence in relation to the government is fundamental and should be ensured by the Constitution. As discussed in the case of FBiH, this may not be the case there. All three SAIs have in some years faced reduced budgetary funds. In RS there has been political pressure on the

SAI by the government to perform special audits with the aim of overstressing scarce SAI resources, so that no audit can be performed thoroughly and professionally. In addition, no budget beneficiaries at the State or RS level have internal audit. Only selected institutions of FBiH do and they have a working relationship with the SAI.

- **Are reports submitted to a Public Accounts Committee and/or debated by the legislature?**

YES – All audit reports are made public by their submission to the legislature. While the media exploits their sensational aspects, there is a growing understanding of the institution and its importance in enhancing national integrity. This has also led to a greater co-operation of the international community with the SAIs and growing technical assistance, originally only provided by the Swedish Government's SIDA. It now receives assistance from the OSCE Parliamentary Support Programme and the USAID Public Sector Accounting Reform Project. The former trains MPs in interpreting the reports and the latter aims at facilitating SAI access to the treasury transaction database.

- **Are all public expenditures audited annually?**

PARTLY – None of the three SAIs has sufficient internal capacities to undertake full audit coverage and the audit reports produced remain of unpredictable quality. Ultimately, legislation does not satisfactorily support SAI's independence or the immunity of auditors, which is reflected in the objectivity, credibility, efficiency and effectiveness of their reports. A part of the problem is external and relates to the continuing lack of the public accounting standards. A separate USAID programme has recently been addressing these.

- **Is reporting up to date?**

YES – Besides the limits to timely reporting already mentioned, the number of available staff is also insufficient. Less than 70 auditors in total are expected to inspect some 3,100 clients, of which 96% are at the Entity-level. The budget allocations at present do not permit them to undertake a greater scope of audit. These constraints grow even tighter when governments try to influence the work of SAIs by adding more tasks to the priority pile. The work of the special auditor comes under a separate regime and recently this has proven to be incompatible with SAI work, in that SAIs have been requested to undertake a separate investigation of accounts (in this case, RS' Telekom). In addition, the issue of the District of Brčko remains unsolved – currently there is no audit for the District's institutions.

- **Are all public expenditures declared in the official budget?**

YES – In general the executive today publishes all public expenditures in the official budget. However, it is the task of the SAI to determine if there are exceptions. Where SAI finds a breach in the reporting of expenditures, this immediately becomes part of its official and public reports.

Judiciary

- **Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other ministers and their officials)?**

YES – The Constitutional Courts determine whether general government actions are in accord with the relevant constitutions, whereas regular courts control the legality of individual administrative acts through administrative dispute proceedings.

Yet the Constitutional Courts do not have much authority and, in most cases, their decisions are not implemented voluntarily. Apart from that, these courts are only minimally functional or entirely non-functional due to a failure to appoint judges. The administrative department has not been established yet in the Court of BiH, although the Law makes provisions for it. This department will act in administrative disputes. Regular courts have a large number of unresolved administrative dispute cases, so parties who find themselves damaged in an administrative procedure, have no ability to seek relief through court procedure.

The Court of BiH has three distinct jurisdictions: criminal, administrative, and the so-called appellate jurisdiction. In accordance with these multiple jurisdictions, the Court of BiH is divided into three divisions. Within its administrative jurisdiction, the Court is competent to rule on final administrative acts of the institutions of BiH and its bodies, public agencies, public corporations, institutions of the Brčko District and any other organisation, as provided by the State Law, acting in the exercise of a public function. During this procedure the Court weighs the legality of individually and generally enforceable administrative acts adopted by the abovementioned authorities. This means that any individual party, be they an private or legal entity, who is dissatisfied with a decision of a State organ or administrative organisation at State level is entitled to initiate such a procedure. The legal term for this procedure is 'administrative dispute'. The administrative dispute proceedings are initiated by an action. The applicants are entitled to claim: a declaration that the act, decision or regulation challenged is contrary to law and is invalid; a finding of liability against the administration, including compensation for consequent damage; an order to comply with their statutory obligations, where there has been an omission to act by the administration or public agencies.

Although the Law on the Court of BiH was enacted as far back as 2000, the Court's administrative division is still not functioning (as opposed to the criminal and appellate divisions), so there is no actual option to initiate administrative dispute proceedings before this Court. This means that if any party is dissatisfied with a final decision made in an administrative procedure by organs and organisations at the State level, they cannot initiate administrative dispute proceedings before the competent court.

The Constitutional Court of BiH has the jurisdiction to determine whether provisions of Entity constitutions and laws are in accord with the Constitution of BiH. However, only a small number of

institutions or individuals are entitled to initiate such procedures before this Court. The procedure before the Constitutional Court of BiH may be initiated only by the members of the Presidency of BiH, the Chair of the Council of Ministers, the Chair or the Deputy Chair of either chamber of the Parliamentary Assembly (the House of Representatives and the House of Peoples), one quarter of the members of either chamber of the Parliamentary Assembly or one quarter of either chamber of the legislature of an Entity (the National Assembly and the Council of Peoples in RS, and the Parliament and the House of Peoples in FBiH).

The possibility for requesting the examination of the constitutionality of a decision issued by executive authorities by the Constitutional Court is limited primarily by the number of persons who are entitled to initiate such procedures. The Constitutional Court is comprised of 9 judges (two Serbs, two Croats, two Bosniaks and three international judges). A valid decision requires that at least one representative of each constituent nation participated in making the decision. As judges are elected by their respective assemblies or Entity Parliaments (as proposed by the Entity President) the election procedure can be very drawn-out. So, for instance, the election of two Judges from RS took more than a year, during which time the work of the Constitutional Court of BiH was effectively blocked.

Likewise, the Constitutional Court of RS was defunct for over a year and a half because judges were not elected by the National Assembly of RS.

As for the judiciary's right to decide on the legality of final administration acts (administrative dispute proceedings), the situation is formally and legally better at the Entity level than at the State level. Namely, the Entities have their own laws on administrative dispute proceedings.

After the proceedings are completed, the court is authorised, if it accepts the appeal, to annul the challenged administrative act and return it to the administrative authority for re-consideration. The court decisions are binding upon administrative authorities. Administrative authorities are legally bound to issue a new decision within 15 days, taking into consideration the court's legal understanding of the case. If the administrative authority ignores the court's decision and fails to issue a new decision or to comply with the legal opinion of the court, then the aggrieved party is entitled to initiate new proceedings before the court. The court then has the right to issue a new decision which takes the place of the decision of the administrative authority (the so-called 'full jurisdiction dispute').

The factual situation is as follows. The courts are literally overloaded with administrative actions. At the time of preparation of this report, the Supreme Court of RS had around 3,800 unresolved cases and the Supreme Court of FBiH around 4,500. One reason for this situation is, among other things, the process of re-electing judges. Therefore there simply were not enough judges to work on administrative disputes. The number of unresolved administrative disputes at Entity-level supreme courts is worrying and it demonstrates the total inefficiency of the system with regards to judicial control of administrative acts.

On the other hand, even if the court issues a decision, administrative authorities mostly fail to meet the deadline for issuing their new action or to comply with the legal opinion of the court,

which is binding for them. There is unfortunately no other legal mechanism to subject administrative authorities to the court's orders, even when the courts issue a decision that completely supersedes the action of an administrative authority. This is due to the fact that, again, the execution of the court's decision is carried out by administrative authorities, which often to act as directed by the court. This situation could be improved by the introduction of agencies for public administration at all levels in BiH.

So, although there is a formal possibility to initiate administrative dispute proceedings before the competent courts and to challenge the legality of final administrative acts, this possibility does not exist in practice. For instance, if administrative dispute proceedings were initiated today, the case would wait at least three years to be considered before the court. In addition administrative actions are not suspended upon the initiation of an administrative dispute. Challenging the legality of final administrative acts is thus virtually impossible and the level of protection for the subjects of administrative acts is certainly not sufficient.

- **Are judges/investigative magistrates independent, i.e. are appointments required to be based on merit?**

YES – According to the changes to the Entity Constitutions of May 2002, which were imposed by the High Representative in BiH, the appointment of judges (and prosecutors) is assigned to the newly established High Judicial and Prosecutorial Councils. The appointment of judges was formerly in the hands of the legislature, whether they were nominated by the Ministry of Justice or other authorities of executive power. The appointment of judges was completely in the hands of political parties even before war broke out and that loyalty to a political party prevailed over professional qualifications. The respective courts were comprised of judges from one constituent people only. To rectify this state of affairs, representatives of the international community, headed by the Office of the High Representative, initiated a reform of the judiciary in 2000. The High Judicial and Prosecutorial Councils were established at the Entity-level in that same year.

Re-appointment of judges began in mid-2003. So far a quarter of all judges have been appointed. The rules stipulate that only the best candidates should be elected. It is early to say whether recruitment and career development will be truly based on merit in the long-run.

- **Are the appointees protected from removal without relevant justification?**

YES – Judges are effectively elected for their working life (except for presidents of the court who are elected for a specific period of time, either for 6 or 4 years, and who can be re-elected). These conditions are laid out in the Laws on courts and they eliminate arbitrariness in determining the duration of judicial office. Judges were elected for life in the previous system as well, but the reform of the judiciary started from the premise that it is necessary to re-elect judges. This is due to the fact that over the last ten years, judges have been elected under abnormal circumstances, either during war or under political upheavals that had direct influence on the election of judges. One can conclude that such major 'repair' of the judiciary is justified. Likewise, judges enjoy immunity from prosecution and being remanded in custody. They are not held accountable on the

basis of civil law for opinions expressed during the exercise of their public function. The HJPCs have the authority to strip judges of their immunity.

It should be noted that the rules of disciplinary proceedings apply to judges who are currently holding judicial office in BiH (both those who have been elected and those who have not been elected yet). Within HJPCs there are disciplinary prosecutors and two-instance disciplinary councils that guarantee a fair removal procedure. As these institutions have been established only recently and only several judges have undergone the disciplinary procedure so far, it would be too early to conclude whether judges will be fully protected in future against arbitrary removals.

The High Representative's authority to suspend judges introduces legal insecurity into the removal procedure (although this is an integral component of the High Representative's overall authorities regarding civilian implementation of the Dayton Agreement). The High Representative has the authority to suspend judges, but cannot remove them from office. Considering that the High Representative exercised this authority only in interregnum, when the HJPCs were not operational, it is certain that he will not exercise this particular authority any more. Any future suspension and removal from office will have to pass the regular disciplinary procedure, as prescribed by the Laws on HJPC.

- **Are recruitment and career development based on merit?**

YES – The appointment of judges started in early 2003. The judges who already hold office must reapply in order to remain in office (either in their current posts or in another court). In addition, any other qualified candidates may apply. The process for appointing new judges is entirely open, for a full 'repair' of the judiciary. Candidates for judge pass through a certain assessment, conducted on behalf of the HJPC by the Independent Court Commission of BiH, which also serves as the secretariat of the HJPC. All candidates will be invited for interviews to test basic knowledge.

- **Have there been instances of successful prosecutions of corrupt senior officials in the past three years?**

NO – Some of the minor cases were mentioned in the main text of this report, such as Mr. Suzić, Mr. Gojko Kličković and former members of HDZ leadership suspected of organised crime.

It is not uncommon that the police (who were, until recently, authorised to conduct pre-criminal procedure) inform the public of criminal charges being brought against a public officeholder. Almost always an impression is created that this person is actually guilty even before the appropriate procedure has been initiated in court. The newly adopted Law on Criminal Proceedings, which dissolves the institution of the investigative judge, gives the prosecutor the exclusive authority to conduct investigations, and stipulates that the police have an obligation to assist the prosecutor, clears a formal path for the legal and expedient processing of charges brought against persons suspected of having committed a criminal act. Given that the Law entered into force only recently, it is still too early to assess its effectiveness.

Civil Service

- **Are there laws establishing criminal and administrative sanctions for bribery?**

YES – The laws dealing with the criminal and administrative sanctions for bribery are the Criminal code of BiH and the Conflict of interest law of BiH. The former is implemented by the prosecution and judiciary of BiH at all levels, and the latter is monitored and implemented by the Election Commission.

Sanctions for bribery in the civil service are primarily meted out by the Election Commission. The case can subsequently be brought to the prosecutorial attention. The aims of the Conflict of interest law are:

- to ensure political responsibility and transparency of actions of elected and appointed officials, ensure the integrity of *the office* and not to protect the individuals holding the office;
- to publish guidelines, forms and maintain the registry to assist in the implementation of the Law;
- to publish guidelines for the registry, necessary forms, rules and procedures, decisions and reports;
- to decide whether an activity or lack thereof may constitute a breach of law;
- to submit reports on its work to the Presidency of BiH every six months and to the public at least once a year; and
- to submit reports to the relevant prosecution on any case of breach of the Law that may also represent a breach of the criminal code.

- **Are there rules requiring political independence of the civil service?**

YES – The Law on civil service (CSL) expressly forbids civil servants to be linked with political parties.

Civil service is regulated in the Law on civil service in the institutions of BiH, which was imposed by the High Representative in May 2002 and adopted by the Parliamentary Assembly of BiH in mid-2003. The main principle of this Law is that a civil servant must be impartial (Article 3 (e)) and “must not be a member of governing or other boards of political parties and must not follow political parties’ instructions” (Article 16 (1.e)). This excludes, at least in theory, the influence of political parties on the civil servant.

Article 15 (2) of the Law provides that a civil servant is entitled to receive fair and equitable treatment in all aspects of personnel management without regard to his or her ethnic origin, social origin, Entity citizenship, residency, religion, political or other beliefs, sex, colour, birth, marital status, age, property, disability or other status.

- **Are recruitment/career development rules based on merit?**

YES – The State Civil service agency controls recruitment based on merit.

A selection committee examines and selects candidates based on professional merit, as assessed through an open competition identical for all candidates, which excludes the possibility of nepotism or cronyism.

The open competition procedures are carried out by the Agency for civil service and the selection committee, which is appointed by the Agency. The selection committee is composed of five members, three of which are civil servants of the institution concerned. The other two members are appointed from a list of experts approved by the Agency. To preclude any favouritism, the highest and lowest scores given to a candidate during the selection process are discarded.

In addition to the CSL, it is also important to mention the Law on administration, the Law on the Council of Ministers, the Law on ministries and the Law on conflict of interest in the governmental institutions of BiH if one is to understand the civil service system. Together these laws together give a full picture of the state of civil service in BiH.

- **Are there specific rules to prevent nepotism? Cronyism?**

YES – Full implementation of the provisions of the CSL is the best prevention against nepotism or cronyism. Moreover, Article 14 (3) of the Law ensures civil servants are impartial and in particular:

- that they avoid activities or failures to act in the line of professional service that may be in breach of or are not compatible with the duties prescribed by the Law, and avoid expressing their partisan beliefs; and
- that they do not accept for themselves or their relatives any profit, benefit, financial compensation, favour etc. except those allowed by this Law.

- **Are there rules (including registries) concerning acceptance of gifts and hospitality?**

YES – The Law on conflict of interest regulates this. However, no sanctions have yet been invoked in a case of irregular acceptance of gifts or hospitality.

Acceptance of gifts and other benefits is also regulated in the Law on conflict of interest in the governmental institutions of BiH, which was imposed by the High Representative in May 2002. This Law stipulates that no gift in an amount exceeding KM 100 be accepted and that any gift exceeding the said amount must be reported to the Election Commission, which is charged with implementing this Law.

Monetary gifts of any value cannot be accepted, even below KM 100. There is a special service within the Election Commission in charge of initiating procedures in such cases.

- **If so, are these registers kept up to date? By whom?**

YES – They are kept by the BiH Archive. The Election Commission has to keep a register of accepted gifts, although the Law does not define what happens with the gifts afterwards, namely, whether they remain in the institutions or are given to museums, libraries, schools, etc.

- **Have they legal powers to enforce disclosure?**

YES – While legal powers do exist, they have not been used in practice to date.

- **Have they staff to investigate allegations?**

NO – Staff expansion is planned for 2004, according to information supplied by the commission. Within the Election Commission there should theoretically be investigators who deal with such allegations, but these posts remain vacant. It is expected that the Election Commission will be ready to assume all its responsibilities under the Law on conflict of interest by late 2004.

- **What powers of sanctions are in place against civil servants?**

LIMITED – Implementation of the Law is in its initial phase, and no sanctions have been invoked so far.

Should a civil servant be found in breach of the Law, the following sanctions can be imposed:

- written notification;
- written injunction;
- suspension of the right to apply for openings in the civil service for a period of up to two years;
- suspension from current post and docking of salary for a period of 2 to 30 days;
- demotion to a lower civil service rank ;
- dismissal from civil service.

Another option is preventive suspension as per Article 58 of the Law, under the following conditions:

- If a criminal investigation is launched against a civil servant, according to Article 57 of the Law, the authority in charge of employing civil servants at that post shall immediately suspend the civil servant whether or not the civil servant is already in custody;
- If a civil servant is caught engaging in an act considered criminal, for which a prison sentence of more than five years may be given; or
- If there are serious suspicions that a criminal act was perpetrated by a civil servant.

In all these cases, the Civil service agency is in charge of suspending or penalising the civil servants concerned.

- **Have they ever been invoked?**

NO – This may actually happen in the course of 2004, according to Jakob Finci, Agency head.

- **Are there restrictions on post public service employment?**

PARTLY – They exist formally but have not yet been implemented in practice.

Civil servants and other elected officials cannot be employed with the employer they were superior to for a period of two years following removal from office or expiration of mandate, nor can they receive any money from this employer or firm for a period of two years following departure or removal from office.

- **Are procedures and criteria for administrative decisions published?**

YES – They are published in the Official Gazette as well as on the web site. At local level they are published on municipality notice boards.

All administrative decisions, criteria and procedures can enter into force only after their disclosure. As for the State level, the disclosure is made in the Official Gazette of BiH. Disclosure for the lower levels occurs through their respective official gazettes or on the notice boards of municipalities that do not issue their own official gazettes.

In addition, the Freedom of information act makes provisions for obligatory disclosure of all documents (except for state and military secrets) to the public within no more than 15 days following the submission of a request. The result of this is full transparency and insight into the performance of the public administration.

If a requested document is not made available, it is possible to initiate court proceedings. This allows full protection of the public interests in every aspect.

- **Are there complaint mechanisms for public servants and whistleblower protection measures?**

YES – The committee for civil servants' complaints is in charge of examining the final awards, decisions etc. failures or mismanagement of the Agency in case of any civil servant. A committee investigation may be initiated by:

- the civil servant against whom the questioned decision or action was brought; or
- the institution where the civil servant is employed.

The committee then:

- investigates the individual who filed the complaint, if deemed appropriate;
- calls in witnesses and experts, if deemed appropriate;
- seeks and obtains all relevant information from other public offices;
- adopts the regulations on its activities.

The decisions of the committee must be made on legal grounds and fully based on the facts as determined by an investigation. The decisions are:

- final and can only be reinvestigated by a relevant court, in line with the laws of BiH;
- handed to the individual appealing within eight days of the decision.

The committee is assembled by the Council of Ministers and consists of three members. The posts are filled on a competitive basis, by means of public adverts. The mandate is four years. The Law also stipulates details for the selection of the committee members and their code of conduct.

- **Are there means for complaints by members of the public?**

YES – The Freedom of information act is in force enabling information access as well as the lodging of related complaints. Complaints can be directed in writing to the committee for civil servants' complaints.

On the other hand, civil servants can claim protection of their own rights through the civil service board – established by the Law on civil service in the institutions of BiH as a permanent body of the BiH Council of Ministers. The decisions of the board are final and administrative procedure can be initiated against them only before the Court of BiH.

Since the Court of BiH is a newly established institution that is still not fully operational at the time of writing this report, there is no court precedent that would indicate how effective such protection of civil servant's rights really is. However, this should become clear in 2004 and 2005, once practice is established.

- **Are there administrative checks and balances on decisions of individual public officials?**

YES – The Civil service agency is in charge of reviewing civil servants' activities.

The performance of civil servants is monitored and evaluated at least once a year. The performance evaluation of a civil servant refers to the monitoring and the appraisal of his or her accomplishments in accordance with the position held during his or her tenure. The results of the performance appraisal will be taken into account for the promotion of civil servants. Should the performance appraisal be negative, the civil servant will undergo a specific training program in order to remedy the situation. Should there be two consecutive negative performance appraisals, the civil servant can be dismissed.

Police and Prosecutors

- **Is the commissioner of police independent?**

YES - The law is applied. The independent board for each Entity or cantonal police force should ensure the commissioner (or director in the case of RS) acts independently of political pressure. Although this pressure is strong, the commissioners are aware that they have to make decisions in the interest of citizens, not in the interest of political parties. According to the interviews conducted for this report with members of the Sarajevo Cantonal independent board, the commissioners generally perform their duties responsibly and professionally and take into consideration the proposals put forward by the independent board. However, it should be noted that the institution of police commissioner is completely new to BiH, so its real contribution will become visible over the coming years. The independent boards meet regularly to discuss the operations of the police commissioners or directors. Their first public reports will be presented to the Parliaments soon, which will enable the public to judge the work of the police as well as that of the independent boards.

- **Are appointments required to be based on merit?**

YES – The Commissioner is appointed through a transparent and independent selection process conducted by the independent board for election and revision. Candidates for commissioner are proposed by the commission for election and appointment and with the successful candidate appointed for a period of four years by the respective Parliament in consultation with UNMIBH/IPTF and now the European Union Police Monitors. For example, at the level of Sarajevo Canton, the independent board consists of seven members, two of whom are representatives of the cantonal MIA, while the other five are citizen's representatives – recognised experts in law, criminology or human rights – who are not members of any political party. According to Article 25 of the Law on Internal Affairs of the Sarajevo Canton, the independent board manages the nomination, appointment and removal of the police commissioner. In line with its duty, the independent board announces an open competition to fill the position of commissioner, considers the submitted applications, makes a pre-selection of eligible candidates, proposes the candidates to the Minister, considers all complaints regarding the police commissioner's performance (including citizen's complaints), and considers the cantonal Parliament's, government's or Minister's proposals for maintaining or removing the police commissioner. In addition, the independent board proposes the removal of the police commissioner if he or she is found to have committed a criminal act or serious breach of discipline, if he or she meets any of the requirements for termination of service or if EUPM reports that the commissioner has acted in contravention of formal rules. The independent board also assesses the commissioner's performance in the case that he or she is reappointed to a second term.

After the selection, the independent board will propose the eligible candidate to the Minister. He or she must:

- not be a member of any political party, legislative or executive body (neither at the moment of election nor before election);
- not have been convicted of a criminal act or abuse of power, or have been punished with disciplinary measures for serious violations of duty;
- have at least 10 years' police experience and at least 4 years managerial experience (excluding the period between 1 March 1992 and 14 December 1995), as well as proven skills in handling difficult operations;
- not yet meet retirement criteria;
- have temporary authorisation from EUPM;
- give a written statement on assets, which will be made available to the public;
- meet other general requirements stipulated by the law; and
- have held the rank of chief inspector for at least three years.

The Minister has to forward the proposal to the government. Should the Minister fail to do so within seven days, the independent board can forward the proposal directly to the government. If the government disagrees with the board's proposal, it must give reasons for its position and ask the independent board to reconsider its original proposal. If that happens, the independent board can either confirm its proposal or propose another candidate. Regardless of what the board decides, its decision becomes final and binding. The identical procedure is followed if the independent board initiates the removal of the police commissioner, of course only if all the requirements for such procedure are met.

In late 2002 the Government of the Sarajevo Canton issued the Regulation on Establishment of the Public Complaints Bureau within the Ministry of Internal Affairs of the Sarajevo Canton.⁸⁴

The problem of ethnic criteria is present in the Sarajevo Canton as well, with its mandate of establishing a ministry with an ethnic structure reflecting the 1991 population census findings for the territory that is today the Sarajevo Canton.⁸⁵

Very similar are the procedures at the Entity level. For example, the director of police of RS is elected by an independent board of nine, whose membership is ethnically balanced and drawn mostly from the civil sector and includes police/security experts with technical and advisory assistance from the EUPM. Nevertheless, there are no safeguards against influence on the members of the independent board. It is therefore difficult to estimate at this early stage if appointments are truly based on merit or if some levels of the police force may still be politically influenced.

• **Is the appointee protected from removal without relevant justification?**

YES – There have been no removals of police commissioners, as they have only been in office for a short while. In any case, one can expect that legal provisions will be applied in the case of removal.

- **Are public prosecutors independent?**

YES – Doubts regarding the BiH judiciary of corrupt judges and prosecutors at all levels, led to the reappointment of all judges and prosecutors, conducted by the independent judicial commission. Apart from that, the laws enacted by the High Representative create a number of checks that each candidate needs to pass in order to be appointed to the post of judge or prosecutor. It is not surprising then that certain judges and prosecutors have left this job and begun working as lawyers, and have been replaced by clean and uncorrupted appointees.

- **Are there special units for investigating and prosecuting corruption crimes?**

YES – Both at the State level (prosecution) and at the Entity-level (police). Additionally, some prosecutors who passed all the checks of the independent judicial commission (such as the Chief Cantonal Prosecutor in the Tuzla Canton) stated publicly that they will try to establish specialised anti-corruption departments within cantonal prosecutor's offices. The same initiative is expected to be launched in other cantons of FBiH.

- **Is there an independent mechanism to handle complaints of corruption against the police?**

YES – As specified above, the independent board considers all complaints regarding the police commissioner's performance (including citizen's complaints), and considers the cantonal parliament's, government's or Minister's proposals for removal of the police commissioner.

There are no statistical indicators that would give a broader picture of the extent, structure and dynamics of corruption in BiH. There are many reasons for that. First of all, no piece of legislation in BiH contains a definition of corruption. Instead, they mention several criminal acts that could, by their very nature, constitute corruption in some sense of the word.

- **Does civil society have a role in such a mechanism?**

YES – Except for the monitoring provided by NGOs such as Transparency International BiH, several members of civil society are involved in the proposal for the parliamentary election of the police director both in FBiH and RS. It is also their duty as the independent committee to observe the performance of the elected individual, handle citizens' complaints and, if appropriate, propose dismissal and replacement. This is not investigation *per se*, but a civil inquiry based on factual complaints of police corruption; NGOs are legally allowed to launch such inquiries or even suggest replacing the police director.

- **In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?**

NOT AVAILABLE – Data insufficient. Please see the main report, section 'police', which details the lack of statistics and data sources on corruption offences in the police force.

- **Are there any cases of corruption within the prosecuting agencies?**

NOT AVAILABLE – Due to the lack of statistical indicators on corruption offences in the prosecutor's offices.

- **Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?**

There are no special anti-corruption instruments or procedures available to the police and prosecutor's offices. For the purposes of anti-corruption they use the instruments that apply to other criminal acts under the national Criminal codes. It should be noted that the criminal legislation in BiH has been amended on several occasions over the past decade with different amendments to Entity Laws. The last time these Laws were amended was in 2003. The Criminal code and Criminal procedure law of BiH were enacted thanks to the High Representative. The Entity Laws needed to be harmonised with the two Codes. This was done with great difficulty, although now BiH finally has a unified and harmonised criminal legislation. Therefore, the same instruments for the fight against crime and, consequently, corruption are available to all police forces and prosecutor's offices.

- **Is the law applied?**

PARTLY – The new Criminal code and Criminal procedure law have only been in effect for a short time, which prevents a proper assessment of their application.

- **Is private-to private corruption punishable by law?**

NO

- **Is the law applied?**

NOT APPLICABLE

- **How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?**

NOT AVAILABLE – Due to lack of available statistical indicators on corruption offences in the prosecutor's offices.

Public Procurement

- **Do rules for public procurement require competitive bidding for all major procurements, with limited exceptions?**

Federation of BiH

YES – According to the Regulation on the procedure for procurement of goods, performance of services and contracting (Official Gazette of FBiH, No. 40 of 14 August 2003), all major procurements require competitive bidding.

Republika Srpska

YES – In RS the field of public procurement is governed by the Law on procedure for procurement of goods, performance of services and contracting (Official Gazette of RS, No. 20 of 18 May 2001), according to which all major procurements require competitive bidding.

- **Are the rules laid down in documents publicly accessible?**

PARTIALY – According to regulations and the Law, the rules laid down in documents are publicly accessible only in cases where public procurement is conducted by method of open bidding and partially accessible in cases where pre-bidding is conducted.

In the case of open bidding, the invitation to bid is published in the Official Gazette of FBiH, in one of daily or weekly newspapers of FBiH or in foreign newspapers in the case of an international open bid, and online (FBiH website). In RS the bid is publicised in the Official Gazette, in RS newspapers or in the special international information newsletter.

The rules of open bidding are included with the invitation to bid. In both Entities the following information must also be made public:

- Contents of the bidding documentation,
- Documentation that proves eligibility of the bidders,
- The manner of marking and submission of bids,
- Time and place for submission of bids,
- Criteria for selection (this usually includes: the offered price, delivery terms, quality of goods, works or services, payment method, availability of service and technical support),⁸⁶
- Time and place for public opening of the bids.

The rules that apply to pre-bidding procedure, in terms of the criteria used for selection of qualified bidders, are made publicly accessible by means of an invitation to pre-bidding which is published in the same way as the invitation to open bidding.

In all other methods of public procurement, in both Entities, the rules laid down in documents are known only to the bidders to whom these documents are sent, and they are not publicly accessible.

- **Are there strict formal requirements that limit the extent of sole sourcing?**

YES – In both Entities there are requirements that limit the extent when sole source or direct negotiation methods are used. This method can be used in procurement of goods, contracting or performance of services by one bidder only for amounts that do not exceed KM 15,000.

This formal provision is strictly implemented in practice. Approval for this procurement method is given by the relevant authorities (ministries) for each individual case. The same applies to both Entities.

- **Are all major public procurements widely advertised to the private sector?**

YES – On the basis of the regulations which require that the information be published in the certain media (mentioned above) and bearing in mind that these rules are fairly implemented in practice, it is fair to say that the private sector in both Entities is widely informed about major public procurements.

There are certain limitations in practice regarding availability of the media of one Entity in the other. Therefore, the possibility of the private sector from one Entity to participate in public procurements in the other Entity is somewhat limited.

- **Are procurement decisions made public?**

NO – After the decision on the best bidder is made, the customer is legally bound to notify the successful bidder within 24 hours. Within the following 24 hours the customer is legally bound to notify all other bid participants of the decision.

There is no formal provision requiring the decision to be made public.

This applies to both Entities. These formal provisions are implemented fairly in practice.

- **Is there a procedure to request review of procurement decisions?**

Federation of BiH

YES – Bid participants are allowed to file a complaint to the relevant ministry within 8 days of receipt of the selection decision notification. The complaint suspends the completion of the procurement contract. In fact, the complaint is filed directly to the customer, who can either dismiss it or change his or her selection decision. Should the customer decide to stick to his or her initial decision, it is bound to submit the complaint along with complete accompanying

documentation to the relevant ministry, which will then issue a second-instance decision within 30 days.

Republika Srpska

YES – According to the Law, the bidder who participated in a bidding procedure is allowed to file a written complaint to the customer and to send a copy of the complaint to the relevant municipal authority or the Ministry of Finance, depending of the level of procurement, within three days of receipt of the selection decision notification.

The complaint suspends the conclusion of the procurement contract.

The customer is bound to reply to the complaint within 8 days. If the customer decides to accept the complaint, he or she must eliminate irregularities. He or she must notify the relevant municipal authorities or the Ministry of Finance of any such change.

Should the customer reject the complaint, the bidder is allowed to file a complaint to the Ministry of Finance. The complaint suspends the completion of the procurement contract. The Ministry is bound to issue a decision on the complaint within 15 days following the day when the complaint was received.

The prescribed procedure is implemented fairly in both Entities. Relevant authorities make decisions within their jurisdiction and responsibility. However, the percentage of decisions challenged remains significantly low.

- **Can an unfavourable decision be reviewed in a court of law?**

Federation of BiH

YES – According to regulations, it is possible for a bidder who is dissatisfied with the decision of the relevant ministry, in regards to his or her complaint, to initiate an administrative procedure with the competent court.

There is no record of administrative procedures initiated in practice so far.

Republika Srpska

YES – According to the Law, a bidder who is dissatisfied with the decision of the Ministry of Finance can initiate an administrative procedure with the competent court.

According to the Ministry of Finance, which is the controlling body for public procurement procedures in the whole of RS, there is no record of any such complaint having been filed with the court in 2003.

- **Are there provisions for blacklisting of companies proved to have bribed in a procurement process?**

NO – Neither the Procurement regulation of FBiH nor the Procurement law of RS contains provisions for 'blacklisting' companies proven to have bribed in a procurement process⁸⁷.

- **Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?**

Federation of BiH

PARTLY – The provisions on nepotism/conflict of interest appear in the regulation in two ways:

- the first type of provision applies to bidders and specifies that they cannot participate in open bidding if:
 - a) the responsible persons of the bidding party are blood relatives of closer than second degree kinship to a responsible person of the customer party, including the customer's legal representative or any other responsible person, or if they are bonded by adoption or guardianship;
 - b) a bidder is an individual who has held a responsible position with the customer within the last three years.
- the second type of provision applies to customers and aims to prevent conflicts of interest when members of the commission for opening and accepting bids are appointed. According to these provisions, members of the commission cannot be:
 - a) economically associated, as director, deputy director, president or a member of the managing or supervising board of the customer;
 - b) in an administrative authority, legal entity with more than 50% state-owned capital or other authority or institution, as a manager, deputy manager of an administrative authority, director, president or member of the managing or supervising board of the customer.

In practice these provisions are partially implemented. Sometimes the implementation of these provisions is purposefully avoided.

Republika Srpska

PARTLY – The RS Law contains similar provisions.

The following bidders are excluded from open bidding:

- individual persons who are blood relatives of closer than second degree kinship to a responsible person or an officer employed by the customer, or if they are bonded by adoption or guardianship;
- individual persons who have worked in responsible positions with the customer within the last two years.

As for conflict of interest on the customer's part, members of the commission for opening and accepting bids cannot be appointed from among managers or deputy managers of administrative authorities, or, in case the customer is a public enterprise, from among directors or the president of the managing board.

In both Entities the provisions for prevention of conflict of interest when members of commissions are appointed are implemented fairly. The provisions that exclude bidders on the grounds of nepotism or conflict of interest are very difficult to implement because they are too wide and can be differently interpreted. Nepotism or conflict of interest on the part of the customer certainly exists, but it is formally concealed in a variety of ways.

- **Are assets, incomes and life styles of public procurement officers monitored?**

NO – There are no formal provisions in either Entity with respect to monitoring of incomes and living standards of public procurement officers.

Ombudspersons

- **Is there an Ombudsman or its equivalent (e.g. an independent body to which citizens can make complaints about maladministration)?**

YES – The Ombudsman for Human Rights of BiH was established in February 1996 in accordance with the Dayton Peace Accord. The institution was established with the aim of promoting good governance and the rule of law, protection of rights and freedoms of individual persons and legal entities, as enshrined in the Constitution of BiH.

The Ombudsman for Human Rights of BiH has the authority to examine cases involving malfunction and violation of human rights by any State or Entity governmental institution in the country. He or she examines cases of cumbersome and discriminatory bureaucracy, and poor administration in any governmental authority.

The institution was given a new legal basis for its work in January 2001, when the Law on Ombudsman for Human Rights of BiH was enacted.

The first Ombudsman for Human Rights of BiH was a foreign citizen, appointed on 20 January 1995 by the OSCE Mission to BiH. As of 1 January 2004 the position was passed on to three Ombudsmen, citizens of BiH, who were appointed by the Parliament of BiH. The institution of the Ombudsman of BiH was established by the Constitution of BiH, which makes provisions for three Ombudsmen for the territory of FBiH.

The three Ombudsmen, each representing one of the three constitutive peoples in BiH, were appointed for the first time by the Parliament of FBiH in 2002 (at the 28 May 2002 session of the House of Peoples and the 30 July 2002 session of the House of Representatives).

For reasons of territorial coverage, the FBiH Ombudsman opened their offices in six different towns and appointed deputies.

The Law on FBiH Ombudsman gave full authority to the Ombudsman to act as an independent, public, parliamentary institution established with the aim of protecting human dignity, rights and freedoms at the level of FBiH, as well as at the cantonal and municipal levels.

The Ombudsman of RS is an independent institution with the broad authority to examine the legality of actions of public administration in RS. On 9 February 2002 the National Assembly of RS appointed three Ombudsmen - one from among each of the three constitutive peoples in BiH. The institution's work is focused on resolving individual citizen's complaints in connection with the way they have been treated by administrative or judicial authorities. The institution also submits special reports to relevant governmental representatives. These reports highlight existing problems and recommend solutions.

The experience in practice so far has shown that this institution has gained a great degree of citizen confidence and managed to become an essential mechanism for controlling the performance of governmental authorities in the protection of fundamental human rights and freedoms of citizens.

- **Is the Ombudsman independent?**

YES – Both by law and in practice.

- **Are appointments required to be based on merit?**

PARTLY – Appointments of the Ombudsman are based on merit and they cannot be removed from office without relevant justification.

Any person having full civil and political rights, who has a proven experience in the field of human rights and a widely recognised high ethical standard can be appointed Ombudsman. However, over the last several months there has been some criticism in the media in connection with the attempts of certain leading political parties to influence the appointment of the Ombudsman at the State level. Conditioning the post by working experience in law and duration of the Ombudsman's mandate in parallel to that of the parliament, adds suspicions to the integrity of the selected individuals.

The process of appointment of Ombudsman and their deputies is not clear or transparent to citizens.

- **Is the appointee protected from removal without relevant justification?**

YES – No Ombudsman can be removed from office without relevant justification.

The Ombudsmen are independent in carrying out their functions and no governmental authority may interfere with such functions.

The Ombudsman for Human Rights of BiH and his or her family enjoy the same prerogatives and immunity as the ambassadors who head missions to other states, in accordance with the Vienna Convention on Diplomatic Relations. The staff of the Office of the Ombudsman for Human Rights cannot be apprehended, taken into custody, subjected to investigation or prosecution, nor can they be tried for any action undertaken, opinion expressed or decision made in carrying out their duties in accordance with the Ombudsman's instructions.

- **Has an Ombudsman been removed without relevant justification in the last five years?**

NO – No Ombudsman has been removed from office since the institution was established.

- **Can petitioners complain anonymously if they fear possible reprisals?**

NO – Every individual person or legal entity is entitled to lodge a complaint with the Ombudsman for Human Rights of BiH. The complaint lodged in such a manner or the resultant intervention of the Ombudsman cannot legally entail criminal, disciplinary or any other sanctions against the petitioner, nor can it result in any harassment or discrimination of the petitioner. Correspondence sent to the Ombudsman from persons in custody or imprisoned cannot be subject to censorship, nor can such correspondence be opened. Conversations between the petitioner and the Ombudsman or the Ombudsman's designate can never legally be monitored or interfered with.

The Ombudsman for Human Rights of BiH may refuse to consider anonymous complaints, complaints that he or she finds ill-intentioned or unfounded, or those that are lodged more than 12 months after the facts, events or decisions that are the subject of the complaint. If the Ombudsman declines to consider a complaint for some other reason, he or she can forward the case to the Entity Ombudsman or refer the petitioner to the most adequate means of initiating an action, if such means are available, with the petitioner free to use the means they find most appropriate. When the Ombudsman finds that there are sufficient grounds for launching an investigation, he or she will give due notification to the governmental authority or officials in question and will request a written statement before the prescribed deadline

Every citizen of FBiH and RS in possession of well-founded allegations is entitled to lodge a complaint with the Ombudsman office without restriction. However, one cannot lodge an anonymous complaint with the Entity Ombudsman. The complaint requires the signature of the petitioner and the individual's personal data.

Legal entities, institutions and other legal authorities are also entitled to lodge a complaint. In every case, the Ombudsman will take any necessary steps to resolve any maladministration or violation of rights.

If Ombudsman offices are not able to conduct an investigation requested by a petitioner, they will do everything in their power to advise the petitioner on how to lodge the complaint with another relevant authority or institution.

- **Are reports of the Ombudsman published?**

YES – Every year the institution of the Ombudsman for Human Rights of BiH is bound to present the results of its activities to the Presidency of BiH, the House of Representatives and the House of Peoples of BiH. These reports are publicly accessible through the web site of the institution. In addition, the Ombudsman produces special reports when public importance or urgency dictates.

The Ombudsman of FBiH presents an annual report to the Prime Minister and the Deputy Prime Minister, all Presidents of the cantons and the OSCE. In accordance with constitutional and legal provisions, the Ombudsman submitted special reports to the relevant FBiH and international authorities when they found cases of massive violation of human rights of citizens. Each special report provides the relevant authority with specific recommendations as to what measures the

authorities need to implement in order to eliminate the violations detailed in the report and ensure the rights of citizens.

During 2002, the Ombudsman of FBiH submitted special reports and recommendations to the relevant authorities. All special reports and recommendations were considered by the relevant authorities. Of the total of 41 special reports and recommendations submitted in 2002, 26 (63.5%) have been accepted, 8 were refused, and in 6 cases the deadline for submission of reports has not expired. In RS, annual reports of the Ombudsman are submitted to the National Assembly. Annual and special reports of all the Ombudsmen are public documents and they are available on the website.

The Ombudsman often informs the public of their activities through the media, thereby exerting pressure on governmental authorities and state administration with the aim of improving the human rights situation in the country. Their reports are also publicly available at the Ombudsman website: www.ohro.ba.

• **Does the government act on the Ombudsman's recommendations?**

PARTLY – The governmental institutions of the State and the Entities are bound by law to cooperate with the Ombudsman. Co-operation of the governmental bodies in communication with the Ombudsman in FBiH is unsatisfactory because of their failure to implement the Ombudsman's findings and recommendations, although there has been a slight increase in the number of positive responses during the course of 2003.

The percentage of cases and written requests from the Ombudsman that the authorities failed to respond to is an astonishing 34.8 %. In addition, certain officials were indifferent or silent whenever the Ombudsman attempted to establish communication and access documents in connection with the submitted complaints. Officials often protect the interests of the political parties that appointed them.

The fact is that the Ombudsman's requests submitted to relevant senior officials, in a bid for concrete resolutions, have not yielded any results. Instead of being punished for such conduct, officials are often protected by politicians. Officials ignore the Ombudsman recommendations wilfully.

When the Ombudsman identifies inefficiency, he or she tries to facilitate cooperation by means of written communication with the relevant institutions, containing recommendations, opinions, suggestions and reports, and requesting a rapid response. To this end, the Ombudsman arranges meetings with managers of the relevant institutions and senior state officials.

In any case, when a public official repeatedly ignores the Ombudsman's requests, that official's reappointment to a public function should be precluded by law.

Investigative/Watchdog Agencies

- **Are there special investigative or watchdog agencies?**

YES – When considering the investigative or watchdog agencies in BiH, it is important to note that these are governmental agencies (within the formal power system). In BiH, however, they operate to a very limited extent and have found substitutes in the international agencies and, to a much lesser extent, local and international non-governmental organisations focused on monitoring government efficiency with regard to the delivery of public services and practices in the field of legislature.

- **What are their main responsibilities:**

- **Investigation**
- **Prevention**
- **Education & Awareness**
- **Prosecution**

PARTLY – This is true in case of the OHR's anti-crime and corruption unit (ACCU) that is tasked with investigation of those criminal charges that are deemed too 'complex' for the national judiciary. This can be understood both as a lack of faith in an independent judiciary, as the outcome of investigation may be influenced by those affected. The other explanation is a simple lack of institutional capacities to investigate large criminal activities. In either case, the strategy of the OHR must be seen as transitional and their role as limited in the context of strengthening the investigative capacities of BiH. The same applies to prosecution as an institutional responsibility.

Prevention, education and awareness raising is primarily a result of their current activities. However, the ACCU has been very opaque in their activities and so their capacities and their *modus operandi* remain largely unknown. Therefore, strengthening their educational role and the transfer of their know-how to national independent authorities are an imperative for the OHR in the short to medium-run.

Other than that, the Entity governments have attempted to set up anti-corruption teams led by high-ranking politicians (with attempts by the former Entity Prime Ministers in 1999 and similar attempts by the former Vice President of RS in 2001). These agencies never managed to establish themselves as independent of political influence and as genuine anti-corruption watchdogs, therefore paving the way for a greater influence of the OHR in that area.

- **Are they independent?**

NO – Both governmental and international community investigative or watchdog agencies are formally independent in their actions. In practice, however, this independence is not demonstrated to a degree that varies between agencies.

Governmental agencies still may still be under a certain influence, given the manner of appointment in governmental agencies, which, besides professional knowledge, unfortunately also implies a certain level of political compromise, and is not always clear and transparent. The reporting process of governmental investigative agencies, where reports are technically submitted directly to the governments and parliaments never fully materialised. The government agencies have had an incredibly limited life span and have proved totally inefficient, incapable of handling corruption and, thus, ultimately impotent.

The international community's watchdogs on the contrary are less influenced by the country's day-to-day politics. The efforts of foreign and military intelligence services in investigating organised crime appear to be independent of the OHR, although at some higher level their work may be coordinated. Sometimes, investigative and prosecutorial activities may link to another political issue, such as the alleged war criminals network financing, which may affect the priority of activities. Yet overall, despite lacking a certain transparency and with little accountability to the national integrity system, their work is largely independent.

- **Are appointments required to be based on merit? Are appointments generally based on merit?**

NO – In practice, certain appointments to the government investigative agencies have been subject to political negotiations eventually leading to their dissolution. The OHR's appointments to the ACCU are neither transparent nor accountable, although it is taken for granted that the individuals employed there observe the same code of conduct as all other OHR employees. The NGO-rooted watchdogs operate as any other civil society organisations and not always are appointments merit-based.

- **Are the appointees protected from removal without relevant justification?**

UNKNOWN

- **Are their reports published (other than when criminal charges are pending)?**

PARTLY – The reports, when produced by the investigative/watchdog agencies, are given a lot of publicity in the media. Journalists with special interests conduct their own additional investigation of allegations contained in the reports. This publicity is an indicator of the current overall interest in combating corruption as well as the scarcity of quality information on the topic.

The final reports of investigative and watchdog organisations are not always made publicly accessible. However, it is important that the public is kept informed of the investigative agency's current activities, particularly the ACCU, as their reports often remain confidential pending a full investigation, which can take years (such as the infamous delay in processing the "Hercegovačka Banka" case). And although it preserves the independence of their reports, the secrecy that surrounds the ACCU's investigation generates a lot of public scepticism.

- **Do they report publicly to the legislature on the general scope of their work?**

NO – The ACCU ultimately make their reports publicly accessible (except in cases when criminal charges have not been resolved, which can take a long time), though they are not intended directly for legislature's consideration.

There is a legal obligation for governmental agencies to report to the legislature on both individual activities undertaken and the general scope of their work. The ACCU is perhaps most secretive about scope of their work and it is generally difficult to find publicly accessible details, except when cases have long been closed. They certainly do not report to the official authorities in the country, except for a limited co-ordination with the prosecution and the Court of BiH.

- **Can people complain to the agency without fear of recrimination?**

PARTLY – Formally speaking, citizens may complain to the agencies without fear of recrimination and a certain number of citizens do complain. The findings of our survey point to several facts in connection with citizens' complaints:

- Very few citizens choose to contact investigative agencies,
- Of those who did choose to contact investigative/watchdog agencies, very few wished to reveal their identity.

Analysing this situation, one can conclude that, regardless of the statutory right to protection of identity, citizens still do not believe that the watchdog agencies would be able or willing to protect these rights if faced with powerful officials or organisations. Another conclusion is that there is a certain degree of apathy or scepticism about whether individuals can really make a difference, so they remain aloof instead and choose not to get involved. This somewhat limited trust of the public certainly affects the quality and extent of cooperation between citizens and watchdog agencies and reduces the efficiency of these agencies.

No complaints by politicians to the ACCU will defer or reverse the decision of the High Representative on the political removal of an individual. As soon as the OHR deems it appropriate, the decisions on removal are published and the individual is dismissed with few options for complaint. The process is being questioned in many national and international reports as indicated in the main body of this Report.

Media

- **Is there a law guaranteeing freedom of speech and of the press?**

YES – Article 3 of the Constitution of BiH guarantees the highest level of internationally recognised human rights and fundamental freedoms, which also includes freedom of thought and freedom of expression. Freedom of expression is also guaranteed to all BiH citizens in Article 10 of the European Convention for the Protection of Human Rights, which was also signed by BiH.

Additional legislation was adopted on 23 October 2000, when the BiH Council of Ministers adopted the draft Freedom of information act. This was the first such law adopted in one of the republics of the former Yugoslavia. According to this Law, every citizen has a right to access information in the control of public authorities. The Law was developed by the OSCE, with the help of the Office of the High Representative as well as local and international legal experts.

The State legal system is responsible for the implementation of these laws, while CRA has a special role in granting or denying licences for electronic media in BiH. The CRA's role in complete regulation of the media in BiH is becoming more and more important every year. So today, this regulatory body monitors implementation of the Law on Communications, which also includes the monitoring of the right to freedom of expression.

Additional laws at the level of Entities also have influence on regulation of freedom of speech in BiH. So, for instance, the Law on Libel and Slander, which contained a stipulation from former Yugoslav law that libel is considered a criminal act and made provisions for punishment by imprisonment for several months or even several years, has been upgraded by the Freedom of information act, according to which the right to freedom of expression protects "...the contents of expression, as well as the writing style, and refers not only to cases in which comments are positive or inoffensive, but also to those that can be offensive, shocking or upsetting." This Law gives supreme importance to freedom of speech, which opened the way for a number of questionable and untrue press articles that caused damage to certain persons in terms of their reputation and position in society. It is because of these cases that the international community in BiH ordered that a press council should be established, which would act as a self-regulatory body for protection of professional standards in journalism.⁸⁸ The Press Council, however, does not have jurisdiction over the licensing of the print media, nor does it have authority to invoke sanctions against them. It has at its disposal exclusively journalistic tools such as the right to reply and publication of correction, apology or denial.

- **Is there censorship of the media?**

NO – According to the latest report of the American organisation Freedom House, which issues a barometer of freedom of the media in different parts of the world on a regular basis, BiH is ranked 37th of the total of 166 countries covered by the barometer. It fares better than its neighbours

Croatia (ranked 69th) and Serbia & Montenegro (ranked 85th). Such a good rating is due to the fact that direct censorship practically does not exist, while other types of pressure on the media are more frequent.

Apart from some rare cases of direct censorship, the media are very often exposed to a special type of pressure aimed at keeping certain information from the public. So, for instance, the 1999 BiH Report of an American organisation for freedom of the media stated that public authorities in Gradačac had allegedly asked journalists to submit their articles for inspection before they were published.

- **Is there a spread of media ownership?**

YES – At the moment there are 41 television stations and 142 radio stations in BiH. Although this number is large for such a small market, there is no significant concentration of media ownership as yet. *OBN (Open Broadcast Network)*, the only commercial broadcast network covering the whole territory of BiH, is owned by a few shareholders, mostly from foreign countries. *Federal television* and *Republika Srpska television* operate within the BiH Public Broadcasting Service. They are funded by advertising and television taxes, and are therefore considered independent. The fourth strongest television station is *Mreža (Network)*, which is, in fact, a joint project of the owners of several smaller television and radio stations in BiH.

The fact that there is no significant concentration of media ownership in BiH was reiterated at the recent Council of Europe/BiH Communications Regulatory Agency Conference. Presented at the conference were the results of the CRA's survey on the spread of media ownership (and legal provisions in connection with political parties, religious groups, etc.), as well as on the issue of foreign media ownership and mixed media ownership. Based on these results the conclusion of the conference was that there is no great concentration of media ownership.

However, BiH, as a member of the Council of Europe, is expected to adopt legislation designed to prevent concentration of media ownership that might affect pluralism at any point in the future. Regulators of broadcast and print media in all member countries of the Council of Europe are expected to adjust their respective legislation to these rules as soon as possible. In late 2003, BiH adopted the rules according to which any merging between broadcast media covering whole Entities and/or the whole State is forbidden. Cross-ownership (i.e. ownership of a combination of broadcast and print media by one subject) is also forbidden. One person or firm can own only one television and one radio station for the audience segment it covers. Such a move on the part of CRA is justified in public with the wish to avoid a damaging concentration of media ownership, which would most affect smaller communities in BiH.

Financial needs often lead to a degree of professional dependence, and so many broadcast and print media outlets are known to have close ties to certain international community sources (US, OHR), political parties (SDA, SDS, HDZ, SNSD etc.) or, less frequently, businesses.

- **Do any publicly owned media regularly cover the views of government critics?**

YES – Being a public channel, *Radiotelevizija Federacije BiH* (FTV – Broadcasting Service of FBiH) regularly covers the views of government critics. So, for instance, the very popular show “60 minuta” broadcasts views of well-known opposition politicians and others who participate in the political life of the country and has uncovered numerous affairs in the current government. One of these affairs was connected with the privatisation of several firms in the Zenica-Doboj Canton. Mr. Nedžad Polić, Governor of the canton, was allegedly linked with shady dealings in the privatisation process.⁸⁹

- **Have journalists investigating cases of corruption been physically harmed in the last five years?**

PARTLY – Since 1998 there have been a number of physical assaults on journalists investigating cases of corruption. So, for instance, on 3 November 1999 Mr. Mirko Stojčinović, Mayor of Doboj, physically assaulted Mr. Mirko Srdić, a journalist of the Belgrade-based news agency *Beta*, threatening to kill him. The incident took place after Mr. Srdić published an article on corruption in Doboj, mentioning the mayor in a negative context.

In April 2000, Mr. Adi Hadžiarapović, journalist of the Sarajevo-based daily *Dnevni Avaz*, was physically attacked by the driver of the then Prime Minister of the Federation of BiH, Mr. Edhem Bičakčić, allegedly because of some critical articles the journalist wrote about the Prime Minister.

In May 2000, two Croatian journalists of the Rijeka-based daily *Novi list* were allegedly physically assaulted by two unknown persons because they had reportedly been writing articles on links between politics and crime in Herzegovina.

It is also worrying that in May 2000 the then Prime Minister of RS, Mr. Milorad Dodik, invited all “patriots” in his interview with the Belgrade daily *Blic* (BiH edition) to settle accounts with the editors and journalists of the weekly *Reporter*, because of the articles on corruption which were published in that newspaper.

It would be worth mentioning here the statistics of the OSCE’s journalist help-line, which registered 132 assaults on journalists through 2000, 49 of which (35.5%) were carried out by state authorities and public institutions.⁹⁰

- **Do the media carry articles on corruption?**

YES – A great number of dailies and weeklies regularly uncover corruption affairs at all levels of power. So, for instance, the weekly magazines *BH Dani*, *Slobodna Bosna* from Sarajevo and the Banja Luka-based *Reporter* are commendable for uncovering some of the greatest illegal dealings in FBiH and RS. At the same time, FTV’s programme “60 minuta” is one of the best examples of the determination of certain journalists to expose corruption and other affairs. However, public prosecutors rarely launch investigations based on such articles.

Two examples are presented below:

In the case of Zlatko Lagumdžija, former Chairman of the Council of Ministers and ex-Foreign minister, the BiH daily, *Dnevni Avaz*, undertook an investigation of an alleged conflict of interest that resulted in profits extracted from the "BiH Telecom". Lagumdžija then sued *Dnevni Avaz* and won the case with a verdict prohibiting *Dnevni Avaz* from writing articles about Lagumdžija in the future and demanding a penalty of KM 10,000. In a similar case, the general manager of the "Sarajevo Tobacco Factory" sued *Dnevni Avaz*. However, such articles are being published under remarkable circumstances with consequent lost court cases. Newspapers like *Dnevni Avaz*, or *Nezavisne Novine* of Banja Luka only target certain individuals and the corruption-related articles are being written when any given individual is being targeted by the financiers of the media, or if a racket is to be collected from firms (in the form of expensive adverts published in such media) in order to prevent their dirty laundry from coming out.

Another interesting case is the wire-tapping of high-level politicians pending a court hearing. *Dnevni Avaz* published transcripts of conversations of the former director of the FBiH Intelligence Agency (FOSS) on a daily basis. Other media questioned the sources of the transcripts and how *Dnevni Avaz* managed to get a hold of them. Eventually, the Parliamentary Assembly of BiH formed an investigative committee focussing on the legality of FOSS' activities but also on the channels used to disseminate information to *Dnevni Avaz*. The saga is not finished yet.

- **Do media licensing authorities use transparent, independent and competitive criteria and procedures?**

YES – CRA's *modus operandi* is that of transparency rules and procedures set out in its rulebook, available publicly. More details are given in the main body of this report. These rules have introduced more order in the media market(s) of BiH, but have also reduced the number of media outlets.

- **Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?**

NO – As said in the first part of the analysis, the Law on Libel was further upgraded with the Freedom of information act. This Law ensures greater freedom of expression for journalists.

However, it is also important to mention that there are other ways of preventing articles on corruption from being published. In August 1999, the Editor-in-chief of the Sarajevo-based weekly *Slobodna Bosna*, Mr. Senad Avdić, was taken into custody by the police. The police justified the detention by insisting that Mr. Avdić be present at the court hearing in a lawsuit filed against *Slobodna Bosna* on charges of libel. Just a few issues before, *Slobodna Bosna* had published an article accusing a politician of corruption.

Civil Society

- **Does the public have access to information and documents from public authorities?**

YES – In both Entities of BiH and at the State level there are Freedom of information acts. These Acts define how citizens obtain access to information and what the officials' responsibilities are in this respect.

Although the Laws have been in effect for several years, this survey found that very few citizens know of their existence or of their own rights stemming from the Laws. The result is that very few citizens exercise their right to access information on the government's performance. This right is occasionally exercised by journalists but the results of their efforts vary widely.

The survey revealed a very low level of awareness on this Law even among officials, who tend to undervalue this civil right and its ultimate outcomes, instead of encouraging citizens and civil groups to develop an interest in this feature. Public officials generally see these requests as a threat to their position or political power, so it usually takes a very long time to process a submitted request and the answers given are very broad. These tendencies strengthen the mistrust of citizens in these and similar processes, which has a chilling effect on the development of civil society in BiH.

If one considers that the Law was meant to give the public a better insight into the performance of elected officials (with the exception of matters of national security), it becomes evident that its purpose has only partially been fulfilled. The Law exists merely to meet the legal form. It is obvious that there is a need to put extra effort into the promotion of the Law and its purpose as well as in educating citizens and public officials in this field.

- **Do the public authorities generally co-operate with society groups?**

YES – The Law provides general definitions governing the cooperation of public authorities with civil society groups and emphasises the obligation of public officials to cooperate with the public. Legally speaking, public authorities generally cooperate with different civil-society groups on issues that are mostly connected with the final implementation of certain decisions and rarely in the field of prioritisation or decision-making.

- **Are there citizen's groups or business groups campaigning against corruption?**

YES – It should be noted that in this field there are no formal obstacles to launching various campaigns, including campaigns against corruption. But in actuality there are only sporadic and disconnected anti-corruption actions by certain groups rather than real campaigns. Such efforts have a very limited duration and effect.

This situation is undoubtedly connected with the lack of a clearly demonstrated anti-corruption priority on the part of the public authorities. Our emphasis is on 'demonstrating' because currently there is a lot of talk on the issue, a lot of announcements of various anti-corruption plans and initiatives, but at the same time, very few specific actions taken with the aim of eradicating the corruption that has spread across all layers of society.

Clear demonstration of the fight against corruption would bring about desired changes in society. The public would support such changes and recognise them as a genuine effort on the part of the public authorities. However, due to lack of serious anti-corruption efforts on the part of public authorities, citizens do not generally see any perspective for their campaigning efforts, or for any other organised form of action.

To date the only anti-corruption NGO in the country with its sole focus on good governance, the fight against corruption and the promotion of transparency and accountability in society, remains TI BiH. It has been involved in scores of anti-corruption campaigns, corruption monitoring, assistance in drafting and amending critical laws, educating civil servants and the public, whistle-blowing, co-operation with other NGOs, and training of investigative journalists. This has been achieved with fair success and the visibility and popularity of the NGO has been on the rise continuously.

In terms of business associations and the commercial sector, they are often happy to conform to the corrupt system and profit from it, rather than launch or support anti-corruption campaigns that might bring them more frequent audits or have other more serious impacts on their business.

The main reason for such an attitude is inadequate cooperation between small and medium-sized private businesses, which makes them feel powerless and unable to bring about changes. As for large businesses, they are closely connected with the authorities (public authorities have either a significant share in or a major ownership of most large firms), so they are unwilling to undertake any initiatives without their cooperation. Weak and unstable private business associations have recently managed to break with that negative trend and begun to broadcast sensible messages, promoting market values, struggling for a favourable business environment, and a reduction in administrative barriers. These attempts have triggered some popular attention and support, yet much remains to be done in strengthening their own structures to empower them to deal with critical anti-corruption issues in the business sector.

- **Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?**

YES – In answering this question, it is necessary to make a distinction between the legislature (assemblies, parliaments, and the municipal councils) and the executive authorities. This is because positive legislation allows the citizens, if they follow the prescribed procedure, to be present at the parliamentary sessions, which certain citizen's groups do make use of. These groups perform basic monitoring of the parliament's performance (manner and efficiency of work, decision making processes, etc.) and report on this to the public or to users of their services, most

often to both. This practice is a form of monitoring the legislature's performance. As for the formal monitoring of the executive authorities' performance, the public is not allowed to be present at government sessions, but it is informed of the topics covered at the session through press conferences.

The other form of monitoring the authorities' performance (both legislature and executive) is the less formal but no less important process of monitoring the results or effects of their work, i.e. the decisions made. There is no legislation on these activities, which are usually undertaken at the initiative of certain individuals or groups with a concrete interest, who want to see for themselves that the government is meeting its contractual or legal obligations. The groups and organisations active in this field are usually those that have a direct interest in concrete issues (e.g. trade unions in connection with the general agreement and obligations stemming from it, as well as other beneficiaries of budgetary funds).

The cases described above represent a certain class who are more interested in the level of budgetary funds they will get than in the quality of the decision-making process. The initiatives mentioned are definitely important because they bring the authorities back to reality by being confronted with continuous requests for more funds. However, it is important to note that there is a lack of organisations or citizen's groups monitoring the authorities' performance in terms of prescribed procedure and the quality of solutions offered.

To sum up, there is a certain level of monitoring of the government's performance, but it is currently focused on financial end results than on qualitative analysis, with an eye to improvement and the adoption of better management solutions, that is articulated long-term processes which will lead to increased efficiency of the government's performance and reduction of corruption.

- **Do citizen's groups regularly make submissions to the legislature on proposed legislation?**

YES – The legislation makes provisions for participation of the public in consultations on the adoption of various laws or decisions. The citizens' groups or individuals have room to work on improving the proposed laws during the work of commissions or working bodies or during public debates organised by the authorities or commissions with the aim of eliciting the public's comments on certain proposals. In practice, however, that right is not being exercised all too often, although it has been happening more regularly lately, as evidence at the municipal level suggests. At higher levels of government, the practice is very rare.

- **Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?**

PARTLY – The formal education system in both Entities does not pay attention to raising awareness of the need for anti-corruption measures. However, corruption issues are getting more important and are receiving special treatment in the BiH society. In addition, the reform of the education system is under way in both Entities, so certain segments of the future education system will deal with the phenomenon of corruption.

Apart from the formal education system, also of note are occasional public actions aimed at reducing corruption and educating citizens on the topic. In the recent past, pressed by the international agencies, authorities have launched several actions to call attention to increased corruption and its consequences for citizens, as well as to invite citizens to cooperate by refraining from giving bribes in addition to merely reporting cases of corruption. The existence of these activities is a very positive thing that shows a clear educational purpose. However, the real effects of such campaigns remain limited. Citizens are asked to refrain from offering bribes, but with an implication that they must give up certain services or be prepared for them to become more complex and time-consuming.

Since these activities do not follow government reforms, which would match the citizens' efforts and contribute to medium-term progress, they have not managed to achieve any tangible results. Yet, if progress in the eradication of corruption is to be achieved, then education as a tool for anti-corruption combat should be coordinated with concrete anti-corruption activities taking place in other pillars of society.

Bearing in mind the different types of civil society action in BiH described here, there is a big difference between legal provisions and the real situation in almost all areas of possible civil actions analysed here. In almost all cases there are legal possibilities, or at least no legal obstacles for the implementation of certain activities. However, the actual situation is that citizen's groups very rarely participate in decision-making processes.

The existence of satisfactory formal provisions is a good sign that officials are putting co-operation with civil society on the agenda. But the imprecision of most laws and the failure of citizens and citizen's groups to exercise their rights is an indicator of low interest on the part of the officials to promote cooperation with the public.

Regional and Local Government

- **Is there a legal requirement that meetings of city/town councils be open to the press and public?**

YES – The activities of all local authorities are open to the public, and the Freedom of information act applies to all local government offices.

- **Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?**

YES – According to the Constitution, all meetings are open, and so far there have been no complaints in this respect.

All cantons have their own respective constitutions and each municipality has its own statute, which restricts non-transparent work of local administration. The practice so far shows that most sessions have indeed been open to the public and there have been no objections to the possibility of civil society overseeing the work of local administration bodies.

However, there have been objections by the parliamentarians when the Federal TV did not broadcast sessions of the Entity Parliament. This may have more to do with self-promotion, than a genuine desire to increase transparency of the parliamentary work.

- **Do national agencies with a remit to deal with corruption (anticorruption agencies, Ombudsmen, Supreme Audit Institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?**

PARTLY – Ombudsman offices exist on Entity and State levels, and the Election Commission covers local needs, but from the State level only, formally also covering the regional/local level. Supreme Audit cannot yet effectively cover the activities of the local government, although if ordered by the Entity Parliaments, they could be engaged in auditing at that level. Since they still have not introduced the treasury system into local budgeting, one would expect some instances of serious misuse of public funds by local governments. The process of transitioning to the treasury system is expected to speed up in the course of 2005.

Government Anti-Corruption Strategy

Introduction

While all levels of the government have been discussing the need to adopt an anti-corruption strategy, very little actual will was behind such actions. Therefore, no actual strategy was ever adopted at any level of the government. The joint institutions of BiH have attempted to come up with a list of laws and institutions that are required for an effective anti-corruption fight, and with an immense support and pressure from the international community that list was adopted by the executive and legislature in 2000. It has soon failed to meet its objectives and deadlines and the initiative died out quickly. Several subsequent attempts failed as well. The OHR also drafted and promoted with a big bang its own strategies, which too failed the same way. Therefore, except for a lot of talking on the issue, BiH very much remains a rare country heavily affected by corruption yet with no anti-corruption government strategy at any level.

- **Has the government announced an anti-corruption strategy and a timetable for implementation?**

PARTLY – Anti-corruption activities have intensified greatly since 1998. The Entity governments, in cooperation with the OHR, adopted anticorruption strategies at their respective levels. At the request of and in cooperation with national authorities, the World Bank prepared a Diagnostic Survey of Corruption in BiH, which was published in 2000. The Global Framework Strategy of Economic Development, which was developed at the same time, highlighted corruption as one of the most serious obstacles to ensuring economic development, which set anti-corruption combat as one of the top priorities in the work of the governments in BiH. The Proposed Poverty-Reduction Strategy sees anti-corruption combat as an essential prerequisite to improving the business environment in BiH. The anti-corruption strategy was based on three principal objectives:⁹¹

- Transparency and accountability in the public sector,
- Free competition in the private sector,
- Building up the trust of citizens in governmental institutions by giving them the possibility to participate in policy development and institutional reforms.

In addition to these objectives, there is the intention to create a framework for eradication of corruption through laws adopted at the State level. The Entities will change and amend their laws and regulations in accordance with the principles contained in the new State-level laws, which will also contribute to legislative and operational harmonisation. Institutional reforms will be directed towards strengthening the judiciary and prosecution, and establishing new institutions with the aim of increasing efficiency.

The Anti-Corruption Office (envisaged by the anti-corruption strategy but never established), CIPS Project (the Citizens Identification Protection System), Treasury institutions, Supreme Audit Offices, Working Group for Combat against Corruption and Organised Crime (envisaged by the

anti-corruption strategy but never established), and Civil Service Agency constitute just one part of the institutional framework, partially realised, for strategy implementation.

Courts, prosecutor's offices, police and the banking sector are special areas of public administration with the priority to educate officials about corruption and their obligations and roles in its eradication. A special emphasis in these activities is given to NGOs and the media.

Journalists are being progressively empowered to better understand and report on policy and activities in this field. On the basis of these strategic directions, the government of BiH and the Entity Governments developed the Action Plan in the field of anti-corruption combat and strengthening of the rule of law (December 2002). The first version of this action plan did not contain an implementation timetable, but the activities in the legislative field and in the institutional field ran in parallel with the work on strategy and the Action Plan.

The changed and amended Anti-corruption strategy and Action Plan were developed in the form of a proposal in October 2003. This plan of activities determines the implementation timetable. To date however, no effective anti-corruption strategy is in place and the work on this and related fields remains very much *ad hoc* and primarily international community-driven.

- **How much of the strategy has been implemented?**

Approximately 40% of the initial Action Plan has been spontaneously, but not strategically, implemented in the field of the legislature activities – several important laws necessary for implementation of the strategy have been adopted. The activities aimed at ensuring the rule of law in legislative and executive authorities and establishing a legal framework based on the integrated judiciary system is taking place continually. So far less than 20% of activities planned in this field have been implemented.

Reforms in the structure of the judiciary have already been implemented in both FBiH and RS. At the moment activities are underway with an aim of implementing the law concerning the number and structure of court employees, ensuring the transparency of the appointment of judges, and improving professionalism and ethical criteria required for the appointment of judges.

Reforms have also begun in the field of criminal law, but it is necessary to accelerate the reform of the Law on obligations and reform of the code of rights, implement the Law on money laundering at the level of BiH, establish departments for resolving commercial disputes, and initiate the education of judges. Increasing the efficiency of domestic offices for the identification and eradication of crime and corruption, continuing of the reform of indirect taxation, improving the public finance management and control system, continuing of activities in combating human trafficking, increasing the transparency of the privatisation process etc. are all just a part of the forthcoming activities that need to be implemented by the end of 2004, as planned by the improved version of the proposed Action Plan.

- **Is the strategy at national level or regional/local level?**

BOTH – The strategy and the Action Plan are shared by both State and Entity-level governments. After the establishment of the Ministry of Justice at the level of BiH, most of the activities planned in the new Action Plan are implemented at the State level.

- **Is the government meeting its own timetable?**

NO – The improved version of the anti-corruption Action Plan, which would contain the implementation timetable, has not been adopted yet. The planned deadlines by the end of 2003 had largely been missed. Due to the workload of governments they are not expected to meet the planned deadline for implementation of the Action Plan.

Donor Anti-Corruption Initiatives

- **Which bilateral and multilateral donor agencies are based in the country**

There are various donor agencies based in BiH: USAID, Council of Europe, UNDP, EU (EC), WB, OSCE, DfID, SIDA, CIDA, SDC, OSF, Cooperazione Italiana, JICA, Denmark, Norway and other various donor governments and NGOs

During the initial post-war period, two principal anti-corruption projects were launched. The first project was launched by the EU through establishment of CAFAO, whose mission was to control customs authorities and monitor smuggling of goods, while the main mission of CAFAO today is to prepare customs authorities for reform and their transfer from the Entity-level onto the State level.

In 1998 Council of Europe worked on a project drafting legislation on corruption and money laundering, which was on the list of priorities for admission of BiH to the Council of Europe, while the UN and EU worked on reform and training of police forces, as well as on establishment of the State Border Service.

The first articles on large-scale corruption in BiH appeared in foreign press in 1998. In 1999 corruption was highlighted as one of the most acute problems hampering economic development in the country. At that time donor organisations changed their policy and started to pay more attention to corruption-related problems.

In 1999 OHR developed its Anti-Corruption Strategy which remains in the archives of both local and international institutions.

The BiH Council of Ministers invited the World Bank to develop the Diagnostic Surveys of Corruption in BiH, which were publicly presented in 2000. This was the first such study ever in BiH. The findings were shocking. Namely, the study revealed citizens' profound mistrust in governmental institutions – about 95% of the respondents believed that corruption exists in the country, while 55-60% thought that it is very widespread⁹².

The first significant project in corruption awareness raising was carried out by the OSCE in cooperation with local non-governmental organisations. The project was called "Outvote Corruption" and was launched during the 2000 election campaign with the aim of advising the public to vote for political parties which had anti-corruption programmes as corruption combat was a top priority in BiH even at that time.

- **What types of anti-corruption initiatives have they supported**

- legislation drafting